25+ years

AEB

Association of European Businesses

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DEAR READERS!

We are delighted to present the 'European Business in Russia: Position Paper 2021' – a publication that will summarize the outcomes of intense lobbying work on a variety of legislative initiatives implemented by the AEB Committees and Working Groups throughout 2020. Likewise, it will provide precisely articulated recommendations for government authorities on how to specifically deal with the issues which are of paramount importance for foreign businesses operating on the Russian market.

The outburst of the COVID-19 pandemic caused many problems to people and organizations worldwide, and the AEB was not an exception. Nevertheless, the Association managed to smoothly adapt to the emerging circumstances and continued to work at its usual pace, having ensured uninterrupted activities to achieve significant results.

In March 2020, the Russian government restricted the entry of foreigners into the country, that has led to difficulties for the highly qualified specialists working in AEB member companies to re-entry the Russian territory to fulfill their duties. The AEB has been at the forefront of the enormous efforts together with the representatives of the Russian government for getting them back. Four lists, including more than 2000 highly qualified specialists and their accompanying family members, were approved by the government and received permission to return to Russia.

In 2020 the AEB has dealt with other issues such as localization and access of foreign products to government purchases and public procurement, a new mechanism of the special investment contracts (SPIC 2.0), mandatory labelling of goods and track & trace systems, double tax avoidance treaties and changes to the procedure for VAT exemptions for software and databases (so-called "tax maneuver" in the IT sector), parallel imports and double standards in the composition and quality of goods, regulatory guillotine, and so on.

Moreover, the AEB continues to follow such topics as customs, waste management, insurance, taxation, banking, technical regulations, trade law and self-regulation. The Association has been in close contact with authorities from the European Union and the Eurasian Economic Union on various matters, such as migration, localization, mandatory labelling, trade and customs and other areas of mutually beneficial cooperation.

Dear friends, let us kindly express genuine gratitude to all AEB members for their dedication, support and trust, especially nowadays, in times of uncertainty. We clearly understand how many hardships companies had to overcome due to the pandemic, and what a challenging path is still ahead of them to fully recover and acquire new strength.

The year 2020 is remarkable for us as the AEB celebrates its 25th anniversary. Unfortunately, the ceremony itself and a number of events on this occasion have been moved to 2021 because of the pandemic, but we hope that the celebrations will turn into a festival of bright ideas, smart expertise and outstanding solutions for all of us. Let us grow strong together!

Johan Vanderplaetse
Chairman of the Board

Tadzio Schilling
Chief Executive Officer

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As the world ushered in 2020, the expectation that we would be entering a period of a prolonged global health pandemic was not high on the list of businesses, policy makers or the billions of people it has now impacted. According to the World Health Organization, there are now more than 33 million confirmed cases of coronavirus in 235 countries and territories around the world. The current pandemic has fundamentally shifted how we work and live as a society. We must take action to protect our people, our companies and our communities in this new reality.

For many companies, the COVID-19 pandemic has served as a catalyst for change. From strategy to planning to ways of working, businesses are embracing the new reality and accelerating in areas of digital and agility to ensure continuity and growth for the future.

The coronavirus pandemic has accelerated many aspects of business for various companies. This crisis has seen dramatic shifts in demand and negative impacts to economies around the world. Governments are responding with economic stimulus, recovery packages, and policies that target green investment. We believe the post-COVID recovery presents an unprecedented opportunity to 'build back better' and that clean energy will play a vital part.

Additionally, we have seen a dramatic change in how we work. Though remote work was a necessity during the pandemic, it is quickly becoming the norm. A recent survey by Global Workforce Analytics found that 93% of employees would prefer to work at home some of the time, while other companies have shifted to permanent remote work. Balancing the demands of home and work have been even more apparent during these past months further, fuelling the need for companies to assess new approaches to how we work for the long term.

The current environment enforced and accelerated a pivot to agile practices. This means deploying cross-disciplinary teams and empowering them to solve problems and seek opportunities. Agility links businesses and teams across many geographies, keeping people connected while maintaining our strong culture of inclusion. This has proven vital during these challenging times.

Another outcome for business is the push for deeper digitalization. Digital is at the core of the strategy for many companies and will enable them to invest significant capital into new businesses. The pandemic has accelerated the need to be at the forefront of digital design, linking people, assets, and partners in innovative ways.

During the pandemic, many companies have taken active steps to promote mental health awareness and provide support for employees and their families. During this time of uncertainty and change, ensuring teams have access to these resources remains important.

With the post-COVID world uncertainty, businesses must adapt, balance, and be imaginative in their approaches to the changing landscape. People often talk about 'the art of the possible'; the current crisis is redefining 'possible' day by day.

GREENHOUSE GAS EMISSIONS REGULATION AND THE INTERNATIONAL CLIMATE AGENDA

In December 2019, less than a week after taking office, the head of the European Commission, Ursula von der Leyen, unveiled the European Green Deal, a new climate strategy for the EU countries to achieve carbon neutrality by 2050. In March 2020, the EU Council approved the EU's long-term strategy for low-carbon development and presented a draft climate law and over the following months published sectoral strategies which are part of the plan and commitments to ensure funding and an equitable mechanism for such a transformation. The key reason for such ambitious goals is the broad consensus regarding the scale of the climate catastrophe and its economic and social consequences if we would not be able to keep the average temperature rise within 2 °C by 2100.

The pandemic impact on the economy and its recovery have become an additional incentive, and taking into account the recommendations of leading economists, the European Commission has linked the budgets for economic recovery, the pan-European budget and the climate targets, allocating at least 30% of the total budget of over EUR 1 trillion for the next 7 years to implement the climate strategy.

Many components of the EU strategy will be associated with a major change in the market for Russian exports. It is certainly a strategy for the energy system, including "green" hydrogen, but also strategies and action plans for sustainable mobility, circular economy, etc.

Finally, to ensure a level playing field and stimulate the development of those EU industries competing with importers from countries with no strict emission regulations, the EU proposed the concept of a cross-border carbon regulation mechanism, CBAM. The mechanism may take form of payments similar to the EU ETS quota mechanism for installations producing imported goods, or of payments based on the carbon footprint of imported goods. Other approaches are also being elaborated. The regulation, which can be introduced as early as 2022, should cover the products of a number of industries – the first wave is expected to cover steel, cement and bulk organic and inorganic chemicals as well as electricity imports.

The stance that the EU takes is not at all unique: this September, US presidential candidate Joe Biden announced a USD 2 trillion climate plan, and Chinese President Xi Jinping announced that the country expects a peak in greenhouse gas emissions by 2030 and is adopting the goal of achieving carbon neutrality by 2060.

In March 2020, the Russian Ministry of Economic Development published a draft 2050 Strategy for the Long-Term Development of the Economy of the Russian Federation with a low level of greenhouse gas emissions. The baseline scenario of the strategy considers measures to improve the energy efficiency of the economy and preserve forests and presumes an increase in emissions by 2050 by more than 26% relative to the current level (2017). The most ambitious scenario presumes a more moderate increase in emissions by 2030 and their return to roughly current levels by 2050. A recent draft Federal Law "On State Regulation of Emissions and Removal of Greenhouse Gases..." features the same level of ambition. The bill, which does not imply the introduction of any measures limiting emissions, was supported by most of the Government. The adoption of the bill stalled due to the position of the Special Presidential Representative on Climate Issues Ruslan Edelgeriev, who linked it with Russia's potential for interaction with the EU as part of the introduction of CBAM.

According to various estimates, the EU's CBAM can cost Russian importers about EUR 3–6 billion annually. In the event that such measures are introduced affecting Russian companies, these funds would go to the EU budget. Effect of the climate policies pursued by the EU and other importing countries on the demand for energy and is equally important. According to the range of estimates, a decrease in demand for fossil fuels will lead to loss of about 1% of Russian GDP – an amount several times higher than that associated with CBAM.

In fact, the only way to respond to both these threats to the Russian economy would be to introduce national regulation of greenhouse gas emissions. Such regulation will allow for a dialogue with the EU on an equal footing and will provide tools in order to collect and direct funds to stimulate promising industries and technologies in Russia. At present an increasing number of Russian businesses are coming to share this view. Hopes for legal protection mechanisms via WTO agreements are fading, and not only because their effect is already considered when developing EU cross-border mechanisms. All candidates for the post of the next WTO Director General who have higher chances to be selected have announced in their programmes the need to reform the organization to reflect climate and environment issues.

Such regulation will also establish a level playing field for European companies operating in Russia, many of which are implementing unified corporate policies and setting ambitious goals to reduce greenhouse gas emissions and carbon footprint of products and switching to renewable energy sources. Defining a low-carbon development and reduction of greenhouse gas emissions strategy compatible with the goals of the Paris Agreement and the definition of regulatory instruments and emission targets for 2030–2050 will allow European companies to implement investment strategies to transfer and expand advanced technologies in Russia, including those in energy efficiency, renewable energy and low-carbon transport. These same measures will also help stimulate the growth of Russia's own innovative industries, helping improve competitiveness of the Russian economy in the global market – and thus benefitting international companies present here.

LABELLING: ISSUES AND CHALLENGES

Labelling ('Markirovka' in Russian) is probably the word of the year for many professionals working with consumer goods. It means the labelling system that tracks the movement of an individual item along the supply chain. Although still scarcely noticed by the general public, labelling is an extremely complex and expensive project both for businesses and the state.

The project started off in 2016-2017 with an experiment in fur clothes – a segment then notorious for a big share of the black market. Labelling helped significantly purge the market, filter out illegal imports and bring a manifold increase in collected taxes and customs duties. This success story inspired the government to push harder for the system's expansion, which is now coming in giant leaps: tobacco, shoes, medicines, car tyres, clothing, perfumes, milk and dairy, bottled water, etc. The Russian government has declared an ambitious goal to extend labelling to as many categories as possible by 2024.

While some industries support labelling, others are still quite apprehensive about it due to the costs, lack of transparency, hasty implementation and a multitude of unresolved technical issues.

There is no denying, though, that there are still some fundamental challenges to tackle:

- The system is still too far from becoming fully operational. There are business processes and issues that urgently need description and testing (e.g. e-commerce, IP rights protection and many others).
- The economic consequences of labelling are yet to be assessed in terms of inflation, growing administrative and technical burden, market access, etc.
- The government should spare businesses the need to deal with several traceability systems at a time (namely, EGAIS, labelling, Mercury, documentary traceability). As of now, such systems are actually competing with each other and beginning to overlap in some of the categories (e.g. dairy or alcoholic drinks). There should be a single interface, 'one window', designed for submitting data by the business, which would save integration and operational costs.
- The amount of big data collected through labelling and other similar systems must be properly protected to avoid their leakage or misuse by unscrupulous market players.
- Labelling must not become a trade barrier for international businesses dependent on imports or working within the Eurasian Economic Union.

The effect of labelling may also go beyond a simple CAPEX and OPEX increase or squeezing out illegal goods from the market. Being quite a complex project in terms of technology and processes, labelling might change the whole market landscape. As the overall cost of doing business goes up, the survival of smaller companies and entrepreneurs comes into question. Local farmers, shop owners, or restaurateurs are not usually quick and efficient enough when it comes to finding the people and money that would help them implement hi-tech projects. Therefore, the risks of such businesses range from losing ground to bigger companies to complete extinction. Hence, the government shouldn't turn a blind eye to that and instead provide sufficient and timely support to SMEs to ensure their survival.

POSITION PAPERS BY COMMITTEES AND WORKING GROUPS

AGRIBUSINESS COMMITTEE

Chairman:
Dirk Seelig, CLAAS Vostok

Committee Coordinator:
Asker Nakhushev

INTRODUCTION

In 2020 the world economy faced a serious challenge: the COVID-19 pandemic, whose impact on the global and Russian economies is yet to be fully appreciated. But even now we can say that the Russian agricultural sector, on the one hand, has found itself at the epicentre of this dangerous threat since it is impossible to stop food production, while, on the other hand, it has shown its ability to operate effectively even in such extraordinary circumstances. According to the forecasts of the Ministry of Agriculture of Russia, this year agricultural production in Russia will grow by more than 1%, and the agricultural sector, as a whole, will grow by 2%. Here the main factor of success is the fact that Russian farmers are accustomed to working in a high-risk environment and overcoming the restrictions imposed by severe natural and climatic conditions, infrastructural restrictions and foreign trade sanctions.

In fact, in 2020 the Russian agricultural sector clearly confirmed its role as a basic sector of the economy, and its growth, although more modest than in the previous several years, is helping compensate for the decline in other sectors and is contributing to the recovery of the domestic economy. However, in the near future many risk factors remain: first of all, low purchasing power of the population, increased internal and external competition, technological gaps, limited access to financial and investment resources, infrastructure problems.

The current positive results include the expected expansion of areas for the cultivation of major crops: grain maize by 3.7% to 2.7 million ha, rice by 1.7% to 198,400 ha, buckwheat by 6% to 858,200 ha and potatoes by 3.8% to 1.32 million ha. The total area under crops this year reached 80.3 million ha, a 1% increase. Another important indicator showing that Russia occupies an increasingly significant place in the global food market and is successfully overcoming existing difficulties is an 11% increase in exports in the first quarter of this year. Supplies of agricultural products to foreign markets reached USD 5.963 billion. The decline in grain exports by 12% to USD 1.79 billion was more than offset by growth in other items, including processed products, which is in line with the Russian government's strategy for the development of the agricultural sector. The export of vegetable oils increased by 24% to USD 1.18 billion; fish and seafood, by 2% to USD 1.17 billion; processed food products, by 29% to USD 0.73 billion; meat and dairy products, by 74% to USD 0.2 billion; and other agricultural products, by 55% to USD 0.89 billion.

The opening of foreign markets that were previously inaccessible to domestic agricultural producers will facilitate a further increase in exports. In 2020 China opened its market for the import of Russian meat, soybeans and sunflower oil, and an almost twofold increase in the export of meat and dairy products at the beginning of the year is just the beginning. The Indian market, the main export to which is sunflower oil, has significant potential as well. In recent years Russian agricultural products were practically not supplied to this country; this explains the explosive growth of exports by 564%. However, the current volume of USD 0.17 billion, as in the case of China, indicates that the potential of this market is still huge. Supplies of pork to Vietnam, beef to Brazil, beef and poultry to Venezuela, rabbit meat to South Korea and poultry to the UAE began this year as well.

However, to increase the country's export potential and produce competitive products, much remains to be done in terms of technological improvement, upgrade of equipment, development of external supply infrastructure and strengthening the country's image among foreign consumers as a reliable supplier of high-quality food products.

The main risk factors that Russian farmers have yet to face include a projected significant drop in the Russian economy and in the actual disposable income of the population as a result of lower oil prices and self-isolation. Also, the Ministry of Agriculture does not exclude the acceleration of food inflation due to the devaluation of the rouble. The latter may have a negative impact on a number of agricultural sectors which rely more than others on imports: equipment, ingredients and chemicals which have no complete equivalents in the domestic market. For example, imported components in dairy production reach at least 25%.

In crop production, the main stress factors are associated with the use of foreign machinery, equipment and components. At the peak of the pandemic, many foreign manufacturers suspended production, and countries adopted border-crossing restrictions. Due to the disruption of supply chains, up to two-thirds of dealers working in Russia experienced difficulties with the supply of machinery and spare parts, and 84% of them expect a drop in sales of agricultural machinery for the year. However, accumulated stocks and well-

functioning supply chains, overall, made it possible to quickly reconfigure the work of dealer networks throughout the country and to carry out sowing and harvesting without interruptions.

The further development of the equipment upgrade process will largely depend on the macroeconomic situation and state support measures; the latter will be especially relevant since due to deteriorating market conditions the availability of commercial loans to finance investments in the high-risk agricultural business will inevitably decrease. On the positive side, the industry will be supported by the expansion of exports because even in the event of a devaluation of the rouble export revenue will be able to compensate for losses caused by the weakening of the national currency.

At the same time, the difficult period that Russian farmers are facing today is also a period of additional opportunities to optimize production, reduce costs and enter new sales markets.

REGULATORY ENVIRONMENT

SUBSIDIES FOR AGRICULTURAL MACHINERY MANUFACTURERS (DECREE OF THE GOVERNMENT NO. 1432)

The Subsidy Programme for Manufacturers of Agricultural Machinery (the 'Programme'), according to which the production of agricultural machinery in Russia is subsidized, provided that it is sold at a discount.

In 2020 the Ministry of Agriculture of the Russian Federation transferred the management of the Programme to the Ministry of Industry and Trade of the Russian Federation.

The Ministry of Industry and Trade amended Decree of the Government No. 1432, and in 2020 the Programme began operating according to the new rules.

Competitive selection was introduced for participation in the Programme, the possibility of postponing the payment of subsidies to the next year was abolished, the amount of the discount was changed. In 2020 it is 10%-15%, depending on the region. The concept of 'buyer' has been changed and expanded, and in the case of leasing transactions the client is the leasing company, not the farmer. The application process has changed dramatically.

The budget of the Programme in 2020 is RUB 12 billion. Given the need to compensate agricultural machine builders for debts incurred in 2019, this budget is not enough to provide farmers with the necessary equipment. The Ministry of Industry and Trade supports increasing the programme budget.

Subsidies can only be received by manufacturers carrying out a specific list of process operations as well as companies that have entered into a Special Investment Contract. Performing this list of process operations is equivalent to a localization level of 65%, which is a rather stringent requirement for manufacturers. The stages of achieving the localisation level are not provided for. The Committee believes that a more flexible approach for accessing funding instruments is needed.

LOCALIZATION OF AGRICULTURAL MACHINERY PRODUCTION IN RUSSIA

In 2020 discussions began on draft Decree No. 719 on grain and forage harvesters. At the moment, an agreement has yet to be reached on several key issues, which raises concerns that the situation with the amendments in Decree No. 719 regarding tractors will be repeated. The Committee would like to once again highlight the significant shortcomings of this approach to localization requirements:

- To date, the Committee member companies have successfully opened production facilities in various countries in Asia, Europe and Latin America. It should be noted that none of these countries have similar requirements for the use of local components. The use of components manufactured by global leaders is due both to innovation and quality requirements and to the price factor (mass production is less expensive). Thus, the investments required for the performance of the operations provided for by this methodology have no economic justification and will ultimately lead to the loss of key product parameters, such as quality, price and the cost of ownership for the end consumer.
- The responsibility for the development of a supplier network falls on equipment manufacturers since there is no government programme or strategy for the development of suppliers for the agricultural sector. The main problem is the search for Russian suppliers of such components as engines, hydraulic systems, harvester controls, final drives, transmission elements, harvester drive elements and bearings. Manufacturers of finished products are unable to independently attract foreign component suppliers to Russia, including due to insufficient volumes. And today there are no Russian suppliers providing the required quality.
- This approach does not provide for measures to stimulate the introduction and development of the latest technologies as well as not yet implemented but promising technologies.
- Wording on R&D and percentage limit of total points. The text of the resolution uses a rather narrow understanding of the entire range of R&D activities and excludes the process of implementing R&D in serial production. For the technological development of the agricultural machinery industry, R&D alone is not enough: the implementation process is important, and it requires the technological modernization of production and the introduction of high technologies in the equipment manufacturing process. At the same time, when studying draft Decree 719 on the automotive industry, broader formulations were found that involve accounting for the costs of engineering work, improving product quality, product certification, purchasing and upgrading tools and equipment for organizing production planning etc. Moreover, this draft provides for taking R&D expenses incurred by the parent foreign company into account. The R&D conditions for the automotive industry appear to be more feasible than for agricultural machinery manufacturers.
- In the current version of the decree, the maximum percentage of the total number of points is set at 80% by 2026. It is proposed

to reduce this requirement to 50% with an extension in the fulfilment term to 2030. With the current localization requirements, there is no economic incentive for manufacturers to invest in localization.

The main message that manufacturers are trying to convey to the Ministry of Industry and Trade of Russia is that the requirements should be proportionate to the real possibilities for localizing their products in Russia. The goal of agricultural machine manufacturers is to develop and improve the model range of their equipment and provide Russian farmers with modern equipment that meets international quality standards.

RECOMMENDATIONS

- Broad and transparent discussions of the criteria for localizing equipment are required, including with the involvement of companies interested in developing their own production in the Russian Federation. These requirements should be long-term and should not be revised every few years. This is an important and necessary condition for planning investments in production and further localization.
- Localization requirements should be economically feasible and take into account global experience, including the implementation of advanced global innovative products and solutions.
- It is necessary to create and adopt a long-term strategy for the development of suppliers for the agricultural sector. The Ministry of Industry and Trade of Russia should be the driver of this issue. The Committee members are ready to support this initiative in every possible way and share their global experience and expertise.

DISPOSAL FEE

On 1 January 2016, the Federal Law "On Amendments to Clause 24-1 of the Federal Law 'On production and consumption waste'" came into force in order to provide the safe disposal of self-propelled vehicles and trailers by charging a scrapping fee. Later, in February 2016 Decree No. 81 was published with rates and payment methodology. It should be noted that the public discussion was not observed for the documents. According to the Committee's experts, scrapping fees were not economically justified, and actual cost of recycling should not exceed 2% of equipment cost, so fee amounts do not comply with the goals of the Federal Law to ensure recycling procedure. This fee significantly increases the burden on business and creates additional barriers to the purchase of modern agricultural machinery. On May 31, 2018, the base rate of the disposal fee grew from 15% from RUB 150,000 to RUB 172,500. During the last two years intensive discussion has been ongoing regarding increase of scrapping fees further. Needless to say that such signals did not have any positive impact on market environment, nor made it more predictable, and disturbed our customers. Recent talks about possibility of scrapping fees indexation multiplied by rouble rate uncertainties generated concern of market players especially amid COVID-19 spread, which business have already suffered from. We understand that so called "industrial subsidies" allow to offset scrapping fees paid, but the subsidies available for some companies, mostly local ones, and that's way the fees can be considered as a sort of punishment for customers for equipment chose.

RECOMMENDATIONS

Considering above, the Committee finds it reasonable to restrain from scrapping fees increase and secure sustainable rules of the game for the market at least for the next three years. We also believe that clear and direct communication with business regarding the issue will bring certainty to the local market and support fair competition to secure high quality of products and services for Russian customers.

ELECTRONIC PASSPORTS FOR SELF-PROPELLED MACHINES

EEC Board Resolution No. 122 dated 22 September 2015 established new operating standards and the procedure for transitioning from unified passports for self-propelled machines and other types of machinery (approved by EEC Board Resolution No. 100 dated 18 August 2015) (the Unified SPM Passport Form) to the system of electronic passports for self-propelled machines and other types of machinery (the EPSPM) effective 1 November 2019.

As the EPSPM system is not yet ready, the Ministry of Industry and Trade of the Russian Federation proposed postponing the introduction of the EPSPM for 2 years – that is, until 1 November 2021. The initiative was supported by the Ministry of Agriculture of the Russian Federation and EEC member countries: Kazakhstan, Belarus and Kyrgyzstan.

RECOMMENDATIONS

To improve the draft electronic passport for self-propelled machines by optimizing the number of required technical parameters and making appropriate amendments to the EEC Board Resolutio; to determine the list of authorized operators responsible for entering EPSPM data for imports.

COMMITTEE MEMBERS

CLAAS • CNH Industrial Russia • John Deere Rus • KUHN VOSTOK.

AIRLINES COMMITTEE

Chairman:
Eric Louveau, Air France-KLM

Committee Coordinator:
Ksenya Bortnik

INTRODUCTION

The AEB Airlines Committee is the main representative body of foreign airlines in Russia in the absence of any Board of Airline Representatives. It works in close cooperation with the International Air Transport Association (IATA) and with the Moscow and provincial airport authorities.

Its objective is to support foreign airlines in a highly regulated sector, raising issues faced by its members with Russian authorities in order to facilitate the development of the Russian civil aviation market and meet the airline industry's key commitments in terms of safety, security and sustainability.

Unlike the internal EU market, the Russian international market is still regulated by bilateral air service agreements between state authorities, based on balance and reciprocity, which can be linked to commercial agreements with Russian airlines.

Since 2017, both domestic and international air traffic has strongly increased mainly due to the strong capacity development implemented by Russian airlines, low cost carriers and Gulf carriers.

This double-digit development, above air traffic demand, leads to a strong pressure on yields and profitability of the international air routes to/from Russia.

Since the beginning of the unprecedented COVID-19 crisis, all international airlines are fighting for their own survival and their market presence in Russia, and are actively lobbying the Russian authorities to authorize the resumption of regular international flights and lift unnecessary travel restrictions.

TAXATION

ISSUES

The complex legal environment (air service agreements, bilateral taxation treaties, Russian Federation laws) creates taxation hurdles for airlines operating in Russia, but also for Russian providers and local authorities who don't apply the law in a consistent way. Airport taxation is also not consistent between Russian and foreign airlines, making competition conditions unfair. It is therefore crucial to continue all lobbying actions towards Russian authorities and airports to solve these issues.

RECOMMENDATIONS

- Align the passenger terminal charge (RI), security charge (UH) and new infrastructure charge between foreign airlines and Russian airlines.
- Leverage the new tax code update (dated April 2019 for implementation in July 2019) allowing representative offices to claim a VAT refund (i.e. on non-airport related services for international airlines).

NEW ELECTRONIC VISA REGIME IN RUSSIA

ISSUES

Since the launch of the pilot e-visa regime for the St. Petersburg region on 1 October 2019, too many passengers are refused entry to Russia by immigration authorities and sent back to their country of origin because their e-visa form does not fully match with their passport details. The above issue is due to the lack of any automated check performed during the online visa process. The improvements made in December 2019 are not sufficient to address completely this issue.

RECOMMENDATION

Continue to lobby the Russian authorities to ensure that an efficient and automated process/tool will be ready before the extension of the e-visa regime to the entire Russian Federation set for 1 January 2021.

AIRPORT HANDLING

ISSUES

Most Russian airports are today in a monopolistic situation as regards handling activities, which can be performed only by the airport. Therefore, the prices are much higher than the European average, limiting airlines' development. On top of this, some immigration and customs procedures should be reviewed and sim-

plified in order to improve the punctuality in Russian airports without compromising security and safety.

RECOMMENDATIONS

- Facilitate the opening of the airport handling market to private handlers to allow capacity growth at a lower cost.
- Review and simplify the airports' regulations and procedures in line with international standards. For instance, remove the law forcing passenger counting by a police officer at the door of the aircraft during boarding: this double counting by the police and the airline creates delays in case of a mismatch and has no impact on flight safety or on immigration control.

COMMITTEE MEMBERS

Air France • Compagnie Nationale Royal Air Maroc • KLM Royal Dutch Airlines • Delta Airlines.

AUTOMOBILE MANUFACTURERS COMMITTEE

Chairman:
Thomas Staertzel, Porsche Russland

Deputy Chairman:
Alexey Kalitsev, Hyundai Motor CIS

Committee Coordinator:
Olga Zueva (olga.zueva@aebrus.ru)

The Automobile Manufacturers Committee (AMC) was formed in 1998 to unite and represent the common interests of its member companies – major international car makers acting as official importers to Russia and as national sales companies (NSCs).

The aim is to create and observe fair business rules for all companies officially operating on the Russian market and to leverage inter-company cooperation. Currently, the Committee unites 26 members representing 46 brands (automobile and motorcycle importers and producers) that carry out business activities in the Russian Federation. The AMC concentrates on the most important and urgent issues faced by automotive and motorcycle businesses and affecting its members by developing appropriate responses, lobbying Committee interests, and interacting with Russian government authorities, public institutions, local and international automotive associations, as well as the mass media.

To increase the efficiency of Committee activities, it was decided to focus on areas addressing acute automotive issues, in particular, where members who are specialists in these fields combine their efforts to find solutions. The AMC contains 6 working groups (WG, the number of which is not fixed) that integrate up to 400 company representatives and a motorcycle manufacturers subcommittee. Each WG deals with a specific automotive issue that has been set as a priority by the Committee:

- aftersales;
- exhibitions/marketing and PR;
- government relations;
- homologation/certification;
- intelligent mobility (IMobility);
- used cars.

The Committee operates under the AEB Committee Rules and Automobile Manufacturers Committee Charter.

For a number of years, the AMC has been cooperating with the Association of Russian Automakers (OAR), the official representative of Russia in the International Organization of Motor Vehicle Manufacturers (OICA). Years ago, a Memorandum of Understanding was concluded between AMC and OAR to intensify joint efforts, exchange information and strengthen lobbying activities in the automotive sector. Cooperation with international automotive associations is developing as well. The AMC is in contact with the German Automotive Industry Association (VDA), the European Automotive Manufacturers Association (ACEA), the Japanese Manufacturers Association (JAMA Europe), the French Confederation of Automobile Manufacturers (CCFA) and the OICA.

GOVERNMENT RELATIONS (GR)

The group coordinates relations with governmental bodies and advocates for the interests of the Committee members. Initiatives on improving the legislation is a focus of the GR WG too. When necessary, the group organizes consultations and discussions of different levels with representatives of the state authorities. As an example, meetings with the Deputy Minister of Industry and Trade, Deputy Head of Rosstandart and other stakeholders were arranged to discuss state support measures during the pandemic.

The group is also responsible for working out a common position on ELV issues and monitors creation of the complex system for recycling end-of-life vehicles in Russia as well as issues regarding the implementation and change in rates of the disposal fee.

MOTORCYCLE MANUFACTURERS SUBCOMMITTEE

The subcommittee was established in December 2019 in order to represent the interests of motorcycle manufacturers in Russia and to develop the industry.

The aims of the subcommittee are:

- to engage in dialogue with Russian institutions and other key stakeholders in order to advance the understanding of industry positions on relevant policy issues;
- to provide clear and factual information concerning the Russian motorcycle sector and to foster an understanding of the sector's contribution to society;
- to advocate on behalf of its members for policies that improve the competitiveness of manufacturers;
- to monitor regulatory activities that affect the motorcycle industry and are unique to it.

The subcommittee intends to establish contacts with international motorcycle associations such as ACEM to use industry best practices that are already developed.

The members of the subcommittee are BMW (BMW Russland Trading), Ducati (VW Group), Harley-Davidson Russia and CIS, Honda Motor Rus, Suzuki Motor Rus, and Yamaha Motor CIS.

AFTERSALES

The Committee conducts targeted work to change the OSAGO law in close cooperation with ROAD (Russian Association of Auto Dealerships) and the insurance community represented by individual companies and RAMI (Russian Association of Motor Insurers), as well as with the Central Bank – the legal regulator on issues concerning the legislation of compulsory motor vehicle liability insurance. In 2016, this work resulted in acceptance of amendments to the Federal Law 'On OSAGO' (third-party liability insurance), which established the priority of non-monetary compensation (repair) over direct monetary payment. Unfortunately, the stance of certain market players resulted in acceptance of the amendments in a form which inhibited establishment of a healthy repair market under the OSAGO programme. The Committee continues its vigorous efforts in this area directed at the market players and public institutions responsible for its regulation. Our objective is to create a balance of interests of all market participants with unconditional priority for the interests of consumers.

Achieving this target will put a stop to the ongoing reduction in spare parts and body repair sales.

ISSUE

One of the essential regulatory problems in the field of restoring repair under OSAGO is concerned with spare parts pricing. Calculation of the amount of compensation for spare parts used during repairs is based on the Provision of the Central Bank 'Concerning the universal method to determine the cost of repair of damaged motor vehicles'. The prices currently quoted therein are significantly below market levels. Since 2016 the Automobile Manufacturers Committee has been discussing this problem and potential solutions with the insurance community and in 2018 meetings took place with the Central Bank, including related Russian ministries.

RECOMMENDATIONS

The Automobile Manufacturers Committee deems it necessary to continuously work with the Central Bank and the Russian Association of Motor Insurers (RAMI) to develop the right database for the compensation of spare parts prices to the body shops of Official Dealers.

The AMC Aftersales Working Group performs targeted work to change the law related to Recall and Service campaigns in Russia as well as the methods for vehicle owner notification and motivation to visit official dealers to carry out the required check/repair. Members hold working meetings with the Federal Agency for Technical Regulation and Metrology (Rosstandart), State Research Center of the Russian Federation 'NAMI', Association "Russian Automobile Dealers" (ROAD), and the insurance community, represented by both individual companies, the Russian Association of Motor Insurers (RAMI), and the Central Bank of the Russian Federation acting as a regulator in the field of insurance.

In 2020 based on Rosstandart's order, NAMI developed the first edition of the GOST related to motor vehicle recall. The main items, which are under discussion, can be summarized as follows: basic definitions, risk estimation, and campaign classification criteria, as well as a lack of description related to communication from governmental structures to vehicle owners, aiming at 100% information penetration in the market and motivation by the affected vehicle owners to visit official dealerships to carry out the required service. With great regret, it is necessary to admit as highly probable the fact that at the very initial stage the technical order of the GOST was prepared in a way to avoid a direct description of the communication methods between governmental structures and vehicle owners.

Our objective is to create an efficient auto/motor vehicle recall system that includes the stages of action preparation, announcement (publication), owner notification, check/repair, as well as supervision and reporting. Hitting this target will significantly reduce risks to the life and health of all traffic participants as well as increase both vehicle and overall traffic safety.

ISSUE

The most significant drawbacks of the current GOST can be noted as follows: fuzzy classification criteria for risks and campaigns as well as placing direct responsibility on manufacturers to prepare and carry out recalls without any support from the governmental structures in terms of owner notification and recommending a dealer visit.

RECOMMENDATIONS

The Automobile Manufacturers Committee deems it necessary to work continuously with Rosstandart and NAMI to adjust the content of the GOST to the level of leading world standards, especially in the areas of risk estimation, campaign classification, owner notification and motivation, and campaign process supervision by auto manufacturers and state bodies.

In addition, starting in 2018, the AMC AS Working Group communicates with the insurance community regarding owner notification about outstanding recalls, and since 2019 it holds meetings with the Central Bank. As a result of the meetings, AMC members and the Central Bank's management came to a mutual understanding about the importance of notifying vehicle owners. Currently, the Central Bank Insurance Market Department analyses market regulatory documentation to generate proposals for possible cooperation/coordination of further actions.

Another very important issue on the Committee's agenda is labelling of goods, tires and spare parts/components in particular.

ISSUE

In the context of the Eurasian Economic Union, it is not economically justified to label only goods already delivered to the Russian Federation and intended only for sale in Russia.

RECOMMENDATIONS

- Unification of requirements for control and identification marks in the Eurasian Economic Union.

- Establishment of a system where control and identification marks will be applied within the Eurasian Economic Union country at whose border the goods received their initial customs clearance.

ISSUE

Labelling of the part itself can significantly impair its consumer qualities (glass, mirrors, interior parts) or have a material impact on the cost of production, as in most cases the application of protective packaging is a continuous automated process where the introduction of an additional intermediate operation during serial production is rather costly.

RECOMMENDATIONS

To establish a universally accepted list of goods subject to control and labelling with an identification mark and/or to determine the procedure for inclusion of a new list of goods/product group that provides for the participation of representatives of the relevant industry in assessing the need to supplement the list of goods with such a commodity group. In addition, according to the Association, the decision to enter a specific commodity group into such a list should be established by a regulatory act no lower than the level of federal law. To provide for the possibility of applying a POC on the packaging and/or the goods in a location that the manufacturer/importer will determine. To allow the possibility of applying control and identification marks on packaging and/or goods in an area to be determined by the producer/importer.

ISSUE

In certain cases, the cost of labelling can significantly exceed the cost of the part itself.

RECOMMENDATION

To determine the lower limit of the cost for a unit of merchandise at which the first sale in the territory of the EAEU by a producer/importer takes place and to determine the cost of a merchandise unit that is subject to control and identification marking. Goods with a cost lower than the established limit shall not be marked.

MARKETING/EXHIBITIONS/PUBLIC RELATIONS

The Marketing/Exhibitions/Public Relations Working Group consists of experts in marketing and communications from all auto companies that are members of the Committee. The group's goals are:

- to coordinate various events with the brands;
- to help the Committee improve and strengthen communication with the press;
- to define a common communications policy that is in the interest of all companies represented on the Committee;
- to support the Russian press in representing the automotive sector by coordinating events for the press;
- to monitor publications in the mass media;
- to share information about changes taking place on the Russian mass media market; and
- to discuss and elaborate unified ethical standards for the interaction of the marketing and PR departments of auto companies that are Committee members with other market participants (journalists, advertizing and event agencies, agencies arranging automotive awards and events, etc.).

Organizing Russian and international automotive events is one of the agenda items of the Marketing and Public Relations Working Group. All events should be arranged on terms which are clear and common to all participants (auto companies), providing transparent and precise processes. The Committee conducts intensive negotiations and provides the lobbying necessary for the events mentioned above to be organized in line with international standards.

The Working Group also participates in the organization of the Committee's annual press conference, announcing sales results for all auto companies which are Committee members. This press conference summarizes the annual results of the auto industry in Russia, discusses the main trends in the industry and explains the Committee's priorities for the upcoming year.

INTELLIGENT MOBILITY

In June 2016, the decision to establish an Intelligent Mobility Working Group within the framework of the AEB Automobile Manufacturers Committee was made. The aim of the Working Group is to consolidate the efforts of automobile manufacturers in facilitating the development of electric, hybrid and alternative mobility systems, as well as other innovative technologies within Russia.

The Intelligent Mobility Working Group is engaged in the preparation and implementation of Road Maps to develop electric transport and autonomous driving technologies in Russia.

As part of proposal preparation activities, the Intelligent Mobility Working Group of the AMC has joined the subgroup on the creation of digital infrastructure for remotely piloted and connected vehicles, the Intellectual Urban Mobility subgroup in the framework of NTI Autonet, and the Working Group on improving legislation and removing administrative barriers in order to implement the Road Map of NTI Autonet.

The IMobility Working Group actively participates in events and meetings related to the development of electric vehicles, charging infrastructure and remotely piloted vehicles in the Russian Federation.

ISSUES

1. *Development of the electric vehicles market.* Thanks to the actions of the business community and, in particular, the members of the Working Group, from 4 May 2020 to 31 December 2021, the import duty on electric vehicles into the EAEU member states was zeroed.

   Important issues for the IMobility Working Group remain the further extension of the zero customs duty on electric vehicles and the development of measures stimulating the introduction of electric vehicles to the Russian Federation (grants for the purchase of electric vehicles, priority on public transport lanes, exemption from

transport tax in all regions, the creation of free parking zones and other measures that contribute to the development of the necessary infrastructure).

2. One of the key objectives of the IMobility Working Group is to attract the *attention of the regulatory authority to the problem of the development of new transport technologies* and the need for significant support measures.

3. The most important area of the Working Group's work in 2020-2021 is to actively take part in developing the *Avtodata national platform*. In particular, together with NP Glonass a joint working group was formed to work out the legal basis for the operation of the platform, as well as the necessary technical regulation.

Members of the Working Group are representatives of AutoVAZ, BMW Russland Trading, Hyundai Motor Rus, Jaguar Land Rover, Kia Motors Russia, Toyota Motor, Mercedes-Benz Rus, Nissan Manufacturing Rus, Peugeot Citroën Rus (Groupe PSA), Porsche Russland, Renault Russia, Suzuki Motor, Volkswagen Group Rus and Volvo Cars.

AUTOMOTIVE REGULATION/CERTIFICATION (HOMOLOGATION)

The working group collaborates with the authorities of Russia and the Eurasian Economic Union to improve the vehicle conformity assessment system.

The Eurasian Economic Commission prepared and posted for public discussion an expanded draft of Amendment No. 3 to the Technical Regulation of the Customs Union 018/2011 'On the safety of wheeled vehicles', which provides for a whole range of innovations related to the introduction of new requirements for automotive technology, as well as the improvement of conformity assessment procedures.

During the quarantine period caused by the spread of the coronavirus, the Federal Agency on Technical Regulation and Metrology (Rosstandart) began transition to the registration of vehicle type approvals in electronic form.

The Ministry of Industry and Trade of the Russian Federation (Minpromtorg) together with the Ministry of Economic Development (Mineconomrazvitiya), Rosstandart and the Federal Accreditation Service (RusAccreditation) have prepared recommendations explaining the procedure for carrying out mandatory certification by applicants and certification bodies during the current epidemiological situation. These recommendations provide for the possibility of taking specimen and samples in a remote format using electronic means of communication, as well as proposals for using the results of previously conducted analysis of the state of production for the renewal of certificates of conformity.

Technical Committee 056 'Road Transport' continued work on the development of new standards as part of the implementation of a comprehensive programme for the development of standards for automotive products until 2025. Representatives of the Automobile Manufacturers Committee are included in the working group to discuss a draft of new standards and are actively involved in this work.

A significant part of the new standards for autonomous, connected cars, electric vehicles, and data exchange between cars and infrastructure are being developed as part of the action plan of the National Technology Initiative AUTONET at the site of the Technical Committee 056 'Road Transport'.

ISSUES

The methodological procedure for drawing up expert opinions based on the results of the examination of technical documentation and previously conducted tests for the purpose of assessing the conformity of vehicles was updated. However, this update did not contribute to the simplification of procedures and the formation of a unified approach. The inconsistency between the actions of certification bodies and testing laboratories still does not allow for the full use of this mechanism, which, in turn, creates difficulties for most car manufacturers when planning certification of current and new vehicle models.

The transition to issuing vehicle type approvals in electronic form, quickly initiated by Rosstandart during the introduction of quarantine measures, caused an ambiguous reaction from automakers and certification bodies. On the one hand, issuing the VTA in electronic form made it possible to somewhat reduce the time for issuing and signing the VTA by the administrative body. On the other hand, however, questions of the legitimacy of the VTA in electronic form remain open. Some companies have faced difficulties associated with the recognition and use of such VTA in other EAEU member countries. To resolve this situation, it is necessary to amend the relevant regulatory acts of the Eurasian Economic Commission.

The working group took an active part in the consideration and development of comments and proposals on the published draft Amendment No. 3 to the Technical Regulation of the Customs Union 018/2011. Unfortunately, the process of reviewing draft amendments is very slow in various administrative bodies. Information on the progress of implementation of the stages of development of Amendment No. 3 is reflected out of time, which in turn leads to uncertainty with the dates of entry into force of these changes and, as a result, complicates the processes of business planning and the release of new models onto the EAEU market.

ISSUE

The requirements for equipping vehicles with emergency call devices (systems) came into force on 01.01.2015 for new types of vehicles and 01.01.2017 for all vehicles released into circulation. At the moment, the infrastructure necessary for the full functioning of the emergency call device (system) has been created only in the Russian Federation (ERA-GLONASS) and in the Republic of Kazakhstan (EVAK).

In the Republic of Belarus, the Republic of Kyrgyzstan, and Armenia, such a functioning infrastructure does not exist, so the emergency call device (system) cannot fully function in these EAEU member countries and cannot fulfil its primary task – to accelerate the provision of

assistance to drivers and passengers of the vehicle in the event of a serious accident.

A paradoxical situation arises. In accordance with the provisions of TR CU 018/2011, vehicle manufacturers and distributors must supply automobiles to Belarus, Kyrgyzstan, and Armenia that are fully compliant in their specifications with the type approved in the Russian Federation, i.e. with an active emergency call device (system), but in these countries the device/system will not work well. In order to protect themselves from possible consumer claims, automakers are forced to make reservations in the operating manuals.

ISSUE

There are plans to introduce new UN Rules No. 144 on Accident Emergency Call Systems (AECS) into TR CU 018/2011.

However, at the moment there is absolutely no clear understanding of how the requirements of the UN Rules will coexist in parallel with the requirements of TR CU 018/2011 and with the requirements of the standards included in the List of Standards No. 1 and the List of Standards No. 2.

Please note that some of the requirements of UN Rules No. 144 differ significantly from the current provisions of TR CU 018/2011 and GOST. For example, the acceleration/deceleration profile when testing a device/system for mechanical strength.

In addition, it should be noted that the Russian Federation has not yet determined the Administrative Authority and Technical Service under UN Rules No. 144.

RECOMMENDATIONS

The working group needs to intensify its efforts to interact with the Department of Technical Regulation of the Eurasian Economic Commission, the Department of Automotive Industry and Railway Engineering of the Ministry of Industry and Trade of the Russian Federation and Rosstandart to accelerate the resolution of urgent problems, increase the transparency of TR CU 018/2011, and eliminate the possibility of different interpretations of the provisions of the technical regulation by various organizations and bodies.

The working group continues to work to clarify the procedure for issuing expert opinions, as well as the possibility of conducting some tests remotely using electronic audio/video communications amid continuing restrictions caused by the spread of the coronavirus.

The working group continues to work on clarifying the current situation related to the recognition and use of the VTA issued in electronic form.

The Committee appeals to the Ministry of Industry and Trade of the Russian Federation with a request for the participation of representatives of the Committee in the working group to discuss draft amendments to the Technical Regulation of the Customs Union 018/2011, including at the earlier stages of their development.

STATISTICS/AUTOMOTIVE MARKET/CAR SALES

From January to August 2020, new car and light commercial vehicle sales in Russia decreased by 16.9% in comparison with the same period in 2019. Total sales for 8 months of the current year amount to 880,000 cars.

As a result of the global economic crisis caused by the pandemic and falling oil prices, more than 45 billion roubles were allocated from the federal budget in 2020 to support the Russian automotive industry. A total of 17 billion roubles were allocated for the programme for subsidizing interest rates on loans, 8 billion roubles for the programme for preferential car leasing and 2.5 billion roubles for a new programme of the Ministry of Industry and Trade ('Affordable rent') from the total scope.

The top ten selling passenger car models in 2020 were produced in Russia (traditional Russian brands and foreign models assembled locally).

CONSUMER LEGISLATION

The Consumer Legislation Working Group lobbies for the amendment of consumer rights protection legislation as applied not only to the automotive industry, but other industries as well.

The Working Group, with the active participation of experts from different AEB Committees, has prepared draft amendments to the abovementioned legislation, which includes a definition of 'essential drawback', liability for actions committed by third parties and the disproportionality of liability. The proposals of the Working Group were sent to the responsible agencies with follow-up meetings in order to discuss in detail the proposed amendments.

Currently, members of the Working Group continue to discuss updating the law 'On the Protection of Consumer Rights' within the regulatory guillotine mechanism in the dedicated working group.

COMMITTEE MEMBERS

Avtovaz • BMW Russland Trading • Chery Automobile Rus • FCA Russia • GAZ Group • General Motors CIS • Harley-Davidson Russia and CIS • Honda Motor RUS • Hyundai Motor CIS • Jaguar Land Rover • Kia Motors Rus • Mazda Motor Rus • Mercedes-Benz Rus • Mercedes-Benz Manufacturing Rus • Mercury Auto/Ferrari Maserati • MMC Rus • Mitsubishi Motor Rus • Nissan Manufacturing Rus • PSA Groupe (Peugeot Citroën Rus) • Porsche Russland • Renault Russia • Subaru Motor • Suzuki Motor Rus • Toyota Motor • Volkswagen Group Rus (Audi/Bentley/Ducati/Lamborghini/Škoda/Volkswagen/Volkswagen NFZ) • Volvo Cars • Yamaha Motor Rus.

AUTOMOTIVE COMPONENTS COMMITTEE

Chairman:
Alexey Belyaev, Faurecia

Deputy Chairman:
Andrey Kossov, Johnson Matthey

Committee Coordinator:
Asker Nakhushev

INTRODUCTION

The Committee assesses the situation for manufacturers of auto parts as rather difficult. Global and Russian practices show that the production of auto parts is a business with low profit margins. According to the 2025 Strategy for the Development of the Automotive Industry of the Russian Federation, approved by Order of the Government of the Russian Federation No. 831-r dated 28 April 2018, the Strategy points to the development of the automotive components industry as one of the main priorities for the development of the automotive industry. The Strategy separately notes that up to 70% of the added value of a car is created by suppliers of auto parts, raw materials and materials. Thus, the overwhelming majority of localization can be ensured precisely at the expense of component suppliers and not by the forces of the vehicle manufacturers themselves.

Plans were made to solve this problem by raising additional investments under special investment contracts (SPICs) and additional regulation through PP719 (see below), but the industry encountered additional difficulties.

The continuing growth in the cost of cars against the backdrop of stagnating personal incomes already by the results of 2019 contributed to a contraction of the automotive market. The combination of the COVID-19 pandemic which has been intensifying since the beginning of the year and the restrictive quarantine measures have led to a further sharp drop in personal income. In the second quarter of 2020 when the most stringent restrictions and self-isolation regime were in force, the actual money income available to Russian workers fell immediately by 8% compared to the same period last year. At the same time, the rouble depreciated against major currencies by more than 25%, which will contribute to a further increase in car prices. These circumstances underlie the negative development forecast for the market and the entire industry for the next few years, also due to a decrease in the economic efficiency of enterprises following the drop in production volumes.

In addition, the restrictions associated with the pandemic have also led to tensions in supply chains, which is again indicative of significant risks and the dependence of the domestic industry on imports.

Against this background, the Committee is calling on the Government to develop systemic measures aimed directly at supporting the auto parts sub-industry.

SANCTIONS POLICY

The sanctions policy and its impact on the industry have not undergone significant changes over the past year; a tangible negative impact of these factors on individual segments of the industry has persisted. The uncertainty associated with the possible application of sanctions against individual legal entities or groups of companies makes it difficult to plan promising projects for many companies in the industry, including car component manufacturers and car manufacturers, because of the risks of the application of secondary sanctions to them. Such risks are more relevant for global and international companies conducting their main activities outside the Russian Federation and the EAEU. These circumstances have a negative impact on the automotive industry as a whole and the automotive components sector in particular, as they restrict the natural development of new projects, the conclusion of new contracts, etc.

RECOMMENDATION

The AEB has repeatedly expressed its position regarding sanctions and we sincerely hope that the influence of non-economic factors on the development of the automotive industry will be neutralized.

INDUSTRIAL ASSEMBLY OF AUTO PARTS

In 2020, automotive industry companies continued to receive subsidies on the basis of Decree of the Government of the Russian Federation No. 1278 of 26 October 2018 (PP 1278) in terms of compensation for the costs incurred for the purchase of imported parts and components.

At the same time, from 1 January 2021, the work of industrial assembly companies will end due to the expiration of the industrial assembly agreements. This means that from next year, the State will stop providing support to the automotive sector companies in terms of the payment of the aforementioned subsidies. In addition, the question arises about the possibility for companies to receive subsidies for December 2020 due to the expiration of the subsidy rules under PP No. 1278 from 1 January 2021.

Based on publicly available information, the Ministry of Industry and Trade does not plan in future to extend the industrial assembly regime in one way or another. However, the Ministry is working on other support measures planned to be provided as early as next year.

In connection with such, the automotive sector companies are facing challenges related to the correct completion of work under agreements concluded with federal ministries (Agreement on Industrial Assembly and Agreement on Subsidies) in terms of fulfilling their obligations.

RECOMMENDATIONS

Companies would be well advised to evaluate the ways of making targeted use of the components imported under the EAEU nomenclature of goods subject to foreign trade codes for "industrial assembly", provided for by the laws, after 2020 in order to minimise possible negative consequences.

It is recommended to provide the ministries with documents confirming that the obligations taken under the agreements have been fulfilled in full and, if possible, to obtain confirmation from the ministries on the fulfilment of such obligations.

In addition, companies need to assess the legal implications that could arise if companies fail to achieve 2020 localization levels, mismanage components after 2020 and fail to file reports after 2020.

When organizing the supply of foreign parts and components classified by the EAEU nomenclature of goods subject to foreign trade codes for "industrial assembly", companies should carefully plan their volumes during the last months of 2020 in order to reimburse subsidies as much as possible, as well as use such components in a targeted manner in future.

MODIFICATION OF THE SPECIAL INVESTMENT CONTRACT MECHANISM (SPIC 2.0)

SPIC 2.0 is a contract concluded in relation to an investment project for the introduction or development and implementation of a technology included in the list of modern technologies approved by the Government of the Russian Federation, in order to master the serial production of globally competitive industrial products based on this technology. The parties to the SPIC are the investor, on the one hand, and the Russian Federation, a constituent entity of the Russian Federation, a municipal entity – jointly – on the other.

Within the SPIC, the investor assumes obligations to invest a certain volume of funds. The public party (represented by the Russian Federation, a constituent entity of the Russian Federation, a municipal entity), in turn, undertakes to implement measures to stimulate activities in the field of industry, provided for by federal and regional law. Under SPIC 2.0, an investor who has introduced modern technology and manufactures relevant products based on such technology in the Russian Federation has the right to claim tax benefits (for income tax and regional/local taxes if there are relevant provisions in regional legislation) and other state support measures (including an accelerated and simplified procedure for obtaining the status "made in the Russian Federation", certain guarantees of non-deterioration of tax conditions, special conditions for the lease of land plots and other measures). At the same time, according to the new regulation, the receipt of state support/application of tax incentives is terminated when the total volume of expenses and revenue shortfalls due to the application of incentive measures is 50% of the investor's capital expenditures. SPIC 2.0 will be concluded based on the results of a closed (for projects with military, special or dual purposes) or open bid initiated by a public party or an investor. Applications for the bid will be accepted remotely via the State Industry Information System. The tender may be awarded to one or more participants whose applications were recognised by the bid commission as the best based on the following criteria:

- the period for the introduction of modern technology (the period from the moment of SPIC 2.0 conclusion to the moment of production of the first batch of products based on this technology);
- the volume of industrial products produced during the term of SPIC 2.0;
- technological level of industrial production localization using technology included in the list of modern technologies approved by the Government of the Russian Federation.

A number of laws governing the new format for the conclusion and execution of SPIC 2.0 came into force in 2019, but in order for the SPIC 2.0 mechanism to fully "come into effect", it was necessary to issue relevant by-laws. Over the course of nine months of 2020, the main regulatory and legal framework required to launch the SPIC 2.0 mechanism was almost completely established, with the exception of the list of modern technologies in relation to which SPICs will be concluded. On 16 September 2020, a public discussion of the draft list was completed, respectively, and the adoption of such can be expected in the near future.

From the automotive component industry, the draft list included, inter alia, technologies for the production of automated transmissions, cab suspensions, hydro/electric steering modules, plasma cutting technologies for the production of front bumpers and others.

It should also be noted that since the new SPIC 2.0 mechanism does not provide for a minimum investment requirement, this gives more opportunities for companies from the auto parts industry to conclude such.

RECOMMENDATIONS

The SPIC 2.0 tool is primarily aimed at localizing technologies in the Russian Federation, therefore, companies should already now determine the technologies that can be used for the production of industrial products, as well as assess the possibility and feasibility of their "import" or development on the territory of the Russian Federation.

In addition, at this stage, in case of interest in the SPIC 2.0 tool, it is important to assess the compliance of the company and its investment project with the established requirements, start preparing the necessary set of documents for participation in the bid (if the Company's technology is already in the list of modern technologies) or start the procedure for updating the list of modern technologies.

SUBSIDY FOR TRANSPORTING PRODUCTS FOR EXPORT

On 28 May 2020, a new version of Government Decree of the RF No. 496 was approved which provides for compensation of manufacturers' costs for the transportation of their products for export.

The possibility of obtaining a subsidy for transportation applies, in particular, to manufacturers of cars (Code 8701–8705 under the Foreign Trade Nomenclature of Goods of the EAEU) and car components (Code 8708 under the Foreign Trade Nomenclature of Goods of the EAEU) (for more details, see Order of the Ministry of Industry and Trade No. 2095 dated 2 July 2020).

The rules for granting subsidies provide for almost half of the funds allocated from the budget (in 2020, RUB 13 billion) going to organizations in the mechanical engineering industry. The subsidy amount is limited to 80% of the total costs of the organization for the transportation of products, but not more than 11% of the cost of transported products (for manufacturers and affiliated persons of manufacturers) and 13% (for authorized persons of manufacturers). At the same time, the maximum amount of support provided per organization cannot exceed RUB 0.5 billion.

The rules for granting subsidies also provide for the ranking of organizations which is performed within the production sectors and taking into account the volume of budgetary allocations, distributed in the following order:

- at the first stage, the draft register of subsidies recipients includes organisations with which agreements have been concluded on the implementation of a corporate programme to improve competitiveness (for more details, see Government Decree No. 191 dated 23 February 2019);
- at the second stage, organizations that supply products for the purpose of implementing certain decisions of the Government of the Russian Federation are included in the draft register of recipients of subsidies;
- at the third stage, other organizations are included in the draft register of subsidies recipients in descending order of the planned value for the subsidies performance indicator;
- at the fourth stage, a waiting list is formed, which includes applications for participation in the qualifying selection in descending order of the planned value of the indicator necessary to achieve the result of granting a subsidy in the next planning period for product supplies.

The new edition of Decree of the Government of the Russian Federation No. 496 contains a number of changes. In particular, as a result of the amendments, the efficiency factor of using a Russian carrier when transporting products by road, and/or water, and/or air transport was increased from 1.05 to 1.15, which is taken into account when calculating the planned costs of the organization.

Additionally, the list of products has been expanded for the purpose of implementing state support for organizations, which now includes assembly kits of products being now understood as assembly kits for railway transport (a group of components of commodity items 8601–8606 of the Foreign Trade Nomenclature of Goods of the EAEU) and assembly kits for land transport (a group of components commodity items 8701–8705 of the Foreign Trade Nomenclature of Goods of the EAEU (except for the code 8701 90 under the Foreign Trade Nomenclature of Goods of the EAEU)) supplied for final assembly of products.

Attention should be paid to the change in the deadlines for submitting documents to the Russian Export Center for a subsidy, as well as to expansion of the list of documents provided.

Thus, in 2021 and subsequent years, documents for a subsidy must be submitted no later than 31 March, and/or no later than 31 May, and/or no later than 31 August.

Additionally, it will be necessary to submit, in particular the following:

- a report on the achievement of the planned value of the indicator required to achieve the result of the subsidy;
- report on the implementation of the planned volume of product supplies in value terms;
- a letter confirming the accuracy of the information contained in the documents.

An important change is the cancellation of the penalty for not achieving in particular – in terms of the results of planning the supply of products – the planned value of the indicator necessary to achieve the result of this programme, as well as of the planned volume of product supplies in value terms in relation to the period of product supplies from 1 September 2019 to 31 July 2020.

RECOMMENDATIONS

- Clarify the mechanism for ranking the exporters applying for participation in the CCEP and provide for the option of regular (annual) additional selection of members for the programme, as well as an option for adjusting the programmes that have already been selected in order to update the export strategies.
- Provide for the option of including export volumes of Russian suppliers of car components in the CCEP of car manufacturers.

EURO 6

The AEB Automotive Components Committee and the majority of experts generally support the introduction of emission standard 6 in the EAEU to improve the environmental situation, enhance the technical level of equipment manufactured, ensure the industry's integration with other developed markets and attain the goals set by the Automobile Industry Development Strategy up to 2025.

For business, what is most critical is that currently there are no clear guidelines for introducing the new emission standard 6, no established deadlines and no exhaustive technical requirements. To plan investments, carry out the respective developments and make preparations for production, it is crucial to set deadlines and work out requirements.

On the positive side, it should be noted that, in summer 2019, the EEC issued a resolution officially introducing the concept of emission standard 6, without, however, an exhaustive technical description.

RECOMMENDATION

The Ministry of Industry and Trade, in cooperation with NAMI and the EEC, should determine the date on which emission standard 6 will be introduced and give its precise definition.

STATE REGULATION OF THE INDUSTRY: GOVERNMENT DECREE 719-PP

State support for the industry is mainly related to the fulfilment of the requirements for automotive products established by RF Government Decree No. 719 dated 17 July 2015 "On Confirmation of Industrial Production in the Territory of the Russian Federation" (hereinafter, "Decree 719"). The possibility for car manufacturers to receive a number of industrial subsidies, the right to apply for corporate programmes to increase competitiveness and the possibility of concluding contracts for the supply of products for state needs are directly related to how many points the product receives (for each of the areas of state support, there is a minimum number of points that give the car manufacturer the right to qualify for state support of a certain kind). For example, in order to obtain subsidies to reimburse the costs associated with the support of high-tech products (RF Government Decree No. 191 of 23 February 2019), it is necessary to score at least 900 points from 1 January 2019, at least 1,200 points from 1 January 2022 and at least 1,400 points from 1 January 2025. Thus, the State encourages manufacturers to gradually increase the level of localisation by purchasing locally produced components. Car manufacturers will get points, in particular, for the localization of technological operations and for using Russian components and raw materials. At the same time, the methodology for allocating points is not transparent. So, for example, for a driver assistance system you can get a maximum of 500 points, but for the use of deeply localized seats only 30 points are awarded, and for electric lighting devices and light signalling devices, only 20 points. It is necessary to avoid a situation where component manufacturers already operating on the Russian market will be squeezed out by imports because their products bring too few points, and this is not enough to interest the automaker.

The accrual of a significant number of points is provided for the localization of R&D (200 points for every 0.5 percent of the cost of research and development from the revenue). In addition, in relation to the production of a number of automotive systems, points can be assigned for developing software and attaching the results of intellectual activity to a Russian legal entity.

A special investment contract can provide the opportunity to fix the list of localized technological operations for a certain period and get a deferment in meeting the conditions for localization parameters while gaining access to certain state support mechanisms. Due to the introduction of a point system, manufacturers that have not entered into SPICs, in order to confirm the status of the Russian production of their products, must receive expert reports issued by the territorial divisions of the RF CCI, which must contain information on the total number of points.

On 20 July 2020, an updated procedure for issuing documents came into force for the purpose of confirming the production of industrial products in the Russian Federation (Order of the RF CCI No. 66 of 16 July 2020).

The Committee generally supports the initiatives to develop and support the auto industry, as well as to clarify the conditions for assigning the status "made in Russia". For the further development of the industry, it is also important to have targeted development measures and support for manufacturers of auto parts. The Committee hopes that it will ultimately be possible to reach a consensus between all interested parties, creating uniform, interlinked, consistent and clear rules and thus speeding up the development of the entire automotive industry of Russia and, in particular, the auto parts sub-industry.

RECOMMENDATIONS

It is recommended that companies monitor the draft amendments being posted, monitor possible changes in legislative regulation on localization issues and state support measures and assess the impact of updated legislative regulation and possible amendments on current localization parameters in terms of the possibility of obtaining state support.

COMMITTEE MEMBERS

Aptiv (PES/SCC) • ATC-Avto • Benteler Automotive • Clarios • Continental Automotive Technologies • Delphi Samara • Dow Europe GmbH Representation office • Faurecia • Gestamp Russia • Henkel Rus • ISG support-GUS GmbH • Johnson Matthey • NTN-SNR • Robert Bosch • RUSSIAN AUTOMOTIVE COMPONENTS • SAF-HOLLAND • Segula Technologies Russia • Volvo Vostok.

Automotive consultants: Deloitte & Touche CIS • DLA Piper • EY • KPMG • PwC.

BANKING COMMITTEE

Chairman:
Mikhail Chaikin, ING BANK (EURASIA) JSC

Deputy Chairman:
Stuart Lawson, EY

Committee Coordinator:
Tatyana Listrovaya (tatiana.listrovaya@aebrus.ru)

INTRODUCTION

This year has been a shock for the global economy and markets. The coronavirus pandemic has resulted in significant loss of life, brought a sudden halt to international tourism, struck the service industry and forced governments and central banks to implement significant fiscal and monetary easing. At the same time, the coronavirus crisis has not created obvious growth points and the expected trajectory of the global economic recovery is far from "V-shaped". In all reality, it is more likely either a "U", a "W" or an "L". On the contrary, the crisis has only exacerbated existing imbalances, including the growing socio-political polarization in developed countries, global trade and foreign policy contradictions, as well as the low efficiency of monetary policy in developed countries, which is leading to asset inflation instead of stimulating economic activity.

The coronavirus has exacerbated imbalances including in Russia, hitting the private service sector, i.e. small and medium-sized businesses and the private sector. It has exacerbated the existing problems of social inequality, which leads to a further reorientation of budgetary policy towards financing the social sphere. By the beginning of 2020, the government had a plan for the implementation of National projects mainly represented by infrastructure-related projects, with a total budget of RUB 26 trillion (3.6% of the annual GDP of the Russian Federation). The pandemic has shifted these priorities, and the deadlines for the implementation of the National Projects have been shifted from 2024 to 2030, and in the structure of current budget expenditures, the share of health care and social services expenses increased through additional forwarding of direct payments to support the people's income. These measures are intended to mitigate the impact of the crisis on the consumer trend, but they are not contributing to confidence in the corporate sector.

Consequently, the Russian economy now has prospects of recovering its losses while maintaining the previous structural constraints, including insufficient development of the internal material infrastructure and a difficult business climate for the private sector. Therefore, the list of desired agenda items still includes reducing administrative barriers to business, strengthening the institutional framework and reducing government presence in the banking and real sectors, as well as in the employment segment. Given the limited track record in this area, experts remain sceptical about Russia's ability to deliver strong acceleration of the GDP growth in the coming years.

2020 has also added to the list of challenges for the banking sector. The ongoing risk of financial restrictions, low investment demand in the real sector, a high share of state-owned banks and the difficult position of foreign financial institutions have now been added to the existing risks of funding decreasing due to low rates, deterioration in the quality of loan portfolios and increasing government debt in the structure of banking assets amid an expansion of the government borrowing programme and the restrained demand from non-residents. It should be noted that the prompt actions taken by the Bank of Russia in terms of monetary policy, banking regulation and the foreign exchange market make it possible to smooth out the negative effect of external shocks on the financial system, but its sustainable development requires long-term coordinated actions of various branches of the government. As before, the AEB Banking Committee plans to comprehensively and constructively interact with the Central Bank and other regulatory bodies to maintain fair competition and innovative development of investment activity and money circulation in Russia.

CRITICAL INFORMATION INFRASTRUCTURE SECURITY

Federal Law No. 187-FZ 'On the Security of Critical Information Infrastructure of the Russian Federation' was adopted in mid-2017. Concurrently, criminal liability was introduced for unlawful tampering with the critical information infrastructure of the Russian Federation. However, despite the obvious importance of this legislation, the law and respective bylaws have a rather vague wording. Therefore, the law is not specific as to the subjects regulated thereby and the scope of its application.

In particular, the subjects of the law are, literally, Russian legal entities that possess 'critical information infrastructure objects', i.e. information systems, information and telecommunication networks, and automated management systems used in banking and other financial market segments. Therefore, formally any Russian bank is a 'critical information infrastructure object', which does not seem to be the exact purpose of the regulation. Logically, financial organizations should be deemed as 'critical objects' only if a dysfunction in their IT system affects a large number of individuals and companies.

Moreover, it is difficult to understand how the law should apply. Financial institutions must create a list of critical information infrastructure objects they use and categorize those objects. But the very creation of the list is problematic. The scope of objects includes 'information systems, information and telecommunication networks, and automated management systems'. These definitions are excessively broad. For example, an information system could even mean a text editor the bank uses. Hence, any auxiliary programme, together with the computer it is installed on, may be deemed to be a critical information infrastructure object and will, as such, be included in special reporting.

These problems have not been resolved in 2018-2020, and the situation remains the same in principle.

RECOMMENDATION

To suggest to the Bank of Russia and the Russian Government that they officially clarify how the law applies to banks and financial institutions. If possible, the Russian Government should be asked to clarify the bylaws detailing the application of the law.

LAWS ON SPECIAL ECONOMIC MEASURES

Russian executive authorities have implemented sanctions against certain foreign parties (e.g. the Government Decree of 1 November 2018). The sanctions include freezing funds and prohibiting capital transfer outside Russia. Sanctions of this kind are, presumably, to be implemented by credit institutions. However, the exact content of the sanctions, the procedure for implementation thereof by the banks, and application of the sanctions to Russian companies controlled by the foreign sanctioned parties have not been specified. In practice that may lead to rather surreal situations. For example, the rules in question may be formally interpreted as a prohibition on the banks to execute tax transfers to the Russian budget if the payment is initiated by a Russian organization controlled by a sanctioned party. As there is no executive body designated to grant regulatory advice on the matter and no procedure for such advice, no means are available to the parties involved for timely resolution of unclear issues.

RECOMMENDATION

The government must be asked to specify the procedure for implementation of the special economic measures by the banks and provide a procedure allowing for resolution of unclear issues on the application of these economic measures, analogous to similar procedures existing in other jurisdictions.

LIABILITY OF CREDIT INSTITUTIONS

There is currently no detailed legislation on fines against banks applied by the Bank of Russia. Current laws (Article 74 of the Federal Law 'On the Central Bank of the Russian Federation [the Bank of Russia]') allows the Bank of Russia to fine credit institutions for any breach of federal laws and regulations. Specific content of the breaches is not specified, and there are no procedural rules governing either application of the sanctions or appeal against them.

Russian authorities together with public foundations are now extensively working on reviewing the laws concerning administrative sanctions.

So that fines against the banks are more effective, the regulation of banking is more specific and reasonable, and good participants of the financial markets are protected, we deem a major restatement of the approach to this matter necessary so that fines are not applied for abstract breaches of law and regulations.

Review of the Administrative Offences Code (KoAP) may allow for implementation of two concepts for banks' liability.

KoAP may be supplemented with provisions addressing banking offences and detailing specific scopes thereof, and the Bank of Russia may be authorised to judge the respective cases. The fines shall be differentiated according to gravity of the breaches. Prosecution and appeals will be based on KoAP's respective procedural rules.

Alternatively, provisions covering banking offences may be moved from KoAP to banking laws, which will then be supplemented with a separate concept of a 'banking offence' detailing the corresponding scopes and applicable fines, as well as the procedure for addressing the imposition of fines and appeals to the Bank of Russia, by analogy to the 'tax offence' concept of the tax law.

RECOMMENDATION

The Bank of Russia and the government shall be asked to determine the approach to liability of the banks and initiate amendments to the law, including as part of a KoAP review exercise.

ON THE REGULATION OF DISTANCE AND REMOTE WORK

Many financial institutions and the banking sector faced a new challenge in 2020 – the COVID-19 pandemic. Organizations had to mobilize the existing labor force and quickly shift most processes not requiring the presence of employees in an office to remote work. For distance work, control over the work of employees, labor discipline, and occupational health and safety are the priority. Many employers who were only considering the possibility of distance work for their teams had to quickly make decisions on a new form of interaction with employees, labor discipline, and control over the performance of job functions remotely.

Pursuant to Article 312.1 of the Labor Code of the Russian Federation, "distance work" means performing a labor function defined in an employment contract outside the principal place of an employer's business, its branch, representative office, or other standalone business unit (including ones in other localities), as well as outside a permanent workplace, territory, or facility directly or indirectly controlled by an employer.

Pursuant to Sub-Clause 6 (a) of the first part of Article 81 of the Labor Code of the Russian Federation, "unauthorized leave" means an absence from the workplace without good cause during the entire business day, irrespective of its duration, and an absence from the workplace without good cause for more than four hours in a row during a business day. The definition of a workplace is provided in Article 209 of the Labor Code of the Russian Federation. "Workplace" means a place where an employee must stay or must arrive in connection with their work and which is directly or indirectly controlled by an employer.

Therefore, an employee cannot be dismissed for unauthorized leave during distance work because, proceeding from the above statutory provisions, work outside a permanent workplace controlled by an employee is a key feature of distance work. Generally, if an employee can perform their job duties properly, they can work each day in a new place (at home, in the park, in a cafe, etc.). This position is supported by the Ruling of the Judicial Chamber on Civil Cases of the Supreme Court of the Russian Federation No. 5-KG19-106 dated September 16, 2019.

It should be noted that the draft law No. 973264-7 "On Amendments to the Labor Code of the Russian Federation in Terms of the Regulation of Distance and Remote Work" is under consideration in the State Duma. This draft law will make significant changes to Chapter 49.1 of the Labor Code of the Russian Federation. Thus, it is planned to introduce an "interaction procedure" into Article 312.4 of the Labor Code of the Russian Federation, which may stipulate the obligation of a remote employee to answer calls, e-mails and inquiries from an employer made in another form, as well as the period during which a remote employee must respond to inquiries from an employer related to the performance of their job functions.

The obligation of an employee to ensure proper self-organization when performing distance work in order to comply with the work schedule established by an employer and the prohibition on personal use of the time designated for distance work pursuant to the work schedule established by an employer in the internal code of labor conduct must be included in the terms and conditions of distance work and signed by the parties (the employee and the employer). For example, in our bank, an employee's responsibility to appear, at the request of an immediate supervisor or a line manager, at the employer's premises during working hours established by an employer in the internal code of labor conduct is documented.

Shifting to remote (distance) work has led all employers to consider a quick transition from hard copy document workflow to an electronic format (if applicable) and has strengthened the understanding of the need to use an electronic digital signature both inside organizations and when communicating with regulators. The automation of business processes and personnel record management is becoming not just an important trend in today's business community, but a pre-requisite to provide high-quality and prompt services to our customers and partners. We expect that the provisions regulating the electronic document workflow and the use of an electronic digital signature will be reflected in the Labor Code of the Russian Federation in the near future. This will make it possible to reduce costs for printing and storage of paper documents, transfer documents in an electronic format, and improve many processes related to employee document workflow.

COMMITTEE MEMBERS

American Express Bank ● Bank Credit Suisse (Moscow) ● BNP Paribas ● Center-invest Bank ● Citibank AO ● Commerzbank (Eurasija) AO ● Credit Agricole CIB AO ● Deutsche Bank Ltd. ● European Bank for Reconstruction and Development (EBRD) ● HELLENIC BANK PCL ● HSBC Bank (RR) OOO ● ING BANK (EURASIA) JSC ● Intesa ● Mercedes-Benz Financial Services Rus OOO/Mercedes-Benz Bank Rus OOO/Mercedes-Benz Capital Rus OOO ● Natixis Bank JSC ● Nordea Bank ● OTP Bank JSC ● Raiffeisenbank AO ● Rosbank ● UBS Bank, OOO ● UniCredit Bank AO.

COMMERCIAL VEHICLES COMMITTEE

Chairman:
Jan Aichinger, MAN Truck and Bus

Committee Coordinator:
Asker Nakhushev

MARKET 2020

Year 2020 has brought around a serious hit to the global commercial vehicle markets, Russia being no exception to that. Measures to fight the spread of the COVID-19 (lockdowns in the first place) caused a severe crisis in most countries. Economic activity was limited to a minimum, causing not only extreme drop in demand but also interruptions in supply.

Commercial vehicle market in Russia has been affected too. Having started with robust growth in QI (thanks to strong rouble), sales fell by 30-50% in April-May, further recovering in June. Upon the easing of COVID-caused restrictions, the situation improved, driven both by the deferred demand and by the natural restoration of economic activity. However, starting from July the rouble exchange rate dropped both to dollar and especially to euro quite significantly, thus slowing down the recovery. Going above 90 RUB/EUR in September, the rate came on top of the now felt effect of another scrapping fee increase, which had happened in January 2020 and had since been overshadowed by other, much stronger factors mentioned above.

Another key trend that has been strengthened by the COVID-19 crisis is the consolidation of the market. Smaller companies in retail sector with less financial stamina have been massively disadvantaged compared to bigger players, who have more resources to continue purchasing new vehicles, although this trend had been visible even before the COVID-19 pandemic broke out.

The result of the abovementioned trends is a market that has contracted by 12% overall (>6t) and by 25% in the EU-7 segment from January to August 2020. A redistribution in favour of the local producers is normally always happening in times of crises, this time strengthened by the exchange rate and a scrapping fee increase at the beginning of the year. However, the most profitable part of the Russian brands' production is without doubt also affected by the rouble rate as their share of imported components is higher than that of their traditional, older model lineups.

As autumn is bringing another increase in the number of new COVID-19 cases in Russia (just like in many EU countries), the government is reacting publicly. President Putin spoke to the nation on September 28 urging citizens to pay attention to sanitary measures, while Moscow city administration is already limiting some allowed activities for persons in the risk groups. Although the authorities are clearly willing to limit the negative effects of the sanitary measures and have more experience in tackling the situation, a negative effect on the market is unfortunately inevitable.

CVC expects the EU-7 (>6t) market would drop in a conservative scenario by 35-40% and stay limited to 20-25% decrease in an optimistic one. Much will depend on the way the authorities will tackle the spread of virus and whether measures, more precise than complete economic lockdowns (mass testing, early closing of areas with high infection rate, etc.), will be taken and bring desired results. Another important factor is the pressure on rouble, which is currently record high bringing the national currency to the lowest exchange rate since the negative shock of January 2016. Smart macroeconomic policy and efficient support to the economy targeted at securing sufficient demand, consumer and investor confidence are of key importance here.

Russian bus market has seen a growth of 14% from January to August, largely thanks to big purchases of city buses. Previously planned procurement, both by the government and by large private players (increasing their own fleet) helped to support the market amid general economic crisis. At the same time smaller retail deals dropped dramatically as tourism and long distance travel are among the industries most affected by the COVID-19 pandemic (for example, incoming tourist industry dropped by 90%).

The Committee expects the total bus market growth by end of 2020 at 5-7%. In the coming years the dynamics of bus sales will depend a lot on overcoming the consequences of the COVID-19 pandemic and satisfying the deferred demand. Another key factor will be the national programme of city public transport renewal, which should replace 75% of the bus fleet of key 15 agglomerations across the country within the next 10 years. The Committee sees this programme as a powerful tool for the modernization of the national transportation system. However, the strict focus on the local production may undermine the ambitious plans both by pushing the local manufacturers to the limit of their production capacities and by limiting the competition. The Committee is of the opinion, the government could open at least a share of the total planned bus sales to competition with imported products to guarantee the supplies, keep up competition and introduce global standards of quality and service to the transportation systems of the Russian cities.

It is very difficult to predict how the commercial market would develop in 2021, but some key factors can be identified already today. First, there will be a positive recovery trend once the various vaccines against COVID-19 have been successfully tested and made easily available to the citizens, which would lower the risk of further restrictions and boost consumer and investor confidence. Second, the negative effects of the 2020 crisis will show in full (e.g. the bankruptcy procedures will work again) and produce a counter-trend hitting the market recovery. Obviously, the rouble exchange rate will stay another key factor, driven not only by the objective state of the Russian economy, but also by political tensions between Russia and the EU and the USA on the other side, where the risks of new sanctions wave may have a serious negative effect.

Finally, the government may be tempted to further increase the scrapping fee following rouble devaluation, which will definitively hit the commercial vehicle sales in the country. This would be a very unfriendly and undesirable step to take not only for the producers but for the whole of the Russian economy, which, already weakened in 2020, will become more vulnerable to growing costs of doing business.

DECREE 719 AND LOCALIZATION REQUIREMENTS

Since the last publication of the position paper, the Russian government has revised the rules of the industrial policy in the automotive industry. The criteria for local products have been tightened in a series of amendments to the Government Decree 719, which has in turn become the central document granting access to state support as local manufacturer (along with signed SPIC as necessary condition). For example, public procurement tenders according to the latest version of Decree 719 will from 2023 only accessible to trucks, which will have 3200 points, an equivalent of deep localization (assembly with cab welding and painting, fully local powertrain and use of local metal), going up to 5800 points in 2025, which basically means a completely local product. The tendency of using this logic for every state support measure is seriously demotivating international investors to further localize their products, as it is practically impossible to comply with the target levels. Keeping this policy, the Russian government is risking to lose the achievements of the industrial assembly regime, which has been able to attract investors by using a clear and realistic system of incentives to expand local production.

Building a strong national automotive industry needs therefore not the restrictions but new opportunities and clear rules of the game. Realistic localization targets coupled with serious support for localized component production would not only help bring new investment into the country, create new well-paid jobs for skilled workforce and generate economic growth. They would also make Russian producers stronger by giving them the opportunity to access high quality modern local components at lower prices due to improved economies of scale. The Committee believes that industrial power (high local added value and diversified export) is a safer basis for robust economic growth than industrial autarky (striving to get every automotive component produced locally). As leading global producers present in every key market worldwide we are ready to share our experience and assist the Russian government in its effort to build a stronger and more diversified national economy.

RECOMMENDATIONS

Revise target point levels for public procurement and other state support programmes in line with realistic localization requirements defined in dialogue with the industry.

Finalize and implement efficient component development strategy aimed at supporting economically efficient localization of automotive production.

AUTODATA

The initiative on forming a national platform for automotive data collection and processing was announced on September 30, 2019, and the AEB became a member of the newly created consortium led by the Non-Profit Partnership GLONASS. Since then there has been some limited exchange of ideas on how to develop the initiative further between GLONASS and the AEB working group on the automotive data. In September 2020 a draft law On the State Information System Platform Autodata was made public and was analyzed by the AEB working group.

Commercial Vehicles Committee supports the conclusions made the working group and in particular:

- many of the key definitions are vague and leave a lot of room for the government to arbitrarily change them using government decrees;
- this is especially true and worrying for the definition of 'Compulsory data sets' to be delivered to the platform, which can be expanded by government decision;
- further, the final goal of the data processing is not specified in the draft law;
- there is no clear division of responsibility between the Owner and the Operator of a vehicle, which generates data;
- finally, it is not clear, which data owners and to which extent would be obliged to store and process the data on the Russian territory.

Given this situation, the Committee sees a need for an intensive dialogue with GLONASS and the government to clarify the open questions and optimize the legal definitions. While state regulation of the automotive data processing may be beneficial to the industry, raw and unbalanced initiatives may undermine the progress in automotive digitalization. The Committee sees necessary that the key issues above are addressed so that the new regulation helps ensure the legal certainty and bring business further.

RECOMMENDATIONS

- Revise the draft law On the State Information System Platform Autodata on the feedback provided by the AEB Working Group on the automotive data issues.

- Intensify the dialogue with the expert community to ensure the high quality of regulation is maintained.

INTRODUCTION OF ELECTRONIC PASSPORTS FOR VEHICLES (EPTS)

The Committee members are continuing their active participation in introducing electronic passport for vehicles and, by coordinating their activities with all project participants, are gradually implementing measures for a full transition to electronic passports to be issued both upon release of locally manufactured vehicles and when cars are imported to the Customs Union within the established time frame.

In 2019 the work on the implementation of electronic passports reached the practical phase. Starting in 2020 many Committee members began issuing electronic passports on an ongoing basis. The growing number of vehicles with electronic passports makes it possible to assess the use of the new system in practice with the participation of state authorities (the State Traffic Safety Inspectorate, the Federal Customs Service and the Federal Tax Service) in various regions of Russia. Currently, a number of practical issues of using electronic passports and operating this system are another problem to be addressed along with other unresolved issues.

One of the priority objectives in ensuring the uninterrupted operation of the system of electronic passports is establishing effective cooperation between Electronic Passport JSC and the Federal Customs Service for importers and with the Federal Tax Service for local manufacturers of vehicles. The absence of clear, formalized instructions, a number of gaps in the legislation and a lack of information on the use of the new system locally result in long and often incorrect data exchange between the systems which, in turn, leads to delays in the issuance of electronic passports for individual vehicles.

Since the commencement of the documentation of vehicles through the Electronic Declaration Centre (EDC), the problems of an untested algorithm for exchange of data on release and payment of a scrappage fee between the Federal Customs Service and Electronic Passport JSC and, consequently, the loss of such data have arisen. Furthermore, with the introduction of the EDC, the 'depersonalization' of the Federal Customs Service in the work for dispatching data to the Electronic Payment System has taken place, which has resulted in the disruption of cooperation between the Federal Customs Service and importers and extended time for troubleshooting.

It is crucial that interaction be maintained between the system of electronic certificates of title and the State Traffic Safety Inspectorate. In practice, with a growing number of electronic passports, interaction issues have become more frequent, both in terms of technical aspects and in terms of the information awareness of the State Traffic Safety Inspectorate personnel in the regions. Failures in data exchange between the systems as well as the unawareness of the State Traffic Safety Inspectorate staff on the road and at local departments result in unjustified refusals to register vehicles and forced stoppages on roads waiting for explanations. The Committee believes it crucial to ensure the prompt debugging of the existing interaction mechanism by utilizing the accumulated experience of using electronic passports.

Among the open issues to be addressed, there remains the matter of the practical shift of the main focus of the passport for a vehicle from being a title document issued to confirm the ownership of a vehicle to being a technical document issued to confirm the vehicle's compliance with the Technical Regulations of the Customs Union. Depriving market participants of an effective instrument for verifying the legitimacy of vehicles raises concerns. The Committee still considers it important to include information about the vehicle owner in the list of mandatory fields in electronic certificates of title, which would make it possible to preserve the document's functionality when transitioning to the new system. The Committee also considers it necessary to make information on the owner compulsory and visible upon registration with the State Traffic Safety Inspectorate.

The unpreparedness of the previously announced system of electronic vehicle type approvals which forms the basis for issuing electronic passports for new vehicles also remains a burning issue. The existing database of vehicle type approvals on the platform of electronic passports established the foundations and principles of operation for electronic vehicle type approvals, but, unfortunately, the technical execution does not yet enable it to operate at the necessary level of quality. The Committee's position that maximum compatibility between the two systems must be ensured while minimizing the organizational and material costs for their implementation remains relevant to this day.

The Committee confirms its willingness to continue the dialogue and discuss the topical issues of implementing electronic passports with the Ministry of Industry and Trade of Russia, Electronic Passport JSC and the Eurasian Economic Commission.

RECOMMENDATIONS

- Ensure the information awareness of state officials locally.
- Additionally, work out the possibility of including information about the vehicle owner in the list of mandatory information in the electronic passport.
- Continue developing the system of electronic passports by ensuring compatibility between the system of electronic passports and the system of electronic vehicle type approvals in cooperation with manufacturers/importers of vehicles.
- Work out interaction between the Federal Customs Service and Electronic Passport JSC when working through the EDC to a greater extent, make the form for feedback between importers and the Federal Customs Service when working through the EDC more transparent.
- When information on the owner in electronic certificates of titles is compulsory and manageable, consider the possibility of attaching sale and purchase agreements (scanned copies/electronic documents) in the system.

EXPANDED USE OF NATURAL GAS FOR TRANSPORT

Development of the natural gas fuel market holds a key position amongst the objectives of the industrial policy of the Russian Federation in the automotive industry. The government of the Russian Federation, with the involvement of Gazprom Gas-Engine Fuel LLC, is performing system-level work designed to extend the gas fuelling station network and increase gas consumption in the automotive industry. In March 2020 the state programme of the Russian Federation 'Development of the Power Industry' (Order of the Government of the Russian Federation No. 321 dated 15 April 2014) was supplemented by the sub-programme 'Development of the Gas Engine Fuel Market', which is scheduled to last until 2024 and is targeted at the growth of natural gas consumption in transport up to 2.7 billion m3 and an increase in the number of fixed gas fuelling units to 1,273 and the number of gas-powered vehicles to no less than 40,000.

The sub-programme provides for various measures of state support which, in conjunction with existing measures, should contribute to the accomplishment of the declared targets. The Committee members are convinced that this work will have a strategic impact and is intended to take advantage of Russia's competitive strengths.

At the same time, it should be noted that the adopted measures are primarily focused on the construction of gas fuelling infrastructure (compressed natural gas and liquefied natural gas) and encouraging the refitting of the fleet of light vehicles and light commercial vehicles. Without prejudice to the importance of such measures, the Committee considers it necessary to make allowance for the potential of commercial vehicles when developing measures for support of the gas engine fuel market. International practice, however, shows that the active involvement of commercial vehicles has a more significant effect on the gas engine fuel market than light vehicles. The performance indicators of a number of European manufacturers of commercial vehicles prove that supporting commercial gas-powered vehicles produces a higher effect in terms of gas consumption growth with lower budgetary costs. The Committee believes that faster growth of the gas-powered fleet may be achieved by enhancing the attractiveness of gas-powered vehicles for Russian consumers as compared to diesel vehicles and, in particular, by creating temporary preferential conditions for operation on the market for this type of vehicles aimed at reducing tax and operating costs.

Therefore, when further developing support measures for the gas engine fuel market in Russia, inter alia, at the Analytical Centre at the Government of the Russian Federation, it is expedient to expand the programme for the development of the gas fuel market up to 2024 to include temporary measures not associated with direct budgetary costs, such as establishing a preferential fee for commercial gas-powered vehicles in the Platon system, abolishing the transport tax for owners of commercial gas-powered vehicles, establishing a preferential rate of import customs duty for commercial gas-powered vehicles and a number of others.

The Committee members believe that the totality of incentive measures not requiring direct budgetary disbursements will make it possible to increase the demand for natural gas in Russia, lead to the increased utilization of gas filling stations and ensure the growth of receipts of the budgetary system of the Russian Federation due to the receipt of additional tax payments from manufacturers of such vehicles and industrial (compressed gas) equipment as well as from suppliers of natural gas.

RECOMMENDATION

Work out limited-term measures for supporting the gas engine fuel market other than the subsidization of gas-powered vehicle manufacturers.

COMMITTEE MEMBERS

DAF Trucks Rus LLC • DAIMLER KAMAZ RUS OOO (DK RUS OOO) • FCA Russia • GAZ Group • Hino Motors, LLC • Hyundai Truck and Bus Rus LLC • ISUZU RUS JSC • Iveco Russia LLC • MAN Truck & Bus RUS LLC • Meiller Vostok LLC • Mercedes-Benz Russia • Nissan Manufacturing Rus • Peugeot Citroën Rus (Groupe PSA) • Renault Russia • Scania-Rus LLC • Volkswagen Group Rus (Audi/Bentley/Lamborghini/Škoda/Volkswagen/Volkswagen Commercial Vehicles) • Volvo Vostok NAO.

Representing the following brands: DAF • Citroen • GAZ • FIAT • FUSO • GOLAZ • HINO • Iveco • Isuzu • KAVZ • LIAZ • MAN • Mercedes-Benz • Nissan • PAZ • Peugeot • Renault • Scania • Setra Buses • Ural • Volkswagen • Volvo.

CONSTRUCTION EQUIPMENT COMMITTEE

Chairman:
Andrey Komov, Volvo CE Russia

Committee Coordinator:
Asker Nakhushev

The Construction Equipment Committee was established in February 2008. Its primary goal was to organize a forum where industry representatives could discuss their common problems and take joint actions to address issues of interest for companies operating in Russia.

The Committee's focus areas include:

- exchanging statistical data on the sales of equipment to customers across Russia. Statistical data can also be obtained from other trade organizations, but they do not include sales breakdowns by geographical regions or industries;
- discussing and coordinating actions concerning the organization of the national equipment exhibition;
- intensifying cooperation and establishing an uninterrupted communication channel with Russian state authorities on the following matters:
  - development of technical and safety standards;
  - import duties, customs regulation, and introduction of a scrappage fee;
  - working out production localisation criteria.

MARKET OVERVIEW

The construction equipment industry was negatively affected by COVID-19 as well. Due to strict quarantine measures, the business of our customers was temporarily paralyzed. Even those customers that did not stop working could not get service for construction equipment on time due to the mandatory quarantine. However, after the start of the road construction season and lifting of restriction measures, the situation started to improve and by the middle and the end of summer our customers returned to pre-corona activity level. But towards the end of the year, considering current circumstances, we do not foresee the same positive dynamic going forward due to the following negative factors:

- rouble devaluation, which will lead to increased prices for construction equipment and spare parts;
- seasonal growth of daily COVID-19 cases, which might lead to repeated introduction of restrictions;
- end of road construction season and decrease in overall activity level.

There is information that the next increase in the disposal fee for construction equipment might be introduced. These measures will have a negative impact on the market under current circumstances.

STATISTICS

ISSUE

Retail statistics are, perhaps, one of the most important types of data for all manufacturers of road construction and special-purpose equipment. Currently, the programme applies to the following types of equipment: excavator-loaders, skid steer loaders, crawler loaders, wheel loaders, crawler bulldozers, crawler-mounted excavators, wheeled excavators, rigid dump trucks, articulated dump trucks, motor graders, and pipelayers. Starting from January 2013, the list included telescopic handlers, track-mounted mini loaders, and wheel dozers. Now almost all players in the Russian road construction and special-purpose equipment market are included in the programme for certain types of products, which accounts for the high accuracy of reports. It is expected that the growing number of programme participants will help obtain accurate results for all types of products.

Monthly reports available to the programme participants help determine the market volume and trends, as well as assess the effectiveness of marketing of the main product line and of the introduction of new products, including on a regional level. It should be noted that one of the priorities for the Committee is the confidentiality of data. Participants get only aggregated data, while the data of individual companies are not disclosed. The report form was developed taking participants' proposals into account. Reports are made on the level of federal districts (primary reporting level) and administrative regions (optional) of the Russian Federation, which makes the programme unique. It should also be mentioned that, starting from January 2014, the Committee commenced the processing of reports for Kazakhstan: nine companies are already submitting reports, while others are expected to join in the near future.

Statistical data are the only source of detailed information available to participants of the Russian road construction and special-purpose equipment market. As to the details to be included, the reports must specify only the standard size of the equipment in accordance with the standards of the Intercontinental Statistics Committee (ISC), which makes it possible to easily integrate the Committee's programme with international statistics programmes. In September 2016, the Committee made a decision to publish press releases on the sales of new equipment.

RECOMMENDATIONS

The Committee is convinced that it is necessary to further develop the programme both by increasing the number of its participants and by expanding the details to be specified in the reports, which will make it possible to make the sales statistics provided in the programme more accurate and detailed.

LOCALIZATION

ISSUE

On 17 July 2015, the Russian Government issued Decree No. 719 "On Approving the Criteria for Categorizing Industrial Products as Industrial Products Having No Analogues Produced in Russia, and the Criteria for Categorizing Industrial Products as Products Manufactured in Russia".

The Decree was intended to allow foreign companies investing in local production to receive the status of a local manufacturer. Receiving the status of a Russian manufacturer is especially important for companies that have already made significant investments in the development of production capacities in Russia. According to Decree No. 719, the status of a Russian manufacturer is assessed based on a number of conditions, as well as production and process operations performed in Russia during product manufacturing.

The Committee took an active part in discussing the draft Decree and provided its remarks and additions. Unfortunately, we regret to say that the proposals of the Committee experts were for the most part ignored in finalizing the draft Decree. On the contrary, the criteria were changed to include requirements that were not the subject of public discussion at the stage of developing the document.

For example, the Decree established extremely tight deadlines that cannot be met by companies developing their own production in Russia. The requirement to grow familiar with technological operations as complex as the production of engines and transmissions within four years will automatically deprive manufacturers of the "Made in Russia" status after 2020, even those who now meet all other requirements.

We also feared that the Government would tighten the requirements of this Decree even more and, unfortunately, our fears proved true. On 17 January 2017, the Government issued Decree No. 17 "On Making Amendments to Decree No. 719". This Decree introduced a number of additional mandatory technological operations that foreign investors had not planned to implement in their Russian enterprises for reasons of economic feasibility, e.g. the manufacture of excavator cabins.

The Decree also includes technological operations that have absolutely nothing to do with a given type of equipment. However, all proposals to jointly analyze and revise these disputable provisions of Decree No. 719 are constantly being dismissed by the Ministry of Industry and Trade.

An additional factor hindering localization is the violation by the Ministry of Industry and Trade of its obligations to work out the details of the technological operations listed in Decree No. 719. As a result, the Ministry rejects any technological operations introduced by manufacturers in accordance with their vision of the process without offering any alternatives.

Thus, foreign manufacturers and investors are faced with a practically insurmountable barrier in obtaining the status of a domestic manufacturer, while the "domestic manufacturers", which use obsolete technologies and make zero investments in the modernization of their production, receive huge competitive advantages enabled by the interference of this administrative resource over modern companies of foreign investors; this will eventually squeeze out the latter from the Russian market due to these rather non-market methods.

The compensation for the regularly and unreasonably increasing scrappage fee, compensation for lease payments, as well as the prohibition of procurement for state and municipal needs (further developed in Government Decree No. 616 and 617 of 30 April 2020) can be noted as competitive advantages. As to the procurement prohibition, an absurd situation occasionally takes place when municipal authorities are unable to purchase the products from an enterprise where hundreds of people from municipal institutions work, students of local educational institutions undergo practical training in its workshops and whose taxes are directed to the local budget. As a result of the impact of this administrative resource, state and municipal enterprises are sometimes forced to buy poor-quality products without appropriate service and at inflated prices.

RECOMMENDATIONS

The Committee will continue working with the Ministry of Industry and Trade of Russia on making amendments to Decree No. 719 "On Approving the Criteria for Categorizing Industrial Products as Industrial Products Having No Analogues Produced in Russia and the Criteria for Categorizing Industrial Products as Products Manufactured in Russia" and protecting the interests of foreign investors.

COMMITTEE MEMBERS

Atlas Copco • Caterpillar Eurasia • CNH Industrial Russia • Doosan Infracore Co. Representative Office in Russia • Hitachi Construction Machinery Eurasia • HYUNDAI CONSTRUCTION EQUIPMENT Co. • JCB Russia • John Deere Rus • Komatsu CIS • LIEBHERR-RUSSLAND • Ponsse • Volvo Vostok • Wirtgen-International-Service.

CONSTRUCTION INDUSTRY & BUILDING MATERIAL SUPPLIERS COMMITTEE

Chairman:
Vitaly Bogachenko, LafargeHolcim

Committee Coordinator:
Saida Makhmudova (saida.makhmudova@aebrus.ru)

EXTENSION OF THE PROGRAMME FOR PREFERENTIAL MORTGAGE LENDING FOR THE CONSTRUCTION (PURCHASE) OF INDIVIDUAL HOUSES

ISSUE

The Government of the Russian Federation approved Decree No. 566 dated 23 April 2020 "On Approval of the Rules for Reimbursing Credit and Other Organizations for Lost Income on Housing (Mortgage) Loans Provided to the People of the Russian Federation in 2020", which established that people are provided with 6.5% preferential mortgage loans.

Until 1 November 2020, the preferential lending programme applies to housing loans up to RUB 8 million in Moscow and the Moscow region, St. Petersburg and the Leningrad region. In other regions, the limit for loan amounts should not exceed RUB 3 million. The minimum instalment will be 20%, the maximum rate 6.5% will remain for the entire term of the loan. The government will compensate the difference between preferential and market mortgage rates to banks.

The funds will be reimbursed for loans provided for the purchase of residential premises from legal entities during the construction phase. In addition, the preferential mortgage rate applies to the purchase of apartments in apartment buildings and block housing built with the involvement of equity holders' funds.

The preferential mortgage programme will help ensure the provision of up to 250 thousand loans for the purchase of housing and will also help to additionally attract at least RUB 900 billion to the housing construction sector.

Meanwhile, a large number (66% according to the results of the All-Russian Public Opinion Research Centre survey) of Russian people would like to live in a private house, and only 24% in apartment buildings.

At the moment, the preferential mortgage programme applies only to the purchase of housing in apartment buildings and does not take into account the interests of people who want to purchase housing in the individual housing construction segment.

RECOMMENDATIONS

To extend preferential terms for 6.5% housing (mortgage) loans and for the purchase of new individual housing construction facilities, as well as construction contracts for the acquisition of land plots and construction of individual housing units there for a single family.

If housing loans are maintained at RUB 8 and 3 million, this will significantly expand the number of potential recipients of such loans and that is especially important for the recovery of the Russian economy during the spread of the coronavirus infection. This programme extension will provide assistance to people in need to improve their living conditions, will additionally attract more than RUB 2 trillion to the housing construction sector and will also contribute to the development of the domestic high-quality building materials market and construction services market throughout the country.

APPLICATION OF ADVANCED CONSTRUCTION TECHNOLOGIES AND MATERIALS FOR THE DEVELOPMENT OF ROAD INFRASTRUCTURE IN RUSSIA

ISSUE

The development of safe and high-quality roads using new technologies and materials, as well as contracts for the road life cycle is one of the key tasks set by the May decree of the President of the Russian Federation. The solution to this problem is directly related to increasing the service life of road toppings and motorway pavements, as well as reducing operating costs with the increasing impact of traffic loads. By Decree of the Government of the Russian Federation No. 658 of 30 May 2017, the standard turnaround time for motorways should be almost doubled: before major repairs – 24 years, routine repairs – 12 years. In foreign practice, the service life of road toppings is already calculated to be between 30-50 years.

The world experience shows that increasing the service life of road toppings and pavements and, most importantly, reducing operating costs during the operation of roads is only possible with the wide implementation of modern technologies for making concrete pavement and base course in the construction and reconstruction of roads.

Economic calculations and international practice show that, today, the cost of constructing road toppings with cement concrete pavement and with asphalt concrete layers is approximately equal. However, the service life of cement concrete roads is at

least two times longer and operating costs are much lower and can approach zero in the first 12 years of operation. Given the aforementioned costs, over the life cycle, cement concrete pavements are 40-50% cheaper compared to asphalt concrete pavements. Costs of the construction and reconstruction of roads can also be significantly reduced through the widespread use of local road construction materials reinforced with cement binders.

The advisability of constructing roads with cement concrete pavement was noted in the Strategy for the development of the building materials industry for the period up to 2020 and further time horizon until 2030 adopted by Decree of the Government of the Russian Federation No. 868-r dated 10 May 2016. The strategy provides for a systematic increase in the share of commissioning of roads with cement concrete pavement in the total volume of road construction in Russia.

We deem it necessary to consider the deployment in Russia of construction, reconstruction and repair of roads using road cement concrete based on advanced technologies that can significantly reduce operating costs and at least double the service life of roads.

RECOMMENDATIONS

- Analyze the implementation of Decree of the Government of the Russian Federation No. 868-r dated 10 May 2016 and Decree of the Government of the Russian Federation No. 630 dated 6 April 2017, with regard to the construction of cement concrete pavements for roads.
- By Decree of the Government of the Russian Federation, to provide for a systematic increase in the share of construction of roads with cement concrete pavements.
- Prepare a Decree of the Government of the Russian Federation on the mandatory provision by design organizations to the Glavgosexpertiza (General Board of State Expert Review) of an economic comparison of designs for rigid and flexible pavement when designing motorways, city streets and roads, taking into account operating costs within the life cycle of an object, in order to designate more efficient structures.
- Develop a package of regulatory and technical documents that ensure high-quality construction of cement concrete pavements and base courses using modern technologies. Over the past 30 years, such documents have not been developed or updated.
- For each Federal District, develop programmes for the construction and reconstruction of motorways with the use of cement concrete in the base course and pavement of roads, with the aim of significantly reducing future repair and maintenance costs, as well as extending the life cycle of roads.
- Develop a programme for the reconstruction of streets and roads of urban agglomerations with the use of cement concrete in the pavements and base course of roads, especially in places of public transport stops, places of acceleration and deceleration, belt highways.
- Develop a programme for creating domestic sets of machines for the construction of cement concrete pavements.

FIRE SAFETY IN SHOPPING MALLS

ISSUE

Shopping malls (SMs) are complex structures that include premises for various purposes and involve a high concentration of people. The various purposes of the premises imply various degrees of their fire rating, which is reflected in the requirements for these premises.

The building, therefore, is divided into fire compartments belonging to different functional fire hazard classes. Each fire compartment is rated according to the degree of fire resistance, and structural and functional fire hazard classes. Fire compartments should be separated from each other by a wall with a high (2.5 hours) fire-resistance rating.

When this requirement is met, the probability that fire and combustion products will spread from one fire compartment to another before people are evacuated from there is high.

The situation involving the combustion of the exterior wall envelopes is less predictable. Smoke, and hence combustion products, can spread not only inside one fire compartment but throughout the building. The world experience in fires indicates that a fire outside is often transformed into a fire inside a building.

Most people coming to shopping malls are not familiar with the building layout, since visiting the mall is generally not a daily activity. Therefore, evacuation from the premises in case of an emergency is associated with the search for emergency exits, which can be complicated by panic. At the same time, there are always visitors to the shopping mall who find it difficult to move quickly (elderly, children, people with limited mobility).

The possible smoke in the premises will only complicate this search, and toxic combustion products, which may be part of the smoke from burning structures if combustible materials are used in them, will result in poisoning by combustion products and the inability to evacuate, leading to a fatal outcome.

For example, in the documents regulating fire safety in the Russian Federation, there is a requirement to use only non-combustible materials in the walls of buildings belonging to F4.1 functional fire hazard class. These are schools, non-school educational institutions, secondary special educational institutions, and vocational schools. In other words, buildings in which children are located. At the same time, children visit these buildings regularly and are well aware of where the entrance and exit from these buildings are.

The sad example of Zimnyaya Vishnya shows that there are also children in the mall (cinemas, playgrounds, eateries, shops) who are not aware of the evacuation exit's location. It turns out that the mall in a fire is even more dangerous than educational institutions since the spread of smoke and toxic combustion products can take place in a fire.

RECOMMENDATION

To legislatively establish requirements for shopping malls according to the fire hazard class (K0) (nonflammable) and combustibility of (incombustible) materials for external cladding, decoration and thermal insulation for all external enclosing structures of newly erected facilities.

ACOUSTIC COMFORT IN RESIDENTIAL AND PUBLIC BUILDINGS: IMPROVING REQUIREMENTS AND STRENGTHENING COMPLIANCE CONTROL

ISSUE

Current situation:
1. In general, the requirements of SP 51.13330-2011 "noise protection" in apartment buildings are not observed in 50% of cases (new buildings and secondary housing). In new buildings, the situation is even worse according to research conducted by the SBI Centre for Construction Expertise, Research and Testing.
2. The introduction of selective inspection of objects is not very feasible even in Moscow and the Moscow Region.
3. Tightening the requirements of the code specification or the introduction of new requirements for residential buildings is unlikely due to the "regulatory guillotine" (opinion of the Research Institute of Building Physics).
4. Developers are not interested in changing the sound insulation situation.
5. Consumers are extremely ill-informed about sound insulation.
6. There is uncertainty in the interpretation of certain provisions of SP 51... for residential buildings delivered in a "white box" stage.
7. The issue of office sound insulation is nevertheless relevant and requires regulation, especially in view of the recent adoption of a single standard for office sound insulation in Europe.

RECOMMENDATIONS

- To recognize the preparation of proposals for changing the standards (including methodological guidelines) in the field of sound insulation for residential buildings as inappropriate.
- SG has submitted a proposal to the 2021 National Standardization Plan for the development of GOST for office sound insulation. If the proposal is approved, a Working Group should be created to gather best practices in sound insulation to draw up a standard that meets the interests of both consumers and construction professionals.
- As part of the work to promote sound insulation in multiple dwelling residential buildings, the following is proposed:
  a. to focus on educating consumers about the effects of noise on health and well-being;
  b. to consider options for legal support for consumers who received flats that do not meet the requirements of the code specification.
- To ensure Clause 3, the following proposals are made:
  a. to clarify (with the Research Institute of Building Physics and other experts) discrepancies/contradictions in SP 51...
  b. to conduct a comparative analysis of existing design solutions in the field of sound insulation in order to determine the weakest/most problematic structures (and, in future strive, to convey to the market the need to gradually abandon such solutions in favour of high-quality soundproof structures);
  c. to develop a communication plan with end users.

TRAINING IN MODERN CONSTRUCTION TECHNOLOGIES

ISSUE

The shortage of highly qualified personnel who know innovative construction technologies remains an urgent problem for the construction industry in Russia. In view of this, over the years a number of companies have taken it upon themselves to implement large-scale educational projects with the participation of educational organizations of secondary vocational and higher education and support a whole range of new professions.

In our opinion, modernization of the construction sector in Russia is impossible without a whole range of measures, including educational, methodological, material and technical, and expert support for educational infrastructure in this area. Business is interested in further dialogue and expansion of social partnership with education in training and retraining of personnel for construction and architecture.

Such a partnership is beneficial both for the state, for which it is an investment in vocational and higher education and its infrastructure and, ultimately, in productivity and labour efficiency, and for business, since construction products manufactured in accordance with advanced international quality standards require its professional use. Only a professionally and practically trained specialist can appreciate the advantages of modern construction technologies.

However, at present, investments in the development of the educational and technological base of vocational and higher education are carried out by businesses from their own profits. The current tax legislation of the Russian Federation does not explicitly provide for the possibility of accounting for such expenses for tax purposes, including the cost of supplying construction materials to educational institutions for training purposes, as well as the cost of the performance of work and the provision of services free of charge.

The appeal by the Association of European Businesses to the State Duma on 26 December 2012 did not yield any results resolving this issue.

RECOMMENDATION

In Chapter 25 'Income tax' of the Tax Code of the Russian Federation, to establish the right of a business to account for tax purposes the costs of social partnership with vocational and higher education institutions, in particular, the costs for training students in secondary vocational and higher education institutions, vocational retraining and continuing education of the teaching staff and the provision of materials for the needs of training and various events.

ON ESTABLISHING A MANDATORY EXPERT EXAMINATION OF DESIGN DOCUMENTATION FOR THE OVERHAUL OF AN APARTMENT BUILDING

ISSUE

Article 48 of the Urban Planning Code of the Russian Federation (hereinafter referred to as the RF UPC) provides for the development of design documentation for the overhaul of capital construction facilities, including apartment buildings.

Article 49 of the RF UPC provides for state and non-state expert examination of design documentation. Moreover, the design documentation is not examined in relation to sections of the design documentation prepared for the overhaul of capital construction facilities, including apartment buildings.

In accordance with Article 174 of the Housing Code of the Russian Federation (hereinafter referred to as the RF HC), overhaul fund assets can be used to develop project documentation (if the preparation of project documentation is necessary per urban development legislation).

However, the project documentation is not evaluated and the parameters used in its development may not meet the requirements of the technical regulation on the safety of buildings, structures, and constructions (Federal Law No. 384-FZ dated 29 December 2009) and the requirements of regulatory documents.

RECOMMENDATION

To amend Article 49 of the RF UPC and to make state and/or non-state expert examination of design documentation for the overhaul of apartment buildings mandatory if the preparation of design documentation is necessary per urban development legislation.

APPLICATION OF THE BEST AVAILABLE TECHNOLOGIES IN THE FIELD OF WASTE MANAGEMENT. INCLUSION OF CEMENT INDUSTRY ENTERPRISES AS ENERGY DISPOSAL FACILITIES IN THE WASTE MANAGEMENT SYSTEM AT FEDERAL AND REGIONAL LEVELS

ISSUE

The cement industry offers a unique technology for the disposal of waste in cement kilns, which is the replacement of part of conventional fuel (gas, coal) with a wide range of waste, including the remains of MSW sorting. The presence of an oxidising atmosphere and high temperatures in the combustion zone in cement kilns provides safe conditions for the complete destruction of waste. A distinctive feature of the process is the absence of secondary waste – an ash residue, which, when entering into a chemical reaction with the raw mix for cement production, forms a semi-product – clinker.

The use of waste as alternative fuel and raw materials in the cement industry can reduce the negative impact on the environment, including reducing CO2 emissions and minimizing the use of natural resources. This technology is recognized as the best available technology (BAT) in Russia and the EU and is widely used around the world.

Today, in accordance with the waste hierarchy, the above technology is the best available alternative to both disposing of waste sorting residues at landfills and incinerating them at incineration plants.

The widespread use of energy disposal technology at cement production plants will make a significant contribution to achieving the goal of the Ecology national project – the direction of 36% of the total volume of generated MSW for disposal by 2024.

RECOMMENDATIONS

- The constituent entities of the federation include cement plants as objects of energy disposal in the territorial waste management schemes.

- To develop a system of regulatory and economic measures aimed at stimulating the implementation of investment projects on energy waste disposal at cement industry enterprises:
  - recommend to the constituent entities of the federation the implementation of disposal at cement production plants of the residues of MSW sorting as the best available technology of "energy disposal" as a priority in comparison with the use of MSW landfills;
  - regulate the procedure for approving a regulated "rate for energy disposal" to enable payment by regional operators for this service to cement production enterprises within this rate;
  - include in the programmes aimed at the implementation of the federal project "Integrated MSW Management System", including in regional programmes in the field of waste management, measures to stimulate the implementation of investment projects at cement production plants to create energy waste disposal capacities, including partial subsidising of costs for the construction of alternative fuels workshops;
  - subside the cost of transportation of MSW sorting residues for disposal at the cement production plant from the processing (sorting) facility to the disposal facility.

- Remedy gaps in the regulatory framework, in particular:
  - take into account the peculiarities of waste disposal at cement production plants in the development of legal and regulatory documents;
  - develop and approve a methodology for standardizing emissions from waste disposal and the use of alternative fuels at cement production plants;
  - adopt by-laws on the implementation of the specified BAT for obtaining standards for maximum permissible emissions (MPEs), standards for waste generation and limits for their disposal (SWGLD), as well as an integrated environmental permit (IEP).

- Develop and implement a set of measures aimed at improving the quality of MSW sorting. The above will reduce the cost of disposal and, ultimately, the financial burden on the people. It is also necessary to consider measures aimed at supporting projects for the reconstruction and construction of facilities for MSW sorting, providing for the preparation of waste that meets the requirements of cement recovery plants.

COMMITTEE MEMBERS

AGC Glass Europe • Ariston Thermo Rus • BASF • BAYER • Dow Europe GmbH Representation office • Guardian Glass • HeidelbergCement Rus • Henkel Rus OOO • Knauf Group CIS (OOO Knauf Gips) • LafargeHolcim • Legrand LLC • LLC "Bekaert Lipetsk" • ROCA • ROCKWOOL • Saint-Gobain • Siemens LLC • SLK Cement Limited Liability Company • Tikkurila • Wienerberger • YIT.

CROP PROTECTION COMMITTEE

Chairman:
Hans Bestman, ADAMA

Deputy Chairman:
Pavel Zibarev, FMC

GR Manager:
Tatiana Belousovich (tatiana.belousovich@aebrus.ru)

The Crop Protection Committee (CPC) was set up in 2004 as a subcommittee. It became a committee by the decision of the AEB Board in September 2011. Currently, it unites six leading international companies representing innovative crop protection technologies on the Russian market.

The aim is to establish a consolidated position on key issues affecting the industry and to lobby for the CPC interests by interacting with Russian governmental authorities, public institutions and business associations.

The CPC consists of four Working Groups composed of various specialists nominated by their companies, whose aim is to find optimal solutions to the following key issues:
- registration and regulatory affairs;
- anti-counterfeiting activity;
- a container management scheme (CMS);
- communications and information support.

The last two Working Groups are inter-committee and unite specialists from member companies of two Committees: Crop Protection and Seed. Since 2013, the Committee, together with Russian companies, has been working on the collection of statistical data on the dynamics of the Russian Crop Protection Products (CPP) market based on the Black Box principle.

INTRODUCTION

According to Kleffmann Group data (Kynetec), the global CPP market in 2019 grew insignificantly by 0,7% (compared to 2018) to USD 55,6 billion. Its further growth is forecasted.

Asia and Latin America continue to hold the lead in sales, in particular, the Brazilian CPP market remains the largest in the world. Sales in Northern and Western Europe are declining due to an increase in the number of active substances of pesticides that are banned from use.

The Russian CPP market reached in 2019 USD 2,081 billion, or about RUB 134,724 billion (at the year's average exchange rate) came out on the 7th place in the world and on the first place in Europe. It represents one of the fastest growing CPP markets in the world with an average growth of 12.5% over the past 10 years. Sales of insecticides are growing, in particular for spring rapeseed. Sales of fungicides are increasing too. Herbicide sales decreased due to the introduction in 2019 of anti-dumping duties on the import of herbicides from the European Union for a period of 5 years. The market shares of products sold by international and Russian companies remain equal.

Company mergers have changed the industry. State authorities all over the world are trying to balance the situation in order to provide equal conditions for competition.

INFLUENCE OF EUROPEAN CPP TRENDS ON RUSSIAN AGRICULTURE

ISSUE

Politicized approach to pesticide safety in EU led to not scientifically based restrictions on the use of a number of active substances of pesticides (AS) in Europe and, accordingly, necessitated their replacement. Such overestimation of pseudo ecological ideas negatively impacts agriculture. After the adoption in May 2009 of the stricter Regulation 1107 of the European Commission, and due to growing political and social pressure, more than 50 AS were withdrawn from the market. It is becoming increasingly difficult to register AS in the EU based on objective scientific research. The range of crop protection products available to European farmers is constantly decreasing.

The Crop Protection Committee members are seriously concerned about the negative consequences for Russian agriculture if Russia follows European trends. This scenario should not be accepted in Russia, where agriculture is playing a more and significant role in economy and food security.

Today, Russian agriculture has been assigned ambitious objectives both in harvesting and in doubling agricultural exports in 2024 to USD 45 billion. Grain is still the main agricultural export product. It accounts for a third of total exports in monetary terms. Over the past few years, grain supplies abroad have grown due to increased yields paired with stable domestic consumption.

The current Russian laws and regulations governing CPP turnover are based on the principles of their safety for human health and the environment. In some cases, the requirements for CPP toxicological, hygienic and environmental assessment and classification are much more stringent than in the EU.

Following the European CPP trends and requirements is unlikely to contribute to the achievement of set objectives and the fulfilment of current plans by Russian agriculture but may rather have an adverse impact. Assessing CPP in terms of their potential hazard, which is leading to European agriculture losing more and more CPP, is unlikely to promote Russian agricultural interests, the achievement of declared productivity indicators and the development of export potential.

RECOMMENDATIONS

The Crop Protection Committee members and the Russian Union of Crop Protection Manufacturers intend to maintain a constant constructive dialogue with relevant government authorities, research institutes, and industry unions and associations in order to explain the adverse effects of following noted CPP trends that have developed in the EU, taking into account the requirements for the circulation of crop protection products in the territory of the Russian Federation and the tasks set for Russian agriculture. Working meetings and negotiations are held with representatives of the Ministry of Agriculture, the Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing (Rospotrebnadzor), the Federal Service for Supervision of Natural Resources Exploitation (Rosprirodnadzor), the leadership of the Federal Scientific Centre for Hygiene – Erisman Institute – and other associations. Such meetings are planned to continue.

REGULATION OF CPP TURNOVER IN RUSSIA AND EAEU

The current state of Federal Law No. 109-FZ 'On Safe Handling of Pesticides and Agricultural Chemicals' dated 19 July 1997

In 2020, significant amendments were made to the law, which the Crop Protection Committee had been focusing its efforts on for several years.

- As part of these amendments, a sixth part was added to Article 12, which reads, 'State registration is not required for pesticides and agrochemicals that are not intended for use in the Russian Federation (intended solely for sale outside the Russian Federation)'. On the one hand, this amendment encourages exports, while on the other, it serves as motivation for international companies to localize manufacturing in Russia and develop their own production facilities here. CPC member companies produce up to 50% of the products sold on the Russian market on tolling lines of the Agrokhemikat plant in Kirovo-Chepetsk and plan to increase local production to 70-80% by 2023. FMC already has its own plant in the Republic of Chuvashia. Bayer and Syngenta have begun construction of plants in the Lipetsk Special Economic Zone.
- Article 10, 'Expert Assessment of the Results of Registration Trials of Pesticides and Agrochemicals', has been revised. Specifically, a provision has been added stating that 'State ecological expertise of the draft technical documentation for a pesticide or agrochemical and sanitary-epidemiological expertise are carried out simultaneously'.

  This amendment helps optimize the state registration procedure for the CPC.

CURRENT STATUS OF THE EAEU TECHNICAL REGULATION 'ON THE SAFETY OF CHEMICAL PRODUCTS'

ISSUE

The EAEU Technical Regulation 'On the Safety of Chemical Products' 041/2017 (TR) was adopted on 3 March 2017 by decision of the EEC Council No. 19 and will enter into force on 2 June 2021. In the Russian Federation, the authority responsible for implementing the provisions of the TR is the Ministry of Industry and Trade.

The TR does not apply to pesticide formulations and related processes of their production, storage, transportation, sale and disposal (recycling).

Until the entry into force of the EAEU technical regulation setting forth the requirements for pesticide formulations and related processes of their production, storage, transportation, sale and disposal (recycling), the provisions of the acts of EAEU bodies or the laws of the EAEU member states shall apply. Accordingly, the TR extends to AS and components for pesticide production.

The Russian Federation has an approved procedure in place for CPP state registration, providing for CPP exhaustive toxicological, hygienic, environmental and biological examinations, hazard assessment, rationing and detailed regulation. All components of a formulation, including AS and the formulation itself, are carefully studied and assessed. The state function of CPP state registration is assigned to the Ministry of Agriculture.

Thus, applying the TR to pesticide AS means that they will undergo inventory and notification procedures, which essentially duplicate the requirements for AS in the framework of state registration of pesticides.

RECOMMENDATIONS

Taking into account that in the Russian Federation the authority responsible for implementing the provisions of the TR is the Ministry of Industry and Trade, it can initiate changes to the TR by submitting a request to the EEC. The Crop Protection Committee members and the Russian Union of Crop Protection Manufacturers are cooperating with the Department for the Chemical Technology Sector and Bioengineering Technologies to explain the advisability of excluding AS of pesticides from the TR's coverage. Another argument for this is that AS are only used for the manufacture of pesticides. If pesticide formulations are excluded from the TR, then it makes sense to also exclude AS. This argument was outlined in a joint application submitted by the two associations to A. Popova, the Head of the Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing (Rospotrebnadzor). It was Rospotrebnadzor that previously initiated the exclusion of pesticide preparations from the TR.

COMBATING COUNTERFEIT PRODUCTS ON THE RUSSIAN CPP MARKET

ISSUE

Today counterfeit pesticides are becoming a new global threat to legitimate producers, consumers and the environment. According to data from the Organization for Security and Cooperation in Europe (OSCE), in 2015 the share of counterfeit products on the world CPP market was 25%, and 70% for retail packages. According to Russian experts, in some regions this share reaches 30%. Based on Kleffmann data on the Russian CPP market and on OSCE evaluations, we can estimate the approximate economic damage which the Russian federal budget suffers every year at more than USD 400 million.

Counterfeit pesticide production and distribution is a well-organized illegal business controlled by transnational criminal structures, one of the top ten by level of income. Counterfeiters successfully replicate the design of the product and take advantage of a farmer's wish to save money, so purchases of counterfeit pesticides are becoming quite frequent.

RECOMMENDATIONS

It is impossible to decrease the use of counterfeit pesticides by agricultural producers without an active information campaign conducted by the Anti-Counterfeit Working Group, both through their own efforts (as part of seminars for agronomists and agriculture industry experts, on their company websites, etc.) and by involving the mass media.

On the Committee's initiative, the website protectcrop.ru was created and launched. It is intended to provide information about current efforts to combat counterfeit CPP, legislative changes, effective measures, positive Russian and European experiences, and news. The website needs to be promoted through the mass media, public events and meetings with governmental authorities, industrial unions and associations.

The International Anti-Counterfeiting Forum is considered an effective platform for promoting the Committee's consolidated position. Working Group members have delivered presentations there since it was first held in 2012. Committee representatives also take part in meetings held by the Expert Council of the State Commission on Combating Illegal Turnover of Industrial Products, which started its work in June 2017.

Combating counterfeit CPP in Russia is possible only through the joint efforts of the authorities, CPP producers and public organizations. For operative response measures in case counterfeit CPP is detected, cooperation is developing with the 14th Office (agriculture) of the 'P' Department (consumer markets) of the General Directorate of Economic Security and Anti-Corruption of the Ministry of Internal Affairs.

CONTAINER MANAGEMENT SCHEME (CMS)

ISSUE

All over the world, CPP manufacturers are responsible for the environmental friendliness of their products throughout their complete lifecycle: from research and development of a new molecule to container collection and disposal. Now there are more than 40 container management schemes around the world. In 25 countries, including Russia, pilot projects have been launched. Subsequently they develop and become full-fledged schemes.

In Russia, the amendment of the federal legislation on waste management was one of the motivating factors in establishing a Container Management Scheme. On 29 December 2014, Federal Law 458 was adopted, which introduced changes to Federal Law 89 'On Production and Consumption Waste'. According to the new Article 24.2, producers/importers of goods must provide for the collection and recycling of waste after the use of these goods, according to the normative standards set by the Government. It stipulates two options for responsible implementation:

- paying an ecological fee to the federal budget;
- establishing in-house infrastructure or using an operator's services. To fulfil the responsibility on their own, producers/importers can also create an association (union).

Being ecologically responsible companies, AEB CPC members, through joint efforts with the Russian Union of CPP Producers, have ensured the collection and recycling of waste pesticide containers on the basis of world standards since 2013, i.e. before the introduction of the amendments to the legislation. A logical development of the container management scheme was the establishment of the company ECOPOLE, founded by the AEB and the Russian Union of Crop Protection Manufacturers in July 2016. This company focuses on organizing a collection and disposal scheme for all interested parties and on monitoring compliance with safety requirements.

Due to the collaborative efforts of the Committee and the Russian Union of Crop Protection Manufacturers, amendments were introduced into Sanitary Regulations and Standards 1.2.2584-10 'Hygienic Safety Requirements for the Processes of Trials, Storage, Transportation, Sale, Use, Disposal and Recycling of Pesticides and Agrochemicals' in order to harmonise the provisions of Section XX 'Safety Requirements for the disinfection of vehicles, equipment, containers, premises and working clothes' with international principles and standards and to prevent disagreements arising in regard to the management of used packaging materials, with the accompanying risk of penalties being imposed by the regulatory authorities.

However, agricultural producers do not always fulfil the requirements of Sanitary Regulations and Standards 1.2.2584-10 and do not rinse containers properly during the process of plant treatment, which creates a danger both for human health and the environment. In addition, recently there has been an increase in the num-

ber of farm agronomists selling used pesticide containers to private companies acting as container collection and disposal operators, although they are not licensed for hazardous waste management or contractually connected with ECOPOLE. This situation implies the obvious risk of reuse of containers for counterfeit formulations.

On 1 September 2019, amendments to the Code of Administrative Offences of the Russian Federation entered into force. In particular, there are stricter fines for non-compliance with sanitary and epidemiological requirements for handling production and consumption waste, as introduced by Art. 6.35, which is certainly a positive point. However, the lack of proper control over the safe handling of pesticides (in 2011 the respective powers of Rosselkhoznadzor were transferred to Rospotrebnadzor and Rosprirodnadzor) creates opportunities for violation of the rules for handling used containers, which are used by bad-faith agricultural manufacturers.

RECOMMENDATIONS

An important part of the container management scheme is teaching farmers to rinse containers properly to ensure the ecological safety of the whole process. The Committee considers it crucial to regularly educate agricultural producers through presentations of member companies at public events and distribution of print media expressly demonstrating the procedure for washing containers properly, which is already being carried out by the CMS Working Group together with ECOPOLE.

Another important factor is information and administrative support on the part of governmental authorities and/or their subordinate structures. In the Memorandum of Cooperation between the AEB and the Federal State Budgetary Institution Russian Agricultural Centre, the AEB and ECOPOLE reached an agreement on involving the Russian Agricultural Centre's branches in the awareness campaign for agricultural producers.

To prevent the illegal sale of containers, it is necessary not only to use information resources, but also to ensure regular and effective control over the circulation of pesticides. This issue is discussed at the working meetings at the Ministry of Agriculture and at the annual conference 'Pesticides'. At the moment state authorities do not pay proper attention to the problem, probably not realizing the risks it poses to human health and the environment. By joining forces with the Russian Union of Crop Protection Manufacturers, the Crop Protection Committee considers it advisable to continue activities to raise the awareness of state authorities regarding the existing problem and find relevant solutions.

CONCLUSION

The CPC members are fully committed to the development of sustainable agriculture in Russia, and all its initiatives are based on this key principle. Sustainable agriculture is a productive, competitive and efficient way to produce safe agricultural products, while at the same time protecting and improving the natural environment and social/economic conditions of local communities.

The efforts of the Committee are focused on the development of meaningful interaction with state authorities, industrial unions and associations, and non-governmental organizations to address the following key issues:

- ensuring equal terms for conducting business for both Russian and international companies on the Russian market;
- optimizing the process of CPP state registration;
- establishing the necessary conditions for CPP R&D activity in Russia (before the launch of registration trials) as a necessary basis for production localization;
- provision of effective measures for anti-counterfeiting activity in the CPP market in Russia;
- creation of a legal framework and infrastructure for the CMS.

COMMITTEE MEMBERS

ADAMA • BASF • Bayer • Corteva Agriscience • FMC • Syngenta.

ENERGY COMMITTEE

Chairman:
Ernesto Ferlenghi, Eni S.p.A

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Committee Coordinator:
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EU-RUSSIA RELATIONS

Lingering political tensions, the oil crisis in spring 2020 and the COVID-19 pandemic made an impact on EU-Russia energy relations. The ambitious climate targets set by the Paris Agreement, climate agreements of EU countries and other policies make the parties look for innovative ways to advance within the energy sector.

Energy transition is progressing in EU countries and in Russia. The recently presented EU Hydrogen Strategy and the draft Strategy for Low-Carbon Development of the Russian Federation till 2050 could give an impetus to fostering future bilateral energy relations. The AEB is convinced that constructive dialogue involving all stakeholders will promote achieving win-win solutions.

OIL AND GAS SECTOR

ISSUE

The widening gap between domestic gas production and consumption in the EU exacerbated by political unrest around existing and future infrastructure projects create uncertainty for stable gas supply from Russia to the EU. Diversification of sources and routes, as well as security of demand and supply are important for ensuring delivery of the necessary volumes to consumers.

RECOMMENDATION

It is vital to continue the dialogue aimed at finding an appropriate solution to guarantee steady gas supply to European consumers. The commitment by European companies participating in the Nord Stream 2 project underscores its strategic importance for the market, which is to benefit from the project's positive effect on gas prices.

ISSUE

Uncertainty about the role of natural gas in the future energy mix in Europe may negatively impact planned and existing infrastructure projects. Increasing concerns about the carbon footprint of methane urge EU policy makers to follow respective stringent rules.

RECOMMENDATION

For years to come natural gas will play a role in the EU energy mix. The EU will remain an important market for Russian gas. Today, ensuring stable and affordable energy supply and natural gas makes it possible to promote innovative solutions for the low-carbon economy in the long term. It can be used for producing hydrogen, which has many low-carbon applications. The existing gas transportation infrastructure can be adapted for cross-border transportation of hydrogen. Innovative technologies can help both to reduce the carbon footprint from using natural gas and to produce carbon neutral gases. Respective joint research projects should be supported.

ISSUE

Introduction of cross-border carbon regulations by the EU may significantly affect Russian exporters of industrial goods.

RECOMMENDATION

Since the parties are interdependent on trade and energy supply, it is important to maintain a constructive dialogue aimed at reaching a balanced solution that considers both the EU's Green Deal ambitions and the interests of Russian industrial producers. By ratifying the Paris Agreement, Russia demonstrated its serious commitment to playing a role in achieving climate agenda goals. Changing European regulations along with potential challenges for the Russian industry may provoke a faster transition to low-carbon consumption by enterprises and accelerated growth in the energy efficiency of capacities.

ISSUE

The Russian government has lately been introducing changes to the tax system for the oil and gas industry, testing and fine-tuning new regimes.

RECOMMENDATION

Predictability of taxation, fiscal stability for long-term projects and fair treatment for all investors is highly essential to ensure successful implementation of large investment projects.

ISSUE

The Federal Law 'On Regulations of Foreign Investments in Strategic Industries' and amendments to the Subsoil Law introduced the concept of investment in entities holding licences for fields of federal significance.

RECOMMENDATION

A company carrying out a geological survey under a geological licence needs a guarantee of the right to participate in the development in case of a discovery. If the discovery is considered of federal significance, new procedures must be established to eliminate licence withdrawal risks. Subsoil users should be allowed to proceed to exploration and production prior to the geological studies' completion.

ISSUE

Restrictions on the export of geological information hinder the efficient operations of foreign companies and JVs in Russia.

RECOMMENDATION

Export licencing procedures for non-secret and especially interpreted geological information produced by subsoil users upon analysis of source data need to be modified to ease the implementation of joint projects. Geological data not falling under Presidential Decree No. 1203 dated 30/11/1995 as a state secret and procured by a company on legal grounds and at its own expense should be allowed for export.

HYDROGEN

ISSUE

Some countries have recently adopted national hydrogen strategies and begun to implement them. The hydrogen strategies of EU countries might impact Russia's prospects of exporting its fuels to Europe.

RECOMMENDATION

The draft of the roadmap of the development of hydrogen energy in Russia in 2020–2024 was recently compiled. Thanks to Russia's vast production potential and increased global interest in the development of hydrogen energy, it offers an opportunity for the Russian energy sector. Russia is capable of producing hydrogen at a competitive price. The development of hydrogen projects in Russia is stimulated by the vicinity of the most promising export markets and existing export infrastructure that can also be used for exporting hydrogen.

ELECTRIC POWER SECTOR

ISSUE

An effective mechanism for selecting and carrying out replacement activities that secures the balance of interests of all market players when decommissioning electric power facilities does not exist.

Federal Law No. 281-FZ adopted on 31 July 2020 provides a determination by the Ministry of Energy of the Russian Federation on replacement activities and the competitive capacity selection by the system operator required for the decommissioning of electric power facilities. However, the law includes approaches which do not encourage the owners of generating facilities to decommission economically inefficient capacities, thereby imposing additional duties and risks of uncompensated costs on them.

RECOMMENDATIONS

Proper legal conditions and economic stimuli for decommissioning electric power facilities are needed for the implementation of the law, including amendments to subordinate legislation securing:

- transparent terms and conditions for holding a tender for replacement activities;
- the facilities whose maintenance shutdown and decommissioning are laid down by the scheme and UES development programme may be taken out of service from the date indicated in such scheme;
- the deadline for suspending the decommissioning of a facility by the competent federal agency shall not exceed 6 years;
- non-discriminatory pricing rules to continue the operation of generating facilities whose decommissioning has been suspended under the decision of the Ministry of Energy and for grid operators that have assumed the obligations to implement replacement activities pursuant to the law.

ISSUE

Decree of the Russian Government No. 43 dated 25 January 2019 introduced amendments to the Rules of the Wholesale Electricity and Capacity Market, which created a statutory framework for selecting modernisation projects. But the existing rules for competitive selection disallow companies implementing projects to fully benefit from switching their generating equipment from the steam-power cycle to the high-performance steam-gas cycle.

RECOMMENDATIONS

To amend the Rules of the Wholesale Electricity and Capacity Market and Decree of the Russian Government No. 43 dated 25 January 2019, with consideration for:

- specifying the parameter values used to calculate the size of maximum capital expenditures for the projects of switching to the steam-gas cycle, in particular, to consider an increase in the multiplier for the relevant modernisation activities up to 3.5;
- soften localization requirements for the equipment used in modernization projects for generating facilities of thermal power plants when holding competitive selections for 2026-2029;
- disallow any provisions giving rise to unreasonable preferences for certain projects of specific generating companies.

ISSUE

Draft regulations provide for the establishment for generating facilities based on RES to be commissioned after 2024 of requirements on exports of industrial products (primary and/or ancillary equipment), works (services) and the application of penalties for failure to comply with such export-related requirements. The integration of such mechanism will cause a situation where liability for exports of power equipment will be borne by generating companies implementing RES investment projects.

Such proposals will reduce the opportunity for generating companies to invest in RES projects and develop such technologies in Russia.

The necessity to comply with the requirements for export equipment will result in the need to re-distribute international investment resources in favour of RES projects in other countries.

RECOMMENDATION

When approving regulations governing the requirements for equipment localization for RES after 2024, to use export requirements as a stimulus, excluding the penalties for non-compliance with such export requirements.

COMMITTEE MEMBERS

BP Russia • Chevron Neftegaz Inc. • Electricite de France • Enel Russia • Eni S.p.A • ENGIE • Equinor Russia AS • Fortum • Gasunie • MOL Plc • OMV • Repsol Exploracion S.A. • Shell E&P Services (RF) B.V. • Total E&P Russie • Uniper Global Commodities SE • Unipro • VNG AG.

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TRACK & TRACE SYSTEM

JUSTIFICATION FOR TRACK & TRACE INTRODUCTION

When making a decision to introduce track & trace (T&T) for a specific product category, initial judgement on its reasonability and effectiveness is essential. With investment into T&T, the state, businesses and society as a whole must gain significant benefits which could not be achieved by other, less expensive means. For T&T, such benefits could be found in suppressing counterfeiting, illegal circulation of goods, and, to a lesser extent, in consumer safety (assuring the fast recall of improper products). In counterfeiting and falsification cases, a practical benefit could be achieved only if such products are present in traditional legal distribution channels (T&T could not be applied in trans-border sales via the Internet or in black market trade, for example). Other potential benefits of T&T, such as tracking the supply chain, market performance data, etc., are achievable by other means.

T&T introduction is justified if:

- the share of the counterfeit and/or illegal product in the legal distribution channel is high;
- the product belongs to a high-risk category and T&T gives business operators fast recall capabilities.

Otherwise, if none of the above goals are reached, the introduction of T&T for a product category is pointless.

TRACEABILITY SYSTEM DUPLICATION

AEB member companies consistently adhere to the position that only one system should operate for one product category, especially if its implementation is associated with significant business costs. This principle was laid down in the draft 'Concept of the Establishment and Functioning of the Labelling and Traceability System in the Russian Federation'. However, it was not included in the text of the adopted NAP (Government Order No. 2963 dated 28/12/2018). Today, there is a precedent on the market of two traceability systems being introduced for dairy products simultaneously: voluntary labelling was announced on 15 July 2019, while the mandatory imposition is planned from January 2021. Along with this, from 1 July 2019 dairy products have been included in the Mercury veterinary traceability system, implemented by the State Information System. The government's objective to integrate the systems is currently being addressed through expansion and duplication of operations in both systems, which in practice means two licensing systems from which a business must obtain reaffirmation of the right to each operation with the product, double state control and administrative responsibility.

This approach does not meet the principles of reducing duplication of the regulatory requirements laid down on the basis of the current reform of control and supervision activities, and it will lead to an additional burden on business.

RECOMMENDATION

To ensure the implementation and application of the principle of using no more than one traceability system for one category of goods, in particular, through amendments to the draft Federal Law 'On the Labelling of Goods by Means of Identification in the Russian Federation'.

COSTS FOR INTRODUCING THE SYSTEM OF LABELLING GOODS BY MEANS OF IDENTIFICATION

According to Rosstat, the volume of food production in Russia is estimated at 198 million tonnes, plus 4.4 billion notional product units (for categories measured in packages). Considering the average number of 1 kg packages (by product group), the annual cost of purchasing codes (identification means) alone is estimated by the market at RUB 163 billion. This is comparable to the annual level of product inflation – about 3% of the volume of goods shipped.

It should be noted that, depending on the product category, FMCG markets differ considerably in the level of technical development. This significantly affects the costs of system implementation and maintenance, but today this is not taken into account when decisions on labelling are made. Considering capital expenses, the minimum impact on the cost price is estimated at 4%. For those industries where the level of automated production and warehouse management is quite low (for example, the dairy industry), the prime cost will increase by 8-10%.

Government Decree No. 577 dated 8 May 2019 sets the payment to the national operator for the provision of each marking code at 50 kopecks (with the exception of vitally important pharmaceuticals that cost less than 20 roubles). Meanwhile, the differentiation of payment is not provided either depending on the price or the prime cost of goods, or on mass demand and the size of the market, or on the package size. Thus, for both expensive perfume and clothing, as

well as for a carton of milk, the burden on the product cost will be 50 kopecks, even though the national operator estimates the market for light industry products at 3 million PCs and dairy products at 23 billion PCs.

The main cost components for ensuring piece-by-piece traceability based on coding and tracking of each product package for manufacturers and sellers include:

- capital investments: equipment for code marking during the production of goods and repackaging during transportation; integrative IT systems to enable the sharing of information with the labelling system on the movement of goods;
- operating expenses: the purchase of individual marking codes;
- retrofitting with equipment and software of current operations and systems: transition to e-flow of documentation in transactions between economic entities; introduction of automated warehouse management; changes in the principles of delivery and order formation.

RECOMMENDATION

To ensure that financial and economic analysis of the reasonableness of the cost of marking codes and its revision are performed, taking into account its results, as well as taking into account the burden on business when making decisions on the introduction of labelling.

THE PROBLEM OF TURNOVER OF ORGANIC PRODUCTS IN CONNECTION WITH THE ENTRY INTO FORCE OF 280-FZ DATED 03.08.2018

From 1 January 2020, Federal Law No. 280-FZ dated 03.08.2018 'On Organic Products and Amendments to Certain Legislative Acts of the Russian Federation' (hereinafter, 'No. 280-FZ'), which regulates the production, storage, transportation, labelling and sale of organic products offered to the Russian consumer, came into force.

The law introduced a number of requirements for the circulation of organic products, namely: organic products must have a dedicated graphic image (sign) and a barcode which would allow one to access information about the producers of organic products and the types of organic products they produce through a general state e-register of organic producers specially created by the Russian Ministry of Agriculture. The law prohibits the use of the word 'organic' on packaging in any form or language. It also lacks the provisions on the transition period. The law does not recognize international certification system of organic products.

For many years before the adoption of national organic regulation, more than 80 Russian producers and importers of organic products had been supplying Russian consumers with such products. They had documentary evidence and labelling in accordance with international organic standards. As of 1 January 2020, the market for such products is estimated at tens of billions of roubles.

In fact, organic producers and importers only had 2 weeks as a transition period to pass the national organic certification. The necessary by-laws were adopted only in mid-December 2019 and came into force on 1 January 2020, while the electronic register became operational only in February 2020 and only for Russian legal entities. To date, it includes just 41 organic producers, and 10 of them are producers of alcoholic beverages. About 80 applications for certification have been registered and are awaiting their turn, while the same number of applications await registration. Moreover, the first domestic certification bodies for organic products and raw materials received accreditation only at the end of November 2019. To date, four of them are registered in the Russian market, and just two of them can carry out organic certification of finished products. The capabilities of the other two are limited by the certification of agricultural raw materials. In total, only 10 experts work in those organizations, and only four experts have experience in organic certification.

The COVID epidemic further exacerbated the situation and almost completely froze the certification process, especially for foreign manufacturers, since the certification process requires on-site inspections of the fields and production sites of the raw materials used. Vast stocks of organic products suddenly turned out to be illegal, and despite the fact that Rospotrebnadzor later issued a clarification that made it possible to sell these stocks, it did not solve the problem at the system-wide level. A number of Russian manufacturers have officially notified the Ministry of Agriculture of the Russian Federation about the issues with passing the Russian organic certification of their products, as it is impossible to carry out such certification for imported raw materials and ingredients as required by some certification centres.

In addition to the above, for foreign producers, which by default do not have such Russian attributes as INN, OGRN, etc. required by the by-laws, the technical issues of entry into the Russian register of organic producers have not been resolved. Based on this and in view of the ongoing restrictions on international movement related to the pandemic, some applications for certification were denied.

According to experts, it takes at least one and a half years to adapt to new national requirements, provided that all procedures are adopted and a sufficient number of organic certification bodies are accredited with the necessary staff of experts with no restraints on movement. Only in this case can the process be carried out without disruption to business and without the Russian consumer losing quality of life.

In the light of the above, it is obvious that the producers and importers of organic products and raw materials still have no means to comply with the requirements of Law No. 280-FZ.

Despite the current conditions, the Ministry of Agriculture refused to consider a moratorium both on the application of penalties for inevitable violations in the circulation of organic products and on the application of certain requirements of the law, which were not backed up either legally or technically. Given the above reasons, the existing replenishment stocks of organic products, the cost of which is estimated at billions of roubles, is currently outside the legal field.

Of particular concern is the fact that such regulation, which directly affects the labelling of products, is adopted at the national level, thereby

actually becoming a barrier to the free movement of such products across the EAEU.

RECOMMENDATIONS

- Introduce amendments to the law that legalizes the circulation of imported organic products and raw materials accompanied by international certificates until at least 31.12.2025.
- Provide for a 3-year transition period, during which interested companies could go through the organic certification procedure and switch to new labelling, and the authorities can fine tune the work of the e-register and fill it with organic producers; at the same time, during the transition period, do not prohibit the circulation of imported organic products and raw materials accompanied by international certificates.
- Take measures to create a competitive and professional environment to provide the domestic certification system for organic products with a sufficient number of qualified experts.

RISKS TO THE AVAILABILITY OF MEDICAL AND DIETARY FOOD PRODUCTS ARISING FROM CHANGES IN THE DECISION OF THE CUSTOMS UNION COMMISSION NO. 317 DATED 18 JUNE 2010 'ON THE APPLICATION OF VETERINARY AND SANITARY MEASURES IN THE EURASIAN ECONOMIC UNION'

When the Decision of the Board of the Eurasian Economic Commission 'On Amendments to the Unified List of Goods Subject to Veterinary Control' came into force on 22 February 2019, new positions (products) under EAEU Classifier codes were included in the list and a number of positions were revised.

In furtherance of the decision and in conjunction with the regulatory impact assessment procedure, the EAEU's Legal Portal published draft amendments to Decision No. 317 of the Customs Union Commission 'On Amendments to Unified Veterinary (Veterinary and Sanitary) Requirements for Goods Subject to Veterinary Control (Oversight)' (hereinafter, the 'Draft Decision'). Pursuant to the Draft Decision, the toughest veterinary control measures should be applied to new products on the list; for example, a veterinary certificate and an import permit must be obtained, and producers must be included in the Register of Third-Country Enterprises.

The amendments apply to groups of products under codes 1901 90 910 0 and 1901 90 990 0 of the EAEU Classifier and will have a significant impact on imports to Russia of goods in Group 2106 [UVSR positions 81, 81(1), 81(2)], which include specialized therapeutic and nutritional food products, including children's foods, as well as a number of dietary supplements. Imports of these products, depending on the category, account for 90% of total imports to the EAEU. The restrictions will also cover related ingredients: vitamins, minerals and supplements, ingredients with casein, lactalbumin, high serum protein, chemically pure lactose content, etc.

It is noteworthy that most of the above products and ingredients have no components of animal origin in Group 04 of the EAEU Classifier (dairy products) or any other group in Section 1 of the EAEU Classifier (products of animal origin) and have never been treated as food products exposed to veterinary risk. Moreover, such products have never been subject to veterinary control in EAEU countries.

The logic of the Draft Decision suggests that the new descriptions of goods are not covered by the current exemption from veterinary control for finished food products with less than 50% content of animal origin when the goods are supplied to the Russian Federation and the Republic of Kazakhstan. This regulation is in line with the commitments assumed upon joining the WTO and set down in Decision No. 810 of the Customs Union Commission 'On Exemptions from Veterinary Measures for Goods in the Unified List of Goods Subject to Veterinary Control (Oversight)' of 23 September 2011 ('Decision No. 810') and in Decision No. 317 of the Customs Union Commission 'On the Application of Veterinary and Sanitary Measures in the Eurasian Economic Union' of 18 June 2010 [Appendix 1 to the Unified Veterinary Requirements for Goods Subject to Veterinary Control (Decision No. 317, UVSR)].

Such an approach sets a precedent for violating WTO requirements across the EAEU, with the burden subsequently cascading to manufacturing and logistics operations in member countries that assumed those obligations (to date, Russia and Kazakhstan). These concerns proved justified in June 2020 when the Ministry of Agriculture issued the draft order 'On Amendments to the List of Controlled Goods That Must Be Accompanied by Supporting Veterinary Documents, Approved by Order No. 648 of the Ministry of Agriculture dated 18 December 2015,' which incorporated the requirements of Decision No. 11 into Russian law.

As per the background report to Decision No. 11, the amendments to the unified list of goods subject to veterinary control and the Draft Decision discussed through the RIA procedure were designed to address the issue of control over imported cheese-like products ('produced by the technology of making cheese from milk-containing products, where animal fat is replaced with vegetable fat'). The restrictions, however, also apply to medical and therapeutic foods, including vital foods for children and adults in need of specialized medical nutrition (for example, those with severe allergies, metabolic disorders or recovering from life-threatening illnesses), the components required to produce specialized food products and other foods domestically, etc. The range of goods in Product Position 2106 and their quantities are probably too great to perform a full-scale impact assessment, and 'cheese-like products' in that context pale into insignificance.

To implement the proposed veterinary control measures (for example, requirements for importers of high-risk products, such as livestock or unprocessed carcasses, to be included in the register of importers and obtain import permits), complex arrangements are required which can take years before deliveries are launched. This threatens not only the domestic food industry as a whole, but also public health in EAEU member states where such specialized products are a vital means of maintaining quality of life.

Given the above, we believe that the Draft Decision, as proposed, is impractical, imposes excessive requirements on the subject of regulation and activities of market participants, and may severely affect the circulation of product groups necessary for the stable performance of the food industry in the EAEU and socially significant categories of food products.

RECOMMENDATIONS

- Add an exemption to the Draft Decision for products with less than 50% content of animal origin that are supplied to the Russian Federation and the Republic of Kazakhstan, and replace the term 'milk components' with the term 'Group 04 products'.
- Reduce control measures for products to a simple 'veterinary certificate' requirement.
- Provide an exception on the application of veterinary control measures for highly processed products that do not carry risks, such as specialized products, including infant nutrition, vitamin-mineral (vitamin, mineral) complexes (premixes), flavouring additives, protein concentrates (animal and vegetable origin) and their mixtures, fibres, food additives (including complex), biologically active food additives, food products intended as raw materials for the production of infant nutrition; stabilizers, flavours, confectionery glaze, pastes and fillers.
- Establish a transition period for the decision of at least two and a half years after its official publication date.

COMMITTEE MEMBERS

BAYER • Cargill LLC • Confederation of Danish Industry • Corteva Agriscience • DANONE RUSSIA, JSC • DSM • Ferrero Russia, CJSC • HEINEKEN BREWERIES, LLC • HERBALIFE NUTRITION • Nestle Rossiya LLC • P.R. Rouss (Pernod Ricard Rouss), ZAO • Perfetti Van Melle Co., Ltd • SAF-NEVA • Trade House AROMA, JSC • Zentis Russland LLC.

HEALTH & PHARMACEUTICALS COMMITTEE

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Committee Coordinator:
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IMPACT OF THE COVID-19 PANDEMIC ON THE PHARMACEUTICAL INDUSTRY

ISSUE

Today, to summarize, we can say that the pharmaceutical industry was less affected by the restrictions imposed by the government in connection with the COVID-19 pandemic than other industries. Pharmaceutical enterprises continued to operate, carrying out continuous production and ensuring an uninterrupted supply of medicines to meet the needs of Russian patients.

However, the pandemic and the economic situation as a whole could not but affect the further development of the industry. On the one hand, some processes were significantly complicated or suspended. For example, during the lockdown, there were delays in the transportation and customs clearance of medicines not related to the treatment of COVID-19 as well as of samples for clinical trials. Moreover, there were difficulties due to the closure of borders and limited opportunities for the arrival of foreign specialists, which in several cases affected the readiness of some enterprises to launch mandatory labelling of medicines by 1 July 2020 as well as other operational and production processes that required the personal presence in Russia of foreign employees.

On the other hand, on the contrary, some initiatives were developed during the pandemic. For example, in March 2020, by Decree of the President of the Russian Federation and then by subsequent amendments in Federal Law No. 61 'On Drug Circulation' and the relevant decree of the Government of the Russian Federation, the online sale of OTC medicines was legalized. The initiative, which had been discussed since 2017, was finalized in less than 2 months.

The situation with telemedicine developed in a similar way: the foundations for its implementation were laid down in Federal Law No. 242 in 2017, but in practice it was rarely used due to a number of prohibitions (impossibility of remote diagnosis, etc.). Amendments to Federal Law No 323-FZ 'On the Fundamentals of Protecting Citizens' Health in the Russian Federation' on remote medical examinations in emergencies and under the threat of the spread of a disease posing a public danger were adopted in the first reading in March 2020. So far, this initiative is at the level of a draft law; however, in summer the law 'On Experimental Legal Regimes in the Field of Digital Innovation in the Russian Federation' was adopted. Its purpose is to create the legal conditions for the quicker development and implementation of new products and services in the areas of applying digital innovations, including in the field of telemedicine. Telemedicine visits are already being actively used in pilot mode in Moscow and will possibly be implemented in other regions in the near future.

Another important initiative was launched during the pandemic: the facilitated registration of medicines, which usually takes at least a year on average. However, at the moment, this procedure applies only to drugs intended for use in emergency situations, for the prevention and treatment of diseases that pose a danger to others and that were developed, inter alia, on instructions from the authorities.

RECOMMENDATIONS

The healthcare and pharmaceutical initiatives implemented by the state in the first half of 2020 set the vector for the further development of these industries. In the current difficult conditions, it is important to be proactive. For example, it seems advisable to cooperate with all market participants to consider the possibility of expanding the online sales mechanism for prescription drugs as well as to continue work on the introduction of electronic prescriptions throughout the country. These measures will allow patients, including those with chronic non-communicable diseases, to follow the prescribed treatment even in a difficult epidemiological situation as well as during the flu season. Moreover, it is important to continue the development of digital healthcare, including telemedicine, the demand for which will only grow in the future.

IMPLEMENTATION OF THE AUTOMATED DRUG CIRCULATION MONITORING SYSTEM

ISSUE

The Committee expresses support for the drug labelling project (drug circulation monitoring, 'DCM'), which has been implemented since 2017 and has become mandatory for participants in the pharmaceutical market effective 1 July 2020. The member companies of the committee have made every effort to promptly provide their production sites with the necessary equipment as well as to bring business processes in line with legal requirements in active cooperation with regulatory authorities and the Centre for the Development of Advanced Technologies (CDAT). At the same time, in some cases, it was necessary to perform additional configuration of IT systems and adjust other processes, also due to restrictive measures caused by the COVID-19 pandemic.

At the same time, pharmaceuticals manufacturers that are AEB members faced such difficulties in the process of introducing the labelling system as the denial of approvals for the import of unserialized drugs and their release on the market. There are also delays in the release of labelled medicines on the market by distributors and pharmacy chains due to the insufficient capacity of the DCM system.

In addition, it remains critical for drug manufacturers to resolve the issue of access to analytical data – namely, not only to the information about series and batches of medicines but also about individual packages. It is essential for manufacturers to obtain this information, both for monitoring quality issues in the case of a patient complaint to a manufacturer and in the event of the potential withdrawal of a medicine from the market[1].

Finally, it is important for players in the pharmaceutical market to continue discussing the current state of affairs in connection with the new aspect of imperative mono-aggregation since some logistics operations, for example, preparing goods for shipment, are taking place with long delays.

These and many other topics, including the solution of technical issues, are studied by market participants in a regular dialogue with the government and the operator CDAT, finding a common ground and gradually resolving emerging issues.

RECOMMENDATIONS

To effectively implement the system for mandatory labelling of medicines in the Russian Federation, it is necessary to introduce the system in phases, taking into account the stages of readiness of all participants of medicine circulation.

As a solution to the problem of drug supply for the population of the Russian Federation in the conditions of insufficient capacity of the DCM State Information System, it is possible to establish:

- the maximum term within which the data on the movement of medicines transferred to the system must be confirmed by the participants of the chain when information is submitted to the DCM system in reverse (for example, within three hours);
- or a single way of providing information to the DCM system, for example, exclusively in the form of a direct data transfer procedure.

To prevent shortages, especially during the COVID-19 pandemic and seasonal fluctuations in the incidence of acute respiratory viral infections, it is recommended to provide a mechanism for the import of a greater quantity of medicines than the quarterly volume for the calendar year in accordance with the current laws.

In addition, under certain conditions (risk of shortages, etc.), it is necessary to provide for the possibility of importing an additional quantity of medicines according to the issued approval within the maximum permitted volume.

ENSURING THE FULL OPERATION OF THE PHARMACEUTICAL INSPECTION SYSTEM IN ACCORDANCE WITH EAEU REQUIREMENTS

ISSUE

Eurasian Economic Union (EAEU) member states, in accordance with the principles specified in article 30 of the Treaty on the Eurasian Economic Union dated 29 May 2014, have agreed to form a common market for drugs that meet the requirements for good pharmaceutical practices, which include good laboratory, clinical, production, distribution and other practices. Good pharmaceutical practices play a critical role in ensuring that drugs meet the established requirements in terms of quality, efficacy and safety, and member state inspectorates ensure a high level of compliance with these requirements by all parties involved in the circulation of drugs.

In accordance with article 7 of the Agreement on Common Principles and Rules for the Circulation of Drugs within the EAEU, the member states shall register and assess drugs intended for circulation in the common drug market within the Union in accordance with the rules for registration and assessment of drugs approved by the Eurasian Economic Commission.

According to Resolution of the Council of the Eurasian Economic Commission (EEC, the Commission) No. 78 dated 3 November 2016 'On the Rules for Registration and Assessment of Drugs for Medical Use', until 31 December 2020 it will be possible to choose the approach for the registration of a medicine, according to national regulations or common Eurasian regulations. Previously issued national registration certificates will be valid until 31 December 2025.

To ensure the functioning of the common drug market within the EAEU, preclinical safety studies of drugs shall be carried out in accordance with the good laboratory practices requirements of the Union, and clinical trials in the member states shall be carried out in accordance with good clinical practices (GCP) and requirements for drug trials approved by the Commission. The production of drugs within the Union shall also be carried out in accordance with good manufacturing practices (GMP) approved by the Commission.

According to Resolution of the EEC Council No. 78 dated 3 November 2016 'On the Rules for Registration and Assessment of Drugs for Medical Use' (paragraph 34), clinical trials of medicines shall be carried out in accordance with the Union's good clinical practice rules approved by the Commission. The GCP rules were approved by Resolution of the EEC Council No. 79 dated 3 November 2016 'On the Approval of the Good Clinical Practice Rules of the EAEU'.

According to the requirements, clinical trials initiated after 1 January 2016 shall be conducted in whole or in part in the territory of the Union. If it is impossible to comply with the requirement, the regulatory body may appoint an unscheduled inspection of one of the clinical centres where the clinical trial was conducted (with the exception of orphan drugs, for which clinical data can

[1] At the same time, the Committee declares that the position on the issue of access to data outlined here applies only to the pharmaceutical industry.

be submitted without conducting trials in the EAEU). Depending on the factors, an unscheduled inspection may be carried out during the registration period, in parallel, or in the first 3 years after registration.

The possibility of inspections for medicines for which clinical trials were conducted without the participation of Russian (Eurasian) clinical centres will make it possible to register medicines that would otherwise never become available to Russian patients while ensuring full quality control of the trials performed. The impossibility of conducting trials in the EAEU may be due to a series of factors, for example, the impossibility of recruiting patients during an international study, late entry of the drug into international markets due to the manufacturer's primary focus on the local market (for example, a small innovative development company), clinical centres in the EAEU being busy with other studies, etc.

The Federal Service for Surveillance in Healthcare (Roszdravnadzor) is vested with the authority to organize and conduct the control of compliance by entities involved in drug circulation with the requirements for clinical trials of medicines established by Federal Law No. 61-FZ 'On Drug Circulation' and other regulations of the Russian Federation adopted in accordance with it. However, Roszdravnadzor does not yet have the authority to conduct inspections in relation to clinical trials of drugs for medical use in accordance with the EAEU requirements, although the draft Government Decree has already been published in the framework of public discussions.

In practice, now all the powers of Roszdravnadzor in relation to the EAEU apply only to medical devices, and not to medicines; this also applies to inspections of the pharmacovigilance system. As for medical devices, Roszdravnadzor is authorized to organize inspections of medical device production facilities and conducts inspections of inspection organisations in accordance with the Requirements for the Implementation, Maintenance and Assessment of the Quality Management System for Medical Devices Depending on the Potential Risk Associated with their Use approved by Resolution of the EEC Council No. 106 dated 10 November 2017.

RECOMMENDATIONS

In addition to the lack of authority to conduct inspections, by analogy with the current regulations on conducting inspections to determine the compliance of medicine production with the EAEU's good manufacturing practices, it appears necessary to develop and adopt a whole set of documents regulating in detail the procedure for organizing and scheduling all pharmaceutical inspections. Moreover, in the future it is advisable to combine the authority to conduct all pharmaceutical inspections within a single inspection body, which will significantly improve the organization of inspections and the interaction of entities involved in drug circulation with such a single body.

GMP PROCEDURE

ISSUE

The EAEU's GMPs have been officially approved and have been in force since 2016. The practical application of the rules has several peculiarities. Currently, in Belarus, GMP inspections can be carried out in parallel both according to national rules and according to the EAEU's GMP. The Inspectorate in Belarus checks production sites for compliance with the rules within the framework of the production of dosage forms declared for inspection in general. In Russia, as far as inspection rules are concerned, the model has been fully implemented according to the national GMP. It is important to note that the opinion issued by the Ministry of Industry and Trade on a foreign manufacturer's compliance with Good Manufacturing Practices has a limitation in the form of a list of drugs which is approved upon submission of the inspection application. At the same time, this is not provided for by the Russian rules for conducting GMP inspections. A positive trend is that in Russia, since the end of September 2020, according to Decree of the Government of the Russian Federation No. 1446 dated 15 September 2020, the regulator has been able to conduct inspections according to the EAEU's GMP. Thus, in Russia, it is possible to submit applications for GMP inspections both according to national rules and according to the EAEU rules.

It should be noted that since mid-2020 applicants have had difficulties with filing inspection applications both in Russia and in Belarus, including due to the impact of the global COVID-19 pandemic. Due to delays and postponements of inspections during 2020, a queue has formed. According to the website of Federal State Institution State Institute for Drugs and Good Practices (FSI 'SID & GP'), the inspections schedule in Russia is full until April 2021, and in Belarus, until March 2022.

In connection with the COVID-19 pandemic, inspections of production sites were stopped due to the impossibility of cross-border and regional travel by inspectors. To preserve the continuity of production processes, the Government of the Russian Federation amended Decree of the Government of the Russian Federation No. 1289 (Decree of the Government of the Russian Federation No. 789 dated 29 May 2020) introducing the possibility of inspecting production sites by examining documents and using remote communication means, including audio or video communication.

RECOMMENDATIONS

It is advisable for the Russian regulator to issue an opinion on the manufacturer's compliance with Good Manufacturing Practices without a restrictive appendix specifying a list of drugs. In addition, it is recommended to publish clarifications for the pharmaceutical market on the cost of inspections according to the EAEU's GMP.

Due to the inability to carry out remote inspections for compliance with the EAEU's GMP, it is necessary to speed up the consideration and adoption of amendments to the relevant acts of the Union, including Resolution of the EEC Council No. 83 regarding the implementation of the mechanism for remote inspections of production sites, by having the competent Russian bodies apply to the EEC Council and actively participate in the consideration and approval of the necessary amendments.

In addition, it is important to consider the possibility of adopting amendments to the EAEU's current GMP Rules as soon as possible to extend the deadline for submitting the results of national inspections for the procedures under these Practices until 2025; for this purpose, the Russian side should apply to the EEC Council with a request to expedite the consideration of this issue.

At the same time, another important aspect is the Eurasian Economic Commission's recommendation to regulators in Kazakhstan, Armenia and Kyrgyzstan to conduct GMP inspections according to the EAEU's GMP Rules.

INCREASING THE AVAILABILITY OF INNOVATIVE MEDICINES UNDER STATE PROGRAMMES FOR MEDICINES PROVISION TO RUSSIAN CITIZENS

ISSUE

The state programme for the treatment of high-cost nosologies (the 'HCN Programme') adopted in 2008 under Decree of the Government of the Russian Federation No. 1416 led to a revolutionary breakthrough in the availability of innovative drugs for the treatment of the most serious high-cost diseases. However, now this programme needs further development and optimization. The criterion 'no negative impact on the existing budget of the HCN Programme during the first year and the three-year planning period' when considering proposals for the inclusion of medicines in the expensive medicines list (Resolution of the Government of the Russian Federation No. 871 dated 28 August 2014) is a significant and often insurmountable barrier for innovation.

Another obstacle consists in the current procurement system. In accordance with Federal Law No. 44-FZ dated 5 April 2013, the procurement of medicines is carried out mainly through electronic auctions by reducing the initial (maximum) price. The auction method makes it possible to obtain the lowest possible bid price only if there are several participants offering a medicine with the same international non-proprietary name ('INN') and is most suitable for purchasing generic (biosimilar) medicines. An innovative medicine has a unique INN. Consequently, the organization of tender procedures does not achieve its goals for reducing the price, but holding the auction requires time and organizational costs on the part of the customer.

RECOMMENDATIONS

- Introduce a differentiated approach to the assessment of innovative medicines when forming lists of medicines for human use and the minimum range of medicines required for the provision of medical care, taking into account their long-term impact on the quality and duration of life and excluding the criterion of negative impact on the budget for this category of medicines.
- Develop and implement a mechanism that enables the transfer of medicines that have registered analogues in the Russian Federation from the HCN Programme to other medicine supply programmes in accordance with their profile (hospital, outpatient segment) while maintaining their availability in accordance with the actual need.
- For innovative patented medicines, establish a differentiated mechanism for fixing statutory prices and price regulation.
- Form an interdepartmental platform on the basis of the Ministry of Health of the Russian Federation, including for the purpose of negotiating with manufacturers for the conclusion of various models of agreements for the purchase of innovative medicines.
- Develop a legal instrument that makes it possible to draw up proposals and set the obligations of the parties when entering into agreements supported by the interdepartmental platform.
- Supplement and improve the laws on the procurement of medicines: introduce long-term contracts between government customers and drug manufacturers, risk-sharing and cost-sharing contracts, procurement of reference patented medicines without electronic auctions.
- Implement a flexible mechanism for the formation of the budget of state programmes based on the assessment of medical technologies and of patient's actual needs, as reflected in the unified register of beneficiaries, using digital data processing technologies.

STATE PROCUREMENT OF MEDICAL DEVICES

ISSUE

On 13 August 2020 the Letter of the Ministry of Finance of the Russian Federation No. 24-06-06/70942 was published, explaining the use of the items of the catalogue of goods, works and services for state and municipal needs (the 'Catalogue'), taking into account the amendments made under Decree of the Government of the Russian Federation No. 961 dated 30 June 2020 in the Rules for Using the Catalogue approved by Decree of the Government of the Russian Federation No. 145 dated 8 February 2017 (the 'Rules for Using the Catalogue').

According to the explanation provided by the Ministry of Finance, when making procurements using the items of the catalogue of goods included in the List under Decree of the Government of the Russian Federation No. 878 dated 10 July 2019 'On Measures to Stimulate the Production of Radio Electronic Products in the Russian Federation in the Procurement of Goods, Works and Services for State and Municipal Needs, on the Amendment of Decree of the Government of the Russian Federation No. 925 Dated 16 September 2016 and Recognition of Certain Acts of the Government of the Russian Federation as Void', the customer shall be guided by the catalogue and apply the function and quality characteristics and consumer properties specified in the relevant catalogue item. As a consequence, the customer loses the right to specify the characteristics and to purchase goods that meet the needs of a specific medical institution, which is contrary to the laws on public procurement.

Many of the catalogue items contain very short, general descriptions of complex, high-tech equipment used in various hospital departments for different purposes. The configuration and composition of equipment of the same type may differ significantly depending on the area of use.

Based on the above, the customer loses the right to have the needs for the necessary equipment met, which will significantly affect the quality of diagnostics and therapy and can also lead to inappropriate spending of state funds since according to the general characteristics the customer cannot reject equipment that does not meet the profile and needs of the institution.

RECOMMENDATION

It is necessary to restore the possibility of adding additional equipment characteristics to the technical description of the goods, taking into account the clinical or operational justification for the need to indicate the characteristics.

CONFIRMATION OF RUSSIAN PRODUCTION OF MEDICAL EQUIPMENT

ISSUES

1. The configurations of high-tech medical equipment cannot be unified since they include a large number of options that, in various combinations, make it possible to obtain a configuration that meets the terms of reference of a healthcare facility formed in accordance with its clinical objectives. However, according to experts of the Chamber of Commerce and Industry of the Russian Federation (Russian CCI), an Annual Expert Examination Certificate for the issue of ST-1 certificates can only be issued for fixed configurations that are not subject to change – that is, changing any configuration by adding or reducing options requires a new expert examination. This either cannot be done in the period from the time the procurement notice is published to the end of the bid submission deadline, or it reduces the available configurations and limits the ability to fulfil the clinical objectives of the healthcare facility.

2. There is no clear list of documents to confirm the ad valorem share (the cost of all imported materials used should not exceed 50% of the price of the final product).
According to Order of the Russian CCI No. 29 dated 10 April 2015 'On the Regulations on the Procedure for Issuing Certificates of Origin of Goods According to the Form ST-1 for the Purpose of Procurement for State and Municipal Needs (for Certain Types of Medical Devices)', the calculation of the ad valorem share of the goods is made by the applicants who confirm the price of components with their own financial documents.

However, Order of the Russian CCI No. 29 dated 10 April 2015 does not provide a list of documents to confirm the ad valorem share. In practice, experts ask the applicant for past contracts for the sale of the goods declared for expert examination as a basis for calculating the ad valorem share of the goods. But the configuration of the medical device declared for expert examination may differ from the one sold earlier since the device is configured at the customer's request. Moreover, it is impossible to confirm the ad valorem share if the product has not yet been put up for auction.

3. In the 'Agreement on the Rules for Determining the Country of Origin of Goods in the Commonwealth of Independent States dated 20 November 2009' (the 'Agreement'), there is no definition of a simple operation.

For the application of Decree of the Government of the Russian Federation No. 102 dated 5 February 2015 'On Restrictions and Conditions for the Admission of Certain Types of Medical Devices Originating from Foreign Countries for the Purpose of Procurement to Meet State and Municipal Needs' (PP No. 102), a document confirming the country of origin of the goods is a certificate of origin of the goods issued by the Russian CCI in accordance with the criteria for determining the country of origin of goods provided for in the Agreement.

Operations carried out at the time of production of goods cannot be recognized as meeting the criterion of sufficient processing/reprocessing of goods if they are mentioned, in particular, in clause 'm' of section 3 of the Agreement: simple assembly operations. However, the Agreement does not provide a definition of simple assembly operations.

Currently, CCI experts interpret the concept of 'simple assembly operations' in different ways and do not recognize the production of high-tech medical equipment as meeting the criterion of sufficient processing/reprocessing despite the actual presence of a production site in the Russian Federation and its inclusion in the registration certificate, despite the presence of special production equipment and training of highly qualified specialists involved in production, despite meeting the criterion of the cost of imported materials being less than 50% of the price of the final product.

The only existing definition of a simple assembly operation is given in the laws and regulations of the Eurasian Economic Commission – namely, in Resolution of the EEC Council No. 49 dated 13 July 2018 for the approval of the 'Rules for Determining the Origin of Goods Imported into the Customs Territory of the Eurasian Economic Union'. The Rules (clause 7 of section II) define a simple operation as 'an operation that does not require the use of special skills (know-how), machines, devices or equipment specially designed for this operation'. The CCI experts do not recognise this definition.

As a result, medical products that fall under PP No. 102 cannot obtain the status 'manufactured in the Russian Federation', and manufacturers cannot take advantage of the benefits provided to domestic products in state and municipal auctions.

RECOMMENDATIONS

- To the Ministry of Industry and Trade and the Russian CCI: clarify the list of documents to be submitted to experts for review at the production site to obtain an annual expert examination certificate.
- To the Russian CCI: reconsider the criteria for high-tech equipment for which it is impossible to determine the final number of configurations.

COMMITTEE MEMBERS

Angelini Pharma Rus LLC • Astellas Pharma ZAO • AstraZeneca Pharmaceuticals LLC • BAYER • BIOCAD • Bionorica OOO • Boehringer Ingelheim • Canon Medical Systems LLC • Chiesi Pharmaceuticals LLC • Dr. Reddy's Laboratories Ltd. • DSM • Egis Pharmaceuticals PLC (Hungary) • Esparma • Fidia Pharma • GE (General Electric International (Benelux) B.V.) • GlaxoSmithKline Trading, JSC • Lundbeck Rus • Merck LLC • MirVracha LLC • Novartis Group Russia • Novo Nordisk A/S • Orion Pharma LLC • Philips LLC • Procter & Gamble • Reckitt Benckiser Healthcare, LLC • Roche Diagnostics Rus LLC • Sanofi Russia AO • SANOFI-AVENTIS REP OFFICE • SERVIER • Siemens LLC • Stada CIS.

HOME APPLIANCES MANUFACTURERS COMMITTEE

Chairman:
Huibert Arie de Haan, BSH Bytowyje Pribory

Deputy Chairman:
Pavel Rudyakov, Samsung

Committee Coordinator:
Elena Kuznetsova (elena.kuznetsova@aebrus.ru)

In 2020, Russia's home appliances market has been developing under harsh restrictions created by the pandemic, unstable energy prices, and significant currency rate fluctuations, which reduce disposable income and purchasing power. All the negative trends in 2020 will likely continue in 2021. In this situation, the home appliances and consumer electronics manufacturing industry needs government support and longer transition periods for the new regulations that create additional costs. With the high degree of localization in the industry, effective government support can help preserve jobs and the tax base.

EAEU: TECHNICAL REGULATION 048/2019 ON ENERGY EFFICIENCY OF ENERGY CONSUMING DEVICES. CONTROVERSIAL REQUIREMENTS FOR TESTING LABORATORIES

EAEU TR 048/2019 allows for one to apply conformity declaration scheme 1д (1d) based on the declarant's own proof and perform tests by the manufacturer's internal unaccredited testing laboratories or centres. Yet, the Regulation significantly restricts internal laboratories: they must be registered and operate in the EAEU. The European Union also allows one to use internal laboratories for conformity declaration, but applies no restrictions on the laboratory's location to prevent influence on test results. The EAEU's requirement to localize laboratories implies costs at many millions of dollars and significant delays in market access by new products, hence lower tax revenues from product sales.

RECOMMENDATIONS

- The Committee suggests that a joint clarification by the EEC and Russia's Ministry of Industry and Trade should be issued to allow use of test protocols issued by the manufacturer's internal laboratories located outside the EAEU for conformity declaration purposes according to Scheme 1d.
- The Committee requests that new conformity assessment requirements that incur high costs for the industry be postponed for two years, until 1 September 2024.

RUSSIA: WASTE MANAGEMENT

Since 2017, all manufacturers and importers in Russia must declare their volumes of finished goods and packaging thereof placed on the Russian market and either report that those goods and packaging were properly recycled or pay a corresponding environmental fee. Recycling requirements were imposed for three years, until 2020, and the new draft government regulation on imposing the recycling requirement in 2021-2023 is under public scrutiny. The draft applies an annual 5% growth rate to the recycling requirements for home appliances and consumer electronics. In the current economy, higher environmental fees would be an extra burden for local manufacturers and could lead to lower production volumes, fewer jobs, and less tax revenue. When developing incentives for the economy, the Russian government should consider keeping the 2020 recycling requirements for home appliances and consumer electronics manufacturers in 2021.

RECOMMENDATIONS

- The Committee urges the government not to exacerbate the burden on home appliances and consumer electronics manufacturers in the current economic situation, but to preserve the 2020 recycling requirements in 2021.
- The Committee expresses its utmost concern about calls for higher environmental fee rates, insists that the current norms and rates are economically justified, and appeals to all the parties involved to focus on creating and developing effective nationwide waste collection, transportation, and sorting, which was the principal aim of fee collection.

RUSSIA: PRODUCT LABELLING AND DOCUMENT TRACKING

On 1 January 2019, Russian Government Decree No. 792-p dated 28 April 2018 'On Adopting the List of Certain Goods Subject to Compulsory ID Labelling' came into force. Some photo equipment was listed there as a pilot. Nonetheless, the federal government is aiming at 100% traceability of all kinds of goods and plans to complete the labelling project by 2025, with similar developments at the EAEU supranational level. Yet, approaches to the identification of certain goods are still unclear, which concerns the market. While welcoming the efforts to legalize the market and make it more transparent, the Committee notes that the home appliances market is one of Russia's most transparent and traceable, it shows virtually no such things as smuggling or counterfeiting, and all locally manufactured and imported home appliances are fully equipped for individual identification and tracing (with serial numbers, etc.) throughout their life cycle and market turnover. The Committee looks positively at the

Federal Customs and Tax Services' joint experiment to track certain categories of imported goods (including household refrigerators and washing machines) through customs and tax documents that resulted in the Ministry of Finance's draft government decree on the national goods tracking system, especially in the part concerning non-proliferation of alternative product turnover control systems to the goods subject to document tracking, and believes that the document tracking system integrated with home appliance manufacturers' individual product identification systems fully corresponds to the foundation principles of the traceability project.

RECOMMENDATIONS

- The Committee appeals to all government bodies involved in the labelling project to thoroughly analyze the document tracking experiment's results and apply to such unequivocally identifiable and traceable goods as home appliances the legal provisions that allow identification and tracing with the manufacturers' labelling. This approach can help implement the project in our industry faster, more efficiently, rather painlessly, and without excessive costs, thus avoiding an undesirable product price increase.
- The Committee expresses its eagerness to engage all interested parties, participate in developing a home appliance identification system based on manufacturers' labelling, and share EU best practices in this area.
- The Committee warns against unnecessary haste in turning the document tracking experiment into global market requirements and urges the use of a balanced approach and the gradual implementation of tracking requirements.

COMMITTEE MEMBERS

Ariston Thermo Rus • BEKO LLC • Brother LLC • BSH Bytowyje Pribory OOO • Delonghi • Electrolux • GROUPE SEB-VOSTOK ZAO • Kaercher • LIEBHERR-RUSSLAND • Mitsubishi Electric (Russia) LLC • Philips LLC • Procter & Gamble • Samsung Electronics • SMEG Russia LLC • Whirlpool RUS.

HOTELS & TOURISM COMMITTEE

Chairman:
Bertrand Dugast, Accor Russia

Committee Coordinator:
Ksenya Bortnik

MIXED DEVELOPMENT

From March until June 2020, most hotels have been experiencing a very low level of activity, having their outlets closed and their occupancy brought to a minimum. During the summer period and the end of the lockdown period, the hospitality industry managed to slowly recover, especially in Russia's tourist areas, such as Sochi or Kaliningrad.

However, most hotel owners, especially in Moscow, are still struggling to pay taxes (in particular, property taxes) while still bearing losses in hotel operations due to the absence of international business and restrictions on meetings and conventions.

As a result, most new hotel openings have been rescheduled until further notice, hotel employees who left between March and now have usually not been replaced, and the overall hospitality sector is facing a major drain of its talent due to reduced salary and benefits. A lot of hotels could not benefit from loans granted by the authorities either because of the capital structure of their owners, or their OKVED code did not match the requirement, or they were not registered as an SME.

As the crisis dragged on, the VAT break for the summer quarter was quickly overridden by the demand for older tax debts related to Q1, regardless of the current loss of revenue of all hotels in the city. The need to drive cash flow into hotel operations in order to cover the most urgent needs, such as payroll, has been so crucial that Moscow now represents one of the cities with the steepest drops in hotel prices during the pandemic in comparison to all other European capitals, while also showing the strongest recovery occupancy until the end of September.

To relieve cash flow pressures, allow operators and owners to secure jobs and maintain investments in quality operations and assets. A suspension on VAT payments until mid-2021 is required, including a review of the property tax break and its cancellation for 2020. Further delay in payment of payroll taxes and employee benefit contributions are needed as well to recover sufficient cash flow to ensure the day-to-day operations of the hotels. Redefining and reviewing the hotel tax base based on the overall revenue and profitability of the hospitality business is urgently needed, as the existing model does not correspond anymore with the current reality.

Hotels remain a great source of jobs for the skilled and unskilled alike, so maintaining the workforce should be a priority in this extended crisis period. The most optimistic forecast predicts a recovery of the hospitality and tourism sector by 2023. By the end of 2023, we should reach 2019 results. All hotels will therefore continue to reduce staff and cut expenses in 2020 and 2021, especially if tax payment schedules and the taxation basis is not reviewed. As a result, it is most important to relieve pressure on cash flow and avoid massive lay offs or bankruptcy.

ISSUE

The electronic visa will ease the current visa process, motivate incoming business and leisure travellers to visit the Russian Federation, increase air traffic and, as a consequence, increase spending by tourists in Russia (which leads to an increase in taxes to the Russian budget). As a result, passengers will greatly simplify their travel formalities as well as minimise the time and costs for the standard visa application process.

Based on the experience with the Fan ID visa alternative implemented by Russian authorities during the 2018 FIFA World Cup and taking into account recent serious issues that the industry faced after e-visa implementation in St. Petersburg in October 2019 (around 5-10% of all e-visa holders were declared inadmissible), we would like to share with you our concerns and recommendations in order to ensure a smooth and efficient e-visa process for all stakeholders and travelers.

RECOMMENDATIONS

The e-visa application process must be clear and simple for the traveler, which unfortunately is not the case for current e-visa request procedures applicable to Russian regions where the e-visa is valid.

We do insist here on the coordination of the different authorities involved in the overall visa process and customs clearance to develop a clear and common process.

The e-visa application process should be simple for a traveler with proper validation of the traveler's credentials in the application form (such as name, passport number, date of birth) versus information on the passport. Validation should be done by the MFA before e-visa issuance.

The top requirement is proper validation by the MFA of business travelers' personal data, such as first name, last name, passport number, in the e-visa online application form versus a scanned passport before e-visa issuance and its delivery to the requester.

It is extremely important to take into account the fact that airline and airport staff have no ability and no legal grounds at departure to check e-visa information. Therefore, airlines must be exempt from fines for a traveler's possible errors or fraud.

Last but not least, it is essential to implement at the arrival area of major Russian international airports help desks for passengers where they will have the ability to correct on the spot, if necessary, their e-visa (24/7 service) in the same way that it was successfully implemented during the 2018 FIFA World Cup and proved its necessity and value for all involved.

ISSUE

One of the keys to supporting business recovery in the hospitality sector in cities like Moscow and St. Petersburg is the conference and meetings sector.

However, assembling large numbers of people during the pandemic we are experiencing creates some risks and challenges. Hotels, companies and individuals attending meetings together with authorities must agree to respect strict, operationally acceptable and understandable guidelines.

RECOMMENDATIONS

At the moment, Rospotrebnadzor provides only the following generic guidelines in terms of food and beverage: MR 3.1/2.1.0193-20 Recommendations on the organization of work in the post-COVID period for enterprises providing temporary residence activities (hotels and other accommodation facilities) and MR 3.1/2.3.6.0190-20 Recommendations on the organization of work in the post-COVID period for F&B enterprises.

We are now looking for international agreed labels and best practices to accommodate medium to large events in hotel meeting rooms and convention centres. For instance, Rospotrebnadzor's recommendation shall cover the following areas:

How to resize meeting room capacity to safely accommodate all participants, how to organize a circulation path in a meeting room, how to perform effective disinfection and on which key points to focus, specific recommendations on the air condition system, how to clearly display reminders of local health and safety instructions in the meeting rooms, how to optimize contactless communication between hotel teams and participants, how to organize a coffee break, lunch and dinner, whether it is plated or buffet to limit the risk of contagion.

We kindly ask you to consider the possibility of holding a working meeting with the involvement of our experts to discuss and develop joint proposals on these specific matters, and in the meantime elaborate a clear and amendable concept for hygiene regulation to prevent the spread of COVID-19 for the conference and meetings sector in order to re-start the industry.

ISSUE

Over more than 20 years, hospitality in Moscow has diversified with the help of newly-arrived international hotel operators. With the expansion in luxury and select service hotel brands came new opportunities for young people to join the workforce and make a career in the hotel business. The international companies brought new standards for a customer service culture, employee development and financial management of hospitality businesses. As the local scene matured, thousands passed through basic jobs, learning the first skills of customer care and the finer points of client interactions.

With growth and diversification comes the opportunity to build careers in the sector in the city as well as in the country and beyond. Here lies the challenge. The next generation sees the industry as first step, but cannot envision a permanent career here, leaving the hotel business for industries that require less physical input and more relaxed hours. The 24/7 demand does not seem to suit the Millennials, and the turnover of beginners increases, as they take up jobs that may offer fewer career growth opportunities and even less pay.

Many hotel schools and technical colleges also host students who do not consciously chose the hospitality industry as a sector to make their career in, but who want to study something while considering the future. These unfocused students and job candidates therefore switch often and fast, looking for the right thing, creating inconsistency in the team approach to service, increasing the cost for training, increasing manpower to cater to the newcomers, and increasing recruiting efforts.

RECOMMENDATIONS

Hospitality education curriculum needs to move into the 21st century and adapt methods and content to the modern hotel business to create focus and challenge those who are interested, immediately weeding out those who are looking for an easy couple of years in school. The learning needs to be more praxis oriented, allowing for modern subjects such as leadership and people development to enter the theoretical learning. This should be combined with on-the-job learning experience, similar to the dual education apprentice system practiced in central Europe and now being adopted in the UK as well.

The student is not only properly challenged, showing the viability of the industry, but is also confronted with modern subjects of the business. And in the course of this work, on-the-job experience in a real life environment and challenges provide work experience within the training years.

Students who completed such dual education training as hotel and catering, hotel and restaurant accountant, or caterer and chef are sought after in countries with strong hospitality demand, as the quality of those seeking employment abroad after receiving their diploma

show the true spirit and drive to serve in the industry and will be the captains of industry in the future.

ISSUE

The first thing tourists do on arrival at Russian airports is to try and find the quickest and easiest route to their hotel. Before they reach signs for the Aeroexpress or the taxi stands, they are stopped by private taxi drivers offering extremely high prices which can be 10 times more than the standard fare from the airport to their hotel. Guests end up scammed when they take these trips. The taxi driver tells the passenger they can pay by card when they get to the hotel and the passenger pays assuming that the fare won't be that high. Unfortunately, by the time they receive a notification from their bank and see the total, it is too late, as PIN-confirmed operations can't be cancelled. They can't go to the police because these taxi drivers are usually self-employed and, as such, they can set their own prices.

RECOMMENDATION

Communication with the airport administration needs to be improved in order to place anti-scam notices at the airport. Or tell passengers where to find the Yandex taxi stands before the exits.

REGULATORY GUILLIOTINE: COMTINUATION OF REVIEW AND STREAMIMG OF THE REGULATION

In early 2019, the Government of the Russian Federation announced the launch of the 'regulatory guillotine', which should accelerate investment growth and sharply reduce the number of laws that impede business.

The AEB Hotels & Tourism Committee includes representatives of large international luxury hotel chains that meet the top requirements for providing hotel services to guests in Moscow and Russia as a whole.

In practice, hotels face excessive and inflated demands from regulators based on the norms and requirements of legislation that is outdated or recently tightened.

An example of the legal requirements from the Soviet period are the regulations of the Russian Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing (Rospotrebnadzor). Hotels faced with these requirements consider such checks to be inconsistent with the requirements of international hotel business standards. This is a significant obstacle to doing business and maintaining a high level of service for guests of the capital and, ultimately, does not represent adequate protection of consumer rights. Also, it is worth noting that in practice hotels are often faced with the fact that representatives of one regulator interpret the norms of legislation differently, thereby presenting different requirements for providing hotel services.

RECOMMENDATIONS

The Hotels & Tourism Committee supports the proposal of the Government of the Russian Federation to reduce and revise the regulatory framework, which creates additional burdens for doing business in Russia.

At the same time, the Committee believes that the work of the 'regulatory guillotine' on outdated legislation should be clearly structured, consistent, substantive, effective and implemented in accordance with the realities of doing business.

The Committee believes that by removing outdated rules, and in essence not creating a new legislative regulatory framework, the mechanism will not give the proper result, but will only create unnecessary obstacles. The time needed to revise a large expanse of the regulatory framework should be comparable to the amount of work on them.

The AEB Hotels & Tourism Committee is working with the Moscow government and the Moscow Mayor's office to protect the rights of entrepreneurs in order to improve the requirements and legislation governing the provision of hotel services to develop pragmatic proposals in accordance with modern business needs in real time.

COMMITTEE MEMBERS

Accor Groupe • Ararat Park Hyatt Moscow • Hotel Baltschug Kempinski Moscow • Marriott Novy Arbat Hotel Leasing LLC • Mercure Ibis Adajio Moscow Centre Bakhrushina • Radisson Collection Hotel Moscow • Renaissance Moscow Monarch Centre Hotel • Ritz-Carlton, Moscow • Sokotel LLC (Sokos Hotels St. Petersburg) • Swissotel Krasnye Holmy Moscow.

INSURANCE & PENSIONS COMMITTEE

Chairman:
Alexander Lorenz, SAFMAR NPF AO

Deputy Chairman:
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Committee Coordinator:
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The AEB Insurance & Pensions Committee is a group of like-minded insurance and pensions executives and legal specialists. We work on various legal initiatives and one of our main objectives is to improve the working environment for insurers and pension funds operating in Russia. We strive to find workable compromises between industry players, the regulator and the end customer. In the below we highlight the key issues affecting our industry segments in 2020.

OVERALL MARKET SITUATION: INSURANCE

Like many other sectors of the Russian economy, the Russian insurance industry has had to deal with the economic impact of COVID-19. While overall insurance premiums have largely stagnated if comparing the first 6 months of 2020 to the same period in 2019, some product segments such as travel insurance have been affected quite considerably. In addition, the pandemic has been challenging in terms of operating insurance companies with large numbers of employees, parts of which needed to be moved to remote working. Also, the effectiveness of various distribution channels needed to be reviewed and there is an urgent need to speed up the digitalization process and re-engineer interactions with clients, given changing consumption behaviours. Some hope is being placed on the new Russian Central Bank's marketplace concept, which will create several platforms on which insurance companies and other product providers can sell their products to the general public in a safe environment that is supported by the various other digital government platforms (such as gosuslugi.ru or mos.ru). These platforms will integrate with these government sites, draw client data and store transactions and policies in the personal account/cabinet of each registered citizen.

RUSSIAN PENSIONS

The below outlines the main trends on the Russian pension market:

- **Consolidation**. The Russian pension market has been further consolidating and is gravitating around a handful of large state-owned pension funds. Currently there are 49 licensed pension funds. Concentration is high with some 90% of assets being held by the top 10 funds.
- **Increased transparency**. Under the auspices of the Russian Central Bank the Russian pension market is becoming more transparent with some funds increasingly publishing their actual investment portfolios on a regular basis.
- **Improved regulation and supervision**. Contrary to popular belief, especially in the West, the Russian pension market is actually highly regulated. Deviations from proclaimed investment strategies are strictly monitored by so-called specialized depositories who have oversight over the investment portfolios of all pensions funds in Russia. These specialized depositories register investment portfolio changes on a daily basis and are obliged to immediately report any possible suspicious activity to the Central Bank.
- **Pension reform prospects unclear**. The Russian (obligatory) second pillar OPS pension system has now remained frozen for a few years, with no OPS contributions being received by pension funds. Investment income is now the main driver of the market, which does not allow pension funds to invest in any growth strategies. The government had some time ago put forward the "GPP" (guaranteed pension product) concept. However, partly due to the pandemic, the timing of the introduction of this concept or whether it will be introduced at all is unclear. What is clear is that the Russian economy needs a strategy that will foster the development of long-term savings and a vibrant pension market should be a key objective of such a strategy.
- **Digitalization of the Russian pension industry remains a challenge**. Large funds are finding it difficult to digitalize their relationship with second pillar OPS clients, not least as there are still regulations in place that formally require actual physical mailing in paper form via the post office to millions of clients. Also given the uncertainty of upcoming pension reform, pension funds are investing less in IT than they normally would. In this sense, a clear strategy by the government would be very helpful, as it also allows funds to formulate a clear digital transformation strategy.

NEGATIVE CONSEQUENCES OF COVID-19 FOR THE RUSSIAN INSURANCE MARKET AND THE NEED FOR STATE SUPPORT

In general, regulatory relief for the insurance market introduced in April by the Central Bank of the Russian Federation to tackle the effects of the COVID-19 outbreak supported the market participants. When many companies were transforming their operational models, some weakening of regulatory rules, such as extension of reporting submission periods, moratorium on fines for failure to meet deadlines, etc., was a timely support measure for business. Along with that, the reporting volume has grown as companies now need to also submit reports on anti-virus measures. Moreover, support measures are non-recurring, while problems triggered by

the first outbreak of the pandemic in the spring and the rising number of infected in the fall of 2020 continue to have a negative impact on the insurance market. Insurers need long-term support programmes which will allow them to focus on providing insurance services to customers and developing new insurance types amid the current complicated economic environment.

These negative consequences have been to a large degree instigated by the slowdown in economic processes which resulted from restrictions on business and the reduced purchasing power of insurers, including legal entities.

Insurers dealing with voluntary health insurance were the first to speak out about problems in the provision of services caused by the ban on the part of the state to give medical treatment to the insured when COVID-19 is diagnosed. This gave rise to claims and the negative response from insurers and it may result in a growing number of appeals from the insured to the Financial Ombudsman and to Russian courts in the future. When imposing restrictions, the government did not announce force majeure, which is essentially weakening the position of insurers in a dispute related to the impossibility to ensure the provision of healthcare services under voluntary medical insurance programmes. It appears that special explanations by the Bank of Russia would allow one to expect a well-reasoned position by the courts and would be helpful in out-of-court dispute resolution with respect to claims from the insured, including proceedings within the context of the consumer protection law.

Businesses in many sectors of the economy have started to incur unprecedented losses. Specialized insurers of commercial (trade) loans may face an intensification of the non-payment crisis. Against this backdrop, introduction by the Russian government of a moratorium on filing for bankruptcy with respect to some categories of companies, which is an insured event in this type of insurance, greatly helps to stabilize the current situation. However, the moratorium will expire on 7 January 2021. In expectation of changes in the risk exposure, credit insurers may face the impossibility of acquiring traditional reinsurance coverage in foreign markets. Considering that total trade loans provided by suppliers in Russia to their counterparties with the support of insurance companies amounted RUB 5-5.5 trillion (3-4% of GDP) on average in 2019, the limited capacity of insurance and reinsurance programmes in this segment may have an extremely negative impact on the speed and the volumes of trade turnover or result in a rise in the price of alternative solutions. In European Union countries, credit insurers have already received state guarantees for over EUR 40 billion[1].

We think that corporate insolvency in some sectors may be like an avalanche in Russia, and the volume of insured turnover may shrink by 20-40%.

To mitigate the effects of COVID-19 and maintain the ability to provide insurance coverage to companies, it would be reasonable to discuss the possibility of state support to credit insurers through provision of a national reinsurance capacity by the Russian National Reinsurance Company with respect to insurance of commercial transactions in the Russian Federation. Interested insurers and the AEB Insurance & Pensions Committee have attempted to initiate discussions about this problem at the All-Russian Insurance Association platform, but no solution has been found so far.

Slowdown in the purchasing power of insurers inevitably results in violations of the payment discipline under insurance contracts. Absolute and relative amounts of receivables from the insurance premium were growing in the first half of 2020. Insurers are compelled to provide the insured with the option of paying by instalments to maintain insurance coverage, which will result in a growing number of violations of standards set by the national regulator for that asset type.

The volatility of the rouble versus major foreign currencies will inevitably entail growth in insurance payouts by insurance type, which directly or indirectly depends on the purchase of goods of foreign origin, such as comprehensive insurance and third-party liability insurance for motor vehicles.

The state of core assets of insurers in the context of a decreasing return on bank deposits, shares and bonds for the majority of Russian and foreign issuers also gives rise to concern.

The above leads to tensions in the balance sheets of insurers and endangers compliance with the national regulator's requirements for their financial stability. We think it would be advisable under this challenging economic environment to defer the introduction of new, tougher regulations in terms of eligible assets of insurers, including the share of receivables, standards for recording the share of reinsurers, especially for reinsurance of comprehensive insurance and third-party liability insurance for motor vehicles, to a later date – 1 July 2022.

IN THE SPRING OF 2020, THE BANK OF RUSSIA, IN PURSUANCE OF THE INSTRUCTION OF THE PRESIDENT OF THE RUSSIAN FEDERATION, DEVELOPED AND PUBLISHED A NEW CONCEPT OF REGULATION OF THE MORTGAGE INSURANCE MARKET

Offers set forth in the Concept have caused deep concerns from all professional participants of the financial market, both insurance companies and banks. The primary area of concern is that implementation of the Concept will cause significant problems for customers and the economy.

The competitive ability of the mortgage insurance market, which is already not highly competitive, will be the most compromised. The absence of free competition, a main driver for the development of any market, will have a negative impact on consumers, depriving them of the possibility to choose an available and high-quality service at their own discretion.

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOC_2020_091_I_0001

When finalizing the Concept, it is important to ensure the following main aspects:

- Introducing free competition in the market by waiving the current process of accrediting insurance companies. As a consequence, banks will accept insurance contracts concluded with any insurance company operating in the insurance market under the laws of the Russian Federation. This will allow competitors to compete with each other according to the level and the quality of services, especially if minimum coverage is regulated by the government.
- Maintaining and supporting the ability to conduct sales of mortgage insurance through alternative channels (real estate agencies, online players, direct sales) will also inspire free competition and result in reduced insurance prices for customers.
- Inspiring innovations, customer-centric practices and high-quality services in the mortgage insurance market by getting insurers interested in competing for the quality of products.
- Providing customers with clear and transparent insurance terms and conditions, a sensible price for an insurance product, and open and available information about characteristics of a product.

Mortgage insurance may become a growth driver for the entire Russian insurance market, not just the bank insurance sector. To ensure it is supported and developed effectively, the necessary balance of interests of all market participants should be preserved.

D&O INSURANCE

Directors' and officers' insurance policies (hereinafter – "D&O insurance") are issued in order to ensure due indemnification of damages of an entity and its shareholders caused by unfair or unreasonable actions (omissions) by its directors and officers (members of its governing bodies).

D&O insurance is not a widespread practice in Russia. This is primarily driven by the current tax regulation: entities cannot allocate insurance premiums under D&O insurance contracts to expenses for income tax purposes and D&O (members of corporate bodies) must pay personal income tax (hereinafter, "PIT") on insurance premiums paid out of employers' funds.

This year, the government of the Russian Federation introduced the draft Federal Law No. 969592-7. If adopted, this law will release individuals from PIT on insurance premiums paid by employers by adding the following wording to Clause 3 of Article 213 of the Tax Code of the Russian Federation (hereinafter, the "Russian Tax Code"): "and under voluntary third-party liability insurance policies of board members of joint-stock companies".

The AEB is supportive of this initiative. However, in its opinion, the wording of the draft law is suboptimal and needs improvement, as the following characteristics of D&O insurance have not been taken into account.

- D&O insurance policies provide coverage not only for board members, but also to other D&O: executive bodies, chief accountants, heads of branches, etc.
- D&O insurance policies are issued in Russia more often as financial risks insurance or as a combined (mixed) contracts for insurance of financial risks and third-party liability.
- D&O insurance policies are issued not only for joint-stock companies, but also for other legal entities, including limited liability companies. The type of a legal entity do not affect loss exposure caused by actions of D&O of such legal entity.

Additionally, we recommend introducing amendments into Article 263 of the Russian Tax Code by extending the list of voluntary insurance costs which are accepted for corporate tax purposes. The absence of this possibility will greatly limit the demand for D&O insurance policies and will be a constraining factor for the development of insurance, that improves financial stability of legal entities.

RECOMMENDATIONS

- Add the following wording to Clause 3 of Article 213 of the Russian Tax Code: "and under directors, members of corporate bodies and/or other officers voluntary insurance policies".
- Add sub-Clause 9.4. to Clause 1 of Article 263 of the Russian Tax Code, which will read as follows: "9.4.) voluntary insurance of directors, members of corporate bodies and/or other officers".

CONDITIONS FOR ALLOWING FOREIGN INSURERS (REINSURERS) ACCESS BY OPENING BRANCHES (OFFICES)

In accordance with the Russian Federation's commitments in the insurance services sector when joining the WTO (Protocol of 16.02.2011, ratified on 21.07.2012, No. 126-FZ), the Ministry of Finance has prepared a new version of the bill on key requirements subject to access and activities of foreign insurers in the form of a branch instead of a 100% owned subsidiary. Such changes should come into force on 22.08.2021, and may have a noticeable impact on the decisions of foreign insurers to start operations in Russia, creating conditions for the expansion of the list of services for Russian insurers. At the same time, the liabilities of such a branch are guaranteed by the capital of the parent insurance (reinsurance) company whose assets under the Protocol may not be less than USD 5 billion (i.e. approximately RUB 340.0 billion). The draft law was initiated in 2018, but so far, including the wording of the draft law submitted for public discussion in 2020, most of its provisions are in conflict with the practice of simplifying access to national markets when opening branches of foreign insurers.

The current version of the Russian draft law does not simplify the conditions for commercial access to foreign insurance companies in the form of branches as compared to the conditions for opening subsidiaries, but in many ways makes it both stricter and more unpredictable. In particular, it concerns the size of the initial guarantee deposit, which should correspond to the minimum amount of the authorized capital taking into account the types of insurance activities, but the branch is not entitled to place it at its own discre-

tion, but is obliged to keep the amount of money from RUB 240 to 960 million (up to EUR 12.0 million) in a special account with the Deposit Insurance Agency, without being able to receive investment income. The amount of such deposit is subject to quarterly adjustment and makes the economic conditions of the foreign insurer unpredictable.

The obligation of a foreign insurer under the draft law to transfer 10% of risk reinsurance under an insurance contract concluded by a Russian branch to RNPK is of great concern. Firstly, this norm is not technically feasible, as reinsurance contracts are often concluded for all geographical locations of the international insurer's business, and secondly, it conflicts with the requirements for reliability of reinsurance in a number of jurisdictions, as the credit rating of RNPK (BBB) is significantly lower than that required by the solvency norms, including the 2009 Solvency II EC Directive.

Finally, the draft law makes it possible to open a branch depending on an agreement between the insurance supervision authorities of the country of registration of the foreign insurer and the Russian Federation. There are no such agreements to date, and this requirement is not provided for in the 2011 national obligations.

The Committee has repeatedly argued in favor of finding a balanced approach in the choice of ways to regulate the establishment and operation of branches of foreign insurers, taking into account the scale of intended insurance operations and the nature of the risks assumed: for example, by requiring maximum financial security and its localization for types of insurance related to the interests of citizens, and simplifying them for branches that provide insurance under corporate property programs of international companies, or in the area of international insurance restructuring.

RECOMMENDATIONS

When preparing the draft law, it is necessary to take into account the legal status of the branch, which provides insurance services only within the parent company of the foreign insurer. This should be reflected in the requirements for the opening and operation of the branch (guarantee fund, insurance reserves, assets, management of the branch). In the case of branches of foreign reinsurers, the requirement for the size of the guarantee fund must take into account the modern possibilities of providing services in the cross-border trade regime without such encumbrances. The conditions for opening branches of foreign insurers may be considerably simplified, taking into account the initial restrictions on foreign insurers acquiring this right. Requirements not provided for by the national obligations of the Russian Federation and considered as unjustified administrative barriers to access to the national insurance market of the Russian Federation should be excluded from the draft law.

COMMITTEE MEMBERS

AIG Insurance Company, JSC • Allianz IC OJSC • BNP Paribas CARDIF Insurance company • Chubb Insurance Company, LLC • CMS Russia • Credendo – Ingosstrakh Credit Insurance LLC • Euler Hermes • EY • General Reinsurance AG • Generali Russia & CIS • MAI Insurance Brokers • Renaissance pensions JSC NSPF • SAFMAR NPF AO • SCOR Moscow Representative Office • SOCIETE GENERALE Strakhovanie Zhizni LLC • SOGAZ Insurance Group • Tinkoff Online Insurance, JSC • VSK Insurance House (SAO VSK) • Zetta Insurance Company Ltd. • ZURICH RELIABLE INSURANCE, JSC.

IT & TELECOM COMMITTEE

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Edgars Puzo, Atos

Deputy Chairpersons:
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PROSPECTS FOR THE DEVELOPMENT OF THE REGULATION OF TELECOMMUNICATIONS AND INFORMATION TECHNOLOGIES IN RUSSIA

INTRODUCTION

In 2020 the coronavirus pandemic led to an increased demand for various IT solutions, significantly speeding the pace of digital transformation of the Russian economy. Broad support of the Government's efforts from Russian and international telecommunications and IT companies, many of which have provided expanded access to their infrastructure and services, became the foundation for the stability of the Russian economy during the self-isolation period.

Digital transformation and the achievement of 'digital maturity' in key economic sectors and the social sphere were first included in the updated development goals in accordance with the Decree on the National Development Goals of the Russian Federation for the Period up to 2030 signed by the President of the Russian Federation on 21 July 2020. The Government of the Russian Federation is developing indicators of the level of digital maturity and appropriate adjustments to national projects, including the Digital Economy Programme. The import phase-out policy has been implemented intensively owing to broad support measures for Russian IT companies, stimulating government demand for domestic products as well as due to the restriction of competition.

The experience of other European countries shows that restrictive measures aimed at protecting the internal market do not lead to the creation of competitive world-class products in the long term. However, a reverse effect is possible if similar restrictions are imposed on Russian products in foreign markets.

RUSSIAN LEGISLATION ON PERSONAL DATA

On 10 October 2018 the Russian Federation signed a protocol amending the 1981 Convention of the Council of Europe for the Protection of Individuals with Regard to Automatic Processing of Personal Data, which will help align the legislation of the Russian Federation and the European Union related to the processing of personal data.

On 2 December 2019 a law came into force introducing significant fines for non-compliance with requirements for the localization of databases containing personal data. The fines range from 1 to 18 million roubles for companies and from 100,000 to 800,000 roubles for CEOs and other top managers. The court has already imposed fines in the amount of 4 million roubles on Twitter and Facebook.

On 21 July 2020 the Russian Government submitted a draft law to the State Duma (https://sozd.duma.gov.ru/bill/992331-7) on the procedure for depersonalizing personal data; the requirements and methods for depersonalizing such data will be approved by the Federal Service for Supervision of Communications, Information Technology and Mass Media. For the purpose of personal data erasure in IT systems, the draft law prescribes using only security products that have been certified by the Federal Service for Technical and Export Control (FSTEC) or the Federal Security Service (FSS), which will create additional difficulties for the data controller in fulfilling the legal requirement for the timely erasure of personal data.

EUROPEAN LEGISLATION ON PERSONAL DATA

On 25 May 2018 the EU General Data Protection Regulation entered into force. The GDPR is extraterritorial in nature and is applicable to a number of Russian companies, which, if they do not comply with it, may be subject to significant financial liability (for example, a fine in the amount of 20 million euros).

After the Court of Justice of the European Union issued the judgement in case C-311/18 (Schrems II) on 16 July 2020, uncertainty has emerged in the European legislation whether it is permissible to transfer personal data from the EU to Russia. We believe that to solve this problem, more active cooperation between state authorities of Russia and the EU is needed.

RESTRICTING ACCESS TO INFORMATION ON THE INTERNET

Recently, the Federal Service for Supervision of Communications, Information Technology and Mass Media has repeatedly pointed out the ineffectiveness of the mechanism for blocking information resources (for example, websites and mobile applications) that violate data protection legislation.

On 18 June 2020 the Federal Service for Supervision of Communications, Information Technology and Mass Media, in agreement with the General Prosecutor's Office of the Russian Federation, removed the

restrictions on access to Telegram. The decision taken by the Federal Service for Supervision of Communications, Information Technology and Mass Media suggests that a website or a mobile application may be unblocked out of court if the company has taken the necessary measures to comply with Russian legislation. We believe that it is advisable to apply this practice to other resources.

STORING USER MESSAGES AND USER DATA

There is still some uncertainty regarding the implementation of the Yarovaya package, in particular, regarding the obligations of telecom operators and organizers of information dissemination to store text messages, voice information, images, sounds, video and other messages of communication services users. Effective 1 July 2018, the above data must be stored for up to 6 months from the end of their collection, transmission, delivery and/or processing.

Due to the COVID-19 pandemic, telecom operators and the business community count on the relaxing of/changes in some of the legal requirements.

SECURITY OF CRITICAL INFORMATION INFRASTRUCTURE

On 1 January 2018 the Federal Law on the Security of the Critical Information Infrastructure of the Russian Federation came into force.

At the end of May, the Ministry for Digital Development, Communications and Mass Media of Russia proposed making a transition to the 'preferential use' of Russian software and equipment at CII facilities. In accordance with this proposal, the owners of CII facilities will be obliged to switch to the preferential use of software registered in the Russian register and the EAEU (Eurasian Economic Union) Software Register by 1 January 2021 and to the preferential use of Russian equipment by 1 January 2022.

Acceptance of the proposed requirements in their current version may lead to a failure of the IT systems supporting the operation of CII facilities, and CII entities will have to bear significant unreasonable costs for the purchase of new equipment and software when the life cycle of their already installed equipment and software has not yet expired. In addition, there is a risk of violation of WTO agreements if instruments are adopted restricting the purchase of foreign products by CII entities, many of which are privately owned.

RECOMMENDATIONS

- To involve experts from international and professional associations to participate in working groups and expert councils of the executive and legislative authorities in the development of a legal regime comprising concepts that are relevant for the modern digital economy (big data, Internet of Things etc).
- To develop a balanced approach to the distribution of costs between business and the state with regard to the implementation of the Yarovaya package.
- To develop an official position on the GDPR, the possibility of cross-border transfer of personal data from the EU to Russia and vice versa and approaches that would make it possible to effectively implement the changes provided for by the revised Convention of the Council of Europe in Russian legislation on personal data.
- To issue official explanations and create conditions for broader practical application by data controllers of clause 7 of part 1 of article 6 of 152-FZ (processing of personal data is necessary to exercise the rights and legitimate interests of the data controller or third parties) for the purpose of justifying personal data processing.
- To issue official explanations on the following matters:
  (a) application of the Federal Law 'On the Security of the Critical Information Infrastructure of the Russian Federation' to companies;
  (b) the mechanism for assessment and decision-making in accordance with the Federal Law 'On the Security of the Critical Information Infrastructure of the Russian Federation'.
- To decline to adopt regulatory instruments instructing private companies to switch to the 'preferential use' of Russian software and equipment at critical information infrastructure facilities.
- To accelerate adoption of a legal framework for new technologies in order to not lag behind the global high-tech market.

STATE AND DEVELOPMENT TRENDS IN THE RUSSIAN TELECOMMUNICATIONS MARKET

The Russian telecommunications market remains highly consolidated.

The number of phones, smartphones, tablets and modems connected to the mobile internet (the main driver of operators' revenue growth) in Russia is about 100 million.

Innovations stimulate the development of a society fully connected to the internet. A promising market segment is developing – the Internet of Things (IoT), which involves connecting various objects to the network. Already today, M2M connections in the world demonstrate an annual growth of 40%. With the emergence of the IoT, this segment is expected to explode.

At the moment, the transport industry is a leader in terms of the volume of the enterprise market of the Internet of Things among Russian industries – 13.1 billion roubles. This amount is largely generated by vehicle telematics systems (they account for about 44% of the current number of all M2M connections).

Data security is another popular segment of the corporate ICT market. According to the IDC forecast, the average annual growth rate of the corporate cybersecurity service market will amount to 3.9% by 2022. This is facilitated by the growing number of cyberthreats – the development of the Internet of Things alone in the coming years will provoke an avalanche-like increase in the number of devices connected to the global network. The presence of threats from so many unmanaged or poorly managed devices will lead to a need to protect both existing online services and newly connected objects.

The next generation of 5G mobile communications is currently the most debated issue in the telecommunications industry. One of the most difficult issues is the issue of frequency allocation for the deployment of 5G communication networks.

The most common frequency range for 5G networks worldwide is 3,400–3,800 MHz. This is due to the fact that this range has quite wide free frequency bands in most countries – about 100 MHz per operator, which can be used to transmit growing traffic volumes. The wide availability of this range in many countries makes it a priority in the development of consumer devices, primarily, smartphones.

Another frequency area used for the development of 5G networks in the world is the frequency ranges above 26 GHz. Only US operators currently work on these bands. In the future, other countries will join them, primarily, Europe (expected in 2021) and South Korea.

As to the Russian Federation, the most promising range (3,400–3,800 MHz) is occupied mainly by military and satellite communication systems, which are not planned to be transferred to other frequencies in the near future. Operators and equipment manufacturers expect the regulator to resolve the issue of allocating/clearing frequencies as soon as possible; otherwise Russia may significantly lag behind the rest of the world in the implementation and development of the new generation of communications.

COMMITTEE MEMBERS

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MACHINE BUILDING & ENGINEERING COMMITTEE

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PRODUCTION AND INVESTMENT RAISING

The Association of European Businesses pays special attention to such an economic category as the localization of engineering processes, production and subsequent maintenance of engineering products in Russia and to facilitating the inclusion of Russian engineering products in global supply chains. The growth in the share of surplus value created by a foreign economic entity in the Russian market contributes to the economic growth of the regions, the development of the national industry of suppliers, technologies, production, management and improvement of Russian production competencies.

The growth in the level of localization is largely ensured by a targeted state policy in the area of attracting foreign investments and competencies in the construction of local capacities for the production of both end engineering products and component parts of various levels as well as materials required for their production. Such tools include both direct policies with short-term effects, such as establishing special economic zones, tax and customs preferences, state subsidies, etc., and measures that will have a long-term indirect effect, such as incentives for the development of small- and medium-sized business acting as suppliers, improvements in the educational training of competitive staff, the streamlining of bureaucratic processes.

The Committee is actively involved in localization development in Russia and holds regular meetings and consultations in this area.

ISSUES

The Committee has identified three clusters of challenges related to the development of enterprises of foreign companies in Russia.

Essential cluster

- The desire of state and municipal companies to replace purchased products with local products, which are often substitutes which are inferior in a number of respects to imported originals, may lead to a deterioration in the quality of products created in Russia. The underdevelopment of the system for the production of local components and materials negatively affects the quality of the end product due to shortcomings in the previous stages of production. This results in higher costs in the final product, both for companies and for the state.
- The economic basis for the localization strategy and programme has not been properly prepared. This programme seems to be implemented manually. And its implementation contradicts economic laws and global trends in labour specialization. For example, there is a tendency to focus production of key components in one place. At the same time, the development of local production is aimed at reducing logistics costs and the use of manufactured products, primarily in local markets, and thus the market volume as well as the potential for exporting localized goods to export markets plays a decisive role in deciding on investments in localization projects. The underestimation of such global trends in Russia in the development of local production creates a problem that leads to a situation where international companies cannot substantiate the economic feasibility of projects for organizing production in Russia.
- Russia's internal market capacity is too small, due to extremely limited solvent demand, to justify the feasibility of local production, especially for the fabrication of automation components since the pool of engineering companies and comprehensive solution developers is too limited in Russia, and there is little motivation for export from Russia.
- The cost of loans needed to develop the technological base of enterprises is very high, which hinders their modernization.
- High administrative and bureaucratic barriers and the complexity of and continuous changes in Russian legislation in the area of setting up production result in high administrative costs. International companies have to employ a large number of experts just to prepare documents and supervise necessary changes in processes, while the majority of suppliers of technologies and ready products are small companies that cannot afford this. To obtain state subsidies, the preparation of a large number of documents is necessary so is participation in a tender, which requires a significant amount of employees' time with no guarantee of success.

Engineering cluster

- Low automation levels and ageing equipment at many facilities of potential suppliers, which leads to low quality and high cost of products of such facilities.
- Non-compliance of the organization of production processes and the quality of components and materials produced by local suppliers with international standards and the requirements of quality management systems applied to suppliers by international

companies, which complicates the process of including Russian manufacturers in global supply chains.
- Low labour productivity (the mean value in Russia is less than one-third of the same value in the US).
- Shortage of trained personnel (blue-collar workers and engineers) able to work with cutting-edge equipment and technologies. Although the situation is improving, it remains quite acute.

Infrastructure cluster

- Poor infrastructure (except for some regions) and high administrative/bureaucratic barriers in some regions.
- High overhead expenses.
- The underdeveloped state of small- and medium-sized businesses, which are the basis of the component production industry worldwide.

RECOMMENDATIONS

The Committee suggests the following approaches for the state to encourage foreign investment in Russian production capacities.
- Develop effective mechanisms to protect property and foreign investments as well as reduce the administrative burden on investors, limiting the inspection and supervisory function of governmental agencies.
- Share risks with manufacturers by providing a preferential period for investment industrial projects, depending on the production type and payback period.
- Continue creating technology parks with complete infrastructure, including production premises, using the positive experience of certain regions.
- Provide companies with more than 40% foreign capital and exporting more than 30% of their production outside of the Customs Union with special fiscal exemptions.
- Exempt technology park residents from rent for 5–8 years and from a number of taxes, as in special economic zones. Residents should be invited to technology parks with the purpose of establishing links between them so as to create process chains. Manufacturers of components mandatory for localization should be invited to such technology parks first of all. The efficiency of technology parks should be evaluated by the number and sophistication of the production chains arranged at them rather than by the number/volume of investment(s) involved.
- Provide financial support to local, medium-scale businesses complying (or clearly declaring their intention to comply) with the product quality requirements of foreign investors (or subject to the approved modification programme to achieve compliance in the coming year).
- Change the approach to production localization in the Russian Federation, focusing on the development of areas in which Russian manufacturers have the greatest competencies, taking into account the possibility of their integration into global supply chains. Provide preferential treatment for imports of products in which Russian components are used.
- To stimulate solvent demand, provide the opportunity to obtain loans with a low interest rate both for manufacturers of products and for their customers.
- Provide support for the export of products by providing export credits, government guarantees and insurance of risks of participants in export transactions and by subsidising the cost of transportation across the territory of the Russian Federation.
- Improve the infrastructure and attractiveness of the regions where it is planned to develop production in order to attract highly qualified experts.
- Creation and development of human resources having modern competencies in the country by organizing educational programmes in educational institutions according to world standards with student exchange programmes between educational institutions of Russia and foreign countries as well as with the involvement of foreign experts or people with foreign experience. Such programmes shall not be limited to universities in the central regions of the country.
- Simplify the procedure for the entry of highly qualified foreign experts into the Russian Federation under work visas.

ISSUE

The policy of import substitution of products of the Russian government was implemented by Resolution of the Government of the Russian Federation No. 719 dated 17 July 2015 'On Confirmation of the Production of Industrial Products on the Territory of the Russian Federation', in which the principle of performing mandatory technological operations in the country was adopted as the main criterion for recognizing the Russian origin of products. This requirement concerns almost all major industries, and both the list of mandatory operations and the list of regulated industries continue to expand.

Lists of production operations have been elaborated on the basis of the current production process of enterprises that are already monopolists in their sectors. Therefore, this principle strengthens their monopolistic position and completely excludes them from competition and eliminates incentives for the technological development of production and the improvement of the technical level of products, reduction of their cost and improvement of economic efficiency and competitiveness. In addition, buyers of such products are doomed to use obsolete equipment at excessive prices.

The principle of selecting production operations and significantly expanding their list as well as assigning each operation a certain number of points was introduced as an alternative to the principle of mandatory production operations in the automotive industry. Depending on the number of points assigned to the products, the manufacturer gets access to certain forms of state support. Despite the progressive nature of the new method designed to provide more freedom to manufacturers in the choice of operations, it has a number of disadvantages.

List of operations

The choice of operations included in the new list is not optimal. For example, an excessively large number of newly introduced operations are related to producing automotive electronics. Since the requirement for manufacturing electronic components in the Russian Federation was not previously imposed on automakers, most

of them were not prepared to master their production. Given the criticality of electronic systems and, accordingly, the software for them in a modern car, the cost of their development is extremely high, and debugging and testing take a very long time. It seems extremely economically inefficient to develop a separate version of the software for the Russian market with the transfer of intellectual property rights to this version to a company registered in the Russian Federation. It is also unlikely that Russian software will be used as the only one installed on internationally manufactured cars produced worldwide. The fact that the production of automotive electronic systems is poorly developed in Russia, in general, should also be taken into account.

The list of production operations also includes the use of Russian paints and varnishes, although even Russian automakers refuse to use them.

RECOMMENDATIONS

Since the point system for evaluating production in Resolution of the Government of the Russian Federation No. 719 can be applied to all industries, bring to the notice of the representatives of the Ministry of Industry and Trade and the Ministry of Economic Development the position of international investors developing production in the Russian Federation that in its current form it does not give an objective assessment of the localisation of production. Either its careful adjustment is required, taking into account the specifics of the production of different categories of the same product as well as the development of aftermarket coverage, the availability of spare parts, the development of the competencies of local personnel, etc., or its replacement with an integrated system is necessary, which would evaluate investment activity in the Russian Federation as a whole, for example, evaluation based on value added.

COMMITTEE MEMBERS

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REGULATION OF COMMERCIAL ACTIVITIES

ISSUES

TRADE DURING THE PANDEMIC

Retail and wholesale trade has been acutely affected by the pandemic in Russia. According to the Federal State Statistics Service and the Ministry of Industry and Trade of Russia, in April 2020, the fall in retail turnover amounted to over 23% on an annualized basis, in May, more than 19%, in June, almost 8%, in July, about 3%, in August, 2.7% and 3% in September. In January–September 2020, sales were 4.8% lower than in the previous year.

The food trade was able to continue working but went through a number of difficult stages. The first one entailed urgently meeting the sharp increase in popular demand for a number of long-term storage products and introducing enhanced anti-epidemic measures in retail facilities. At the second stage, food trade had to face regional access regimes and obstacles to interregional transportation of goods. This was followed by the introduction of mask regimes by the regional governmental bodies and difficulties both in terms of ensuring a sufficient supply of masks in range at the initial stage and in terms of interacting with buyers in violation of the regulations of the authorities.

In the food trade segment, stores located in shopping centers mainly suffered losses across various segments, but the overflow of retail customers to chain stores also had an impact in "high-traffic locations" situated near transport facilities, enterprises, business centers, etc. Thus, the restrictions mainly affected the performance of small and medium-sized trade enterprises. In addition, the business incurs increased costs for anti-epidemic measures, logistics, personnel, etc. In general, food trade in January–August lost about 2.2% of turnover compared to the same period in 2019, although large trade enterprises generally managed to maintain and even partially increase turnover.

Due to the restrictions, the trade in non-food products was forced to stop operations in its facilities in March and only since June has gradually restored the business incurring significant additional costs for anti-epidemic measures. At the same time, even the expansion of such a sales channel as e-commerce made it possible to partially compensate for the lost turnover and profit. During the period from January to August, the non-food trade decreased by 7.8% compared to the same period in 2019. According to experts, a more or less complete recovery of the non-food trade should be expected no earlier than in 2021.

Online trading experienced a significant increase in demand and turnover, although it also had to face many regulatory restrictions and prescriptions.

At the same time, the situation for trade as a whole could have been much more serious had it not been for the support measures taken by the state to stimulate demand through direct financial assistance to the people, as well as measures to support business, primarily in terms of compensating for the payment of loans and support employment, deferral of obligations for loans, taxes, etc.

The main question for trade in the fall of 2020 is how the pandemic will further develop, in particular, what trade restrictions the state will introduce in response to the next surge in infection. This uncertainty is detrimental to the recovery and further development of trade.

In addition, analysis of experiences in the initial phase of the pandemic shows that many complications for the trading business were associated with the unpredictability of the authorities' actions not leaving time to prepare for the imposed restrictive and monitoring measures, with redundant restrictive requirements, as well as with the lack of proper coordination of actions of regional authorities.

RECOMMENDATIONS

The Association of European Businesses calls on the Government of Russia and the relevant federal executive authorities to develop, in advance and in dialogue with business, regulations for trade operations if a second wave of the pandemic occurs, which would:

a) exclude the closure of retail facilities, provided that clearly defined sanitary anti-epidemic requirements are met. This would also exclude the binding of permits for the operation of consumer market enterprises to certain threshold values for the area of facilities (400 and 800 sq. m);
b) ensure the necessary predictability and consistency in the actions of federal and regional authorities, as well as tools for their constant dialogue with the trade business to solve operational problems and tasks;
c) exclude the use of excessive and obviously unrealizable regulations in trade, such as, for example, the use of recirculation devices (closed-type UV air disinfection devices) in trade and logistics facilities.

An important measure to support trade would also be the government's compensating the costs of trade enterprises for anti-epidemiological measures (purchase of personal protective equipment, disinfectants and payment for the services of disinfection organizations, cost of testing employees for COVID-19, etc.).

Finally, the Association of European Businesses considers it important to include the relevant companies, not only retail but also small wholesale and wholesale trade companies, in the list of backbone (so-called "system-building") enterprises of Russia due to their importance for the uninterrupted supply of businesses and, thus, end consumers with the necessary goods.

STATE REGULATION OF TRADE

Federal Law No. 273-FZ dated 3 July 2016 "On Amending the Federal Law 'On the Foundations of Government Regulation of Trade Activities in the Russian Federation' and the 'Code of Administrative Offenses of the Russian Federation'" introduced significant changes to government regulation of the consumer market.

According to the official rationale, the above amendments were intended to strengthen food security and eliminate unfair practices in the market. In reality, they amounted to unprecedented state interference in the freedom of contractual relations between counterparties imposing a fundamentally new, "front-margin" model of interaction between trade and suppliers.

The transition to a new format of relations within the limited time established by law required all market participants to mobilize significant resources. In addition, due to deficiencies in the text of the amendments, market participants needed clarifications from the Federal Antimonopoly Service, which were received just 6 weeks before the end of the transition period. Business also experienced significant difficulties in the first half of 2017 due to mass checks on the implementation of the given law, when the territorial departments of the FAS in each region demanded a huge amount of documents from trade companies.

Ultimately, most market participants were able to adapt to the new legislation, but it became obvious that the adopted amendments had seriously complicated conditions for doing business, especially for small and medium enterprises both in trade and in the food industry. The dramatic limitation of suppliers' ability to use the services of trade chains for the promotion and logistics of goods and an overall increase in the transparency of purchase prices led to increased price competition whereby small and medium-sized business lost their competitiveness.

The amendments in November 2018 to the Trade Law on the prohibition of returns of food again significantly hurt small and medium-sized businesses' position in the consumer market.

In parallel, at the end of 2018, the Government of the Russian Federation initiated a procedure for assessing the actual impact (hereinafter, "AAI") of the 2016 amendments designed to establish the efficacy of these changes, taking into account the stated goals. According to the published report on AAI, more than 80% of the 1,500 representatives of trade chains and suppliers considered the efficacy of the amendments to be low.

In April 2020, a group of deputies of the State Duma of the Russian Federation submitted to the parliament a draft Federal Law "On Amending Article 8 of the Federal Law 'On the Basics of State Regulation of Trade Activities in the Russian Federation' in Terms of Pointing Out the Obligation of the Government of the Russian Federation to Establish Maximum Permissible Retail Prices for Certain Types of Essential Goods".

The proposed legislative initiative was another attempt to interfere with price regulation. The introduction of the proposed amendments would not only significantly limit the constitutional freedom of economic activity in Russia but also threaten to seriously disrupt the entire economy of relations within the distribution chain and would also have an adverse impact on small and medium-sized businesses.

These amendments came during an already extremely difficult period for the consumer market – the spread of the novel coronavirus infection. In March 2020, trading companies and food manufacturers faced a sharp increase in demand for a number of socially important goods. At the same time, a sharp drop in the exchange rate of the national currency in late March–early April led to a noticeable increase in the cost of food products from manufacturers – on average, about 5–15%. Accordingly, if this legislative initiative were to be implemented, the Russian consumer market would need to undergo additional destructive shocks.

SELF-REGULATION

Due to the radical strengthening of government regulation of trade in 2016, the development of self-regulation in the consumer market was "frozen" until market participants have adapted to working under the new rules. The dialogue between self-regulation participants was only resumed in the second half of 2017 when work began on adapting the Code of Good Practices (CGP) to take the new legislative reality into account, as did discussion about the prospects for self-regulation in Russia and its future mechanism. In March 2018, the Working Group of the Intersectoral Expert Council presented the approved version of the revised Code; the Chamber of Suppliers, however, blocked its adoption due to the dissatisfaction of several supplier associations with the results of the Working Group.

In 2018–2019, the self-regulation process, in fact, had to be restarted with the active assistance of A. Sharonov, rector of the Skolkovo Moscow School of Management, who headed the Commission for the Compliance with the CGP. Retailers confirmed their commitment to the current version of the Code of Good Practices and the decisions of the CGP Compliance Commission, with the exception of those Commission decisions that were officially challenged by the Trade Chamber. At the same time, representatives of retailers and suppliers resumed negotiations to finalize certain provisions of the Code. The Good Practice Commission itself shifted to a more regular and systemic mode of operation.

At the end of 2019, a register of companies adhering to the Code of Good Practices was created, where mainly trading companies are currently registered. For the resolution of disputes arising on the implementation of the Code, the institute for the settlement of disputes at the companies' level was also developed through the work of the CGP controllers.

Unfortunately, the agreed decision on the terms of the application of penalties was blocked by some members of the Chamber of Suppliers. Nevertheless, there is ongoing active discussion of other possible changes to the Code of Good Practices, in particular, regarding the coordination of the volumes and conditions of ordering each batch of goods.

Trade's commitment to self-regulation is also confirmed by the fact that in March 2020, due to the increased demand for certain types of goods and the objective difficulties caused by the coronavirus pandemic, a number of trading companies introduced a moratorium on the imposition of penalties against bona fide suppliers and manufacturers for the undersupply of goods before the situation in the consumer market is stable.

RECOMMENDATIONS

Unconditionally confirming its belief that amendments to the Trade Law of 2016 and 2018 have been counterproductive, the Retail Trade Committee considers any further tightening of government regulation of trade to be extremely harmful. The Committee draws particular attention to the fact that the desire for excessive regulation of civil law relations between trade and suppliers is leading the Russian consumer market away from the principles of a market economy towards a uniform administration and, indeed, towards the abolition of all the multifaceted relationships of its participants in the market. This undoubtedly affects the overall business and investment climate in the country, in the trade sector, and can also significantly reduce the efficiency of business processes.

Ultimately, one can assume that further growth in the regulatory and financial burden on trade, along with the reduced profitability of trade, will become a factor in reducing business activity in this industry which still remains one of the segments of the Russian economy which is still able to successfully deal with emerging problems and which continues to attract capital investments, both Russian and foreign.

The Retail Trade Committee considers it appropriate to initiate a similar AAI procedure with respect to amendments to the Trade Law concerning the prohibition of returns and in general to introduce a moratorium on further tightening of legislation for the retail industry.

At the same time, the Association fully supports the efforts of market participants aimed at developing a self-regulation system that would stimulate market participants to expand the application of good practices.

In the future, it is necessary to create an effective mechanism where any initiatives for regulatory changes in the field of trade, including amendments to the Trade Law itself, should be considered first and foremost within the framework of self-regulation by representatives of trade company associations (including small and medium-size trade enterprises) and suppliers.

STRATEGIC TRADE DEVELOPMENT

ISSUE

Trade is one of the primary sectors of the Russian economy and the largest employer in the country. At the same time, there is currently no long-term strategy for trade development at state level that would reflect the real situation and serve as a key document defining state policy and, accordingly, practical actions of government bodies at all levels in relation to this industry, ensure the predictability of the investment climate and be linked with plans for the development of related industries (agricultural production, transport infrastructure, healthcare, etc.).

RECOMMENDATIONS

We consider it necessary for the Government of the Russian Federation to adopt the Trade Development Strategy reflecting the following fundamental conditions for the effective development of the industry:

- promotion of competition in trade, predictability of government regulation and development of self-regulatory mechanisms;
- promotion of growth in the volume of food trade, rather than the statistical number of retailers;
- support for the purchasing power of the population, including through the introduction of food aid programs;
- support for the investment attractiveness of wholesale and retail trade;
- systemic support for SMEs in the field of trade;
- support for the development and legalization of the wholesale segment;
- support for domestic production enterprises producing modern warehouse and retail equipment;
- state assistance to trade enterprises in the development of quality and safety control systems for food products to be sold;
- optimization of information interaction of all links of the distribution chain with each other and with the state, including by creating a single interface for transferring data to traceability systems;
- development of the training of qualified personnel for food logistics and wholesale and retail trade, increasing the prestige of the profession;
- fighting against "regional protectionism" (i.e. formal and informal barriers to entry onto the regional market of goods from other constituent entities of the Russian Federation) within the framework of inter-regional integration in the field of food markets;
- inadmissibility of state regulation of prices or surcharges on consumer goods (with the possible exception of emergency situations);
- introduction of international goods safety and quality standards in the Russian Federation (including in order to increase the export potential of products).

REGULATION OF THE ALCOHOL MARKET

ISSUE: DECLARATION OF BEER PRODUCTS

Currently, the requirement to declare beer, beer drinks, cider, poiret and mead is still in force. Taking into account the functioning of the Unified State Automated Information System (USAIS), this requirement is rudimentary.

RECOMMENDATION

Abolish the declaration of beer products.

ISSUE: LICENSING

The current licensing regulation is unreasonably strict when almost any violation entails cancellation and suspension of a license (including minor errors in the documentation). Given the fact that all the stores of one retail chain in a region are included in a general license, a violation committed by one store entails stopping the sale of alcohol products by all the stores in the said retail chain in the corresponding region.

In addition, protectionism is observed in a number of regions, namely, imposition of special conditions for obtaining or renewing licenses, as well as preferential conditions for the sale of alcoholic drinks from local producers.

There are no unified rules for specifying the address of an object. In practice, they vary from region to region. For example, in the Nizhny Novgorod region, it is sufficient to indicate only the house number, while in Moscow, the address must be indicated in full, down to the room and office numbers. The licensing authority makes a request to the Unified State Register of Taxpayers to confirm the numbering of the premises. As a result, it turns out that if, due to minor repairs, e.g. in the office portion, the numbering of rooms in the entire store changes, then it is necessary to renew the license and undergo new licensing checks.

The problem with tax arrears has become extremely aggravated. Information about the presence of tax arrears or non-payment of fines by legal entities is not always correctly reflected in the State Information System on State and Municipal Payments (SIS SMP). Moreover, the participants in the alcohol market do not have access to the information contained in the SIS SMP and, accordingly, they do not have the opportunity to check in a timely manner whether their tax liabilities, fines attributable to organizations are correctly indicated in the system, how correctly the payment made is reflected so that was to provide the licensing authority with documents confirming the repayment of the debt or the payment of a fine. For the reasons mentioned above, in their work trading companies encounter unjustified refusals of licensing authorities to issue licenses or even the suspension of existing licenses.

There are no unified rules for conducting field licensing checks in each region. For example, in Moscow, the inspection is conducted with audio/video recording; in the Tambov region, there is no on-site inspection; in the Lipetsk region, the inspection is carried out by analogy with the inspection for the license for purchasing, storage, and supply of alcoholic products – in each region, it is necessary to adapt to the characteristics of a particular licensing authority.

Regional protectionism may also be observed as follows:

- regions with double – pseudo-voluntary – certification;
- regions requiring monthly submission of a declaration on the volume of alcohol turnover which creates excessive pressure on the business;
- regions that introduce their own trade rules – regional minimum retail prices, a ban on alcohol trade in the licensed object at the discretion of the licensee, permission to trade only in a strictly defined place in the store (on a certain shelf in the department);
- regions that block business – refusal to issue a license in the event of failure to comply with the requirements of certain authorities.

RECOMMENDATIONS

1. To adopt the draft Federal Law "On Amending the Federal Law 'On State Regulation of Production and Circulation of Ethyl Alcohol, Alcohol and Alcohol-Containing Products'" (https://sozd.duma.gov.ru/bill/875219-7, https://regulation.gov.ru/projects#npa=99718) providing for:
   - excluding the possibility of refusal to issue a license if the information about the building contained in the documents does not match the data found during the inspection;
   - introducing an accelerated and simplified procedure for issuing/prolonging a license in the event of a change in the official address by decision of the relevant authorities (while maintaining the previous physical location of the building or premises indicated in the license);
   - cancelling the requirement for the absence of tax or penalty arrears as a condition for issuing a license;
   - issuing a separate license for each object;
   - forming a single procedure to be followed in the event of suspension of the license;
   - excluding the requirement for a warehouse if the applicant applies for a license for the retail sale of alcoholic beverages.
2. To adopt a single regulation on licensing the retail sale of alcoholic beverages.
3. To adopt a unified procedure for conducting an on-site licensing check.
4. To consider the possibility of cancelling the licensing of the trade in alcoholic beverages due to the widespread implementation of USAIS.

ISSUE: DISTANCE TO SOCIAL FACILITIES

Each region of Russia has its own standards for the minimum allowable distance from children's, educational, medical, military, and other institutions to trade outlets selling alcoholic beverages. Trade enterprises face risks of license cancellation in the event of involuntary

violation of the minimum distance, e.g. in cases where social facilities arose within this minimum acceptable distance after the opening of the trade outlet. For such cases, Clause 11 of Article 16 of 171-FZ provides for the possibility of preserving the license and its prolongation but not for more than 5 years.

RECOMMENDATION

To consider the possibility of reducing the list of social facilities, to clarify the procedure for applying this regulation in order to exclude the possibility of its "retroactive force", to define unified requirements for the distance and calculation methods in each region.

ISSUE: ONLINE ALCOHOL SALES

Online sales of alcohol are currently prohibited. At the same time, a large number of illegal merchants operate on the market and there are no mechanisms to effectively combat them. The Government of the Russian Federation is currently developing rules for the online sale of alcoholic beverages. The Association supports the efforts of the Government and the Federal Service for Alcohol Market Regulation in this area.

RECOMMENDATIONS

1. To adopt the draft Federal Law "On State Regulation of Production and Circulation of Ethyl Alcohol, Alcohol and Alcohol-Containing Products and on Limitation of Consumption (Drinking) of Alcohol Products" (regarding the remote retail sale of alcoholic drinks using the Internet information and telecommunications network).
2. To note the ban on advertising alcohol products in the Internet. To eliminate the problem in interpreting this prohibition. Based on the letter of the FAS Russia dated 20 July 2016 No. AK/49414/16, it is advisable to amend Sub-Clause 8 of Clause 2 of Article 21 of Federal Law No. 38-FZ dated 13 March 2006 "On Advertising".

ISSUE: ENTRY INTO FORCE OF 468-FZ "ON VITICULTURE AND WINE MAKING IN THE RUSSIAN FEDERATION" (HEREINAFTER, THE "LAW")

Currently, the Law gives rise to a lot of questions, such as:

- to date, no federal executive body to exercise powers in the field of viticulture and wine growing has been identified and, accordingly, there is no body that has the right to give official explanations on the implementation of the Law requirements;
- it is not clear whether the requirements of the Law apply to products that were purchased before the entry into force of the Law;
- it is not clear how to indicate information about the variety and the harvest year in the event that wine products are made from grapes of different varieties and different years of harvest;
- how to assign the correct product name if the terms in the Law do not correspond to the terms in the relevant GOSTs (State Standards), namely, the Law specifies "wine with a protected geographical indication" and "wine with a protected designation of origin", and according to GOST 55242-2012 these terms have been designated as "wine of a protected geographical indication" and "protected designation of wine origin".

RECOMMENDATIONS

To determine the federal executive body exercising powers in the field of viticulture and wine growing.

To amend the Law on "Viticulture and Wine Growing in the Russian Federation" in terms of bringing it into line with GOST, as well as the forthcoming Technical Regulations of the Customs Union.

To amend the Law on "Viticulture and Wine Growing in the Russian Federation" in terms of resolving existing issues and determining the authorised federal executive body.

WASTE-MANAGEMENT LAW

ISSUES

EXTENDED MANUFACTURER LIABILITY

In September 2019, Alexei Gordeev, Deputy Prime Minister, instructed the Ministry of Natural Resources of the Russian Federation to develop a Concept for improving the extended manufacturer liability mechanism (EML) by 3 October 2019. The EML concept, presented in January and February 2020, aimed to create economic incentives for packaging manufacturers to use recycled materials and thus move towards a cyclical economy. However, a number of proposals contained in the submitted editions threatened to destroy the system of extended manufacturer liability as such and to nullify the work carried out by manufacturers and importers of goods and packaging to collect and process waste.

In particular, the Ministry of Natural Resources of the Russian Federation proposed to transfer responsibility for the disposal of packaging to the packaging manufacturer, as well as to apply a 100% disposal standard, thus introducing a fiscal mechanism in the form of mandatory payment of an environmental fee without the ability for manufacturers and importers of goods and packaging to independently execute EML. The implementation of these proposals will lead to the elimination of the already created infrastructure for full cycle waste disposal (from collection to direct disposal). Moreover, with the introduction of the 100% environmental fee, trading companies will have to pay an increased (by about 70%) environmental fee, which will significantly increase the financial burden.

In March 2020, the new supervising Deputy Prime Minister Victoria Abramchenko agreed to postpone the approval of the EML concept. At the moment, active work is underway to discuss the provisions of the concept with all interested parties within the working group under the Deputy Prime Minister. The final version of the EML concept should be submitted by Q4 2020.

REGIONAL OPERATORS

When concluding agreements with regional operators for waste management, AEB member companies are currently facing a number of problems. The core challenge is that, in different regions of the Russian Federation, different methods for commercial accounting of municipal solid waste are used even in cases where companies use identical equipment for accumulation of MSW.

Decree of the Government of the Russian Federation No. 1156 dated 11 November 2016 (Clause 15 of Section V of the approved standard contract) provides for the choice of a method for accounting municipal solid waste in accordance with the Rules for commercial accounting of the volume and/or mass of municipal solid waste approved by Decree of the Government of the Russian Federation No. 505 dated 3 June 2016 "On Approval of the Rules for Commercial Accounting of the Volume and/or Mass of Municipal Solid Waste". Thus, the use of a number of methods for accounting MSW is allowed:

- by estimation, based on the standards for accumulation of MSW;
- by estimation, based on the number and volume of containers for storing MSW;
- based on the mass of MSW, determined using measuring instruments.

Moreover, the choice of accounting method is not regulated and is actually chosen at the discretion of the regional operator and not that of the business.

In addition, a possibility of newly reforming the waste management system is being actively discussed, which could lead to a significant increase in the financial and administrative burden on trading companies, in particular, in connection with an increase in eco-fee rates and new requirements for organizing the collection and logistics of containers and consumer goods that have lost their consumer properties.

RECOMMENDATIONS

1. The Ministry of Natural Resources and Environment of the Russian Federation provide for the establishment of a differentiated approach to determine the eco-collection rate and mechanisms for stimulating the growth of indicators for the collection and processing of secondary resources extracted from the received wastes with their subsequent use in circulation in the EML concept.
2. The Ministry of Natural Resources and Environment of the Russian Federation shall provide in the EML concept for the establishment of environmental fee rates based on approved methods for calculating environmental fee rates as per reasonable methods for assessing the costs of collection (procurement), transportation, processing, disposal of a single product or unit of a product weight that has lost its consumer properties, where the costs of creating infrastructure facilities intended for the specified purposes should be included.
3. The Ministry of Natural Resources and Environment of the Russian Federation shall provide in the EML concept for the preservation of the possibility for importers and manufacturers of goods and packaging to have a choice, i.e. to pay an environmental fee or to implement waste collection and disposal projects independently or through specialized associations.
4. The Government of the Russian Federation / Russian environmental operator shall give clear instructions to regional operators regarding the abandonment of the use of the estimate accounting method based on the standards for accumulation of MSW for certain types of retail facilities.
5. To establish that companies interacting with regional operators and owning their own landfills shall account for MSW based on the mass of MSW determined using measuring instruments.
6. To conduct a wide discussion and assessment of the regulatory impact of initiatives to reform the waste management system with the participation of companies' representatives from the wholesale and retail sectors, including small and medium-sized businesses.

FOOD WASTAGE

ISSUE

At present, Russia, like the rest of the world, is demonstrating a growing awareness of the importance of the struggle to reduce food wastages. According to data of the European Commission (2011), production and distribution account for 39% of commodity-distribution losses, end consumers for 40%, public nutrition for 14%, trade for 5%.

Reduction of waste in production is, first of all, facilitated by the introduction of new technologies and appropriate staff training. To reduce food waste during storage and transportation, it is advisable to stimulate the introduction of new types of packaging that will increase the shelf life of goods, especially perishable ones. Trading companies, in turn, shall seek to optimize and automate ordering procedures which will make it possible to avoid overstocking of the warehouse.

Moreover, food charity plays an important role, which helps to prevent food losses by transferring to the needy segments of the population food products that have not lost their consumer properties but must be recycled. In April 2020, the President of the Russian Federation issued an order to exclude products donated to charitable and socially oriented organizations from income tax. The corresponding amendments were made to part two of the Tax Code of the Russian Federation (draft law No. 959325-7) and should enter into force on 1 January 2021.

At the same time, food products donated to charity will continue to be subject to value added tax.

RECOMMENDATIONS

To resolve the problem, it is necessary to focus on the use of big data analytics to optimize logistics processes and manage orders in trade,

conduct educational and training work among consumers, improve processing technologies and adopt legislation to stimulate the proactive work of businesses in this direction (including food charity).

Abolish value added tax on food donated to charity.

REGULATION OF CROSS-BORDER ELECTRONIC COMMERCE IN THE RUSSIAN FEDERATION

ISSUE

Over the past 8 years, the Government and the expert community have been discussing the regulation of cross-border online trade in Russia.

Electronic commerce is the most rapidly growing distribution channel in terms of volume and importance for many enterprises. According to current estimates, the cross-border segment accounts for more than 30% of the e-commerce market, with sales volumes of more than RUB 500 billion in 2019. As of mid-2020, the Russian Post is importing more than 1 million parcels a day from abroad. In 2020, the cross-border segment is expected to account for more than 40% of online sales. The cross-border sector is the foundation of the commercial ecosystem for many stakeholders and includes the processing of information, sales, payments and supply of goods from more than 100 countries to Russian consumers.

ADVANTAGES AND DISADVANTAGES

- Russian market participants operating under the general taxation regime are concerned by the negative impact that the current regulation is having on competition. A foreign seller is exempt from VAT and must pay duty only if the sale exceeds a threshold for shipment cost of EUR 200. This is unfair in relation to local manufacturers and companies engaged in electronic commerce with Russian consumers within the country. The Russian budget is experiencing a shortage in its tax and customs revenues. Domestic manufacturers and retailers suffer losses due to the advantages given to external competitors. The Russian government decided to gradually lower the duty-free threshold, transfer to the Russian Post and other logistics companies the function of an authorized operator for remote payment of duties and fees for individuals, which will create the expected equality between Russian and foreign companies. At the same time, the discussed proposal on "bonded warehouses", when duties and taxes will not be paid immediately, but when the purchased goods are exported from a customs warehouse located on the territory of Russia, requires a more careful study in order to prevent the flow of traditional imports into the "bonded warehouses".
- Other market participants suggest that the introduction of VAT and customs duties for cross-border sales will lead to negative consequences for Russian consumers in terms of price increases, reduced selection. New trade barriers will appear that will affect the business associated with the cross-border trade channel. It is also expected that a gradual increase in taxes and fees will turn out to be less than the Government's expenses and investment in organizing the collection and monitoring of the additional taxes and fees.

RECOMMENDATIONS

It is important to use international and Russian experience. In particular, in the Russian Federation, the Russian Post and the Federal Customs Service conducted an experiment where all the necessary customs duties on goods transferred to the IGOs were paid by the Russian Post. Extending this experience to the entire flow of cross-border trade will have a positive impact of the new regulation on consumers in Russia, on the development of internal logistics and financial services, including the Russian Post, predicting the costs of the Federal Tax Service and the Federal Customs Service of Russia in the event of VAT and/or customs duties levying in cross-border online commerce. The experience of the Government of Russia in collecting the "Google Tax" since January 2017 should also be analyzed in particular.

TRACEABILITY

ISSUE

In recent years, a number of electronic systems have been introduced in Russia by various authorities to monitor and track the movement of goods on the consumer market. These include, in particular, USAIS "Mercury", the marking system. A system of documentary traceability of imported goods is currently being developed. All this has already led to significant costs for participants in the wholesale and retail trade (purchase of the necessary equipment, development/adaptation of appropriate IT solutions and business processes, training of our own personnel and partners). The lack of common standards for such systems (a single catalogue of goods, a unified IT platform, labelling standards, principles of traceability, etc.) dramatically reduced the effectiveness of such systems and increased the burden on market participants, especially among small and medium-sized businesses.

RECOMMENDATIONS

For the effective operation of the unified national traceability system, it is necessary to fulfil the following key conditions:

1. Determine the responsible department and entrust it with creating a single interface for business to transmit data on the circulation of goods within the framework of existing and developed (supra-)national information systems, eliminating duplicate functions.
2. To approve a "road map" with clear deadlines for the implementation of traceability for each of the planned categories of goods, with pilot projects providing for a sufficient transition period during which penalties will not be applied, in order to avoid parallel labelling in several categories in order to optimize the burden on the business (including small and medium business).
3. To ensure that product categories are included in traceability systems only based on the results of the feasibility assessment and regulatory impact assessment, including from the

point of view of the investment ambient, as well as the development goals of small and medium-sized businesses.
4. To ensure the harmonization of traceability requirements in the EAEU territory in order to avoid the creation of additional trade barriers.
5. It is necessary to provide a detailed description of the proposed system in terms of:
   - the rights, obligations and responsibilities of business models of the commercial operator of the system (with the main provisions of the draft regulatory legal acts);
   - a description of the process of interaction between the private operator and the market (in terms of prohibitive and permissive functions);
   - description of the process of interaction with government bodies (in terms of prohibitive and permissive functions);
   - the presence or absence of additional commercial intermediaries when working with the system;
   - ensuring the confidentiality of information constituting a trade secret.
6. To coordinate the format and procedure for providing data from the information system with market participants (including associations of small and medium-sized businesses).
7. To prevent unfair competition and exclude access of participants of goods circulation to data having high commercial sensitivity for other companies participating in the traceability system (e.g. to information about the supply chain or sales to legal entities).
8. To prevent the introduction of disproportionate (including criminal) liability for minor violations of the operating procedure of such a system by business participants. To consider the possibility of using the data obtained through the labelling and traceability system for a clearer division of liability for the sale of counterfeit products between the seller and the manufacturer.

COMMODITY (INVENTORY) LOSSES

ISSUE

Current regulation: retail chains are currently suffering losses from theft of goods in self-service lounges ("unknown losses") in the amount of 0.5 to 1.7 percent of revenue. At the same time, these commodity losses are objective and inevitable for this trading format and cannot be reduced to zero even with the introduction of the most advanced systems for ensuring the safety of goods. The specifics of the goods sale in self-service stores also does not allow identifying specific persons responsible for the loss of each individual unit of goods.

The objective nature of such costs and the impossibility of identifying the perpetrators were noted by the Supreme Arbitration Court of the Russian Federation when reviewing the Auchan Case[1], which established that such costs can be taken into account for tax purposes on the basis of paragraph 2 of Article 265 of the Tax Code of the Russian Federation, provided that they meet the requirements of paragraph 1 of Article 252 of the Tax Code of the Russian Federation, without the mandatory submission of documents issued by the authorized government body in confirmation of the absence of persons responsible in theft.

At the same time, the applicable law of the Russian Federation on the recording and accounting for commodity losses (Tax Code of the Russian Federation, Order of the Ministry of Finance of the Russian Federation No. 49 dated 13 June 1995 "On the Approval of Methodological Recommendations for the Inventory of Property and Financial Liabilities") does not take into account the objective features of modern retail trade and established approaches to assessing loss of goods (see Decision of the Supreme Arbitration Court of the Russian Federation No. VAS-13048/13 dated 4 December 2013 for the Auchan Case). It seems to be insufficiently defined and ethically outdated. In addition, there are no necessary explanations of the Federal Tax Service of Russia and/or the Ministry of Finance of Russia, establishing a single standard of tax control on issues of accounting for goods losses.

All this leads to the fact that the tax authorities have different approaches to assessing the validity of accounting for commodity losses for tax purposes and in some cases ignore the objective and inevitable nature of the occurrence of commodity losses, despite the measures taken by retail chains to prevent them.

The abnormally high requirements imposed in some cases for the confirmation of expenses in the form of theft of goods by unidentified persons lead to significant administrative and time costs on the part of retailers. The imperfection of the applicable law of the Russian Federation and the inconsistency of the approaches of the tax authorities to the assessment of commodity losses are creating significant legal uncertainty in the assessment of the tax consequences of the sale of goods, objectively associated with the facts of unidentified theft. As a result, the business is actually facing additional taxation of commodity losses or is being forced to take on tax risks.

According to the AEB Retail Committee, the solution to the issue of accounting for commodity losses is complex and is associated with both the need to improve the regulatory framework (Tax Code of the Russian Federation, procedure for conducting inventories and registration of their results) and the need to develop uniform standards for tax control over the legality of accounting for expenses in the form of shortages of goods when taxing profits.

RECOMMENDATIONS

The AEB Retail Committee offers the following solutions to this problem:
- Setting a threshold value (as a percentage of the total amount) for inventory losses, the amount of which can be accounted for in the

[1] Decision of the Supreme Arbitration Court of the Russian Federation No. VAS-13048/13 dated 4 December 2013

taxable base on the basis of a simplified package of supporting documents.

- Updating the currently applicable order of the Ministry of Finance of Russia No. 49 dated 13 June 1995 "On the Approval of Methodological Recommendations for the Inventory of Property and Financial Obligations" taking into account the objective characteristics of retail and the position of the Supreme Arbitration Court of the Russian Federation on the Auchan Case.
- Developing a uniform approach to tax control over the legality of accounting for commodity losses for the purpose of taxation of profits within the Federal Tax Service of Russia.

COMMITTEE MEMBERS

Auchan Russia • H&M Hennes & Mauritz LLC • IKEA DOM LLC • Lenta LLC • LEROY MERLIN Russia • M.Video • METRO AG Representative office • OBI Russia.

SEED COMMITTEE

Chairman:
Vladimir Druzhina, KWS

Deputy Chairman:
Denis Zhuravskiy, Syngenta

GR Manager:
Tatiana Belousovich (tatiana.belousovich@aebrus.ru)

The Seed Committee was set up in 2014 as a Subcommittee, but it became a full Committee by the decision of the AEB Board in March 2015. Currently, it unites seven leading international seed-producing and importing companies.

The aim of the Committee is to represent and lobby for its members' interests based on a consolidated position on the key issues of selection and seed growing through interaction with government bodies, public organizations, branch associations and unions to create and support a favourable climate for business development.

Specialists from the Committee member companies, together with the Crop Protection Committee member companies, are members of two inter-committee Working Groups: Anti-Counterfeiting Activity and Communications and Information Support. Moreover, the Committee has formed a Working Group on Biotechnologies.

INTRODUCTION

According to professional marketing research data, the global seed market has continued to grow steadily, though modestly. Maintaining the trend of stable growth in the production of the required amount of high-quality seeds of field and vegetable crops is the basis for a reliable food supply for the increasing population of the planet.

Today, the further progressive development of agriculture in Russia requires innovative agricultural technology which would ensure the efficiency and growth of agricultural production and optimize the net cost of agricultural products.

CREATION OF CONDITIONS FOR LOCALIZATION OF SEED PRODUCTION IN RUSSIA

ISSUE

The Russian government continues to worry about the dependence of Russian farmers on imported seeds for a range of important agricultural crops. Localization of seed production in Russia by international companies is considered one of the ways to solve this problem. The active discussion of seed production localization criteria is ongoing. The Annex to Decree of the Government of the Russian Federation No. 719 of 17 July 2015 'On the Confirmation of Industrial Production on the Territory of the Russian Federation' establishes the requirements for industrial products to be considered products produced on the territory of the Russian Federation with regard to various industries. Such requirements are not available for seed products yet.

A number of regulatory acts contain a requirement to perform primary seed production on the territory of the Russian Federation (production of parent lines of hybrids or super-elite varieties), as well as research and selection activities for the cultivation of new varieties and parent lines of hybrids. Such a requirement can hardly be considered economically and professionally reasonable, especially at the initial phase of localization. First of all, primary seed production is possible only under special conditions, including the availability of special isolated breeding zones and special expensive technology, apparatus and equipment to maintain and preserve genetic purity and the varietal and sowing features of parental forms, as well as guaranteed protection of intellectual property rights. Rather, it can be implemented as the final stage of seed production localization if it is economically feasible. Moreover, in other industries (machine tools, automotive, special machinery, etc., represented in the Annex to Decree of the Government of the Russian Federation No. 719 of 17 July 2015), such a requirement to conduct research and development and the production of high-tech components in the Russian Federation is not present.

RECOMMENDATIONS

Members of the Committee have expressed their willingness to invest in seed production in the Russian Federation and the construction of production facilities. Up to 40% of the seeds sold by the Seed Committee member companies in Russia are already produced in Russia. Companies already have or are planning to launch their own R&D and breeding stations; they are engaged in production of hybrids and varieties of the main field crops and have created laboratories for seed quality testing. In addition, some companies has started the construction of their own factories: the KWS company is building a plant for the production of sugar beet seeds in the Lipetsk Special Economic Zone, and the Euralis Semences company, merged with the Caussade Semences Group in Lidea, is building a plant for the production of field crop seeds in the Pavlovsky district of the Voronezh region.

However, the requirement to transfer production of parent lines of hybrids to the territory of the Russian Federation is currently unreasonable, and in no way encourages companies to further develop their own production in the Russian Federation.

The creation of the economic and legal conditions for the localization of the production of seeds bred in Russia will allow, on the one hand, a decrease in the dependence of Russian agricultural producers on the import of seeds and the related risks, and, on the other hand, it will preserve the potential for large harvests.

REGULATION OF SEED TURNOVER

ISSUE

In recent years, the development of the draft Federal Law 'On Seed Production' (hereinafter referred to as the Draft) has intensified, which has been going on for over 10 years. The AEB fully supports the efforts of the Ministry of Agriculture of Russia to form an appropriate regulatory and legal framework for one of the leading sectors of agriculture that meets the mutual interests of the state and business, and participates in the discussion of the draft law in accordance with the established procedures.

The current version of the Draft raises concerns among both international and local seed producers, primarily regarding bureaucratic barriers. A number of new requirements are being introduced, expressed in strengthening control, which concerns not only the quality of seeds, which is correct and logical, but also the places of production, storage and sale of seeds. Obstacles to business development, including to the localization of seed production in Russia, are being created. These requirements apply both to seeds produced in Russia and to imported seeds, which involves control over the production sites, storage and sale of seeds on the territory of foreign states. The latter should be linked to the legislation of the importing countries. In addition, the International Organization for Economic Cooperation and Development (OECD), of which Russia is a member, has developed rules and schemes that establish requirements for the cultivation, field inspection, certification and labelling of seeds for seven groups of agricultural plants. The inspectors can be both representatives of state authorities and representatives of seed originator companies. Seeds that have passed the certification procedure under the OECD schemes receive the status of seeds of guaranteed varietal quality. Thus, there is no control over the entire process of seed production, from sowing to sale, not to mention control over the places of production, storage and sale of seeds on the territory of importing foreign states.

The AEB has submitted a number of requests to the Ministry of Agriculture and the Ministry of Economic Development asking to remove the excessive requirements and bring the provisions of the Draft into line with the provisions of the Federal Law No. 184-FZ of 27 December 2002 'On Technical Regulation' and the Federal Law No. 248-FZ of 31 July 2020 'On State Control (Supervision) and Municipal Control in the Russian Federation', as well as with the law of the Eurasian Economic Union and the European Union.

RECOMMENDATIONS

Cooperation with the state authorities, including the RF Presidential Administration, will continue in order to explain and prevent the adverse effects of Rosselkhoznadzor's excessive requirements for Russian agriculture, in particular, for the 2020 sowing campaign, due to the impossibility of the timely import of seeds.

The Committee aims to continue constructive interaction with the state authorities, including the RF Presidential Administration in order to explain the adverse effects of the Draft's excessive requirements for the development of local seed production and to exclude such effects.

IMPROVING THE STATE CROP VARIETY TRIAL SYSTEM

ISSUE

State trials of seed varieties and hybrids are one of the key tools for the development of state policy in the field of seed selection and production.

The following requirements must be met in order to obtain objective results:

- compliance with the state seed variety trial methodology: mandatory availability of reference standards for comparison, compliance with the randomization principle, and taking samples for recording crop yields;
- compliance with agrotechnical measures to ensure the growth and development of crops: appropriate preparation of soil, fertilization, and usage of crop protection products.

The following clauses are included in the contract between the applicant company and the regional trial station for the services of conducting state seed variety trials: 2.1.1 State trial methodology and 2.1.2 Agrotechnical measures. However, some regional trial stations fail to perform their obligations, thus violating the terms of the contract. In this case, with poor soil nutrition and in the absence or insufficiency of protection from diseases and pests, seed varieties and hybrids undergo 'natural selection', which violates the principle of objective state seed variety trials.

Order of the Federal State Budgetary Institution 'The Russian State Commission on Testing and Protection of Selection Achievements' (hereinafter, the State Commission) No. 143 of 31 August 2018, related to its key activities on a paid basis, significantly increased the cost of state variety tests. However, the quality of the tests does not always remain at the level stated in contracts with companies.

RECOMMENDATIONS

Constructive dialogue between the State Commission and the applicant companies greatly contributes to an increase in the level of state tests and the objectivity of assessment of their results. The Committee began cooperating with the State Commission from the moment it was set up. Working meetings are held to discuss key issues of the state crop variety trials, and experts of the Committee member companies take part in updating the methods of the state crop variety trials for the value cultivate utility of corn and sunflower.

The Committee's position on the issue of improving the state seed variety trial system provides for accomplishing the following objectives:

- Ensuring accurate fulfilment of the procedure for issuing orders for the supply of seed samples of varieties and hybrids for carrying out state crop variety trials; informing applicant companies in a timely manner about current changes to the name or address of the testing station; and compliance with deadlines for seed order issuance, etc.
- Improvement of the procedure for state seed variety trials: provision of regional trial stations with specialized machinery for launching seed variety trials; compliance with the methodology of state seed variety trials and implementation of agrotechnical measures for the growth and development of crops; timely notification of applicant companies about the exclusion (removal) of a seed variety/hybrid from trials because of insufficient information (in particular, because of the absence of distinctness, uniformity and stability (DUS) test results from EU states), incorrect execution of documents, or other technical reasons; and provision of an opportunity for applicant companies to visit regional trial stations.
- Provision of substantiating criteria for decision-making on the inclusion of a variety/hybrid in the State Register of Selection Achievements Permitted for Use on the Territory of Russia to the companies involved; influencing additional criteria on decision-making: technological uniformity, commercial yield, transportability, etc.
- Optimization of maintenance of the State Register of Selection Achievements Permitted for Use on the Territory of Russia: development of a procedure for variety/hybrid reregistration after 10 years of its inclusion in the State Register, with subsequent renewal of registration upon the request of the applicant without further trials.
- Provision of the opportunity to a Committee representative to attend the meetings of the Expert Commission as an observer.

CONCLUSION

With its great potential, the Committee sees its development both in the attraction of new members and in strengthening and widening cooperation with government bodies, industry associations, and public organizations. The top priorities are:

- optimizing the registration procedure for new seed varieties and hybrids;
- creating conditions for the localization of seed production in Russia:
  - ensuring a favourable regulatory environment for the development of selection and seed production;
  - ensuring the protection of intellectual property rights in crop selection and seed production;
  - creating conditions for the conduct of scientific research in crop selection by international companies;
  - establishing clear rules and criteria for the localization of the production of seeds in order to recognize them as seeds produced in Russia.

COMMITTEE MEMBERS

BASF • Bayer • Corteva Agriscience • Euralis Semences Rus • KWS RUS • Limagrain • Syngenta.

COMPLIANCE & ETHICS COMMITTEE

Chairperson:
Svetlana Makarova, Nokia

Deputy Chairman:
Alexey Khakhulin, Fortum

Committee Coordinator:
Svetlana Nechaeva (svetlana.nechaeva@aebrus.ru)

APPLICATION OF NEW TECHNOLOGIES IN COMPLIANCE IN A DYNAMICALLY CHANGING WORLD

ISSUE

The outbreak of the COVID-19 pandemic has forced companies to reconsider their priorities in many areas. It has obviously led to severe financial problems for both companies and workers in all industries. Since many companies are currently resuming their activities while preparing for further twists in the 'new reality', many compliance challenges remain, and new compliance challenges will arise which require proper handling.

RECOMMENDATIONS

Companies need to be flexible, adapt to rapid changes in their industries and the market in general and revise their strategic goals where necessary, with a commitment to ethical and compliance principles.

Companies need to pay attention to the value of an informed compliance culture and foster a culture of ethical behaviour and business ethics to avoid exacerbating the negative financial impact of the crisis. The current situation is already complex enough and does not need to be further complicated by the legal consequences of violations in the field of compliance, including criminal ones.

ISSUE

The number of legal requirements is continuously growing. Amid such regulatory pressure, compliance experts are faced with a host of new tasks requiring immediate attention. How can we maintain the gold standard of compliance in a fast-changing regulatory environment?

RECOMMENDATIONS

Compliance is becoming an integral element of corporate culture and helps build business based on high corporate standards. Corporate culture has a defining value for companies. Building a corporate culture is the CEO's responsibility, but it requires input from each and every employee. Understanding corporate values is crucial for creating a trust-based business environment. Today the presence of policies and procedures alone is not enough. It is essential to seamlessly incorporate these procedures into a company's activities or, in other words, create a balance between adequate control and acceptable risks.

ISSUE

The rapid growth of technology cannot be stopped. Whether we like it or not, technology penetrates every sphere of human life. Compliance is not an exception. Using artificial intelligence helps build relations between objects. Technological progress is a driver for applying technologies, and it poses new challenges for the compliance function. Compliance departments operate using modern automated systems. Such systems are often not interconnected and are not flexible in relation to regulatory changes, which requires significant costs for their modernization. The question arises: What impact does the rapid development of compliance technologies have?

RECOMMENDATIONS

The strategy pursued by a company determines the use of technology across the company and in all areas of its activities. Reasonable use of technology is another factor that is no less important. The company's maturity and the availability of methods and internal processes as well as the preparedness of its personnel for automation are factors to be taken into account. Sensible use of new technology helps companies progress in all their areas. New technology is often mistrusted, which is an understandable human reaction to everything new. Changing this way of thinking requires time. It is important to understand that new technology will do good and will not lead to any adverse consequences.

ISSUE

Using new technology becomes more complicated because of the regulator's requirements regarding personal data as well as conflicts in the laws of various jurisdictions.

RECOMMENDATION

Companies should keep within certain legal boundaries when collecting and processing personal data in the course of their

commercial activities. Cross-border data collection is a common practice both for law enforcement and intelligence bodies and for multi-national private companies. This means that the legal framework of two countries may be applicable to their activities: one of the territory where the data are collected and the other of the territory where the data are processed. If different countries have conflicting legal requirements or provisions, this may create tangled situations requiring expert analysis.

ISSUE

Modern technology is not always used to benefit society. Compliance experts are finding it more difficult to cope with their duties as fraudsters are not idle. The number of cyberattacks is growing from year to year (in 2020 the situation has been especially aggravated by the circumstances associated with the pandemic and the changes that countries were forced to make, and that business is forced to adapt to in one way or another). What must a good compliance specialist know and be able to do today?

RECOMMENDATIONS

Compliance specialists need to expand their competences for working with big data. The most in-demand areas of expertise include working with data and building risk-assessment algorithms. At the same time, even the newest technology requires competent specialists who will be able to properly apply the results of its use. This is possible only subject to constant professional development and an ability to quickly develop and adapt skills, processes, controls to the changing regulatory and business environment.

THE ANTIMONOPOLY COMPLIANCE LAW HAS COME INTO FORCE

ISSUE

On 12 March 2020 amendments to the Law 'On Protection of Competition' came into force which regulate the arrangement of an internal system for ensuring compliance with the requirements of antimonopoly legislation, so-called antimonopoly compliance. Along with the existing institutions for the prevention of and release from liability, the purpose of the institution of antimonopoly compliance is to prevent violations of antimonopoly laws. The above amendments introduced the concept of an internal system ensuring compliance with the requirements of antimonopoly legislation and stipulate basic requirements for the development and implementation of the appropriate compliance programmes. At the same time, this draft law provides for posting information about the antimonopoly compliance programme on the corporate website.

However, contrary to expectations that amendments would be introduced to the Administrative Code reducing the administrative fine for a violation if preventive measures have been taken as an additional measure to stimulate implementation of such programmes, no such changes have been made in the Administrative Code, which has somewhat reduced interest in this issue. At the same time, it is obvious that antimonopoly legislation must not be violated. And the presence of a provision in the Administrative Code reducing the fine if there is an effective anti-monopoly compliance system in place should not be the only incentive for organising antimonopoly compliance in a company, and compliance assurance should not be arranged with the sole purpose of mitigating liability.

It is also worth mentioning that the new draft Administrative Code provides for a rule in note 2 to article 27.1 of the Draft Administrative Code where the presence of antimonopoly compliance is directly specified as a special mitigating circumstance in the case of violations of antimonopoly legislation by self-employed entrepreneurs or legal entities, such as abuse of their dominant position in the commodity market, conclusion of a contract restricting competition, performance of concerted actions restricting competition, coordination of economic activities or unfair competition.

To mitigate responsibility according to the new draft Administrative Code, the following two conditions shall be met:

- A system of internal antimonopoly compliance must have been organized before the date of the relevant administrative violation (or, in the case of a continuing violation, before the anti-monopoly authority detected the signs of an administrative violation).
- The relevant violation of antimonopoly legislation must have been discovered and terminated as of the date of initiation of administrative proceedings in connection with the implementation of measures of the anti-monopoly compliance system.

RECOMMENDATIONS

Business should still pay attention to the position of the FAS of Russia both regarding the presence of an antimonopoly compliance programme as a 'best market practice' and regarding the elements which such a programme must contain in order to be effective. Antimonopoly compliance becomes even more relevant in connection with the increasing frequency with which the Federal Antimonopoly Service has been discovering violations of the legislation by foreign companies and their subsidiaries.

PROCESSING OF PERSONAL DATA OF EMPLOYEES IN THE CLIMATE OF THE COVID-19 PANDEMIC

The COVID-19 epidemic has forced many companies to transition a significant number of their employees to remote work, which has entailed the emergence of additional difficulties in terms of processing personal data and has negatively affected the employer's ability to monitor the actions of its employees.

ISSUE

First, the COVID-19 pandemic has influenced the emergence of new means of data processing by data controllers. For example, in ac-

cordance with Decree of the Mayor of Moscow No. 12-UM dated 5 March 2020, all employers in Moscow are obliged to measure the body temperature of their workers at workplaces and suspend persons with fever from the office. In accordance with article 10 of the Federal Law 'On Personal Data', body temperature falls into a special category of personal data since it is information about the health of the personal data subject. Such data may be processed only with written consent. The Federal Service for Supervision of Communications, Information Technology and Mass Media published a message stipulating that the consent of the employee to temperature measurement is not required since measures aimed at identifying infection are connected with determining the possibility of performing job functions. The explanation of the Federal Service for Supervision of Communications, Information Technology and Mass Media does not contain any references to legal provisions that would empower the employer to measure body temperature or to suspend employees from work due to their inability to perform their functions in the event of a change in body temperature. This message is not a legally binding regulatory act and thus creates risks for companies of being prosecuted in court on the basis of claims filed by data subjects.

RECOMMENDATIONS

To discuss with lawmakers the possibility of amending the Federal Law 'On Personal Data' so as to liberalise the requirements for consent to personal data processing, including the possibility of processing special categories of personal data with consent obtained in any acceptable form if such processing is required for the exercise of the rights and legitimate interests of the data controller.

ISSUE

Second, remote work requires the processing of personal data on devices belonging to employees as well as on corporate devices located outside the employer's premises. This problem is not new, but this is obviously the first time the Russian economy has faced such a huge scale of remote personal data processing.

RECOMMENDATIONS

In this regard, the following activities are of particular relevance:
- revising personal data processing and making changes to previously developed lists and methods of processing personal data;
- adjusting employers' corporate bylaws in connection with changes in the characteristics of personal data information systems;
- making sure the data contained in the register of personal data controllers are up to date and making timely amendments thereto;
- ensuring the confidentiality of personal data using technical means.

The interested public authorities should, together with data controllers, collect and summarize the best risk management practices connected with the processing of personal data by employees working outside the office as well as by employees processing personal data received by the employer on their personal devices.

ISSUE

Third, it is becoming more and more difficult to monitor employees' actions since the number of devices and processes to be monitored is increasing. For the purpose of monitoring employees' actions using technical means, the employer generally relies on the consent of the data subject, which may be withdrawn. Withdrawal of consent to personal data processing may make such processing impossible and is an extremely likely means of protection for unscrupulous employees during investigations.

RECOMMENDATIONS

Employers should assess whether their employment contracts and corporate regulations are up to date in order to establish a clear list of cases when it is possible to monitor employees' actions and should analyze the legal grounds for such monitoring and develop their legal position regarding additional grounds for processing personal data if consent is withdrawn.

RUSSIA MIGHT IMPOSE CRIMINAL PENALTIES FOR COMPLIANCE WITH FOREIGN SANCTIONS

ISSUE

In 2018 an initiative group of State Duma deputies registered a draft federal law suggesting amending chapter 29 of the Criminal Code of the Russian Federation to include article 284.2, imposing criminal penalties for a refusal to enter into or perform transactions because of foreign restrictive sanctions, such as those imposed by the European Union, the US and other countries, unions and organizations. The text of this document provides for criminal penalties for actions (inaction) in pursuance of a foreign country's resolution on imposing restrictive measures. Such actions (inaction) must entail a restriction or a refusal to perform or enter into an operation or transaction. Russian citizens will also bear liability for wilful actions contributing to the introduction of such restrictive measures. After the consideration of the draft law in the first reading, a number of appeals were received from representatives of business communities with the aim of making a number of amendments to the draft law. Despite the declared goals of protecting the interests of citizens, Russian legal entities and the Russian Federation, the adoption of this draft law in its current version may cause irreparable damage to the Russian business climate. If this document is adopted in its current version, it is highly probable that a substantial part of international business may decide to terminate its activities in Russia. This draft law will aggravate the situation for doing business in the Russian Federation, which is already complex enough as it is. Any liability for compliance with the requirements of applicable jurisdictions may lead to the

most tragic of consequences both for international business and for the Russian economy in general.

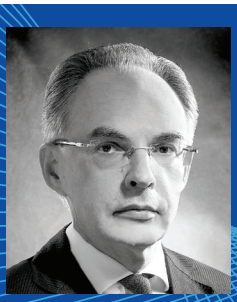
RECOMMENDATIONS

Since the consideration of the draft law has been postponed to another plenary session without a clear date, it is advisable to consistently monitor the status of the draft law and, when its consideration is resumed, take active steps in accordance with the course of its consideration (to submit a proposal for the conduct of a repeat expert examination of the draft law as well as for the provision of an expert opinion about the potential impact of the draft law on certain sectors of the Russian economy; to send appropriate appeals from business associations, including foreign business associations, producers' unions and consumer unions, etc).

COMMITTEE MEMBERS

AIG Insurance Company, JSC • Air France • Akzo Nobel Coatings LLC • ALD Automotive • ALRUD Law Firm • AO Deloitte & Touche CIS • Astellas Pharma ZAO • AstraZeneca Pharmaceuticals LLC • Atlas Copco, JSC • Baker McKenzie • BEITEN BURKHARDT Moscow • BNP Paribas CARDIF Insurance company • Boehringer Ingelheim • BRAND & PARTNERS LLC • British American Tobacco Russia • Bryan Cave Leighton Paisner (Russia) LLP, Russian branch • Caterpillar Eurasia LLC • Center-invest Bank • Chiesi Pharmaceuticals LLC • CMS Russia • Coleman Services UK • Continental Tires RUS OOO • Control Risks • Credendo – Ingosstrakh Credit Insurance LLC • Credit Agricole CIB AO • DAIMLER KAMAZ RUS OOO (DK RUS OOO) • DANONE RUSSIA, JSC • De Lage Landen Leasing • Dentons • DHL Express • Dow Europe GmbH Representation office • Dr. Reddy's Laboratories Ltd. • Drees & Sommer • Egorov Puginsky Afanasiev & Partners (EPAM) • Euler Hermes • EY • General Motors CIS • Generali Russia & CIS • GlaxoSmithKline Trading, JSC • Grata International • HEINEKEN BREWERIES, LLC • Hempel AO • Hino Motors, LLC • HSBC Bank (RR) OOO • Hyundai Truck and Bus Rus LLC • IKEA DOM LLC • Imperial Tobacco Sales and Marketing • Inchcape Holding LLC • John Deere Rus, LLC • KPMG AO • Kuehne+Nagel • LANXESS LLC • Liniya Prava Law Firm • M.Video • MAN Truck & Bus RUS LLC • Mannheimer Swartling • Mercedes-Benz Financial Services Rus OOO/Mercedes-Benz Bank Rus OOO/Mercedes-Benz Capital Rus OOO • Mercedes-Benz Russia • Merck LLC • Michelin • Noerr OOO • Nokia • Novo Nordisk A/S • Pepeliaev Group, LLC • Peugeot Citroën Rus (Groupe PSA) • Philips LLC • Porsche Russland • PPG Industries LLC • PwC • Refinitiv SA - Moscow branch • Repsol Exploracion S.A. • Risk Advisory Group Ltd • Robert Bosch OOO • Roche Diagnostics Rus LLC • ROCKWOOL • Rödl & Partner • Rosbank • SAP CIS • Scania-Rus LLC • Schneider Electric Joint Stock Company • SCHNEIDER GROUP • SERVIER • Shell Exploration and Production Services (RF) B.V. • Siemens LLC • SOCIETE GENERALE Strakhovanie Zhizni LLC • Syngenta • Tinkoff Online Insurance, JSC • TMF Group • Total E&P Russie • Toyota Motor • Urus Advisory Ltd. • Volkswagen Group Rus (Audi/Bentley/Lamborghini/ Škoda/ Volkswagen/Volkswagen Commercial Vehicles) • Whirlpool RUS • ZURICH RELIABLE INSURANCE, JSC.

CUSTOMS & TRANSPORT COMMITTEE



Chairman:
Dmitry Cheltsov

Deputy Chairpersons:
Sergei Gusev, Electrolux; **Wilhelmina Shavshina**, EY

Committee Coordinator:
Ksenya Bortnik

INTRODUCTION

The experts of the Customs & Transport Committee continuously analyze the effective legal acts regulating transport operation and customs, as well as new draft documents. Based on the analysis, the Committee develops recommendations to reduce the risks of doing business, prepares proposals for amending the applicable laws, as well as draft legal acts.

The AEB Committee members are included in the Public Council under the FCS of Russia and the Expert Advisory Council for the implementation of customs policy under the FCS of Russia. The Committee experts are included in the Commissions and the Expert Group of the Public Council under the FCS of Russia, as well as the standing committees of the Expert Advisory Council for the implementation of customs policy under the FCS of Russia.

The Committee mediates a constructive dialogue between the authorities and the business community on transport and customs regulation in order to enhance business environment by improving the quality of public administration in these areas.

Currently the Committee has identified the most pressing problems and proposed ways of solving them.

DEVELOPMENT OF THE INSTITUTION OF AUTHORIZED ECONOMIC OPERATOR

New regulations introduced in 2018 to guide activities of the Authorized Economic Operator (AEO) gave a new impetus to the development of this institution. New operators have appeared from among the customs representatives, the AEO status is taken into account when categorizing participants in foreign economic activity, agreements on the essential requirements for the AEO accounting system have been reached.

ISSUE

In practice, the limited extent of legislative easing implemented to date is an obstacle to further development of the AEO institution. Existing operators and companies applying for the AEO status are interested in new easing that could help speed up goods turnover and improve customs procedures. In particular, this means resolving the issue of labelling goods in AEO warehouses; expanding the practice of periodic declaration of imported goods for AEO with a gradual transition to payment of customs duties upon submitting the final declaration (combining the release prior to filing and periodic declaration); granting the right to AEO carriers to declare goods delivered from online stores to individuals and to pay customs duties for them, and many other types of easing in the field of customs clearance.

RECOMMENDATIONS

The EEC should provide/develop new types of easing for authorised economic operators based on the existing experience for the effective legislation and taking into account the international best practices. The AEB Customs & Transport Committee is preparing consolidated proposals for amending the customs union legislation.

ADMINISTRATIVE RESPONSIBILITY FOR CUSTOMS RULE VIOLATIONS

ISSUE

After numerous changes made to Chapter 16 of the Code of Administrative Offences of the Russian Federation, the descriptions of offences are still imperfect and inadequacy and disproportionate nature of sanctions established for individual violations of customs rules remain.

RECOMMENDATIONS

According to the Committee, the shortcomings in the legislation on administrative responsibility for customs rule violations can be comprehensively solved only after amendments to the relevant chapter of the Code of Administrative Offences of the Russian Federation based on proposals made by the expert community and taking into account the current law enforcement practice.

In this regard, the Committee approves the adoption of Federal Law No. 207-FZ dated 23 June 2016 "On Amendments to the Code of Administrative Offences of the Russian Federation" and Federal Law No. 213-FZ dated 23 June 2016 "On Amendments to the Code of the Administrative Offences of the Russian Federation with Regard to Improving Administrative Responsibility for Violation of Customs Rules", whose drafts were developed with the direct participation of the Committee's experts. The Committee also welcomes the adoption of Bill No. 130151-7 prepared by the FCS of Russia "On Amendments to the Code of the Administrative Offences of the Russian Federation (Regarding the Payment of

Fines for Administrative Offenses in the Field of Customs Activities)" in the first reading.

At the same time, the Committee notes that not all existing issues in the legislation on administrative responsibility for customs rules violations have been resolved in the above-mentioned legal acts.

According to the Committee, the most pressing issues requiring an early solution are problems with the standards established in Part 3 of Article 16.1, Part 1 of Article 16.2, Part 3 of Article 16.12, as well as in Article 16.15 of the Code of Administrative Offences of the Russian Federation.

Due to the above, it seems extremely necessary, as part of development of a new version of the Code of Administrative Offences of the Russian Federation, to fully revise Chapter 16 of the Code to bring the provisions of the Code in line with the standards of the Customs Code of the EAEU and the Federal Law "On Customs Regulation in the Russian Federation...", and to eliminate systemic problems identified in the law enforcement practice in terms of the ambiguity in the offense description and disproportionate nature of the prescribed sanctions (inadequacy of punishment) relative to the degree of public danger, economic damage and adverse consequences of offences.

LABELLING PRIOR TO IMPORT OF GOODS

ISSUE

After the enactment of the Treaty on the Eurasian Economic Union (EAEU), many importers face refusals by customs bodies to release goods and administrative sanctions, including seizure of goods, when importing goods that have not been labelled with the common mark of product circulation in the market (EAC) and/or without other mandatory labelling required by the technical regulations. According to the technical regulation requirements, the common mark of product circulation in the market (EAC) and other labelling must be applied onto the products before they are released into circulation. The documents of conformity are issued (registered) on the condition that the products meet the technical regulation requirements, including labelling requirements. Based on the foregoing, the customs bodies believe that the certificate or declaration of conformity submitted by the importer does not apply to goods that do not meet the labelling requirements at the moment of registration of the customs declaration.

However, according to Decision of the EEC Council No. 44 dated 18 April 2018 "On Standard Schemes for Conformity Assessment", products are released into circulation by the importer, which imposes a number of obligations on the latter related to the subsequent circulation of these products in the market, including obligations to the consumers. Furthermore, this decision stipulates that the issuance of the certificate of conformity and the registration of the declaration of conformity must precede labelling of the product with the EAC mark.

Therefore, the above-mentioned approach of the customs bodies is a technical barrier to mutual trade with third countries, which is in conflict with the goals of adopting the technical regulation (Clause 1, Article 52 of the Treaty on the EAEU), the principles of its application (Subclause 16, Clause 1 of Article 51 and Article 55 of the Treaty on the EAEU) and Russia's WTO obligations. As a result of such an approach of the customs bodies, many importers are forced to arrange for required labelling abroad to avoid complaints from the customs bodies and delays in the release of goods. If the importer cannot impose this obligation on the seller of goods due to the nature of their contractual relations, the importer has to use the services of third parties and to bear the relevant costs, which increases the price of the goods.

Following consultations with business and taking into account the established practice on this matter, the Federal Customs Service of Russia published clarifications (Letter No. 14-88/35479 dated 14 June 2018) on the possibility of conditional release of goods for their labelling with the EAC mark by the importer with a commitment to submit the documents of conformity after release. The practice of application of this clarification differs in different customs bodies. As a result, importers find themselves in different competitive conditions. This clarification also does not cover the possibility of Cyrillic labelling of goods, even though in its other clarification (Letter of the Federal Customs Service of Russia No. 01-11/50898 dated 15 August 2018) the Federal Customs Service of Russia stated that the absence of Cyrillic labelling on the imported goods, as well as the absence of the EAC mark, is not a sufficient basis to institute proceedings in a case of an administrative offence as per Part 3, Article 16.2 of the Russian Code of Administrative Offences.

RECOMMENDATIONS

For the reasons stated above, the publication of the aforementioned letters of the FCS of Russia did not solve the existing issues in the Committee's opinion. This is a temporary half-measure. For the application of the technical regulation, the term "release of products into circulation" should be understood not as release of goods by the customs bodies, as defined by the EAEU customs legislation, but as actions of the importer that has imported such products for their distribution in the territory of the Union as part of its commercial activity, whether free of charge or on a paid basis. The Committee has prepared proposals for amending the Treaty on the EAEU and Decision of the Customs Union Commission No. 711 dated 15 July 2011.

In the Committee's opinion, to fully avoid complaints from customs bodies and delays in the release of goods, importers should arrange for the necessary mandatory labelling of goods prior to their import to the Russian Federation until the introduction of the above-mentioned changes. We also recommend using the provisions of the aforesaid Recommendations and letters of the Federal Customs Service when importing product samples for testing.

Taking into account the enactment of the EAEU Customs Code and the Federal Law "On Customs Regulation", the new Procedure for the Registration of Declarations of Product Conformity to the Requirements of EAEU Technical Regulations, new Standard Plans of Product Conformity Assessment and the new Procedure for the Import of Products Covered by Mandatory Requirements in the EAEU,

it is necessary to prepare a new updated and supplemented version of the joint Explanations of the Federal Customs Service of Russia and the Federal Accreditation Service of Russia on the procedure for importing goods as samples for their testing. Furthermore, in 2020, it seems appropriate to analyze the practical application of clarifications submitted by the Federal Customs Service of Russia and to amend them following such analysis.

CONFIRMATION OF COUNTRY OF ORIGIN

In accordance with the "Non-Preferential Rules for Identifying the Country of Origin of Goods Imported into the Customs Territory of the Eurasian Economic Union" approved by Decision of the EEC Council No. 49 dated 13 June 2018, the origin of goods is generally confirmed by a declaration of origin (Clause 23), and in some cases, a certificate of origin (Clauses 24, 25). According to the general rule established by Clause 7 of Article 109 of the Customs Code of the Eurasian Economic Union (EAEU Customs Code), a submitted declaration of goods does not have to be accompanied by documents confirming the information stated in the declaration of goods (including documents on the origin of goods) to the customs authority. At the same time, in accordance with Clause 6 of Article 80 of the Customs Code of the EAEU, copies (including hard copies of electronic documents) of these documents may be submitted if, under the Treaty on the Eurasian Economic Union dated 29 May 2014, international treaties and legal acts in the field of customs regulation and/or international treaties of the member states entered into with a third party, the mandatory submission of originals of that documents is not required.

Non-preferential rules do not contain a direct requirement to submit originals of certificates of origin of goods during their customs declaration (unlike, for example, Decision of the EEC Council No. 60 dated 14 June 2018 "On Approval of the Rules of Origin of Goods for Developing and Least Developed Countries", where such direct requirement is established in Clause 30).

ISSUE

In practice, however, the customs authorities always require the original certificate of origin and present requirements for the form of the certificate. If importers fail to submit the original during customs declaration, they are forced to pay security amount guaranteeing the payment of customs duties and taxes based on the anti-dumping duty rate, which leads to funds being frozen for many months. Under global epidemiological restrictions, it is difficult, and in some cases even impossible, to obtain the original certificate, since many Chambers of Commerce have switched to issuing certificates exclusively in electronic form.

Clause 25 of the Non-Preferential Rules allows for possible use of an electronic system for verifying the origin of goods and the original certificate of origin does not need to be submitted if the customs authorities use the system. The website of the Eurasian Economic Commission published "information on electronic databases of authorized bodies of third countries that can be used to check the certificates of origin issued by them as part of preferential and non-preferential trade". These provisions indicate that the requirement by the customs authorities to submit the original certificate of origin in hard copy is excessive and not based on legislation.

AEB member companies note that this interpretation of the Non-Preferential Rules exists only in the Russian Federation. When importing goods to other EAEU countries, the originals of non-preferential certificates of origin are not required when declaring goods, the customs authorities check the certificate number indicated in the copy held by the importer in the electronic database and allow the release of goods. In case of doubts about the country of origin during the post-release control, the importer is obliged to submit the original certificate of origin.

RECOMMENDATIONS

It seems appropriate to amend Decision of the EEC Council No. 49 dated 13 June 2018, eliminating the ambiguous interpretation of the Non-Preferential Rules for determining the country of origin of goods.

It is very important to intensify work on creating conditions for an early transition to electronic verification of certificates of origin through electronic interaction between the Russian Federation and the main trade partner states, first of all in Europe.

In the opinion of the AEB member companies, until the electronic verification system is implemented, submitting the original certificate of origin may be made unnecessary if there is a copy of the certificate and information on this certificate in the electronic database of the Eurasian Economic Commission.

COMMITTEE MEMBERS

Akzo Nobel Coatings • Allen & Overy Legal Services • ALRUD Law Firm • Arval • Atlas Copco • Baker McKenzie • BAT • BAYER • BCLP • BEITEN BURKHARDT • Bonduelle-Kuban LLC • BMW Russland Trading • Cargill • Caterpillar Eurasia • CMS Russia • Corteva Agriscience • Danone • Delonghi • Dentons • DHL Express • DHL Global Forwarding • DLA Piper • Electrolux • EPAM • EY • Ferrero Russia • FM LOGISTIC VOSTOK • General Motors CIS • Groupe SEB Vostok • Honda Motor RUS • John Deere Rus • Imperial Tobacco Sales and Marketing • IRU • JCB • JETRO • Johnson Matthey PLC • KPMG • Leroy Merlin • L'Oreal • Nestle • Noerr • OBI • Pepeliaev Group • Peugeot Citroën Rus (Groupe PSA) • Philips • Porsche Russland • Procter & Gamble • PwC • Roca • ROCKWOOL • Saint-Gobain • Schneider Electric • SCHNEIDER GROUP • Siemens • Specta • Total E&P Russie • VEGAS LEX Advocate Bureau • VOLKSWAGEN Group Rus • Zentis.

FINANCE & INVESTMENTS COMMITTEE

Chairman:
Stuart Lawson, EY

Committee Coordinator:
Tatiana Listrovaya (tatiana.listrovaya@aebrus.ru)

INTRODUCTION

Although Russia has shown an admirable degree of fiscal integrity, it had been in relative stagnation over the past few years as it faced the challenge of diversifying the economy whilst improving productivity across all sectors. 2020 started well with the appointment of Mikhail Mishustin as prime minister in January. Coming from the Federal Tax Service, he was seen as a technocrat brought in to ensure that National Projects, a cornerstone of the planned economic recovery, would be executed in a timely manner. The Central Bank had successfully implemented policies targeting inflation and there was a steady decrease in lending rates designed to stimulate growth. Conservative policies meant that foreign debt levels had been substantially reduced and the country enjoyed historically high levels of foreign exchange reserves and the national wealth fund had been replenished and was becoming available for development projects.

Then the COVID virus hit in March and the country was brought to a standstill as a tough lockdown policy was enforced. The consensus is that the pandemic was, in fact, well managed, especially compared to the poor performance of the West. The second quarter was massively negatively impacted, but recovery has been quick with strong consumer rebound. The expectation now is that yearly GDP will drop by 3.5%, which is significantly lower than the originally anticipated 6.5 to 8%.

At issue going forward is what impact this year will have on the potential for the positive impact of the national projects. Implementation of the latter has been pushed back 4 years, with full implementation not expected until 2025. Additionally, the response of the authorities to support the SME sector has been lukewarm and state participation in the economy has continued to grow.

With inflation under control and significant resources in place, the country faces no systemic threats in the near term. However, productivity remains a challenge and there will be the need for foreign direct investment and access to best-in-class technology and management through access to world markets. The single greatest challenge facing Russia is the potential for further isolation from these resources due to the political environment in Europe and the US.

LOCALIZATION

The policy of import substitution (localization) launched by the state in 2014 is now entering a new stage: the emphasis is shifting from solving mainly investment tasks to the development and transfer of new technological competences, creating export-oriented sectors of industry.

Despite the coronavirus pandemic and related restrictions, foreign companies from various industries (automotive, pharmaceutical, IT and others) are showing a steady interest in localization projects. At the same time, one of the important factors is the increase of effectiveness of support measures by the state. For example, we are talking about special investment contracts (SPIC), the total volume of investments under which as of September 2020 amounted to 807.8 billion roubles.

The latest innovations related to SPIC were adopted by the Russian Government in July 2020 to develop amendments to the Federal Law 'On Industrial Policy', so-called SPIC 2.0. The main changes as compared to SPIC 1.0 include the abolition of the minimum investment threshold for a project (previously, RUB 750 million), extension of the contract term (up to 15 years for investments up to RUB 50 billion and up to 20 years for investments over RUB 50 billion) and mandatory use of modern technologies. The main incentives for SPIC 2.0 remained the same: stability of business conditions for investors, tax benefits, accelerated procedure for obtaining the status of 'Russian manufacturer', as well as the status of 'sole supplier' by state order (for projects with a budget of more than RUB 3 billion).

The government also provides other incentives for companies, for example, through regional support measures. The Moscow City Government provides tax and other incentives to enterprises that have received the status of 'industrial complex' (more than 40 large production companies, including those with foreign capital), and from 2020 another mechanism – the investment tax deduction – is provided. Introduction of additional financial instruments gives new opportunities to companies to renew fixed assets, modernise production and implement strategic projects.

RECOMMENDATIONS

New and improved state support measures are certainly very attractive for foreign investors. At the same time, when making

investment decisions, the stability of Russian legislation and fiscal conditions, further simplification of localization mechanisms and, taking the pandemic into account, balanced attention from the state both in respect of the industries most affected by the coronavirus and other industries remain important factors for European companies.

In addition, we believe that Moscow's flagship experience with support measures for existing localized enterprises can be applied in other Russian regions, taking into account local characteristics.

GREEN FINANCING AND ESG INTEGRATION IN RUSSIA

So-called ESG factors (environmental, social, governance performance) are gaining increasing importance as a key topic for the international financial sector. Some large investors such as Blackrock, European Investment Bank, or the Norwegian Pension Funds decided or declared they would cease financing projects and corporates with a large carbon footprint, in particular, as ESG-related investment products show a stronger performance on average than conventional financial products. The global green bond market grew from USD 51 billion in 2014 to USD 690 in 2019, while ESG-compliant assets increased from USD 8 to 18 trillion.

Considering the growth in these numbers, one must recognize that the weight of ESG factors has moved beyond the level that can by ignored by global financial market participants. Weak ESG performance may increase the cost of external financing in the near future. For Russia itself and companies doing business in the country, this creates additional challenges due to the existing carbon-dependent economic structure and continued sanctions imposed by Western countries.

RECOMMENDATIONS

In order to avoid negative effects on GDP growth and further discounting of asset values, the Russian government should consider setting up a more ambitious environmental policy framework and supportive measures motivating companies to increase their ESG performance.

OBTAINING NECESSARY FINANCIAL AND OTHER INFORMATION FROM CONTROLLED COMPANIES

At present, Russian legislation does not sufficiently regulate the provision of information by a company to its shareholders and founders.

To exercise their rights under Federal Law No. 208-FZ dated 26.12.1995 'On Joint Stock Companies' (including the rights under Article 32 of said federal law), shareholders are required to request the necessary documentation and information from the company in order to decide on the voting procedure at the General Meeting of Shareholders. However, since the legislation does not regulate the list of documents and information it is required to provide, as well as the terms of such documents and information (except as specified in Article 91), companies have an opportunity not to provide some documents or information.

Shareholders need to receive complete and reliable information published in financial statements and notes thereto from controlled companies because in case shareholders fail to receive necessary information and documentation, there is no possibility to analyze the economic activity of controlled companies promptly and fully.

RECOMMENDATIONS

1. To require controlled companies to provide the requested financial information and legal documents within strictly established deadlines by indicating specific terms in the law or in the manner provided for by local regulations of the companies.

Recommendation on regulation of time limits for provision of documents at the request of shareholders: within 10 days from the date of the request (on the condition that the company had the documents as of the date of the request), and for requests for documents and information required to make a decision when voting at regular and extraordinary meetings of shareholders – no later than 3 working days before the date of the General Meeting of Shareholders.

2. The controlled companies must provide shareholders holding at least 25% of voting shares with details and explanations of accounting and other financial documentation, information on the company's related parties, as well as information on the procedure and management bodies with regard to subsidiaries of the controlled company upon shareholder request.

CONSENT TO INTERESTED PARTY TRANSACTIONS

The procedure for the Board of Directors or General Meeting of Shareholders to approve a related party transaction has not been regulated by law. In particular, no resolution was passed on examination of members of the Company's Board of Directors or parties to a transaction during voting on approval of interested-party transactions.

RECOMMENDATIONS

When submitting for approval by the Board of Directors for interested-party transactions, the company must provide information on whether or not each of the parties to the transaction, as well as each member of the Board of Directors, is interested in such transaction. Such confirmation may be provided in the form of a statement of circumstances signed by an authorized representative of the company in which it is established that there is no interest in executing an approved transaction. Such certification should

also be based on information received from members of the Board of Directors (that they are persons controlling certain companies, close relatives of such persons, etc.) and information received from the parties to the transaction.

Resolve the issue of approval of transactions where there is also actual interest from shareholders, members of the Board of Directors or the company's sole executive body in such transactions. In particular, actual interest may be determined in the form of direct or indirect benefits that such shareholders or directors may derive from the transaction itself or in connection with its execution.

Adoption of detailed rules and requirements may help improve the quality of corporate governance.

COMMITTEE MEMBERS

ABB • Accor Groupe • AGC Glass Europe • ALD Automotive • ALRUD Law Firm • American Express Bank • American Institute of Business and Economics • Antal Russia • AO Deloitte & Touche CIS • Arval • Auto Partners • AVIS Russia (Bilantilia Corp., duly authorized representative of Avis in the territory of the Russian Federation) • Baker Botts L.L.P. • BEITEN BURKHARDT Moscow • BMW Russland Trading • BRAND & PARTNERS LLC • Caterpillar Eurasia LLC • Citibank AO • Credendo – Ingosstrakh Credit Insurance LLC • Creon Capital S.a.r.l • De Lage Landen Leasing • Debevoise and Plimpton LLP • Dentons • Deutsche Bank Ltd. • Drees & Sommer • Egorov Puginsky Afanasiev & Partners (EPAM) • Euler Hermes • EY • FCA Russia • Generali Russia & CIS • Gerald Sakuler • Grata International • HeidelbergCement Rus • HELLENIC BANK PCL • Heroes S.r.l • Hino Motors, LLC • HSBC Bank (RR) OOO • Hyundai Truck and Bus Rus LLC • IBFS Europe GmbH • Inchcape Holding LLC • ING Wholesale Banking in Russia • INVESTMENT COMPANY IC RUSS-INVEST • John Deere Rus, LLC • Kia Motors Rus • Knauf Group CIS (OOO Knauf Gips) • KPMG AO • LeasePlan Rus • Legrand LLC • LEROY MERLIN Russia • Lincoln International CIS Holding B.V., Branch in Moscow • MAI Insurance Brokers • MAN Truck & Bus RUS LLC • Mannheimer Swartling • Mazars • Mercedes-Benz Financial Services Rus OOO/Mercedes-Benz Bank Rus OOO/Mercedes-Benz Capital Rus OOO • Mercedes-Benz Russia • MonDef • MOST SERVICE, member of Bruck Consult • Natixis Bank JSC • NOBLE HOUSE Group Russia • Noerr OOO • Norton Rose Fulbright (Central Europe) LLP • OTP Bank JSC • PEAC Leasing AO • Pepeliaev Group, LLC • Peugeot Citroën Rus (Groupe PSA) • PwC • Raiffeisenbank AO • Renaissance pensions JSC NSPF • Rödl & Partner • Rosbank • Rosbank Leasing • SANOFI-AVENTIS REP OFFICE • Scania-Rus LLC • Schneider Electric Joint Stock Company • SCHNEIDER GROUP • Segula Technologies Russia LLC • SERVIER • Tikkurila • TMF Group • UniCredit Bank AO • Urus Advisory Ltd. • Vaillant Group Rus LLC • VEGAS LEX Advocate Bureau • Viruni Capital Partners • VISA • Volvo Cars, LLC • Volvo Vostok NAO • YIT • ZURICH RELIABLE INSURANCE, JSC.

HUMAN RESOURCES COMMITTEE

Chairperson:
Irina Aksenova, Coleman Services UK

Committee Coordinator:
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The Human Resources Committee was established in 1995. At present, there are four Subcommittees: the Assessment, Training and Development Subcommittee; the Compensation and Benefits Subcommittee; the Labour Law Subcommittee and the Recruitment Subcommittee.

The Committee's goals are:

- developing the HR market in Russia;
- lobbying for the Committee members' interests in business communities and in governmental and legislative bodies at all levels necessary for the implementation of the activities of AEB members on the territory of the Russian Federation;
- informing business circles and government institutions in Russia about the current situation in the field of human resources;
- developing solutions for HR-related issues which AEB member companies face when working with personnel in our country;
- promoting the exchange of experiences between foreign and Russian HR specialists;
- assisting AEB members in expanding their networks and helping companies to adapt to the Russian business environment.

The Committee works in accordance with changes in the Russian labour market, including changes caused by the global economic situation, demographic trends, and innovations in the Russian legislative framework. The Committee promotes the application of the best international HR practices and standards in Russia.

ASSESSMENT, TRAINING AND DEVELOPMENT SUBCOMMITTEE

Nowadays, companies working on the Russian market have to face a number of challenges, namely regulatory barriers to the application of foreign practices and changes in traditional methods of personnel management due to the implementation of remote work.

The regulatory framework imposes restrictions on companies in the use of automation systems of foreign origin and, moreover, establishes standards for the storage and cross-border transfer of personal data. This prevents companies from taking full advantage of the services of already-established ecosystems in talent management and makes implementation of best management practices more complicated.

The adaptation of remote work in the conditions of the coronavirus pandemic forces companies to reconsider their approaches to personnel management and adapt to the prevailing circumstances.

According to surveys conducted during the lockdown, 40% of companies responded have suspended the personnel recruitment process. Approximately the same number of companies have completely transitioned face-to-face interviews to an online format. Additionally, one-third of the companies surveyed have completely moved trainings to an online format. 40% of respondents have noted that the current situation will lead to a reconsideration of the company's main strategic development directions and its approach to personnel management.

The Subcommittee sees as its goal the spread of best practices and technologies, the collection and popularization of HR practices bringing the greatest measurable results for business, and assistance in choosing the degree of localization of international practices for Russian realities. The Committee, in cooperation with members of the Association, will look for opportunities in the current situation and provide practical recommendations on the application of global practices, taking into account local regulatory restrictions.

COMPENSATION AND BENEFITS SUBCOMMITTEE

2020 has been a tough year for the HR function, namely for the compensation and benefits subdivision. Companies have had to cut staff or send employees on leave or furlough. Enterprises have adapted to the crisis by taking measures they could afford.

BASE SALARY

The average salary increase comprised 8.5% over the past year. Most organizations continue taking an individual approach for some employees when deciding to change salary. For such individuals, the average per cent change in the level of remuneration exceeds the per cent increase in payroll in the whole organization. In the coming year, companies will particularly differentiate their approach to salary increases based on job level.

INCENTIVE PROGRAMS

In 2020 most companies have paid short-term variable incentives for 2019, including incentives that were to be paid in April. Most companies do not plan to revise KPIs because of the tough

year for performance indexes. Over the past years, the structure of the compensation package has not undergone significant changes; as the level of the position in the organizational structure of the company increases, the share of the bonus part climbs as well: from 10-15% for line personnel to 50% or more for senior and top managers. Companies combine corporate (team) and individual performance efficiency indexes to determine incentives.

BENEFITS FOR EMPLOYEES

Contrary to expectations, the composition of the package of benefits has not undergone significant changes either. Paid mobile communications and health and life insurance programs are still considered to be the most popular components of the social package. Transportation and food benefits have been partially cancelled during the pandemic, while some companies added telemedicine and corporate psychologists to the benefit package. Moreover, the number of companies that are launching employee health programs has increased.

FEATURES OF ADDITIONAL MOTIVATION PROGRAMS

Many companies continue showing interest in long-term incentive programs for executives. The increased popularity of these programs during the crisis in 2015 has not diminished. In most companies, participants in long-term incentive programs are top managers of the level of CEO, CEO-1 or CEO-2, as well as top managers of some structural divisions and branches. The most popular indexes used in long-term incentive programs are profit margins such as net income – EBITDA and shareholder income.

At the same time, internal training, corporate events, recognition, rotation programs and mentoring have been identified as the most popular tools among non-material motivation. Additionally, flexible hours, which have become especially relevant in the period of mass remote work, hold a leading position.

LABOUR LAW SUBCOMMITTEE

ELECTRONIC HR DOCUMENT MANAGEMENT

The urgent need to switch to electronic HR management in Russia has accelerated the legislative process. Federal Law No. 439-FZ dated 16 December 2019 introduced amendments to the Russian Labour Code and made it possible to keep information on previous employment in digital form (so-called "electronic employment record books"). Subsequent legislative and governmental statutes formed the basis for the transition to electronic employment record books starting from 1 January 2020.

Unfortunately, the development of a legislative base for transitioning other HR-related documents to digital form has been delayed. In practice, this process was advanced substantially during the period of anti-COVID-19 restrictions. Businesses had to quickly transition large numbers of employees to work from home. That was impossible without an actual transition to digital document management, including HR-related documents. Although employers had very little opportunity to document this transition in full compliance with the current rules of the Labour Code, the Russian Government, represented by the Ministry of Labour, de-facto legalized the existing simplified format. Obviously, European businesses would have found it much more convenient if the Government were to arrange relevant statutes to be issued that would legalize the existing transition of HR-related documents to digital format. That would minimize the existing legal risks arising out of the use of digital HR documents not supported by statutory rules, and thereby would significantly improve the investment climate in the country.

REMOTE WORK

Chapter 49-1 of the Russian Labour Code, which regulates employees' work outside permanent workplaces, was introduced by Federal Law No. 60-FZ dated 5 April 2013. However, until 2020, employers used this form of employment relationship on a rather limited scale. That was mainly caused by the comparatively low flexibility of the new rules. For example, the law provides no opportunity to combine in-office and remote work, although it was found in practice that such a combination makes it possible to materially mitigate the negative consequences of out-of-office work, such as weakened communications with colleagues, complications in arranging collective efforts and hindering the permanent employer's supervision of employees' activities.

The spread of COVID-19 and the harsh restrictions imposed by the authorities made the transition to remote work a necessary alternative to a complete shutdown for the majority of employers. The almost half-year country-wide experience of work from home has demonstrated the enormous potential of this form of employment relationship for both employers and employees. Recent polls show that numerous businesses do not plan to return all their employees to offices and other workplaces, but intend to continue using remote work. However, the current rules of the Labour Code are turning out to be too inflexible for such a large-scale transition to remote work. Employers need more flexible regulations, including the ability to combine remote and on-site work in the first instance.

At the present time the State Duma is considering a draft law with a new version of Chapter 49-1 of the Russian Labour Code. This draft statute makes it possible to resolve the above problem to a great extent. The AEB HR Committee will take active part in the discussion of the above legislative project for the purposes of amending it in the interests of AEB members.

SECONDMENT

Federal Law No. 116-FZ dated 5 May 2014, which entered into force on 1 January 2016 and provides for significant restrictions on travel for work in other organisations, remains, in the opinion of the business community, one of the main obstacles

for further economic development. Unfortunately, all attempts to further develop the legislative framework so that the norms of the aforementioned law on secondment between affiliated companies still often meet with stiff resistance from labour union organizations. The latter block any bills in this regard. Unfortunately for the European business community, the prospects for creating a legal environment for the successful operation of the secondment mechanism in Russia are still far from being realized.

PREVENTION OF CONFLICTS OF INTEREST AND COMPETITION FROM EMPLOYEES

Over the years, European business has proposed introducing standards into Russian labour legislation aimed at regulating issues of competition from employees and not allowing conflicts of interest between employees, at least while working for a particular employer. While the current version of the Labour Code of the Russian Federation provides for the possibility of dismissing an employee if they do not take measures to prevent or resolve a conflict of interest to which they are a party (clause 7.1 of part 1 of Article 81 of the Labour Code of the Russian Federation), this rule applies only to a certain circle of persons (for example, in state institutions) and may not be applied by employers from commercial organizations. Consequently, European business, on the one hand, is obliged to implement policies on the prevention of conflicts of interest and on anticorruption requirements and bears great responsibility for this, while, on the other hand, it is not able to apply appropriate sanctions to employees who have violated these requirements. In this regard, it seems absolutely essential to resolve these issues at the level of federal law and, among other measures, provide for the possibility of dismissing employees of commercial organizations in connection with their violation of provisions on non-competition and limiting conflicts of interest.

RECRUITMENT SUBCOMMITTEE

In recent years, the role of an HR specialist has increasingly transformed into the role of a business partner who does not just solve operational tasks, but also proposes and implements action plans to improve and optimize business processes and supports managers in achieving their business goals through HR tools. Thus, the development of the professional competencies of human resources specialists is currently underway. The speed of operating procedures is increasing, and more emphasis is being placed on productivity. This has led to the rapid development of the HR technology market. Literally every week there is a new product on the market designed to help HR professionals carry out their daily role as efficiently as possible and increase staff competence. Everything that can be automated is automated: recruitment (from screening resumes to competency-based interviews) using chatbots and video interviews, as well as on-boarding, assessment, training and administration through online applications. However, Russia has not yet caught up with Europe and the USA in terms of technology.

There is a shortage of certain personnel on the labour market at the same time as a surplus of people looking for employment. This paradox is caused by a significant acceleration of changes and increasing competition in almost all spheres of the economy. A highly competitive, technologically developing and rapidly changing market requires certain professional and personal competencies from employees which are not found in every candidate on the labour market. As a result, companies poach and "buy off" the best specialists, and the candidates who do not have the competencies required by the market remain unemployed.

Despite the economic downturn caused by the coronavirus pandemic, companies strive to retain highly effective employees and employees with high potential; at the same time, employees have become more cautious when deciding to change jobs.

The new experience gained during quarantine has accelerated the spread of online technologies in recruitment, and new approaches to hiring have been tested (e.g. cross-hiring).

Currently, there are three areas in recruitment: executive search, traditional recruitment (management selection and qualified specialists recruitment) and mass recruitment. Staff outsourcing, an alternative way of hiring employees, is also being actively developed. Interim management (temporary provision of management resources and skills), which is already quite widespread in Europe, is just beginning to develop in Russia.

The Recruitment Subcommittee sees its mission in disseminating best practices and technologies in the field of recruitment and cooperation with related committees to provide practical assistance to companies from different industries in accomplishing their business objectives.

COMMITTEE MEMBERS

Accenture • Accor Groupe • AIG Insurance Company, JSC • Air France • ALD Automotive • ALRUD Law Firm • ALSTOM Transport Rus LLC • American Institute of Business and Economics • ANCOR • Angelini Pharma Rus LLC • Antal Russia • AstraZeneca Pharmaceuticals LLC • Atlas Copco, JSC • Auchan Russia • Avito (LLC KEH eCommerce) • Baker McKenzie • BAYER • BEITEN BURKHARDT Moscow • Bonduelle-Kuban LLC • BP • British American Tobacco Russia • Brother LLC • Bryan Cave Leighton Paisner (Russia) LLP, Russian branch • BSH Bytowyje Pribory OOO • Cargill LLC • CBSD/Thunderbird • Chevron Neftegaz Inc. Moscow Branch • Chiesi Pharmaceuticals LLC • Citibank AO • Coleman Services UK • Continental Tires RUS OOO • Credit Agricole CIB AO • Creon Capital S.a.r.l • Delonghi • Deutsche Bank Ltd. • DHL Express • DHL Global Forwarding • DSM • Epiroc Rus LLC • Equinor Russia AS • Ericsson • Euler Hermes • EY • FERRONORDIC • Foodcard • Gasunie • GfK Rus • H&M Hennes & Mauritz LLC • HEINEKEN BREWERIES, LLC • HELLENIC BANK PCL • Henkel Rus OOO • Hino Motors, LLC • Honda Motor RUS LLC • HSBC Bank (RR) OOO • Hyundai Motor CIS • IE Business School • IKEA DOM LLC • ING Wholesale Banking in Russia • Intermark Relocation • IWM • John Deere Rus, LLC • KPMG AO • Legrand LLC • LEROY MERLIN Russia • M.Video • MAI Insurance Brokers • Mazars • Mazda Motor Rus • METRO AG Representative office • Michelin • MMC Rus • Morgan Lewis • NAVIEN RUS, LLC • NOBLE HOUSE Group Russia • Nordea Bank • Novartis Group Russia • OBI Russia • Orange Business Services • Oriflame • Orion Pharma LLC • Pepeliaev Group, LLC • Peugeot Citroën Rus (Groupe PSA) • Philip Morris Sales and Marketing • Porsche Russland • PPG Industries LLC • PwC • Renault Russia • Repsol Exploracion S.A.• Richemont • Robert Bosch OOO • ROCKWOOL • Rödl & Partner • SAFMAR NPF AO • SCHNEIDER GROUP • Segula Technologies Russia LLC • SERVIER • Shell Exploration and Production Services (RF) B.V. • Siemens LLC • Signify Eurasia LLC • Specta • Staff-UP, LLC recruitment agency • TOTAL VOSTOK LLC • Unipro PJSC • Vaillant Group Rus LLC • Viessmann LLC • VISA • Vitus Bering Management Ltd. • Volkswagen Group Rus (Audi/Bentley/Lamborghini/Škoda/Volkswagen/Volkswagen Commercial Vehicles) • Volvo Vostok NAO.

INTELLECTUAL PROPERTY COMMITTEE

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PARALLEL IMPORTS

PROHIBITION OF THE PARALLEL IMPORT OF GOODS/ REGULATION OF THE EXHAUSTION OF TRADEMARK RIGHTS

ISSUE

The current Russian legislation and international treaties on the Eurasian Economic Union have unequivocally and clearly resolved the issue of parallel imports: the import of goods containing certain means of individualization into the territory of the EAEU without the consent of the copyright holder is not permitted. As a general rule, parallel imports are illegal and are subject to prohibition in accordance with the provisions of trademark laws.

The right to prohibit parallel imports arises from the general powers of the trademark owner constituting the trademark owner's exclusive right to the trademark. The import onto the territory of the Russian Federation of goods bearing trademarks with the aim of introducing them into civil circulation on the territory of the Russian Federation is a separate type of use of trademarks and is illegal if not permitted by the right holder of the trademarks.

To balance the interests of the right holder and the rights of others, the law establishes the principle of the exhaustion of trademark rights. The fourth part of the Civil Code of the Russian Federation, reproducing the regulation introduced by the Law 'On Trademarks, Service Marks and Appellations of Origin' in the early 2000s, establishes the 'national' principle of the exhaustion of trademark rights. The national principle of the exhaustion of trademark rights presumes that right holders cannot prohibit other persons from using their trademarks in respect of other products that were put into civil circulation in the Russian Federation directly by or with the consent of their right holders.

Similar provisions concerning the exhaustion of trademark rights are also contained in the Customs Union Agreement on the Common Principles of Regulation in the Field of Intellectual Property Protection as well as in the Treaty on the Eurasian Economic Union. The Agreement and the Treaty establish a regional principle of the exhaustion of trademark rights for the member states of the Customs Union and the Eurasian Economic Union (the Republic of Belarus, the Republic of Kazakhstan, the Russian Federation, the Republic of Armenia and the Republic of Kyrgyzstan). A largely similar model of the regional principle of the exhaustion of trademark rights is also used in the European Union.

For many AEB members, the issue of parallel imports in Russia is of the utmost importance. Despite the latest positive trends in the evolution of judicial practice, which has strengthened the position on the illegality of parallel imports over the last four years, right holders are facing new pressing problems.

In September 2020 the Federal Antimonopoly Service issued a decision deeming the actions of two right holders aimed at protecting their rights to trademarks from the unauthorized import of marked goods into Russia by third parties under parallel imports to be unfair competition (article 14.8 of the Law on Protection of Competition). Despite the regional principle of exhaustion effective in the EAEU and the Russian Federation, which requires the consent of the right holder to imports, the FAS actually legalized the import of goods from foreign countries without the consent of the right holder.

We believe that such a decision by the FAS not only leads to legal uncertainty but also contradicts Russian legislation and international treaties concluded by the Russian Federation.

Currently, there is a great deal of debate in Russia on changing the principle of exhaustion of trademark rights from national/ regional to international, both in general and in relation to a specific list of products. This initiative comes from individual state authorities.

Another issue stirring up a lot of agitation among right holders is an initiative currently being discussed on making amendments to Russian laws and adopting regulatory acts to restrict the exclusiveness of trademark rights and to establish actual liability for right holders for actions aimed at exercising and protecting their exclusive rights under law by counteracting parallel imports. The prohibition on parallel imports under the regional regime of exhaustion of trademark rights is a fundamental legal doctrine in European Union law and is supported both by the European Court of Justice and by national courts. Moreover, approaches are being formed in judicial practice that contribute to the simplest and the most understandable procedure for inter-

action between right holders and customs authorities in order to prevent parallel imports.[1]

The position on the inadmissibility of liberalization of parallel imports in the context of the national or regional regime of exhaustion of trademark rights is also supported by the International Trademark Association (INTA).[2]

RECOMMENDATIONS

The Committee believes that neither existing Russian laws nor the laws of the Customs Union and the Eurasian Economic Union regulating the exhaustion of trademark rights require any changes. Further active cooperation, discussions and consultations are recommended at all levels and on all platforms to make the position of AEB members known to all stakeholders and state authorities involved in the process.

In addition, when developing positions on the issue of parallel imports, we recommend taking into account the extensive experience of the European Union, where a similar – regional – principle of exhaustion of trademark rights applies.

EFFECTIVE COUNTERMEASURES AGAINST PRODUCERS AND DISTRIBUTORS OF COUNTERFEIT PRODUCTS

ISSUE

The overall ineffectiveness of measures intended to counteract counterfeiting on the local market results in a large number of counterfeit products, first of all, in the consumer goods sector. While Russian customs authorities have developed rather effective centralized anti-counterfeiting instruments with the involvement of qualified local and central FCS staff specializing in anti-counterfeiting measures, the respective practice of other Russian law enforcement authorities needs considerable improvement.

It is obvious, however, that the effectiveness of increased penalties or other toughening of sanctions for infringements related to the production and distribution of counterfeit products is reduced due to weak mechanisms for imposing administrative and criminal sanctions for the illegal use of trademarks.

RECOMMENDATIONS

The Committee recommends working out and introducing quarterly quantitative regulatory target indicators for seized counterfeit products on a territorial basis for law enforcement officers and Rospotrebnadzor staff, which should be differentiated depending on the occurrence of counterfeit products on the markets of this or that region.

Another recommendation involves organizing centralized accounting, processing obtained data, controlling the attainment of target indicators with further differentiation by regions and encouraging regional divisions to implement and accomplish these measures.

To improve the work of law enforcement authorities, we think it is appropriate to organize and conduct annual seminars on regional and federal levels for law enforcement and Rospotrebnadzor officers responsible for anti-counterfeiting measures, with the involvement of representatives of right holders.

GEOGRAPHICAL INDICATIONS AND DESIGNATIONS OF ORIGIN

ISSUE

Federal Law No. 230-FZ dated 26 July 2019 'On Amending Part Four of the Civil Code of the Russian Federation and Articles 1 and 23.1 of the Federal Law "On State Regulation of the Production and Turnover of Ethyl Alcohol and Alcoholic and Alcohol-Containing Products and on Limiting the Consumption (Drinking) of Alcoholic Products"' has come into force.

The law introduces a new means of individualization – geographical indications ('GIs'). The geographical indications regime involves much simpler requirements for the product and the production process.

Until now, manufacturers had only one effective way to ensure legal protection for the indication of the place of production of their goods – designations of origin (section 3 of chapter 76 of the Civil Code of the Russian Federation) ('DOs'). However, DOs involve extremely stringent requirements for the product itself and the process of its production. In particular, the special properties of the goods must be exclusively determined by the natural conditions and human factors characteristic of a given geographical area, and all production stages that have a significant impact on the formation of such special properties must be performed on the territory of this geographical area.

The new law introduces a very important change in the legal regime governing collective means of individualization, providing for the introduction of a new means of individualization in Russian law and expanding the possibilities of foreign holders of exclusive rights to geographical indications and designations of origin to ensure their protection in the Russian jurisdiction. The law clarifies the procedure for the registration of rights by a regional manufacturers' association, which is especially important for the holders of exclusive rights to geographical indications and designations of origin protected by the law of EU countries.

[1] The Hague District Court, 15 April 2020 (Armani v ITG).

[2] INTA. Parallel Imports/Gray Market https://www.inta.org/topics/parallel-imports/

It seems that the adopted amendments have not in any way filled the existing gap in the possibility of using such collective means of individualisation in foreign languages in advertising.

Part 11 of article 5 of Federal Law No. 38-FZ dated 13 March 2006 'On Advertising' determines that the production, placement and distribution of advertizing must comply with the requirements of Russian legislation, including the requirements of civil legislation and legislation on the state language.

In particular, clause 2 of article 3 of Federal Law No. 53-FZ dated 1 June 2005 'On the State Language of the Russian Federation' establishes that if a foreign language is used in advertizing alongside the state language of the Russian Federation the texts in Russian and in such foreign language shall be identical in their content and technical design.

Clause 3 of the same article defines a list of exceptions for some means of individualization: brand names, trademarks and service marks. However, neither designations of origin nor geographical indications are included in the above list of exceptions. In this regard, the use of DOs and GIs in a foreign language registered in Russia on the basis of the registration documents issued in foreign countries may be deemed a violation of the advertizing legislation.

RECOMMENDATIONS

It is proposed to bring the provisions of the Federal Law 'On the State Language of the Russian Federation' into alignment with the provisions of civil legislation, legislation on technical regulation and legislation on consumer protection, expanding the list of means of individualization for which a foreign language may be used by adding other means of individualization, including designations of origin and geographical indications.

TRADEMARKS, SERVICE MARKS AND DESIGNATIONS OF ORIGIN OF THE EURASIAN ECONOMIC UNION

ISSUES

On 3 February 2020 the Agreement on Trademarks, Service Marks and Designations of Origin of the Eurasian Economic Union (EAEU) (the 'Agreement') was signed in Moscow.

The Agreement provides for trademark protection in the territory of all states of the Eurasian Economic Union (Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia) if such a trademark is registered as a Union trademark.

It seems expedient to approve methodological recommendations at the interstate level, which would be mandatory for all agencies of the Union states, on verifying the compliance of a declared designation with the requirements of the Agreement. The availability of such recommendations would make it possible to avoid significant differences in the approaches of national authorities to the registration of national trademarks, which would be taken into account when registering Union trademarks.

Such interstate recommendations could be based on section IV 'Verification of the Compliance of a Declared Designation with the Requirements of Russian Legislation' of the Guidelines for the Implementation of Administrative Procedures and Actions as Part of the Provision of the State Service of State Registration of a Trademark, Service Mark or Collective Mark and Issuance of Certificates for a Trademark, Service Mark or Collective Mark and Duplicates Thereof approved by Order of the Federal State Budgetary Institution Federal Institute for Industrial Property No. 12 dated 20 January 2020.

We believe that creation of a common open database of national applications and trademarks registered in the EAEU member states will significantly simplify the procedure for preparing an application for a Union trademark, which, in turn, will lead to the increased popularity of the Union trademark registration procedure.

A common open database of national and EU trademarks has been successfully applied in the European Union.

In accordance with clause 4 of article 3 of the Agreement, disputes concerning infringement of the exclusive right to a Union trademark in the territory of a member state shall be resolved in accordance with the legislation of that state. At the same time, the Agreement does not contain any rules for determination of jurisdiction by the courts of member states, which may entail uncertainty in disputes connected with infringement of rights to EAEU trademarks, including on the internet.

In resolving this issue, we recommend referring to the experience of the European Union in resolving disputes connected with the infringement of EU trademark rights.

AEB participants believe that the rules for determining jurisdiction established by EU Regulation No. 2017/1001 (EUTMR) as well as conclusions drawn on the basis of the existing litigation practice in the European Union may be used as a basis for resolving the above problem in the event of any disputes connected with the infringement of EAEU trademark rights.

In our opinion, the matter of the territoriality of applying such a sanction as prohibition of the use by third parties of a Union trademark or a designation confusingly similar thereto, if a violation of Union trademark rights is discovered, remains unresolved within the framework of the Agreement. Speaking more precisely, in accordance with the applicable legal provisions, such a prohibition shall initially apply to the territory of the member state where protection is sought.

This issue has been reflected in the litigation practice of the European Union, according to which such a prohibition shall apply in the entire territory of the EU. An exception may be a situation where the defendant has proven that consumers are not being

misled in a certain territory, in which case the relevant EU member state may be excluded from the scope of the prohibition (see, in particular, the judgment of the Court of Justice of the European Union in case C-223/15).

RECOMMENDATIONS

We recommend initiating a discussion of the above issues at all levels and on all platforms with the participation of all stakeholders and state and interstate institutions to develop optimal solutions as well as to identify other problems that may be faced by applicants and Union trademark right holders in the future, with the aim of subsequently eliminating such problems.

INFRINGEMENT OF TRADEMARK RIGHTS AS A BASIS FOR ITS INCLUSION IN THE CUSTOMS INTELLECTUAL PROPERTY REGISTRY (CIPR)

ISSUE

Until 2020, customs authorities had developed a practice according to which the employees of the Federal Customs Service of Russia insisted that an application for the inclusion of a trademark in the CIPR must contain information and documents confirming that trademark right infringements had been committed by means of importing goods marked with such trademark. In the absence of such information and supporting documents in the package of documents submitted to the FCS, the customs authorities could refuse to include the trademark in the CIPR.

However, the Supreme Court of the Russian Federation did not agree with this position, noting in its Ruling No. 305-ES19-17108 dated 22 January 2020 in case No. A40-241863/2018[3] that it is incorrect to interpret clause 25 of the Administrative Regulations of the Federal Customs Service on implementation of the state function of maintaining the customs intellectual property registry approved by Order of the Federal Customs Service of the Russian Federation No. 1488 dated 13 August 2009[4] as dictating that additional information about committed infringements of trademark rights be submitted along with the application since it does not correspond to the purpose of measures aimed at protection of intellectual property rights. Otherwise, the actions of the customs authorities connected with the maintenance of the CIPR would be associated only with the facts of already committed offenses, which makes it meaningless to maintain the CIPR as a means of contributing to the identification and prompt suppression of offenses and to the protection of the rights of right holders.

At the same time, as of summer 2020, both the FCS and the Ministry of Finance of the Russian Federation continued to consider submission of evidence of already committed violations to be a precondition for inclusion of a trademark into the CIPR.

RECOMMENDATIONS

It seems that such discrepancies in the interpretation of regulatory provisions may be eliminated only by adjusting customs legislation and the corresponding bylaws.

In our opinion, preference should be given to the position of the Supreme Court of the Russian Federation since it is most consistent with the objectives of the customs authorities in general and the CIPR in particular.

In this regard, it is proposed to amend part 1 of article 328 of Federal Law No. 289-FZ dated 3 August 2018 'On Customs Regulation in the Russian Federation and on Amendments to Certain Legislative Acts of the Russian Federation' to read as follows: '1. A right holder interested in protecting their intellectual property rights in connection with the import of goods into the Russian Federation or the export of goods from the Russian Federation or in connection of any other actions with goods under customs control shall have the right to apply to the federal executive body exercising control and supervision functions in the field of customs for inclusion of the corresponding intellectual property item in the customs register (the 'application').'

If the above (or similar) amendments are introduced to the legislation, we recommend excluding clause 19.3 from the Administrative Regulations for the maintenance of the CIPR approved by Order of the Federal Customs Service of Russia No. 131 dated 28 January 2019.

The proposed amendments will simplify the procedure for including a trademark in the CIPR, which, in turn, will enable a right holder to more quickly and efficiently protect their exclusive rights from parallel importers and from importers of counterfeit products.

PROVISION BY DOMAIN NAME REGISTRARS OF INFORMATION ABOUT INDIVIDUAL DOMAIN ADMINISTRATORS

ISSUE

Infringements of exclusive rights to various results of intellectual activity are increasingly taking place on various websites on the internet. Within the meaning of Federal Law No. 149-FZ dated 27 July 2006 'On Information, Information Technologies and Data Protection', a website owner and the administrator of the domain where such website is located shall be responsible for the information posted on such a website.

[3] Ruling of the Chamber for Commercial Disputes of the Supreme Court of the Russian Federation No. 305-ES19-17108 dated 22 January 2020 in case No. A40-241863/2018.

[4] A similar provision is contained in the current administrative regulations.

In this regard, right holders often need to find out who the domain administrator is. However, if the domain administrator is an individual, the relevant data will not publicly available.

Moreover, domain name registrars have recently refused to provide the above information to right holders, even upon a reasoned written request (including a lawyer's request), saying that such information is protected by the legislation on personal data.

The registrars cite, in particular, clause 4 of article 6.1 of Federal Law No. 63-FZ dated 31 May 2002 'On Legal Practice and Advocacy in the Russian Federation', which stipulates that requested information may be denied to a lawyer when such information is classified by the law as restricted-access information. In classifying the personal data of citizens as restricted-access information, registrars refuse to provide the relevant information.

As a result, the right holder is deprived of the opportunity to find out the identity of the domain administrator who is violating their exclusive rights in the pre-trial procedure, which significantly complicates the protection of such rights.

RECOMMENDATIONS

We recommend solving this problem by making the appropriate amendments to the legislation on personal data and/or on legal practice.

In particular, we recommend providing that a lawyer acting in the interests of their client shall have the right, upon a written reasoned request, to gain access to personal data of individuals, including the domain administrator.

At the same time, provision of such a right to a lawyer may be explained by the fact that the third-party personal data obtained by the lawyer will be protected by law as privileged information, which guarantees a level of protection of the data subject's rights and legitimate interests not lower than that provided for in Federal Law No. 152-FZ dated 27 July 2006 'On Personal Data'.

COMMITTEE MEMBERS

Allen & Overy Legal Services • ALRUD Law Firm • AstraZeneca Pharmaceuticals LLC • Baker Botts L.L.P. • Baker McKenzie • BASF • BAYER • BEITEN BURKHARDT Moscow • BMW Russland Trading • Bonduelle-Kuban LLC • Bryan Cave Leighton Paisner (Russia) LLP, Russian branch • Caterpillar Eurasia LLC • CMS Russia • Continental Tires RUS OOO • Corteva Agriscience • Credit Agricole CIB AO • Delonghi • Dentons • DLA Piper • Egorov Puginsky Afanasiev & Partners (EPAM) • Electrolux • Eversheds Sutherland • Evonik • EY • General Motors CIS • Google • Kia Motors Rus • L'Oreal • M.Video • Mazars • Mercedes-Benz Russia • Michelin • Morgan Lewis • Nissan Manufacturing Rus • Noerr OOO • Novo Nordisk A/S • Pepeliaev Group, LLC • Philip Morris Sales and Marketing • Philips LLC • Porsche Russland • Procter & Gamble • PwC • Renault Russia • Rödl & Partner • Rouse & Co. International (UK) Ltd. in Moscow, Branch of PLC • Sanofi Russia AO • SANOFI-AVENTIS REP OFFICE • Scania-Rus LLC • Schneider Electric Joint Stock Company • SCHNEIDER GROUP • SERVIER • Shevyrev and partners, Bureau of attorneys • Siemens LLC • Syngenta • Toyota Motor • VEGAS LEX Advocate Bureau • Vlasta-Consulting, LLC • Volkswagen Group Rus (Audi/Bentley/Lamborghini/Škoda/Volkswagen/Volkswagen Commercial Vehicles).

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MODIFICATIONS IN THE REGULATION MECHANISM OF SPECIAL INVESTMENT CONTRACTS

Special investment contracts (SPICs) were introduced in 2014 (SPIC 1.0). The SPIC 1.0 mechanism stipulated that an investor would undertake an obligation to implement an investment project to localize a new production facility or to modernize an already localised production facility in exchange for state guarantees assuring stable conditions for the investor's operations or other incentives. According to the Industry Development Fund, as of 31 July 2019, 45 such contracts had been concluded with the participation of the Russian Federation.

In August 2019, new amendments to Federal Law No. 488-FZ and to the Tax and Budgetary Codes of the Russian Federation came into effect, making material changes in the SPIC regulation mechanism (SPIC 2.0). Now, a package of bylaws has been prepared (regarding the procedure for the conclusion, termination and modification of SPICs, the rules for creating a list of modern technologies, the submission of reports by an investor upon the fulfilment of a contract, etc.), without which SPIC 2.0 could not really work (the document package has not gotten final approval yet, and it is currently at the adaptation stage).

A portion of the amendments already introduced could make SPIC 2.0 a more accessible and interesting tool for prospective investors. For example, the minimum investment threshold has been eliminated (previously, it amounted to RUB 750 mln for SPICs with the participation of the Russian Federation), the maximum effective period of SPICs has been increased (to 15 years if the investment amount does not exceed RUB 50 bln, and to 20 years if the investment amount exceeds that number). The legislative innovations stipulate that the provisions of the Russian Civil Code regarding obligations and contracts may be applied to SPICs. This would offer the parties more flexibility when structuring their rights and obligations under a contract (at the same time, it is still unclear if an investor would be able to propose any changes in practice). Moreover, establishing the limits of the investor's liability to the total value of incentives applied to them seems a positive decision. The AEB also welcomes the introduction of changes to Article 78 of the Budget Code (Federal Law No. 295-FZ), thanks to which, under SPICs, it becomes potentially possible to grant budgetary subsidies on a long-term basis.

Also, as a part of the SPIC reform, it is planned to expand the sphere of application of SPICs, among other things, to cover activities related to the extraction of natural resources and to the supply of electric energy, gas and steam, air conditioning, water supply and sewerage.

On the other hand, the SPIC 2.0 mechanism raises a number of questions among prospective investors. For example, legislative innovations do not offer investors any additional measures of support yet, as compared to those provided to SPIC 1.0 participants previously, which they had counted upon during the discussion of updates to the mechanism. And certain support measures seem even less accessible as compared to SPIC 1.0. For example, the stability of operational conditions is now guaranteed only in those cases when it is directly stipulated by federal and regional regulatory legal acts in the respective governance areas. Also, SPIC 2.0 makes no formal provisions as to the involvement of third parties in a contract (unlike SPIC 1.0, where it was possible to formally involve such third parties to a SPIC on the investor's side), which could be relevant for projects with several participants. All these aspects might reduce the attractiveness of SPICs to investors.

However, the most radical change in the new SPIC is its focus: from a mechanism for supporting production, SPIC 2.0 has, in fact, turned into a mechanism requiring the creation or transfer of new technologies to the Russian Federation in order to manufacture competitive products. The promotion of development and the implementation of modern technologies to manufacture competitive products in the Russian Federation should undoubtedly be welcomed.

However, the main challenge to prospective investors is related to this innovation, since it is still unclear what exactly would be considered modern technology for the purposes of concluding a SPIC (the Russian Ministry of Industry and Trade is currently gathering preliminary proposals from interested parties for the inclusion of various types of modern technologies in the list) and how the practice of conducting expert assessments of technologies to have them included on the list would be arranged, as well as the practice of inclusion of technologies on the list at the investor's initiative (according to the new rules, a SPIC can only be concluded with regard to technology already included in the list approved by the Russian government).

Moreover, the SPIC 2.0 conclusion procedure itself (the contract would be concluded based on the results of an open or closed tender, the winners of which could be several investors at a time, along with their projects) now involves a multi-step and rather complicated procedure for selecting and assessing an application which, on the one hand, makes the process more transparent but, at the same time, complicates the already rather resource-intensive procedure. The "first come-first served" rule applicable for some projects could also raise competition-related concerns.

The current draft bylaws required to regulate the procedure of including technologies on the list, as well as the procedure for concluding a SPIC 2.0, raise a number of questions (both technical ones and ones of principle) and require clarification (for example, whether an investor would be able to propose any changes to a draft SPIC).

RECOMMENDATIONS

The AEB has a generally positive opinion of the SPIC 2.0 mechanism, but the attractiveness of this tool would largely depend on whether proposals for the improvement of current draft bylaws would be taken into account and how effectively the work with prospective investors would be arranged (including the stages of including technologies on the list and updating them). The AEB intends to monitor the development of events, and it is prepared to participate in the revision of the SPIC 2.0 mechanism to increase its attractiveness to investors.

'CONSUMER EXTREMISM' ON THE TERRITORY OF VARIOUS REGIONS OF THE RUSSIAN FEDERATION

ISSUE 1: MAKING COMPLAINTS ABOUT PRODUCT QUALITY WITHOUT RETURNING/PROVIDING THE PRODUCT ITSELF

The Law on the Protection of Consumers does not stipulate the mandatory nature of the pre-judicial resolution of a dispute, in particular, the consumer's obligation to provide the product to have its quality examined before submitting a claim. Negative consequences include: denying the defendant the right to examine product quality; increasing the burden on the court system; the impossibility of taking the product away from the consumer, who can use it during the court hearing; and an increased period of penalty accrual (not from the moment of provision of the product, but from the date of receipt of the claim) and, accordingly, its amount.

RECOMMENDATIONS

To prevent abuse on the part of consumers at the legislative level, it can be stipulated that ignoring the pre-trial procedure for resolving a dispute entails a refusal to satisfy the claim for a penalty and fine, and also that the claim satisfaction period is to be counted not from the date of the arrival of the complaint from the consumer but from the moment of examination of the product's quality or, if an expert examination of the product has been arranged, from the moment the expert examination is conducted, the period of which is restricted by Clause 5 of Article 18 of the Law on the Protection of Consumers.

ISSUE 2: DISPROPORTIONATE PENALTY AMOUNTS

The Law on the Protection of Consumers (Clause 6 of Article 13) establishes that a penalty shall be accrued in favour of a consumer at the rate of 1% of the cost of the product per day for the entire period of delay, as well as a fine amounting to 50% of the sum judged in favour of the consumer. In practice, the amounts of penalties and fines in favour of consumers sometimes total 300-400% of the initial cost of the product, which contradicts the principles of civil law. Huge amounts of penalties are attractive for dishonest consumers.

RECOMMENDATIONS

The AEB recognizes the necessity of having a protective mechanism for consumers who face the violation of their rights. At the same time, the AEB believes that the penalty amount should be determined based on the rules of Article 395 of the Civil Code of the Russian Federation, which refers to the key interest rate of the Bank of Russia. The Association also believes that the total amount of all penalties should be limited to the value of the product.

ISSUE 3: LIABILITY FOR THIRD-PARTY CONDUCT

It follows from Part 1 of Article 20 and Article 23 of the Law on the Protection of Consumers that, for a violation of the agreed time period for eliminating defects in goods, a defendant who has committed such a violation is liable to the consumer. There is a trend in court practice that, in the case of repairs to a vehicle, the liability is attributed, not to the person who performed the repairs, but to the seller or importer of the vehicle. Also, sellers and importers are held liable for third-party conduct, even in cases when there are no legal relations between them.

RECOMMENDATIONS

The AEB believes that the provisions of the law should not lead to no-fault liability for the actions of other parties. In the opinion of the AEB, this regulation should be adjusted with regard to submitting further complaints in court only regarding the person who has committed such a violation of consumer rights.

ISSUE 4. EXTENDING CONSUMER PROTECTIONS TO LEGAL ENTITIES

We have observed a trend toward the Law on the Protection of Consumers being applied in disputes between legal entities in arbitrazh (state commercial) courts. For example, a legal entity purchases the right of claim from a consumer (through assignment), most often a penalty of 1% per day, and files a claim in an arbitrazh

(state commercial) court against the seller, importer or manufacturer of the product, asking the court to award a penalty. Moreover, the consumer often assigns a right of claim that he or she has not submitted to a court of general jurisdiction and that is based only on the Law on the Protection of Consumers (part 1 of article 23 of the Law on the Protection of Consumers). The use by legal entities of the possibilities offered in the Law on the Protection of Consumers leads to abuses and to the recovery of significant monetary sums from the defendants, rather than to the restoration of consumer rights.

RECOMMENDATIONS

Due to the special status of the consumer as the weak party in a relationship, the Law on the Protection of Consumers provides increased legal protection for the consumer. For this reason, legislation stipulates a significant penalty of 1% per day, or 365% per annum, for violations of consumer rights. A legal entity that does not have the status of a consumer under the Law on the Protection of Consumers should not enjoy the rights and protections provided to consumers and should not bring claims against a defendant with which it does not have a contractual relationship. The AEB believes there should be a restriction on the assignment of the right to claim penalties under the Law on the Protection of Consumers. Otherwise, the regime of increased legal protection applies to professional legal entities in civil law relations. Also, in the AEB's view, such cases should be considered in courts of general jurisdiction, since they are not economic in nature.

A DRAFT LAW THAT MAKES CHANGES IN THE LAW ON THE PROTECTION OF CONSUMER RIGHTS AND THE POSSIBILITY OF CONDUCTING UNSCHEDULED CHECKS (DRAFT LAW NO. 755217-7 DATED 16 JULY 2019)

The draft Law proposes to:

- establish the impossibility of reducing the amount of penal provisions;
- 100% of the fine amount should be awarded to a public association or local authority if they submit a claim for protection of a consumer (currently – 50%);
- obligate a state authority to conduct unscheduled checks based on a request from a public association.

The AEB believes that when the draft Law is passed, the seller/consumer balance in legal relations will be materially disturbed; the proposed changes with regard to collection 100% of the fine in favour of the association or authority are aimed at adversely influencing consumer rights; the expansion of the circle of persons could potentially result in the creation of an additional tool for unfair competition and increase the burden on state authorities.

ANTIMONOPOLY LAWS: LATEST AMENDMENTS ISSUE

The past year has been marked by the development of a number of new and existing legislative initiatives of the Federal Antimonopoly Service of Russia (the FAS) aimed at the material modification of current regulations in certain areas. In the first instance, it is important to highlight the draft Law on Antimonopoly Compliance, which has been submitted to the State Duma of the Russian Federation after several years of discussions both by the FAS and by the business community. Though the draft Law proposes to codify this institution, already widespread in Russian practice and actively promoted by the FAS of Russia, it still fails to offer any answers to the key question asked by each company that has been assessing the expediency of adopting a system of compliance with antimonopoly laws. This question concerns the possible consequences for a company that has implemented an antimonopoly compliance system but was still found to have committed a violation of antimonopoly laws. The executive summary to the draft Law notes that a company which has implemented such a system and aligned it with the FAS but was still found to be in violation of the law may claim exemption from liability if its behaviour meets such approved antimonopoly compliance measures. Nevertheless, until such an option is included directly in the text of such a draft or any subsequent drafts, the companies that have implemented such a system would not have any directly stipulated guarantees of mitigation of or exemption from liability in a situation when a violation has been committed, despite the steps taken. At the same time, it is important to remember that, even now, the availability of antimonopoly compliance measures would allow a company that has implemented them to reduce the frequency of its scheduled audits by antimonopoly authorities or become exempt from such audits completely.

Changes have taken place in the sphere of foreign investment regulation as well; the FAS has gained the right to demand the suspension of the deals of foreign investors with respect to any Russian business entities, not just strategic ones. Such a suspension is possible until: (i) the FAS decides that there is no need to notify the Chairman of the Government Committee for Control over Foreign Investments in Russia (the 'Committee') on the deal being made, or (ii) the Chairman of the Committee makes a decision that there is no need for its pre-approval. Also, among other things, the criteria making a deal subject to consideration by the Chairman of the Committee are unclear. Such uncertainty obviously interferes with the consistent and long-term planning of foreign investor actions in Russia. Moreover, the work on a draft Law increasing control over foreign investments has been renewed. According to this draft Law, the FAS would like to have the right to approve the deals of foreign investors not only with strategic Russian entities, but also with Russian organisations (including non-profits) which are not business entities but are involved in strategic activities.

The work on other, no less important projects previously announced by the FAS is in progress. Among them, (i) the so-called 'fifth antimonopoly package' aimed at clarifying antimonopoly regulations in the conditions of a digital economy and tightening the rules for approval of deals; (ii) a draft law on changing the regulation of natural monopoly objects; (iii) a draft law on the reform of tariff regulations; and (iv) a draft law on the administrative procedure for creating unitary enterprises and their activities are worth noting.

RECOMMENDATIONS

The AEB is paying close attention to the latest proposals of the FAS concerning the amendment of Russian antimonopoly laws.

The Association welcomes the initiative of the FAS to implement the institution of antimonopoly compliance in Russian regulations; however, the AEB once again stresses the importance of reflecting the benefits and advantages to companies with their own programmes for compliance with antimonopoly laws.

We recommend that AEB members conduct a preliminary evaluation of the potential effect of the initiatives proposed by the FAS of Russia and take active part in public discussions of both new and past drafts developed by the regulator.

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INTRODUCTION

Under current law, in order to work in Russia, a foreign citizen residing temporarily in Russia must have the following documents attesting to this right: a work permit and work visa or a patent (a patent is required for citizens entering Russia under a visa-free regime who do not meet the criteria for highly qualified specialists). It is possible to obtain a work permit by following either of the two existing procedures: (i) the procedure for highly qualified specialists, or (ii) the procedure for everyone else.

WORK PERMIT FOR HIGHLY QUALIFIED SPECIALISTS (HQS)

Highly qualified specialists (HQS) are foreign nationals, who are, generally, managers or professionals with unique knowledge and professional skills, and whose personal income is at least RUB 167,000 per month. They enjoy a number of preferences, including a simplified procedure for obtaining work permits and visas valid for up to three years, and no quotas are required to hire them.

ISSUES

Non-profit organizations are currently unable to hire HQS. The Committee earlier approached the relevant government agencies with proposals to change this legislative provision. The requirement that an HQS be paid quarterly wages (remuneration) of at least three minimum HQS wages (RUB 501,000) runs counter to current labor law in cases where an HQS is absent from work for a valid reason. Under migration law, failure to pay the specified quarterly wages (remuneration) in the event of sick leave, maternity leave or unpaid vacation is treated as failure by the employer to fulfill its obligation to pay the required salary to an HQS and is punishable by fines and sanctions such as a two-year employment ban.

In order to resolve these issues involving a conflict of migration, tax and labor laws, the Committee believes it essential for special and more flexible approaches to be designed and incorporated into current law.

RECOMMENDATION

Until the issue of wages payable for a period in which an HQS is absent for a valid reason can be resolved, we recommend following the requirements of current law, as failure to comply with the established requirements may entail a two-year prohibition on hiring HQS.

OVERVIEW OF ISSUES STEMMING FROM COVID-19

While the information presented in this section is valid at the time of writing, it may change as the epidemiological situation develops, which may lead to changes in current Russian law and practice. It is therefore recommended that employers double-check the existing procedures for foreign nationals entering Russia as well as other regulations when making business-related decisions.

(I) HIGHLY QUALIFIED SPECIALISTS (HQS)

Given the epidemiological situation in Russia and worldwide, the Russian Government adopted Resolution No. 635-r of 16 March 2020, imposing a number of restrictions on foreign nationals entering Russia (the "Government Resolution").

The Government Resolution allows a single entry into Russia for foreign nationals holding HQS status and included in the lists approved by the relevant federal executive bodies.

Despite a set of measures taken by the Government, companies arranging for their HQS to return to Russia face a number of issues when seeking approvals for their entry into Russia:

1) Issue: Deciding who to apply to. A company must first decide which federal executive body it should apply to for an entry permit for an HQS. In practice, AEB members have found it difficult to determine the federal executive body with jurisdiction over a given employer or customer of work (services). The OKVED code (i.e. code of a sector of activity) is not always a reliable source for accurately establishing the federal executive body that has such jurisdiction. Applications from many companies, including foreign legal entities operating in Russia via a representative office or branch, were not accepted by the federal executive bodies that the applicants thought had jurisdiction over them.

2) Issue: No application procedure or processing deadlines. There is no procedure in place to regulate the application process (including a list of required documents) and turnaround times for applications. The lack of a clear procedure results in multiple cases where federal executive bodies refuse to accept applications, al-

though, under current law, they are supposed to do so and then forward a list of foreign nationals allowed to enter Russia to both the Russian Federal Security Service and Ministry of Internal Affairs.

RECOMMENDATIONS

- Set and publish clear criteria for a Russian entity or a foreign company operating in Russia via a representative office or branch to be regarded as under the jurisdiction of a given federal executive body based on OKVED codes or other attributes; communicate these criteria to employers and relevant ministries.
- Establish, at the Government level, a common procedure for filing and processing the paperwork required for the approval of a list of foreign employees; under this procedure, tight deadlines should be set for federal executive bodies to give their approvals and send the relevant lists to the Russian Federal Security Service (Border Guards Service) and Ministry of Internal Affairs, as well as to issue entry permits for Russia.

3) Issue: Indicating border checkpoints. Under amendments to the Government Resolution, federal executive bodies require companies compiling lists of HQS who are expected to come to Russia to indicate a specific border checkpoint and the planned date of entry into Russia. However, it is virtually impossible to provide exact dates of entry and border checkpoints when filing an application, as Russia currently has no regular air traffic with most countries, the epidemiological situation worldwide is constantly changing, and there are no clear deadlines for handling applications.

RECOMMENDATION

Either abolish this requirement altogether or change the deadlines for providing information about the date of entry and border checkpoint.

4) Issue: Family members of HQS are unable to enter Russia. The Government Resolution does not establish a procedure for family members entering Russia with HQS. Yet this is a pressing issue, as many HQS reside in Russia with their families and would like their family members to accompany them when they enter Russia. Their children, who are schooled locally, have to interrupt their education if they are unable to return to Russia. In some cases, this prompts top executives of major foreign companies or their Russian subsidiaries that are critical to the local economy to give up their employment in Russia.

RECOMMENDATION

Amend the Government Resolution to allow entry into Russia for accompanying family members of HQS.

5) Issue: HQS who are citizens of countries approved by the Russian Government face difficulties when entering Russia. While the Government Resolution (with the attached list of countries) does not expressly restrict entry into Russia for citizens of the listed foreign countries, including HQS, the Russian Ministry of Internal Affairs claims that such foreign nationals may enter Russia for purposes of employment, only provided that they are HQS and follow the relevant procedure – in other words, that they are included in the list of HQS. Indeed, when attempting to cross the Russian border, employees of AEB member companies who are citizens or residents of the listed foreign countries, have been told that that they must be included in the list of HQS, while, in fact, they are entitled to cross the border without any additional approvals just by virtue of being citizens of the countries listed in the Government Resolution. This puts HQS at a disadvantage compared with citizens and residents of the listed foreign countries who enter Russia on other visas. This restrictive interpretation would seem to defeat the purpose of the Government Resolution and may therefore unreasonably affect the rights of citizens or permanent residents of the foreign countries listed therein.

RECOMMENDATION

The Russian Ministry of Internal Affairs should clarify how the new provisions should be applied to citizens and permanent residents of the listed foreign countries, including HQS, and should allow them to enter Russia for purposes of employment regardless of whether or not they have HQS status or are included in the HQS list, provided that they have all the required paperwork.

(II) EQUIPMENT SETUP AND MAINTENANCE STAFF

Under paragraph 8 of clause 2 of the Government Resolution , foreign nationals involved in the setup and maintenance of foreign-manufactured equipment are allowed to enter Russia, provided that they are included in the list submitted to the Russian Federal Security Service and Ministry of Internal Affairs by the federal executive body with jurisdiction over the entity that has ordered this foreign equipment.

ISSUE

In implementing this provision of the Government Resolution, AEB members encounter the same problems that they face when seeking approval for a list of HQS who will enter Russia; they are therefore unable to promptly set up and maintain foreign-manufactured equipment, which results in the late launch of new production facilities and suspension of investment contracts.

(III) ENTRY INTO RUSSIA FOR FOREIGN NATIONALS HOLDING A PERMANENT RESIDENCE PERMIT

ISSUE

The Government Resolution allows foreign nationals permanently residing in Russia, except those listed in paragraph 13 of clause 2 of Government Resolution No. 763-r of 27 March 2020, to enter Russia by any means of transport, including by air; however, in the case of entry and exit by land transport, paragraph 13 of clause 2 of Government Resolution No. 763-r makes reference to foreign nationals permanently residing and staying in Russia who have permission to leave Russia once to visit their home country. This exception is not clear and gives rise to uncertainty regarding whether or not foreign nationals holding a permanent residence permit may enter and exit

Russia multiple times; it should therefore be clarified in order to avoid legal uncertainty and ensure consistent application of the law.

RECOMMENDATION

Allow foreign nationals holding a permanent residence permit in Russia to enter and exit Russia multiple times.

(IV) SELF-ISOLATION RULES FOR HQS

ISSUE

Under Resolution No. 9 of the Chief Public Health Officer of the Russian Federation of 30 March 2020 "On Additional Measures to Prevent the Spread of COVID-2019," foreign nationals and stateless persons arriving in Russia for purposes of employment must stay in isolation for 14 calendar days upon arrival to Russia; for this reason, they are unable to start their job immediately, and this also makes it difficult to establish and resume operations.

RECOMMENDATION

Abolish the self-isolation requirement for foreign HQS arriving in Russia for purposes of employment, so that they and their accompanying family members come under rules and restrictions similar to those applicable to Russian nationals (Resolution No. 9 of the Chief Public Health Officer of the Russian Federation of 30 March 2020, clause 6, paragraph 6.2), while the requirements in clause 1 of Resolution No. 7 of the Chief Public Health Officer of the Russian Federation of 18 March 2020 should remain unchanged.

STANDARD PROCEDURE FOR PROCESSING WORK PERMITS

This procedure has largely lost the relevance it had before the introduction of the policy regulating HQS, but, for a variety of reasons, it still applies. The process involves a number of additional requirements for employers and is more complicated and time-consuming, and a work permit obtained under the standard procedure is valid for one year. So every year employers need to go through the entire process, including, in some cases, quota allocation.

ISSUES

1) **Quota for hiring foreign workers**. The current procedure for obtaining a quota to hire foreign workers is complex and lengthy and entails many difficulties, and there is no guarantee that a quota will be granted. It therefore seems unreasonable and impractical to retain the quota requirement for employees receiving work permits under the standard procedure.
2) **Exams on the Russian language, history and the basics of law**. To obtain a work permit under the standard procedure, workers are required to provide a certificate confirming that they have passed an exam on the Russian language, history and the basics of Russian law. This significantly complicates the secondment process as well as business planning in Russia. However, a good command of the Russian language is often not essential because the foreign worker's colleagues know the foreign language or the company employs qualified in-house translators.

RECOMMENDATION

The Committee considers it necessary to revise the procedures of applying for quotas and approving them, extend the list of quota-free professions for qualified foreign workers, as well as to consider the possibility of eliminating the requirement that qualified specialists arriving in Russia on the basis of a visa take an exam on the Russian language, history and basics of law.

PATENTS

Foreign nationals, other than HQS, arriving in Russia on a visa-free basis (specifically, citizens of Azerbaijan, Moldova, Tajikistan, Uzbekistan and Ukraine), should obtain a patent for work under the relevant procedure stipulated by law. Patents are subject to a simplified procedure and do not involve applying for a quota.

A patent is issued to a foreign national for a period from 1 to 12 months and can be extended for the same period any number of times. However, the effective term of a patent may not exceed 12 months after the date of issuance.

A patent is deemed extended for a period for which a fixed fee is paid by the holder. If the fee is not paid, the patent is annulled on the date following the last day of the paid period.

The fixed fee for a patent is an advance payment towards personal income tax (PIT) and should be offset against this tax.

In accordance with Presidential Decree No. 274 of 18 April 2020, during the pandemic, patents can be issued regardless of the time limits for filing the required paperwork or the purpose of the visit or departure from Russia.

Current legislation has also been amended to allow holders to have their patents re-issued an unlimited number of times without having to leave Russia.

ISSUES

Hiring foreign nationals holding a patent may entail the following issues.

In practice, it may be difficult to offset advance payments for a patent against PIT, and the tax authorities may order an additional review in relation to paid but unrecognized tax.

Note also that foreign nationals holding a patent cannot work in other constituent entities of the Russian Federation even when on a business trip, as under Order No. 564n of the Russian Ministry of Health and Social Development of 28 July 2010 this is only allowed for foreign citizens with a work permit or temporary residence permit. To address this issue, discussion is currently under way to amend Order No. 564n.

Another issue is that representative offices and branches via which foreign legal entities operate in Russia cannot hire foreign nationals holding a patent because these offices and branches are not included in the list of entitled employers stipulated in Article 13.3.1 of Federal Law No. 115-FZ of 25 July 2002 "On the Legal Status of Foreign Nationals in the Russian Federation".

RECOMMENDATION

We recommend that employers take into account the above specifics related to hiring foreign nationals holding a patent and observe the established rules, including restrictions, while the Migration Committee will continue to work on amendments to allow legal entities operating in Russia via representative offices and branches to hire foreign workers holding patents.

NEW MIGRATION REGISTRATION RULES

Amendments to Federal Law No. 109-FZ "On Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation" took effect on 7 September 2020.

Below are the main changes introduced by these amendments:

- Foreign nationals may act as hosts for migration registration purposes if they own residential property in Russia.
- All paperwork needed to register foreign nationals (i.e., those holding a temporary or permanent residence permit) is to be filed in person or electronically via the Public Services portal or a multifunctional center.
- If applicants file for registration electronically, they should also present original documents confirming the right to use the residential property to the migration registration authority.
- A foreign national may personally submit a notification of arrival to the migration registration authority in the following cases:
  - the property owner is unable to do so for a valid reason (e.g. illness);
  - the foreign national holds title to residential property (in which case instruments of title must also be presented);
  - the property owner permanently resides abroad (in the case of individuals, including foreign nationals) or is located abroad (in the case of foreign legal entities or organizations); in this case, the host's notarized consent to the foreign national's residence (stay) at the property should be attached to the notification of arrival.
- The host may submit a notification of the foreign national's arrival either in person or electronically via the Public Services portal or a multifunctional center; alternatively, it may be mailed to the migration registration authority via Russian Post. If a notification is filed electronically, its detachable part is signed by the migration officer with an enhanced electronic signature and then printed out and handed to the foreign national.
- Foreign nationals staying at a hotel, sanatorium, recreation center, motel or holiday home do not have to be removed from the migration records at their previous place of stay.

ISSUE

The lack of an approved administrative procedure for the amendments that have already taken effect remains a key issue. As a result, regional offices of the Ministry of Internal Affairs have no common and clear understanding of how these amendments should be acted upon in practice.

The possibility of obtaining the relevant service electronically via the Public Services portal, albeit provided by law, has not yet materialized.

RECOMMENDATION

In practice, migration registration and deregistration of foreign employees may be treated differently, depending on how each regional office of the Russian Ministry of Internal Affairs (MIA) interprets the new legal requirements. The Migration Committee recommends that each such case be noted and reported to the Main Directorate for Migration Affairs or the head of the MIA's regional office to which the company applied for registration in order to clarify any requirements inconsistent with the clarifications of the Main Directorate for Migration Affairs.

NOTIFICATIONS

An employer is required to notify the migration authorities of the conclusion, expiration or cancellation of an employment/civil contract with a foreign national within three business days after any of these events. Notifications are required for all categories of foreign nationals, including those working on the basis of a work permit (including HQS) or patent, those temporarily or permanently residing in Russia, and those working without a work permit by virtue of intergovernmental agreements as well as in other cases stipulated by current law.

Moreover, an employer is obliged to notify the migration authorities of the payment of quarterly wages/remuneration to HQS.

Pursuant to the effective Code of Administrative Offenses, an employer that fails to meet the notification deadlines may be fined from RUB 400,000 to RUB 1,000,000, depending on the region where the employer operates.

ISSUE

Pursuant to Ruling No.83-AD18-6 of the Supreme Court of the Russian Federation of 7 June 2018, it is not required to notify the migration authorities of the conclusion and termination of employment contracts with citizens of the Republic of Belarus, and it is illegal to hold employers liable for failure to notify of employment contracts with citizens of the Republic of Belarus. In practice, representatives of the migration authorities may not share this position.

Below are some difficulties that arise when a notification form is completed:

- there is no sample form to aid in completing notifications, and the notification of contracts concluded with students who are citizens of EAEU countries, for example, is difficult to complete;
- it is impossible to notify of contract termination by mutual consent of the parties.

Notification of an employment contract with citizens of EAEU countries and foreign nationals working under a patent may be submitted only if their migration registration details gave been entered in the MIA's database. Note, however, that when filing a notification, EAEU citizens are legally allowed to stay in Russia without being registered with the migration authorities.

Incorrect completion of the notification form may entail an administrative fine for violating the rules of form completion.

In practice, mailed notifications may be returned to the sender for various reasons. Moreover, it is uncertain which regional office of the Main Directorate for Migration Affairs should be notified and what date should be regarded as the date of a contract's conclusion.

RECOMMENDATIONS

When notifying the migration authorities, it is necessary to follow the procedure and time limits established by current law, rather than the individual opinions of migration officials.

Immediately before sending a notification, it is necessary to check the following:
- the forms comply with current law;
- the address of the regional office of the migration authorities, as indicated in official sources, is correct.

INTERGOVERNMENTAL AGREEMENTS ON MIGRATION

Currently, there are several international agreements regulating labor migration matters. These agreements introduce a simplified procedure for nationals of one contracting state to obtain visas and work permits in the other contracting state.

Intergovernmental agreements with the French Republic, the Republic of Korea and a number of other states provide for simplified procedures applicable to employees within the same group of companies, and employees of branches and representative offices of foreign legal entities, as well as to young specialists.

There are a number of preferences for citizens of member states of the Eurasian Economic Union (EAEU), including the ability to work without a work permit or patent in EAEU member states. At present, citizens of the Republic of Belarus, Armenia, Kazakhstan and Kyrgyzstan are entitled to work in the Russian Federation without a work permit or patent. However, an employer is obliged to comply with the general requirements of migration laws when hiring those foreign citizens, in particular, to notify the migration authorities of the conclusion and termination of employment contracts and civil contracts.

Employees and their family members from EAEU countries must register with the migration authorities within 30 days of their arrival in Russia.

The reciprocity principle is now gaining importance in international relations: reciprocal arrangements are used, for example, when compiling a list of countries with which air traffic can be resumed, which makes it easier for permanent residents and citizens of listed countries to enter Russia during the COVID-19 pandemic.

RECOMMENDATIONS

To optimize time expenditures and other costs, it is necessary to observe the provisions of intergovernmental agreements and strictly comply with the requirements of migration law when hiring foreign nationals to whom these agreements apply.

Intergovernmental agreements with other countries that simplify the procedure for temporary work certainly improve the business climate and promote an inflow of foreign investments into the Russian economy. The Association of European Businesses welcomes the conclusion of such agreements.

INVITING PARTY'S RESPONSIBILITY FOR THE STAY OF A FOREIGN CITIZEN IN THE RUSSIAN FEDERATION

Federal Law No. 216-FZ "On an Amendment to Article 16 of the Federal Law "On the Legal Status of Foreign Citizens in the Russian Federation" was adopted in late 2018.

Pursuant to this law, the inviting party is held accountable in event that a foreign national fails to leave Russia on time. According to the amendments, the inviting party must ensure that invited foreigners comply with the rules for staying (residing) in Russia, i.e., that their actual activities during their stay (residence) in the country are consistent with the declared purpose of their entry or occupation and that such foreigners leave the country by the end of the designated period of stay.

As stated in the law, a list of measures and rules for their implementation is established by the Government of the Russian Federation.

Another law is Federal Law No. 215-FZ "On an Amendment to Article 18.9 of the Administrative Offenses Code of the Russian Federation," adopted on 19 July 1998.

Under this law, the inviting party may be fined if a foreign national fails to comply with the declared purpose of his/her entry into Russia. Individuals inviting foreign nationals to Russia for private purposes and providing them with accommodation are also responsible for ensuring that they leave the country by the end of the designated period of stay. Otherwise, the inviting parties will face a fine ranging from RUB 2,000 to RUB 4,000. Fines for the same offense have been imposed on officials and organizations (from RUB 45,000 to RUB 50,000 and from RUB 400,000 to RUB 500,000, respectively). Similar sanctions are imposed for failing to ensure that invited persons comply with the declared purpose of their entry into Russia.

For almost a year now, the AEB Migration Committee has been actively involved in the activities of the working group on the implementation of the "regulatory guillotine" mechanism, contributing to its efforts on the migration front. This is a direct dialogue with the Russian Government and the Ministry of Internal Affairs at the level of deputy minister.

Though, when it comes to migration matters, there are very few outdated requirements, the existing procedure for all working groups established under the "regulatory guillotine" project requires that any draft regulation dealing with a specific matter (and, in fact, any draft law) is to be approved by this working group. Among key items on agenda of the working group was a Government Resolution relating to obligations of inviting parties, drafted in pursuance of Federal Law No. 216-FZ. This Government Resolution, which took effect on 25 September 2020, provides for the following requirements:

- The inviting party must provide its contact details to a foreign national by email, and only once. Thus, the original requirement, whereby these details were to be delivered in person against confirmation of receipt, was eliminated at the suggestion of the business community.
- The inviting party should guarantee financial and medical support and accommodation (i.e., existing obligations effectively remained unchanged).
- The inviting party must help a foreign national to achieve the purpose of their visit. The Government Resolution gives a specific list of steps to be taken by the inviting party. For example, if the purpose of a visit is business, the inviting party must arrange meetings, conferences, business and commercial negotiations, and contract signing or extension. If the purpose of the visit is work, the inviting party must arrange for employment, a workstation, and the signing of an employment contract or civil contract. Note, however, that the specific steps listed in the Government Resolution could come into conflict with the new list being prepared of purposes for visiting Russia. Below are the changes proposed by the AEB Migration Committee to the draft document discussed by the working group on the implementation of the "regulatory guillotine" mechanism in the area of migration:
  - the purpose for visiting Russia on a business visa – "for the purposes of business trips" – is loosely worded, i.e., any business events, not just those indicated in the Government Resolution (see above), meet this purpose;
  - while an "assembly" visa is now classified as a business visa, no employment contract is signed between the inviting party and a person arriving in Russia on an "assembly" visa.
- The inviting party should notify the MIA within two days after it loses touch with a foreign national. This provision does not apply if the foreign national has re-entered Russia (for example, on a multi-entry visa) and the inviting party is unaware of this.

ISSUES

Unfortunately, the specific steps to be taken by the inviting party, as listed in the Government Resolution, do not include some obvious steps, such as visiting exhibitions (if the purpose of a visit is business). It will not always be easy for the inviting party to provide a workstation to foreign nationals visiting Russia to work, as required by the Government Resolution, especially during the pandemic, when it is recommended that employers transition their workforce to remote work, because in this case no physical workplaces are created.

The Migration Committee supports measures to improve state migration policy, including prevention of violations of the residence regime in Russia by foreign nationals and stateless persons. It is important to note that an inviting party generally lacks effective tools to ensure that foreign nationals leave Russia on time, and increased responsibility in this area will merely place an additional administrative burden on an employer acting as an inviting party.

PERMANENT RESIDENCE AND CITIZENSHIP IN RUSSIA

Over the past year, significant changes have been made to the current procedures in migration law for obtaining permanent residence and citizenship in Russia. Obtaining permanent residence and citizenship in Russia has become especially relevant during the pandemic, as individuals holding either status can, in many cases, cross the Russian border in both directions. This prompts some categories of foreign nationals to start the process of obtaining permanent residence and citizenship in Russia.

Below are the main categories of foreign nationals entitled to apply for permanent residence without having first to obtain a temporary residence permit:

- highly qualified specialists and members of their families;
- foreign nationals whose parent or child is a Russian citizen;
- qualified specialists who have worked for at least six months in professions included in the list of professions approved by the Russian Government;
- foreign nationals who have completed intramural education in a Russian university with honors;
- foreign nationals who were born in the RSFSR and held Soviet citizenship;
- foreign nationals who are recognized as native speakers of the Russian language.

The law on Russian citizenship has also been heavily amended, with foreign nationals now being allowed to obtain Russian citizenship without renouncing their original citizenship.

The following foreign nationals holding permanent residence permits can obtain Russian citizenship using a simplified procedure:

- those who are married to a Russian citizen registered at his/her the place of residence in Russia and have at least one common child from that marriage;
- those who have at least one parent who is a Russian citizen residing in Russia;
- those who were born in the RSFSR and held Soviet citizenship;
- those who have been married to a Russian citizen for at least three years;
- those who have legally competent adult children who are Russian citizens;

- those who obtained occupational education in the main state-accredited occupational education programs in Russian educational or scientific institutions in Russia after 1 July 2002 and have been employed in Russia for a total of at least one year prior to the date of their application for Russian citizenship;
- citizens of Belarus, Kazakhstan, Moldova and Ukraine;
- qualified specialists who have worked for at least one year prior to the date of their application for Russian citizenship in a profession included in the list of professions approved by the Russian Government;
- those who are recognized as native speakers of the Russian language.

ISSUES

The key issue relating to permanent residence and citizenship in Russia is filing documents to obtain the required status. Foreign nationals have to make multiple attempts before an application is accepted, as there is no common and clear standard on what documents should be submitted and how they should be completed, while government officials may have diametrically opposed requirements, which may also vary depending on the region.

RECOMMENDATIONS

Foreign nationals should be ready to make multiple attempts before an application is accepted and should be prepared for changing requirements on the part of officials receiving the relevant paperwork.

ADMINISTRATIVE LIABILITY FOR FAILURE TO COMPLY WITH MIGRATION LAW

The current law of the Russian Federation provides for strict sanctions and heavy fines both for legal entities and individuals, including foreign nationals, in the event that they are charged with non-compliance with migration law.

ISSUE

The administrative fines and ensuing liability envisaged in current law are, at times, disproportionate to the offense. A draft of a new version of the Administrative Offences Code does not much improve the situation.

One measure that appears excessive is a ban on entering Russia for foreign nationals charged with administrative liability for two or more offenses committed during a period of three years, regardless of their degree of severity and harm to society and without regard for whether the offender has acted on the decision to impose administrative liability in a timely manner. This is an especially pressing issue for foreign nationals acting as the sole executive body of a legal entity.

RECOMMENDATIONS

In view of the growing scrutiny over migration-related matters on the part of the Ministry of Internal Affairs (including plans to introduce mandatory fingerprinting for HQS and other foreign workers), it is recommended that companies and foreign nationals strictly observe Russian law, including the rules for stays in Russia.

In particular, we offer the following recommendations:

- Ensure that foreign nationals and their employers have a complete set of required migration documents at all times in the event of an inspection.
- Make use of the MIA's electronic services to check for any fines, administrative offenses and bans on entering Russia for foreign nationals.

COMMITTEE MEMBERS

Allen & Overy Legal Services • ALRUD Law Firm • AO Deloitte & Touche CIS • Baker McKenzie • BEITEN BURKHARDT Moscow • Bellerage Alinga • BP • Caterpillar Eurasia LLC • Chevron Neftegaz Inc. Moscow Branch • CMS Russia • Continental Tires RUS OOO • Corteva Agriscience • Delegation of the European Union • Dentons • EY • Honda Motor RUS LLC • IKEA DOM LLC • Intermark Relocation • KPMG AO • LEROY MERLIN Russia • Mannheimer Swartling • Mazars • Michelin • Moscow School of Management SKOLKOVO • MOST SERVICE, member of Bruck Consult • Noerr OOO • Pepeliaev Group, LLC • Philip Morris Sales and Marketing • Rosbank • Scania-Rus LLC • SCHNEIDER GROUP • Secretan Troyanov Schaer S.A. • Shell Exploration and Production Services (RF) B.V. • Siemens LLC • TMF Group • Total E&P Russie • UniCredit Bank AO • VISA • Visa Delight • Volkswagen Group Rus (Audi/Bentley/Lamborghini/Škoda/Volkswagen/Volkswagen Commercial Vehicles) • Volvo Vostok NAO.

PUBLIC RELATIONS & COMMUNICATIONS COMMITTEE

Chairperson:
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Committee Coordinator:
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The Public Relations & Communications Committee was established in 2008 to bring together experts in PR and corporate communications, as well as to create a platform for exchanging information and advising on issues of applying successful international PR practices in Russia. The Committee holds regular meetings and events for PR professionals looking to improve their professionalism and establish relationships with the key stakeholders. The representatives of AEB member companies, as well as external experts, are invited to participate in these meetings.

In the context of globalization of the communication space and growing influence of social media, the topics of crisis communications and reputational risk management gain particular relevance and are reflected in the Committee's agenda. The PR industry trends associated with digitalization and the growing role of social media are forming and will continue to form one of the Committee's key areas of work. The Committee aims to monitor the developments in this area and serve as a discussion platform, including through interaction with authorities (GR) and other groups of stakeholders as professional associations, the expert community, and NGOs.

Traditional and new media remain among the key issues for the PR industry. In this area, the Committee holds the annual 'Meet the Media' event to meet with the leading media (TASS, RIA Novosti, Russia Today, Vedomosti, Kommersant, Expert, etc.). This format enables PR specialists to get professional recommendations and improve skills in planning news content, working with newsworthy issues in the digital information space, and promoting corporate news at the federal level.

The Committee has always focused on a class of issues related to sustainable development and corporate social responsibility of businesses (CSR). International studies show that today all groups of stakeholders are paying great attention to these aspects. In this regard, such crucial trends as globalization of the information space and strengthened cross-functional interaction in the corporate sector give a particular significance to these topics. Being the source of a high level of expertise at the global level, leading European companies pay special attention to the implementation of advanced practices in this area.

In terms of sustainable development and CSR, the Public Relations & Communications Committee acts as a reliable partner and seeks to increase public awareness of the need to implement responsible business practices though its agenda and raising the issues of minimizing operational impact on the environment, using renewable resources, improving productivity, etc. The Public Relations & Communications Committee intends to continue its activity in this area and extend cooperation with other AEB Committees to hold meetings that serve as a joint platform for more proactive interaction with external stakeholders.

One of the key areas of the Committee's work is organizing meetings with Russian and international experts. This format is incorporated in the Committee's agenda in order to inform its members about a wide range of issues related to the industry's trends and challenges at the global level, as well as about their correlation with the Russian context. Under current conditions, a PR professional is required to constantly improve professional competencies, and that aspect also remains in the Committee's focus.

The Public Relations & Communications Committee organizes its work and operates within the framework of the AEB's mission. All meetings and events organized by the Committee are aimed at forming and maintaining AEB's reputation as a reliable partner and a public relations actor that shares the principles of openness and inclusiveness in its interaction with external audiences on a wide range of issues. The Committee encourages AEB companies to exchange best practices for mutual enrichment.

COMMITTEE MEMBERS

ABB • Accor Groupe • Allianz IC OJSC • ALRUD Law Firm • American Institute of Business and Economics • ANCOR • Angelini Pharma Rus LLC • Antal Russia • AO Deloitte & Touche CIS • Ararat Park Hyatt Moscow • Arval • AstraZeneca Pharmaceuticals LLC • Atlas Copco, JSC • AVIS Russia (Bilantilia Corp., duly authorized representative of Avis in the territory of the Russian Federation) • Avon Beauty Products Company, LLC • Baker McKenzie • BAYER • BEITEN BURKHARDT Moscow • Benteler Automotive LLC • BNP Paribas Bank JSC • Boehringer Ingelheim • Bonduelle-Kuban LLC • BP • British American Tobacco Russia • Bryan Cave Leighton Paisner (Russia) LLP, Russian branch • BSH Bytowyje Pribory OOO • Caterpillar Eurasia LLC • CEETRUS, LLC • Chadbourne & Parke LLP • Chevron Neftegaz Inc. Moscow Branch • Clifford Chance • CMS Russia • Commerzbank (Eurasija) AO • Continental Tires RUS OOO • Corteva Agriscience • Creon Capital S.a.r.l • DANONE RUSSIA, JSC • Dassault Systems LLC • Debevoise and Plimpton LLP • Dentons • DHL Express • Dow Europe GmbH Representation office • DSM • Egorov Puginsky Afanasiev & Partners (EPAM) • Enel Russia • ENGIE • Essity LLC • Euler Hermes • Evonik • EY • Ferrero Russia, CJSC • Gasunie • GAZ Group • Generali Russia & CIS • Haldor Topsoe LLC • HELLENIC BANK PCL • Hino Motors, LLC • Hotel Baltschug Kempinski Moscow/Baltschug Ltd. • Hyundai Motor CIS • IE Business School • IKEA DOM LLC • Imperial Tobacco Sales and Marketing • ING Wholesale Banking in Russia • Intermark Relocation • Iveco Russia LLC • John Deere Rus, LLC • Kesarev • LafargeHolcim • LeasePlan Rus • Legrand LLC • Lipetsk SEZ JSC • Lundbeck Rus • Macro-Advisory Ltd. • Mazars • Merck LLC • Messe Frankfurt Rus Ltd. • METRO AG Representative office • Mitsubishi Electric (Russia) LLC • Morgan Lewis • MOST SERVICE, member of Bruck Consult • NAVIEN RUS, LLC • Nestle Rossiya LLC • Noerr OOO • Nokia • Novo Nordisk A/S • Orange Business Services • Oriflame • Pepeliaev Group, LLC • Philip Morris Sales and Marketing • Philips LLC • Procter & Gamble • Promaco-TIAR • Publicity Consulting Group, an ECCO Network Affiliate in Russia • PwC • Raiffeisenbank AO • Renaissance Moscow Monarch Centre Hotel • Repsol Exploracion S.A. • ROCKWOOL • Rödl & Partner • SANOFI-AVENTIS REP OFFICE • Scania-Rus LLC • SCHNEIDER GROUP • SERVIER • Shell Exploration and Production Services (RF) B.V. • Siemens LLC • Signify Eurasia LLC • Sokotel LLC (Sokos Hotels St. Petersburg) • Stada CIS • Subaru Motor • Swissotel Krasnye Holmy Moscow • Syngenta • TABLOGIX • TechSert • Tikkurila • Unipro PJSC • Urus Advisory Ltd. • VEGAS LEX Advocate Bureau • Volkswagen Group Rus (Audi/Bentley/Lamborghini/Škoda/Volkswagen/Volkswagen Commercial Vehicles) • Volvo Vostok NAO • Yamaha Motor CIS LLC.

PRODUCT CONFORMITY ASSESSMENT COMMITTEE

Chairman:
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SYNCHRONIZATION OF STANDARDIZATION AND TECHNICAL REGULATION

ISSUE

At the current stage of development of the conformity assessment system of the Eurasian Economic Union, the risk assessment procedure cannot be fully implemented making the model of conformity assessment based on the application of standards the only practically possible one. At the same time, technical tools and technologies are being developed all over the world and that, in turn, requires timely modification (updating) of the lists of standards harmonized with technical regulations. To this end, national standardization bodies publish new versions of standards in a relatively timely manner. However, in a number of cases, we see an inconsistency between the activities of the supranational regulation body and national standardization bodies. This inconsistency leads to a situation where the mandatory conformity assessment of new types of products becomes impossible. In addition, the updating is delayed by the complex and multi-stage procedure for amending the lists of standards for the EAEU technical regulations, as well as the possibility of applying the relevant up-to-date standards for a long time. This makes it extremely difficult to bring modern innovative products to the markets.

RECOMMENDATIONS

- To amend the actual procedure for updating the lists of standards to the EAEU technical regulations in order to simplify the procedure for their approval to accelerate processes for introducing modern standards at supranational level.
- To ensure that the list of standards is modified in advance so that testing laboratories have the opportunity to plan activities to prepare the test base and expand the scope of accreditation by the date that the new standards come into force.
- To provide for the widest possible time interval of transition periods during which old and new versions of standards will remain valid and can be used for testing compliance with the requirements of technical regulations.
- In the absence of rules and methods of research, testing and measurements in the approved standards applicable directly to the declared products, to provide the opportunity to apply the approved national, international and interstate standards containing these rules and methods.
- To eliminate the possibility of the regulations coming into force before the completion of the action plan necessary for their implementation, ensuring the adoption of the package of all documents necessary for their application.

AMBIGUITY OF TECHNICAL REGULATIONS

ISSUE

Since the entry into force of the first technical regulations of the Customs Union within the Eurasian Economic Union, the necessary infrastructure has been built, along with a market for conformity assessment bodies. At the same time, applicants, accredited persons and supervisory authorities often have differences in the interpretation of the provisions of regulatory acts in the field of technical regulation.

RECOMMENDATIONS

- With the involvement of executive and supervisory authorities, business and public associations, to establish an official body within the Eurasian Economic Commission that will regularly generalize law enforcement practice with sufficient authority to clarify ambiguous provisions of the technical regulations of the Eurasian Union. For national technical regulations, a similar body should be established under the Ministry of Industry and Trade of the Russian Federation.
- An effective tool for resolving the above-mentioned issue could be the publication of a manual on the application of technical regulations, similar to the practice of publishing the Blue Guide adopted in the European Union.

IMPERFECTION OF THE TERM BASE USING THE EXAMPLE OF THE TERM "RELEASE IN CIRCULATION"

ISSUE

Key terms – in law in general and in technical regulation in particular – should be uniformly understood by all parties of legal relations. One of the key and most important terms used in technical regulation is the "release of products into circulation", since as soon as products are released into circulation many rights and obligations related to ensuring and confirming the conformity of products to mandatory requirements arise.

The definition of this term stated in Clause 2 of the Protocol on Technical Regulation within the EAEU (Appendix No. 9 to the Treaty on the EAEU dated 29 May 2014) does not fully comply with the principle of legal certainty, which entails a different understanding and various law enforcement practices both among the EAEU member states and among the parties of legal relations in the Russian Federation.

RECOMMENDATION

To amend the Protocol on Technical Regulation within the EAEU in terms of defining the term "release of products into circulation" in order to ensure its maximum legal certainty and uniform understanding. The new definition should be worded taking into account the existing law enforcement practice in the EAEU member states (including and above all taking into account differences in law enforcement), as well as taking into account the best world practices of regulatory activities of this key term.

REDUNDANCY OF MANDATORY CONFORMITY ASSESSMENT PROCEDURES

ISSUE

Mandatory conformity confirmation procedures introduced for products by most of the EAEU (CU) technical regulations imply the obligation of applicants to engage a third-party contractor to conduct tests and assess the conformity of products. At the same time, the conformity assessment schemes available to applicants for mass products subject to confirmation of conformity by certification assume, regardless of the manufacturer's needs, a production conditions analysis understood by regulators as a physical audit of production process. Most bona fide manufacturers engage consultants from reputable expert organizations in their country as an independent party; however, the results of their activities, on formal grounds, cannot be taken into account for the purposes of assessing the stability of the production process of certified products in the EAEU countries.

In addition, model conformity assessment schemes, including their latest revision (Decision of the EEC Council No. 44 dated 18 April 2018), involve testing in an accredited or in-house laboratory located in the EAEU. It should be noted that, despite the formal requirements for testing in accredited laboratories of the EAEU and increased control over compliance with such requirements, there is still no necessary testing base for certification tests for a number of safety parameters. This situation is especially typical for resource-intensive and high-tech industries, where the number of test centers is limited not only in the EAEU, but throughout the entire world. Even if such test centers are present in the EAEU, repeated testing for compliance with the requirements of harmonized standards in some cases is still economically impractical for manufacturers and prevents the introduction of innovative products to the EAEU market.

Continuing changes to the requirements for the design of the evidence base (in particular, test reports) for the purpose of registering a declaration of conformity according to Scheme 1d lead to a re-assessment of products for the same (identical) safety parameters. The adopted Technical Regulations of the Eurasian Economic Union TR EAEU 048/2019 "On the Requirements for the Energy Efficiency of Energy-Consuming Devices" whose requirements do not allow the applicant to use the results of tests carried out in a foreign laboratory is the most illustrative example.

RECOMMENDATIONS

- To provide the possibility to take into account the results of the manufacturer's production audit carried out by internationally recognized expert organizations when certifying mass products in the relevant provisions of technical regulations if the content of the production audit conducted allows the certification body to conclude that the manufacturer is able to stably produce products that comply with the EAEU technical regulations.
- To consider the issue of concluding international agreements on the mutual recognition of procedures and documents for assessing the conformity of products, including test reports.
- To provide for the possible application of product test results for compliance with the requirements of international standards obtained in internationally recognized accredited laboratories, including those that meet the requirements of ISO 17025, in the relevant provisions of the technical regulations of the Eurasian Union in order to confirm the compliance of products with the mandatory requirements of the technical regulations of the EAEU.
- To allow the application of a conformity assessment scheme through declaration of conformity based on evidence obtained by the applicant without the obligatory involvement of a third party.
- When developing legal rules for technical regulation, to be guided by the principle of proportionality and maintain a balance between the necessity to reduce risks associated with products and the burden on economic operators that have to bear additional financial costs and face delays in bringing a product onto the market.

REMOTE ANALYSIS OF PRODUCTION CONDITIONS

ISSUE

The 2020 special conditions for doing business, due to the global pandemic, have placed economic entities and government bodies before the need to search for non-standard solutions. One of the most important decisions in the field of technical regulation, adopted during this period, has been the permission to carry out remote analysis (remote assessment) of the performance using technical means of communication and recording audio and video materials. The use of this tool is permitted on a temporary basis, exclusively until the end of 2020.

RECOMMENDATION

State authorities that carry out normative regulation in the field of confirmation (assessment) of the conformity of products, as well as supervision of the activities of accredited certification bodies, conduct a comprehensive systematic analysis of the practice of remote analysis of the performance according to which results consider the issue to continue using such a method to analyze the performance on a regular basis. The rules for conducting remote analysis of the performance can be clarified based on the results of such analysis.

COMMITTEE MEMBERS

ABB • Avon Beauty Products Company, LLC • BASF • Bonduelle-Kuban LLC • Brother LLC • BSH Bytowyje Pribory OOO • Caterpillar Eurasia LLC • Continental Tires RUS OOO • Corteva Agriscience • DANONE RUSSIA, JSC • DLA Piper • Doosan Infracore Co. Representative Office in Russia • Dow Europe GmbH Representation office • Electrolux • Ericsson • Ferrero Russia, CJSC • GE (General Electric International (Benelux) B.V.) • GROUPE SEB-VOSTOK ZAO • H&M Hennes & Mauritz LLC • Harley-Davidson Russia and CIS • Hempel AO • Henkel Rus OOO • Hino Motors, LLC • Hitachi Construction Machinery Eurasia Limited Liability Company • IKEA Purchasing Services Russia • Imperial Tobacco Sales and Marketing • JCB Russia LLC • John Deere Rus, LLC • Kaercher • Komatsu CIS, LLC • L'Oreal • LafargeHolcim • Legrand LLC • Merck LLC • Michelin • Mitsubishi Electric (Russia) LLC • Nestle Rossiya LLC • Nike • Noerr OOO • Nokia • Nokian Tyres Ltd • Oriflame • Philip Morris Sales and Marketing • Philips LLC • Procter & Gamble • Renault Russia • ROCKWOOL • Saint-Gobain • Samsung Electronics • Scania-Rus LLC • Schneider Electric Joint Stock Company • SCHNEIDER GROUP • SECRETAN TROYANOV SCHAER S.A. • TechSert • Tikkurila • VEGAS LEX Advocate Bureau • Volvo Cars • Yamaha Motor CIS LLC.

REAL ESTATE COMMITTEE

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MEASURES FOR THE SAFE CONSTRUCTION (FINISHING) WORK IN CONDITIONS OF AN ADVERSE EPIDEMIOLOGICAL SITUATION

BACKGROUND

2020 has been marked by a new issue that the business of the Russian Federation and the world as a whole has not yet faced – the pandemic of the novel coronavirus infection.

The COVID-19 coronavirus infection is a potentially severe acute respiratory infection caused by the SARS-CoV-2 coronavirus.

The disease was first recorded in December 2019 in Wuhan, the capital of China's Hubei province, and has since spread across the planet reaching 27 million infected and over 870,000 deaths by September 2020.

Due to the epidemic, the World Health Organization (WHO) declared an international health emergency on 30 January 2020, and on 11 March 2020, the spread of the virus was declared a pandemic.

ISSUE

Local epidemics and the global pandemic of a novel coronavirus infection have placed the construction business in the Russian Federation and other countries before new challenges:

- Restrictions on the operation of a number of enterprises, except for companies ensuring the functioning of cities and states, up to a complete shutdown of factories in several countries for unpredictable periods, stopping shipments of products not related to essential goods.
- Restrictions on the transportation of goods between countries, up to a complete ban on crossing state borders for products other than essential goods not available in a particular country.
- Restrictions on movement of people between countries, including within the professional activities, as well as work resources and management personnel, up to a complete ban on crossing borders.
- Restrictions on the movement of people within the country, up to restrictions on movement even within a city.
- Quarantine measures both for people infected with the novel coronavirus infection and for people in contact with patients.
- Lack of an appropriate legislative framework, clear and unambiguous official recommendations on the actions of organizations and enterprises, both in the event of suspension of their work and in the event of the resumption/continuation of their activities, at federal level.

RECOMMENDATIONS

In the event of a further deterioration of the epidemiological situation associated with an increase in the incidence of COVID-19 or in the event of similar epidemics, it is necessary to update the legislative framework and issue unambiguous, consistent recommendations for application by construction organisations at federal level:

- With regard to the Civil Code of the Russian Federation, clarification of the term of "force majeure" and classifying epidemics at a certain level of their development to force majeure circumstances.
- In terms of labour legislation, the determination of the "remote workplace" concept, requirements for the employer to organize such, composition of a list of job functions that can be carried out remotely, determination of the procedure for exercising labour functions remotely (working hours, rest time, work schedule, control of working hours, exchange of personnel documents remotely), determination of the procedure for transferring employees to remote work, including the exchange of HR documents on transfer to remote work in electronic form.
- In terms of labour protection standards, SanPin (Sanitary Regulations and Norms), i.e. establishment of federal requirements for the safe performance of construction work (both in relation to new construction projects and when performing repair and finishing work, including in existing buildings) in the case of epidemics of diseases by airborne transmission, including the arrangement of the construction site and workplaces, monitoring the health status of employees, specific rules for provision of PPE, requirements for provision of tools, requirements for personal hygiene and disinfection of premises and surfaces, distancing, routing flows, safety measures during loading and unloading, etc., as well as works not allowing to ensure distancing, requirements for catering and accommodation for employees, requirements for reducing visits to construction sites by external specialists (construction control, field supervision), requirements for minimising the number of employees on a single shift and organising shifts without the teams coming into contact, activities aimed to ensure the epidemiological safety of people.

- Updating the regulatory framework regarding the maintenance of work logs, architectural supervision, with the introduction of provisions allowing the maintenance of such logs electronically and recording the procedure for the exchange of such logs electronically.
- Updating the regulatory framework regarding the issuance of Design/Detailed Documentation for the work, with the introduction of provisions allowing the release of Detailed Documentation into the work electronically and recording the procedure for the exchange of this Design/Detailed documentation in electronic format.
- Updating the urban planning code and procurement legislation in terms of the procurement of construction works, the inclusion of the contractor's right to replace the equipment/materials used with the most similar in terms of technical characteristics in the event that the work of the relevant plant is stopped due to epidemiological restrictions, including with the introduction of appropriate changes in the design and estimate documentation as agreed with the customer and the author of the project with the introduction of appropriate notes in the designer's supervision log and without repassing the expert examination of the design and estimate documentation in the absence of significant deviations from the technical characteristics provided for by the basic design and estimate documentation.
- Regarding the legislation on the protection of personal data and confidential information, updating the requirements for the storage and transfer of personal data, confidential information if it is necessary to exchange such data during remote work.
- When updating the legislative and regulatory framework, we recommend consulting with professional participants in the construction market and non-profit organizations in the field of construction, as well as design in order to take into account the actual circumstances identified by such organizations in their construction and design activities in 2020.

OVERVIEW OF LEGISLATIVE AND CONTRACTUAL NORMS THAT NEED TO BE UPDATED SO THAT IN THE EVENT OF SIMILAR EPIDEMICS IT IS UNEQUIVOCALLY CLEAR HOW THE PARTIES TO A LEASE AGREEMENT SHOULD ACT AND WHAT THEIR OBLIGATIONS ARE TO EACH OTHER

ISSUE

Existing legislative norms are inadequate to regulate relations between landlords and tenants and maintain a balance of their interests. Court practice and contractual practice on these issues is lacking.

The provisions of Clause 4 of Article 614 of the Russian Civil Code currently allow the tenant to demand a reduction in the lease payment if, for reasons beyond its control, the conditions of use stipulated by the lease agreement or the condition of the property degrade substantially. As a rule, this norm is employed in a fairly limited number of cases, such as repairs to the building[1], an interruption in the power supply[2], and so on. There are doubts that it can be widely used in 'post-COVID' disputes.

The government's attempt to regulate landlord–tenant relations during the pandemic – the adoption and subsequent amendment of Article 19 of Federal Law No. 98-FZ dated 1 April 2020 ('Law No. 98-FZ')[3] – only underscored the need for cooperation between parties. The norms of this article, most clearly aimed at protecting the interests of the tenant, mainly relate to certain categories of tenants (the so-called 'affected sectors' of business, for example, health and fitness, tour agencies, museums and zoos, hotels, eateries, etc.), whereas the majority of tenants do not fall into these categories.

Clause 3 of Article 19 of Law No. 98-FZ grants a tenant the right to demand a reduction in the lease payment, and the Russian Supreme Court confirms[4] that the lease payment is to be reduced, but the amount of the lowered lease payment is determined taking into account the amount by which the lease payment is usually lowered in the given situation. Thus, the uncertainty in this matter remains unresolved.

As for landlords, tax benefits are stipulated for them as a measure of support, but these support measures have had virtually no regulatory impact on lease relations.

When both parties in legal relations have suffered, the reasonable course of action is not to compete, but to cooperate in order to preserve the business.

Due to the possibility of a second wave of the pandemic and the consequent introduction of new restrictions, it is essential to update legislation, including as regards contractual relations in general and lease relations in particular, and make it more flexible and balanced.

What's missing is a 'code of best practices' (including international practices) that the parties could use to guide them when new restrictions are introduced, either to work together more amicably or to terminate their relations.

RECOMMENDATIONS

It would seem reasonable to leave the existing legislative norms 'as they are'. Clause 4 of Article 614 of the Civil Code has proven its ap-

[1] Judgement No. F06-20323/2017 of the Commercial Court of the Volga District dated 12 May 2017 in Case No. A65-25310/2016.

[2] Judgement No. F05-8666/2016 of the Commercial Court of the Moscow District dated 5 July 2016 in Case No. A40-115211/15.

[3] Federal Law No. 98-FZ dated 1 April 2020 'On Amending Certain Legislative Acts of the Russian Federation on Issues of Preventing Emergencies and Emergency Response'.

[4] Response to Question 5 'Overview No. 2 of Certain Issues Related to Court Practice on the Application of Legislation and Measures to Prevent the Spread of the Novel Coronavirus Infection (COVID-19) in the Russian Federation' (approved by the Presidium of the Supreme Court of the Russian Federation on 30 April 2020).

plicability in conditions unrelated to the introduction of restrictions. The chances of it being used in 'post-COVID' disputes are not high, but court practice may amend this conclusion. As for Article 19 of Law No. 98-FZ: on the one hand, it clearly needs improvement, but on the other, further amendments to recently adopted norms may cause even greater legal uncertainty, and for that reason here too we should wait for court practice.

Instead of just waiting for court decisions, it would be a good idea for business associations to draft a 'code of best practices' that could be recommended to the parties as guidance when new restrictions are introduced, either to work more amicably together or to terminate their relations. Some of these recommendations, if recognized by market participants, could be implemented in legislation.

'Best practices' should be reflected in agreements and taken into account during their performance. The following terms and conditions may be included in such 'best practices':

- The agreement should describe the purpose of use of the premises in as much detail as possible, with due accounting of all important parameters (for example, which part of the space will be used for each specific activity). It is also important that the use of the premises to be leased does not run counter to the permitted use of the building as a whole and the land plot pursuant to urban planning regulations.
- The right of the tenant to a reduction in the area to be leased in case of certain circumstances (state restrictions, drop in income to a certain level, etc.) in exchange for reasonable compensation to the landlord. Another compromise could be granting the tenant the right to sublease part of the premises, with the provision that the landlord cannot refuse to agree to the sublease for no reason.
- It is crucial that the parties completely reconsider the provision on unilateral repudiation of the lease agreement. Both parties should have this ability: in the landlord's case – on the grounds of the failure to make a lease payment for longer than a set period, and in the tenant's case – on the grounds of the landlord's refusal to reduce the area to be leased to the tenant, or if restrictions last longer than a set period. Another option for the tenant would be to agree on 'windows of opportunity', i.e. periods during which the tenant has the right to unilaterally repudiate the agreement without penalty (for example, once every three years).
- The most detailed possible itemisation of the lease payment, so that refusal to pay for clearly unused premises (the parking lot) or services of the landlord (for example, weekly wet cleaning) can be agreed.
- It would be reasonable to include a separate section in the lease agreement on the rules for holding negotiations. These rules could stipulate the general procedure for negotiating (the responsible persons, methods of communication [including online], deadlines for agreeing on proposals, the procedure for signing documents, and the liability for violating this procedure). It is also important that provisions be made for the stress-free conclusion of negotiations – the possibility to terminate them if the parties cannot find common ground. It would also be possible to use intermediary procedures (mediation), including but not limited to, in commercial courts and business associations, after settling in advance the procedure for their use in agreements.
- According to the Russian Supreme Court[5], a debtor's lack of the required funds may be recognized as grounds for releasing it from liability for the non-performance or undue performance of obligations pursuant to the rules of Article 401 of the Civil Code, if the lack of funds is caused by the establishment of restrictions. This is permissible when a reasonable and prudent party to a civil transaction performing similar activity could not have avoided the unfavourable financial consequences caused by the restrictions. Thus, financial hardship could potentially be grounds to release the tenant from liability in case of force majeure. It seems critical to adhere to this practice, including at the contractual level, i.e. additional regulation in agreements on possible exemption from liability in such a situation.
- The lease payment is established in a foreign currency within the 'currency corridor', i.e. the threshold values of the foreign currency are indicated in case of exchange rate fluctuations, or the possibility to switch to lease payments in roubles is agreed in case the exchange rate of the foreign currency appreciates significantly.

In general, a party should figure out what will cause it the least amount of damage: sticking with the status quo or making certain concessions.

THE KEY PROBLEMS OF THE DEVELOPMENT AND IMPLEMENTATION OF MODULAR TECHNOLOGIES IN RUSSIA

ISSUE

Over the past 5 years, the modular construction market in Russia has been developing slowly. The core reason is that developers are not ready to test technological know-how. This is because it requires significant changes in the existing business processes and technologies for the construction of real estate objects.

However, due to the launch of project financing schemes and escrow accounts, there has been a change in the cost of development projects. It has become even more urgent to reduce costs.

To solve the issue of introducing modular technologies in Russia, it is necessary – above all – to create and develop tools, as well as practices for comparing costs developed at the expert level. They

[5] 'Overview No. 1 on Certain Court Practices Related to the Application of Legislation and Measures to Prevent the Spread of the Novel Coronavirus Infection (COVID-19) in the Russian Federation' (approved by the Presidium of the Russian Supreme Court on 21 April 2020).

will make it possible to calculate a financial model for each object, taking into account the design and construction risks. Developers will be able to predict the benefits from the introduction of certain innovations.

Accurate data confirming cost savings will open up new perspectives for pilot projects. Manufacturers of innovative technologies will be motivated to develop, test and improve new products.

At the moment, the development of a calculator of economic efficiency has begun based on the example of plumbing modules in cooperation with the Institute of Tax Management and Real Estate Economics of the Higher School of Economics.

Conclusions and figures illustrate the economic effect of the introduction of Prefab in the development business. The use of factory-quality modular blocks in comparison with the construction design can permit the following reductions:

- 10–12 times for project risks, such as bankruptcy of contractors, missed deadlines, increased cost of materials and work, poor quality of facilities being built and the cost of correcting deficiencies. And also the subsequent costs of compensation payments;
- 3 times for the labour intensity at the facility;
- 40 times for the cost of project administration.

In the spring of 2019, at the beginning of the pandemic in Russia, plumbing modules were first used in social construction. A 735-bed medical dormitory for doctors and staff of an infectious diseases hospital in New Moscow was built in less than a month. Such record-breaking time frames were possible, among other things, thanks to Prefab technologies.

The current government initiatives to support the construction industry are insufficient for the development of new technologies in Russia. This is largely due to the lack of centralized support for modular construction at legislative level:

- There is no base of innovative solutions under the control of the relevant executive body of state authority. Consequently, there is a low awareness of representatives of sectoral government agencies about existing technological solutions.
- There is no platform for meeting developers and representatives of state-controlled industries.
- Weak support for innovation in the construction industry.

RECOMMENDATIONS

The inclusion of modular technologies at the design stage of social facilities will help manufacturers realise their potential and will stimulate quality competition. In general, this will contribute to the development of the construction market in Russia.

The creation of a single information aggregator for modular construction, uniting the state, development, investors and manufacturers from all over the world will allow accumulating knowledge and experience, as well as the introduction and use of modular technologies in commercial and government projects.

REGULATORY FRAMEWORK FOR CONSTRUCTION

ISSUE

Construction in Russia is burdened by a massive scope of various technical requirements. Meanwhile, some of these requirements do not reflect the development of modern technologies, often contradict each other, and result in material difficulties in obtaining necessary approval documents and performing construction works.

As part of the general approach, referred to as the 'regulatory guillotine', the government attempts to reduce the number of mandatory requirements for the construction sector. On 1 August 2020, the new list of mandatory construction technical requirements and national standards (also referred to as 'SNiP' and 'GOST'), approved by Regulation of the Government of the Russian Federation No. 985 dated 4 July 2020 (Regulation No. 985), came into force. Some technical amendments were made (such as replacement of unenforceable SNiP and GOST with up-to-date requirements) and the content of mandatory technical requirements was adjusted.

The number of technical requirements for the construction sector decreased from 10,000 to 7,000 requirements in total. Despite the lower number of technical requirements and rules, their number remains enormous.

It is important to note that the new list of requirements does not have retroactive effect. It is supposed that design documentation which was developed before 1 August 2020 should be inspected for compliance with the old list of mandatory technical requirements approved by Regulation of the Government of the Russian Federation No. 1521 dated 26 December 2014 (Regulation No. 1521).

Moreover, in our view, Regulation No. 985 does not take provisions of the Town Planning Code of the Russian Federation (RF TpC) into account with respect to specification of technical requirements during expert review of the design documentation. Under Clause 5.2 of Article 49 of RF TpC, technical requirements are applied as of the date of the land plot's town planning layout considering the date of the design documentation's filing with the expert authority, rather than as of the date of the design documentation's preparation.

As a matter of practice, if a developer who had obtained the land plot's town planning map more than 1.5 years ago starts preparing design documentation before 1 August 2020 and complies with the old requirements (listed in Regulation No. 1521) following the provisions of Regulation No. 985 above, there would be a risk of receiving a negative conclusion from an expert entity. This could happen if an expert entity legitimately complies with the provision of RF TpC instead of Regulation No. 985.

The Ministry of Construction of the Russian Federation has also proved this risk. In its letter dated 14 August 2020 No. 25756-OG/08, related to the application of Regulation No. 985, it referred to the provisions of RF TpC and ignored the literal sense of the provisions of Regulation No. 985 mentioned above.

RECOMMENDATIONS

We assume that during the introduction of new technical requirements and regulations in construction a more systematic approach is required, which should consider the hierarchy of regulations.

Furthermore, the government should take the substance of the regulatory framework of construction into account and introduce such regulations, which would guarantee quality and safety of construction works and their results and not cause any additional administrative barriers.

In particular, those technical requirements that eliminate obvious mistakes and affect safety should have retroactive force. As to what concerns other requirements that do not directly affect safety, the developers should have the choice to apply more or less restrictive technical requirements at their reasonable discretion.

OVERVIEW OF THE LEGISLATIVE STORIES THAT MUST BE UPDATED TO PROVIDE THE PARTIES TO A CONSTRUCTION CONTRACT WITH A CLEAR PROCEDURE AND A CLEAR SET OF OBLIGATIONS IN THE EVENT OF SIMILAR EPIDEMICS

THE EFFECT OF EPIDEMICS ON THE PROCEDURE AND PERIOD FOR THE PERFORMANCE OF OBLIGATIONS UNDER A CONSTRUCTION CONTRACT

ISSUE

The global spread of the new coronavirus infection (COVID-19) in 2020 has had and continues to have a dramatic impact on many vital spheres of our society. The construction industry has been one of those hit by restrictions on international and domestic passenger and cargo transportation, limitations in the work of public authorities, suspension and full stoppage of work at many construction sites, and lack of relevant statutory regulations.

The new reality has begun to dictate its own rules, and therefore it has become necessary to adopt a number of legislative amendments to clearly determine the procedure to be followed by the market participants and, in particular, by the parties to a construction contract, in case the epidemiological situation becomes worse due to an increase in new COVID-19 cases, as well as in case of the occurrence of similar epidemics.

During the pandemic, the parties to a construction contract have faced uncertainties as to the procedure and period for the performance of their contractual obligations and as to the possibility of terminating such obligations in view of the restrictive measures adopted in the Russian Federation.

On 21 April 2020, the Supreme Court of the Russian Federation issued Court Practice Review No. 1 on certain cases involving the application of legislation and measures to counter the spread of the new coronavirus infection (COVID-19) in the Russian Federation, thus attempting to address the above problems. However, the parties to civil law relations still remain unprotected in the event of similar global pandemics in the future.

RECOMMENDATIONS

To support the parties to a construction contract and ensure the sustainability of the construction industry, it is recommended to take the following fundamental measures in the field of civil law relations:

- To amend the concept of force majeure circumstances ('force majeure') in the Russian Civil Code by qualifying the occurrence of such global pandemics as force majeure in order to avoid in the future multiple disputes over the nature of epidemics and the procedure for performing obligations under a contract, or to adopt a new Federal Law to define and detail the concept of force majeure specifically in relation to construction work, and to establish the procedure to be followed by the parties as part of their relevant legal relations.
- To supplement Article 716 of the Russian Civil Code with provisions allowing a contractor to suspend its work in the event of a relevant epidemiological situation in the Russian Federation.
- To adopt regulations providing for rules for suspension of construction work in connection with the occurrence and reoccurrence of force majeure circumstances. In this respect, it should be taken into account that contractors may incur additional time and financial costs in connection with the temporary demobilization and conservation of a construction site, as well as the resumption of their work in the future. Appropriate risk allocation between the parties to the construction contract should be envisaged.

CLARIFICATION OF THE CONCEPT OF 'NON-WORKING DAYS' IN RELATION TO CONSTRUCTION WORK

ISSUE

The working days between 30 March 2020 and 11 May 2020 were declared non-working by the president of the Russian Federation in several stages (Orders dated 25 March 2020, 2 April 2020 and 28 April 2020) (the 'Order').

In connection with the Order, the parties to a construction contract raised the question of whether their obligations must be performed under such contracts, taking into account that construction work is often carried out on a continuous basis and that labour law defines only 'days-off' and 'public holidays'.

RECOMMENDATIONS

- To define in the Russian Civil Code or amend accordingly the Russian Labour Code as regards the concept of 'non-working days' in relation to construction work, explaining that 'non-working days' do not allow the parties to a construction contract to delay the performance of their obligations under such contracts.

- If any regulations are enacted in the future that are similar in their meaning and content to the Order, to regulate in detail the concept of 'non-working days' and its application in various types of civil law relations, including construction contracts.

COMMITTEE MEMBERS

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SAFETY, HEALTH, ENVIRONMENT & SECURITY COMMITTEE

Chairman:
Valery Kucherov, ERM (Environmental Resources Management)

Committee Coordinator:
Elena Kuznetsova (elena.kuznetsova@aebrus.ru)

HEALTH & SAFETY

ISSUE

Under the current circumstances we need to recognize the changing climate of organization of work and related risk factors. From a health and safety perspective, we observe a significant shift that organizations are well advised to take a closer look at. The concept of sustainability is often seen to apply to environmental, ecological, and economic aspects, often called the 3 "E's". But there is more to it. There is also the human factor, transitioning from an egocentric, narrow focus towards a broader, more integrated perspective that puts the individual in a different light. This is reflected in the research around reflexivity, a psychological concept that moves away from the previous concept of using the individual contribution of employees integrated into the overall perspectives of organizational planning and strategy towards a broader embedding of the concept of employee well-being, allowing for more growth, flexible change and ultimately putting the human factor as the main capital of organizations in the centre. It is the perception of individual growth and development and how organiszations can enhance and support the fulfilment of personal objectives that takes centre stage. Recognizing how the organization benefits and grows with the creation of such flexibilities is where the opportunity lies in the current situation.

Research has shown that working from home, though not always possible for everybody and potentially not desirable at all times, can create that 'kick' that gives employees the level of flexibility to increase their engagement and drive them to achieve their own and the organization's objectives. This alignment is crucial and requires a lot of adaptations from an organizational perspective.

RECOMMENDATIONS

To adjust to the new demands of organizations, there is a need to arrange effective ways for working from home that eliminate confusion and uncertainties. Safety levels of equipment and connections and use of safe internet protocols are important. Organizing an individual workspace and work time, connection to the working team and clarity of corporate objectives during work from home. Recognition of mental health aspects for employees and putting into place adequate support and guidance. Many were ill-prepared for this new form of work. Some over-performed, working longer hours than what they would do previously, finding it difficult to achieve balance between work and home. A complete rethink of connectivity, managing remotely, keeping teams engaged and motivated while working from home, and ensuring continued performance and quality of work will be a key challenge. For those jobs where people need to come to their place of work, safety measures need to be strictly observed, often requiring a considerable rethink of workflow organization. New concepts will have to be introduced, and not only from a logistical, organizational level but in consideration of the insecurities and additional pressures that are at work on people. Recognizing the increased pressures calls for an adequate framework to help the workforce to cope, learn and grow with the mental health pressures they are exposed to. Assuring a positive transition to these new forms of organizing work will create opportunities through more flexibility and more integration.

CLIMATE POLICY

ISSUE

Recent months were full of failures in international climate policy. In particular, at the main venue for this, the so-called COP 25 in December 2019, no internationally viable mechanisms for agreement among countries about climate change were agreed. Also, due to the pandemic, the next COP will not take place at the end of 2020 as planned, but at the end of 2021. Moreover, emissions may be seen to have become less important due to the slowdown of international economies due to the pandemic. Nevertheless, very substantial progress has been made in implementing international structures in recent months. Importantly, groups of units that will be recognized for offsetting airliners may be forced to do this, as the restriction on emissions set by the IATA have been defined. Also, CORSIA, the body in charge of reviewing emissions reductions by airlines, has announced that it will recognize more types of units. In addition, a registry for such units as been set up so that the technical requirements for trade are being fulfilled and additional countries have joined CORSIA.

Also, a number of countries have taken or deepened initiatives. Importantly, internationally operating corporations have continued working on implementation of their commitments to reduce their or, at times, their suppliers' emissions. As a consequence, climate professionals are experiencing a substantial uptake of work and expect that demand will also soon increase.

Some progress with Russian legislation has been made in recent months, but there is still no reliable framework that could orient businesses on what they are to expect in the future, including in the long term.

RECOMMENDATIONS

It is recommended to speed up legislative efforts so as to facilitate participation of Russian business in international carbon markets. We strongly believe that the more comprehensive legislation is, the more Russian business will be able to take advantage of regulations, including on an international level.

SECURITY

ISSUE

2020 has naturally become the year of risk and crisis management. Specialists in this area joke that this and most likely 2021 is a kind of "gift", a real test of business sustainability. Many businesses have failed this test.

Dr David Rubens, Managing Director of the Institute for Strategic Risks in London, who kindly agreed to share his vision, believes that the end of 2020 will be a time of survival and stabilization; however, for those organizations that share the principles of risk and crisis management, business continuity and resilience, 2021 will be a year of new opportunities.

The challenges faced by many organizations in recent months have been devastating to an extent that would have been inconceivable before the COVID pandemic. Probably, there is not a single business model left that could withstand and also remain fully operational in the "new world".

Alongside the challenges, new opportunities arose. It is as if the COVID hit the reset button and we are all starting over from scratch, regardless of the size of the business. We all had the opportunity to rediscover ourselves. Will we be doing business in 2021? Definitely! Will we be doing it the same way as in 2019? Definitely not. Business owners and company management should view COVID not so as much a destroyer of the old order but as a creator of a new one.

And the winners in the new order will be the organizations that do not merely see themselves as hyper-competitive and overly predatory but rather as able to build mutually beneficial relationships with their partners and customers, thus creating opportunities via support and cooperation.

RECOMMENDATIONS

- To accept the fact that the world will never be the same.
- To seek new opportunities and develop practices that will support undertakings.
- To continue testing business continuity plans: the perfect storm isn't over yet.
- To monitor regulatory and other changes.
- To closely monitor the competitive environment.

COMMITTEE MEMBERS

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SMALL & MEDIUM-SIZED ENTERPRISES COMMITTEE

Chairman:
Andreas Bitzi, quality partners.

Committee Coordinator:
Tatiana Morozova (tatiana.morozova@aebrus.ru)

INTRODUCTION

Started in March 2011, the Small & Medium-Sized Enterprises (SME) Committee unites and represents the interests of the Association's small and medium member companies. The Committee aims to identify the specific needs of European SMEs operating in the Russian market and promote fair business rules by leveraging ethical and effective inter-company cooperation and information exchange. The ultimate aim is to improve the business climate for SMEs in Russia so they can act as an additional driving force for economic growth and modernization. The Committee focuses, in particular, on the following priorities:

- establishing new business connections to other AEB members and local companies;
- offering a platform for interaction with Russian state agencies and regulatory bodies;
- creating a forum to exchange information, best practices and relevant market news;
- providing its members with regular updates on sectoral/cross-sectoral information;
- interacting with SMEs from EU member states with the support of embassies/trade representations.

MARKET AND MACROECONOMIC REVIEW

Small and medium businesses have been high on the domestic policy agenda. Overall, the specific regulatory framework for SMEs in Russia is governed by Federal Law No. 209-FZ (24.07.2007). This law has been updated on several occasions and currently exists in its latest version dated 08.06.2020. At the outset of the recent economic crisis, in 2015 the Russian State Duma adopted a law on the formation of the Federal Corporation for Small and Medium-Sized Enterprises, created through the merger of the Credit Guarantee Agency and the Russian Bank for Small and Medium Enterprises Support. Until the creation of the corporation, all instruments that existed to help small businesses in Russia were fragmented. The establishment of a 'single window' was meant to streamline these procedures, according to the government.

The main objective of the corporation is to provide financial, infrastructural, property, legal and methodological assistance and issue warranties and guarantees to SMEs. In addition, the corporation is to bring about an increase in the share of SMEs in government purchases. For instance, SMEs are entitled to appeal to courts if their rights are infringed in the course of public tenders. In another move, the Russian government created a single export support structure, the Russian Export Centre (REC), resulting from the organizational merger of the Russian Agency for Export Credit Insurance and Investment (EXIAR) and Eximbank. While these and other measures, such as the efforts to improve the general business climate which resulted in Russia climbing from 112th in 2013 to 31st in 2019 in the World Bank Doing Business ranking, have certainly helped to stabilize the SME sector during the crisis, some well-known hurdles and structural bottlenecks have not been eliminated yet.

The overall increase in the number of SMEs we witnessed some years ago has now turned into a decrease: overall, from 2,241,650 (only legal entities, no individual entrepreneurs are counted) in 2015 to 2,768,614 in 2017, but with a significant decrease since then to 2,336,710 (2,128,435 micro, 191,036 small and 17,239 medium-sized businesses). In the official statistics, no clear corona effect would be visible. This may be the case due to a certain lag in possible liquidations of SMEs. Another factor may be that a number of companies that would qualify as SMEs, but had not been in the official SME registry, were entered after the business support measures by the Russian government aimed at SMEs were announced. A massive decrease in the overall numbers from July to August 2020 has technical reasons, and the same effect can be observed every year. The number of employees in SMEs (excluding individual entrepreneurs) was 12.9 million, as compared to 13.73 million three years earlier.

The vast majority of the organizations in the SME registry are micro-businesses (2,128,435). Only 191,036 are small and 17,239 are medium businesses. The most widespread industries SMEs are engaged in are construction/real estate and trade. On an aggregate level, the share of SMEs in both GDP and employment is still very low in international comparison at about 22%. According to the national projects' goals, the share should increase to 32.5% by 2024. By 2030, the government would like to see the share at 40%.

The reasons behind the weak development of the Russian SME sector are well known: the difficulty in obtaining loans at reasonable rates, the often discriminatory access to procurement contracts, particularly from companies with state participation, as well as ad-

ministrative hurdles and poor efficacy of state-run programmes, including subsidies for SMEs in the regions. During the COVID-19 lockdown, the government's business support programmes for SMEs mainly targeted certain sectors. That is, the overall SME sector has suffered massively without feeling much support from the state. It can be assumed that the share of SMEs is going to decrease in the short term rather than increase according to the stated government goals.

The SME Committee will dedicate its efforts to engage Russian authorities in a dialogue to find solutions that will allow European SMEs as well as SMEs in general to better exploit the opportunities in the Russian market. Naturally, within the last couple of months, the main subjects were connected to the support measures for SMEs during the COVID-19 economic crisis.

ISSUES

CRITERIA FOR SMALL AND MEDIUM-SIZED ENTERPRISES

Currently, companies can be considered SMEs if they have up to 15 employees for micro enterprises, 100 for small enterprises, and 250 for medium-sized enterprises. The maximum turnovers for the respective categories are RUB 120 million for micro enterprises, 800 million for small enterprises, and 2 billion for medium-sized enterprises.

In March 2020, President Vladimir Putin raised the question of whether the criteria for SMEs coincide with the current reality and whether they should be adjusted in order to better fit into the goals of the government to promote SMEs. Therefore, the Ministry of Economic Development under Minister Reshetnikov raised the question and asked businesses and business organizations for input.

RECOMMENDATIONS

The AEB Small & Medium-Sized Enterprises Committee collected input from its member companies. The Committee thereafter approached the Ministry of Economic Development in a letter dated 19.05.2020 with a recommendation to leave the limits of SMEs at the current level when it comes to the number of employees. As for the turnover limits, the recommendation was to increase the limits of the three categories to adjust to economic development and the new reality as follows:

- micro enterprises: 150 million roubles instead of 120 million;
- small enterprises: 1 billion roubles instead of 800 million;
- medium-sized enterprises: 4 billion roubles instead of 2 billion.

The Ministry of Economic Development responded to the recommendation of the AEB SME Committee on 02.07.2020. The Ministry's opinion is that there should be no changes to the current criteria for SMEs. The Ministry's main argument is that an increase in the limits would lead to a decrease in revenues to the state budget, and, therefore, the limits shall remain the same as they are now.

CRITERIA AND PROCEDURES TO BE INSERTED AND REMAIN IN THE OFFICIAL SME REGISTRY BY THE RUSSIAN TAX AUTHORITIES

Within the COVID-19 lockdown and economic downturn, to which the Russian government introduced a number of support measures aimed at SMEs, mainly for the so-called 'most suffering industries', many companies meeting the SME criteria in place would learn that they were not or were no longer in the official SME registry. At the same time, the registry would be the basic criterion whether an entity would be entitled to benefit from business support measures introduced by the Russian federal government as well as regional governments, whereas in the past, many enterprises would not care much about being in the registry because they would not see a specific benefit of being recognized as an SME. Surprised by the fact that they were not included, many of our member companies, as well as external companies, approached the AEB and the SME Committee about the procedures and criteria in place. Currently, certain companies that fully meet the legal criteria of SME would approach the tax authorities via their SME online portal and would be put (back) onto the list easily, as long as the ownership is Russian or/and private persons. However, why some of the companies that once were in the registry and unexpectedly and without information were removed from the registry remains unknown. In case of entities with foreign ownership of above 49%, they would have to prove their foreign mother company meets the Russian SME criteria as well. For this to be proven, an auditor must handle this procedure, and on the foreign side, documents must be provided and legalized. This is time-consuming, costly and possibly unnecessary.

RECOMMENDATIONS

The AEB Small & Medium-Sized Enterprises Committee recommends simplifying the procedures and making them more transparent:

- Any entity that is entered into the registry will be automatically informed via electronic message 30 days before it will be removed, with an indication of the reason for removal. This gives enough time to react.
- In case of SMEs with foreign ownership of above 49%, it is recommended to simplify the procedure such that renewal does not have to be made annually, but possibly bi-annually. This is to reduce effort and costs both on the tax authorities' side and on the taxpayer's side.
- Documents to be presented for acceptance into the registry, as well as for renewal, will be transferred to the tax authorities via electronic channels rather than in hard copy.

EXCLUSION OF MOST SMES FROM COVID BUSINESS SUPPORT MEASURES

During the COVID crisis, which hit Russia as hard as it hit other countries around the world, the government quickly took action and announced it would support small and medium-sized enterprises. There would be great relief among SMEs. As it turned out, almost all measures targeted the so-called 'most suffering indus-

tries' and left out the vast majority of SMEs, although practically all companies were suffering a lot. The only measure that would target the whole SME sector would be a decrease in social contributions to a flat 15%, which provided real relief. However, many SMEs have gone out of business in summer or early autumn 2020 due to liquidity issues and there may be high numbers of bankruptcies ahead.

Furthermore, an important factor to support businesses in many Western countries is the concept of short-time work for a limited time. Under this regime, the employer has an opportunity to react to a crisis situation by reducing the working time of employees in reaction to a sudden and temporary slump in demand, and, in parallel, reducing the labour costs accordingly. The loss in salary will, to a certain extent, be compensated to the employees by the state for limited time. In some countries, the state reimburses 80% of the lost salary to employees. Other countries compensate more, some less. For instance, if the working time is reduced by 50% for six months, the employer decreases the salary by 50%. If the lost part of the salary is compensated by 80% by the state, then the employee would get 80% of that lost half of the salary and would, overall, end up getting 90% of their pre-crisis salary. This reduces the impact of decreased working time on employees and reduces the risk of people falling into poverty due to decreased working time.

RECOMMENDATIONS

In the face of a possible second wave of the crisis, as well as potential future pandemic situations with similar consequences or other economic crisis situations that may come up, it is recommended to review the static focus on the 'most suffering industries'. In practice, the whole economy is suffering, and there is a risk of a domino effect. Support for SMEs must be made broader and access to support measures must be available to all SMEs, possibly based on certain financial figures. The support measures must be accessible without high bureaucratic barriers.

Furthermore, it is recommended to consider the concept of short-time work, as described above, to avoid SMEs being forced to lay off large numbers of staff.

If the concepts are reviewed and decided upon now, they will be ready in any future economic crisis situation, and small and medium-sized enterprises and their employees will be better protected against impacts from a short-term crisis.

ADMINISTRATIVE BARRIERS TO DOING BUSINESS

The SME sector stands to gain a lot from legislative changes, but for now, many of the announced changes are more declarative in nature, often complicated, and precise information on upcoming draft bills is scarce and not easily accessible. The amount of control measures and administrative paperwork makes it virtually impossible to comply with all requirements. In addition, some of the civil servants may be prejudiced, and this tends to adversely affect an already complex process. As a result, directors of SMEs are compelled to make a considerable personal investment in the process in order to overcome these bureaucratic issues.

RECOMMENDATIONS

It is clear that the most pressing issue for small businesses in Russia is to reduce bureaucracy and corruption. Any simplification of the registration process and other administrative requirements for SMEs would be welcome. In addition, simplified methods for monitoring health and safety, fire protection, labour, and other regulations would be highly beneficial. We suggest that the preparation of financial and tax reports be required only once a year. Another way to simplify the creation of small enterprises would be by replacing the legal address with the home address of the owner or CEO. On the other hand, it is necessary to support and further encourage the business integrity of SMEs and their adherence to the law. In order to encourage the practice of paying attention to the history of business ethics of SMEs, the Committee and the AEB should promote the establishment of regular dialogue or set up a dedicated platform in collaboration with the Russian government and other public organizations.

LABOUR LEGISLATION AIMED AT PROTECTING THE RIGHTS OF EMPLOYEES

Since the formation of the Russian Federation, labour legislation has undergone significant changes for the better, but the law still contains some excessive provisions for protecting the rights of employees. These rules do not allow employers to easily adapt to the rapidly changing economic environment, which has a particularly negative impact on small companies that lack adequate financial or time resources to compensate for administrative rigidities.

RECOMMENDATIONS

We propose that the deadline for a letter of resignation be extended to three months for middle and senior level managers and to one month for lower level employees. Such a provision already exists in some European countries. This will give SMEs more time to find replacements and will be beneficial to employees who would receive higher severance pay. We also propose simplification and liberalization of the temporary employee regulations. This would greatly increase the options open to small business owners when forced to respond to changes in the business environment.

COMMITTEE MEMBERS

Credendo – Ingosstrakh Credit Insurance LLC • Creon Capital S.a.r.l • DAF Trucks Rus LLC • Dentons • DHL Express • DISPAK, LLC • Egorov Puginsky Afanasiev & Partners (EPAM) • EKE Group • ERM (Environmental Resources Management) • EY • Ferrero Russia, CJSC • FM LOGISTIC VOSTOK • Foodcard • Generali Russia & CIS • Gestamp Russia • Helene Moris • HELLENIC BANK PCL • HERBALIFE NUTRITION • Heroes S.r.l • Hino Motors, LLC • HUMAN SEARCH, OOO • IE Business School • Intermark Relocation • International Hotel Investments (Benelux) B.V., Branch of IHI, Private Limited Liability Company • International School LLC • International SOS • INVESTMENT COMPANY IC RUSS-INVEST • Italcantieri • IWM • JTI Russia • JURALINK • Juralink G-nius • KfW IPEX-Bank Representative Office • Kuehne+Nagel • KUUSAKOSKI OY (Petromax AO) • LANXESS LLC • LIEBHERR-RUSSLAND • Lighthouse Russia BV • Lincoln International CIS Holding B.V. • Branch in Moscow • Macro-Advisory Ltd. • MAI Insurance Brokers • Mannheimer Swartling • Mazars • Mercedes-Benz Russia • Messe Frankfurt Rus Ltd. • MonDef • Moskva-Krasnye Holmy LLC • MOST SERVICE, member of Bruck Consult • NOBLE HOUSE Group Russia • Nordea Bank • Oriflame • Pavia e Ansaldo • Pepeliaev Group • LLC • Perfetti Van Melle Co. • Ltd • Philip Morris Sales and Marketing • Polish Business Club in Moscow • Port Hamburg Marketing • Publicity Consulting Group, an ECCO Network Affiliate in Russia • PwC • quality partners. • Raiffeisenbank AO • Renaissance Moscow Monarch Centre Hotel • Robert Bosch OOO • Rödl & Partner • Royal Norwegian Consulate General in St. Petersburg • SAF-HOLLAND • SCANDINAVIAN INTERIORS JSC • SCHNEIDER GROUP • SECRETAN TROYANOV SCHAER S.A. • SPEAKUS Ltd • Special economic zone "STUPINO QUADRAT" • Spectrum holding Ltd • Stockholm School of Economics in Russia • Subaru Motor • Swissotel Krasnye Holmy Moscow • TABLOGIX • TechSert • TMF Group • TNT • Toyota Motor • Unipro PJSC • Urus Advisory Ltd. • Viruni Capital Partners • Vitus Bering Management Ltd. • Vlasta-Consulting, LLC • VSK Insurance House (SAO VSK) • Welcome Abroad Relocations • Zentis Russland LLC.

TAXATION COMMITTEE

Chairperson:
Alina Lavrentieva, PwC

Deputy Chairpersons:
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Committee Coordinator: **Olga Kirichinskaya** (olga.kirichinskaya@aebrus.ru)

AMENDMENTS TO DOUBLE TAXATION TREATIES

ISSUE

In his speech on 25 March 2020, the President of the Russian Federation proposed making amendments in the double taxation treaties with 'transit' countries through which 'significant resources of Russian origin' pass. These amendments provide for increasing the tax rate on income in the form of dividends from 5% to 15% and setting a 15% rate in respect of interest payable to foreign companies located in those countries.

Following that speech, the Ministry of Finance of Russia issued an informational message according to which the amendments planned in respect of increasing the tax rate at the source in the form of dividends and interest will apply to so called transit jurisdictions. Generally, companies in such jurisdictions are established for the purpose of applying reduced tax rates established by double taxation treaties, concluded the Ministry of Finance of Russia. Primarily, this relates to Cyprus and some similar jurisdictions.

Afterward, the Ministry of Finance of Russia sent letters with these proposals to the Republic of Cyprus, Malta and the Grand Duchy of Luxembourg. Then, a similar letter was also sent to the Kingdom of the Netherlands.

Further to these letters amendments have been made in the treaties with the Republic of Cyprus and Malta, as of October 2020 the respective Protocols have been signed by both parties, and the amendments will take effect on 1 January 2021. The Ministry of Finance of Russia has published a draft Protocol in respect of the Grand Duchy of Luxembourg.

It follows from the wording of these Protocols that the previous assessment criteria for the application of a reduced 5% rate when paying dividends and exemption from tax on payment of interest were replaced with two groups of criteria based on the status of the income recipient (formal criteria). For example, the following recipients have the right to a 5% rate for the payment of dividends and exemption from tax on payment of interest:
(A) entities with a special status: (i) an insurance company or pension fund; (ii) the Government, a political subdivision, or a local government body; or (iii) the Central Bank;
(B) public companies – that is, companies whose shares are listed at a registered stock exchange, provided that free float is not less than 15% of voting shares subject to an annual 15% share in a Russian company paying dividends.

Thus, all private companies were excluded from the list of entities having the right to a reduced 5% rate for payment of dividends and exemption from tax on payment of interest, irrespective of their direct investments in the Russian Federation and their share in a Russian company paying dividends.

This approach prejudices the rights of private investors in Russia and contradicts the objective of encouraging the exchange of goods, works and services, for which double taxation treaties are primarily designed. Foreign investors who have already invested in the Russian economy are facing increased taxation on the return of their money through dividends which, undoubtedly, has a negative impact on the economics of their projects in Russia and reduces the prospects of business development in Russia. As for new investors, this creates higher barriers against entry to the Russian market, forcing them to increase the price of products and services to keep the project economics profitable.

RECOMMENDATIONS

- Make provisions for exceptions from the application of an increased tax rate in respect of dividend and interest income of private companies directly investing funds in Russia in the amount agreed on in a double taxation treaty and owning not less than 15% of the capital of a company paying dividends, within 365 days inclusive of the dividend disbursement day.
- Make provisions for exceptions from the application of an increased tax rate in respect of dividend and interest income of a company meeting two criteria: (1) 50% of the capital of that company is directly owned by a public company whose shares are listed at a registered stock exchange; and (2) that company directly owns not less than 15% of the capital of a company paying dividends, within 365 days inclusive of the dividend disbursement date.

DEVELOPMENT OF VAT LEGISLATION WITH RESPECT TO CROSS-BORDER TRANSACTIONS

ISSUE

On 1 January 2019, a new Russian VAT taxation regime for electronic services came into force. Under the new rules, all foreign organizations rendering electronic services to Russian customers must register with the tax authorities of the Russian Federation, submit VAT returns independently and pay VAT to the Russian budget. The said require-

ments have no exceptions and apply even to one-off, intra-group and low-value transactions.

Moreover, based on a number of official interpretations of the Ministry of Finance and the Federal Tax Service of Russia, the registration of a foreign organization with the tax authorities in the Russian Federation on any basis (including as a foreign provider of electronic services) obligates this organization to report independently and to pay VAT on all transactions which are subject to Russian VAT, and not only on electronic services ('other sales'). However, a number of technical issues concerning this requirement, including the issues of documenting 'other sale' transactions and the Russian customer's right to recover input VAT on such transactions, have not been resolved.

This regime contravenes global practices and creates unreasonable administrative difficulties for foreign providers of electronic services. It requires that foreign companies have detailed knowledge of Russian tax legislation and undertake complicated and often expensive reworking of IT systems. For small and medium-sized companies, the new rules are a barrier to entry into the Russian market. Simultaneously, the interests of Russian taxpayers, who either lose access to new technologies and innovative digital products or bear tax risks due to full or partial noncompliance with Russian requirements on the part of the foreign provider, suffer.

The said problems are partially mitigated by Letter No. SD-4- 3/7937@ (СД-4-3/7937@) of the Federal Tax Service of Russia dated 24 April 2019. In this Letter, developed with the active assistance of the Association of European Businesses, the Federal Tax Service essentially 'allowed' Russian customers to voluntarily withhold and pay VAT on electronic services and 'other sales' and to claim a VAT credit. However, this mechanism directly contradicts the Tax Code of the Russian Federation and may be applied only if the foreign provider can sufficiently control the Russian customer's actions.

RECOMMENDATIONS

- To limit the scope of the regime for foreign companies rendering electronic services to Russian individuals and/or individual entrepreneurs.
- To eliminate unreasonable barriers in international trade of services.
- To fill in technical gaps in the current regime.

ADVANTAGES

- Improvement of the investment climate.
- Reduction of cost and risks of the participants in tax relations.
- Certainty for taxpayers.

PROPERTY TAXATION: MOVABLE VERSUS IMMOVABLE PROPERTY

ISSUE

Federal Laws No. 202-FZ dated 29 November 2012, No. 366-FZ dated 24 November 2014 and No. 302-FZ dated 3 August 2018 introduced the cancellation of movable property taxation. However, in practice, tax authorities qualify machinery and equipment as immovable property, as they are 'connected to the building' in which they are located and 'constitute a complex, integral item'.

As a result, when commissioning new production lines or modernizing existing ones, taxpayers lose their legal right to property tax exemption. As a result, the goal of the abolition of the 'tax on modernization', stated in paragraph 1.1.3 of the Key Directions of the Tax Policy for 2014-2016, sect. 2 of the Key Directions of the Tax Policy for 2015-2017 and paragraph 3.1 of the Key Directions of the Budget, Tax and Customs Tariff Policy for 2019-2021, has not been achieved.

This goal is confirmed in Ruling of the Constitutional Court of the Russian Federation No. 47-P dated 21 December 2018 and Decisions of the Chamber for Commercial Disputes of the Supreme Court of the Russian Federation dated 16 October 2018 on case No. A68-10573/2016 and dated 12 July 2019 on case No. A05-879/2018.

RECOMMENDATIONS

It is necessary to distinguish between taxable and non-taxable property directly in the Tax Code of the Russian Federation in order to exclude increased taxation on the development and modernization of production facilities. To this end, it is necessary to legally establish the defined criteria for taxable (non-taxable) equipment and/or the possibility to determine the list of such equipment by a decree of the Government of the Russian Federation.

ADVANTAGES

- Reduction of the cost and risks of the participants in tax relations.
- Certainty for taxpayers.
- Stimulation of the processes of production facilities modernization.

TAXATION OF INTRAGROUP SERVICES

ISSUE

To reduce costs, transnational corporations use so-called service companies, which service group members or accumulate specific functions related to the business processes of a corporation at the level of the parent company. Such activity of a contractor company for the benefit of recipient companies brings benefit to the latter due to the absence of the need to purchase similar services from third parties or organize the performance of necessary functions using its own resources.

The tax administration practice of recent years was negative for taxpayers and, in essence, entailed the practical impossibility of Russian taxpayers recognizing expenses for the acquisition of services from companies of the group. By issuing Letter No. ShYu-4-13/12599@ dated 6 August 2020 (the 'Letter'), the Federal Tax Service took the first step toward the elaboration of uniform approaches to tax audits over that type of expenses. However, the problem of recognizing expenses for the acquisition of intragroup services is multi-faceted; therefore, not all its aspects are covered by explanations provided in the Letter. In particular, the Letter does not cover a number of important methodological matters such as applying allocation keys to costs

incurred by a contractor when using an indirect pricing mechanism, and it does not fully clarify the matter of differentiation of services and the shareholders activity.

RECOMMENDATIONS

Continue the work on elaboration of uniform approaches and the procedure for the interaction of taxpayers and tax agencies when recognizing expenses for the acquisition of intragroup services, including elaboration of reasonable approaches, comprising the best practices in conformity with the provisions of the Transfer Pricing Guidelines of the Organization for Economic Cooperation, toward:

- determining the price of services using substantiated allocation keys;
- differentiating provided services and activity for the benefit of shareholders;
- limiting the powers of local tax authorities to make a detailed analysis of contractual pricing under the guise of checking the economic justification of expenses;
- receiving information in respect of a foreign contractor through international exchange of information between tax authorities.

ADVANTAGES

- Unification of Russian rules and practical approaches of tax authorities with international rules and approaches, taking into account the openness of the global reporting of international groups and the automated exchange of information, which will make it possible to minimize the reasons and grounds for initiation of mutual agreement procedures by competent authorities due to the difference in approaches toward recognizing that kind of expenses.
- Improving (preserving) the investment attractiveness of the Russian market for foreign investors by defining clear tax administration rules.

LEGAL UNCERTAINTY AND A FORMAL APPROACH IN APPLYING THE PROVISIONS OF ARTICLE 54.1 OF THE RUSSIAN FEDERATION TAX CODE AND UNJUSTIFIED IMPOSITION OF LIABILITY FOR DELIBERATE NON-PAYMENT OF TAXES

ISSUE

The persisting indeterminacy in application of certain provisions of article 54.1 of the Russian Federation Tax Code and the article as a whole adversely affects the desire of foreign business to invest in Russia's economy. In particular, this is driven by formal application of the provisions of the Russian Federation Tax Code article 54.1 by tax agencies, even if not to the detriment of Treasury revenues.

Practice has shown that unjustified application of the provisions of clause 1 of this article on distortion of information, resulting in a prohibition on deduction of expenses/deductions if the taxpayer makes even insignificant errors in documents or financial/tax accounting. The provisions of the given clause are used instead of or alongside clause 2 when an obligation is performed by another entity (i.e. not an entity party to the agreement and/or an entity to which a transaction performance obligation is assigned by agreement or by law) without taking into account whether the taxpayer should or could know that the obligation would be performed by an entity other than the counterparty. Furthermore, tax agencies do not always account for the fact that economic agents may conduct their activities in any way not prohibited by law, including engaging third parties (such as subcontractors) to perform their obligations. In practice, this approach results in unjustified refusal to allow expenses/deductions in the event of claims against counterparties of the 2nd and subsequent levels, even if the immediate counterparty is a real economic agent that itself bears liability for the counterparties it engages.

Moreover, tax agencies do not always determine the actual tax obligations of the parties to a transaction (do not perform a so-called 'tax reconstruction'), this possibly resulting in the additionally charged tax exceeding the taxes not paid to the Treasury.

One particular problem consists in objective imputation when taxpayers are held liable under clause 3 of article 122 of the Russian Federation Tax Code for deliberate non-payment of taxes, with reference to article 54.1 of the Russian Federation Tax Code, without the tax agency acts and decisions specifying evidence and circumstances confirming that a deliberate tax offence has been committed.

RECOMMENDATIONS

To resolve the current problems, appropriate clarifications need to be given by the Federal Tax Service of Russia concerning the following matters:

- correct qualification of offences under article 54.1 of the Russian Federation Tax Code and prevention of a formal approach being taken in applying that article;
- interpretation of obligation performance for the purpose of applying sub-clause 2, clause 2, article 54.1 of the Russian Federation Tax Code as per the provisions of the civil legislation and taking into account assessment of the circumstances of establishment and verification by the taxpayer that its direct counterparty is a real economic agent (from the standpoint of it having functions, risks and assets) since it is this counterparty that performs obligations toward the taxpayer and bears the risks associated with engaging counterparties for performance of the relevant obligations;
- prevention of counterparties of the 2nd and subsequent levels being held liable for a tax offence;
- determination of the actual tax liabilities, taking into account the real nature of the transaction and the effective economic rationale for it;
- prevention of arbitrary imposition of liability for deliberate non-payment of taxes;
- taking into account circumstances excluding culpability in committing a tax offence if the taxpayer assists in identifying persons involved in tax schemes.

ADVANTAGES

- Legal determinacy and a uniform approach in applying article 54.1 of the Russian Federation Tax Code.
- Termination of the practice of unjustified imposition of liability for the actions of counterparties of the 2nd and subsequent levels and that of unjustified imposition of criminal liability.

- Mitigation of the tax risks associated with business activities and improvement of the business and investment climate.

EXCESSIVE LAW ENFORCEMENT INTERVENTION IN TAX CONTROL AND THE THREAT OF UNJUSTIFIED CRIMINAL PROSECUTION OF GOOD FAITH TAXPAYER OFFICERS

ISSUE

Criminal law provisions are increasingly being used as an instrument for exerting unjustified pressure on business as law enforcement bodies intervene excessively in tax control activities, thus driving unnecessary criminalization of economic relations and repressive criminal crackdowns on businessmen, as well as duplication of law enforcement, control and supervision functions. This situation is explained, in particular, by the following problems:

- Criminal liability and liability for tax offences are not sufficiently differentiated in practice.
- The risk of tax offences being classed as continuing (the consequences of this approach being essentially equivalent to canceling the limitation period with respect to tax crimes).
- Criminal prosecution of taxpayer officers and other employees for tax abuses committed by counterparties (nonpayment of taxes by fly-by-night companies).
- Recognition of tax calculation breaches as fraud (Article 159 of the Criminal Code) if a tax refund is granted, this entailing harsher punishment without a chance of gaining exemption from criminal liability by compensating for the damage caused.
- A rise in the number of criminal cases initiated for tax evasion after the corresponding taxes have been paid in full following tax audits and prior to a criminal case being initiated.
- Imposition of liability for failure to discharge tax agent duties even if no false tax calculation is intentionally submitted by the tax agent.
- Criminal prosecution thresholds set in absolute terms without regard for the scale of the business or total tax liability (large amounts – RUB 15 mln or more, especially large amounts – RUB 45 mln or more, within three years, irrespective of the unpaid share of the tax).
- Absence of any uniform approach to determining aggregate thresholds and no possibility of effectively contesting the amounts calculated by the investigators.

Given the complexity and inconsistency of tax law, this approach escalates tension in tax relations, results in undue intervention in business operations by law enforcement and corrupt practices, and undermines the investment climate. This obviously runs counter to the government's economic and criminal policy, which is designed to foster a favourable business climate, decriminalize business offences and preclude even formal opportunities for abuse of rights to put pressure on business, as has been stated repeatedly by the President of the Russian Federation.

RECOMMENDATIONS

The current law enforcement situation requires relevant solutions, primarily adopted by decree of the Plenum of the Russian Supreme Court. Additional new clarifications need to be provided by the Russian Supreme Court to resolution of the Plenum of the Russian Supreme Court No. 48 dated 26 November 2019 "On the practice of courts applying the legislation on liability for tax crimes" since it did not introduce legal determinacy into the majority of material issues relating to applying the criminal legislation on tax crimes. With respect to matters that will not or cannot be resolved by RF Supreme Court clarifications, criminal law needs to be amended.

Relevant proposals for improving the criminal legislation and its enforcement have been elaborated by the AEB working group on tax crimes and submitted to the Russian Supreme Court, the State Duma, the Presidential Administration and the Ministry of Finance of Russia.

ADVANTAGES

- More effective combating of tax evasion through more rational use of law enforcement resources.
- Avoidance of excessive criminalization of economic relations and superfluous criminal prosecution of business people.
- Better guarantees of good faith taxpayer rights being protected.
- Abatement of corrupt practices.
- A more favourable investment climate and encouragement of business initiative.

COMMITTEE MEMBERS

Alrud • Auchan • Baker McKenzie • BAT • Beiten Burkhardt • BCLP • BNP Paribas Bank • Boehringer Ingelheim • BP • Brand & Partners • BSH Bytowyje Pribory • Cargill • Carnelutti Russia • Citibank • Clifford Chance • CMS Russia • CNH Industrial Russia • Commerzbank (Eurasija) • Continental Tires RUS • Corteva Agriscience • Credit Agricole CIB • Creon Capital S.a.r.l • Daimler Kamaz Rus • Deloitte • Dentons • Deutsche Bank Ltd. • DHL Express • Enel Russia • EPAM • Eversheds Sutherland • EY • Ferrero Russia • General Motors CIS • Guardian Glass • Haval Motor Rus • Hino Motors • HSBC Bank (RR) • IKEA DOM • Imperial Tobacco Sales and Marketing • JTI Russia • Juralink • Kia Motors Rus • Knauf Group CIS • KPMG • L'Oreal • LafargeHolcim • Lidings Law Offices • Loyens & Loeff N.V.• M.Video • Mazars • Mercedes-Benz Financial Services Rus • METRO AG • Michelin • Nike • Nissan Manufacturing Rus • Noerr • Nokian Tyres Ltd • OBI Russia • Olson Consulting • Oriflame • PEAC Leasing • Pepeliaev Group • Philip Morris Sales and Marketing • Procter & Gamble • PwC • Raiffeisenbank • Renault Russia • Repsol Exploracion S.A. • Rockwool • Rödl & Partner • Sanofi Russia • Schneider Group • Shell Exploration and Production Services (RF) B.V. • Schlumberger • Siemens • Solvay Vostok • Tikkurila • Total Vostok • Toyota Motor • Unipro • Volkswagen Group Rus • Whirlpool Rus • Zurich Reliable Insurance.

COATINGS INDUSTRY WORKING GROUP

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Working Group Coordinator:
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The Coatings Industry Working Group was established in 2016 with the objective of aligning the interests of coatings manufacturers operating in Russia.

The Working Group has been actively engaged in clarifying the implications of implementation of Article 18 of Federal Law of the Russian Federation No. 488-FZ dated 31.12.2014 regarding state procurement and subsequent related legislation, as well as the prioritization of products manufactured in the Russian Federation over those manufactured in foreign countries. It is in the interest of members to clearly understand the rules and interpretations of the legislation so as to create a level playing field between companies manufacturing in the Russian Federation, be they Russian-owned or foreign-owned. It is the position of the Working Group that the government should clearly define what is meant by locally manufactured, or 'localized', including the extent to which local raw materials are to be used, as well as other criteria. The Working Group cooperates with other associations and departments of the government, including the Russian Ministry of Industry and Trade, in order to enact legislation and industry road maps which will lead to the sustainable growth of competitive locally available raw materials.

The Working Group shares information regarding international sanctions and countersanctions so that each individual member can decide on its own course of action. It is the position of the Working Group that a sanctions-free environment and the normalization of international relations is desirable and would aid the growth of the coatings industry.

The Working Group shares information between its members regarding the presence of counterfeit products on the market and actions taken by its members to combat fraud, including cooperation with competent authorities.

The Working Group supports the full implementation of free trade throughout the Eurasian Economic Union for coatings, as it is applied specifically to certain other industry sectors.

The creation of equivalent standards between Russia and Europe for the testing of coating materials is important to improve efficiency and to reduce the duplication of effort. This would not only speed up the adoption of European technologies in Russia but also help the acceptance of Russian technologies abroad and reduce costs.

The Working Group will continue to carefully follow the implementation of Eurasian Economic Union Technical Regulation 'On the Safety of Chemical Products' (TR EEU 041/2017) and related legislation to be prepared in time for its entry into force in June 2021. The Working Group supports entry into force of the new Technical Regulation 041/2017 'On the Safety of Chemical Products'.

WORKING GROUP MEMBERS

Akzo Nobel Coatings LLC • Allnex Belgorod LLC • Hempel AO • Jotun Paints LLC • PPG Industries LLC • Resinex Rus • Tikkurila.

NON-FOOD FMCG WORKING GROUP

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ON THE PROSPECTS OF IMPLEMENTATION OF MANDATORY LABELLING OF FAST-MOVING CONSUMER GOODS WITH MEANS OF IDENTIFICATION

At present, a system of labelling and tracing fast-moving consumer goods is being implemented and developed in Russia. It is believed that this system will provide support to bona fide manufacturers and public authorities in the fight against counterfeit products.

Members of the working group support initiatives to combat the circulation of counterfeit products to ensure the safety of Russian citizens and consumer access to high-quality goods from bona fide manufacturers, including with the use of certain high-tech solutions.

Nevertheless, at present the experience of implementation of the labelling of fast-moving consumer goods with means of identification has caused some concern among manufacturers, and could have a material negative impact on the sectors affected by the need to apply mandatory labelling, especially during the spread of COVID-19 and the related negative consequences for the economy:

- the implementation of the system of labelling with means of identification at a production facility or at a customs warehouse when importing goods involves investments of millions in the acquisition and installation of equipment and software (SW), as well as for work on its setup and integration into the production and telecommunication processes of manufacturers of fast-moving consumer goods, and investments in the implementation of the track & trace system, the integration and adaptation of warehousing software, upgrading goods assembly lines and other warehousing operations;
- the subsequent use of the system for labelling goods with means of identification involves the regular purchase of specialized codes for 50 kopecks per unit, which, given the production volumes of fast-moving consumer goods, adds up to millions in additional costs to businesses annually.

Therefore, the high cost associated with the implementation of labelling may result in material growth of prices for fast-moving consumer goods and a reduction in their range and restrict the availability of retail goods due to the slowing of their movement through logistics chains.

The mechanism for decision-making on the implementation of labelling with means of identification in individual sectors is equally concerning. Decisions that have such strategic importance for businesses need to be made by means of an open dialogue with representatives of industry and specialized authorities who supervise a given sector.

RECOMMENDATIONS

For labelling with means of identification to become a truly effective solution for combating counterfeit products and increasing the traceability of certain goods, and not just an additional financial burden on businesses, the following actions must be taken before introducing such labelling in a given sector:

- Determine the critical threshold of counterfeiting to decide on the implementation of the traceability system in the sector.
- Assess the share of counterfeit products on the market and justify the need to implement the traceability system in the sector.
- Initiate a dialogue with the sector regarding the need to implement the traceability system and technical aspects of its implementation; assess the readiness of all participants of circulation of labelled goods.
- Shape the interagency position of authorities regarding the feasibility of implementing labelling.
- Provide for reasonable transition periods to allow the industry to carry out the necessary measures to implement the traceability system without harming the industry and consumers.
- Ensure a legally valid basis for introducing a moratorium on prosecution for errors in the course of data transfer between participants of circulation during the transitional period.
- Prepare the appropriate legislative infrastructure harmonized with other regulatory norms, both within a member country of the Eurasian Economic Union and between member countries.

The subsequent implementation of labelling with means of identification in the fragrance sector will be more effective if the following recommendations are adhered to:

- Ensure the postponement of entry into legal force of the mandatory labelling of perfumery to April 1, 2021, so as to enable the participants of circulation to sell their products unhindered during the high season. This period is particularly important for the fragrance sector, since it is one of the industries most affected by activities aimed at preventing the spread of COVID-19.

- Extend the transitional period for circulation of unlabelled products released before the date of mandatory labelling until October 1, 2022.
- Establish voluntary data transfer between participants of circulation via electronic document flow until April 1, 2021, and a moratorium on prosecution for errors in data transfers between participants of circulation during the transitional period.
- Taking into account the characteristic features of the sector and the high volume of imported products, enable importers to apply labelling with means of identification at importers' warehouses in Russia, after customs clearance has been completed, since labelling at a customs warehouse makes the logistics chain more complicated and leads to additional costs, including the increased cost of customs clearance.

ON THE INCREASE TO 100% OF THE STANDARD OF RECYCLING OF WASTE PRODUCTS AND PACKAGING TO BE DISPOSED AFTER LOSING THEIR CONSUMER PROPERTIES

In August 2019, discussion began on the need to increase the standard for the recycling of goods included in the 'List of goods to be recycled after losing their consumer properties' approved by Decree of the Government of the Russian Federation No. 2970-r dated December 28, 2017, up to 100%, as well as the introduction of the moratorium on the need for manufactures to independently ensure compliance with recycling standards.

The manufacturers of perfumery and cosmetic products (PCP) and household chemical products (HCP) use aluminum and plastic (including PET) packing materials in their fast-moving consumer goods.

According to the best international practices, most PCP and HCP manufacturers work to mitigate their environmental impact during the entire life cycle of their products, from their formation and manufacture to use and ultimately being recycled, with the help of various sustainable development strategies. When developing their investment programmes, manufacturers take into account a gradual, well-reasoned and industry-agreed increase in the rates of the environmental fee and recycling standards, as well as the development of tools for the independent implementation of the expanded obligations of manufacturers.

The abolition of tools for the independent implementation of the expanded obligations of manufacturers by increasing the recycling rate to 100% and the introduction of a moratorium on manufacturers having to independently ensure compliance with recycling standards will jeopardize the environmental programmes of PCP and HCP manufacturers, including those related to the independent implementation of the expanded obligations of manufacturers, cause a significant increase in consumer prices for fast-moving consumer products, and also have a negative impact on the investment climate of the Russian Federation as a whole, turning the expanded obligations of manufacturers from a tool stimulating the development of the processing industry of plastic, metal and other waste into an additional fiscal fee.

Nevertheless, responsible PCP and HCP manufacturers implementing their own global programmes for sustainable development generally support the institution of the expanded obligations of manufacturers as such, provided there is a development strategy thoroughly worked out and agreed with the relevant industries, including a planned, predictable and reasoned increase in the recycling rate, rate of the environmental fee, and other tools for the expanded obligations of manufacturers.

RECOMMENDATIONS

As far as the issue of increasing the recycling standard is concerned, it is advisable to evaluate all the significant factors and consider the possibility of a predictable, gradual and well-reasoned increase in the standard, as well as the possibility of introducing a sufficient transition period within a systematic dialogue between regulatory bodies and the business community.

Representatives of the expert, scientific and business communities should be involved in the discussion of the increase in the standard to avoid considerable economic risks and ensure the effectiveness of the employed measures.

As for the introduction of a moratorium on the independent implementation of the expanded obligations of manufacturers, this restriction seems excessive because it will transform the expanded obligations of manufacturers from a tool developing the processing industry for plastic, metals and other packaging materials, as well as the production industry of high-quality secondary raw materials, into an additional fiscal burden on businesses. Thus, the Working Group recommends the option of the independent implementation of the expanded obligations of manufacturers be maintained.

WORKING GROUP MEMBERS

Avon • Electrolux • Henkel • Herbalife • L'Oreal • Oriflame • Procter & Gamble • Yves Rocher.

TOBACCO PRODUCTS WORKING GROUP

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The Tobacco Products Working Group was established in 2013. It unites manufacturers of tobacco products, which have an aggregate market share of about 95% and total investment in the economy of the Russian Federation exceeding USD 8 billion.

The working group seeks to ensure the formation of a stable and predictable legislative regime in the industry, adoption of clear and consistent legal norms in the field of regulating production and circulation of tobacco and nicotine-containing products, adoption of measures to counter illegal trade in them, as well as regulation of the production, circulation and taxation of alternative nicotine-containing products and devices designed to consume nicotine in ways other than smoking tobacco.

SYSTEM OF EXCISE TAXATION OF TOBACCO PRODUCTS BASED ON A THREE-YEAR PLANNING CYCLE IN THE TAX CODE

ISSUE

The current approach to the three-year planning of excise taxation of the tobacco industry in the Russian Federation corresponds to the best international experience in the field of tax policy.

It should be noted that the last decade has been characterized by an increase in the tax burden and a decrease in the affordability of legal tobacco products.

As a result of a long-term increase in excise taxes and a decline in the affordability of legal cigarettes, the Russian market is flooded with illegal products and the legal market is shrinking amid a significant difference in excise rates on tobacco products between EAEU states (the gap in excise rates between cigarettes in the EAEU and Russian Federation leads to a 2-3 fold difference in final prices for a consumer).

According to expert estimates, the total volume of illegal cigarettes sold in Russia in 2019 amounted to 34 billion pieces. Lost budget revenues from excise taxes and VAT, according to experts, amounted to at least 100 billion roubles in 2019, 53 billion roubles in 2018 and 31 billion roubles in 2017. If the negative trends prevailing in the Russian tobacco market remain, the budget revenues lost may increase even more significantly.

Thus, if the fiscal policy of the state to increase excise rates on tobacco products until 2017 led to a certain increase in federal budget revenues with a low share of illegal cigarette trade, then over the past 3 years, despite the continued increase in excise rates, budget revenues decreased because of the reduction in the legal market.

In September 2020, the government and the State Duma made the decision to sharply (20%) increase the level of excise taxes on tobacco products and increase the ad valorem component up to 16% from 2021. It should be noted that a year earlier a balanced approach was adopted in the Russian Federation Tax Code, and for 2020-22 an annual increase in excise taxes by 4% was planned due to the growth of illegal trade in Russia and the need to harmonise excise rates in Russia and other EAEU member countries.

A 20% increase in excise taxes in 2021 will lead to a significant increase in price for a pack of cigarettes – on average from 120 to 140 roubles. A significant increase in cigarette prices due to the sharp increase in excise taxes will lead to major increase in the volume of the illegal market, which experts estimate may double from the current 15% to 29%.

Against the backdrop of decreasing real disposable incomes of the population and in the presence of illegal cigarettes on the market at prices of 50-70 roubles per pack, a major portion of consumers will switch to illegal products.

A rational approach to indexation of excise taxes on tobacco products would be their predictable and gradual growth, taking into account the inflation projected by the government of the Russian Federation and the level of real disposable income of consumers.

RECOMMENDATIONS

It is recommended to continue the existing effective practice of excise taxation of tobacco products on the basis of a three-year planning cycle, excluding an increase exceeding inflation in tax rates in the already approved three-year period, ensuring moderate growth in illegal trade with an increase in tax revenues and a decrease in consumption of tobacco products.

ILLICIT TRADE IN TOBACCO PRODUCTS

ISSUE

In the period from 2015 to 2019 the volume of illegal tobacco products in Russia increased almost 15 times from 1.1% to 15.6% (according to Nielsen). Annually, Russia loses billions of roubles

due to illegal trade in tobacco products. According to expert estimates, the total volume of illegal cigarettes sold in Russia in 2019 was 34 billion pieces. The total budget losses in the form of unpaid excise taxes and VAT in 2019 exceeded 100 billion roubles. If the current negative trends in the Russian tobacco market continue, the amount of budget losses may increase even more significantly.

The increased inflow of illegal tobacco products from Eurasian Economic Union (EAEU) member states is associated with a significant price difference for tobacco products. Thus, the weighted average price of a pack of cigarettes in Russia in 2020 is about 120 roubles, and the prices of products illegally delivered to the Russian Federation from EAEU countries (Belarus, Kyrgyzstan, Kazakhstan, Armenia) start from 30 roubles per pack of cigarettes.

Such a price gap is facilitated by a significant gap in excise rates between the Russian Federation and the rest of the EAEU members, as well as a lack of control over trade operations within the common customs space. Therefore, this problem can no longer be solved outside the framework of harmonization of the excise policy on tobacco products between EAEU partner countries.

In order to address this problem, on the initiative of the Russian Federation, members of the Eurasian Economic Union developed an agreement on the principles of tax policy in the field of excise taxes on tobacco products of the EAEU member states. Harmonization of excise tax rates will help to establish a civilized market for tobacco products in the EAEU and minimize the illegal cross-border flow of products. The agreement establishes a mechanism for the harmonization of excise rates by setting an indicative rate to five years starting from 2024 with the subsequent setting of new rates. The range of acceptable deviation of actual rates, also fixed in the agreement, makes it possible to take into account the level of socio-economic development of each country. In December 2019, the agreement was signed by all EAEU member countries and submitted for ratification.

In addition to the fact that illegal trade leads to a direct loss of state budget revenues and negative consequences for tobacco market participants, illegal trade contributes to the growth of organized crime, increases the number of illegal producers and sales channels and leads to job cuts at the factories of the legal producers who act in accordance with Russian legislation.

RECOMMENDATIONS

In order to eliminate the prerequisites for the illegal trafficking of tobacco products into Russia from other EAEU member states, it is expedient to accelerate the implementation of domestic procedures required for the ratification of the agreement on the principles of tax policy in the field of excise taxes on tobacco products of EAEU member states.

At the same time, it is necessary to take urgent legislative and regulatory measures aimed at increasing responsibility for illegal tobacco sales and improving the efficacy of law enforcement in the Russian Federation.

It is necessary to set limits for individuals on the transportation of unmarked cigarettes for personal consumption, increase administrative fines for the sale of illegal tobacco products, and introduce a single minimum price for tobacco products as a universal threshold below which tobacco producers cannot set retail prices for cigarettes.

It is also necessary to introduce criminal liability for the illegal movement of tobacco and alcohol products on a large scale across Russia's state border with EAEU member states. The Criminal Code currently only provides liability for the illegal movement across the customs border of the Customs Union, which allows smugglers to move illegal excisable products into Russia from other EAEU member states with impunity.

Some of the bills have already been introduced to the State Duma and received conceptual support from the Russian government (positive official responses have been received), but are still under consideration. The delay in the adoption of these legislative initiatives has a negative impact on the legal tobacco market in Russia, resulting in increased budget losses, which makes it advisable to urgently consider and adopt them as a matter of priority.

It is also necessary to develop and introduce clear regulations on destruction of confiscated illegal products and on funds used for their production and increase the amount of fines for the sale of illegal products, and introduce responsibility for the illegal movement of tobacco products across the state border of the Russian Federation.

It should be noted that the government of the Russian Federation is working on the preparation of a new version of the Code of Administrative Offences of the Russian Federation, which proposes liability for both the placement into circulation and the sale of tobacco products without labelling by means of identification and for the production of tobacco products without special or excise stamps. It is proposed to maintain the amount of fines at the level established by the current version of the Code of Administrative Offences of the Russian Federation, which seems to be extremely low for effective prevention of illegal tobacco sales.

Analysis of the law enforcement practice of bringing individuals to administrative liability under the current provisions of paragraph 4 of Article 15.12 of the Code of Administrative Offences of the Russian Federation shows that under the conditions of insignificant amounts of administrative fines for individuals and officials (4,000-5,000 roubles and 10,000-15,000 roubles, respectively) compared to the amounts of administrative fines for legal entities (200,000-300,000 roubles), individuals assume responsibility for the sale of illegal products, thus exempting legal entities from payment of significant administrative fees.

In this regard, it seems necessary to consider the introduction of greater fines in the new version of the Code of Administrative Offences of the Russian Federation for individuals, officials and

individual entrepreneurs, as low fines for individuals and officials are disproportionate to the illegal income received from the trade of illegal products.

The increase in administrative fines will help to ensure a strong preventive impact and reduce the number of offences in this area, which will significantly reduce the volume of illegal tobacco sales in Russia.

In order to combat the production of counterfeit goods in the Russian Federation it is necessary to launch a system for monitoring supplies and tracking the movement of production equipment, as provided by the Russian legislation.

To control the transit and cross-border movement of tobacco products through the Russian Federation, it is necessary to introduce guarantee mechanisms ensuring either the removal of tobacco products from the Russian Federation or payment of excise duties at current Russian rates.

DIGITAL MARKING AND TRACKING OF TOBACCO PRODUCTS

ISSUE

From 1 March 2019, Russia launched the digital marking of tobacco products by means of digital identification and control of its exit from retail sale by codes deactivating at online cash registers. From 1 July 2020, the requirements for the traceability of the movement of tobacco products in the wholesale market and the use of electronic document flow by all participants of tobacco sales came into force. The full-scale launch of the labelling and tracing system allows us to count on the prevention of illegal tobacco product inflow into the legal trade channels, while the problem of the inflow of illegal products from neighbouring countries remains relevant due to the established practice of its sales bypassing the requirements for the use of online cash registers.

The practice of working in the new environment revealed software flaws, which resulted in failures of shipments from manufacturers to distributors. Fixing errors in the electronic document process required a lot of manual labour of specialists both on the side of manufacturers and on the operator's side.

RECOMMENDATIONS

The key task for the period until the end of 2020 is the speedy stabilization of the tracking system in the electronic document flow (EDO) segment. The responsibility of EDO suppliers for the quality and stability of their services should also be fixed in the legislation.

Stable functioning of a T&T system will allow, in accordance with legislative requirements, access to market information by tobacco turnover participants and make it possible to abolish the excise paper stamps.

INNOVATIVE NICOTINE-CONTAINING PRODUCTS REGULATION

ISSUE

Currently, the market for innovative nicotine-containing products (NCP) is actively developing in the Russian Federation based on the process of consuming (inhaling) aerosol containing nicotine, created by heating tobacco or nicotine-containing liquid without any burning.

On 31 July 2020, the Russian president signed a law on amending Federal Law No. 15-FZ 'On protecting the health of citizens from exposure to tobacco smoke and the consequences of tobacco consumption' in terms of regulating nicotine-containing products. The law extends the restrictions that are applicable to traditional tobacco products on the consumption of nicotine-containing products and introduces a ban on the advertising of NCP and their sale to minors.

The law also contains provisions related to the subject of technical regulation at the level of the EAEU, e.g. 20 mg/ml nicotine limit for e-liquids.

The nicotine limit for e-liquids is a scientifically unreasonable measure, which will limit competition and lead to growth of the illegal market. The ban on nicotine packs is also an excessive burden, as, when properly regulated, such products can reduce health risks for smokers.

RRP products have obvious potential for reducing health risks to consumers of traditional cigarettes. Thus, limiting consumers' access to RRP products and to information about them is a disproportionate and unjustified measure.

RECOMMENDATIONS

The working group considers it necessary to develop, on the basis of scientific research and a risk-based approach, a comprehensive technical regulation of innovative nicotine-containing products in the EAEU framework, taking into account their impact on health in comparison with traditional tobacco products. This regulation should include the EAEU Technical Regulations for nicotine-containing products, establishing mandatory requirements for the composition, packaging and labelling of such products and informing adult smokers about their health effects, as well as a package of related mandatory standards, as well as the procedure for admitting nicotine-containing products to the market that meet safety requirements and have passed an objective scientific assessment.

WORKING GROUP MEMBERS

British American Tobacco Russia • Imperial Tobacco Sales and Marketing • JTI Russia • Philip Morris Sales and Marketing.

WORKING GROUP ON LABELLING AND TRACK & TRACE SYSTEM

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MANDATORY LABELLING OF GOODS WITH MEANS OF IDENTIFICATION

ISSUE

On 2 February 2018 an Agreement was signed on the labelling of goods with means of identification in the Eurasian Economic Union (EAEU) (ratified in the Russian Federation by Federal Law No. 281-FZ dated 3 August 2018 (entered into force on 14 August 2018)).

According to the Agreement, within the EAEU labelling of goods may be introduced by a decision of the Council of the Eurasian Economic Commission (see clause 1 of article 3).

The storage, transportation, purchase and sale of goods that are subject to labelling but are unlabelled are prohibited on the territories of member states (see article 4).

Federal Law No. 487-FZ dated 31 December 2017 has made amendments to the Federal Law 'On the Principles of State Regulation of Trade Activities in the Russian Federation' providing for the possibility of introducing mandatory labelling of certain types of goods with means of identification (see clause 7 of article 8 of the version effective 1 January 2019).

In pursuance of these provisions, the Government of the Russian Federation issued two decrees:

- Decree of the Government of the Russian Federation No. 791-r dated 28 April 2018 'On the Approval of the Model of Functioning of the System for Labelling of Goods with Means of Identification in the Russian Federation'
  Main provisions:
  - The principles of the functioning of the goods labelling system are described.
  - The organizational structure is established, with the Ministry of Industry and Trade being the coordinator of this system, which regulates the activities of federal executive authorities and participants in the turnover of goods in terms of introduction of the labelling system, develops the relevant draft regulatory instruments, etc.
- Decree of the Government of the Russian Federation No. 792-r dated 28 April 2018 'On the Approval of the List of Individual Goods Subject to Mandatory Labelling with Means of Identification' (entered into force on 1 January 2019).

Mandatory labelling has currently been introduced or is planned for introduction in such categories as tobacco products, shoes, medicines, fur clothes, photo cameras and flashes, tyres, light industry products, perfumes and eau de toilette. In addition, experiments are currently underway to introduce digital labelling for dairy products, wheelchairs, bicycles and packaged water.

The current legislation on the mandatory labelling of goods still has a significant number of gaps and inaccuracies, which creates unpredictable working conditions for business, significantly complicates business processes and increases the non-production-related costs of bona fide market participants.

RECOMMENDATIONS

Supporting the aspirations of the Government of the Russian Federation in the field of combating illegal trafficking in industrial products, AEB member companies consider it necessary to implement traceability and labelling systems for a wide range of consumer goods only after an assessment of the balance of benefits and costs to economic entities and their readiness to implement the proposed measures and only when the technical feasibility of such traceability systems has been confirmed. To implement this approach to the implementation of traceability and labelling systems, we propose:

- Providing for the inclusion of each specific product category in the list of products subject to mandatory labelling with means of identification only after:
  - assessment by market participants of the feasibility of introducing traceability/labelling in this category of goods/products, taking into account the confirmed volumes of counterfeit as compared to the total volume of the relevant category of goods/products proposed for labelling in monetary and physical terms as well as the necessary financial costs of the entire distribution chain from production to the end consumer, with the publication of the results of such assessment for the business community on the official website of the Ministry of Industry and Trade or on the website of the relevant ministry;
  - assessment of the success of a pilot project, which includes large-scale testing of the system along the entire distribution chain for a period of time sufficient to identify deficiencies and eliminate them (including climatic and seasonal features as well as the specifics of the turnover of certain categories of goods and other features);

- assessment of the regulatory impact (including in relation to the consequences for small- and medium-sized businesses and end users).

Providing for the possibility of assessing the actual impact based on the results of the inclusion of each category in the labelling system.

Pilot projects and industrial implementations in those sectors where mandatory labelling has already been introduced demonstrate certain negative consequences for foreign trade participants. In this regard, when assessing the feasibility of introducing labelling, it is necessary to take into account the consequences for participants in foreign trade (export and import), taking into account the specific characteristics of the categories of goods to which the labelling system is supposed to be extended.

Taking the specific features of business processes in which the relevant goods/products proposed for labelling are used as a component/constituent part for the production of a new product into account when assessing the feasibility of labelling introduction and taking into account cases when the sale of the relevant goods/product proposed for labelling is carried out as an additional, non-core (niche) activity of market participants.

The relevant authority must agree on the methodology for assessing the feasibility of introducing labelling with market participants, and the methodology must have a status not lower than the level of a Decree of the Government of the Russian Federation.

Providing for the possibility of developing and introducing alternative methods of combating counterfeiting instead of a mandatory labelling system.

- Developing, together with industry participants, a 'road map' for each of the categories of goods subject to mandatory labelling with means of identification, containing realistic and sufficient deadlines for market participants to implement mandatory labelling requirements; stipulating phased introduction of the requirements for labelling and traceability of such goods, pilot projects and sufficient periods for analyzing the results of pilot projects and eliminating the identified deficiencies; and establishing transition periods agreed upon with market participants during which no penalties will be applied.
  - Providing a unified standard for systems for the reading and processing of labelling data for all new categories of products subject to labelling in order to avoid excessive costs for the implementation of duplicate traceability systems, including taking into account the systems used at the EAEU level.
  - Eliminating the possibility of parallel implementation and/or operation (application) of different traceability/labelling systems for the same product category in order to prevent a double burden on business (including small- and medium-sized businesses), in particular, taking into account those systems used at the EAEU level.
  - The deadlines for the removal of unlabelled product stock from circulation for each link in the supply chain shall be sufficient and shall be agreed upon with business.
- In the context of a plurality of state systems for the traceability of goods, providing for the possibility for turnover participants to transfer data on the turnover of goods through a single interface (in particular, for USAIS, Mercury, labelling by the Center for the Development of Advanced Technologies (CDAT) and documentary traceability of the Federal Tax Service) without collecting duties/fees for using such interface.
- As the range of labelled goods expands, providing for a revision of the cost of generating control information per unit of goods with the aim of significantly reducing it.

  Providing for post-payment for labelling codes, thus stimulating the operator to provide better services to the participants of the labelling system.
- In the case of imports, providing for the possibility of applying labelling codes in the territory of the Russian Federation, not only at customs warehouses but also at importers' warehouses (after the importers have carried out customs clearance, and the customs authorities have released the goods for domestic consumption).
- Developing and approving a unified approach/concept of the labelling system within the EAEU based on a single set of standards agreed upon between EAEU members.
- Determining areas of responsibility for each of the participants in the traceability and labelling system as well as sanctions for violations. Preventing the introduction of disproportionate (including criminal) penalties for violations of the operating procedure of such a system by the participants of the turnover of goods.

  Considering the possibility of using the data obtained through the labelling and traceability system for a clearer division of liability for the sale of counterfeit and falsified products.
- Legislatively defining the procedure for providing access to information contained in the GIS MT, taking into account the interests of all market participants, and establishing the rules for classifying information as confidential.

  Ensuring proper protection of the turnover participants' commercial information by the system operator and defining its liability for the 'leakage' of data and disclosure of confidential information to third parties in the Administrative Code of the Russian Federation.
- With the introduction of the labelling system, reducing the risk profile/scope of control and supervisory measures in relation to bona fide participants in the turnover of labelled products, focusing the efforts of the regulatory authorities on liquidating the black market.

- Developing criteria within the framework of a risk-based approach and approving indicators that would serve as the basis for initiating surveillance activities related to the identification of violations of the legislation in the field of labelling goods with means of identification.

- Providing a set of measures of fiscal (tax incentives) and non-fiscal (grants, soft loans, measures to improve the business environment) support for small businesses participating in the labelling system.

- Promoting the dissemination of best practices and the exchange of experience in the implementation of traceability and labelling systems.

- Ensuring compliance with intellectual property rights to trademarks when importing labelled goods in accordance with the Protocol on the Protection and Enforcement of Intellectual Property Rights (Appendix No. 26 to the Treaty on the Eurasian Economic Union).

- Considering the situation connected with the coronavirus pandemic, failed supplies of equipment and the shutdown of factories around the world, the general negative economic situation and the inadmissibility of placing an additional financial burden on legal entities and individuals during the crisis and the government's search for effective incentive measures, postponing introduction of mandatory labelling of goods provided for by the current legislation of the Russian Federation and suspending expansion of the list of goods subject to mandatory labelling for at least 1 year.

WORKING GROUP MEMBERS

AstraZeneca Pharmaceuticals LLC • Auchan Russia • BEITEN BURKHARDT Moscow • Chiesi Pharmaceuticals LLC • CMS Russia • DANONE RUSSIA, JSC • DHL Express • DSM • Egorov Puginsky Afanasiev & Partners (EPAM) • ERM (Environmental Resources Management) • H&M Hennes & Mauritz LLC • Harley-Davidson Russia and CIS • HEINEKEN BREWERIES, LLC • Henkel Rus OOO • HERBALIFE NUTRITION • Honda Motor RUS LLC • IKEA Purchasing Services Russia • JCB Russia LLC • Mazda Motor Rus • Mercedes-Benz Russia • Merck LLC • METRO AG Representative office • Michelin • Mitsubishi Electric (Russia) LLC • MMC Rus • MOST SERVICE, member of Bruck Consult • Nestle Rossiya LLC • Nike • Nokian Tyres Ltd • Oriflame • Philip Morris Sales and Marketing • Philips LLC • Procter & Gamble • Promaco-TIAR • quality partners. • Renault Russia • Samsung Electronics • SCANDINAVIAN INTERIORS JSC • Shell Exploration and Production Services (RF) B.V. • Tikkurila • Vlasta-Consulting, LLC • Volvo Vostok NAO • Yamaha Motor CIS LLC • Yusen Logistics Rus LLC.

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OVERALL SITUATION IN THE INNOVATION SPHERE

ISSUE

Innovation in manufacturing is crucial for global economic growth. However, the manufacturing industry is facing unprecedented challenges that must be addressed by companies and governments if it is to succeed: the need to create highly customised experiences and products, to deliver at a lower cost and higher efficiency, or to implement new business models and sources of growth that build trust among consumers. In order to keep up, companies need to embrace the Fourth Industrial Revolution. Fourth Industrial Revolution technologies allow companies to position manufacturing as a source of competitive advantage while helping to achieve the Sustainable Development Goals.

Most of the current state programmes and initiatives are primarily focused on Russian providers, and very few European companies are included in some of those programmes. We need to present the credentials of European companies, interest and willingness to bring technical expertise, a particularly unique combination of automation and robotics to include us into the multiregional educational, consultancy and implementation programmes focusing on improving productivity and efficiency.

The new revision of the SPIC prepared by the Russian Ministry of Industry and Trade is awaiting implementation. The new SPIC 2.0 can be awarded based on an examination by a Russian expert board only. No international experts will be allowed. Furthermore, the implementation of SPIC 2.0 could bring various liabilities, including tax and even criminal investigations, if the target committed production revenue volumes are not reached. Thus, it will be critically important to be included in the process of preparing the respective regulations.

State support and incentives to implement digital state-of-theart solutions for green energy-efficient technologies are essential. Work in this area could also be positive for AEB's image. Furthermore, it could boost the market for energy-efficient solutions, i.e. for AEB member companies it could be an additional market for insulation materials, drives, efficient motors, implementation of DSCs in energy-extensive unautomated manufacturing facilities. The previous state energy efficiency programme has been virtually on hold since 2014.

Export (of industrial goods) is one of the country's top priorities, as articulated by the President as well as top government officials, particularly the Ministry of Industry and Trade. A special state agency – the Russian Export Centre (REC) – was established to support export development. Most of the support is in special financing and contract insurance. However, the programme suffers from a lack of understanding of international supply chains, limited knowledge of export markets and quality issues. According to the export-import marketing studies, industrial exports correlate with the import of components. Thus, unrestricted access to foreign components is essential to boost the competitiveness of Russian industry, i.e. it could be beneficial to AEB members as a component supplier.

Stimulating the localization of high-tech production and technology in Russia remains a priority objective in the development of an innovative economy, which is especially sensitive to human and cultural factors. Development of innovations entails changes in the culture, mentality, outlooks and behavioural stereotypes. But it appears that such changes have not been profound enough, as, for instance, the innovation market's infrastructure created in recent years does not work. The market does not produce the services for which it was created – there is an infrastructure, but it does not have content. Innovations are produced by people, and the system of relations in which they function must contribute to creating innovations. It is noteworthy that the most mature market in Russia is the IT market, which did not even exist in Soviet times. This market does not have problems with the so-called 'Soviet heritage', but other markets are still striving to overcome the standardization and certification mechanisms developed in that era.

The implementation of innovative products/services should be supported by the development of technical regulations that are currently often lacking or based on outdated approaches (e.g. most technologies for smart grids, smart cities, energy storage devices for electricity supply and demand management). Moreover, it is advisable to create new federal/industrial standards (and update the existing ones) based on the international standards rather than local norms, which is an essential prerequisite for competitiveness on the international stage.

In 2014-2015 serious changes began in the macroeconomic and geopolitical situation, which naturally affected the innovation sphere. Economic sanctions affect the development of technologi-

cal innovations, as Russia's science and technology sphere suffers from deteriorating political relations with technologically developed countries. In an acutely competitive high-tech environment, special attention should be paid to stimulating the localization of R&D and development of advanced science-intensive technologies to increase added value.

RECOMMENDATIONS

The innovation policy should not be limited to supporting research and development. It is vital to ensure a balanced government policy in several aspects.

First, the policy should support innovations both in major companies and in medium and small businesses, as both of these sectors play an essential and often mutually complementary role in innovative systems. Companies also need to be stimulated by encouraging them to invest in innovations.

Second, the system of innovations should be made transparent for foreign sources that should supplement Russian sources rather than replace them. The Russian R&D policy is now placing a greater focus on expanding international cooperation, since the same transparency is required to support training and build up innovative capabilities in companies.

Third, more attention should be paid to the demand for knowledge creation. Until recently, the technology promotion philosophy had a rather strong influence on the innovation policy and placed an excessive emphasis on supply. Such an approach has considerable limitations in a market-driven economy, where customer knowledge plays a significant role in shaping innovations.

Fourth, the major focus of the innovation policy should be on boosting the global export potential of Russia's innovative and value-added products.

To attain such a balance, Russia must create and support the drivers of change. The federal government cannot and should not do everything alone. Instead, it should promote a favourable business environment and encourage others to take the initiative. In some cases this would involve encouragement of expanding capacities, e.g. at the regional level where the administration often lacks the capabilities to create and implement a specially developed innovation policy. Too much R&D financing is still allocated without adequate control and accounting or without specific targets, which leads to an unnecessary waste of resources. The principle of priority and selectivity should be applied to concentrate domestic R&D in centres with adequate research capabilities. The innovation sphere's development prospects in Russia depend on the right choice of priorities to support, as well as the ability to identify socially beneficial projects that would yield comprehensive results instead of impressive and prestigious ones. Promotion of international cooperation not only in science, but also in the development of new technologies at the pre-competitive stages is an important factor in determining the prospects of Russia's innovation sphere.

RENEWED MECHANISM OF SPECIAL INVESTMENT CONTRACTS (SPIC-2)

The AEB Working Group on Modernization & Innovations made a dedicated effort to diligently analyze SPIC-2 with a focus on the technological and legal aspects of the updated mechanism for special investment contracts (SPIC-2) and to facilitate a number of corresponding events. It served as a platform to discuss key challenges in innovation development and the dispersal of cutting-edge technologies in Russia, as well as the perspectives for implementing high-tech projects with the support of SPIC 2.0 and the advantages and disadvantages of SPIC 2.0 in comparison to SPIC 1.0 in terms of protecting investors.

The special investment contract (SPIC-1) provides the investor with special treatment such as tax benefits and subsidies in exchange for investment activities. The maximum set term of the Federal SPIC is 10 years and the minimum investment amount is 750 million roubles.

Although a SPIC as a type of investment instrument is regarded as a form of production localization that is guaranteed non-discrimination in public tenders and can receive the status of "Sole Supplier", anecdotal evidence suggests that some companies have had difficulty obtaining the benefits promised and fulfilling their obligations under SPIC-1 terms. Most projects under SPIC-1 cover the automotive, pharmaceutical, electronics and oil-and-gas equipment industries.

SPIC-2 represents a significant step in improving the investment climate, particularly in regard to tax benefits and liabilities. Tax benefits are provided both at the federal and regional levels, and liabilities are limited to the amount of fiscal support measures provided by the state.

SPIC-2 was originally developed as a tool for developing innovation, transferring technologies and implementing modern technologies for the production of competitive goods in the world market. Once implemented, it will be possible to obtain related state support measures (tax relief, guarantees of stable legal conditions for business, localization of industrial products, access to state orders, inclusion as a single supplier and other support measures).

For most foreign investors, "Made in Russia" status may be the most important and attractive part of the new regulations. However, as indicated in the detailed legal analyses below, "access to government purchases as a sole supplier [is] subject to investments of more than 3 billion Russian roubles". This may not be achievable – particularly for small and medium-sized companies and new investors.

One of the key objectives of the SPIC-2 is to include SMEs, which is why the entry barrier for the minimum investment amount of 750 million roubles has been eliminated. However, the new format requires extensive documentation and procedures that may be restrictive to foreign SMEs, particularly newcomers. The active

participation of pharmaceutical and automotive companies appears natural due to the scale of their market in Russia, the size of their investments and their well-established local presence.

The conclusion of SPIC-2 will operate via tender rather than a simple application procedure. SPIC-2 sets out the procedure for holding a competitive selection process for the development and deployment of technologies included in a government-approved list of advanced modern technologies. Input for this list was collected from Russian businesses and academia. An expert examination procedure for the technology is established to assess applications in order to estimate the competitiveness of the technologies proposed. However, no foreign experts are allowed on the expert board. This may seriously upset the results of any expert examination and compromise its validity and completeness, particularly in regard to the long-term competitiveness of the technologies proposed. Another possible danger is subjectivism in an expert board that has no international expertise. The long-time frames of projects may require extraordinary strategic marketing expertise to ensure the global competitiveness of products and demand for such technologies and corresponding products over the project's lifespan.

COVID-19 AND INNOVATIONS

Since March 2020 the COVID-19 pandemic has dominated world economic news. In this regard, the AEB Working Group on Modernization & Innovation would like to address two COVID-19 issues. Even before COVID-19, e-commerce was rapidly growing both globally and in Russia. The pandemic has been a catalyst for even more growth. Russia has experienced 10 times more growth in e-commerce than the real economy in 2019. Yandex indicates that in 2020 62 million people used e-commerce in Russia and forecast this number to be 66 million by 2021. Much of the increase is driven by COVID-19 and the need to stay home. Ozon's sales have increased 115% during 2020 due to COVID-19. By 2024 the growth of e-commerce is expected to increase 26% from 2020.

There at least two e-commerce issues that can be addressed: a) Most Russians pay for their e-commerce domestic goods with cash on delivery. This system can be improved. The Chinese model of escrow payments used by Alipay could improve Russia's e-commerce payment system as it requires a customer's bank account be debited only when goods are received. b) 73% of cross-border goods are shipped by Russian Post, which takes about three weeks, while customers expect a delivery period of five days. Delivery time should be improved. The China model of partnering with B&M retailers can also be used, as this would reduce the need for costly investments in logistics infrastructure. Russian e-commerce companies like Ozon and Wildberries are already doing this.

SIGNIFICANCE OF IPR AND WTO/TRIPS

ISSUE

Upon joining the WTO, Russia assumed all the obligations of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and the additional commitments on IPR issues contained in the WTO Working Party Agreement. The TRIPS Agreement sets minimum standards for protection of copyrights and related rights, trademarks, geographical indications, industrial designs, patents, integrated-circuit layout designs, and undisclosed information. The TRIPS Agreement also establishes minimum standards for the enforcement of IPR in administrative and civil actions and, at least in regard to copyright piracy and trademark counterfeiting, in criminal actions and actions at the border.

IP protection benefits the economy in terms of GDP, employment, tax revenues, development and competitiveness. In addition, IP rights promote foreign direct investment and technology transfers. Robust IPR legislation and strong enforcement will be important for Russia to fully realise its FDI potential.

Inadequate and ineffective copyright protection, including online piracy, continues to be a significant problem, damaging both the market for legitimate content in Russia as well as in other countries. Russia remains home to several sites that facilitate online piracy of video games, music, movies, books and television programming. Russia has enacted legislation that enables right holders to seek court-ordered injunctions, but has not taken steps to get at the root of the problem – namely, investigating and prosecuting the owners of the large commercial websites selling such pirated material, including software.

Russia is a thriving market for counterfeit goods sourced from China, which enter the country through Kazakhstan, Kyrgyzstan and Azerbaijan. Similarly, there is little enforcement against counterfeits trafficked online, including apparel, footwear, sporting goods, pharmaceutical products and electronic devices. It is important to note that weak IPR is a significant obstacle to the development of innovation in Russia.

Local producers, regardless of their location, need to integrate their operations with global supply chains, as this is connected with satisfying customer needs in accordance with trends of the Fourth Industrial Revolution. Reduced cost, availability, and easy purchase of the best components is critical for improving the competitiveness and export potential of Russian industry in global conditions. Restrictions on buying foreign software, like other best-of-class components, could directly affect the competitiveness and cost of Russian products, projects and solutions.

RECOMMENDATIONS

- To address inadequacies of civil enforcement procedures.
- To improve administrative enforcement procedures.
- To improve actions against internet infringements.
- To address deficiencies in criminal IP law an procedures.
- To strengthen customs enforcement with respect to parallel trade.
- To improve coordination among enforcement authorities in addressing counterfeiting and piracy.
- To establish effective dialogue and cooperation between Russian authorities and IP rights holders.

- To increase awareness of counterfeiting and piracy and the associated economic and social harm among policy makers and the general public.

CHALLENGES IN LOCALIZATION, PRODUCTIVITY AND QUALITY IMPROVEMENT

ISSUE

Over the last several years, localization has been driven by two factors: rouble depreciation in Q4 2014 in parallel with new rules, regulations and policies introduced in order to promote import substitution and more local production in Russia.

Localization driven by the lower currency exchange rate has in many cases brought benefits, as larger parts of the value chain are being done or manufactured in Russia due to Russian production becoming more competitive. Market competition should help ensure that these benefits become sustainable via improved productivity and quality.

The newly introduced rules, regulations and policies have helped to increase local production, but it also seems that ways of implementation have reduced competition in several sectors, creating an unequal playing field among companies – both Russian and foreign – manufacturing in Russia. This contributes to limitations on productivity and quality improvements.

The substantial drop in Russia's growth potential from approximately 4-5% in November 2016 to 1.5-3.0% in November 2018 as estimated by the World Bank is reason for concern and an indication that there seems to be a need to reconsider policies, including localisation, in order to increase competition and improve productivity and quality to grow the Russian economy.

RECOMMENDATIONS

To review rules, regulations, policies and implementation instructions, focusing on only those sectors considered strategic for localization regulations. For other sectors, to review rules, regulations and policies, ensuring a level playing field for all market participants with production in Russia and increasing competition in order to improve productivity and quality to grow the Russian economy.

STAFFING FOR AN INNOVATION ECONOMY

ISSUE

Constant changes in technology associated with the development and implementation of digital solutions affect the business strategies of companies and their need for staff. As a result, new requirements arise for digital literacy, the development of professional (including engineering) competencies and behavioural culture. At the same time, a lack of qualified personnel is felt at all levels of leadership and execution of duties. Staffing for innovative development is possible only if there is a developing environment that promotes the expansion of professional contacts for the exchange of knowledge, the possibility of inviting external experts, the formation of teams of varying experience, as well as training and retraining of their own employees.

In the IT market there is a tremendous shortage of quality labour, that of approximately 500,000 IT specialists. Special effort should be made to develop competencies in modern digital industrial approaches in the main industries for the Russian market such as heavy machinery, energy and natural resources, transportation and logistics, medicine, as the 21st century economy is based on high value-added ecosystems where the real and the virtual merge to produce goods and experiences. Virtual experience platforms take performance to new heights, boosting the capacity of teams tasked with imagining and creating new products.

The government and companies have to prepare the current and upcoming workforce for the future of labour, where new industry practices linked to Big Data and artificial intelligence (AI), augmented reality, additive manufacturing, cobotics and advanced simulating tools will keep people at the core of innovation. Tomorrow's game changers in the industry will be those that empower the workforce of the future with the best knowledge and know-how assets. Not those with the most automated production systems. Supported by pragmatic government skills' policies and strategies, leading companies can empower their workforce by:

- ensuring the workforce of the future is 'career-ready' after school/university/vocational training;
- anticipating roles and skills of the future to meet upcoming needs;
- making life-long learning and upskilling of the current workforce a public policy and corporate priority;
- turning the knowledge & know-how of the retiring workforce into valuable assets for the corporate memory;
- sustaining the attractiveness of crucial science and engineering professions in the eyes of the new generations;
- facilitating the digital transformation of educational systems to achieve these goals.

Among the positive developments in the field of staff training that deserve attention is the increased interest from the state and from companies with state participation in introducing advanced training and development practices, including holding federal and regional competitions and attracting qualified personnel management and project management specialists from international companies. The matter of innovation and digital technologies becomes more than just a fashion and reaches the level of conscious application within companies.

Separately, it is worth noting the development of the WorldSkills movement, especially in terms of preparing for the professions of the future (Future Skills competition) as a platform for introducing a culture of short- and medium-term training and re-training. Another example: a number of technical universities are introducing personalised training in new skills based on a product approach.

The difficulty in developing competencies lies in the need to meet constantly changing requirements, i.e. life-long learning. In practice, the organization of work in most enterprises and the higher education system do not correspond to the model of continuing education and development. In addition, it is difficult to apply effective work organisation practices in Russian companies, including cloud solutions, due to regulatory restrictions on the use of foreign software and cross-border transfer of personal data.

RECOMMENDATIONS

To implement a culture of continuous learning, the following conditions are required: work on a real and relevant innovation task, the opportunity to exchange ideas and practices, learn from colleagues and external experts, organize the work of distributed teams, constantly update the experience gained, scale up successful practices of universities, strengthen cooperation between educational institutions and businesses, and stimulate the development of mediumterm training and retraining courses.

Joint systematic work by businesses, research and educational institutions and the government is needed to identify and describe the key competencies and potential of Russian personnel, develop centres of engineering competencies at the international level and create educational inter-university consortiums to ensure a competitive advantage in the innovation economy of the future.

WORKING GROUP MEMBERS

ABB • Agro-Chemie Kft. • ALRUD Law Firm • American Institute of Business and Economics • ANCOR • AO Deloitte & Touche CIS • AVIS Russia (Bilantilia Corp.) • Baker McKenzie • BAYER • BEITEN BURKHARDT Moscow • Benteler Automotive LLC • British American Tobacco Russia • Brunel CR B.V. Moscow Branch • BSH Bytowyje Pribory OOO • Caterpillar Eurasia LLC • Clifford Chance • CMS Russia • CNH Industrial Russia LLC • Commerzbank (Eurasija) AO • Confederation of Danish Industry • Corteva Agriscience • Credendo – Ingosstrakh Credit Insurance LLC • DAF Trucks Rus LLC • DANONE RUSSIA • JSC • Dassault Systems LLC • Debevoise and Plimpton LLP • DELCREDA • DEME Group • DLA Piper Rus Limited LLC Branch in St.Peterburg • Dow Europe GmbH Representation office • Electricite de France (EDF Russie) • Ericsson • European Space Agency, Permanent mission in the RF • Eversheds Sutherland • EY • Ferrero Russia, CJSC • FERRONORDIC • FM LOGISTIC VOSTOK • Gasunie • GE (General Electric International (Benelux) B.V.) • HEINEKEN BREWERIES, LLC • HELLENIC BANK PCL • Hino Motors, LLC • HYUNDAI CONSTRUCTION EQUIPMENT Co., LTD • Hyundai Motor CIS • Hyundai Truck and Bus Rus LLC • ING Wholesale Banking in Russia • International SOS • ISG support-GUS GmbH • Itella, OOO • JCB Russia LLC • JETRO • John Deere Rus, LLC • Johnson Matthey PLC • JUNGHEINRICH • JURALINK • KfW IPEX-Bank Representative Office • Kia Motors Rus • Komatsu CIS, LLC • Kuehne+Nagel • Legrand LLC • Lipetsk SEZ JSC • Mannheimer Swartling • Mercedes-Benz Russia • Merck LLC • MonDef • Morgan Lewis • MOST SERVICE, member of Bruck Consult • Nestle Rossiya LLC • Nissan Manufacturing Rus • Noerr OOO • Novartis Group Russia • Pavia e Ansaldo • PEAC Leasing AO • Pepeliaev Group, LLC • Philips LLC • PPG Industries LLC • Promaco-TIAR • Publicity Consulting Group, an ECCO Network Affiliate in Russia • PwC • quality partners. • Renault Russia • Roche Diagnostics Rus LLC • Rödl & Partner • Saint-Gobain • Samsung Electronics • Scania-Rus LLC • SCHNEIDER GROUP • SERVIER • Shell Exploration and Production Services (RF) B.V. • Siemens LLC • Signify Eurasia LLC • Special economic zone "STUPINO QUADRAT" • Subaru Motor • TABLOGIX • TechSert • Tikkurila • TMF Group • Unipro PJSC • VEGAS LEX Advocate Bureau • Volkswagen Group Rus (Audi/Bentley/Lamborghini/Škoda/Volkswagen/Volkswagen Commercial Vehicles) • Volvo Vostok NAO • Weir Minerals RFZ • Wirtgen-International-Service LLC • Yamaha Motor CIS LLC.

WORKING GROUP ON THE REGULATION OF CHEMICAL PRODUCTS

Chairperson:
Anna Trunina, Dow Europe GmbH Representative office

Deputy Chairperson:
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Working Group Coordinator:
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TECHNICAL REGULATIONS OF THE EURASIAN ECONOMIC UNION ON THE SAFETY OF CHEMICAL PRODUCTS (TR EAEU 041/2017)

The Working Group on the Regulation of Chemical Products was founded in 2017 to discuss the Technical Regulations 'On the Safety of Chemical Products', approved by Decision of the Eurasian Economic Commission No. 19 dated 3 March 2017, which raises a number of questions from a wide range of industry sectors, including chemical raw materials and manufacturing of tyres, crop protection agents, paint materials, household chemical products, etc. The Technical Regulations of the Eurasian Economic Union 'On the Safety of Chemical Products' (TR EAEU 041/2017) (the 'Technical Regulations') provide for the development of a procedure for the creation and maintenance of a register, notification, and registration of substances by 1 December 2018.

ISSUE

The AEB Working Group on the Regulation of Chemical Products would like to express the concern of importing companies and major investors in the Russian economy regarding the current situation with the Technical Regulations of the Eurasian Economic Union 'On the Safety of Chemical Products' (TR EAEU 041/2017) approved on 3 March 2017.

At present, any organization producing and/or importing chemical substances and mixtures – whether they be raw materials, materials, finished products, or even waste (with rare exceptions established by Technical Regulations 041/2017), regardless of their tonnage – are included in the field of activity covered by the draft EEC decision.

The time frames established by the draft documents for creating registers for chemical substances and mixtures do not make the creation of the registers possible within the given time frames.

Today, thousands of chemical substances are not subject to compliance assessment in EAEU countries, and there is no data on them in the information sources of these countries; they are produced in amounts less than one tonne per year and are not subject to registration in other countries around the world. As a result, data on these substances cannot be found in open sources. In addition, thousands of chemical mixtures are also not subject to compliance assessment in EAEU countries and do not require registration in other countries around the world. Therefore, to create a register of chemical mixtures, it is necessary to first create a register of chemical substances.

Countries within the EAEU lack a sufficient number of qualified specialists and equipped laboratories capable of conducting expert examination and, where necessary, testing of such products within the given time frames.

The rules specified in the drafts will lead to significant costs (financial, time, labour and other costs) that are largely excessive and unjustified.

The lack of a graduated approach (based on the annual tonnage of chemical products produced and/or imported) in the introduction of notification and registration, along with excessive information provision requirements, will significantly complicate the activity of large enterprises and may not always be feasible for medium-sized and especially small enterprises (low-tonnage production and import). It is also likely that this will lead to the establishment of technical trade barriers for innovative chemical substances/mixtures in the form of progressive innovations that have not entered the markets yet.

In general, the approach corresponds with global best practices. However, the omission of certain essential details makes it less effective and, more importantly, unreasonably complicates the operations of companies. The best approach is to use the development, implementation, and operation experience of existing systems. It makes sense to look more closely into Europe's experience and employ the best aspects of it.

RECOMMENDATIONS

Taking the above into account, we propose the following:

- To implement thresholds (tonnage ranges) for data requirements, i.e. the amount of data requested for notification regarding new chemical substances should depend on the tonnage manufactured or imported and placed on the EAEU market. This will avoid creating trade barriers, especially as regards low-volume chemical substances.
- A Chemical Safety Report (CSR) should only be requested for notification regarding new chemical substances manufactured or imported and placed on the EAEU market above a certain thresh-

old. This could be 1 tonne/year and per notifier as under the EU's REACH. Without a tonnage threshold and a CSR requirement only for high-volume substances, far too much data/costs will be required for low-volume substances.

WORKING GROUP MEMBERS

Akzo Nobel Coatings LLC • Allnex Belgorod LLC • Avon Beauty Products Company LLC • BASF • Bayer • British American Tobacco Russia • Brother LLC • Caterpillar Eurasia LLC • Continental Tires RUS OOO • Dow Europe GmbH Representation office • Electrolux • GE • Hempel AO • Henkel Rus OOO • John Deere Rus, LLC • Johnson Matthey PLC • JTI Russia • Kaercher • Knauf Group CIS (OOO Knauf Gips) • LANXESS LLC • Merck LLC • Michelin • Philip Morris Sales and Marketing • Procter & Gamble • Renault Russia • Rockwool • SERVIER • Shell Exploration and Production Services (RF) B.V. • Solvay S.A. • Wacker Chemie Rus.

NORTH-WESTERN REGIONAL COMMITTEE

Chairman:
Anton Rassadin, BSH Bytowije Pribory

Deputy Chairpersons:
Andreas Bitzi, quality partners.; **Elena Novoselova**, Coleman Services;
Wilhelmina Shavshina, EY

Committee Coordinator: **Alla Oganesian** (alla.oganesian@aebrus.ru)

INTRODUCTION

The AEB North-Western Regional Committee (AEB NWRC) was founded in St. Petersburg in February 2010. Currently, there are 100 member companies of the Committee, representing the full spectrum of business sectors. We have members from most EU countries, but owing to St. Petersburg's location, many of its members are Scandinavian, more specifically, Finnish (40%).

The mission of the AEB NWRC is to create a more favourable business and investment environment in the North-Western region in order to benefit member companies. The region includes St. Petersburg; the Arkhangelsk, Kaliningrad, Leningrad, Murmansk, Novgorod, Pskov, and Vologda regions; the Republics of Karelia and Komi; and the Nenets Autonomous District.

The most important objectives of the Committee are as follows:
- to be the best Western lobbying organization supporting member companies;
- to improve the business environment, increase transparency and develop honest business opportunities in the region;
- to facilitate effective cooperation with local and federal authorities in order to solve problems or benefit member companies and/or their business sectors;
- to develop platforms, such as subcommittees or working groups, in order to resolve members' business issues;
- to organize events and other meeting opportunities for networking purposes;
- to cooperate with consulates and other bodies of the European Union in the region;
- to cooperate with other business associations;
- to provide quality information according to the needs of member companies.

The Committee organizes some very popular events in St. Petersburg. For example, the Northern Dimension Forum attracts hundreds of companies and has become a regular event on the local business calendar. We regularly organize open meetings, round tables and business meetings addressing current business affairs and problems.

In 2020, the Committee has significantly strengthened its cooperation with regional authorities and business associations, as well as its communications, in order to actively lobby member companies' interests, promptly inform them about the situation in the region and COVID-related restrictions and support measures, and participate in developing and implementing recovery measures for the regional economy. Our collaboration with the government of the Leningrad region is highly appreciated; it allowed member companies in the region to restore operations after the restrictions very quickly and efficiently with full support from the authorities.

The Committee has organised the following Subcommittees:
- HR and Migration;
- Customs, Transport and Logistics;
- Legal and Taxation;
- Construction and Real Estate.

The Committee is managed by a Steering Group. The following representatives currently constitute the Steering Group: Andreas Bitzi (Deputy Chair, quality partners.), Anna Chekhova (Commerzbank (Eurasija) AO), Natalia Kapkaeva (Port of Hamburg Marketing), Timo Mikkonen (ORAS RUS), Elena Novoselova (Deputy Chair, Coleman Services), Anton Poddubny (Dentons), Anton Rassadin (Chair, BSH), Wilhelmina Shavshina (Deputy Chair, EY), and Maxim Sobolev (YIT).

HR AND MIGRATION SUBCOMMITTEE

INTRODUCTION

St. Petersburg has established itself as a strong industrial centre. It is an economically developed and financially self-sufficient region of Russia. St. Petersburg's economy is largely based on industry, which serves as a major source of tax revenue and provides employment to one-fifth of the working population.

FOCUS

The Committee as a whole is committed to:
- assessment, training and development of personnel;
- compensation and benefits;
- labour law;
- recruitment;
- migration policy.

COMMITMENTS

The purpose of the subcommittee is to provide favourable conditions for further development of the HR market in the North-Western region by:

- creating a platform for constructive dialogue between the state, employers and public educational institutions;
- facilitating experience exchange among the foreign and Russian HR communities and promoting the application of the world's best HR practices and standards in Russia;
- providing assistance to foreign AEB member companies in HR issues in the North-Western region and in Russia;
- providing assistance to foreign AEB member companies in migration issues according to the migration legislation of the Russian Federation.

ISSUE

St. Petersburg and the Leningrad region rank as one of the most attractive investment destinations in Russia. While investors remain interested in the North-Western market, companies just entering the national market don't always have the necessary knowledge of Russian legislation and local peculiarities which come with long experience of doing business in the country. Apart from that, companies that already operate in Russia often face legal challenges on issues related to personnel management as a result of legislative omissions, conflicting laws and ambiguities in law enforcement. An issue of particular interest to foreign companies is the hiring of foreign personnel in Russia.

RECOMMENDATIONS

The subcommittee aims to inform and advise foreign companies on all the HR and immigration-related issues they may face when doing business in Russia by:

- encouraging active cooperation with government and legislative bodies in order to develop unified methods of law enforcement and to eliminate legislative omissions and conflicting laws which impede effective business activity on the part of foreign companies in Russia;
- providing assistance to foreign AEB member companies in establishing new business contacts in the North-Western region;
- discussing developments and trends in the Russian labour market and recent changes in Russian legislation.

CUSTOMS, TRANSPORT AND LOGISTICS SUBCOMMITTEE

MANDATORY LABELLING OF GOODS WITH MEANS OF IDENTIFICATION

In 2020, the system of mandatory labelling of specific goods with means of identification is developing further. Mandatory labelling has been in effect in relation to footwear and medicines (with certain exceptions) since 1 July 2020 and in relation to photography products and perfume since 1 October 2020 (unsold stock of unlabelled goods may be sold until 30 September 2021). Moreover, 1 November 2020 marks the start of the first phase of the mandatory labelling of tyres and tyre casings, which entails a ban on the circulation of unlabelled goods, with a temporary exception to be made for wholesalers and retailers.

Starting 1 January 2021, mandatory labelling is to come into effect in relation to consumer goods. To date, pilot labelling projects have been launched in relation to several product groups: dairy products (mandatory labelling should have been introduced in 2020, but the experiment has been prolonged until the end of 2020), bottled water and wheelchairs. An initiative to launch a pilot beer and beer drinks labelling project was officially put forward in September 2020.

ISSUE

As soon as mandatory labelling of goods with means of identification enters into force, goods must be so labelled before they are put into circulation in Russia, including goods imported from non-EAEU member states.

RECOMMENDATIONS

According to current laws regulating mandatory labelling, imported goods must be labelled with identification codes before they are released for domestic consumption in Russia. Thus, labelling should be done using one of two methods: (1) at a foreign warehouse before the goods are packed into transport packaging and subsequently moved across the Russian border; (2) if goods are placed under the customs warehouse procedure, at a warehouse in Russia before the goods are released for domestic consumption.

CATEGORIZATION OF FOREIGN TRADE OPERATORS

Order of the Russian Ministry of Finance No. 29n of 21 February 2020 (the "Order"), regulating the procedure for assigning categories to foreign trade operators for the purpose of applying certain measures of customs control to them, came into effect in June 2020. Compared to the previously effective Order of the Federal Customs Service of Russia No. 2256 of 1 December 2016 On Approving the Procedure for Automated Determination of the Risk Category of Foreign Trade Operators, the new order clarifies the conditions for assigning entities to one of the three categories (high, medium and low risk), establishes the procedure for applying risk minimization measures, sets the requirements according to which an entity is to be included in/excluded from a particular category, and amends the list of criteria distinguishing the activities of entities carrying out customs transactions.

ISSUE

Despite substantial improvements to approaches to categorization, during implementation of the Order in practice, foreign trade operators encounter a number of difficulties, including the following:

1. One of the blocking criteria making it impossible for an entity to apply a low risk category is the non-fulfilment or improper fulfilment of responsibilities by that entity in the course of a customs audit. Any technical error, including any inaccuracies in the completion of documents provided, misprints, etc., may be found to constitute such non-fulfilment at the customs authority's discretion. In practice, a few days after such inaccuracies, the company may, for example, face a huge increase in the number of searches and document requests, which brings about substantial costs.
2. Another blocking criterion according to the Order is if an entity is in arrears on its customs payments and taxes, without any minimum threshold.
3. Information about the assigned risk category is accessible only to foreign trade operators who have signed the Charter of Bona Fide Foreign Trade Operators and to authorized economic operators (since the latter are automatically assigned a low risk category when they are awarded the status). Other foreign trade operators will not have access to such information in their personal accounts.

RECOMMENDATIONS

Continue interacting with the competent government authorities of the Russian Federation, including the Ministry of Finance of Russia and the Federal Customs Service of Russia, while the main provisions of the Order reducing the efficiency of the categorization of foreign trade operators are being polished.

As concerns the risk of non-fulfilment of responsibilities in the course of a customs audit, we recommend that foreign trade operators should give full and well-substantiated answers when responding to requests of the customs authorities for production of documents and data and should take advantage of their right to extend the document production time.

As concerns compliance with the remaining criteria, we recommend considering signing the Charter of Bona Fide Foreign Trade Operators or obtaining the status of an authorised economic operator.

TRANSPORT DEDUCTIONS

ISSUE

Lately customs authorities have launched mass audits to check the justification for deducting transport costs relating to the transport of goods across the customs territory of the EAEU from the customs value of goods, which results in a lot of arbitration and controversial judgements in this respect.

The point the customs authorities are making is as follows:

- In order to be entitled to a deduction of transport costs incurred after you have crossed the EAEU border, you should show the cost of transportation separately from the price of goods and split it into the cost of transportation up to the customs border of the EAEU and beyond, not only in the foreign trade contract and/or the foreign seller's invoice, but also in the contract for carriage and in the invoice issued by the carrier, which the declarant is to produce even if it is not a party to the contract with the carrier.
- The forwarder's fee may not be deducted from the customs value as transport costs.

In the opinion of the customs authorities, in situations when the declarant only has information and documents supplied by the foreign seller, and the carrier, with which the declarant has no contractual arrangements, refuses to provide the contract of carriage and invoices for such carriage, the declarant does not have the right to claim such deduction.

That said, the customs authorities consider that forwarding services relating to the transportation of goods up to the EAEU border should not be included in the customs value of goods.

RECOMMENDATIONS

In order to ensure consistency in law enforcement practices, including judicial practice, and legal certainty for declarants, it is necessary to introduce amendments to the Customs Code of the EAEU and/or devise an act of the Eurasian Economic Commission that would establish conditions for deducting transport costs from the customs value of goods and, in particular, determine entitlement to deduction of the cost of forwarding services from the customs value of goods as, well as the procedure for providing documents in confirmation of such costs.

As concerns proof of transport costs, we recommend that companies provide customs authorities with a complete set of the relevant documents, which should be in agreement with each other, and a general letter to explain the logic behind, and bring more clarity to, the legal nature of documents and contractual arrangements between all parties involved in the shipment and delivery of goods to the territory of the Russian Federation.

In order to get a deduction, it is also necessary to ensure that the cost of transportation be shown separately from the price of goods and that it be split into the cost of transportation up to the customs border of the EAEU and beyond and that the same be shown in the foreign trade contract and the seller's invoices and in the contract of carriage and the invoice issued by the carrier.

INCLUSION OF DIVIDENDS IN THE CUSTOMS VALUE OF GOODS

ISSUE

The new practice adopted by the customs authorities is to run customs audits in order to check whether dividends payable to parent companies outside the EAEU are included in the customs value of goods. The number of court disputes on the matter has increased as a result of this.

According to part 9 of art. 39 of the Customs Code of the EAEU, dividends or other payments remitted by the purchaser to the seller are not included in the customs value of imported goods. That said, pursuant to item 3 of part 1 of art. 40 of the Customs Code of the EAEU, the part of income (revenues) received as a result of the subsequent sale or other disposition or use of imported goods which is directly or indirectly payable to the seller should be included in the customs value of goods. These two provisions have become a stumbling block in disputes over the inclusion of dividends in the customs value of goods.

Dividends are part of the company's net profit distributable in favour of that company's shareholder in proportion to such shareholder's share in the authorized capital of the company. Dividends are the financial result of any company in general and are not dependent on the sale of particular goods.

RECOMMENDATIONS

We recommend that companies keep abreast of any subsequent developments in judicial practice on the matter and be prepared for the fact that customs authorities may request documents and data when checking the correctness of the customs valuation of goods and especially the lawfulness of the non-inclusion of dividends in the customs value of goods.

In the current situation it would be also good to prepare arguments to prove that the distribution of dividends is not connected with the goods the company imports. If dividends are payable to a party to a foreign trade contract who is an affiliate (related party) of the declarant, one should also be prepared to produce proof that such affiliation of the parties to the contract does not affect the value of the transaction.

REGULATION OF THE INSTITUTION OF AN AUTHORIZED ECONOMIC OPERATOR

Since 2018, the customs legislation of the EAEU has been supplemented with provisions aimed at giving fresh impetus to the development of the institution of an Authorized Economic Operator (AEO); these provisions provide for three types of AEO certificates with different simplifications for each, extend the list of simplifications available to the AEO and affirm that the AEO fits into a low risk category and so forth.

ISSUE

However, it has turned out that, in practice, the advantages that the AEO status gives to importers are negated by general systemic changes in the customs clearance of goods. For example, goods of "ordinary" importers are often released more quickly than those of AEOs, even when the latter apply such simplifications as "release before filing a declaration", which the customs authorities explain by flaws in how the risk management system operates.

There is also a problem of a lack of trust among foreign trade operators in the mechanism of how the customs authorities provide remote access to the AEO registration system. Foreign trade operators fear that information the customs authorities get from the system or data mart may be used for other purposes, for example, for tax control purposes.

Some of the special advantages the AEO status gives to its holders are either not applied in practice or are inefficient. There is no consistent practice of applying special simplifications such as, for example, the right of an AEO to not provide security when placing goods under the procedure of customs transit. In some instances AEOs still encounter demands from the customs authorities to provide security when the law generally does not demand this, which reduces the overall efficiency of this special simplification.

RECOMMENDATIONS

Continue interacting with the government authorities of the Russian Federation and the Eurasian Economic Commission, inter alia, within the framework of the Working Group for development of the institution of AEOs in the EAEU member states, in order to solve the key issues preventing business from making effective use of the simplifications available to AEOs. The priority areas are: the issuance of EEC Resolutions on standard requirements for the AEO system of recording goods; establishment of clear requirements for remotely accessing data from the system (not the system itself!), including restrictions on the use of data from the system by customs authorities; polishing of the risk management system based on the provision enshrined in the Customs Code of the EAEU that an AEO fits into a low risk category; and further improvement of the mechanism for the operation of special simplifications available to the holders of AEO status.

LEGAL AND TAXATION SUBCOMMITTEE

The main objectives of the Subcommittee include duly informing its members about changes to the legal framework and tax environment; searching for possible ways to minimize or eliminate risks; developing proposals to improve the regulatory framework, both at the federal and regional and levels; and interaction with public regulatory authorities.

ISSUE

At present, in order to apply reduced tax rates for Corporate Income Tax, the provisions of the Tax Code of the Russian Federation (TC RF) establish the volumes and maximum periods for capital investments in Regional Investment Projects (RIPs) in the following amounts:

- 50 million roubles – within a period not exceeding 3 years from the date of inclusion of the organization in the register of RIP participants;
- 500 million roubles – within a period not exceeding 5 years from the date of inclusion of the organization in the register of RIP participants.

Due to the difficult economic situation caused by the pandemic, it may be difficult for investors implementing a RIP to comply with the specified requirements of the TC RF with respect to an investment period. In this regard, there is a risk that RIP participants will lose the right to apply tax support measures, and the implementation of the RIP will be significantly slowed down.

RECOMMENDATION

It is recommended to discuss with the members of the Subcommittee the possibility of submitting a proposal to the competent authorities of the subjects of the Russian Federation of the northwest for support for a significant increase or complete cancellation of the maximum periods for capital investments for RIP, joint preparation of economic feasibility studies and proposals for the adoption of regulatory acts establishing amendments to the TC RF.

ISSUE

A foreign citizen can be refused entry to the Russian Federation if he or she has been subject to administrative penalties for committing even a minor administrative offence in Russia more than twice in a three-year period.

RECOMMENDATION

It is recommended that amendments be considered to the Federal Law 'On the Procedure for Exit from the Russian Federation and Entry to the Russian Federation' regarding changing the criteria for entry restrictions applicable to foreign citizens. Such criteria should be determined depending, in particular, on the nature of the offences, the degree of the foreigner's guilt, and the existence and severity of the damage.

CONSTRUCTION AND REAL ESTATE SUBCOMMITTEE

INTRODUCTION

The Subcommittee was established to unite the interests of companies in the areas of construction, development, property and asset management, legal advisory, consultation, investment and finance, and production and supply of equipment and materials.

The construction sector makes a significant contribution to the industrial and economic growth of the country and the region. It employs more than 300,000 workers in the North-Western region, and also facilitates the production of construction and finishing materials, logistics and other services.

ISSUE

The government and administration of St. Petersburg are forcing developers and investors to participate in the development of urban city's infrastructure: social and cultural facilities, utility networks, roads, etc. The city can buy these infrastructure facilities or accept them as a donation.

Sometimes the city finds insignificant formal reasons to decline acceptance of infrastructure facilities or delays acceptance as much as possible by other methods. Developers and investors are required to perform maintenance of infrastructure facilities at their own expense before these facilities will be accepted by the city.

Local legislation contains few regulations about such partnership between investors and the city. Agreements for participation in the development of the city's infrastructure and applicable local legislation do not take investors' motivation and interests into consideration at all.

RECOMMENDATION

It is necessary to discuss this issue with regional leaders to create legal mechanisms to protect the interests of developers and investors.

ISSUE

The State is actively reforming the legal framework in construction: previously mandatory standards are becoming recommendations, and new requirements are emerging, in particular for information support of construction. A government decree was adopted on creating and maintaining an information model of a capital construction project. It is necessary to define the requirements for the specified models, define transition periods, and so on.

RECOMMENDATION

With the help of the Association's experts, formulate proposals to clarify the requirements for working with the information model of capital construction projects and send the relevant proposals to the Ministry of Construction.

ISSUE

In times of economic instability, countries actively use protectionist measures to patronize domestic producers. Government agencies impose localization requirements on suppliers. The use of non-localized products is being actively pushed out of the sphere of procurement of enterprises with state participation. Direct localization of production requires large investments and is not always economically justified. How can we avoid losing market share and maintain efficiency?

RECOMMENDATION

Discover and disseminate best localization practices for Association members.

COMMITTEE MEMBERS

Abloy LLC (Russia) • Akzo Nobel N.V. • Alianz IC OJCS • Alstom Russia Ltd • Ancor • Antal • Ariston Thermo Rus • Astoria Hotel Complex JSC • Baker McKenzie • BASF • Beiten Burkhardt • Bellerage Alinga • Boskalis Offshore Contracting B.V. • British American Tobacco Russia • BSH Bytowyje Pribory OOO • Business Finland Oy • Caterpillar Eurasia LLC • Citibank AO • Coleman Services • Commerzbank (Eurasija) AO • Credit Agricole CIB AO • Danone Russia • Deloitte CIS • Dentons • DHL Express • DLA Piper Rus Limited LLC Branch in St. Petersburg • Dow Europe GmbH Representation office • Drees & Sommer • East Office of Finnish Industries • Egorov Puginsky Afanasiev & Partners • EKE Group • Eversheds Sutherland • EY • Faurecia • Finnish-Russian Chamber of Commerce • Finnvera Plc • Gestamp Russia • GfK • GROUPE SEB-VOSTOK ZAO • HeidelbergCement Rus • HEINEKEN BREWERIES, LLC • HELLENIC BANK PLC • Henkel Rus OOO • Heroes S.r.l • Human Search, OOO • Hyundai Motor CIS • IKEA DOM LLC • ING Wholesale Banking in Russia • Ingka Rus LLC • International Hotel Investments (Benelux) B.V. (Corinthia Hotel) • Italcantieri • Itella, OOO • JETRO • Jotun Paints LLC • JTI Russia • Jungheinrich Lift Truck • Juralink G-nius • Knauf Group CIS • KPMG AO • Kuehne+Nagel • KUUSAKOSKI OY (Petromax AO) • Legrand Group • Lenta LLC • METAProactive LLC • MOST SERVICE • Nissan Manufacturing Rus • Nokian Tyres Ltd. • Nordea bank • Novartis Group Russia • Novo Nordisk A/S • ORAS RUS LLC • Pekkaniska • Pepeliaev Group LLC • Philip Morris Sales & Marketing • Philips LLC • Ponsse OOO • Port Hamburg Marketing • Promaco-TIAR • PwC • quality partners • Raiffeisenbank AO • Representative office of OMV Russia Upstream GmbH • ROCA • Rockwool • Rödl & Partner • Saint-Gobain CIS • SAF-NEVA • SATO Rus • Scandinavian Interiors • Scania-Rus LLC • SCHNEIDER GROUP • Siemens LLC • Smurfit Kappa • SOGAZ Insurance Group • Sokotel LLC • Specta • Spectrum Holding • Stockholm School of Economics in Russia • Tikkurila • TMF Group • Toyota Motor • Uniper Global Commodities SE • VOLKSWAGEN Group Rus OOO • VSK Insurance Joint Stock Company • Wienerberger • YIT • Yusen Logistics Rus LLC.

SOUTHERN REGIONAL COMMITTEE

Chairman:
Oleg Zharko, Danone Russia

Deputy Chairpersons:
Ralf Bendisch, CLAAS; **Lubov Popova**, VEGAS LEX

Committee Coordinator:
Juliana Perederiy (juliana.perederiy@aebrus.ru)

INTRODUCTION

The Committee has been operating since 2003 and is the first regional union within the Association. Today the Southern Regional Committee includes 37 companies: leading foreign investors, international banks and consulting and engineering companies, whose divisions operate in the Krasnodar region, Rostov region and the Republic of Adygea. The Committee's operations are aimed at resolving issues related to the development of international businesses in the region and creating favourable conditions for the development of mutually beneficial collaboration and cooperation with local authorities.

The Krasnodar region is a key partner of the Southern Regional Committee for a number of objective reasons. The Krasnodar region took 6th place in the national rating of the state of the investment climate in the constituent territories of the Russian Federation maintained by the Strategic Initiative Agency. The Krasnodar region ranks 6th among Russian regions in terms of total investments per year. The region is ranked third in terms of population, after only Moscow and the Moscow region. It is one of Russia's major marketplaces thanks to its large population and numerous tourists.

The coronavirus pandemic has significantly affected the global economy and has changed the format of companies' activities everywhere, including in the south of Russia. The high population density and the tourist flow increase the threat of the virus' spread in the region.

The entire range of measures taken by the member companies of the Southern Regional Committee have made it possible to prevent the shutdown of vital companies and to arrange business in completely new conditions. Foreign companies have become pioneers and experts in the implementation of remote work due to the application of global practices and technologies for the digitalization of business processes. Comprehensive measures have been taken to protect personnel and to ensure social support for employees.

INTERACTION WITH REGIONAL AUTHORITIES IN ORDER TO CREATE CONDITIONS FOR ATTRACTING NEW AND EXPANDING EXISTING INVESTORS' PROJECTS

ISSUES

The Krasnodar region is one of the most attractive regions in the Russian Federation for foreign investors. Its history of successful implementation of investment projects in the area by foreign investors dates back more than 25 years. In 2003 foreign investors in the Krasnodar region initiated the creation of the first regional union – namely, the Southern Regional Committee of the Association of European Businesses. The number of foreign investors who have come to the Krasnodar region reflects the manifold growth in the number of members of the Southern Regional Committee over the years.

Today more than 30 large and medium businesses and organizations are operating in the Krasnodar region, along with the participation of transnational corporations and major foreign companies that represent well-known global brands. A large number of retail branches representing major global companies also operate in the territory.

Member companies of the AEB Southern Regional Committee are actively developing their production facilities in the Krasnodar region. It is worth mentioning that this outcome was made possible thanks to fruitful cooperation and support from regional and municipal authorities and the Legislative Assembly of the Krasnodar region, which promotes the realization of new investment projects and joint initiatives of members of the Association of European Businesses.

The administration and the Legislative Assembly of the Krasnodar region have built an effective system of interaction with potential and existing investors and actively engage business representatives as experts for consultations on a wide range of issues.

The Regional Consulting Committee for Foreign Investments under the Governor of the Krasnodar region operates actively. Fourteen out of eighteen companies in this consulting committee are members of the Southern Regional Committee. For the purposes of the current activities of the regional advisory council on foreign investments, working groups have been formed in the following areas: promoting the investment image of the Krasnodar region; legislative regulation and industrial development; staffing of investment projects; issues of sustainable development and corporate social partnership.

To analyze and summarize the existing experience, starting in 2016 the Consulting Committee for Foreign Investments supported

by EY annually prepares a memorandum on the status of work with foreign investors in the Krasnodar region.

Representatives of AEB member companies also participate in the Committee for Improvement of the Investment Climate under the Governor of the Krasnodar region, the Industrial Development Council under the Governor of the Krasnodar region, the Expert Consulting Committee of the Legislative Assembly of the Krasnodar region on matters of industry, investments, entrepreneurship, communications, consumer and financial markets and foreign trade and in the expert group of the Strategic Initiative Agency for the Krasnodar region.

RECOMMENDATIONS

- To establish information exchange with the Consulting Committee for Foreign Investments under the Government of the Russian Federation.
- To attract investors who have successfully implemented their projects to work with foreign delegations and prospective investors.
- To have successful investors take active part in presenting the region's investment potential at industry and investment forums.
- To consider AEB member companies that operate in Russia but have no branches in the Krasnodar region as a key audience.
- To focus efforts on working with individual AEB industrial committees corresponding to the development strategy of the Krasnodar region for 2030.
- To use the AEB as a platform to promote the investment potential of the region.

INTERACTION WITH PARTNERS AS A FACTOR IN THE DEVELOPMENT OF THE BUSINESS ENVIRONMENT IN THE REGION

ISSUES

The long-term interests of foreign investors are closely connected with the Russian economy, and companies whose manufacturing facilities are located in Russia are an integral part of it. A synergistic effect arises from the activities of foreign investors in the region: companies get Russian partners involved in business – raw material suppliers, equipment maintenance specialists, etc. Therefore, other Russian companies are additionally drawn into the operations of the companies. The presence of investment projects in Russia is a step in the right direction both for companies that operate here and the economy of the region in which they operate and of Russia in general.

Over the years the Southern Regional Committee has become a leading platform for consolidating the position of Russian and international companies operating in the Krasnodar region through interaction with business associations representing Russian business.

Participation in events and mutual support of projects by the Chamber of Commerce and Industry of the Krasnodar region, regional branches of the Russian Union of Industrialists and Entrepreneurs and Delovaya Rossiya make it possible to form a unified business position and focus efforts on the current business agenda.

The Southern Regional Committee conducts an active information policy, promoting AEB's agenda. The socio-political weekly Yug-Times has been an information partner of the AEB Southern Regional Committee for solving these problems for six years.

To develop a constructive trilateral dialogue 'power – business – society', the Southern Regional Committee actively interacts with the Public Chamber of the Krasnodar region.

Since 2014 the Southern Regional Committee has been co-organizing the Time for New Strategies programme together with the Public Chamber of the Krasnodar region, the socio-political weekly Yug-Times, the Agency for Investments and International Cooperation and the Krasnodar regional branch of the Russian Union of Industrialists and Entrepreneurs.

The 'Time of New Strategies' programme became one of the key platforms for expert and public discussion of the Strategy for Social and Economic Development of the Krasnodar region 2030. More than 20 conferences, round tables and strategic sessions have been held over the 7 years of the Time for New Strategies Programme. Since March 2020 programme events have been held online on the MS Teams platform, gathering a large number of interested participants and making it possible to maintain a dialogue between business and authorities in the pandemic situation and in the climate of restrictive measures introduced by companies to protect their personnel.

RECOMMENDATIONS

- To maximize the use of virtual communications, taking into account the sanitary and epidemiological situation.
- To support, develop and promote the Time of New Strategies programme in all respects as one of the key platforms for expert and public discussion of relevant matters of the Krasnodar region's development.
- To monitor the implementation of the 2030 strategy and discuss the prospects of and obstacles to its implementation with business experts.

HIGHLY QUALIFIED PERSONNEL FOR INVESTMENT PROJECTS

ISSUES

Issues related to staffing support for the investment projects of companies traditionally hold an important place in the Southern Regional Committee's work. The HR Subcommittee of the Southern Regional Committee organizes and conducts activities in this area.

One of the factors having a material impact on a company's selection of a platform for investment project implementation is

the availability of large higher education institutions in the region capable of training specialists to the required skill level and possessing knowledge of foreign languages.

Many companies have been implementing scholarship programmes in cooperation with universities and colleges aimed at expanding horizons and knowledge in specific areas.

For 7 years the support of the member companies of the AEB Southern Regional Committee has helped maintain the successful operation of business schools in leading universities of Krasnodar: in 2020 the first students graduated from the Business School of Kuban State University. During the academic year, in each of the business schools, 40 speakers from 15 member companies of the Southern Regional Committee of the Association of European Businesses teach classes for graduate students who have passed a strict selection process and talk about business processes and business practices of international corporations. Guided trips to enterprises are organized for the students of the business schools. The training ends with the defence of business cases proposed by the companies participating in the project.

More than 450 students have been educated in business schools during their operation. This project was awarded the 'Public Recognition' prize by the Public Chamber of the Krasnodar region. The work of the Business Schools has continued online since March 2020 due to the pandemic.

Representatives of the member companies of the AEB Southern Regional Committee sit on the Expert Council and act as mentors for the winners of the 'Leaders of Kuban – Moving Up!' contest for managers.

One of the key events of the HR agenda in southern Russia is the annual HR Conference, which the Southern Regional Committee has been organizing for 12 years with support from the AEB Human Resources Committee. In 2020 business strategies and practices in the context of the coronavirus pandemic were discussed at the conference.

RECOMMENDATIONS

- To continue and develop interaction with universities through Business Schools, actively attracting speakers from various countries in an online format.
- To expand the activities of the Business Schools by creating special groups to train young teachers.
- To share the experience of the Business Schools at business and educational platforms.
- To contribute to the comprehensive training of personnel to work in governmental institutions by providing a possibility to participate in mentoring for the winners of the managerial personnel competition 'Leaders of Kuban – Moving Up!'.
- To introduce a programme of double mentoring from business and government for personnel in relevant areas.
- To hold industry-specific meetings on topical issues for the representatives of foreign business and the HR community in the region.
- To promote the continued development of constructive dialogue between universities and businesses for further successful realisation of the region's investment potential.

CONCLUSION

The Southern Regional Committee is a recognized leading representative of international companies and investors in the region with a high business reputation.

The objective of the Committee's activities is maximum utilization of the region's investment opportunities. This objective is directly related to the plans of local and regional administrations for stimulating dynamic development of the economy.

The AEB Southern Regional Committee promotes the interaction of investors with regional and municipal authorities and introduces European experience and cutting-edge technologies in various areas of business. This strengthens the existing competitive advantages of the Krasnodar region and southern Russia in general, makes them more attractive to investors and offers new opportunities for the region's economic development.

COMMITTEE MEMBERS

ABB • Advocates Bureau Yug • Allianz IC OJSC • ANCOR • Atos • Banca Inteza • BASF • Bayer JSC • BONDUELLE-Kuban LLC • Cargill LLC • Center-invest Bank • CLAAS • CHEP • Danone Russia • ERGO Insurance Company • EY • IKEA Purchasing Services Russia • Knauf Group CIS • KPMG AO • KWS RUS LLC • Legrand Group • Limagrain RU LLC • Nestle Rossiya LLC • Philip Morris Sales and Marketing • Philips LLC • PwC • Raiffeisenbank AO • Rosbank • Schneider Electric • Siemens LLC • SOGAZ Insurance Group • Syngenta • UniCredit Bank AO • VEGAS LEX Advocate Bureau • Volvo Cars LLC • VSK Insurance House • YIT.

Меморандум европейского бизнеса в России 2021

ДОРОГИЕ ЧИТАТЕЛИ!

Мы с удовольствием представляем «Меморандум европейского бизнеса в России 2021», в котором обобщены результаты интенсивной деятельности комитетов и рабочих групп АЕБ по продвижению различных законодательных инициатив в течение 2020 года. Кроме того, в Меморандуме четко сформулированы рекомендации для государственных органов, касающиеся решения вопросов, которые имеют первостепенное значение для иностранных компаний, осуществляющих свою деятельность на российском рынке.

Вспышка пандемии COVID-19 привела к возникновению множества проблем как у отдельных людей, так и у организаций по всему миру, и АЕБ не стала исключением. Тем не менее Ассоциация смогла плавно адаптироваться к новым обстоятельствам и продолжила работу в привычном темпе, обеспечив бесперебойную деятельность для достижения значительных результатов.

В марте 2020 года Правительство Российской Федерации ограничило въезд иностранных граждан в страну, что затруднило возвращение высококвалифицированных специалистов, работающих в компаниях-членах АЕБ, на территорию России для выполнения своих обязанностей. АЕБ совместно с представителями российского Правительства приложили колоссальные усилия по их возвращению. Правительством были утверждены четыре списка, в которые вошло более 2 000 высококвалифицированных специалистов и сопровождающих их членов семей. Все эти лица получили разрешение на возвращение в Россию.

В 2020 году АЕБ работала и с другими вопросами, такими как локализация и доступ иностранной продукции для государственных закупок, новый механизм специальных инвестиционных контрактов (СПИК 2.0), маркировка и системы прослеживаемости товаров, соглашения об избежании двойного налогообложения и изменение законодательства об НДС в отношении программного обеспечения и баз данных (так называемый «налоговый маневр» в сфере ИТ), параллельный импорт и вопросы так называемого двойного качества товаров, регуляторная гильотина и т. д.

Кроме того, АЕБ продолжает следить за такими темами, как таможенное регулирование, переработка и утилизация отходов, страхование, налогообложение, банковское дело, техническое регулирование, торговое право и саморегулирование. Ассоциация поддерживает тесный контакт с властями Европейского Союза и Евразийского экономического союза по различным вопросам, таким как миграция, локализация, обязательная маркировка, торговля и таможенное регулирование, а также в других сферах взаимовыгодного сотрудничества.

Дороге друзья, позвольте выразить искреннюю благодарность всем членам АЕБ за их преданность делу, поддержку и доверие, особенно сейчас, в период неопределенности. Мы прекрасно понимаем, сколько трудностей пришлось преодолеть компаниям в связи с пандемией и какой непростой путь еще предстоит им пройти для полного восстановления и обретения новых сил.

2020 год для нас знаменательный, так как Ассоциация празднует свое 25-летие. К сожалению, из-за пандемии сама церемония и ряд связанных с этим событием мероприятий перенесены на 2021 год, но мы надеемся, что торжество превратится в фестиваль ярких идей, экспертных знаний и опыта и незаурядных решений для всех нас. Станем сильнее вместе!

Йохан Вандерплаетсе
Председатель Правления

Тадзио Шиллинг
Генеральный директор

ВАЖНЫЕ ТЕМЫ АЕБ

ВЫЗОВЫ, ИЗМЕНЕНИЯ И ПОСЛЕДСТВИЯ: ВЛИЯНИЕ COVID-19 НА БИЗНЕС

С наступлением 2020 года бизнес, правительства стран и миллиарды людей, которых коснулся нынешний кризис, не ожидали, что мир вступает в длительный период глобальной пандемии. По данным Всемирной организации здравоохранения, в настоящее время в 235 странах и территориях по всему миру подтверждено более 33 миллионов случаев заражения новой коронавирусной инфекцией. Нынешняя пандемия внесла существенные изменения в наш образ жизни и работы. В новой реальности мы должны приложить все усилия, чтобы уберечь жизни людей, обезопасить компании от исчезновения, а также защитить свои сообщества.

Для многих компаний пандемия COVID-19 стала катализатором изменений. В самых различных аспектах, от планирования деятельности и до организации рабочего процесса, компании стараются адаптироваться к новой реальности и активно осваивать цифровые технологии, повышать скорость адаптации к новым условиям, чтобы обеспечить непрерывность деятельности и развитие в будущем.

Пандемия, вызванная коронавирусом, придала дополнительный стимул многим аспектам деятельности различных компаний. Текущий кризис заметно повлиял на спрос и оказал негативное воздействие на экономики стран по всему миру. В ответ на это правительства стран вводят меры экономического стимулирования, предоставляют пакеты восстановительных мер и внедряют политики, направленные на «зеленое» инвестирование. Мы полагаем, что по окончании пандемии COVID-19 мы получим беспрецедентные возможности восстановиться и стать лучше, чем раньше, а также что в этом контексте переход на чистую энергию будет являться существенным фактором.

Мы также отмечаем радикальные изменения в организации своей работы. Несмотря на то, что переход на удаленную работу был вынужденной мерой на период пандемии, такая схема работы очень быстро становится нормой. Согласно данным опроса, недавно проведенного компанией Global Workforce Analytics, 93% сотрудников предпочитают часть рабочего времени работать из дома, а некоторые компании полностью перешли на удаленную работу. Необходимость соблюдения баланса между домашними и рабочими делами стала в последние месяцы как никогда важным фактором, стимулирующим компании к рассмотрению новых долгосрочных подходов к организации рабочих процессов.

Текущие обстоятельства стимулировали и ускорили переход компаний к гибким методам работы. Это означает создание междисциплинарных групп и предоставление им полномочий решать проблемы и находить возможности. Способность адаптироваться к изменениям условий объединяет компании и рабочие коллективы, географически удаленные друг от друга, сплачивая сотрудников, позволяя поддерживать устоявшуюся культуру интеграции. Эта способность оказалась особенно актуальной в нынешние трудные времена.

Еще одним результатом для бизнеса оказался толчок к более глубокой цифровизации. Использование цифровых технологий является основным элементом стратегии для многих компаний, что позволит инвестировать существенные средства в новые предприятия. Пандемия стимулировала стремление быть на передовой использования цифровых технологий для объединения сотрудников, активов и партнеров инновационными методами.

В течение пандемии многие компании предприняли активные шаги для продвижения концепции осведомленности о психическом здоровье, благодаря которой стало возможным оказать поддержку коллегам и членам их семей. В сложившейся атмосфере неуверенности и постоянных изменений важно обеспечивать коллективам доступ к таким ресурсам.

Учитывая неопределенность, которая будет свойственна миру по окончании пандемии, компании должны адаптироваться, искать баланс и мыслить креативно при формировании подходов к новым условиям. Люди зачастую говорят, что необходимо делать все возможное; нынешний кризис каждый день меняет наше представление о «возможном».

РЕГУЛИРОВАНИЕ ВЫБРОСОВ ПАРНИКОВЫХ ГАЗОВ И МЕЖДУНАРОДНАЯ КЛИМАТИЧЕСКАЯ ПОВЕСТКА

В декабре 2019 года, менее чем через неделю с прихода на пост, глава Еврокомиссии Урсула фон дер Ляйен представила «Зеленый пакт для Европы» – новую климатическую стратегию стран Евросоюза с целью добиться углеродной нейтральности к 2050 году. В марте 2020 года Совет ЕС утвердил долгосрочную стратегию Евросоюза по низкоуглеродному развитию и представил проект закона о климате, и в течение последующих месяцев публиковал секторальные стратегии, являющиеся частью плана, и обязательства по обеспечению финансирования и справедливого механизма для такой трансформации. Ключевой причиной для столь амбициозных целей является понимание масштаба климатической катастрофы и ее экономических и социальных последствий в том случае, если не удастся удержать рост средней температуры в пределах 2°С к 2100 году.

Влияние пандемии на экономику и необходимость ее восстановления стали дополнительным стимулом – учитывая рекомендации ведущих экономистов, Европейская комиссия связала бюджеты на восстановление экономики, общеевропейский бюджет и климатические цели, направив на реализацию климатической стратегии по крайней мере 30% общего бюджета более чем в 1 трлн Евро на ближайшие 7 лет.

Многие компоненты стратегии ЕС будут связаны с серьезным изменением рынка для российского экспорта. Это, безусловно, стратегия энергетической системы, включая «зеленый» водород, но также стратегии и планы действий устойчивой мобильности, циклической экономики и т. п.

Наконец, для обеспечения равных условий и стимулирования к развитию тех отраслей ЕС, которые конкурируют с импортерами из стран без жесткого регулирования выбросов, ЕС предложил концепцию трансграничного механизма углеродного регулирования. В качестве возможных вариантов реализации механизма прорабатываются аналогичные действующему в ЕС механизму платежи для установок, производящих импортируемую продукцию, платежи на основе углеродного следа импортируемой продукции, и другие подходы. Под регулирование, которое может быть введено уже в 2022 году, должна попасть продукция целого ряда отраслей – планируется, что первая волна регулирования будет охватывать черную металлургию, цемент, химическую промышленность крупнотоннажного производства органических и неорганических веществ, а также импорт электроэнергии.

Позиция ЕС не уникальна: в сентябре кандидат в президенты США Джо Байден анонсировал климатический план на 2 трлн долл., а президент КНР Си Цзиньпин заявил о том, что страна ожидает пика выбросов парниковых газов до 2030 года и принимает цель по достижению углеродной нейтральности к 2060 году.

В России в марте 2020 года Министерство экономического развития опубликовало проект Стратегии долгосрочного развития экономики Российской Федерации с низким уровнем выбросов парниковых газов до 2050 года. Базовый сценарий стратегии рассматривает меры по повышению энергоэффективности экономики и сохранению лесов, и предполагает увеличение выбросов к 2050 году более, чем на 26% относительно текущего уровня (2017 года). Наиболее амбициозный интенсивный сценарий предполагает более умеренный рост выбросов к 2030 году и их возвращение примерно к сегодняшнему уровню к 2050 году. Таким же уровнем амбиций обладает и проект Федерального Закона «О государственном регулировании выбросов и поглощений парниковых газов…» в текущей редакции. Законопроект, который не предполагает введения каких-либо ограничивающих выбросы мер, был поддержан большинством ведомств. Принятие законопроекта застопорилось в связи с позицией спецпредставителя Президента РФ по климату Р.С.-Х. Эдельгериева, который связал его с возможностями России по взаимодействию с ЕС в рамках введения трансграничного углеродного регулирования.

По различным оценкам, механизмы трансграничного углеродного регулирования ЕС могут обойтись российским импортерам в суммы порядка 3-6 млрд евро ежегодно. В том случае, если такие меры будут введены в отношении российских компаний, эти средства получит бюджет Европейского союза. Не менее важно влияние климатической политики, проводимой ЕС и другими странами-импортерами российской продукции, на спрос на энергетические ресурсы. По различным оценкам, снижение спроса на ископаемое топливо приведет к потерям для России порядка 1% ВВП – суммы, в несколько раз больше связанной с трансграничным регулированием.

Фактически единственным способом реагирования на эти угрозы для российской экономики одновременно будет введение национального регулирования выбросов парниковых газов. Такое регулирование позволит вести диалог с ЕС на равных и даст инструменты для того, чтобы собрать и направить средства на стимулирование перспективных отраслей и технологий в России. Сейчас к такой точке зрения приходят представители все большего числа российских компаний. Надежды на юридические механизмы защиты с помощью соглашений ВТО тают, и не только потому, что их действие учитывается при разработке трансграничных механизмов ЕС. Пользующиеся поддержкой кандидаты на пост следующего генерального директора ВТО объявили в своих программах о необходимости реформирования организации для отражения вопросов климата и окружающей среды.

Европейским компаниям, многие из которых реализуют единые корпоративные политики и ставят амбициозные цели по снижению выбросов парниковых газов и углеродного следа продукции, переходу на возобновляемые источники энергии, такое регулирование также позволит вести деятельность в России на равных с национальными компаниями условиях. Скорейшее определение стратегии низкоуглеродного развития и снижения выбросов парниковых газов, сопоставимых с целями Парижского соглашения, и определение инструментов регулирования и целевых показателей на перспективу 2030-2050 гг. позволит европейским компаниям реализовывать инвестиционные стратегии, связанные развитием в России передовых технологий, в том числе в сфере энергоэффективности, возобновляемой энергетики, низкоуглеродного транспорта. Эти же меры помогут стимулировать и рост собственных инновационных отраслей, что будет способствовать повышению конкурентоспособности российской экономики на мировом рынке – а это выгодно и присутствующим здесь международным компаниям.

МАРКИРОВКА: ВОПРОСЫ И ВЫЗОВЫ

«Маркировка» – это, пожалуй, слово года для многих профессионалов потребительского рынка. Речь идет о системе, которая отслеживает движение каждой единицы товара по всей цепочке поставок. И хотя для широкой публики проблематика маркировки вряд ли заметна, мы говорим о крайне сложном и дорогом проекте – как для государства, так и для бизнеса.

Этот проект берет начало в 2016-2017 годах, когда был запущен эксперимент по маркировке меховых изделий; данный сегмент рынка был печально известен благодаря значительной доле контрафакта. Маркировка помогла серьезным образом очистить рынок, отфильтровать потоки контрафакта и многократно увеличить собираемость налогов и таможенных пошлин. Такая история успеха вдохновила Правительство активно продвигать эту систему, и теперь ее расширение происходит огромными скачками: табак, обувь, лекарства, шины, одежда, парфюм, молочные продукты, бутилированная вода и т. п. Российские власти уже объявили об амбициозной цели к 2024 году охватить маркировкой максимально возможное количество товарных категорий.

В то время как ряд отраслей поддерживают маркировку, другие относятся к ней крайне настороженно из-за затрат, непрозрачности, поспешности внедрения и большого количества технических проблем.

Впрочем, трудно отрицать, что существует ряд еще не решенных фундаментальных задач:

- Система еще весьма далека от того, чтобы считаться полностью работающей. Ряд бизнес-процессов и аспектов необходимо описать и протестировать (например, онлайн-торговля, защита прав интеллектуальной собственности и многие другие).
- Экономические последствия от внедрения маркировки еще только предстоит оценить – с точки зрения влияния на инфляцию, роста административной и финансовой нагрузки, доступа к рынку и т. п.
- Правительство должно освободить бизнес от необходимости работать с несколькими системами прослеживаемости одновременно (речь о ЕГАИС, маркировке, системе «Меркурий», документальной прослеживаемости). В настоящее время данные системы, по сути, конкурируют друг с другом и уже начинают пересекаться в отдельных категориях (в частности, в молочной продукции и алкоголе). Необходимо разработать единый интерфейс, «одно окно», для передачи данных бизнесом, что позволит сократить затраты на интеграцию и внедрение.
- Большие данные в системе маркировки и других подобных системах должны быть надлежащим образом защищены во избежание утечки или злоупотреблений со стороны недобросовестных участников рынка.
- Система маркировки не должна становиться торговым барьером для международных компаний, зависимых от импорта или работающих на пространстве Евразийского экономического союза.

Стоит отметить, что эффект от внедрения системы маркировки может быть гораздо глубже, чем простой рост капитальных или операционных затрат и выдавливание контрафакта с рынка. Будучи крайне сложным проектом в плане технологий и бизнес-процессов, маркировка способна перекроить ландшафт всего рынка. С удорожанием стоимости ведения бизнеса под вопросом оказывается выживание малых и средних предпринимателей. Локальные фермеры, владельцы розничных магазинов или рестораторы, как правило, не так быстро и эффективно находят людей и деньги для внедрения столь технологически емких проектов. Поэтому они рискуют либо отдать часть рынка более крупным игрокам, либо вовсе исчезнуть. Правительству стоит обратить внимание на эту проблему и оказать необходимую и своевременную поддержку малому и среднему бизнесу – что станет залогом их выживания.

МЕМОРАНДУМЫ КОМИТЕТОВ И РАБОЧИХ ГРУПП

КОМИТЕТ АГРОПРОМЫШЛЕННОГО КОМПЛЕКСА

Председатель:
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ВВЕДЕНИЕ

В 2020 году мировая экономика столкнулась с серьезным вызовом – пандемией вируса COVID-19, последствия которой для мировой и российской экономики в полной мере еще только предстоит оценить. Но уже сейчас можно сказать, что российский аграрный сектор, с одной стороны, оказался в эпицентре этой опасной угрозы, поскольку невозможно остановить производство продуктов питания, а с другой – показал свою способность эффективно работать даже в таких неординарных обстоятельствах. Согласно имеющимся прогнозам Министерства сельского хозяйства России, в текущем году рост сельхозпроизводства в России превысит 1%, а агропромышленный комплекс в целом вырастет на 2%. И главным фактором успеха здесь является то, что российские фермеры привыкли работать в среде с повышенными рисками и преодолевать ограничения, накладываемые тяжелыми природно-климатическими условиями, инфраструктурными ограничениями, а также внешнеторговыми санкциями.

Фактически, в 2020 году российский АПК наглядно подтвердил свою роль базового сектора экономики и пусть более скромный, чем в предыдущие несколько лет рост, помогает компенсировать снижение в других отраслях и способствует восстановлению отечественной экономики. Тем не менее, в ближайшее время многие факторы риска сохраняются: это, прежде всего, низкий платежеспособный спрос населения, усиление внутренней и внешней конкуренции, технологическое отставание, ограниченный доступ к финансово-инвестиционным ресурсам, проблемы инфраструктурного характера.

Среди текущих положительных результатов можно отметить ожидаемое увеличение посевных площадей основных сельхозкультур: кукурузы на зерно – на 3,7% до 2,7 млн га, риса – на 1,7% до 198,4 тыс. га, гречихи – на 6% до 858,2 тыс. га и картофеля – на 3,8% до 1,32 млн га. При этом общая посевная площадь достигла в этом году 80,3 млн га, увеличившись на 1%. Еще один важнейший показатель, свидетельствующий о том, что Россия занимает все более весомое место на мировом рынке продовольствия и успешно преодолевает имеющиеся трудности, – это 11%-й рост экспорта за первый квартал текущего года. Поставки продукции АПК на внешние рынки достигли 5,963 млрд долларов. При этом сокращение экспорта зерновых на 12% до 1,79 млрд долларов было более чем компенсировано ростом по другим позициям, включая продукцию более глубокого передела, что соответствует реализуемой российским правительством стратегии развития агропромышленного комплекса. Так экспорт растительных масел вырос на 24% до 1,18 млрд долларов, рыбы и морепродуктов – на 2% до 1,17 млрд долларов, продукции пищевой переработки – на 29% до 0,73 млрд долларов, мясомолочной продукции – на 74% до 0,2 млрд долларов и прочей продукции АПК – на 55% до 0,89 млрд долларов.

Дальнейшему наращиванию экспорта будет способствовать открытие ранее не доступных отечественным сельхозтоваропроизводителям внешних рынков. Так, с 2020 года свой рынок для импорта российского мяса, сои и подсолнечного масла открыл Китай и почти двукратный рост экспорта мясомолочной продукции в начале года – это только начало. Не менее значимый потенциал имеет рынок Индии, основой экспорта в которую является подсолнечное масло. В последние годы российская сельхозпродукция в эту страну практически не поставлялась, и именно с этим связан взрывной рост экспорта на 564%. Впрочем, текущий объем в 0,17 млрд долларов так же, как и в случае с Китаем, свидетельствует о том, что потенциал этого рынка еще огромен. Также в текущем году начались поставки свинины во Вьетнам, говядины – в Бразилию, говядины и птицы – в Венесуэлу, мяса кролика – в Южную Корею и птицы – в ОАЭ.

Однако для наращивания экспортного потенциала страны и производства конкурентоспособной продукции многое еще предстоит сделать в плане технологического совершенствования, обновления парка техники, развития инфраструктуры внешних поставок, укрепления имиджа страны у иностранных потребителей как надежного поставщика продуктов питания высокого качества.

Среди главных факторов риска, с которым российским аграриям еще только предстоит столкнуться, можно выделить прогнозируемое значительное падение российской экономики и реальных располагаемых доходов населения в результате снижения цен на нефть и режима самоизоляции. Также Минсельхоз не исключает ускорение продовольственной ин-

фляции из-за девальвации рубля. Последнее может оказать негативное влияние на ряд отраслей АПК, которые больше других зависят от импортных составляющих: оборудования, ингредиентов, препаратов, полноценных аналогов которых на отечественном рынке нет. Например, импортные составляющие в производстве молочной продукции достигают не менее 25%.

В растениеводстве основные стресс-факторы связаны с использованием в значительной части иностранной техники, оборудования и комплектующих. В самый острый период пандемии многие зарубежные производители приостанавливали производство, в странах принимались ограничения по пересечению границы. Из-за сбоя логистических цепочек трудности с поставками техники и запчастей испытали до двух третей работающих в России дилеров, а 84% из них ожидают падения продаж сельхозтехники по итогам года. Тем не менее, созданные запасы, отлаженные цепочки поставок в целом позволили быстро перенастроить работу дилерских сетей по всей стране и без сбоев провести сначала посевную, а затем и уборочную кампанию.

Дальнейшее развитие ситуации с процессом обновления парка техники будет во многом зависеть от макроэкономической ситуации и мер государственной поддержки, последняя будет особенно актуальна, поскольку в результате ухудшения рыночной конъюнктуры доступность коммерческих кредитов для финансирования инвестиций в высокорисковый сельхозбизнес неизбежно снизится. Из позитивных факторов можно отметить, что поддержку отрасли окажет расширение экспортных поставок, ведь даже в случае девальвации рубля экспортная выручка сможет компенсировать потери от ослабления национальной валюты.

Вместе с тем, период трудностей, с которыми сегодня сталкиваются российские аграрии, это также и период дополнительных возможностей по оптимизации производства, сокращению издержек, выходу на новые рынки сбыта.

РЕГУЛЯТОРНАЯ СРЕДА

СУБСИДИЯ ПРОИЗВОДИТЕЛЯМ СЕЛЬСКОХОЗЯЙСТВЕННОЙ ТЕХНИКИ (ПОСТАНОВЛЕНИЕ ПРАВИТЕЛЬСТВА № 1432)

Программа субсидирования производителей сельскохозяйственной техники (далее – Программа), в соответствии с которой выпуск сельхозтехники в России субсидируется при условии ее реализации со скидкой.

В 2020 году Министерство сельского хозяйства Российской Федерации передало ведение Программы Министерству промышленности и торговли Российской Федерации.

Минпромторг внес изменения в Постановление Правительства № 1432 и с 2020 года Программа заработала по новым правилам.

Был введен конкурсный отбор для участия в Программе, отменена возможность переноса выплаты субсидии на следующий год, изменен размер скидки. В 2020 году она составляет 10–15% в зависимости от региона. Поменялось и расширилось понятие «покупатель», а в случае с лизинговыми сделками клиентом выступает именно лизинговая компания, а не аграрий. Кардинально поменялся процесс подачи заявок.

Бюджет Программы в 2020 году составляет 14 млрд рублей. Этой суммы, по предварительным подсчетам, достаточно для удовлетворения потребностей в субсидии в этом календарном году.

Получателями субсидии могут быть только производители, осуществляющие определенный перечень технологических операций, а также компании, заключившие специальный инвестиционный контракт. Выполнение данного перечня технологических операций эквивалентно уровню локализации в 65%, что является чрезвычайно жестким требованием к производителям. При этом этапы достижения уровня локализации не предусмотрены. Комитет полагает, что необходимо предусмотреть более гибкий подход доступа к инструментам финансирования.

ЛОКАЛИЗАЦИЯ ПРОИЗВОДСТВА СЕЛЬСКОХОЗЯЙСТВЕННОЙ ТЕХНИКИ НА ТЕРРИТОРИИ РОССИЙСКОЙ ФЕДЕРАЦИИ

В 2020 году начались обсуждения по проекту Постановления № 719 в части зерноуборочных и кормоуборочных комбайнов. На данный момент так и не найдено понимание по ряду ключевых вопросов, что вызывает опасение повторить ситуацию по изменениям в Постановление № 719 в части тракторов. Комитет хотел бы еще раз подчеркнуть существенные недостатки такого подхода к требованиям по локализации:

- На сегодняшний день компаниями, входящими в состав Комитета, успешно созданы производственные предприятия, расположенные в разных странах Азии, Европы и Латинской Америки. Отметим, что ни в одной из этих стран нет аналогичных предложенным требований об использовании локальных компонентов. Использование продукции мировых лидеров в качестве комплектующих обусловлено как требованиями по инновационности и качеству, так и ценовым фактором (массовое производство имеет меньше издержек). Таким образом, инвестиции, необходимые для реализации операций, предусмотренных данной методикой, не имеют экономического обоснования и приведут в конечном итоге к потере ключевых параметров продукции, таких как качество, цена, стоимость владения для конечного потребителя.
- Развитие сети поставщиков ложится на плечи производителей техники, так как отсутствует государственная программа или стратегия развития поставщиков для АПК. Основная проблема – поиск российских поставщиков по таким компонентам, как двигатель, гидравлическая система, элементы управления комбайном, бортовые редукторы, элементы трансмиссии, элементы привода комбайна, подшипники. Производители готовой продукции самостоятельно не в со-

стоянии привлечь на территорию России зарубежных поставщиков комплектующих, в том числе из-за нехватки объемов. А российских поставщиков комплектующих требуемого качества на сегодняшний день нет.
- Данный подход не предусматривает меры стимулирования внедрения и развития новейших технологий, равно как и пока еще не внедренных, но перспективных технологий.
- Формулировка по НИОКР и предельный процент от общего количества баллов. В тексте постановления используется довольно узкое понимание всего комплекса мероприятий по НИОКР и исключается процесс внедрения НИОКР в серийное производство. Для технологического развития отрасли сельхозмашиностроения одних НИОКР недостаточно, важен именно процесс внедрения, подразумевающий технологическую модернизацию производства и внедрение новых наукоемких технологий в процесс изготовления техники.

  Вместе с тем, при изучении проекта Постановления № 719 по автопрому были обнаружены более широкие формулировки, предполагающие учет затрат на инжиниринговые работы, повышение качества продукции, сертификацию продукции, закупку и обновление инструмента и оснастки для организации технологической подготовки производства и т. д. Кроме того, данным проектом предусмотрено требование учитывать расходы на НИОКР, понесенные материнской иностранной компанией. Условия по НИОКР для автопрома выглядят более выполнимыми, чем для сельхозмашиностроителей.

- В текущей версии постановления предельный процент от общего количества баллов установлен на уровне 80% к 2026 году. Предлагается сократить это требование до 50% с увеличением периода достижения до 2030 года. При текущих требованиях к локализации у производителей отсутствуют экономические стимулы инвестировать в локализацию.

Основной посыл, который пытаются донести производители до Минпромторга России: требования должны быть соизмеримы с реальными возможностями по локализации своей продукции в России. Задача сельхозмашиностроителей – развивать и совершенствовать модельный ряд своей техники и предоставлять российским аграриям современную технику, соответствующую мировым стандартам качества.

РЕКОМЕНДАЦИИ

- Необходимы широкие и прозрачные обсуждения критериев локализации техники, в том числе с привлечением компаний, заинтересованных в развитии собственного производства в Российской Федерации. Данные требования должны носить долгосрочный характер и не должны пересматриваться раз в несколько лет. Это важное и необходимое условие для планирования инвестиций в производство и дальнейшую локализацию.

- Требования по локализации должны носить экономически целесообразный характер, а также учитывать мировой опыт, в том числе по внедрению передовых мировых инновационных продуктов и решений.

- Необходимо создать и принять долгосрочную стратегию развития поставщиков для АПК. Драйвером этого вопроса должен стать Минпромторг России. Члены Комитета готовы всячески поддержать данную инициативу, делиться своим мировым опытом и экспертизой.

УТИЛИЗАЦИОННЫЙ СБОР

С 1 января 2016 года вступил в силу Федеральный закон «О внесении изменений в статью 24-1 Федерального закона «Об отходах производства и потребления»» в целях обеспечения безопасной утилизации самоходных транспортных средств и прицепов за счет взимания сбора за утилизацию. Позже, в феврале 2016 года, было опубликовано Постановление № 81 с указанием ставок и методологии оплаты. Следует отметить, что публичного обсуждения документов не было. По мнению экспертов Комитета, сборы за утилизацию не были экономически оправданы, а фактическая стоимость утилизации не должна превышать 2% от стоимости оборудования, поэтому размер сборов не соответствует целям Федерального закона по обеспечению процедуры утилизации. Данный сбор значительно увеличивает нагрузку на бизнес и создает дополнительные препятствия для покупки современной сельхозтехники. С 31 мая 2018 года базовая ставка утилизационного сбора выросла на 15% со 150 000 рублей до 172 500 рублей. В течение последних двух лет активно обсуждается возможность дальнейшего повышения утилизационного сбора. Естественно, такие тенденции не оказали положительного влияния на рынок и не сделали ситуацию на рынке более предсказуемой, что обеспокоило наших клиентов. Недавние сообщения о возможности индексации утилизационных сборов, помноженные на неопределенность курса рубля, вызвали беспокойство участников рынка, особенно на фоне распространения COVID-19, от которого бизнес уже пострадал.

Увеличение утилизационного сбора неизбежно отразится на цене продукции, что вступает в противоречие с необходимостью повышения доступности надежных и качественных решений для отечественных аграриев, энергообеспеченности сельскохозяйственных организаций и производительности труда в отрасли. Полагаем, что широкая дискуссии со всеми заинтересованными участниками рынка, включая сельскохозяйственных товаропроизводителей, позитивно скажется на ситуацию в отрасли и повысит инвестиционную привлекательность сельскохозяйственного бизнеса.

РЕКОМЕНДАЦИИ

Принимая во внимание вышеупомянутое, мы просим государственные органы учесть обоснованное мнение Комитета и воздержаться от повышения утилизационных сборов, а также представить рациональные правила игры для рынка по крайней мере на следующие три года. Мы также считаем, что четкое и прямое общение с представителями бизнеса по этому

вопросу привнесет определенность в местный рынок и поддержит честную конкуренцию в целях обеспечения высокого качества продукции и услуг для российских клиентов.

ЭЛЕКТРОННЫЕ ПАСПОРТА САМОХОДНЫХ МАШИН

Решением Коллегии ЕЭК от 22 сентября 2015 года № 122 были установлены нормы функционирования и порядок перехода от единой формы паспорта самоходной машины и других видов техники (утвержденного Решением Коллегии ЕЭК от 18 августа 2015 года № 100) (далее – Единая форма ПСМ) к системе Электронных паспортов самоходных машин и других видов техники (далее — ЭПСМ) с 01.11.2019 г.

В связи с неготовностью системы ЭПСМ Министерство промышленности и торговли предложило перенести введение ЭПСМ на 2 года, т. е. до 01.11.2021 г. Инициативу поддержали Министерство сельского хозяйства и и страны-члены ЕЭК – Казахстан, Беларусь и Киргизия.

РЕКОМЕНДАЦИИ

Доработать проект электронного паспорта самоходных машин, оптимизировав количество требуемых к указанию технических параметров, с внесением необходимых изменений в Решения Коллегии ЕЭК, определить перечень уполномоченных операторов по внесению данных ЭПСМ для импорта.

ЧЛЕНЫ КОМИТЕТА

CLAAS • CNH Industrial Russia • John Deere Rus • KUHN VOSTOK.

АВИАЦИОННЫЙ КОМИТЕТ

Председатель:
Эрик Луво, Air France-KLM

Координатор комитета:
Ксения Бортник

ВВЕДЕНИЕ

Авиационный комитет АЕБ является главным представительным органом зарубежных авиакомпаний в России в условиях отсутствия Комитета представителей авиакомпаний. Он работает в тесном сотрудничестве с Международной ассоциацией воздушного транспорта (IATA), а также с администрациями московских и региональных аэропортов.

Его целью является поддержка зарубежных авиакомпаний, работающих в жестко регулируемом секторе, рассмотрение спорных вопросов, возникающих у авиакомпаний при взаимодействии с органами государственной власти Российской Федерации, для содействия развитию российского рынка гражданской авиации и выполнения ключевых обязательств авиатранспортной отрасли по обеспечению безопасности полетов, авиационной безопасности и долгосрочного развития отрасли.

В отличие от внутреннего рынка Евросоюза, российский международный рынок по-прежнему регулируется двусторонними Соглашениями о воздушном сообщении между государственными органами власти. Эти соглашения основаны на принципах равенства и взаимности и могут быть связаны с коммерческими соглашениями, заключенными с российскими авиакомпаниями.

Начиная с 2017 года, значительный рост в области как внутренних, так и международных авиаперевозок происходил в основном благодаря стремительному наращиванию провозных мощностей российских авиакомпаний, так и за счет участия лоукостеров и перевозчиков стран Персидского залива.

Подобное наращивание, темпы роста которого выражаются двузначными числами, когда предложение превышает спрос на авиаперевозки, приводит к снижению рентабельности международных рейсов в Россию и из России.

С самого начала беспрецедентного кризиса, вызванного пандемией COVID-19, все международные авиакомпании вынуждены бороться за собственное выживание, прилагают максимальные усилия для сохранения своего присутствия на рынке России и активно лоббируют свои интересы среди российских властей для получения разрешения на возобновление регулярных международных рейсов и снятия необязательных ограничений на поездки.

ВОПРОСЫ НАЛОГООБЛОЖЕНИЯ

Сложное и многоуровневое правовое поле (Соглашения о воздушном сообщении, двусторонние соглашения об избежании двойного налогообложения, законодательство Российской Федерации) порождает налоговые сложности для международных авиакомпаний, осуществляющих деятельность в России, а также для российских партнеров и местных органов власти, не всегда единообразно трактуют и применяют действующее законодательство. Система взимания аэропортовых сборов также не отличается единообразием подхода, применяемого к российским и зарубежным авиакомпаниями, что создает несправедливые конкурентные условия. Поэтому для разрешения вышеуказанных спорных вопросов крайне важно продолжать лоббировать интересы среди российских органов государственной власти и руководства аэропортов.

РЕКОМЕНДАЦИИ

- Привести в соответствие величину сбора за пользование пассажирским терминалом (RI), сбора за обеспечение авиационной безопасности (UH) и нового сбора за пользование инфраструктурой, взимаемых зарубежными и российскими авиакомпаниями.
- Использовать обновленную редакцию Налогового кодекса (принятую в апреле 2019 года и вступившую в силу в июле 2019 года), согласно которой представительства могут требовать возврата НДС (например на услуги для международных авиакомпаний, не связанные с аэропортом).

ВОПРОСЫ, СВЯЗАННЫЕ С ВВЕДЕНИЕМ В РОССИИ НОВОГО РЕЖИМА ЭЛЕКТРОННЫХ ВИЗ

С момента запуска пилотного режима действия электронных виз в Санкт-Петербурге и Ленинградской области 1 октября 2019 года многие пассажиры получают от ФМС отказ во въезде в Россию и вынуждены возвращаться обратно в страну вылета, поскольку их форма электронной визы не полностью совпадает с паспортными данными. Вышеуказанная проблема связана с отсутствием какой-либо автоматизированной проверки, выполняемой во время онлайн-процесса получения визы. Улуч-

шений, введенных в декабре 2019 года, недостаточно для решения этой проблемы.

РЕКОМЕНДАЦИЯ

Продолжать лоббировать интересы среди российских властей для обеспечения создания полностью готового эффективного процесса/инструмента автоматизированной проверки до расширения режима действия электронных виз по всей территории Российской Федерации, вводимого 1 января 2021 года.

ВОПРОСЫ ОБСЛУЖИВАНИЯ В АЭРОПОРТАХ

В настоящее время большинство российских аэропортов находится в статусе монополистов в отношении наземного обслуживания, которое может осуществлять исключительно аэропорт. Такое положение вещей привело к тому, что цены на наземное обслуживание значительно выше средних европейских, что ограничивает развитие авиаперевозок. Кроме того, должны быть пересмотрены и упрощены некоторые иммиграционные и таможенные процедуры с тем, чтобы улучшить показатели пунктуальности выполнения рейсов в российских аэропортах, не снижая при этом уровень авиационной безопасности и безопасности полетов.

РЕКОМЕНДАЦИИ

- Способствовать открытию рынка обслуживания авиакомпаний в аэропортах, снимая ограничения на допуск новых коммерческих структур с тем, чтобы обеспечить рост объема воздушных перевозок по более низким ценам.
- Пересмотреть и упростить нормативные требования и процедуры аэропортов в соответствии с международными стандартами. Например, отменить закон, требующий проведения подсчета пассажиров сотрудником полиции при посадке на борт воздушного судна: подобный двойной подсчет со стороны полиции и авиакомпании приводит к задержкам в случае несоответствия, но не влияет на безопасность полета или иммиграционный контроль.

ЧЛЕНЫ КОМИТЕТА

Air France • Compagnie Nationale Royal Air Maroc • KLM Royal Dutch Airlines • Delta Airlines.

КОМИТЕТ АВТОПРОИЗВОДИТЕЛЕЙ

Председатель:
Томас Штерцель, Porsche Russland

Заместитель председателя:
Алексей Калицев, Hyundai Motor CIS

Координатор комитета:
Ольга Зуева (olga.zueva@aebrus.ru)

Комитет автопроизводителей (англ. сокр. – AMC) был создан в 1998 году для объединения и совместного представления общих интересов компаний – крупнейших международных автопроизводителей, выступающих в качестве официальных импортеров и локальных производителей, а также функционирующих как общенациональные компании по сбыту в России (NSC).

Цель Комитета – создать и соблюдать правила добросовестной коммерческой деятельности для всех компаний, работающих на российском рынке, а также способствовать развитию сотрудничества между ними. В настоящий момент членами Комитета являются 26 компаний (импортеры и производители автомобилей и мотоциклов), которые представляют 46 брендов и осуществляют свою деятельность на территории Российской Федерации. Комитет концентрирует внимание на самых важных и актуальных проблемах автомобильного и мотоциклетного бизнеса, с которыми сталкиваются его члены, продумывает адекватную реакцию на возникшие проблемы, лоббирует общие интересы членов Комитета, устанавливает контакты с государственными органами Российской Федерации, общественными организациями, национальными и международными отраслевыми ассоциациями и средствами массовой информации.

В целях повышения эффективности деятельности Комитета было принято решение сосредоточиться на определенных областях, связанных с наиболее острыми проблемами автомобильной отрасли, над которыми могли бы совместно работать специалисты, представляющие членов Комитета, чтобы найти оптимальные решения для отрасли. В составе комитета работают 6 рабочих групп (их число может меняться), объединяющих до 400 человек, номинированных компаниями, и подкомитет производителей мотоциклов. Каждая рабочая группа курирует конкретную область, определенную Комитетом в качестве приоритетной. К таким областям относятся:

- послепродажное обслуживание;
- взаимодействие с государственными структурами;
- выставки/маркетинг и связи с общественностью;
- омологация/сертификация;
- интеллектуальные технологии (IMobility);
- автомобили с пробегом.

Комитет работает в соответствии с Правилами работы комитетов АЕБ и Уставом Комитета автопроизводителей.

Комитет на протяжении многих лет сотрудничает с Объединением автопроизводителей России (OAP) – официальным представителем России в Международной организации автопроизводителей (OICA). Несколько лет назад между двумя организациями был заключен Меморандум о сотрудничестве, цель которого – объединить усилия, активизировать обмен информацией и усилить лоббирование в автомобильном секторе. Развивается также сотрудничество с международными ассоциациями. Комитет поддерживает тесные контакты с Немецкой ассоциацией автомобильной промышленности (VDA), Ассоциацией европейских производителей автомобилей (ACEA), Японской ассоциацией производителей автомобилей (JAMA Европа), Французской национальной ассоциацией автопроизводителей (CCFA) и Международной организацией автопроизводителей (OICA).

ВЗАИМОДЕЙСТВИЕ С ГОСУДАРСТВЕННЫМИ СТРУКТУРАМИ

Рабочая группа по взаимодействию с государственными структурами координирует связи с государственными органами и отстаивает интересы членов Комитета. Инициативы по совершенствованию законодательства также находятся в центре внимания рабочей группы GR. При необходимости группа организует консультации и обсуждения разного уровня с представителями государственной власти. В качестве примера можно привести проведение встреч с заместителем министра промышленности и торговли, заместителем руководителя Росстандарта и другими заинтересованными сторонами для обсуждения мер государственной поддержки в период пандемии.

В сферу ответственности группы также входит обсуждение и формирование совместной позиции по вопросу утилизации автотранспортных средств и мониторинг создания комплексной системы переработки вышедших из эксплуатации транспортных средств в России, включая обсуждение вопросов, связанных с введением и изменением размеров утилизационного сбора.

ПОДКОМИТЕТ ПРОИЗВОДИТЕЛЕЙ МОТОЦИКЛОВ

Подкомитет был создан в декабре 2019 года для представления интересов производителей мотоциклов в России и развития индустрии.

Цели подкомитета:
- Участвовать в диалоге с российскими учреждениями и другими ключевыми заинтересованными сторонами для отстаивания позиций индустрии по соответствующим проблемам.
- Предоставлять четкую и фактическую информацию о российском мотоциклетном секторе и способствовать пониманию его вклада в общество.
- Отстаивать от имени своих членов политику, повышающую конкурентоспособность производителей.
- Отслеживать нормативную деятельность, которая влияет на мотоциклетную промышленность и является уникальной для нее.

Подкомитет также намеревается установить контакты с международными ассоциациями мотопроизводителей, такими как ACEM, для использования уже накопленного опыта индустрии.

Членами подкомитета являются: Харли-Дэвидсон Россия и СНГ (Harley-Davidson Russia & CIS), БМВ Руссланд Трейдинг (BMW Russland Trading), Дукати (Фольксваген Груп Рус) (Ducati (Volkswagen Group Rus)), Хонда Мотор Рус (Honda Motor RUS), Сузуки Мотор Рус (Suzuki Motor Rus) и Ямаха Мотор СНГ (Yamaha Motor CIS).

ПОСЛЕПРОДАЖНОЕ ОБСЛУЖИВАНИЕ

Комитет ведет целенаправленную работу по изменению законодательства с сфере ОСАГО, находясь в постоянном контакте с РОАД (Ассоциацией «Российские автомобильные дилеры») и страховым сообществом как в лице отдельных страховых компаний, так и в лице РСА (Российского Союза Автостраховщиков), а также с Центральным банком России (регулятором), в силу закона, вопросов, возникающих в сфере законодательства об обязательном страховании автогражданской ответственности. Итогом данной работы в 2016 году стало принятие поправок в Федеральный закон «Об обязательном страховании гражданской ответственности владельцев транспортных средств (ОСАГО)», установивших приоритет натуральной формы возмещения (восстановительный ремонт) над прямой денежной выплатой. К сожалению, позиция отдельных субъектов рынка привела к принятию указанных поправок в таком виде, который не позволил создать здоровые условия функционирования рынка восстановительного ремонта по ОСАГО. Комитет продолжает вести активную работу как с субъектами рынка, так и с государственными учреждениями, ответственными за его регулирование. Наша цель: создание баланса интересов всех участников рынка с безусловным приоритетом интересов конечного потребителя.

Достижение указанной цели позволит остановить продолжающееся падение продаж запасных частей и услуг кузовного ремонта.

ПРОБЛЕМА

Одной из существенных проблем текущего законодательного регулирования восстановительного ремонта по ОСАГО является проблема ценообразования на запасные части. Для расчета стоимости возмещения за запасные части, использованные при ремонте, используется Положение Центрального банка «О единой методике определения размера расходов на восстановительный ремонт в отношении поврежденного транспортного средства». В настоящее время цены в ней существенно занижены по сравнению с рыночным предложением. Комитет автопроизводителей начиная с 2016 года обсуждает данную проблему со страховым сообществом в поисках путей ее решения, а с 2018 года активно участвует в совещаниях по изменениям Единой методики расчета компенсации восстановительного ремонта в Центральном банке России.

РЕКОМЕНДАЦИИ

Комитет автопроизводителей считает необходимым вести постоянную работу с Центральным банком России и Российским Союзом Автостраховщиков (РСА) по внесению изменений в закон об ОСАГО и Единую методику расчета компенсации восстановительного ремонта для формирования корректных справочников стоимости запасных частей на основании которых производится расчет стоимости компенсации кузовного ремонта и дальнейшему повышению количества компенсаций произведенных в натуральной форме.

Комитет ведет целенаправленную работу по изменению законодательства, связанного с объявлением Отзывных и Сервисных кампаний на рынке России, а также с методами информирования автовладельцев и мотивирования к посещению официальных дилерских предприятий для выполнения необходимых проверок/кампаний. Проводятся рабочие встречи с Федеральным агентством по техническому регулированию и метрологии (Росстандарт), ФГУП НАМИ, Ассоциация «Российские автомобильные дилеры» (РОАД) и страховым сообществом, как в лице отдельных страховых компаний, так и в лице Российского Союза Автостраховщиков (РСА)/Всероссийского Союза Автостраховщиков (ВСА), а также с Центральным банком Российской Федерации, выступающим в качестве регулятора и законодателя страхового рынка.

В 2020 году ФГУП НАМИ по поручению Росстандарта разработал первую редакцию ГОСТ «ОТЗЫВ ПРОДУКЦИИ АВТОМОБИЛЕСТРОЕНИЯ». Основными пунктами, по которым продолжается обсуждение, являются: базовые определения, критерии оценки рисков и классификации мероприятий, а также отсутствие информации по взаимодействию с автовладельцами со стороны государственных органов с целью полного информирования и мотивирования к посещению владельцами АМТС официальных дилеров для проведения соответствующих работ. С сожалением необходимо отметить большую вероятность того, что на начальной стадии техническое задание на разработку ГОСТ было сформулировано таким образом, чтобы

обойти стороной вопросы взаимодействия с автовладельцами со стороны государства.

Наша цель: создание цивилизованной и эффективной системы проведения кампаний, связанных с отзывом АМТС, включающей, организацию, объявление (публикацию), оповещение владельцев и проведение проверки/ремонта, а также контроль и отчетность. Достижение указанной цели позволит значительно снизить риски, связанные с угрозой жизни и здоровью всех участников дорожного движения, а также повысить безопасность как отдельных АМТС, так и дорожного движения в целом.

ПРОБЛЕМА

Существенными недостатками текущей версии ГОСТ можно назвать нечеткие критерии классификации рисков и мероприятий, а также вменение ответственности по организации и проведению отзыва производителям АМТС при полном отсутствии поддержки государства по уведомлению и мотивированию владельцев ТС к посещению дилеров.

РЕКОМЕНДАЦИИ

Комитет автопроизводителей считает необходимым вести постоянную работу с Росстандартом и ФГУП НАМИ с целью доработки текста стандарта до уровня мировых аналогов, в вопросах, связанных с методиками классификации отзывов и оценки рисков, оповещении и мотивировании владельцев АМТС, а также контролю со стороны автопроизводителей и государства.

Дополнительно комитет автопроизводителей, начиная с 2018 года, обсуждает возможность уведомления клиентов о наличии открытых кампаний со страховым сообществом, а с 2019 года проводит рабочие встречи и консультации с Центральным банком России, в результате которых с руководством последнего было достигнуто взаимопонимание о важности информирования владельцев транспортных средств. На данный момент Департамент страховых рынков Центрального банка анализирует соответствующие руководящие документы с целью выработки возможных предложений по взаимодействию и координации последующих шагов.

Еще один важный вопрос на повестке Рабочей группы — маркировка товаров средствами идентификации, в частности, это маркировка шин, запасных частей и компонентов.

ПРОБЛЕМА

В рамках ЕАЭС экономически нецелесообразно наносить маркировку только на тот товар, который уже доставлен на территорию Российской Федерации и предназначен только для продажи на территории Российской Федерации.

РЕКОМЕНДАЦИИ

- Унифицировать требования к КИЗ в рамках ЕАЭС.
- Создать систему, при которой нанесение КИЗ будет осуществляться на территории страны ЕАЭС, при доставке через границу которой товар прошел первичную таможенную очистку.

ПРОБЛЕМА

Приклеивание маркировки на саму деталь может существенно снижать ее потребительские качества (стекла, зеркала, детали интерьера), быть технически невозможным за счет размера детали/ее свойств или серьезно влиять на стоимость производства, поскольку в большинстве случаев нанесение защитной упаковки является единым автоматизированным процессом, и внедрение дополнительной промежуточной операции при массовом производстве, при осуществлении импорта различных категорий товаров в существенном объеме является достаточно дорогостоящим.

РЕКОМЕНДАЦИИ

Однозначно определить перечень товаров, подлежащих маркировке КИЗ, и (или) определить процедуру включения нового перечня товаров/товарной группы, которая предусматривает участие представителей соответствующей отрасли в оценке необходимости дополнения перечня товаров такой товарной группой. Дополнительно, по мнению Ассоциации, решение о внесении конкретной товарной группы в такой перечень должно быть закреплено нормативным правовым актом не ниже уровня Федерального закона. Предусмотреть возможность нанесения КИЗ на упаковку и (или) на товар в месте, которое определит производитель/импортер.

ПРОБЛЕМА

В ряде случаев стоимость нанесения маркировки может значительно превышать стоимость самой детали.

РЕКОМЕНДАЦИИ

Определить нижний предел стоимости единицы товара, по которой происходит первая продажа на территории ЕАЭС производителем или импортером, и стоимости единицы товара, который подлежит маркировке КИЗ. Товары, стоимость которых ниже установленного предела, не маркируются.

МАРКЕТИНГ/ВЫСТАВКИ/ СВЯЗИ С ОБЩЕСТВЕННОСТЬЮ

Рабочая группа «Маркетинг и связи с общественностью» включает в себя специалистов по маркетингу и коммуникациям всех автомобильных компаний-членов Комитета.

Цель работы Группы состоит в том, чтобы наилучшим образом координировать различные мероприятия; помочь Комитету совершенствовать и укреплять связи с прессой; определять общую политику коммуникаций, затрагивающую интересы всех компаний-членов Комитета; оказывать поддержку российской

прессе, представляющей автомобильный сектор, координируя и синхронизируя мероприятия для прессы, проводимые компаниями; осуществлять мониторинг публикаций в СМИ; обмениваться информацией по изменениям на российском рынке средств массовой информации; обсуждать и вырабатывать единые этические нормы взаимодействия отделов маркетинга и PR автомобильных компаний-членов Комитета с другими участниками рынка (журналистами, рекламными и event-агентствами, организаторами автомобильных премий и событий и т. п.).

Одним из пунктов в повестке Рабочей группы является организация российских и международных автомобильных мероприятий, в которых принимают участие компании-члены АЕБ, на понятных и общих для всех участников (автомобильных компаний) условиях при обеспечении прозрачных и четких процессов. Комитет в ходе интенсивных переговоров занимается лоббированием интересов компаний, а также ведет переговоры по обеспечению условий и уровня проведения в соответствии с международными стандартами.

Группа также принимает участие в подготовке ежегодной пресс-конференции Комитета, анонсирующей итоги по продажам всех автопроизводителей-членов Комитета. Эта пресс-конференция каждый год подводит итоги работы автоиндустрии в России, освещает основные тенденции отрасли и ставит приоритеты в работе Комитета на следующий год.

ИНТЕЛЛЕКТУАЛЬНЫЕ ТЕХНОЛОГИИ

В июне 2016 года было принято решение о создании в рамках Комитета автопроизводителей АЕБ Рабочей группы по интеллектуальным технологиям (Intelligent mobility). Цель создания данной Рабочей группы – консолидировать усилия автопроизводителей для содействия развитию электрических, гибридных и альтернативных транспортных средств, а также других инновационных технологий на территории Российской Федерации. Рабочая группа занимается разработкой и внедрением комплексных мер (дорожных карт) для развития как электротранспорта, так и автономных технологий на территории Российской Федерации. Рабочая группа по интеллектуальным технологиям АЕБ вошла в состав Подгруппы по вопросам создания цифровой инфраструктуры для движения беспилотных и подключенных транспортных средств, Подгруппы «Интеллектуальная городская мобильность» в рамках «Автонет» НТИ, а также Рабочей группы по совершенствованию законодательства и устранению административных барьеров в целях реализации Дорожной карты «Автонет» НТИ, для формирования и подготовки предложений. Рабочая группа активно участвует в мероприятиях и встречах, касающихся развития электромобилей, зарядной инфраструктуры и беспилотного транспорта в Российской Федерации.

1. *Развитие рынка транспортных средств на электрической тяге.* Благодаря активным действиям бизнес-сообщества, и, в частности, членов Рабочей группы, с 4 мая 2020 года по 31 декабря 2021 года обнулена пошлина на импорт транспортных средств на электрической тяге на территорию государств-членов ЕАЭС.

   Важными вопросами для Рабочей группы остаются дальнейшее продление нулевой таможенной пошлины на электромобили и разработка мер по стимулированию внедрения транспортных средств на электрической тяге в Российской Федерации (субсидии на покупку электротранспорта, выделенная полоса движения на дорогах общего пользования, освобождение от уплаты транспортного налога во всех регионах, создание зон бесплатной парковки и другие меры, способствующие развитию необходимой инфраструктуры).

2. *Привлечение внимания регулятора к проблеме развития новейших технологий* в транспорте и необходимость принятия радикальных мер поддержки являются одними из ключевых задач Рабочей группы.

3. Одним из важнейших направлений работы Рабочей группы в 2020-2021 годах является активное участие в создании *национальной платформы «Автодата»*. В частности, совместно с НП «Глонасс» была создана совместная рабочая группа для подготовки правовой основы функционирования платформы, а также необходимого технического регулирования.

Членами данной Рабочей группы являются представители: АвтоВАЗ, BMW Russland Trading, Hyundai Motor Rus, Jaguar Land Rover, KIA Motor Rus, Suzuki Motor, Mercedes-Benz Rus, Nissan Manufacturing Rus, PSA Peugeot Citroën, Porsche Russland, Renault Russia, Toyota Motor, Volkswagen Group Rus, Volvo Cars.

ТЕХНИЧЕСКОЕ РЕГУЛИРОВАНИЕ АВТОМОБИЛЬНОГО РЫНКА, СТАНДАРТИЗАЦИЯ (СЕРТИФИКАЦИЯ/ ОМОЛОГАЦИЯ)

Рабочая группа сотрудничает с органами власти России и Евразийского экономического союза в области совершенствования системы оценки соответствия автотранспортных средств.

Евразийской экономической комиссией был подготовлен и размещен для публичного обсуждения расширенный проект Изменений № 3 в Технический регламент Таможенного союза 018/2011 «О безопасности колесных транспортных средств», который предусматривает целый комплекс нововведений, касающихся внедрения новых требований к автомобильной технике, а также совершенствования процедур оценки соответствия.

В период карантинных мер, вызванных распространением коронавирусной инфекции, Федеральное агентство по техническому регулированию и метрологии (Росстандарт) инициировало переход на оформление одобрений типа транспортного средства в электронной форме.

Министерством промышленности и торговли Российской Федерации (Минпромторг) совместно с Министерством экономического развития (Минэкономразвития), Росстандартом и

Федеральной службой по аккредитации (Росаккредитация) подготовлены рекомендации, разъясняющие порядок проведения работ по обязательной сертификации заявителями и органами по сертификации в период сложившейся эпидемиологической ситуации. Данные рекомендации предусматривают возможность отбора проб и образцов в дистанционном формате, используя электронные средства связи, а также предложения по использованию результатов ранее проведенного анализа состояния производства для переоформления сертификатов соответствия.

Технический комитет 056 «Дорожный транспорт» продолжил работу по разработке новых стандартов в рамках реализации комплексной программы разработки стандартов на изделия автомобильной промышленности на перспективу до 2025 года. Представители Комитета автопроизводителей включены в рабочую группу по обсуждению проектов новых стандартов и принимают активное участие в данной работе.

Значительная часть новых стандартов в отношении автономных, подключенных автомобилей, автомобилей с электрическим приводом, обмена данными между автомобилями и инфраструктурой, разрабатывается в рамках плана мероприятий Национальной технологической инициативы «АВТОНЕТ» на площадке Технического комитета 056 «Дорожный транспорт».

ПРОБЛЕМЫ

В текущем году был обновлен методический порядок по оформлению экспертных заключений по результатам экспертизы технической документации и ранее проведенных испытаний для целей оценки соответствия транспортных средств. Но это не способствовало упрощению процедур и формированию единого подхода — несогласованность действий органов по сертификации и испытательных лабораторий по-прежнему не позволяет пока в полной мере использовать данный механизм, что, в свою очередь, создает у большинства автопроизводителей трудности при планировании сертификации текущих и новых моделей транспортных средств.

Переход на оформление одобрений типа в электронном виде, инициированный Росстандартом в срочном порядке в период введения карантинных мер, вызвал неоднозначную реакцию со стороны автопроизводителей и органов по сертификации. С одной стороны, оформление ОТТС в электронном виде позволило несколько сократить сроки оформления и подписания ОТТС административным органом. Однако, с другой стороны, вопросы легитимности ОТТС в электронном форме остаются открытыми. Некоторые компании столкнулись со сложностями, связанными с признанием и использованием подобных ОТТС в других странах-участницах ЕАЭС. Для разрешения данной ситуации необходимо внесение поправок в соответствующие нормативно-правовые акты Евразийской экономической комиссии.

Рабочая группа приняла активное участие в рассмотрении и выработке комментариев и предложений по опубликованному проекту изменений № 3 в Технический регламент Таможенного союза 018/2011. К сожалению, процесс рассмотрения проектов изменений проходит очень медленно в различных административных инстанциях. Информация о ходе исполнения этапов разработки Изменений № 3 отражается несвоевременно, что, в свою очередь, приводит к неопределенности с датами вступления в силу данных изменений и, как следствие, затрудняет процессы бизнес-планирования и выпуска новых моделей на рынок ЕАЭС.

ПРОБЛЕМА

Требования по оснащению транспортных средств устройствами (системами) вызова экстренных оперативных служб вступили в силу с 01.01.2015 г. для новых типов ТС и с 01.01.2017 г. для всех ТС, выпускаемых в обращение. На данный момент инфраструктура, необходимая для полноценного функционирования УВЭОС (СВЭОС), создана только в Российской Федерации («ЭРА-ГЛОНАСС») и в Республике Казахстан (ЭВАК).

В Республике Беларусь, Республике Кыргызстан и в Армении подобной функционирующей инфраструктуры не существует, поэтому УВЭОС (СВЭОС) не могут полноценно функционировать на территории этих стран-участниц ЕАЭС и не могут выполнять свою первоочередную задачу – ускорять обеспечение помощи водителям и пассажирам ТС в случае серьезных ДТП.

Складывается парадоксальная ситуация: в соответствии с положениями ТР ТС 018/2011, автопроизводители и дистрибьюторы обязаны поставлять в Беларусь, Кыргызстан и Армению автомобили, полностью соответствующие по своим спецификациям типу, одобренному в Российской Федерации, т. е. с активным УВЭОС (СВЭОС), но в этих странах устройство/система полноценно работать не будут, и, чтобы защитить себя от возможных исков потребителей, автопроизводители вынуждены делать соответствующие оговорки в руководствах по эксплуатации.

ПРОБЛЕМА

Планируется введение в ТР ТС 018/2011 новых Правил ООН № 144 по автомобильным системам экстренного вызова (AECS).

При этом на данный момент совершенно нет четкого понимания, каким образом требования Правил ООН будут сосуществовать параллельно с требованиями ТР ТС 018/2011 и с требованиями стандартов, включенных в «Перечень стандартов № 1» и «Перечень стандартов № 2».

Необходимо учитывать, что некоторые требования Правил ООН № 144 значительно отличаются от действующих положений ТР ТС 018/2011 и ГОСТ, например, профиль ускорения/замедления при испытании устройства/системы на механическую прочность.

Кроме того, следует отметить, что Российская Федерация до сих пор не определила Административный орган и Техническую службу по Правилам ООН № 144.

РЕКОМЕНДАЦИИ

Рабочей группе необходимо активизировать усилия по взаимодействию с Департаментом технического регулирования Евразийской экономической комиссии, с Департаментом автомобильной промышленности и железнодорожного машиностроения Министерства промышленности и торговли Российской Федерации и Росстандартом для ускорения решения назревших проблем, повышения прозрачности ТР ТС 018/2011, исключения возможности различного трактования положений технического регламента различными организациями и органами.

Рабочая группа продолжает работу по прояснению порядка оформления экспертных заключений, а также возможности проведения некоторых испытаний в удаленном режиме с использованием электронных средств аудио/видео связи в условиях сохраняющихся ограничений, вызванных распространением коронавирусной инфекции.

Рабочая группа продолжает работу по прояснению сложившейся ситуации, связанной с признанием и использованием ОТТС, оформленных в электронной форме.

Комитет обращается в Министерство промышленности и торговли Российской Федерации с просьбой об участии представителей комитета в рабочей группе по обсуждению проектов изменений в Технический регламент Таможенного союза 018/2011, в том числе на более ранних стадиях их разработки.

СТАТИСТИКА/РЫНОК АВТОМОБИЛЕЙ/ПРОДАЖИ ЛЕГКОВЫХ АВТОМОБИЛЕЙ

За период с января по август 2020 года российский рынок новых легковых автомобилей и малотоннажных коммерческих автомобилей сократился на 16,9 % по сравнению с аналогичным периодом 2019 года. Суммарные продажи за 8 месяцев текущего года составили 880 тыс. автомобилей.

В результате мирового экономического кризиса, который был вызван пандемией и падением цен на нефть, более 45 млрд рублей из федерального бюджета выделено в 2020 году на поддержку российского автопрома. На программы льготного автокредитования выделено из общего объема 17 млрд рублей, льготного автолизинга – 8 млрд рублей, на новую программу Минпромторга «Доступная аренда» – 2,5 млрд рублей.

В десятке лидеров по моделям среди легковых автомобильных марок в 2020 году — все десять местного производства (отечественные производители и иностранные бренды, имеющие локальное производство в России).

ЗАКОНОДАТЕЛЬСТВО В СФЕРЕ ЗАЩИТЫ ПРАВ ПОТРЕБИТЕЛЕЙ

Группа лоббирует необходимость изменения законодательства в сфере защиты прав потребителей применительно главным образом к автомобильной отрасли, но также и к другим отраслям.

Рабочая группа при активном участии экспертов из других Комитетов АЕБ подготовила пакет поправок в названный Закон, который включает в себя следующие направления: понятие существенного недостатка, ответственность за действия третьих лиц и несоразмерность ответственности. Предложения Рабочей группы были направлены в соответствующие ведомства; также проведен ряд встреч по детальному обсуждению предложенных поправок.

При этом члены Рабочей группы продолжают обсуждение необходимости актуализации Закона о защите прав потребителей уже в рамках соответствующей Рабочей группы «регуляторной гильотины».

ЧЛЕНЫ КОМИТЕТА

Avtovaz • BMW Russland Trading • Chery Automobile Rus • FCA Russia • GAZ Group • General Motors CIS • Harley-Davidson Russia and CIS • Honda Motor RUS • Hyundai Motor CIS • Jaguar Land Rover • Kia Motors Rus • Mazda Motor Rus • Mercedes-Benz Rus • Mercedes-Benz Manufacturing Rus • Mercury Auto/Ferrari Maserati • MMC Rus • Mitsubishi Motor Rus • Nissan Manufacturing Rus • PSA Groupe (Peugeot Citroën Rus) • Porsche Russland • Renault Russia • Subaru Motor • Suzuki Motor Rus • Toyota Motor • Volkswagen Group Rus (Audi/Bentley/Ducati/Lamborghini/Škoda/Volkswagen/Volkswagen NFZ) • Volvo Cars • Yamaha Motor Rus.

КОМИТЕТ ПРОИЗВОДИТЕЛЕЙ АВТОКОМПОНЕНТОВ

Председатель:
Алексей Беляев, Faurecia

Заместитель председателя:
Андрей Коссов, Johnson Matthey

Координатор комитета:
Аскер Нахушев

ВВЕДЕНИЕ

Комитет оценивает ситуацию для производителей автокомпонентов как достаточно сложную. Мировая и российская практика показывает, что производство автокомпонентов – это низкомаржинальный бизнес. Согласно Стратегии развития автомобильной промышленности Российской Федерации на период до 2025 года, утвержденной распоряжением Правительства Российской Федерации 28 апреля 2018 г. №831-р, одним из главных приоритетов развития автомобилестроения является развитие отрасли автокомпонентов. В Стратегии отдельно отмечается, что до 70% добавленной стоимости автомобиля создается поставщиками автокомпонентов, сырья и материалов. Таким образом, подавляющая часть локализации может быть обеспечена именно за счет поставщиков компонентов, а не силами самих производителей транспортных средств.

Решение этой задачи планировалось осуществить за счет привлечения дополнительных инвестиций в рамках Специальных инвестиционных контрактов (СПИК) и дополнительного регулирования через ПП719 (см. ниже), однако отрасль столкнулась с дополнительными сложностями.

Продолжающийся рост стоимости автомобилей на фоне стагнации доходов населения уже по результатам 2019 года способствовал сокращению автомобильного рынка. Пандемия COVID-19, набирающая обороты с начала 2020 года, и ограничительные карантинные меры привели к дальнейшему резкому падению доходов населения. Во втором квартале 2020 года, во время которого действовали наиболее жесткие ограничения и режим самоизоляции, реальные располагаемые денежные доходы россиян упали сразу на 8% по сравнению с аналогичным периодом прошлого года. Одновременно с этим курс рубля снизился по отношению к основным валютам на более чем 25%, что послужит дальнейшему росту цен на автомобили. Эти обстоятельства формируют базу для негативного прогноза развития рынка и всей отрасли на ближайшие несколько лет, в том числе за счет снижения экономической эффективности предприятий, обусловленного падением объемов производства.

Помимо этого ограничения, связанные с пандемией, также привели к напряжению в цепочках поставок, дополнительно указав на существенные риски и зависимость отечественной отрасли от импорта.

На этом фоне Комитет призывает Правительство к выработке системных мер, направленных непосредственно на поддержку автокомпонентной подотрасли.

САНКЦИОННАЯ ПОЛИТИКА

Санкционная политика и ее влияние на отрасль не претерпели существенных изменений в течение прошедшего года, сохранилось ощутимое отрицательное влияние этих факторов на отдельные сегменты отрасли. Неопределенность, связанная с возможным применением санкций в отношении отдельных юридических лиц или групп компаний, затрудняет планирование перспективных проектов для многих компаний отрасли, включая производителей автокомпонентов и автопроизводителей, из-за рисков применения в их адрес вторичных санкций. Такие риски в большей степени актуальны для глобальных и международных компаний, ведущих основную свою деятельность за пределами Российской Федерации и ЕАЭС. Эти обстоятельства имеют негативное влияние на автомобильную отрасль в целом и сектор автомобильных компонентов в частности, т. к. ограничивают естественное развитие новых проектов, заключение новых контрактов и т. д.

РЕКОМЕНДАЦИЯ

АЕБ неоднократно выражала свою позицию в отношении санкций, и мы искренне надеемся, что влияние неэкономических факторов на развитие автомобильной отрасли будет нивелировано.

РЕЖИМ ПРОМЫШЛЕННОЙ СБОРКИ АВТОКОМПОНЕНТОВ

В 2020 году компании автомобильной отрасли продолжили получение субсидий на основании Постановления Правительства Российской Федерации от 26.10.2018 г. № 1278 (ПП 1278) в части компенсации понесенных затрат на приобретение импортных деталей и комплектующих.

Вместе с тем, с 1 января 2021 г. работа компаний в режиме промышленной сборки завершается в связи с истечением сроков действия соглашений о промышленной сборке. Это означает, что со следующего года государство прекращает оказание поддержки компаниям автомобильного сектора в части выпла-

ты указанных выше субсидий. Кроме того, возникает вопрос о возможности получения компаниями субсидий за декабрь 2020 года, ввиду истечения с 1 января 2021 г. сроков действия правил субсидирования по ПП № 1278.

Исходя из публично доступной информации, Министерство промышленности и торговли в дальнейшем не планирует продление режима промышленной сборки в том или ином виде. Однако Министерство работает над иными мерами поддержки, которые планируется оказать уже в следующем году.

В связи с вышеизложенным, перед компаниями автомобильного сектора возникают вопросы, связанные с корректным завершением работы в рамках заключенных с федеральными министерствами соглашений (Соглашения о промышленной сборке и Соглашения о предоставлении субсидий) в части выполнения взятых обязательства.

РЕКОМЕНДАЦИИ

Компаниям следует оценить предусмотренные законодательством пути целевого использования компонентов, ввезенных с кодами ТН ВЭД ЕАЭС для «промышленной сборки», после 2020 года в целях минимизации возможных негативных последствий.

Рекомендуется предоставить в министерства документы, подтверждающие, что взятые в рамках соглашений обязательства были выполнены в полном объеме и по возможности получить от министерств подтверждение исполнения таких обязательств.

Кроме того, компаниям необходимо провести оценку юридических последствий, которые могут возникнуть в случаях недостижения компаниями уровня локализации за 2020 год, неправомерного распоряжения компонентами после 2020 года и неподачи отчетности после 2020 года.

При организации поставок иностранных деталей и комплектующих, классифицируемых кодами ТН ВЭД ЕАЭС, для «промышленной сборки» компаниям следует в течение последних месяцев 2020 года тщательно планировать их объемы с тем, чтобы возместить субсидии в максимально возможном объеме, а также целевым образом использовать такие комплектующие в дальнейшем.

МОДИФИКАЦИЯ МЕХАНИЗМА СПЕЦИАЛЬНОГО ИНВЕСТИЦИОННОГО КОНТРАКТА (СПИК 2.0)

СПИК 2.0 – контракт, заключаемый в отношении инвестиционного проекта по внедрению или разработке и внедрению технологии, включенной в перечень современных технологий, утверждаемый Правительством Российской Федерации, в целях освоения серийного производства конкурентоспособной на мировом уровне промышленной продукции на основе указанной технологии. Сторонами СПИКа являются инвестор, с одной стороны, и совместно – Российская Федерация, субъект Российской Федерации, муниципальное образование – с другой стороны.

В рамках СПИКа инвестор принимает на себя обязательства по вложению определенного объема инвестиций. Публичная сторона (в лице Российской Федерации, субъекта Российской Федерации, муниципального образования), в свою очередь, обязуется осуществлять меры стимулирования деятельности в сфере промышленности, предусмотренные федеральным и региональным законодательством. В рамках СПИК 2.0 инвестор, внедривший современную технологию и производящий соответствующую продукцию на основе такой технологии на территории Российской Федерации, вправе претендовать на налоговые льготы (по налогу на прибыль, по региональным/местным налогам, при наличии соответствующих положений в региональном законодательстве) и иные меры государственной поддержки (в том числе, ускоренную и упрощенную процедуру получения статуса «сделано в Российской Федерации», определенные гарантии неухудшения налоговых условий, особые условия аренды земельных участков и другие меры). При этом, согласно новому регулированию, получение государственной поддержки/применение налоговых льгот прекращается, когда совокупный объем расходов и недополученных бюджетом доходов в связи с применением мер стимулирования составит 50% капитальных затрат инвестора. СПИК 2.0 будет заключаться по результатам закрытого (для проектов с технологиями военного, специального или двойного назначения) или открытого конкурсного отбора, проводимого по инициативе публичной стороны или инвестора. Заявки на конкурс будут приниматься удаленно через Государственную информационную систему промышленности. Победителями конкурсного отбора могут быть признаны один или несколько участников такого конкурсного отбора, чьи заявки признаны конкурсной комиссией лучшими на основании следующих критериев:

- срок внедрения современной технологии (период с момента заключения СПИК 2.0 до момента производства первой партии продукции на основе этой технологии);
- объем промышленной продукции, произведенной в течение срока действия СПИК 2.0;
- технологический уровень локализации производства промышленной продукции с применением технологии, включенной в утверждаемый Правительством Российской Федерации перечень современных технологий.

Ряд законов, регулирующих новый формат заключения и исполнения СПИК 2.0, вступил в силу еще в 2019 году, но для того, чтобы механизм СПИК 2.0 полностью «заработал», необходимо было издать соответствующие подзаконные акты. За 9 месяцев 2020 года основная нормативно-правовая база, необходимая для запуска механизма СПИК 2.0, была практически полностью сформирована, за исключением перечня современных технологий, в отношении которых будут заключаться СПИК. 16 сентября 2020 г. было завершено публичное обсуждение проекта указанного перечня, соответственно, его принятие можно ожидать уже в ближайшее время.

Из автокомпонентной отрасли в проект перечня были включены, среди прочего, технологии, обеспечивающие производство автоматизированных коробок передач, подвесок кабины, гидроэлектрических модулей рулевого управления, технологии плазменной резки для производства передних бамперов и другие.

Следует также отметить, что, поскольку новый механизм СПИК 2.0 не предусматривает требования по минимальному объему инвестиций, это дает больше возможностей для его заключения компаниям из автокомпонентной отрасли.

РЕКОМЕНДАЦИИ

Инструмент СПИК 2.0 направлен прежде всего на локализацию технологий в Российской Федерации, поэтому компаниям следует уже сейчас определить те технологии, которые могут быть использованы для производства промышленной продукции, а также оценить возможность и целесообразность их «импорта» или разработки на территории Российской Федерации.

Кроме того, на данном этапе в случае заинтересованности в инструменте СПИК 2.0 важно оценить соответствие компании и ее инвестиционного проекта установленным требованиям, начать подготовку необходимого комплекта документов для участия в конкурсном отборе (если технология компании уже есть в перечне современных технологий) или запустить процедуру актуализации перечня современных технологий.

СУБСИДИЯ НА ТРАНСПОРТИРОВКУ ПРОДУКЦИИ НА ЭКСПОРТ

28 мая 2020 г. была утверждена новая редакция Постановления Правительства Российской Федерации № 496, предусматривающего компенсацию затрат производителей на транспортировку продукции на экспорт.

Возможность получения субсидий на транспортировку распространяется в том числе на производителей автомобилей (код ТНВЭД ЕАЭС 8701-8705) и автокомпонентов (код ТНВЭД ЕАЭС 8708) (подробнее см. приказ Минпромторга от 2 июля 2020 г. № 2095).

Правилами предоставления субсидии предусмотрено, что почти половина выделяемых из бюджета средств (в 2020 году – 13 млрд рублей) приходится на организации отрасли машиностроения. Размер субсидии ограничен 80% общего объема затрат организации на транспортировку продукции, но не более 11% стоимости перевезенной продукции для производителей и аффилированных лиц производителей и 13% для уполномоченных лиц производителей. При этом предельный размер оказываемой поддержки на одну организацию не может превышать 0,5 млрд рублей.

Правилами предоставления субсидии также предусмотрено ранжирование организаций, которое осуществляется в рамках отраслей промышленности и с учетом объемов бюджетных ассигнований, распределяемых в следующе порядке:

- на 1-м этапе в проект реестра получателей субсидий включаются организации, с которыми заключены соглашения о реализации корпоративной программы повышения конкурентоспособности (подробнее см. постановление Правительства № 191 от 23.02.2019 г.);
- на 2-м этапе в проект реестра получателей субсидий включаются организации, осуществляющие поставки продукции в целях реализации отдельных решений Правительства Российской Федерации;
- на 3-м этапе в проект реестра получателей субсидий включаются иные организации в порядке убывания планового значения показателя результативности предоставления субсидии;
- на 4-м этапе формируется лист ожидания, в который включаются заявки на участие в квалификационном отборе в порядке убывания планового значения показателя, необходимого для достижения результата предоставления субсидии в очередном периоде планирования поставок продукции.

Новая редакция Постановления Правительства Российской Федерации № 496 содержит ряд изменений. В частности, в результате внесения поправок был повышен коэффициент эффективности использования российского перевозчика при транспортировке продукции автомобильным, и (или) водным, и (или) воздушным транспортом с 1.05 до 1.15, который учитывается при расчете плановых затрат организации.

Дополнительно был расширен перечень продукции для целей реализации государственной поддержки организаций, включающий теперь сборочные комплекты продукции, под которыми понимаются сборочные комплекты средств железнодорожного транспорта (группа составных частей товарных позиций 8601 – 8606 ТН ВЭД ЕАЭС) и сборочные комплекты средств наземного транспорта (группа составных частей товарных позиций 8701 – 8705 ТН ВЭД ЕАЭС (за исключением кода ТН ВЭД ЕАЭС 8701 90), поставляемых для окончательной сборки продукции.

Следует обратить внимание на изменение сроков предоставления документов в Российский экспортный центр для целей получения субсидии, а также на расширение перечня предоставляемых документов.

Так, в 2021 году и последующие годы документы для получения субсидии должны быть представлены не позднее 31 марта и (или) не позднее 31 мая, и (или) не позднее 31 августа.

Дополнительно необходимо будет представить, в частности:
- отчет о достижении планового значения показателя, необходимого для достижения результата предоставления субсидии;
- отчет о выполнении планового объема поставок продукции в стоимостном выражении;

- письмо с подтверждением достоверности информации, содержащейся в документах.

Немаловажным изменением является отмена, в частности, штрафа за недостижение по итогам планирования поставок продукции планового значения показателя, необходимого для достижения результата данной программы, и планового объема поставок продукции в стоимостном выражении в отношении периода поставок продукции с 1 сентября 2019 г. по 31 июля 2020 г.

РЕКОМЕНДАЦИИ

- Уточнить механизм ранжирования экспортеров, заявивших намерение участвовать в КППК, и предусмотреть возможность регулярного (ежегодного) дополнительного отбора участников в программу, а также возможность корректировки уже одобренных программ в связи с необходимостью актуализации экспортных стратегий.
- Предусмотреть возможность включения экспортных объемов российских поставщиков автокомпонентов в КППК автопроизводителей.

ЕВРО 6

Комитет производителей автокомпонентов АЕБ и большинство экспертов в целом поддерживают внедрение экологического класса 6 на территории ЕАЭС с целью улучшения экологической обстановки, совершенствования технического уровня выпускаемой техники и интеграции промышленности с другими развитыми рынками, выполнения целей, установленных стратегией развития автомобильной промышленности на период до 2025 года.

Для бизнеса наибольшей проблемой является отсутствие в настоящий момент четких ориентиров по внедрению нового экологического класса 6, установленных сроков и исчерпывающих технических требований. Для планирования инвестиций, проведения соответствующих разработок и подготовки производства определение сроков и требований является критически важным.

Из положительных моментов стоит отметить, что решением ЕЭК летом 2019 года было официально внедрено понятие экологического класса 6, но без исчерпывающего технического описания.

РЕКОМЕНДАЦИЯ

Минпромторгу совместно с НАМИ и ЕЭК определить дату введения экологического класса 6, а также дать точное его определение.

ГОСУДАРСТВЕННОЕ РЕГУЛИРОВАНИЕ ОТРАСЛИ – 719-ПП

Государственная поддержка отрасли преимущественно связана с выполнением требований, предъявляемых к продукции автомобилестроения, установленных Постановлением Правительства Российской Федерации от 17 июля 2015 г. № 719 «О подтверждении производства промышленной продукции на территории Российской Федерации» (далее – Постановление 719). Возможность получения автопроизводителями ряда промышленных субсидий, право претендовать на участие в корпоративных программах повышения конкурентоспособности, а также возможность заключения контрактов на поставку продукции для государственных нужд напрямую связаны с тем, какое количество баллов получает продукция (для каждого из направлений государственной поддержки предусмотрено минимальное количество баллов, которые дают производителю автомобилей право претендовать на получение государственной поддержки определенного вида). Например, для получения субсидий на возмещение затрат, связанных с поддержкой высокотехнологичной продукции (Постановление Правительства Российской Федерации от 23.02.2019 г. № 191) необходимо набрать с 1 января 2019 г. не менее 900 баллов, с 1 января 2022 г. не менее 1200 баллов, а с 1 января 2025 г. не менее 1400 баллов. Таким образом государство стимулирует производителей на поэтапное увеличение уровня локализации путем закупки локально производимых компонентов. Баллы производителям автомобилей будут начисляться, в частности, за локализацию технологических операций, использование российских комплектующих и сырья. При этом методология распределения баллов непрозрачна. Так, например, за систему помощи водителю можно получить до 500 баллов, а за использование глубоко локализованных сидений – всего 30 баллов, за электрические приборы светового освещения и световой сигнализации – всего 20 баллов. Необходимо избежать ситуации, когда уже работающие на российском рынке производители компонентов окажутся вытеснены импортом, потому что их продукция приносит слишком мало баллов и этого недостаточно для того, чтобы заинтересовать автопроизводителя.

Начисление значительного количества баллов предусмотрено за локализацию НИОКР (200 баллов за каждые 0,5 процента затрат на НИОКР от объема выручки). Кроме того, в отношении производства ряда автомобильных систем баллы могут быть присвоены за разработку программного обеспечения и закрепление результатов интеллектуальной деятельности за российским юридическим лицом.

Возможность зафиксировать перечень локализуемых технологических операций на определенный период и получить отсрочку в соблюдении условий по параметрам локализации, получая при этом доступ к определенным механизмам государственной поддержки, может дать специальный инвестиционный контракт. В связи с введением балльной системы, производители, которые не заключили СПИКи, в целях подтверждения статуса российского производства своей продукции должны получать акты экспертизы, выдаваемые территориальными подразделениями Торгово-промышленной палаты Российской Федерации, которые обязательно должны содержать информацию о совокупном количестве баллов.

С 20 июля 2020 г. вступил в силу обновленный порядок выдачи документов для целей подтверждения производства промышленной продукции на территории Российской Федерации (Приказ Торгово-промышленной палаты Российской Федерации от 16.07.2020 г. № 66).

Комитет в целом поддерживает начинания по развитию и поддержке автопрома, а также уточнению условий для присвоения статуса «Сделано в России». Для дальнейшего развития отрасли также важно наличие адресных мер развития и поддержки производителей автокомпонентов. Комитет надеется, что в итоге удастся достичь согласия между всеми заинтересованными сторонами, создать единые, взаимосвязанные, последовательные и понятные правила и тем самым ускорить развитие как всей автомобильной отрасли России, так и автокомпонентной подотрасли в частности.

РЕКОМЕНДАЦИИ

Компаниям рекомендуется отслеживать размещаемые проекты поправок, а также следить за возможными изменениями законодательного регулирования по вопросам локализации и мер государственной поддержки, подтверждения статуса производимой продукции, оценить влияние уточненного законодательного регулирования и возможных поправок на текущие параметры локализации с точки зрения возможности получения государственной поддержки.

ЧЛЕНЫ КОМИТЕТА

Aptiv (PES/SCC) • ATC-Avto • Benteler Automotive • Clarios • Continental Automotive Technologies • Delphi Samara • Dow Europe GmbH Representation office • Faurecia • Gestamp Russia • Henkel Rus • ISG support-GUS GmbH • Johnson Matthey • NTN-SNR • Robert Bosch • RUSSIAN AUTOMOTIVE COMPONENTS • SAF-HOLLAND • Segula Technologies Russia • Volvo Vostok.

Automotive consultants: Deloitte & Touche CIS • DLA Piper • EY • KPMG • PwC.

БАНКОВСКИЙ КОМИТЕТ

Председатель:
Михаил Чайкин, ING BANK (EURASIA) JSC

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ВВЕДЕНИЕ

Этот год стал шоковым для мировой экономики и рынков. Пандемия коронавируса привела к значительным человеческим жертвам, внезапной остановке международного туризма, ударила по сфере услуг и вынудила правительства и центральные банки провести значительное смягчение бюджетной и денежно-кредитной политики. При этом коронакризис не создал очевидных точек роста, и ожидаемая траектория восстановления мировой экономики далека от буквы «V». Скорее всего, выбирать придется между «U», «W» и «L». Наоборот, кризис лишь усилил имеющиеся дисбалансы, включая рост социально-политической поляризации в развитых странах, глобальные торговые и внешнеполитические противоречия, а также низкую эффективность монетарной политики в развитых странах, которая приводит скорее к инфляции активов, чем стимулирует экономическую активность.

Коронавирус усилил дисбалансы и в России, ударив по сектору услуг, то есть по малому и среднему бизнесу, частному сектору. Это обострило уже имеющиеся проблемы социального неравенства, что ведет к дальнейшей переориентации бюджетной политики в сторону финансирования социальной сферы. К началу 2020 года правительство имело план реализации Национальных проектов, представленный в основном инфраструктурными проектами, с общим бюджетом 26 трлн руб. (3,6% годового ВВП Российской Федерации). Пандемия сместила эти приоритеты, и сроки реализации Национальных проектов были сдвинуты с 2024 на 2030 год, а в структуре текущих расходов бюджета выросла доля трат на здравоохранение и социальную сферу через рост прямых выплат на поддержку доходов населения. Данные меры должны сгладить последствия кризиса для потребительского тренда, но они не способствуют росту уверенности в корпоративном сегменте.

В результате сейчас российская экономика имеет перспективы восстановительного роста при сохранении прежних структурных ограничений, включая недостаточное развитие внутренней материальной инфраструктуры, непростой деловой климат для частного сектора. Поэтому на желаемой повестке дня остается сокращение административных барьеров для ведения бизнеса, укрепление институциональной базы, сокращение государственного присутствия в банковском и реальном секторах, а также в сегменте занятости. Учитывая ограниченный опыт работы в данной области, эксперты по-прежнему скептически относятся к способности России обеспечить значительное ускорение роста ВВП в ближайшие годы.

2020 год увеличил список вызовов и для банковского сектора. К сохраняющемуся риску финансовых санкций, низкому инвестиционному спросу в реальном секторе, высокой доле государственных банков и затрудненному положению иностранных финансовых учреждений добавились риски эрозии фондирования в условиях низких ставок, ухудшение качества кредитных портфелей и рост госдолга в структуре банковских активов на фоне расширения программы госзаимствований и сдержанного спроса на них со стороны нерезидентов. Нельзя не отметить, что оперативные действия, предпринятые Банком России в части денежно-кредитной политики, банковского регулирования и на валютном рынке, позволяют сгладить негативный эффект внешних шоков на финансовую систему, однако для ее устойчивого развития требуются длительные скоординированные действия различных ветвей власти. Как и ранее, банковский комитет АЕБ планирует всесторонне и конструктивно взаимодействовать с Центральным банком и прочими регулирующими органами для поддержания справедливой конкуренции и инновационного развития инвестиционной активности и денежного обращения в России.

БЕЗОПАСНОСТЬ КРИТИЧЕСКОЙ ИНФОРМАЦИОННОЙ ИНФРАСТРУКТУРЫ

В середине 2017 года был принят Федеральный закон «О безопасности критической информационной инфраструктуры Российской Федерации» № 187-ФЗ. Также была введена уголовная ответственность за неправомерное воздействие на критическую информационную инфраструктуру Российской Федерации. Однако, несмотря на очевидную важность регулирования данного вопроса, закон и принятые в его рамках подзаконные акты содержат расплывчатые формулировки. Таким образом, непонятны конкретный субъектный состав и порядок применения закона.

В частности, к субъектам закон относит буквально российские юридические лица, которым принадлежат «объекты критической информационной инфраструктуры», т. е. информационные системы, информационно-телекоммуникационные сети, автоматизированные системы управления, функционирующие в банковской сфере и иных сферах финансового рынка. Таким образом, формально любой российский банк является «субъектом критической информационной инфраструктуры», однако вряд ли это является целью регулирования. Логично, что критическими следует признавать такие финансовые организации, дисфункция информационных систем которых затронет значительное количество граждан или организаций.

Более того, неясен и порядок исполнения закона. Финансовые организации должны создать список используемых ими объектов критической информационной инфраструктуры и категорировать эти объекты. Однако проблематично само создание списка. К объектам относятся «информационные системы, информационно-телекоммуникационные сети, автоматизированные системы управления». Данные понятия очень широки; например, информационная система может означать даже используемый в банках текстовый редактор. Таким образом, любая вспомогательная программа в совокупности с компьютером, на котором она установлена, может быть признана объектом информационной инфраструктуры и в таком качестве включена в специальную отчетность.

Указанные проблемы не были решены в 2018–2020 гг., ситуация принципиально не изменилась.

РЕКОМЕНДАЦИЯ

Обратиться к Банку России и Правительству Российской Федерации с просьбой об официальном разъяснении порядка применения данного закона к банкам и финансовым организациям. По возможности следует просить Правительство уточнить, какие именно подзаконные акты конкретизируют применение рассматриваемого закона.

ЗАКОНОДАТЕЛЬСТВО О СПЕЦИАЛЬНЫХ ЭКОНОМИЧЕСКИХ МЕРАХ

Органами исполнительной власти Российской Федерации введены санкционные меры в отношении ряда иностранных лиц (в качестве примера можно привести Постановление Правительства Российской Федерации от 1 ноября 2018 г.). Перечень санкционных мер предусматривает в том числе замораживание денежных средств на банковских счетах и запрет на вывод капитала за пределы Российской Федерации. Предполагается, что подобные меры должны реализовываться кредитными организациями. Однако в законодательстве не конкретизированы содержание таких мер, порядок их реализации банками, а также необходимость их применения к российским лицам, подконтрольным иностранным лицам, в отношении которых введены санкции. На практике это может приводить к достаточно абсурдным ситуациям: например, в результате формального толкования правил может быть введен запрет банкам на осуществление налоговых платежей в бюджет Российской Федерации применительно к платежам, осуществленным российскими организациями, подконтрольными лицам, в отношении которых введены санкции. Поскольку законодательно не определен орган исполнительной власти, ответственный за дачу разъяснений по содержанию нормативных актов, и не установлена процедура дачи указанных разъяснений, оперативно разрешать неурегулированные вопросы не представляется возможным.

РЕКОМЕНДАЦИЯ

Обратиться к Правительству Российской Федерации с просьбой конкретизировать порядок применения специальных экономических мер банками и определить процедуру разрешения спорных вопросов применения введенных государством санкционных мер экономического характера (по аналогии с процедурами, существующими в других юрисдикциях).

ОТВЕТСТВЕННОСТЬ КРЕДИТНЫХ ОРГАНИЗАЦИЙ

По состоянию на текущий момент подробно не урегулированы законодательством вопросы применения Банком России штрафов к кредитным организациям. Исходя из действующего законодательства (статья 74 Федерального закона «О Центральном банке Российской Федерации (Банке России)»), Банк России вправе штрафовать кредитные организации за любые нарушения федеральных законов и подзаконных актов. При этом конкретные составы правонарушений не установлены, а процессуальные нормы, которые регулировали бы порядок применения такого рода наказаний и их обжалования, отсутствуют.

В настоящее время органами власти Российской Федерации и общественными организациями ведется большая работа по пересмотру законодательства об административных правонарушениях.

В целях повышения эффективности применения штрафов к кредитным организациям, обеспечения более конкретизированного и разумного законодательного регулирования деятельности в банковской сфере и защиты добросовестных участников финансового рынка, мы считаем необходимым принципиальный пересмотр подхода к данному вопросу, что позволит исключить возможность наложения на кредитные организации штрафов за абстрактное нарушение федерального закона или подзаконного акта.

В рамках проекта по изменению Кодекса об административных правонарушениях могут быть реализованы две концепции привлечения банков к ответственности.

КоАП может быть дополнен конкретными составами правонарушений, относящимися к банковской деятельности, а Банк России – назначен органом, уполномоченным рассматривать дела по таким правонарушениям. Размер административных штрафов должен дифференцироваться для различных правонарушений в зависимости от их тяжести. Привлечение к ответственности и обжалование решений будут базироваться на соответствующих процессуальных нормах КоАП.

В качестве альтернативы банковские правонарушения могут быть полностью исключены из КоАП, а законодательство о банках и банковской деятельности может быть дополнено понятием «банковского правонарушения» и конкретными составами и санкциями для таких правонарушений, а также процессуальными нормами, регулирующими порядок наложения штрафов и их обжалования в вышестоящем подразделении Банка России (по аналогии с понятием «налогового правонарушения», существующим в налоговом законодательстве).

РЕКОМЕНДАЦИЯ

Обратиться к Банку России и Правительству Российской Федерации с просьбой об определении законодательного подхода к

ответственности банков и внесении необходимых поправок в законодательство, в том числе в рамках проекта о пересмотре Кодекса об административных правонарушениях.

О РЕГУЛИРОВАНИИ ДИСТАНЦИОННОЙ И УДАЛЕННОЙ РАБОТЫ

Многие финансовые институты и банковская сфера столкнулись с новым вызовом 2020 года – пандемией COVID-19, что потребовало от организаций мобилизовать текущие трудовые ресурсы и в оперативном порядке вывести на удаленную работу большинство процессов, не требующих личного присутствия работников в офисе. Контроль за работой сотрудников, дисциплина труда, а также вопросы охраны труда работника при дистанционной работе выходят на первый план. Многим работодателям, кто только размышлял на темы возможной дистанционной работы для своих коллективов, пришлось оперативно принимать действия в отношении нового формата взаимодействия с работниками, дисциплины труда и контролем за исполнением должностной функции удаленно.

Согласно статье 312.1 ТК РФ, дистанционной работой является выполнение определенной трудовым договором трудовой функции вне места нахождения работодателя, его филиала, представительства, иного обособленного структурного подразделения (включая расположенные в другой местности), вне стационарного рабочего места, территории или объекта, прямо или косвенно находящихся под контролем работодателя.

Согласно подпункту а) пункта 6 части первой статьи 81 ТК РФ, прогулом признается отсутствие на рабочем месте без уважительных причин в течение всего рабочего дня независимо от его продолжительности, а также отсутствие на рабочем месте без уважительных причин более четырех часов подряд в течение рабочего дня. Понятие рабочего места приведено в статье 209 ТК РФ. Рабочее место – место, где работник должен находиться или куда ему необходимо прибыть в связи с его работой и которое прямо или косвенно находится под контролем работодателя.

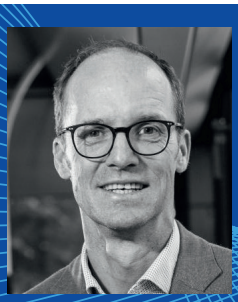
Таким образом, уволить работника за прогул при дистанционной работе не получится, поскольку, исходя из приведенных выше норм закона, одной из основных особенностей данного режима является работа вне стационарного рабочего места, подконтрольного работодателю. По сути работник, если ему удастся обеспечить надлежащее выполнение трудовых обязанностей, может каждый день работать в новом месте (дома, в парке, в кафе и пр.). Данная позиция подтверждается Определением Судебной коллегии по гражданским делам Верховного Суда Российской Федерации от 16.09.2019 № 5-КГ19-106.

Важно отметить, что в настоящее время на рассмотрении в Государственной Думе находится Законопроект № 973264-7 «О внесении изменений в Трудовой кодекс Российской Федерации в части регулирования дистанционной и удаленной работы». Он вносит существенные корректировки в Главу 49.1 ТК РФ. Так, в статью 312.4 ТК РФ планируется внести понятие «порядок взаимодействия», которым может быть предусмотрена обязанность дистанционного работника отвечать на звонки, электронные письма и запросы работодателя, сделанные в иной форме, а также срок, в течение которого дистанционный работник обязан реагировать на запросы работодателя, связанные с выполнением трудовой функции.

Обязательство работника в части обеспечения надлежащего режима самоорганизации при выполнении работы дистанционно, с тем, чтобы соблюдался режим рабочего времени, установленный Работодателем, а также исключение использования в личных целях времени, предназначенного для дистанционной работы, согласно режиму рабочего времени, установленному Работодателем в Правилах внутреннего трудового распорядка также должны быть сформулированы в условиях дистанционной работы и подписаны сторонами (работником и работодателем). Так, например, в нашем Банке закреплена ответственность работника по требованию непосредственного или вышестоящего руководителя являться в помещение Работодателя в пределах рабочего времени, установленного Работодателем в Правилах внутреннего трудового распорядка.

Переход на удаленную работу (дистанционный труд) обратил внимание всех работодателей на необходимость скорейшего перевода бумажного документооборота в электронный формат (где это применимо), а также многократно усилило понимание необходимости использования электронной цифровой подписи как внутри организаций, так и при общении с регуляторами. Автоматизация бизнес-процессов и кадрового делопроизводства становится не просто актуальным трендом современного бизнес-сообщества, но и необходимостью предоставлять качественные и своевременные услуги для наших клиентов и партнеров. Со своей стороны в самое ближайшее время мы ожидаем закрепление норм электронного документооборота и использования ЭЦП также в Трудовом Кодексе РФ. Это позволит сократить издержки на выпуск и хранение документов на бумажных носителях, перевести документы в электронный формат и оптимизировать многие процессы по кадровому документообороту.

КОМИТЕТ КОММЕРЧЕСКОГО ТРАНСПОРТА



Председатель:
Ян Айхингер, MAN Truck and Bus

Координатор комитета:
Аскер Нахушев

РЫНОК В 2020 ГОДУ

2020 год нанес серьезный удар по мировому рынку коммерческих транспортных средств, и Россия не стала исключением. Меры по борьбе с распространением COVID-19 (в первую очередь, режим изоляции) привели к серьезному кризису в большинстве стран. Экономическая активность снизилась до минимума, что привело не только к резкому падению спроса, но и к перебоям в поставках.

Рынок коммерческих транспортных средств в России тоже пострадал. Начав с уверенного роста в первом квартале (благодаря устойчивому курсу рубля), в апреле — мае продажи упали на 30–50%, а в июне ситуация начала восстанавливаться. После ослабления ограничений, связанных с коронавирусом, ситуация улучшилась как за счет отложенного спроса, так и за счет естественного восстановления экономической активности. Однако с июля курс рубля существенно просел по отношению к доллару и особенно по отношению к евро, что замедлило восстановление экономики. Влияние обменного курса, превысившего отметку в 90 рублей за евро в сентябре, наложилось на очередное повышение сборов за утилизацию, которое произошло в январе 2020 года и с тех пор было омрачено другими, гораздо более серьезными факторами, упомянутыми выше.

Еще одна важная тенденция, усугубленная кризисом COVID-19, — это консолидация рынка. Небольшие компании в сфере розничной торговли с меньшей финансовой устойчивостью оказались в значительно менее выгодном положении по сравнению с более крупными игроками, которые имеют больше ресурсов, для того чтобы продолжать закупать новые транспортные средства. Хотя эта тенденция была заметна еще до начала пандемии COVID-19.

В результате вышеупомянутых тенденций с января по август 2020 года рынок сократился на 12% в целом (> 6 т) и на 25% в сегменте EU-7. Во времена кризиса перераспределение рынка в пользу местных производителей считается нормальным явлением, но в этот раз оно упрочилось за счет обменного курса и повышения утилизационного сбора в начале года. Тем не менее курс рубля влияет и на наиболее прибыльную часть производства российских брендов, так как их доля импортных комплектующих выше, чем у их традиционных, старых модельных рядов.

Поскольку с наступлением осени вновь начался рост числа новых случаев COVID-19 в России (как и во многих странах ЕС), правительство принимает соответствующие меры. Президент Путин обратился к населению 28 сентября, призвав граждан обратить внимание на санитарно-профилактические меры, в то время как администрация Москвы уже ограничивает некоторые разрешенные виды деятельности для лиц из групп риска. Хотя власти явно стремятся ограничить негативное воздействие санитарно-профилактических мер и уже имеют значительный опыт в решении этой проблемы, негативное влияние на рынок, к сожалению, неизбежно.

Центральная наблюдательная комиссия (CVC) ожидает, что рынок ЕС-7 (>6 т) снизится согласно консервативному сценарию на 35–40%, а согласно оптимистичному сценарию, падение ограничится 20–25%. Многое будет зависеть от того, как именно власти будут бороться с распространением вируса, будут ли принятые меры более мягкими по сравнению с полной экономической блокировкой (массовое тестирование, своевременное закрытие районов с высоким уровнем заражения и т. д.) и принесут ли они желаемые результаты. Еще один важный фактор — давление на рубль, которое в настоящее время является рекордным, в результате чего курс национальной валюты достиг самого низкого уровня после отрицательного воздействия в январе 2016 года. Ключевое значение в сложившейся ситуации имеют разумная макроэкономическая политика и эффективная поддержка экономики, направленная на обеспечение достаточного спроса, доверия потребителей и инвесторов.

С января по август российский рынок автобусов вырос на 14% во многом благодаря крупным закупкам городских автобусов. Ранее запланированные закупки как государством, так и крупными частными игроками (увеличивающими собственный парк) помогли поддержать рынок в условиях общего экономического кризиса. При этом количество мелких розничных сделок резко сократилось, поскольку туризм и путешествия на дальние расстояния относятся к отраслям, наиболее пострадавшим от пандемии COVID-19 (например, индустрия въездного туризма упала на 90%).

Комитет ожидает, что общий рост рынка автобусов к концу 2020 года составит 5–7%. В ближайшие годы динамика продаж автобусов будет во многом зависеть от преодоления

последствий пандемии COVID-19 и удовлетворения отложенного спроса. Еще одним ключевым фактором станет национальная программа обновления городского общественного транспорта, в соответствии с которой 75% автобусного парка 15 ключевых агломераций страны подлежит замене в течение последующих 10 лет. Комитет считает эту программу мощным инструментом модернизации национальной транспортной системы. Однако концентрация внимания на местном производстве может подорвать амбициозные планы, так как это может привести местных производителей к пределу их производственных мощностей и сокращению конкуренции. Комитет считает, что правительство могло бы выделить долю запланированных продаж автобусов для конкуренции с импортными поставщиками, чтобы гарантировать поставки, поддерживать конкуренцию и внедрять мировые стандарты качества и обслуживания в транспортные системы российских городов.

Сложно предсказать, как будет развиваться коммерческий рынок в 2021 году, но некоторые ключевые факторы можно выделить уже сегодня. Во-первых, после того, как различные вакцины против COVID-19 будут успешно протестированы и станут доступными для граждан, будет наблюдаться положительная тенденция к восстановлению, что снизит риск дальнейших ограничений и повысит доверие потребителей и инвесторов. Во-вторых, негативные последствия кризиса 2020 года проявятся в полной мере (например, будет новая волна банкротств), что создаст противоположную тенденцию, негативно влияющую на восстановление рынка. Очевидно, что курс рубля останется еще одним ключевым фактором, обусловленным не только объективным состоянием российской экономики, но и политической напряженностью между Россией, ЕС и США, при этом риски новой волны санкций будут иметь серьезный негативный эффект.

И, наконец, у правительства может возникнуть соблазн еще повысить утилизационный сбор после девальвации рубля, что определенно скажется на продажах коммерческих транспортных средств в стране. Это может оказать негативное влияние не только на производителей, но и на российскую экономику в целом, которая, будучи ослабленной в 2020 году, станет еще более уязвимой за счет растущих затрат на ведение бизнеса.

ПОСТАНОВЛЕНИЕ № 719 И ТРЕБОВАНИЯ К ЛОКАЛИЗАЦИИ

С момента последней публикации документа российское правительство пересмотрело правила промышленной политики в автомобильной промышленности. Критерии для местной продукции были ужесточены в серии поправок к Постановлению Правительства № 719, которое, в свою очередь, стало основным документом, обеспечивающим доступ к господдержке в качестве местного производителя (наряду с подписанием СПИК в качестве необходимого условия). Например, тендеры на государственные закупки в соответствии с последней редакцией Постановления № 719 с 2023 года будут доступны только для грузовиков, у которых будет 3200 баллов, что эквивалентно глубокой локализации (сборка со сваркой и покраской кабины, силовой агрегат полностью местного производства и использование металла местного производства), к 2025 году количество баллов увеличится до 5800, что будет означать по сути полную локализацию. Тенденция использования этой схемы по каждой мере государственной поддержки серьезным образом демотивирует международных инвесторов проводить дальнейшую локализацию своей продукции, поскольку достичь целевых уровней практически невозможно. Придерживаясь этой политики, российское правительство рискует потерять достижения режима промышленной сборки, за счет которого удалось привлечь инвесторов, используя четкую и реалистичную систему стимулов для расширения местного производства.

Поэтому для создания сильной национальной автомобильной промышленности нужны не ограничения, а новые возможности и четкие правила игры. Реалистичные цели по локализации в сочетании с серьезной поддержкой местного производства компонентов помогут не только привлечь новые инвестиции в страну, но и создать новые высокооплачиваемые рабочие места для квалифицированных специалистов и стимулировать экономический рост. Они также поспособствуют укреплению позиций российских производителей, предоставив им доступ к высококачественным современным местным компонентам по более низким ценам за счет экономии в результате роста масштабов производства. Комитет считает, что промышленная развитость (высокая добавочная стоимость местного происхождения и диверсификация экспорта) является более надежной основой для устойчивого экономического роста, чем промышленная автаркия (стремление обеспечить производство всех автомобильных компонентов местными производителями). Как ведущие мировые производители, присутствующие на всех ключевых рынках мира, мы готовы поделиться своим опытом и помочь российскому правительству в его усилиях по построению более мощной и диверсифицированной национальной экономики.

РЕКОМЕНДАЦИИ

Пересмотреть целевые показатели баллов для государственных закупок и других программ государственной поддержки в соответствии с реалистичными требованиями к локализации, определенными в диалоге с представителями отрасли.

Доработать и реализовать эффективную стратегию разработки компонентов, направленную на поддержку экономически оправданной локализации автомобильного производства.

«АВТОДАТА»

Инициатива по формированию национальной платформы для сбора и обработки автомобильных данных была объяв-

лена 30 сентября 2019 года, и АЕБ стала членом недавно созданного консорциума во главе с Некоммерческим партнерством ГЛОНАСС. После этого между ГЛОНАСС и рабочей группой АЕБ состоялся обмен мнениями о том, как дальше развивать инициативу по автомобильным данным. В сентябре 2020 года был обнародован законопроект «О государственной информационной системе «Платформа Автодата»», который был проанализирован рабочей группой АЕБ.

Комитет коммерческого транспорта поддерживает выводы, сделанные рабочей группой, в частности, следующие:

- Многие ключевые определения не конкретизированы и оставляют возможность правительству в произвольном порядке менять их с помощью постановлений правительства.
- Это особенно актуально в отношении определения «обязательных наборов данных», которые должны быть предоставлены платформе и список которых может быть расширен по решению правительства.
- Кроме того, конечная цель обработки данных в законопроекте не указана.
- Нет четкого разделения ответственности между Владельцем и Оператором транспортного средства, который генерирует данные.
- Наконец, неясно, какие владельцы данных и в какой степени будут обязаны хранить и обрабатывать данные на территории России.

В связи с этим Комитет считает необходимым организовать диалог с ГЛОНАСС и правительством для прояснения открытых вопросов и оптимизации юридических определений. Несмотря на то, что государственное регулирование обработки автомобильных данных может быть полезным для отрасли, непроработанные и несогласованные инициативы могут поставить под угрозу достижение прогресса в автомобильной цифровизации. Комитет считает необходимым решить указанные выше ключевые вопросы, чтобы новое законоположение помогло обеспечить правовую точность и способствовать развитию бизнеса.

РЕКОМЕНДАЦИИ

- Пересмотреть законопроект «О государственной информационной системе «Платформа Автодата»» с учетом комментариев рабочей группы АЕБ по вопросам автомобильных данных.
- Активизировать диалог с экспертным сообществом для обеспечения высокого качества регулирования.

ВВЕДЕНИЕ СИСТЕМЫ ЭЛЕКТРОННЫХ ПАСПОРТОВ ТРАНСПОРТНЫХ СРЕДСТВ

Члены Комитета продолжают активно участвовать в работе по внедрению системы электронных паспортов транспортных средств (ЭПТС) и, координируя свою деятельность со всеми участниками проекта, поэтапно выполняют мероприятия, направленные на полный переход к оформлению электронных ПТС как при выпуске в обращение транспортных средств локального производства, так и при импорте автомобилей на территорию Таможенного Союза в установленные сроки.

С 2019 года работа по внедрению электронного ПТС перешла в практическую фазу, а начиная с 2020 года многие члены Комитета начали выдавать ЭПТС на регулярной основе. Все увеличивающееся число транспортных средств с ЭПТС дает возможность оценить применение новой системы на практике с участием государственных органов (ГИБДД, ФТС и ФНС) в разных регионах РФ. На данный момент к нерешенным ранее проблемам добавился ряд практических вопросов применения ЭПТС и работы с системой.

В ряду первостепенных задач обеспечения бесперебойной работы системы электронных паспортов является налаживание эффективного взаимодействия АО «Электронный паспорт» с ФТС для импортеров и с ФНС для локальных изготовителей ТС. Отсутствие четких формализованных инструкций, ряд пробелов в законодательстве, а также отсутствие информации по применению новой системы на местах ведет к долгому и зачастую некорректному обмену данными между системами, что, в свою очередь, ведет к задержкам в выпуске ЭПТС отдельно взятого транспортного средства.

С началом оформления ТС через Центр электронного декларирования (ЦЭД) добавились проблемы неотработанного алгоритма обмена данными о выпуске в обращение и уплаты утилизационного сбора между ФТС и АО «Электронный паспорт» и, следственно, их потере. Также с введением ЦЭД произошло «обезличивание» ФТС в работе по отправке данных в СЭП, что привело к нарушению взаимодействия ФТС и импортеров и увеличению времени, затраченного на поиск проблемы.

Критически важным является взаимодействие системы электронных паспортов и ГИБДД. На практике с ростом числа электронных ПТС стали все чаще проявляться проблемы взаимодействия как в техническом аспекте, так и в аспекте информационной осведомленности сотрудников ГИБДД в регионах. Отказы обмена данными между системами, а также неосведомленность сотрудников ГИБДД на дорогах и в локальных подразделениях ведут к необоснованным отказам в регистрации транспортных средств, а также к вынужденным простоям на дорогах в ожидании разъяснений. Комитет считает крайне необходимым обеспечить своевременную отладку действующего механизма взаимодействия с учетом накопленного опыта применения ЭПТС.

Среди открытых вопросов остается практическое смещение основного фокуса на смысле ПТС с правоустанавливающего документа, подтверждающего право собственности на транспортное средство, на технический документ, подтверж-

дающий соответствие транспортного средства Техническому регламенту Таможенного союза. Лишение участников рынка действенного инструмента проверки легитимности транспортного средства вызывает обеспокоенность. Комитет продолжает считать важным включение информации о собственнике транспортного средства в перечень обязательных для заполнения полей ЭПТС – это позволит сохранить функциональность документа при переходе на новую систему. Кроме того, Комитет считает необходимым сделать информацию о собственнике обязательной и видимой при регистрации в ГИБДД.

Неготовность анонсированной ранее системы электронных ОТТС, являющихся основой для выдачи ПТС на новые транспортные средства, также продолжает оставаться актуальной проблемой. Имеющаяся сейчас база данных из ОТТС на платформе электронного паспорта заложила основы и принципы работы электронных ОТТС, но, к сожалению, техническое исполнение пока не позволяет работать с необходимым качеством. Позиция Комитета о необходимости обеспечить максимальную совместимость двух систем, а организационные и материальные затраты при их внедрении свести к минимуму продолжает оставаться актуальной по сегодняшний день.

Комитет подтверждает свою готовность к продолжению диалога и обсуждению актуальных вопросов внедрения системы ЭПТС с Минпромторгом России, АО «Электронный паспорт» и Евразийской экономической комиссией.

РЕКОМЕНДАЦИИ

- Обеспечить информационную осведомленность сотрудников государственных органов на местах.
- Дополнительно проработать возможность включения информации о собственнике транспортного средства в перечень обязательных в ЭПТС.
- Продолжить разработку системы электронных ОТТС, обеспечив совместимость систем ЭПТС и электронных ОТТС совместно с производителями/импортерами транспортных средств.
- Дополнительно отработать взаимодействие ФТС и ЭП при работе через ЦЭД, а также сделать более прозрачной форму обратной связи между импортерами и ФТС при работе через ЦЭД.
- Рассмотреть возможность прикрепления договоров купли-продажи (сканы/эл. документы) в систему, когда информация о собственнике в ЭПТС будет обязательной и контролируемой.

РАСШИРЕНИЕ ИСПОЛЬЗОВАНИЯ ПРИРОДНОГО ГАЗА НА ТРАНСПОРТЕ

Развитие рынка газомоторного топлива в России занимает ключевое место среди задач промышленной политики РФ в автомобильной промышленности. Правительство РФ при участии ООО «Газпром газомоторное топливо» ведет системную работу по расширению сети газозаправочных станций и повышению объем потребления газа в автотранспортном секторе. В марте 2020 года государственная программа Российской Федерации «Развитие энергетики» (постановление правительства РФ от 15 апреля 2014 г. № 321) была дополнена подпрограммой «Развитие рынка газомоторного топлива», рассчитанной на период до 2024 года и нацеленной на рост объем потребления природного газа в транспорте до 2,7 млрд куб. м, увеличение количества стационарных газозаправочных объектов до 1 273 единиц и парка газомоторной техники в количестве не менее 40 тыс. единиц.

Подпрограмма предусматривает различные меры государственной поддержки, которые в совокупности с уже существующими мерами должны способствовать достижению заявленных целей. Члены Комитета убеждены, что эта работа имеет стратегическое значение и направлена на использование конкурентных преимуществ России.

В то же время необходимо отметить, что принятые меры преимущественно ориентированы на строительство газозаправочной инфраструктуры (КПГ и СПГ) и на стимулирование переоборудования автопарка легковых и легковых коммерческих автомобилей. При всей важности этих мер Комитет считает необходимым при разработке мер поддержки рынка газомоторного топлива принимать в расчет потенциал тяжелого грузового транспорта. Международная практика показывает, что активное задействование грузовых автомобилей оказывает более значимый эффект на рынок газомоторного топлива, чем легковой автотранспорт. Показатели работы ряда европейских производителей коммерческой техники подтверждают, что поддержка грузового газомоторного транспорта дает больший эффект с точки зрения роста потребления газа при меньших затратах бюджетных средств. По мнению Комитета, опережающий рост газомоторного автопарка может быть достигнут благодаря увеличению привлекательности газомоторной техники для российского потребителя по сравнению с дизельной техникой и в частности посредством создания временных преференциальных условий работы на рынке для данного вида техники, направленных на снижение налоговых, операционных и эксплуатационных затрат.

В этой связи при дальнейшей разработке мер поддержки рынка газомоторного топлива в России, проводимой, в частности, на площадке Аналитического Центра при Правительстве РФ, целесообразно задействовать меры временного характера, не связанные с прямыми бюджетными затратами, такие как: установление льготной платы для грузовых газомоторных транспортных средств в системе «Платон», отмена транспортного налога для владельцев грузовых газомоторных транспортных средств, установление льготной ставки ввозной таможенной пошлины на грузовые газомоторные автомобили и ряд других.

Члены Комитета убеждены, что совокупность мер стимулирующего характера, не требующих прямых бюджетных выплат, позволит повысить спрос на природный газ в России, приведет к увеличению загрузки газозаправочных станций и обеспечит рост поступлений в бюджетную систему РФ за счет дополнительных налоговых платежей от производителей такой техники и промышленного (газобаллонного) оборудования, а также от компаний-поставщиков природного газа.

РЕКОМЕНДАЦИЯ

Проработать меры поддержки рынка газомоторного топлива, не связанные с субсидированием производителей газомоторных транспортных средств и рассчитанные на ограниченный период времени.

ЧЛЕНЫ КОМИТЕТА

DAF Trucks Rus LLC • DAIMLER KAMAZ RUS OOO (DK RUS OOO) • FCA Russia • GAZ Group • Hino Motors, LLC • Hyundai Truck and Bus Rus LLC • ISUZU RUS JSC • Iveco Russia LLC • MAN Truck & Bus RUS LLC • Meiller Vostok LLC • Mercedes-Benz Russia • Nissan Manufacturing Rus • Peugeot Citroën Rus (Groupe PSA) • Renault Russia • Scania-Rus LLC • Volkswagen Group Rus (Audi/Bentley/Lamborghini/Škoda/Volkswagen/Volkswagen Commercial Vehicles) • Volvo Vostok NAO.

Представляющие следующие бренды: DAF • Citroen • GAZ • FIAT • FUSO • GOLAZ • HINO • Iveco • Isuzu • KAVZ • LIAZ • MAN • Mercedes-Benz • Nissan • PAZ • Peugeot • Renault • Scania • Setra Buses • Ural • Volkswagen • Volvo.

КОМИТЕТ ПРОИЗВОДИТЕЛЕЙ ДОРОЖНО-СТРОИТЕЛЬНОЙ И СПЕЦТЕХНИКИ

Председатель:
Андрей Комов, Volvo CE Russia

Координатор комитета:
Аскер Нахушев

Комитет производителей дорожно-строительной и спецтехники начал свою работу в феврале 2008 года. Главная цель создания Комитета состояла в организации форума, где представители индустрии могли бы обсуждать общие проблемы и предпринимать совместные действия по вопросам, представляющим общий интерес для компаний, работающих в Российской Федерации.

Деятельность Комитета осуществляется по следующим направлениям:

- обмен статистическими данными по продажам оборудования клиентам по всей России. Статистическую информацию можно получить и у других торговых организаций, но она не отражает разбивку продаж по географическим регионам или отраслям;
- обсуждение и координация действий по вопросу организации национальной выставки оборудования;
- интенсификация взаимодействия и налаживание бесперебойного канала связи с государственными органами Российской Федерации по следующим вопросам:
  - разработка технических стандартов и норм безопасности;
  - импортные пошлины, таможенное регулирование и введение утилизационного сбора;
  - выработка критериев локализации производства.

ОБЗОР РЫНКА

Пандемия в 2020 году конечно же не могла не отразиться и на рынке дорожно-строительной техники. Жесткие ограничительные меры на время парализовали бизнес многих наших клиентов. Даже предприятия непрерывного цикла (которые не могли останавливаться), ввиду обязательного карантина, не могли вовремя получить техническое обслуживание техники. Однако с наступлением активного дорожно-строительного сезона и постепенного снятия ограничений ситуация стала выправляться и к середине/концу лета охарактеризовалась привычными темпами работы наших клиентов. Но в настоящий момент на сохранение положительной динамики на оставшуюся часть года вряд ли можно надеяться, ввиду целого ряда негативных факторов:

- ослабление рубля и в связи с этим потенциальный рост цен на дорожно-строительную технику и запасные части;
- сезонный всплеск заболеваемости, что может привести к повторному вводу ограничений;
- окончание дорожно-строительного сезона и спад активности.

Также, по имеющейся информации, начались обсуждения увеличения ставок утилизационного сбора на дорожно-строительную технику. Эта мера окажет губительное воздействие на рынок в текущей ситуации.

СТАТИСТИКА

ПРОБЛЕМА

Статистика розничных продаж является, пожалуй, одним из самых важных типов данных для всех производителей дорожно-строительной и спецтехники. Статистическая программа Комитета была запущена в 2008 году и доказала свою эффективность. В настоящее время программа распространяется на следующие виды техники: экскаваторы-погрузчики, погрузчики с бортовым поворотом, гусеничные погрузчики, колесные погрузчики, гусеничные бульдозеры, гусеничные экскаваторы, колесные экскаваторы, самосвалы с жесткой рамой, шарнирно-сочлененные самосвалы, автогрейдеры, трубоукладчики. С января 2013 года были добавлены телескопические погрузчики, гусеничные мини-погрузчики, колесные бульдозеры. Уже сейчас по некоторым видам продукции в программе задействованы почти все участники российского рынка дорожно-строительной и спецтехники, что обуславливает очень высокую точность отчетов. Ожидается, что благодаря росту участников программы удастся получать точные результаты для всех видов продукции.

Ежемесячные отчеты, доступные участникам программы, помогают определить объем и тенденции рынка, профили клиентов, оценить эффективность продвижения на рынке основной линии продукции, а также эффективность внедрения новых продуктов, в том числе и на региональном уровне. Важно отметить, что для Комитета одним из основных приоритетов является конфиденциальность данных. Участники получают только агрегированные данные; данные отдельных компаний не разглашаются. Форма отчетов была разработа-

на с учетом пожеланий участников. Отчеты составляются на уровне федеральных округов (основной отчетный уровень) и административных регионов (по желанию) Российской Федерации, что делает программу уникальной. Стоит также отметить, что с января 2014 года Комитет также начал работать с отчетностью по Казахстану: девять компаний уже предоставляют отчетность, другие компании, как ожидается, присоединятся в ближайшее время.

Статистические данные – единственный источник подобной информации, доступный для участников российского рынка дорожно-строительной и спецтехники. Детализация отчетов установлена на уровне типоразмера техники в соответствии со стандартами Межконтинентального статистического комитета (ISC), что позволяет легко осуществить интеграцию программы Комитета в международные статистические программы. С сентября 2016 года Комитет принял решение публиковать пресс-релизы по продажам новой техники.

РЕКОМЕНДАЦИИ

Члены Комитета убеждены, что необходимо продолжать развитие программы, как увеличивая число участников, так и повышая детализацию отчетности, что позволит сделать предоставляемую в рамках программы статистику продаж более точной и подробной.

ЛОКАЛИЗАЦИЯ

ПРОБЛЕМА

17 июля 2015 года было принято Постановление Правительства Российской Федерации № 719 «Об утверждении критериев отнесения промышленной продукции к промышленной продукции, не имеющей аналогов, производимых на территории Российской Федерации, а также критериев отнесения промышленной продукции к товару, произведенному на территории Российской Федерации».

Постановление должно было позволить иностранным компаниям, инвестирующим в местное производство, получить статус местного производителя. Получение статуса российского производителя особенно важно для компаний, которые уже сделали значительные инвестиции в развитие производственных мощностей в России. В Постановлении № 719 в основу оценки статуса российского производителя был положен перечень условий, а также производственных и технологических операций, выполняемых в Российской Федерации при производстве продукции.

Комитет принял активное участие в обсуждении проекта Постановления и представил свои замечания и дополнения. К сожалению, мы вынуждены констатировать, что предложения экспертов Комитета в подавляющем большинстве не были учтены при доработке проекта Постановления. Напротив, критерии были переработаны таким образом, что в них включили требования, которые не были предметом общественного обсуждения на этапе разработки документа.

Так, в Постановлении были установлены крайне жесткие сроки, недостижимые для предприятий, развивающих собственное производство в России. Требование освоить за четыре года такие сложные технологические операции, как производство двигателя и трансмиссии, автоматически лишает статуса «Сделано в России» после 2020 года даже тех производителей, которые на сегодняшний день всем остальным требованиям соответствуют.

Мы также полагали, что Правительство будет еще больше ужесточать требования по соответствию критериям данного Постановления и, к сожалению, наши опасения полностью подтвердились. 17 января 2017 года вышло Постановление Правительства № 17 «О внесении изменений в Постановление № 719». В этом Постановлении был дополнительно введен ряд обязательных технологических операций, которые иностранные инвесторы, в силу экономической целесообразности, не планировали осуществлять на своих российских предприятиях, например, производство кабин экскаваторов.

Также в Постановлении присутствуют технологические операции, вообще не имеющие никакого отношения к тому или иному виду техники. Однако на все предложения совместно проанализировать и пересмотреть такие спорные позиции Постановления № 719 Минпромторг стабильно отвечает отказом.

Дополнительным фактором, мешающим локализации, является нарушение Минпромторгом своих же обязательств по разработке детализации технологических операций перечисленных в Постановлении № 719. В результате этого технологические операции, внедряемые производителями в рамках своего видения процесса, отвергаются Минпромторгом, однако ничего не предлагается в качестве альтернативы.

Таким образом, перед иностранными производителями-инвесторами был поставлен практически непреодолимый барьер на пути получения статуса отечественного производителя, а так называемые отечественные производители, использующие устаревшие технологии и не инвестирующие в модернизацию производства, в результате вмешательства административного ресурса получили огромные конкурентные преимущества перед современными предприятиями иностранных инвесторов, что фактически приводит к вытеснению последних с российского рынка совсем нерыночными методами.

В качестве конкурентных преимуществ можно отметить компенсацию регулярно и необоснованно увеличивающегося утилизационного сбора, компенсацию лизинговых платежей, а также запрет закупок для государственных и муниципальных нужд, что получило дальнейшее развитие в Постановлениях Правительства № 616 и 617 от 30.04.2020 г. В отно-

шении запрета закупок складывается порой «анекдотическая» ситуация, когда муниципальные власти не имеют возможности закупать продукцию предприятия, на котором работают сотни граждан муниципального образования, студенты местных образовательных учреждений проходят практику в цехах предприятия, и налоги которого поступают в местный бюджет. В результате воздействия такого административного ресурса государственные и муниципальные предприятия вынуждены подчас покупать продукцию низшего качества, без соответствующего сервисного обслуживания и по завышенным ценам.

РЕКОМЕНДАЦИИ

Комитет продолжит работу с Министерством промышленности и торговли Российской Федерации по внесению поправок в Постановление № 719 «Об утверждении критериев отнесения промышленной продукции к промышленной продукции, не имеющей аналогов, производимых на территории Российской Федерации, а также критериев отнесения промышленной продукции к товару, произведенному на территории Российской Федерации» и защите интересов иностранных инвесторов.

ЧЛЕНЫ КОМИТЕТА

Atlas Copco • Caterpillar Eurasia • CNH Industrial Russia • Doosan Infracore Co. Representative Office in Russia • Hitachi Construction Machinery Eurasia • HYUNDAI CONSTRUCTION EQUIPMENT Co. • JCB Russia • John Deere Rus • Komatsu CIS • LIEBHERR-RUSSLAND • Ponsse • Volvo Vostok • Wirtgen-International-Service.

КОМИТЕТ ПО СТРОИТЕЛЬСТВУ И ПРОИЗВОДСТУ СТРОИТЕЛЬНЫХ МАТЕРИАЛОВ

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РАСПРОСТРАНЕНИИ ПРОГРАММЫ ЛЬГОТНОГО ИПОТЕЧНОГО КРЕДИТОВАНИЯ НА СТРОИТЕЛЬСТВО (ПОКУПКУ) ИНДИВИДУАЛЬНЫХ ДОМОВ

ПРОБЛЕМА

Правительство Российской Федерации утвердило постановление от 23 апреля 2020 г. № 566 «Об утверждении Правил возмещения кредитным и иным организациям недополученных доходов по жилищным (ипотечным) кредитам (займам), выданным гражданам Российской Федерации в 2020 году», которым установлено что гражданам представляются льготные ипотечные кредиты по ставке 6,5%.

До 1 ноября 2020 года программа льготного кредитования распространяется на жилищные займы до 8 млн рублей в Москве и Подмосковье, Санкт-Петербурге и Ленинградской области. В других регионах лимит по объему кредитов не должен превышать 3 млн рублей. Минимальный взнос составит 20%, ставка не выше 6,5% сохранится на весь срок кредита. Разницу между льготной и рыночной ипотечными ставками банкам возместит государство.

Возмещать деньги будут по кредитам, выданным для покупки жилых помещений у юридических лиц на этапе строительства. Кроме того, льготная ипотечная ставка распространяется на приобретение квартир у застройщиков по договорам купли-продажи в многоквартирных домах и домах блокированной застройки, созданных с привлечением денег дольщиков.

Льготная ипотечная программа поможет обеспечить выдачу до 250 тысяч кредитов на покупку жилья, а также поможет дополнительно привлечь в сферу жилищного строительства как минимум 900 млрд рублей.

Между тем, большое количество (66 % по результатам опроса ВЦИОМ) граждан Российской Федерации хотели бы жить в частном доме и только 24% – в многоквартирных домах.

На данный момент льготная ипотечная программа распространяется только в отношении приобретения жилья в многоквартирных домах и не учитывает интересы граждан, которые хотят приобрести жилье в сегменте индивидуального жилищного строительства.

РЕКОМЕНДАЦИИ

Распространить льготные условия по жилищным (ипотечным) кредитам (займам) в размере 6,5% и на покупку объектов нового индивидуального жилищного строительства, а также на строительные подряды по приобретению земельных участков и создание на них объектов индивидуального жилищного строительства для одной семьи.

При сохранении размера жилищных займов в 8 и 3 млн рублей это позволит значительно расширить количество потенциальных получателей подобных кредитов, что особенно важно для восстановления экономики Российской Федерации в условиях распространения коронавирусной инфекции. Указанное расширение программы станет хорошим подспорьем для граждан, нуждающихся в улучшении жилищных условий, и позволит дополнительно привлечь в сферу жилищного строительства более двух триллионов рублей и будет способствовать развитию рынка отечественных качественных строительных материалов и рынка строительных услуг на всей территории страны.

ПРИМЕНЕНИЕ ПЕРЕДОВЫХ СТРОИТЕЛЬНЫХ ТЕХНОЛОГИЙ И МАТЕРИАЛОВ ДЛЯ РАЗВИТИЯ ДОРОЖНОЙ ИНФРАСТРУКТУРЫ РОССИИ

ПРОБЛЕМА

Развитие безопасных и качественных автомобильных дорог с применением новых технологий и материалов, а также контрактов жизненного цикла – одна из ключевых задач, поставленных майским указом Президента Российской Федерации. Решение этой задачи напрямую связано с повышением срока службы дорожных одежд и покрытий автомобильных дорог, сокращением эксплуатационных затрат при возрастающем воздействии транспортных нагрузок. Постановлением Правительства Российской Федерации № 658 от 30 мая 2017 г. нормативные межремонтные сроки автомобильных дорог должны быть увеличены практически вдвое: до капитального ремонта – 24 года, ремонта – 12 лет. В зарубежной практике срок службы дорожных одежд рассчитывают уже на 30-50 лет.

Как показывает мировой опыт, повышение срока службы дорожных одежд и покрытий, а главное, снижение эксплуата-

ционных издержек в период эксплуатации дорог возможно только при условии широкого внедрения при строительстве и реконструкции дорог современных технологий устройства бетонных покрытий и оснований дорожных одежд.

Экономические расчеты и международная практика показывают, что стоимость строительства дорожных одежд с цементобетонными покрытиями и слоями из асфальтобетона сегодня примерно равна. Однако срок службы цементобетонных дорог минимум в два раза выше, а эксплуатационные расходы значительно ниже и в первые 12 лет эксплуатации приближаются к нулю. С учетом приведенных затрат в течение жизненного цикла цементобетонные покрытия дешевле по сравнению с асфальтобетонными покрытиями на 40-50 %. Значительно сократить расходы при строительстве и реконструкции дорог позволяет и широкое применение местных дорожно-строительных материалов, укрепленных цементными вяжущими.

Целесообразность строительства автомобильных дорог с цементобетонным покрытием была отмечена в Стратегии развития промышленности строительных материалов на период до 2020 года и дальнейшую перспективу до 2030 года, принятой Распоряжением Правительства Российской Федерации от 10 мая 2016 г. № 868-р. Стратегия предусматривает планомерное повышение доли ввода в эксплуатацию автомобильных дорог с цементобетонным покрытием в общем объеме строительства автомобильных дорог в России.

Считаем необходимым рассмотреть вопрос о развертывании в России строительства, реконструкции и ремонта автомобильных дорог с применением дорожного цементобетона на основе передовых технологий, позволяющих в значительной степени сократить эксплуатационные затраты и не менее чем в два раза увеличить сроки службы автомобильных дорог.

РЕКОМЕНДАЦИИ

- Провести анализ выполнения Распоряжения Правительства Российской Федерации от 10 мая 2016 г. № 868-р и Распоряжения Правительства Российской Федерации от 6 апреля 2017 г. № 630 в части, касающейся строительства цементобетонных покрытий автомобильных дорог.
- Постановлением Правительства Российской Федерации предусмотреть планомерное повышение доли строительства автомобильных дорог с цементобетонными покрытиями.
- Подготовить Распоряжение Правительства Российской Федерации об обязательном предоставлении проектными организациями в Главгосэкспертизу экономического сравнения вариантов конструкций жестких и нежестких дорожных одежд при проектировании автомобильных дорог, городских улиц и дорог с учетом эксплуатационных затрат в рамках жизненного цикла объекта с целью назначения более эффективных конструкций.
- Разработать пакет нормативно-технических документов, обеспечивающих качественное строительство цементобетонных покрытий и оснований автомобильных дорог с применением современных технологий. На протяжении последних 30 лет такие документы не разрабатывались и не актуализировались.
- По каждому федеральному округу разработать программы по строительству и реконструкции автомобильных дорог с применением дорожного цементобетона в основаниях и покрытиях дорог с целью значительного сокращения дальнейшем затрат на ремонт и содержание, а также продления жизненного цикла дорог.
- Разработать программу по реконструкции улиц и дорог городских агломераций с применением дорожного цементобетона в покрытиях и основаниях дорожных одежд, особенно в местах остановок общественного транспорта, местах разгона-торможения, кольцевых автомагистралей.
- Разработать программу создания отечественных комплектов машин по строительству цементобетонных покрытий.

ПОЖАРНАЯ БЕЗОПАСНОСТЬ В ТОРГОВЫХ ЦЕНТРАХ

ПРОБЛЕМА

Торгово-развлекательные центры (ТРЦ) являются сложными объектами, в состав которых входят помещения различного назначения, предусматривающие высокую концентрацию людей. Различное назначение помещений подразумевает разную степень их пожарной опасности, что отражено в требованиях к этим помещениям.

Здание таким образом разбивается на пожарные отсеки, относящиеся к разным классам функциональной пожарной опасности. Каждый пожарный отсек нормируется по степеням огнестойкости, классам конструктивной и функциональной пожарной опасности. Пожарные отсеки должны отделяться друг от друга стеной с высоким (2,5 часа) пределом огнестойкости.

При выполнении этого требования вероятность того, что пожар и продукты горения перекинутся из одного пожарного отсека в другой до того, как оттуда эвакуируются люди, высока.

Ситуация же, когда происходит возгорание наружных ограждающих конструкций, менее предсказуемая. Дым, а значит и продукты горения, могут распространяться не только внутри одного пожарного отсека, но и по всему зданию. Мировой опыт пожаров свидетельствует о том, что пожар снаружи зачастую трансформируется в пожар внутри здания.

Для большего количества людей, приходящих в торгово-развлекательные центры, планировка здания малознакома, так как посещение ТРЦ, как правило, не является ежедневным мероприятием. Поэтому эвакуация из помещения в случае экстренной ситуации будет сопряжена с поиском аварийных выходов, который может осложняться паникой. При этом среди посетителей ТРЦ всегда есть граждане, для которых быстрое перемещение вызовет затруднения (пожилые люди, дети, маломобильные граждане).

Возможное задымление помещения только осложнит этот поиск, а токсичные продукты горения, которые могут быть в составе дыма от горящих конструкций, если в их составе применены горючие материалы, приведут к отравлению продуктами горения и неспособности к эвакуации вплоть до летального исхода.

Пример. В документах, регламентирующих пожарную безопасность в Российской Федерации, существует требование применять лишь негорючие материалы в стенах зданий, относящихся к классу функциональной пожарной опасности Ф4.1. Это школы, внешкольные учебные заведения, средние специальные учебные заведения, профессионально-технические училища. То есть здания, в которых находятся дети. При этом дети посещают эти здания регулярно и прекрасно осведомлены, где находится вход и выход из этих зданий.

Печальный пример «Зимней Вишни» свидетельствует о том, что в ТРЦ также находятся дети (кинотеатры, игровые площадки, заведения общепита, магазины), но они не осведомлены о том, где расположен эвакуационный выход. Получается, что ТРЦ при пожаре представляет еще большую опасность, чем учебные заведения, поскольку при пожаре может иметь место распространение дыма и токсичных продуктов горения.

РЕКОМЕНДАЦИЯ

Законодательно установить для зданий ТРЦ требования по классу пожарной опасности К0 (непожароопасные) и горючести (НГ) материалов внешней облицовки, отделки и теплоизоляции ко всем наружным ограждающим конструкциям вновь возводимых объектов.

АКУСТИЧЕСКИЙ КОМФОРТ В ЖИЛЫХ И ОБЩЕСТВЕННЫХ ЗДАНИЯХ: СОВЕРШЕНСТВОВАНИЕ ТРЕБОВАНИЙ И УСИЛЕНИЕ КОНТРОЛЯ ИХ СОБЛЮДЕНИЯ

ПРОБЛЕМА

Видение текущей ситуации:

- Требования СП 51.13330-2011 «защита от шума» в многоквартирных домах не соблюдаются в 50% случаях в целом (новостройки и вторичное жилье). В новостройках ситуация еще хуже по исследованиям ГБУ ЦЭИИС.
- Введение выборочного контроля объектов малореально даже в Москве и Московской области.
- Ужесточение требований СП или введение новых требований к жилым домам маловероятно ввиду «регуляторной гильотины» (мнение НИИСФ).
- Застройщики не заинтересованы в изменении ситуации со звукоизоляцией.
- Потребители крайне плохо осведомлены в вопросах звукоизоляции.
- Существует неопределенность в трактовке отдельных положений СП 51… для жилых домов, сдающихся в стадии «white box».
- Вопрос акустики офисов тем не менее актуален и требует нормирования, особенно ввиду недавнего принятия в Европе единого стандарта по акустике офисов.

РЕКОМЕНДАЦИИ

- Подготовку предложений по изменению норм (в том числе методических указаний) в области акустики для жилых домов признать нецелесообразной.
- Компания СГ подала предложение в Национальный план стандартизации на 2021 год на разработку ГОСТ на акустику офисов. При одобрении предложения следует создать Рабочую группу для сбора лучших практик по акустике для создания стандарта, отвечающего как интересам потребителей, так и профессионалов строительной области.
- В рамках работы по продвижению акустики в многоквартирных жилых домах предлагается:
  - сосредоточиться на обучении потребителей в вопросах влияния шума на здоровье и благополучие;
  - продумать варианты юридической поддержки потребителей, получивших квартиры, не соответствующие требованиям Сводов правил.
- Для обеспечения п. 3 предлагается:
  - прояснить (у НИИСФ и других экспертов) разночтения/противоречия в СП 51…;
  - провести сравнительный анализ существующих конструктивных решений в области звукоизоляции с целью определения наиболее слабых/проблемных конструкций (и в дальнейшем стремиться донести до рынка необходимость постепенного отказа от подобных решений в пользу качественных звукоизоляционных конструкций);
  - разработать план коммуникации с конечными потребителями.

ОБУЧЕНИЕ СОВРЕМЕННЫМ СТРОИТЕЛЬНЫМ ТЕХНОЛОГИЯМ

ПРОБЛЕМА

Дефицит высококвалифицированных кадров, владеющих инновационными строительными технологиями, по-прежнему остается актуальной проблемой для строительной отрасли России. В связи с этим на протяжении многих лет ряд компаний собственными силами реализует масштабные образовательные проекты с участием образовательных организаций среднего профессионального, а также высшего образования и поддерживает целый спектр новых рабочих профессий.

По нашему мнению, модернизация строительного сектора России невозможна без целого комплекса мер, включающих учебно-методическую, материально-техническую и экспертную поддержку образовательной инфраструктуры в указанной сфере. Бизнес заинтересован в дальнейшем диалоге и

расширении социального партнерства с образованием в области подготовки и переподготовки кадров для строительства и архитектуры.

Такое партнерство выгодно как государству, для которого это – инвестиции в профессиональное и высшее образование и его инфраструктуру и, в конечном итоге, – в производительность и эффективность труда, так и бизнесу, поскольку строительная продукция, произведенная в соответствии с передовыми мировыми стандартами качества, требует ее профессионального применения. Только профессионально обученный, прошедший практическую подготовку специалист способен по достоинству оценить преимущества современных строительных технологий.

Вместе с тем, в настоящее время инвестиции в развитие учебной и технологической базы профессионального и высшего образования осуществляются бизнесом за счет собственной прибыли. Действующее налоговое законодательство Российской Федерации прямо не предусматривает возможность учета подобных расходов для целей налогообложения, в том числе расходы на поставку в образовательные учреждения строительных материалов для целей обучения, а также на выполнение работ и оказание услуг на безвозмездной основе.

Обращение АЕБ в Госдуму от 26 декабря 2012 года не дало никаких результатов в решении указанного вопроса.

РЕКОМЕНДАЦИЯ

Прямо закрепить в главе 25 «Налог на прибыль» Налогового кодекса Российской Федерации право бизнеса учитывать в составе расходов по налогу на прибыль расходы на социальное партнерство с учреждениями профессионального и высшего образования, в частности, расходы на обучение студентов среднего профессионального и высшего образования, профессиональную переподготовку и повышение квалификации преподавательского состава, предоставление материалов на нужды обучения и проведения различных мероприятий.

ОБ УСТАНОВЛЕНИИ ОБЯЗАТЕЛЬНОСТИ ЭКСПЕРТИЗЫ ПРОЕКТНОЙ ДОКУМЕНТАЦИИ ПРИ КАПИТАЛЬНОМ РЕМОНТЕ МНОГОКВАРТИРНОГО ДОМА

ПРОБЛЕМА

Статьей 48 Градостроительного кодекса Российской Федерации (далее – ГрК РФ) предусмотрена разработка проектной документации при капитальном ремонте объектов капитального строительства, в том числе многоквартирных домов.

Статьей 49 ГрК РФ предусмотрены государственная и негосударственная экспертизы проектной документации. При этом экспертиза проектной документации не проводится в отношении разделов проектной документации, подготовленных для проведения капитального ремонта объектов капитального строительства, в том числе многоквартирных домов.

В соответствии со статьей 174 Жилищного кодекса Российской Федерации (далее – ЖК РФ) средства фонда капитального ремонта могут использоваться для разработки проектной документации (в случае, если подготовка проектной документации необходима в соответствии с законодательством о градостроительной деятельности).

При этом оценка проектной документации не проводится, применяемые при ее разработке параметры могут не соответствовать требованиям Технического регламента о безопасности зданий, строений, сооружений (Федеральный закон от 29 декабря 2009 г. № 384-ФЗ) и требованиям нормативных правовых документов.

РЕКОМЕНДАЦИЯ

Внести изменения в статью 49 ГрК РФ и сделать обязательной государственную и (или) негосударственную экспертизу проектной документации при капитальном ремонте многоквартирных домов в случае, если подготовка проектной документации необходима в соответствии с законодательством о градостроительной деятельности.

ПРИМЕНЕНИЕ НАИЛУЧШИХ ДОСТУПНЫХ ТЕХНОЛОГИЙ В СФЕРЕ ОБРАЩЕНИЯ С ОТХОДАМИ. ВКЛЮЧЕНИЕ ПРЕДПРИЯТИЙ ЦЕМЕНТНОЙ ИНДУСТРИИ В КАЧЕСТВЕ ОБЪЕКТОВ ЭНЕРГЕТИЧЕСКОЙ УТИЛИЗАЦИИ В СИСТЕМУ ОБРАЩЕНИЯ С ОТХОДАМИ НА ФЕДЕРАЛЬНОМ И РЕГИОНАЛЬНОМ УРОВНЯХ

ПРОБЛЕМА

Цементная промышленность предлагает уникальную технологию по утилизации отходов в цементных печах, которая представляет собой замену части обычного топлива (газа, угля) на широкий спектр отходов, в том числе остатки сортировки ТКО. Наличие окислительной атмосферы и высоких температур в зоне сгорания в цементных печах обеспечивает безопасные условия полного уничтожения отходов. Отличительной особенностью процесса является отсутствие вторичных отходов – зольного остатка, который, вступая в химическую реакцию с сырьевой смесью для производства цемента, образует полупродукт – клинкер.

Использование отходов в качестве альтернативного топлива и сырьевых материалов на предприятиях цементной индустрии позволяет снизить негативное влияние на окружающую среду, включая сокращение выбросов CO2 и минимизацию использования природных ресурсов. Данная технология признана наилучшей доступной технологией (НДТ) в России и ЕС и широко применяется по всему миру.

На сегодняшний день в соответствии с иерархией управления отходами вышеуказанная технология является наилучшей доступной альтернативой как захоронению остатков сортировки

отходов на мусорных полигонах, так и сжиганию их на мусоросжигательных заводах.

Широкое применение технологии энергетической утилизации на цементных заводах позволит сделать существенный вклад в достижении цели нацпроекта «Экология» – направление 36% всего объема образованных ТКО на утилизацию к 2024 году.

РЕКОМЕНДАЦИИ

- Субъектам Федерации включить цементные заводы в качестве объектов энергетической утилизации в территориальные схемы обращения с отходами.
- Разработать систему регуляторных и экономических мер, направленных на стимулирование реализации на предприятиях цементной индустрии инвестиционных проектов по энергетической утилизации отходов:
  - рекомендовать субъектам Федерации осуществление утилизации на цементных заводах остатков сортировки ТКО как наилучшей доступной технологии «энергетической утилизации» в качестве приоритета по сравнению с использованием полигонов захоронения ТКО;
  - регламентировать порядок утверждения регулируемого «тарифа на энергетическую утилизацию» для возможности оплаты региональными операторами данной услуги цементным предприятиям в пределах данного тарифа;
  - включить в программы, направленные на реализацию федерального проекта «Комплексная система обращения с ТКО», в том числе в региональные программы в области обращения с отходами, мероприятия по стимулированию реализации на цементных заводах инвестиционных проектов по созданию мощностей энергетической утилизации отходов, включая субсидирование части затрат на строительство цехов альтернативного топлива;
  - предусмотреть субсидирование стоимости перевозки остатков сортировки ТКО для утилизации на цементном заводе от объекта обработки (сортировки) до объекта утилизации.
- Устранить пробелы в нормативной базе, в частности:
  - принять во внимание при разработке нормативно-правовой и нормативно-технической документации особенности утилизации отходов на цементных заводах;
  - разработать и утвердить методику нормирования выбросов при утилизации отходов и использовании альтернативного топлива на цементных заводах;
  - принять подзаконные акты по реализации указанной НДТ в части получения нормативов предельно-допустимых выбросов (ПДВ), нормативов образования отходов и лимитов на их размещение (НООЛР), а также комплексного экологического разрешения (КЭР).
- Разработать и внедрить комплекс мер, направленных на повышение качества сортировки ТКО. Это позволит снизить стоимость утилизации и, в конечном итоге, финансовую нагрузку на население. Также необходимо предусмотреть меры, направленные на поддержку проектов реконструкции и строительства объектов сортировки ТКО, предусматривающих подготовку отходов, соответствующих требованиям цементных заводов-утилизаторов.

ЧЛЕНЫ КОМИТЕТА

AGC Glass Europe • Ariston Thermo Rus • BASF • BAYER • Dow Europe GmbH Representation office • Guardian Glass • HeidelbergCement Rus • Henkel Rus OOO • Knauf Group CIS (OOO Knauf Gips) • LafargeHolcim • Legrand LLC • LLC "Bekaert Lipetsk" • ROCA • ROCKWOOL • Saint-Gobain • Siemens LLC • SLK Cement Limited Liability Company • Tikkurila • Wienerberger • YIT.

КОМИТЕТ ПРОИЗВОДИТЕЛЕЙ СРЕДСТВ ЗАЩИТЫ РАСТЕНИЙ

Председатель:
Ханс Бестман, ADAMA

Заместитель председателя:
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Комитет производителей средств защиты растений (СЗР), созданный в 2004 году как Подкомитет, получил статус Комитета в соответствии с решением Правления АЕБ в сентябре 2011 года. В настоящее время он объединяет 6 ведущих международных компаний, представляющих на российском рынке мировые инновационные технологические разработки в области защиты растений.

Цель Комитета – формирование консолидированной позиции компаний-членов по ключевым вопросам развития индустрии и продвижение общих интересов через взаимодействие с органами государственной власти, общественными организациями, отраслевыми союзами и ассоциациями.

Структурно Комитет представлен 4 Рабочими группами, которые объединяют различных специалистов, номинированных компаниями для осуществления деятельности и поиска оптимальных решений по следующим основным направлениям:
- регистрация и регулирование;
- сбор и утилизация использованной тары из-под СЗР;
- противодействие контрафактной продукции;
- коммуникации и информационная поддержка.

Последние 2 Рабочие группы являются межкомитетскими и объединяют специалистов компаний-членов двух Комитетов – производителей СЗР и производителей семян. С 2013 года осуществляется сбор статистических данных по динамике рынка СЗР совместно с российскими компаниями на основе принципа BlackBox.

ВВЕДЕНИЕ

По данным компании Kleffmann Group (Kynetec), мировой рынок СЗР в 2019 году вырос по сравнению с 2018 годом незначительно, на 0,7 % до 55,6 млрд долл. США. Прогнозируется сохранение этой тенденции в ближайшие годы.

Лидерство по продажам продолжают удерживать Азия и Латинская Америка, в частности рынок СЗР Бразилии остается самым крупным в мире. Продажи в Северной и Западной Европе сокращаются, что связано с увеличением числа действующих веществ пестицидов, попадающих под запрет использования.

Российский рынок СЗР, составивший в 2019 году 2,081 млрд долл. США или около 134,724 млрд руб. (по средневзвешенному обменному курсу года), вышел на 7 место в мире и на первое место в Европе. Он представляет один из самых быстроразвивающихся рынков СЗР в мире со средним приростом 12,5% за последние 10 лет. Наблюдается рост продаж инсектицидов (в частности, для ярового рапса) и фунгицидов. Продажи гербицидов сократились, что связано с введением в 2019 году антидемпинговых пошлин на ввоз гербицидов из Европейского союза сроком на 5 лет. Объемы продаж препаратов международных и российских компаний остаются практически в равных долях.

Слияния компаний изменили отрасль. Органы государственной власти во всем мире стараются сбалансировать ситуацию с целью выравнивания условий для развития конкуренции.

ВЛИЯНИЕ ЕВРОПЕЙСКИХ ТЕНДЕНЦИЙ В СФЕРЕ СЗР НА СЕЛЬСКОЕ ХОЗЯЙСТВО РОССИИ

ПРОБЛЕМА

Политизированный подход к обращению пестицидов в Европейском союзе привел к научно необоснованным ограничениям на использование ряда действующих веществ (ДВ) в Европе и, соответственно, к вопросу об их замене. Переоценка такого рода псевдоэкологических настроений негативно сказывается на сельском хозяйстве. После принятия в мае 2009 года более строгих правил – Регламента Европейской комиссии № 1107 – и в связи с растущим политическим и общественным давлением было отозвано с рынка более 50 ДВ. Регистрировать ДВ в ЕС на основе научных объективных исследований становится все сложнее. Арсенал препаратов для защиты урожая, которым располагают европейские фермеры, постоянно сокращается.

Компании-члены Комитета производителей СЗР серьезно обеспокоены негативными последствиями, которые могут возникнуть для сельского хозяйства России при условии следования описанным европейским тенденциям. Не следует допускать повторения соответствующего сценария в России, где роль сельского хозяйства в экономике и обеспечении продовольственной безопасности страны становится все более и более существенной.

Сегодня перед российским сельским хозяйством поставлены масштабные задачи как по сбору урожая, так и по удвоению экспорта сельскохозяйственной продукции к 2024 году до 45 млрд долл. США. Основным сельскохозяйственным экспортным товаром по-прежнему остается зерно. На него приходится треть всего вывоза в денежном выражении. Все последние годы поставки зерна за рубеж росли за счет увеличения урожаев при стабильном внутреннем потреблении.

Действующая в России нормативно-правовая база, регулирующая оборот СЗР, основана на принципах безопасности их использования для здоровья людей и окружающей среды. В ряде случаев требования к токсиколого-гигиенической и экологической оценке и классификации СЗР являются более строгими, чем в ЕС.

Следование европейским тенденциям и требованиям к СЗР вряд ли будет способствовать достижению российским сельским хозяйством поставленных целей и выполнению намеченных планов, но может оказать негативное влияние. Оценка СЗР с позиции их потенциальной опасности, ведущая к тому, что сельское хозяйство ЕС утрачивает все больше СЗР, вряд ли может удовлетворять интересы российской аграрной политики и способствовать достижению заявленных показателей продуктивности и развития экспортного потенциала.

РЕКОМЕНДАЦИИ

Компании-члены Комитета производителей СЗР и Российского Союза производителей химических средств защиты растений (далее – Союз ПХСЗР) нацелены на ведение постоянного конструктивного диалога с соответствующими органами государственной власти, научными институтами, отраслевыми союзами и ассоциациями для разъяснения негативных последствий при ориентации на отмеченные тенденции, получившие развитие в ЕС, принимая во внимание требования к обороту СЗР на территории Российской Федерации и задачи, поставленные перед российским сельским хозяйством. Проводятся рабочие встречи и переговоры с представителями Министерства сельского хозяйства, Федеральной службы по надзору в сфере защиты прав потребителей и благополучия человека (Роспотребнадзора), Федеральной службы по надзору в сфере природопользования (Росприроднадзора), Федерального научного центра гигиены им. Ф. Ф. Эрисмана и других организаций.

РЕГУЛИРОВАНИЕ ОБОРОТА СЗР В РОССИИ И ЕАЭС

Текущее состояние Федерального закона № 109-ФЗ от 19 июля 1997 г. «О безопасном обращении с пестицидами и агрохимикатами»

В 2020 году были внесены принципиальные изменения, на продвижении которых были сосредоточены усилия Комитета в течение последних лет:

- Статья 12 дополнена частью шестой в следующей редакции: «Государственной регистрации не подлежат пестициды и агрохимикаты, не предназначенные для применения на территории Российской Федерации (реализуемые исключительно для вывоза из Российской Федерации)».

  Данное изменение, с одной стороны, стимулирует развитие экспорта, с другой стороны, способствует принятию международными компаниями решений о локализации производства и развитию собственных предприятий. Компании-члены Комитета производят на толлинговых линиях завода «Агрохимикат» в Кирово-Чепецке до 50% реализуемых на российском рынке препаратов и планируют довести местное производство до 70-80% к 2023 году. Компания «ЭфЭм-Си» уже располагает собственным заводом в Республике Чувашия, компании Bayer и Syngenta начали строительство заводов на территории ОЭЗ «Липецк».

- Статья 10 «Экспертиза результатов регистрационных испытаний пестицидов и агрохимикатов» изложена в новой редакции. В частности, вводится положение о том, что «государственная экологическая экспертиза проекта технической документации на пестицид или агрохимикат и санитарно-эпидемиологическая экспертиза проводятся одновременно».

  Данное изменение способствует оптимизации процедуры государственной регистрации СЗР.

ТЕКУЩЕЕ СОСТОЯНИЕ ТЕХНИЧЕСКОГО РЕГЛАМЕНТА ЕАЭС «О БЕЗОПАСНОСТИ ХИМИЧЕСКОЙ ПРОДУКЦИИ»

ПРОБЛЕМА

Технический Регламент ЕАЭС «О безопасности химической продукции» 041/2017 (далее – ТР) был принят 3 марта 2017 г. решением Совета ЕЭК № 19 и вступает в силу 2 июня 2021 г. В Российской Федерации уполномоченным органом, отвечающим за реализацию положений ТР, является Министерство промышленности и торговли.

Действие ТР не распространяется на препаративные формы пестицидов и связанные с ними процессы их производства, хранения, перевозки (транспортирования), реализации и утилизации (переработки).

До дня вступления в силу технического регламента ЕАЭС, устанавливающего требования к препаративным формам пестицидов и связанным с ними процессами их производства, хранения, перевозки (транспортирования), реализации и утилизации (переработки), действуют положения актов органов ЕАЭС или законодательство государств-членов ЕАЭС. Соответственно, ТР распространяется на ДВ и компоненты для производства пестицидов.

В Российской Федерации действует утвержденная процедура государственной регистрации СЗР, предусматривающая исчерпывающие токсиколого-гигиеническую, экологическую

и биологическую экспертизы, оценку степени их опасности, нормирование и детальную регламентацию. Все компоненты, входящие в состав препарата, в том числе ДВ и сама препаративная форма, тщательно изучаются и оцениваются. Государственная функция по осуществлению государственной регистрации пестицидов возложена на Министерство сельского хозяйства.

Таким образом, распространение ТР на ДВ пестицидов означает, что они будут проходить процедуры инвентаризации и нотификации, которые, по сути, дублируют требования к ДВ в рамках государственной регистрации пестицидов.

РЕКОМЕНДАЦИИ

Принимая во внимание, что в Российской Федерации уполномоченным органом, отвечающим за реализацию положений ТР, является Министерство промышленности и торговли, все изменения в текст ТР возможны по его инициативе через обращение в ЕЭК. Компании-члены Комитета производителей СЗР и Союза ПХСЗР ведут взаимодействие с Департаментом химико-технологического комплекса и биоинженерных технологий по разъяснению целесообразности исключения ДВ пестицидов из-под действия ТР. Дополнительной аргументацией является тот факт, что ДВ используется только для производства пестицидов. Если препаративные формы пестицидов исключены из ТР, то логичным представляется и исключение ДВ. Эта аргументация была изложена в совместном обращении двух ассоциаций к Руководителю Роспотребнадзора А. Ю. Поповой. Именно Роспотребнадзор в свое время инициировал исключение препаративных форм пестицидов из ТР.

ПРОТИВОДЕЙСТВИЕ КОНТРАФАКТНОЙ ПРОДУКЦИИ НА РОССИЙСКОМ РЫНКЕ СЗР

ПРОБЛЕМА

Оборот контрафактных пестицидов становится сегодня новой глобальной угрозой. По данным Организации по безопасности и сотрудничеству в Европе (ОБСЕ) 2015 года, доля контрафактной продукции на мировом рынке СЗР составляет 25%. По препаратам малой расфасовки она достигает 70%. По оценкам российских экспертов, доля контрафактных препаратов в отдельных регионах страны составляет 30%. Взяв за основу данные компании Kleffmann по объему российского рынка СЗР и оценку ОБСЕ, можно условно рассчитать экономический ущерб, наносимый государственному бюджету Российской Федерации продажей контрафактных пестицидов, – он превышает 400 млн долл. США.

Производство и распространение контрафактных СЗР представляет собой хорошо организованный нелегальный бизнес, контролируемый транснациональными криминальными структурами, вошедший в последние годы в десятку лидеров по уровню доходности. Нарушители весьма успешно копируют внешний вид препаратов и умело манипулируют стремлением хозяйств к экономии, поэтому случаи приобретения поддельных пестицидов становятся довольно частым явлением.

РЕКОМЕНДАЦИИ

Снизить уровень применения сельхозпроизводителями поддельных пестицидов невозможно без активной информационной кампании, которую члены Рабочей группы по противодействию контрафактной продукции проводят как своими силами (в рамках семинаров для агрономов и специалистов АПК, на веб-страницах своих компаний и т. п.), так и с привлечением СМИ.

По инициативе Комитета разработан и действует сайт защитиурожай.рф, нацеленный на информирование о текущем состоянии противодействия контрафактным СЗР, изменениях в законодательстве, эффективных мерах и позитивном российском и европейском опыте, новостях. Необходимо продвижение сайта через СМИ, открытые мероприятия и рабочие встречи с органами государственной власти, отраслевыми союзами и ассоциациями.

В качестве перспективной площадки для продвижения консолидированной позиции Комитета рассматривается Международный форум «Антиконтрафакт», на котором члены Рабочей группы регулярно выступают с презентациями с начала его проведения в 2012 году. Представители Комитета участвуют также в заседаниях Экспертного совета при Государственной комиссии по противодействию незаконному обороту промышленной продукции.

Предотвращение поступления контрафактных СЗР на российский рынок возможно только при условии объединения усилий органов государственной власти, производителей препаратов и общественных организаций. Для разработки оперативных мер реагирования в случаях обнаружения контрафактных СЗР ведется взаимодействие с 14 отделом (сельское хозяйство) Управления «П» (потребительские рынки) ГУЭБ и ПК (Главное управление экономической безопасности и противодействия коррупции) МВД России.

СБОР И УТИЛИЗАЦИЯ ИСПОЛЬЗОВАННОЙ ТАРЫ ИЗ-ПОД СЗР

ПРОБЛЕМА

Во всем мире производители пестицидов обеспечивают экологичность своей продукции на протяжении всего ее жизненного цикла – от исследования и разработки новых молекул до сбора и утилизации использованной тары. На сегодняшний день в мире существует более 40 устоявшихся систем по сбору и утилизации тары из-под пестицидов. В 25 странах, включая Российскую Федерацию, реализуются пилотные проекты, которые затем получают развитие и становятся полноценными системами.

В России одним из мотивирующих факторов создания системы по сбору и утилизации тары из-под пестицидов стало изменение федерального законодательства по обращению с отходами. 29 декабря 2014 года был принят Федеральный закон № 458, вносящий изменения в Федеральный закон № 89 «Об отходах производства и потребления». Введена новая статья 24.2, согласно которой производители/импортеры товаров обязаны обеспечивать утилизацию отходов от использования этих товаров, в соответствии с нормативами утилизации, установленными Правительством Российской Федерации. Предлагаются 2 варианта реализации расширенной ответственности производителя/импортера:

- уплата экологического сбора;
- выполнение нормативов утилизации самим производителем/импортером путем организации собственных объектов инфраструктуры по сбору, обработке, утилизации отходов или путем заключения договоров с оператором. Самостоятельное выполнение нормативов утилизации может осуществляться также через ассоциацию, которую могут создать производители/импортеры.

Будучи экологически ответственными компаниями, члены Комитета, объединив усилия с Союзом ПХСЗР, обеспечивают сбор и утилизацию полимерных канистр из-под пестицидов на основе мировых стандартов с 2013 года, то есть до внесения изменений в законодательство. Логичным развитием системы сбора и переработки канистр стало создание в июле 2016 года компании «ЭКОПОЛЕ», учредителями которой выступили АЕБ и Союз ПХСЗР. Деятельность компании нацелена на организацию процедуры сбора и переработки для всех заинтересованных компаний и обеспечение контроля выполнения всех требований по безопасному обращению с канистрами.

Благодаря совместным усилиям Комитета и Союза ПХСЗР были внесены изменения в СанПиН 1.2.2584-10 «Гигиенические требования к безопасности процессов испытаний, хранения, перевозки, реализации, применения, обезвреживания и утилизации пестицидов и агрохимикатов» с целью гармонизации положений Раздела XX «Требования безопасности при обезвреживании транспортных средств, аппаратуры, тары, помещений и спецодежды» с общемировыми принципами и стандартами и исключения содержащихся противоречий по обращению с использованной тарой, содержащих риски штрафных санкций со стороны надзорных органов.

Однако сельхозпроизводители пока далеко не всегда выполняют требования СанПиН 1.2.2584-10 и не промывают канистры в процессе обработки растений, что создает опасность как для здоровья людей, так и для окружающей среды. Более того, участились случаи продажи агрономами хозяйств использованных канистр частным компаниям, которые выдают себя за операторов по сбору и утилизации тары, хотя при этом не имеют ни лицензий на обращение с опасными отходами, ни договорных отношений с «ЭКОПОЛЕ». Данная ситуация несет явный риск повторного использования канистр для контрафактных препаратов.

С 01.09.2019 г. вступили в силу изменения в Кодекс Российской Федерации об административных правонарушениях. В частности, предусмотрены более строгие штрафы за несоблюдение санитарно-эпидемиологических требований при обращении с отходами производства и потребления, введенных ст. 6.35, что является, безусловно, позитивным моментом. Однако отсутствие надлежащего контроля за безопасным обращением с пестицидами (в 2011 году соответствующие полномочия Россельхознадзора были переданы Ропотребнадзору и Росприроднадзору) создает возможности для нарушения норм обращения с использованной тарой, которые используют несознательные сельхозпроизводители.

РЕКОМЕНДАЦИИ

Необходимой составляющей частью процесса обращения с тарой из-под пестицидов является обучение сельхозпроизводителей правильной промывке канистр, нацеленное на обеспечение экологической безопасности всего процесса. Комитет считает принципиально важным регулярное информирование сельхозпроизводителей через выступления на открытых мероприятиях компаний-членов и распространение печатной продукции, наглядно демонстрирующей процедуру правильной промывки канистр – кампанию, которая уже реализуется Рабочей группой по сбору и утилизации тары совместно с компанией «ЭКОПОЛЕ».

Еще один значимый фактор – информационно-административная поддержка со стороны органов государственной власти и (или) подведомственных им структур. В рамках Меморандума о сотрудничестве между АЕБ и Федеральным государственным бюджетным учреждением «Российский сельскохозяйственный центр» (Россельхозцентр) между представителями АЕБ и компании «ЭКОПОЛЕ» была достигнута договоренность о вовлечении филиалов Россельхозцентра в проведение информационно-разъяснительной кампании для сельхозпроизводителей.

Для предотвращения незаконной продажи канистр необходимо не только использовать информационные ресурсы, но и обеспечить регулярный эффективный контроль за оборотом пестицидов. Данный вопрос обсуждается на рабочих совещаниях в Минсельхозе, на ежегодной конференции «Пестициды». Пока органы государственной власти не проявляют должного внимания к проблеме, вероятно, не осознавая создаваемые ею риски для здоровья людей и окружающей среды. Объединяя усилия с Союзом ПХСЗР, Комитет считает целесообразным продолжить действия по привлечению внимания органов государственной власти к сложившейся проблемной ситуации и выработке путей ее устранения.

ЗАКЛЮЧЕНИЕ

Члены Комитета выражают свою готовность и заинтересованность в продолжении развития устойчивого сельского хозяйства в России, основывая свои инициативы на этом

ключевом принципе. Устойчивое сельское хозяйство – это продуктивный, конкурентоспособный и эффективный способ производства безопасной сельскохозяйственной продукции, нацеленный на защиту окружающей среды и улучшение социально-экономических условий жизни.

Усилия Комитета сосредоточены на развитии конструктивного взаимодействия с органами государственной власти, отраслевыми союзами и ассоциациями, общественными организациями для решения следующих ключевых вопросов отрасли:

- обеспечение равных условий ведения бизнеса на российском рынке для российских и международных компаний;
- оптимизация процесса государственной регистрации СЗР;
- формирование в России условий для проведения прикладных исследований в процессе разработки СЗР (до начала регистрационных испытаний) как необходимой основы для локализации производства;
- обеспечение эффективных мер противодействия контрафактной продукции на российском рынке СЗР;
- создание инфраструктуры для сбора и утилизации использованной тары из-под СЗР.

ЧЛЕНЫ КОМИТЕТА

ADAMA • BASF • Bayer • Corteva Agriscience • FMC • Syngenta.

КОМИТЕТ ПО ЭНЕРГЕТИКЕ

Председатель:
Эрнесто Ферленги, Eni S.p.A

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ВЗАИМОДЕЙСТВИЕ ЕС И РОССИИ

Сохраняющаяся политическая напряженность, нефтяной кризис весной 2020 года и пандемия COVID-19 оказали влияние на отношения между Россией и ЕС в области энергетики. Амбициозные климатические цели, поставленные Парижским соглашением, климатическими соглашениями стран ЕС и другими политическим документами, стимулируют стороны к поиску новаторских путей развития сотрудничества в энергетическом секторе.

Энергетическая трансформация набирает обороты в странах ЕС и в России. Недавно представленная Водородная стратегия ЕС и проект Стратегии низкоуглеродного развития Российской Федерации до 2050 года могут дать импульс развитию двусторонних отношений в области энергетики в будущем.

АЕБ убеждена, что конструктивный диалог с привлечением всех заинтересованных сторон будет содействовать достижению взаимовыгодных решений.

НЕФТЕГАЗОВЫЙ СЕКТОР

ПРОБЛЕМА

Растущий разрыв между добычей и потреблением газа, усугубляемый политической нестабильностью вокруг существующих и планируемых инфраструктурных проектов, создает неопределенность в вопросе стабильности поставок российского газа в ЕС. Диверсификация источников и маршрутов поставок, вопросы безопасности спроса и снабжения весьма значимы для обеспечения необходимых потребителям объемов газа.

РЕКОМЕНДАЦИИ

Очень важно продолжить диалог, нацеленный на достижение договоренностей о гарантиях непрерывности поставок газа европейским потребителям. Обязательства европейских компаний-участников проекта газопровода Nord Stream 2 подчеркивают его стратегическую значимость для газового рынка, который может выиграть за счет положительного влияния проекта на ценообразование.

ПРОБЛЕМА

Неясность в отношении роли газа в будущем энергетическом балансе Европы может негативно влиять как на крупные перспективные, так и на существующие проекты энергетической инфраструктуры. Растет обеспокоенность относительно углеродного следа от использования метана, что вызывает необходимость введения соответствующих строгих правил в Европе.

РЕКОМЕНДАЦИИ

В предстоящие годы природный газ останется важной частью энергобаланса ЕС, который, в свою очередь, будет значимым рынком для российского газа. Уже обеспечивая стабильное, безопасное и экономически доступное энергоснабжение, природный газ способствует внедрению инновационных решений для низкоуглеродной экономики в долгосрочной перспективе. Он может использоваться для производства водорода, широкое применение которого оставляет минимальный углеродный след. Существующая газотранспортная инфраструктура может быть адаптирована для трансграничной транспортировки водорода. Инновационные технологии способны уменьшить углеродный след от использования природного газа, а также обеспечить производство углеродно-нейтральных газов. Предлагается содействовать реализации совместных исследовательских программ в соответствующих областях.

ПРОБЛЕМА

Введение в ЕС трансграничного углеродного регулирования может существенно повлиять на российских экспортеров промышленных товаров.

РЕКОМЕНДАЦИИ

Поскольку стороны взаимозависимы в вопросах торговли и поставок энергоресурсов, важно поддерживать конструктивный диалог, направленный на достижение сбалансированного решения, учитывая цели «Зеленого курса» ЕС, а также интересы российских промышленных производителей. Ратифицировав Парижское соглашение, Россия продемонстрировала серьезное намерение сыграть свою роль в достижении целей климатической повестки. Изменение европейских правил наряду

с потенциальными проблемами для российской промышленности может стимулировать более быстрый переход предприятий к низкоуглеродной структуре потребления и ускоренный рост энергоэффективности мощностей.

ПРОБЛЕМА

Правительство Российской Федерации продолжило внедрение новой системы налогообложения для предприятий нефтегазовой промышленности, тестируя и совершенствуя новые налоговые режимы.

РЕКОМЕНДАЦИИ

Предсказуемость налогообложения в нефтегазовой отрасли, обеспечение налоговой стабильности для долгосрочных проектов и справедливое отношение ко всем инвесторам жизненно необходимы для успешной реализации крупных инвестиционных проектов.

ПРОБЛЕМА

Федеральный Закон «Об ограничении иностранных инвестиций в стратегические отрасли» и поправки в Закон «О недрах» содержат важную концепцию инвестиций в хозяйственные общества, владеющие лицензиями на месторождения федерального значения.

РЕКОМЕНДАЦИИ

Любая компания, ведущая геологическую разведку в соответствии с геологической лицензией, должна иметь гарантии на участие в разработке месторождения в случае открытия. Если открытие признается имеющим федеральное значение, необходимо принять новые правила и процедуры, устраняющие риск изъятия лицензии. Недропользователи должны иметь право приступать к разведочному и промысловому бурению на месторождении до завершения геологических изысканий.

ПРОБЛЕМА

Ограничения в отношении экспорта геологической информации препятствуют эффективной работе иностранных компаний и совместных предприятий в России.

РЕКОМЕНДАЦИИ

В целях стимулирования реализации совместных проектов необходимо внести изменения в действующую процедуру лицензирования экспорта несекретной геологической информации, полученной недропользователями в результате анализа и обработки исходной информации, а также разрешить вывоз геологических данных, не подпадающих под действие Указа Президента РФ № 1203 от 30.11.1995 г., которые не являются государственной тайной и были получены компаниями на законных основаниях и за их счет.

ВОДОРОД

ПРОБЛЕМА

Некоторые страны недавно приняли и начали реализовывать национальные водородные стратегии. Водородные стратегии стран ЕС могут повлиять на перспективы экспорта российского топлива в Европу.

РЕКОМЕНДАЦИИ

Только что подготовлен проект дорожной карты развития водородной энергетики в России в 2020–2024 гг. Благодаря огромному производственному потенциалу России и возросшему глобальному интересу к развитию водородной энергетики, это открывает новые возможности для российского энергетического сектора. Россия способна производить водород по конкурентоспособной цене. Развитие водородных проектов в России стимулируется близостью к наиболее перспективным экспортным рынкам и существующей экспортной инфраструктуре, которая также может быть использована для экспорта водорода.

СЕКТОР ЭЛЕКТРОЭНЕРГЕТИКИ

ПРОБЛЕМА

В настоящее время отсутствует эффективный механизм выбора и реализации замещающих мероприятий, обеспечивающих соблюдение баланса интересов всех участников рынка при выводе из эксплуатации объектов электроэнергетики.

Федеральный закон № 281-ФЗ «О выводе из эксплуатации объектов электроэнергетики», принятый 31 июля 2020 года, предусматривает определение Министерством энергетики замещающих мероприятий, а также проведение Системным оператором на конкурсной основе отбора мощности, необходимой для обеспечения вывода объекта электроэнергетики из эксплуатации. Однако закон предполагает подходы, которые не стимулируют собственников генерирующего оборудования к выводу из эксплуатации экономически неэффективных мощностей, возлагая на них дополнительные обязанности и риски некомпенсируемых затрат.

РЕКОМЕНДАЦИИ

При внесении изменений в подзаконные акты, обеспечивающие реализацию данного закона, необходимо предусмотреть создание надлежащих правовых условий и экономических стимулов для вывода из эксплуатации объектов электроэнергетики, а именно:

- Прозрачные условия проведения конкурса на замещающие мероприятия.
- В порядке вывода объектов электроэнергетики в ремонт и из эксплуатации указать, что объекты, вывод которых предусмотрен в Схеме и программе развития ЕЭС, могут быть выведены с даты, предусмотренной данной Схемой.

- Предельный срок, на который уполномоченный федеральный орган власти вправе приостановить вывод объекта из эксплуатации, не должен превышать 6 лет.
- Недискриминационные правила ценообразования для продолжения работы генерирующих объектов, вывод которых приостановлен по решению Минэнерго России, а также для сетевых компаний, которые в соответствии с принятым Законом взяли на себя обязательство по реализации замещающих мероприятий.

ПРОБЛЕМА

Постановлением Правительства РФ № 43 от 25.01.2019 г. были внесены изменения в Правила оптового рынка электрической энергии и мощности, что сформировало нормативную базу для проведения отборов проектов модернизации. Вместе с тем необходимо отметить, что действующие правила конкурсного отбора не позволяют компаниям при реализации проектов в полной мере использовать возможности перевода генерирующего оборудования из паросилового в высокоэффективный парогазовый цикл.

РЕКОМЕНДАЦИИ

Внести следующие изменения в Правила оптового рынка электроэнергии и мощности и Постановление Правительства РФ № 43 от 25.01.2019 г.:

- Уточнить значения параметров, используемых для расчета величин предельных капитальных затрат на реализацию проектов перехода на парогазовый цикл, в частности, рассмотреть увеличение повышающего коэффициента для расчета предельных максимальных капитальных затрат для соответствующих мероприятий по модернизации до 3,5.
- Смягчить требования по локализации, предъявляемые к оборудованию, используемому в проектах модернизации генерирующих объектов тепловых электростанций, при проведении конкурсных отборов на 2026–2029 годы.
- Исключить любые положения, дающие возможность необоснованных преференций по определенным проектам конкретных генерирующих компаний.

ПРОБЛЕМА

Проектами нормативных актов предусматривается установление для генерирующих объектов, функционирующих на основе возобновляемых источников энергии (ВИЭ) с вводом в эксплуатацию после 2024 года, обязательных требований по выполнению показателя экспорта промышленной продукции (основного и (или) вспомогательного оборудования), работ (услуг), а также применение штрафных механизмов за невыполнение данных требований по экспорту. Внедрение указанного механизма приведет к ситуации, при которой ответственность за экспорт энергетического оборудования будут нести генерирующие компании, реализующие инвестиционные проекты строительства электростанций на основе ВИЭ.

Указанные предложения существенно ограничат возможность участия генерирующих компаний в реализации инвестиционных проектов в сфере ВИЭ, а также в развитии данных технологий на территории России.

Вынужденная необходимость исполнения требований по экспорту оборудования приведет к необходимости перераспределения доступного инвестиционного ресурса международных инвесторов в пользу проектов на территории других стран.

РЕКОМЕНДАЦИИ

При утверждении нормативных актов, регламентирующих требования по локализации оборудования для ВИЭ после 2024 года использовать требования по экспорту в виде стимулирующего механизма, с исключением штрафов за невыполнение требований по экспорту.

ЧЛЕНЫ КОМИТЕТА

BP Russia • Chevron Neftegaz Inc. • Electricite de France • Enel Russia • Eni S.p.A • ENGIE • Equinor Russia AS • Fortum • Gasunie • MOL Plc • OMV • Repsol Exploracion S.A. • Shell E&P Services (RF) B.V. • Total E&P Russie • Uniper Global Commodities SE • Unipro • VNG AG.

КОМИТЕТ ПО ПИЩЕВОЙ ПРОМЫШЛЕННОСТИ

Председатель:
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СИСТЕМЫ ПРОСЛЕЖИВАЕМОСТИ

ЦЕЛЕСООБРАЗНОСТЬ СИСТЕМЫ ПРОСЛЕЖИВАЕМОСТИ

При внедрении прослеживаемости критична целесообразность в той или иной товарной категории. При вложении средств в прослеживаемость государство, бизнес и общество в целом должны получать значимые преимущества, которые нельзя получить менее затратным способом. Применительно к системам прослеживаемости такие преимущества могут быть в борьбе с контрафактом, нелегальным оборотом товаров и, в меньшей степени, в сфере потребительской безопасности (для обеспечения быстрого отзыва некачественной продукции). В случае контрафакта и нелегального оборота преимущество можно реализовать только тогда, когда товар реализуется в традиционных легальных каналах дистрибуции (прослеживаемость невозможно применить, например, при трансграничной торговле в сети Интернет или подпольных продажах). Другие преимущества, которые могла бы дать система прослеживаемости – прослеживание цепочки поставок, данные о поведении рынка товаров и т. д. – могут быть получены другими способами, без противоречий, ассоциирующихся с прослеживаемостью.

Внедрение прослеживаемости целесообразно:
- когда высока доля контрафакта и (или) нелегальной продукции в легальном канале дистрибуции;
- когда продукция относится к повышенной категории риска и прослеживаемость дает бизнес-операторам возможность быстрого отзыва.

В случае если ни одна из этих целей не будет достигнута за счет внедрения прослеживаемости, внедрять ее для данной категории товаров не имеет смысла.

ДУБЛИРОВАНИЕ СИСТЕМ ПРОСЛЕЖИВАЕМОСТИ

Разнообразие систем прослеживаемости может быть оправдано особенностями товаров и рынков, к которым они применяются, однако компании-члены АЕБ последовательно придерживаются той позиции, что для одной товарной категории должна действовать только одна система, тем более в случае, если ее внедрение связано с затратами бизнеса. Этот принцип был заложен в проекте «Концепции создания и функционирования в Российской Федерации системы маркировки товаров средствами идентификации и прослеживаемости движения товаров», однако в текст принятого нормативно-правового акта (распоряжения Правительства № 2963 от 28.12.2018 г.) не был включен. Сегодня на рынке имеет место прецедент, когда для молочной продукции две системы были введены одновременно: добровольная маркировка объявлена с 15 июля 2019 года, обязательная – планируется с середины 2020 года. Параллельно с 1 июля 2019 года молочная продукция включена в ветеринарную систему прослеживаемости ФГИС «Меркурий». Поставленная Правительством задача по интеграции систем в настоящее время решается через механизм расширения и дублирования операций в обеих системах, что на практике означает две разрешительные системы, от которых бизнес должен получать подтверждение права на каждую операцию с продуктом, двойной государственный контроль и административную ответственность.

Данный подход не отвечает принципам сокращения дублирования нормативных требований, заложенным в основу текущей реформы контрольно-надзорной деятельности, и приведет к дополнительному обременению бизнеса.

РЕКОМЕНДАЦИИ

Обеспечить внедрение и применение принципа использования не более одной системы прослеживаемости для одной категории товаров, в частности, через внесение изменений в проект Федерального закона «О маркировке товаров контрольными (идентификационными) знаками в Российской Федерации».

Затраты на внедрение системы маркировки контрольными идентификационными знаками

Согласно Росстату, объем производства продовольственных товаров оценивается в России в 198 млн тонн плюс 4,4 млрд условных банок (для категорий, измеряемых в упаковках). С учетом среднего количества упаковок в 1 кг (по группам товаров), только ежегодные затраты на закупку кодов (средств идентификации) оцениваются рынком в 163 млрд руб. Это сопоставимо с годовым уровнем продуктовой инфляции – около 3% от объема отгружаемых товаров.

Стоит отметить, что, в зависимости от товарной категории, рынки товаров повседневного спроса (англ. яз. – FMCG, fast-

moving consumer goods) существенно различаются уровнем технического обеспечения, что существенно влияет на стоимость внедрения и эксплуатации системы, но также не учитывается сегодня при принятии решений по маркировке. С учетом капитальных затрат, минимальная дополнительная нагрузка на себестоимость оценивается в 4%. Для тех отраслей, где уровень автоматизированного управления производством и складом достаточно низок (например, молочная промышленность), рост себестоимости составит – 8-10%.

Постановлением Правительства № 577 от 8 мая 2019 года размер оплаты национальному оператору за предоставление каждого кода маркировки определен в 50 коп. (за исключением жизненно важных лекарственных препаратов стоимостью ниже 20 руб.). При этом дифференциация оплаты не предусмотрена ни в зависимости от стоимости или себестоимости товара, ни от массовости спроса и объема рынка, ни от размера упаковки. Таким образом, и для дорогостоящего парфюма, и для предметов одежды, и для пакета молока нагрузка на себестоимость товара составит 50 коп., при том что национальным оператором рынок изделий легкой промышленности оценивается в 3 млн шт., а молочных продуктов – в 23 млрд шт.

Основные статьи расходов для обеспечение штучной прослеживаемости на основе кодирования и трекинга каждой упаковки продукции для компаний-производителей и продавцов включают:

- капитальные вложения: оборудование для нанесения кодов при производстве товаров и переупаковке при перемещении; интеграционные IT-системы для обеспечения обмена информации с системой маркировки о перемещениях товаров;
- операционные расходы: закупка индивидуальных кодов маркировки;
- дооснащение оборудованием и программным обеспечением текущих операций и систем: переход на электронный документооборот при сделках между хозяйствующими субъектами, внедрение автоматизированного управления складами, изменение принципов доставки и формирования заказов.

РЕКОМЕНДАЦИИ

Обеспечить проведение финансово-экономического анализа обоснованности стоимости кодов маркировки и ее пересмотра с учетом его результатов, а также учет нагрузки на бизнес при принятии решений о введении маркировки.

ПРОБЛЕМА ОБОРОТА ОРГАНИЧЕСКОЙ ПРОДУКЦИИ В СВЯЗИ СО ВСТУПЛЕНИЕМ В СИЛУ ФЕДЕРАЛЬНОГО ЗАКОНА 280-ФЗ ОТ 03.08.2018 Г.

С 1 января 2020 года вступил в силу Федеральный закон Российской Федерации от 3.08.2018 г. № 280-ФЗ «Об органической продукции и внесении изменений в отдельные законодательные акты Российской Федерации» (далее – № 280-ФЗ), который регулирует отношения, связанные с производством, хранением, транспортировкой, маркировкой и реализацией органической продукции, предлагаемой российскому потребителю.

Закон ввел ряд требований к обороту органической продукции, а именно: на органическую продукцию предусматривается нанесение графического изображения (знака) установленного образца в совокупности со штриховым кодом, который позволял бы считать сведения о производителях органической продукции и видах производимой ими органической продукции через специально создаваемый Минсельхозом России единый государственный реестр производителей органической продукции. Законом запрещено использование на упаковке слова «органический» в любой форме и на любом языке. Отсутствует в нем и положения переходного периода. Международная система сертификации органической продукции № 280-ФЗ не признается.

До принятия национального органического регулирования более 80 российских производителей органической продукции и ее импортеров уже много лет обеспечивали российских потребителей такой продукцией, имеющей документарное подтверждения и маркировку в соответствии с международными органическими стандартами. Рынок такой продукции на 1 января 2020 года оценивается в несколько десятков млрд рублей.

Фактически, у производителей и импортеров органической продукции было всего 2 недели переходного периода, чтобы пройти национальную органическую сертификацию. Необходимые подзаконные акты были приняты только в середине декабря 2019 года и вступили в силу с 1 января 2020 года, а электронный реестр стал доступен для заполнения только в феврале 2020 года и лишь в отношении российских юридических лиц. На сегодняшний день в него внесены всего 41 производитель органической продукции, причем, 10 из них – производители алкогольной продукции. Порядка 80 заявок на прохождение сертификации зарегистрировано и ждут своей очереди, столько же находятся в ожидании регистрации. Более того, первые отечественные органы по сертификации органической продукции и сырья (далее – ОС) получили аккредитацию только в конце ноября 2019 года. На сегодняшний день на российском рынке зарегистрировано 4 таких ОС и лишь 2 из них могут осуществлять органическую сертификацию готовой продукции, возможности двух других ограничены сертификацией сельхозсырья. В общей сложности в этих ОС осуществляют профессиональную деятельность всего 10 экспертов и лишь 4 эксперта – с опытом в органической сертификации.

Эпидемия COVID-19 еще больше обострила ситуацию и практически полностью заморозила процесс сертификации, особенно для иностранных производителей, поскольку процесс сертификации предусматривает выездные инспекции в места ее произрастания и производства используемого сырья. Обширные запасы органической продукции в одночасье оказались вне закона, и несмотря на то, что Роспотребнадзор позже выпустил разъяснение, которое давало возможность продать эти запасы, оно не решило проблему на системном уровне. Ряд

российских производителей официально уведомили Министерство сельского хозяйства Российской Федерации о проблемах в прохождении российской органической сертификации своей продукции ввиду невозможности проведения таковой в части импортного сырья и ингредиентов, наличие которой требуют некоторые ОС.

Помимо вышесказанного так и не была решена техническая проблема по внесению в Российский реестр органической продукции иностранных производителей, которые априори не могут иметь таких сведений, как ОГРН, ИНН и ряд других, предусмотренных в принятом подзаконном акте. На основании этого, а также ввиду продолжающихся ограничений, связанных с пандемией, по межгосударственному перемещению, имеют место отказы в регистрации заявлений на прохождение сертификации.

По оценке экспертов, для адаптации к новым национальным требованиям требуется не менее полутора лет при условии наличия всех процедур, принятых в установленном порядке, аккредитации достаточного количества органов органической сертификации с необходимым штатом допущенных экспертов и при отсутствии ограничений на перемещения этих специалистов. Только в этом случае процесс может быть проведен без потрясений для бизнеса и без потери качества жизни российского потребителя.

В связи с вышеизложенным очевидно, что у производителей и импортеров органической продукции и сырья до настоящего времени отсутствует возможность исполнить требования Закона.

Несмотря на сложившиеся условия, Минсельхоз отказался рассматривать возможность введения моратория как на применение штрафных санкций за неизбежные нарушения при обращении органической продукции, так и на применение отдельных требований закона, не обеспеченных ни с правовой, ни с технической точек зрения. По вышеупомянутым причинам существующие пополняемые запасы органической продукции, стоимость которых оценивается в миллиарды рублей, в настоящее время находится вне рамок правового поля.

Отдельную обеспокоенность вызывает тот факт, что подобное регулирование, напрямую влияющее на маркировку продукции, принимается на национальном уровне, фактически становясь барьером в свободном перемещении такой продукции по территории ЕАЭС.

РЕКОМЕНДАЦИИ

- Внести в Закон изменения, предусматривающие законодательное разрешение обращения импортной органической продукции и сырья в сопровождении сертификатов международного образца на срок не менее чем до 31.12.2022 г.
- Предусмотреть трехлетний переходный период, в течение которого заинтересованные компании смогли бы пройти процедуру органической сертификации и перейти на новую маркировку, а уполномоченные органы – отладить работу единого реестра и наполнить его производителями органической продукции; при этом в течение переходного периода не запрещать обращение импортной органической продукции и сырья в сопровождении сертификатов международного образца.
- Принять меры по созданию конкурентной и профессиональной среды для обеспечения отечественной системы сертификации органической продукции достаточным количеством квалифицированных экспертов.

РИСКИ ДЛЯ ДОСТУПНОСТИ ПРОДУКТОВ ЛЕЧЕБНОГО И ДИЕТИЧЕСКОГО ПИТАНИЯ, ВОЗНИКШИЕ В СВЯЗИ С ИЗМЕНЕНИЯМИ В РЕШЕНИИ КОМИССИИ ТАМОЖЕННОГО СОЮЗА ОТ 18 ИЮНЯ 2010 Г. № 317 «О ПРИМЕНЕНИИ ВЕТЕРИНАРНО-САНИТАРНЫХ МЕР В ЕВРАЗИЙСКОМ ЭКОНОМИЧЕСКОМ СОЮЗЕ»

22 февраля 2019 года с принятием Решения Совета Евразийской экономической комиссии № 11 «О внесении изменений в Единый перечень товаров, подлежащих ветеринарному контролю», в перечень включены новые позиции (товары) с кодами ТН ВЭД ЕАЭС, а некоторые изложены в новой редакции.

В развитие данного Решения на правовом портале ЕАЭС в рамках процедуры оценки регулирующего воздействия опубликован проект изменений в Решение Комиссии Таможенного союза (КТС) № 317 «О внесении изменений в Единые ветеринарные (ветеринарно-санитарные) требования, предъявляемые к товарам, подлежащим ветеринарному контролю (надзору)» (см. https://docs.eaeunion.org/ria/ru-ru/0103315/ria_05022019, далее – Проект решения). Проект решения предлагает применять к новым товарам Перечня самые жесткие ветеринарные меры контроля: ветеринарный сертификат, оформление разрешения на ввоз и внесение изготовителей в «реестр предприятий третьих стран».

Изменения охватывают группы товаров из кодов ТН ВЭД ЕАЭС 1901 90 910 0, 1901 90 990 0, а также самым серьезным образом отразятся на поставках в Россию товаров групп 2106 (позиции ЕВСТ 81, 81(1), 81(2)), в которые входят пищевые продукты специализированного лечебного и специализированного профилактического питания, в том числе детского, а также большой ряд биологически активных добавок к пище. Доля импорта таких продуктов в страны ЕАЭС, в зависимости от категории, доходит до 90%. Также ограничения коснутся ингредиентов для их производства – витаминно-минеральных комплексов, ингредиентов с содержанием казеина, лактальбумина, высококонцентрированного сывороточного белка, химически чистой лактозы и т. д.

При этом большая часть перечисленных продуктов и ингредиентов вообще не содержит компонентов животного происхождения, относящихся к группе ТН ВЭД 04 (молочная продукция) либо к иной группе из раздела ТН ВЭД 1 (продукты животного

происхождения), и никогда не расценивались в пищевой промышленности как продукты ветеринарного риска. Более того, в рамках ЕАЭС данная продукция никогда не подпадала под меры ветеринарного контроля.

Согласно логике Проекта решения, на новое описание товаров не распространяется действующее сейчас исключение из сферы ветеринарного контроля готовой пищевой продукции, содержащей менее 50% сырья животного происхождения при поставках в Российскую Федерацию и Республику Казахстан. Эта норма не соответствует принятым странами обязательствам при вступлении в ВТО и закреплена в Решении КТС от 23.09.2011 г. № 810 «Об изъятии в применении ветеринарных мер в отношении товаров, включенных в Единый перечень товаров, подлежащих ветеринарному контролю (надзору)» (далее – РКТС № 810) и в Решении КТС от 18.06.2010 г. № 317 «О применении ветеринарно-санитарных мер в Евразийском экономическом союзе» (Приложение 1 к Единым ветеринарным требованиям, предъявляемым к товарам, подлежащим ветеринарному контролю (далее – РКТС № 317, ЕВСТ).

Такой подход создает прецедент несоответствия требованиям ВТО на всей территории ЕАЭС с последующим каскадированием нагрузки на производственные и логистические операции, осуществляемые в рамках стран–членов, принявшим обязательства ВТО (на сегодняшний день – Российская Федерация и Республика Казахстан). Данные опасения реализовались, когда в июне 2020 года Министерство сельского хозяйства Российской Федерации выпустило проект приказа «О внесении изменений в Перечень подконтрольных товаров, подлежащих сопровождению ветеринарными сопроводительными документами, утвержденный приказом Минсельхоза России от 18 декабря 2015 г. № 648»», инкорпорирующий требования Решения № 11 в российское законодательство.

Согласно информационно-аналитической справке к Решению № 11, проблемой, на решение которой были направлены изменения Единого Перечня товаров, подлежащих ветеринарному контролю, и обсуждаемый в рамках процедуры ОРВ Проект решения, являлась необходимость контроля импорта «сыроподобной» продукции («изготавливаемой по технологии сыра из молокосодержащей продукции, в которой животный жир заменен на растительный»). Однако вместе с ней под ограничительные меры попали лечебные и лечебно-профилактические продукты, в том числе жизненно важные для взрослых и детей, имеющих специфические медицинские требования к питанию (например, при тяжелых формах аллергии или болезнях обмена веществ, реабилитации после тяжелых заболеваний), компоненты, необходимые для производства отечественной специализированной (и не только) пищевой продукции, и т. д. По причине широты номенклатуры товарной позиции 2106 и ее объемов полная оценка негативных последствий, пожалуй, не представляется возможной, но очевидно, что «сыроподобная продукция» полностью теряется на их фоне.

Реализация предлагаемых мер ветеринарного контроля (включение в реестр импортеров и оформление разрешений на ввоз, реализуемых обычно в отношении наиболее рискованных товаров, таких как живой скот или необработанные туши) подразумевает проведение сложных с организационной точки зрения мероприятий, что занимает не один год до начала поставок продукции. Это представляет собой угрозу не только для отечественной пищевой отрасли в целом, но и для здоровья граждан стран-членов ЕАЭС, для которых применение такой специализированной продукции является фактором сохранения качества жизни.

Учитывая вышеизложенное, считаем принятие Проекта решения в предложенной редакции нецелесообразным, вводящим избыточные требования в отношении предмета регулирования и деятельности хозяйствующих субъектов, а также потенциально имеющим существенный негативный эффект на обращение на рынке ЕАЭС групп товаров, необходимых для стабильной работы пищевой промышленности, и социально значимых категорий продуктов питания.

РЕКОМЕНДАЦИИ

- Внести в Проект решения исключение для продукции, содержащей менее 50% сырья животного происхождения, при поставках в Российскую Федерацию и Республику Казахстан и заменив при этом термин «компоненты молока» на термин «продукты группы 04».
- Упростить меры контроля, предъявляемые к товарам, до требования «ветеринарный сертификат».
- Предусмотреть исключение по применению мер ветеринарного контроля для специализированной продукции, в том числе детского питания, витаминно-минеральных (витаминных, минеральных) комплексов (премиксов), вкусоароматических добавок, концентратов белков (животного и растительного происхождения) и их смесей, пищевых волокон, пищевых добавок (в том числе комплексных), биологически-активных добавок к пище, пищевых продуктов, предназначенных в качестве сырья для производства детского питания; стабилизаторов, ароматизаторов, кондитерской глазури, паст и наполнителей.
- Установить переходный период для вступления в силу решения не менее 2,5 лет с даты его официального опубликования.

ЧЛЕНЫ КОМИТЕТА

BAYER • Cargill LLC • Confederation of Danish Industry • Corteva Agriscience • DANONE RUSSIA, JSC • DSM • Ferrero Russia, CJSC • HEINEKEN BREWERIES, LLC • HERBALIFE NUTRITION • Nestle Rossiya LLC • P.R. Rouss (Pernod Ricard Rouss), ZAO • Perfetti Van Melle Co., Ltd • SAF-NEVA • Trade House AROMA, JSC • Zentis Russland LLC.

КОМИТЕТ ПО ЗДРАВООХРАНЕНИЮ И ФАРМАЦЕВТИКЕ

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ВЛИЯНИЕ ПАНДЕМИИ НОВОЙ КОРОНАВИРУСНОЙ ИНФЕКЦИИ НА ФАРМАЦЕВТИЧЕСКУЮ ОТРАСЛЬ

ПРОБЛЕМА

Сегодня, подводя промежуточный итог, можно сказать, что фарминдустрия в меньшей степени пострадала от ограничений, введенных государством в связи с эпидемией коронавируса, чем другие отрасли. Фармпредприятия не прекращали свою работу, осуществляя непрерывное производство и обеспечивая бесперебойную поставку лекарственных препаратов для удовлетворения потребностей российских пациентов.

Однако пандемия и экономическая ситуация в целом не могли не повлиять на дальнейшее развитие отрасли. С одной стороны, некоторые процессы были значительно осложнены либо приостановлены. Например, во время «локдауна» возникали случаи задержки транспортировки и таможенного оформления лекарственных препаратов, не связанных с лечением коронавирусной инфекции, а также образцов для клинических исследований. Кроме того, сложности возникали в связи с закрытием границ и ограниченными возможностями для приезда иностранных специалистов, что сказалось в ряде случаев на готовность некоторых производств к запуску обязательной маркировки лекарственных препаратов к 1 июля 2020 года, а также на других операционных и производственных процессах, требовавших личного присутствия в России сотрудников компаний – иностранных граждан.

С другой стороны, во время пандемии некоторые инициативы, наоборот, получили развитие. К примеру, в марте 2020 года Указом Президента РФ, а затем последовавшими изменениями в ФЗ-61 «Об обращении лекарственных средств» и соответствующим постановлением Правительства РФ была легализована онлайн-торговля безрецептурными препаратами. По сути инициатива, которую обсуждали с 2017 года, была финализирована менее, чем за 2 месяца.

Похожим образом развивалась и ситуация по вопросу телемедицины, основы применения которой были заложены в ФЗ-242 также в 2017 году, однако на практике мало применялись в связи с рядом запретов (невозможность удаленной постановки диагноза и пр.). В марте 2020 года в первом чтении были приняты поправки в Федеральный закон № 323-ФЗ «Об основах охраны здоровья граждан в Российской Федерации» о дистанционных медосмотрах в условиях ЧС и угрозы распространения заболевания, представляющего общественную опасность. Пока данная инициатива находится на уровне законопроекта, однако летом был принят закон «Об экспериментальных правовых режимах в сфере цифровых инноваций в Российской Федерации», цель которого – создание правовых условий для ускоренного появления и внедрения новых продуктов и услуг в сферах применения цифровых инноваций, в том числе в области телемедицины. В пилотном режиме в Москве телемедицинские консультации уже активно проводятся и, возможно, в ближайшее время будут реализованы также в других регионах.

Во время пандемии была запущена еще одна важная инициатива – ускоренная регистрация лекарственных препаратов, которая в обычное время в среднем занимает не менее года. Впрочем, на данный момент эта процедура применяется только в отношении лекарственных средств, предназначенных для применения в условиях чрезвычайных ситуаций, профилактики и лечения заболеваний, представляющих опасность для окружающих, и в отношении тех, которые разработаны в том числе по заданию органов власти.

РЕКОМЕНДАЦИИ

Инициативы в области здравоохранения и фармацевтики, реализованные государством в первом полугодии 2020 года, задают вектор для дальнейшего развития этих отраслей. При этом в текущих непростых условиях важно действовать «на опережение». К примеру, представляется целесообразным в диалоге со всеми участниками рынка рассмотреть возможность расширения механизма онлайн-торговли на рецептурные препараты, а также продолжить работу по внедрению электронного рецепта по всей стране. Эти меры позволят пациентам, в том числе с хроническими неинфекционными заболеваниями, сохранять приверженность назначенному лечению даже в условиях сложной эпидемиологической ситуации, а также при сезонных пиках простудных заболеваний. Кроме того, немаловажно продолжать развитие цифрового здравоохранения, в том числе телемедицины, востребованность которой в будущем будет только расти.

ВНЕДРЕНИЕ АВТОМАТИЗИРОВАННОЙ СИСТЕМЫ МОНИТОРИНГА ДВИЖЕНИЯ ЛЕКАРСТВЕННЫХ ПРЕПАРАТОВ

ПРОБЛЕМА

Комитет выражает поддержку реализуемому с 2017 года проекту маркировки лекарственных препаратов (мониторинга движения лекарственных препаратов, далее – МДЛП), которая с 1 июля 2020 года стала обязательной для участников фармацевтического рынка. Компании-члены Комитета приложили максимальные усилия для своевременного технического оснащения своих производственных площадок необходимым оборудованием, а также приведения бизнес-процессов в соответствие с требованиями нормативно-правовых актов в активной коммуникации с регулирующими органами и ЦРПТ. При этом в отдельных случаях потребовалась донастройка ИТ-систем и доналадка других процессов, в том числе, из-за ограничительных мер, вызванных пандемией новой коронавирусной инфекции.

Вместе с тем производители лекарственных препаратов (ЛП) – члены АЕБ – сталкиваются в процессе внедрения системы маркировки с такими сложностями, как получение отказов в выдаче согласований на ввоз и введение в гражданский оборот несериализованных препаратов. Также имеют место задержки с введением в оборот промаркированных ЛП со стороны дистрибьюторов и аптечных сетей из-за недостаточной производительности системы МДЛП.

Кроме того, для производителей ЛП остается критически важным урегулирование вопроса доступа к аналитическим данным, а именно не только к информации о сериях и партиях лекарственных препаратов, но и отдельной пачки. Получение производителями этой информации крайне важно как для мониторинга вопросов качества при обращении с жалобой пациента к производителю, так и в случае потенциального отзыва препарата с рынка[1].

Наконец, для участников фармрынка важно продолжить обсуждение текущего положения дел в связи с новеллой об императивной моноагрегации, поскольку некоторые логистические операции, например, подготовка товара к отгрузке, осуществляются с большими задержками.

Эти и многие другие темы, включая решение технических проблем, участники рынка прорабатывают в режиме регулярного диалога с государством и оператором системы ЦРПТ, находя точки соприкосновения и поэтапно решая возникающие задачи.

РЕКОМЕНДАЦИИ

В целях эффективного внедрения системы обязательной маркировки лекарственных препаратов на территории Российской Федерации необходимо поэтапное введение системы с учетом стадий готовности всех субъектов обращения ЛП.

В качестве решения проблемы по лекарственному обеспечению населения РФ в условиях недостаточной производительности ФГИС МДЛП возможно установить:

- максимальный временной срок, в течение которого данные о движении лекарственных препаратов, переданные в систему, должны быть подтверждены участниками цепочки при обратном способе предоставления сведений в системе МДЛП товаров (например, в течение трех часов);
- либо единый способ предоставления сведений в систему МДЛП, например, исключительно в виде прямого порядка передачи данных.

В целях предотвращения и недопущения дефектуры, в особенности в условиях пандемии новой коронавирусной инфекции и сезонных колебаний заболеваемости ОРВИ, рекомендуется предусмотреть механизм ввоза большего количества лекарственных препаратов, чем ежеквартальный объем за календарный год согласно действующему законодательству.

Кроме того, при определенных условиях (риск дефектуры и пр.) необходимо предусмотреть возможность ввоза дополнительного количества лекарственного препарата по выданному согласованию в рамках максимально разрешенного объема.

ОБЕСПЕЧЕНИЕ ФУНКЦИОНИРОВАНИЯ В ПОЛНОЙ МЕРЕ СИСТЕМЫ ФАРМАЦЕВТИЧЕСКИХ ИНСПЕКЦИЙ В СООТВЕТСТВИИ С ТРЕБОВАНИЯМИ ЕАЭС

ПРОБЛЕМА

Государства-члены Евразийского экономического союза (ЕАЭС) согласно принципам, указанным в статье 30 Договора о Евразийском экономическом союзе от 29 мая 2014 года, договорились о формировании общего рынка лекарственных средств, соответствующих требованиям надлежащих фармацевтических практик, к которым относятся надлежащая лабораторная, клиническая, производственная, дистрибьюторская и другие практики. Надлежащие фармацевтические практики играют важнейшую роль в обеспечении соответствия лекарственных средств установленным требованиям в отношении их качества, эффективности и безопасности, а инспектораты государств-членов обеспечивают высокий уровень соблюдения этих требований всеми участниками обращения лекарственных средств.

В соответствии со статьей 7 Соглашения о единых принципах и правилах обращения лекарственных средств в рамках ЕАЭС, государства-члены осуществляют регистрацию и экспертизу лекарственных средств, предназначенных для обращения на общем рынке лекарственных средств в рамках Союза, в соответствии с правилами регистрации и экспертизы лекарствен-

[1] При этом Комитет заявляет, что позиция относительно вопроса доступа к данным, изложенная здесь, касается только фармацевтической отрасли.

ных средств, утверждаемыми Евразийской экономической комиссией.

Согласно решению Совета Евразийской экономической комиссии (ЕЭК, Комиссия) от 3 ноября 2016 г. № 78 «О Правилах регистрации и экспертизы лекарственных средств для медицинского применения», возможность выбора подходов к регистрации лекарственного препарата, по национальному или общему евразийскому пути, сохраняется до 31 декабря 2020 года. При этом ранее выданные национальные регистрационные удостоверения действуют до 31 декабря 2025 года.

В целях функционирования общего рынка лекарственных средств в рамках ЕАЭС доклинические исследования безопасности лекарственных средств проводятся в соответствии с требованиями правил надлежащей лабораторной практики Союза, а клинические исследования в государствах-членах проводятся в соответствии с правилами надлежащей клинической практики (GCP) и требованиями к проведению исследований лекарственных средств, утверждаемыми Комиссией. Производство лекарственных средств в рамках Союза также осуществляется в соответствии с правилами надлежащей производственной практики (GMP), утверждаемыми Комиссией.

Согласно Решению Совета ЕЭК от 3 ноября 2016 г. № 78 «О Правилах регистрации и экспертизы лекарственных средств для медицинского применения» (п. 34) клинические исследования лекарственных препаратов проводятся в соответствии с требованиями правил надлежащей клинической практики Союза, утверждаемых Комиссией. Правила GCP приняты Решением Совета ЕЭК от 3 ноября 2016 г. № 79 «Об утверждении Правил надлежащей клинической практики Евразийского экономического союза».

Для клинических исследований, инициированных после 1 января 2016 года, существует требование о проведении их полностью или частично на территории Союза. В случае невозможности исполнения требования регулирующий орган может назначить внеплановую инспекцию одного из клинических центров, в которых проводилось клиническое исследование (за исключением орфанных препаратов, в отношении которых допускается представление клинических данных без проведения исследований на территории ЕАЭС). Внеплановая инспекция может проводиться в зависимости от перечня факторов в срок проведения регистрации, параллельно, или в первые 3 года после регистрации.

Возможность проведения инспекции для лекарственных препаратов, клинические исследования которых проводились без участия российских (евразийских) клинических центров, позволит зарегистрировать те препараты, которые в ином случае никогда не станут доступными для российских пациентов, при этом обеспечивая полный контроль качества проведенных исследований. Невозможность проведения исследований на территории ЕАЭС может быть обусловлена комплексом факторов, например, невозможностью набора пациентов в срок проведения международного исследования, поздний выход препарата на международные рынки в связи с первичной ориентацией производителя на локальный рынок (например, небольшая инновационная компания-разработчик), занятостью клинических центров на территории ЕАЭС другими исследованиями и т. д.

Полномочия по организации и проведению проверок соблюдения субъектами обращения лекарственных средств установленных Федеральным законом № 61-ФЗ «Об обращении лекарственных средств» и принятыми в соответствии с ним иными нормативными правовыми актами Российской Федерации требований к клиническим исследованиям лекарственных препаратов закреплены за Росздравнадзором. Но полномочий по проведению инспекций в отношении клинических исследований лекарственных препаратов для медицинского применения в соответствии с требованиями ЕАЭС у Росздравнадзора пока нет, хотя проект Постановления Правительства уже был опубликован в рамках общественных обсуждений.

Фактически сейчас все полномочия Росздравнадзора в отношении ЕАЭС распространяются только на медицинские изделия, в отношении лекарственных средств их нет, что также касается и инспектирования системы фармаконадзора. В отношении медицинских изделий Росздравнадзор уполномочен осуществлять организацию инспектирования производства медицинских изделий и проводит проверки инспектирующих организаций в соответствии с Требованиями к внедрению, поддержанию и оценке системы менеджмента качества медицинских изделий в зависимости от потенциального риска их применения, утвержденными Решением Совета ЕЭК от 10 ноября 2017 г. № 106.

РЕКОМЕНДАЦИИ

Помимо отсутствия полномочий по проведению инспекций, по аналогии с действующими нормативными актами по проведению инспекций в целях определения соответствия производства лекарственных препаратов требованиям надлежащей производственной практики ЕАЭС, представляется необходимым разработать и принять весь комплекс документов, детально регламентирующих порядок организации и сроки проведения всех фармацевтических инспекций. Кроме того, в перспективе целесообразно объединить полномочия по проведению всех фармацевтических инспекций в рамках единого инспекционного органа, что позволит значительно улучшить организацию инспекций и взаимодействие субъектов обращения лекарственных средств с таким единым органом.

GMP ПРОЦЕДУРА

ПРОБЛЕМА

На настоящий момент документально утверждены и с 2016 года действуют Правила GMP ЕАЭС. Практическое применение правил имеет свои особенности. Так, на текущий момент в Беларуси параллельно могут осуществляться GMP инспекции как по национальным правилам, так и по правилам GMP ЕАЭС. Ин-

спекторат в Беларуси проверяет на соответствие правилам производственные площадки в рамках производства заявленных к инспектированию лекарственных форм в целом. В России по правилам инспектирования в полной мере реализована модель по национальным правилам GMP. Важно отметить, что выдаваемое Минпромторгом заключение о соответствии иностранного производителя требованиям Правил надлежащей производственной практики имеет ограничение в виде списка лекарственных средств, согласование которого осуществляется в процессе подачи заявки на инспектирование. При этом российскими правилами проведения GMP инспекции это не предусмотрено. Позитивная тенденция заключается в том, что и в России уже с конца сентября 2020 года согласно Постановлению Правительства РФ № 1446 от 15.09.2020 регулятор получил возможность проводить проверки по правилам GMP ЕАЭС. Таким образом, в России есть возможность представлять заявки на проведение GMP инспекций как по национальным правилам, так и по правилам ЕАЭС.

Хотелось бы обратить внимание на то, что с середины 2020 года у заявителей возникали сложности с подачей заявок на проведение инспекций и в России, и в Беларуси, связанные, в том числе, с влиянием глобальной пандемии коронавирусной инфекции. Из-за задержек и переносов проведения инспекций в течение 2020 года образовалась очередь. По данным с сайта ФБУ «ГИЛС и НП», график инспекций в России расписан до апреля 2021 года, а в Беларуси – до марта 2022 года.

В связи с пандемией новой коронавирусной инфекции были приостановлены инспекции производственных площадок из-за невозможности осуществления трансграничных и региональных перемещений инспекторов. В целях сохранения непрерывности производственных процессов Правительством РФ были внесены изменения в Постановление Правительства РФ № 1289 (Постановление Правительства РФ от 29.05.2020 № 789), вводящие возможность проведения инспектирования производственных площадок по документам, в том числе с использованием средств дистанционного взаимодействия, включая аудио- или видеосвязь.

РЕКОМЕНДАЦИИ

Представляется целесообразным со стороны российского регулятора выдавать заключение о соответствии производителя требованиям Правил надлежащей производственной практики без ограничительного приложения со списком лекарственных средств. Кроме того, рекомендуется опубликовать разъяснения для фармацевтического рынка о стоимости инспекций по правилам GMP ЕАЭС.

Ввиду отсутствия возможности осуществлять удаленные инспекции на соответствие правилам GMP ЕАЭС, необходимо ускорить рассмотрение и принятие изменений в соответствующие акты Союза, в том числе в Решение Совета ЕЭК № 83, в отношении внедрения механизма дистанционных инспекций производственных площадок, посредством обращения уполномоченных органов РФ в Совет ЕЭК, их активного участия в рассмотрении и согласовании необходимых изменений.

Дополнительно представляется важным рассмотреть возможность в максимально короткие сроки принять изменения к действующим Правилам GMP ЕАЭС о продлении срока представления результатов национальных инспекций для осуществления процедур по данным Правилам до 2025 года, и в этих целях российской стороне обратиться в Совет ЕЭК с просьбой ускорить рассмотрение данного вопроса.

При этом существенным моментом также является рекомендации со стороны Евразийской экономической комиссии регуляторам из Казахстана, Армении и Киргизстана проводить GMP инспекции про Правилам GMP ЕАЭС.

ПОВЫШЕНИЕ ДОСТУПНОСТИ ИННОВАЦИОННЫХ ЛЕКАРСТВЕННЫХ ПРЕПАРАТОВ В РАМКАХ ГОСУДАРСТВЕННЫХ ПРОГРАММ ЛЕКАРСТВЕННОГО ОБЕСПЕЧЕНИЯ ГРАЖДАН РФ

ПРОБЛЕМА

Государственная программа лечения высокозатратных нозологий (далее Программа ВЗН), принятая в 2008 году в рамках Постановления Правительства РФ № 1416, обеспечила достижение революционного прорыва в доступности инновационных лекарств для лечения наиболее тяжелых заболеваний, требующих значительных затрат. Однако сегодня эта программа нуждается в дальнейшем развитии и оптимизации. Критерий «отсутствие негативного влияния на существующий бюджет Программы ВЗН в течение первого года и трехлетнего планового периода» при рассмотрении предложений о включении лекарственных препаратов в перечень дорогостоящих лекарственных препаратов (Постановление Правительства РФ № 871 от 28.08.2014) является существенным, а часто и непреодолимым барьером для инноваций.

Другим препятствием являются особенности существующей системы закупок. В соответствии с положениями Федерального закона № 44-ФЗ от 05.04.2013, закупка лекарственных препаратов осуществляется, преимущественно, посредством проведения электронных аукционов путем снижения начальной (максимальной) цены. Метод аукциона позволяет получить максимально низкую цену предложения только при наличии нескольких участников, предлагающих лекарственный препарат с одинаковым международным непатентованным наименованием (далее МНН) и в наибольшей степени подходит для осуществления закупок воспроизведенных (биоподобных) лекарственных препаратов. Инновационный лекарственный препарат имеет уникальное МНН. В этой связи организация конкурсных процедур не достигает своих целей по снижению цены, но требует временных и организационных затрат на проведение аукциона со стороны заказчика.

РЕКОМЕНДАЦИИ

- Ввести дифференцированный подход к оценке инновационных лекарственных препаратов при формировании перечней

лекарственных препаратов для медицинского применения и минимального ассортимента лекарственных препаратов, необходимых для оказания медицинской помощи, с учетом их долгосрочного влияния на качество и продолжительность жизни и исключения критерия негативного влияния на бюджет для данной категории лекарственных препаратов.
- Разработать и внедрить механизм, позволяющий осуществлять перевод лекарственных препаратов, имеющих зарегистрированные аналоги на территории РФ, из Программы ВЗН в другие программы лекарственного обеспечения в соответствии с их профилем (госпитальный, амбулаторный сегмент), с сохранением их доступности в соответствии с реальной потребностью.
- В отношении инновационных, находящихся под патентной защитой лекарственных препаратов, предусмотреть дифференцированный механизм фиксации цен, предусмотренных законодательством, и регулирования цен.
- Сформировать межведомственную площадку на базе Министерства здравоохранения РФ и для осуществления переговоров с производителями по заключению различных моделей соглашений на закупку инновационных лекарственных препаратов.
- Разработать правовой инструмент, позволяющий оформлять предложения и фиксировать обязательства сторон при заключении соглашений, получивших поддержку на межведомственной площадке.
- Дополнить и усовершенствовать законодательство в отношении закупки лекарственных препаратов: внедрить долгосрочные контракты между государственными заказчиками и производителями лекарственных средств, контракты с разделением риска (risk-sharing/риск-шеринг) и разделением расходов (cost-sharing/кост-шеринг), а также закупки референтных лекарственных препаратов, находящихся под патентной защитой, без проведения электронных аукционов.
- Внедрить гибкий механизм формирования бюджета государственных программ на основе оценки медицинских технологий, а также реальных потребностей пациентов, отраженных в едином регистре льготополучателей, и с использованием цифровых технологий обработки данных.

ГОСЗАКУПКИ МЕДИЦИНСКОЙ ТЕХНИКИ

ПРОБЛЕМА

13 августа 2020 года было опубликовано письмо Министерства финансов РФ № 24-06-06/70942, разъясняющее применение позиций каталога товаров, работ, услуг для обеспечения государственных и муниципальных нужд (далее – каталог) с учетом вступивших на основании Постановления Правительства Российской Федерации от 30.06.2020 № 961 изменений в Правила использования каталога, утвержденные постановлением Правительства Российской Федерации от 08.02.2017 № 145 (далее – Правила использования каталога).

Согласно разъяснению Минфина, при осуществлении закупки с использованием позиций каталога товаров, отнесенных к Перечню Постановления Правительства Российской Федерации от 10.07.2019 № 878 «О мерах стимулирования производства радиоэлектронной продукции на территории Российской Федерации при осуществлении закупок товаров, работ, услуг для обеспечения государственных и муниципальных нужд, о внесении изменений в постановление Правительства Российской Федерации от 16 сентября 2016 г. № 925 и признании утратившими силу некоторых актов Правительства Российской Федерации», заказчик должен руководствоваться каталогом и применять только указанные в соответствующей позиции каталога функциональные, качественные характеристики, потребительские свойства товара. Таким образом, у заказчика пропадает право уточнить характеристики и закупить товар, удовлетворяющий потребности конкретного лечебного учреждения, что противоречит законодательству о госзакупках.

Многие позиции каталога содержат очень краткие, общие описания сложного, высокотехнологичного оборудования, использующегося в различных отделениях лечебных учреждений с разными целями. Конфигурация и комплектация такого оборудования одного вида может существенно отличаться в зависимости от направления использования.

Исходя из вышесказанного, заказчик лишается права удовлетворения потребностей в необходимом оборудовании, что существенно повлияет на качество диагностики и терапии, а также может привести к нецелевому расходованию бюджетных средств, поскольку по общим характеристикам заказчик не сможет отказать в приемке оборудования, не соответствующего профилю и потребностям учреждения.

РЕКОМЕНДАЦИИ

Необходимо вернуть возможность внесения дополнительных характеристик оборудования в техническое описание товара с учетом клинического или эксплуатационного обоснования необходимости указания характеристик.

ПОДТВЕРЖДЕНИЕ РОССИЙСКОГО ПРОИЗВОДСТВА МЕДИЦИНСКОЙ ТЕХНИКИ

ПРОБЛЕМЫ

- Конфигурации высокотехнологичного медицинского оборудования не могут быть унифицированы, поскольку подразумевают большое количество опций, которые, в различных комбинациях, позволяют получить конфигурацию, отвечающую техническому заданию лечебно-профилактического учреждения (ЛПУ), сформированному в соответствии с клиническими задачами этого ЛПУ. Однако, по утверждению экспертов Торгово-промышленной палаты РФ (ТПП РФ), Акт годовой экспертизы для выдачи сертификатов СТ-1 может быть выдан только на зафиксированные конфигурации, не подлежащие изменению, т. е. изменение любой конфигурации при добавлении или сокращении опций требует проведения новой экспертизы. Это либо невозможно сделать в

период с момента публикации извещения о закупке до окончания подачи заявок, либо приводит к сокращению доступных конфигураций и ограничению возможностей выполнить клинические задачи ЛПУ.

- Отсутствует четкий перечень документов для подтверждения адвалорной доли (стоимость всех используемых импортных материалов не должна превышать 50% цены конечной продукции).

Согласно Приказу ТПП РФ от 10.04.2015 № 29 «О Положении о порядке выдачи сертификатов о происхождении товаров формы СТ-1 для целей осуществления закупок для обеспечения государственных и муниципальных нужд (для отдельных видов медицинских изделий)» расчет адвалорной доли товара делает заявитель и подтверждает цену комплектующих своими финансовыми документами.

Однако, для подтверждения адвалорной доли в Приказе ТПП РФ от 10.04.2015 № 29 отсутствует перечень документов. На практике эксперты запрашивают у заявителя прошлые договоры продажи заявленного на экспертизу товара как основание для расчета адвалорной доли товара. Но конфигурация заявленного на экспертизу медицинского аппарата может отличаться от продаваемой ранее, поскольку изделие комплектуется по заявке заказчика. Также, если товар на торги еще не выставлялся, подтвердить адвалорную долю невозможно.

- В «Соглашении о Правилах определения страны происхождения товаров в Содружестве Независимых Государств от 20 ноября 2009 г.» (далее Соглашение) отсутствует определение простой операции.

В целях применения постановления Правительства РФ от 5 февраля 2015 года № 102 «Об ограничениях и условиях допуска отдельных видов медицинских изделий, происходящих из иностранных государств, для целей осуществления закупок для обеспечения государственных и муниципальных нужд» (ПП № 102), документом, подтверждающим страну происхождения товара, является сертификат происхождения товара, выдаваемый ТПП РФ в соответствии с критериями определения страны происхождения товаров, предусмотренными Соглашением.

Выполняемые при производстве товара операции не могут быть признаны отвечающими критерию достаточной обработки/переработки товара, если поименованы, в частности, в пункте «м», раздела 3 Соглашения: простые сборочные операции. Однако в Соглашении не дано определение простых сборочных операций.

В настоящее время эксперты ТПП по-разному трактуют понятие «простых сборочных операций» и не признают производство высокотехнологичного медицинского оборудования отвечающим критерию достаточной обработки/переработки, несмотря на фактическое наличие производственной площадки на территории РФ и внесение ее в регистрационное удостоверение, несмотря на наличие специального производственного оборудования и обучения высококвалифицированных специалистов, занятых в производстве, несмотря на соответствие критерию менее 50% стоимости импортных материалов в цене конечной продукции.

Единственное существующее определение простой сборочной операции дано в нормативно-правовых актах Евразийской экономической комиссии, а именно в Решении Совета ЕЭК от 13.07.2018 № 49 утверждены «Правила определения происхождения товаров, ввозимых на таможенную территорию Евразийского экономического союза». В Правилах (пункт 7 раздел II) под простой операцией понимается «операция, для осуществления которой не требуется применения специальных умений (навыков), машин, приборов или оборудования специально предназначенных для данной операции». Экспертами ТПП это определение не признается.

В результате медицинские товары, подпадающие под ПП № 102, не могут получить статус «произведенные в РФ», и производители не могут воспользоваться преимуществами, предоставляемыми отечественной продукции в государственных и муниципальных торгах.

РЕКОМЕНДАЦИИ

- Минпромторгу и ТПП РФ: уточнить список документов для предоставления экспертам для ревизии на производстве для получения акта годовой экспертизы.
- ТПП РФ: пересмотреть критерии для высокотехнологичного оборудования, в отношении которого невозможно определить конечное количество конфигураций.

ЧЛЕНЫ КОМИТЕТА

Angelini Pharma Rus LLC • Astellas Pharma ZAO • AstraZeneca Pharmaceuticals LLC • BAYER • BIOCAD • Bionorica OOO • Boehringer Ingelheim • Canon Medical Systems LLC • Chiesi Pharmaceuticals LLC • Dr. Reddy's Laboratories Ltd. • DSM • Egis Pharmaceuticals PLC (Hungary) • Esparma • Fidia Pharma • GE (General Electric International (Benelux) B.V.) • GlaxoSmithKline Trading, JSC • Lundbeck Rus • Merck LLC • MirVracha LLC • Novartis Group Russia • Novo Nordisk A/S • Orion Pharma LLC • Philips LLC • Procter & Gamble • Reckitt Benckiser Healthcare, LLC • Roche Diagnostics Rus LLC • Sanofi Russia AO • SANOFI-AVENTIS REP OFFICE • SERVIER • Siemens LLC • Stada CIS.

КОМИТЕТ ПРОИЗВОДИТЕЛЕЙ БЫТОВОЙ ТЕХНИКИ

Председатель:
Хюберт Арье де Хаан, BSH Bytowyje Pribory

Заместитель председателя:
Павел Рудяков, Samsung

Координатор комитета:
Елена Кузнецова (elena.kuznetsova@aebrus.ru)

Российский рынок бытовой техники в 2020 году развивался под влиянием серьезных внешних ограничивающих факторов, связанных с распространением в мире вирусной инфекции COVID-19, нестабильными ценами на энергоресурсы, значительными колебаниями курсов валют. Это негативно отразилось на реальных доходах и покупательской способности населения. Негативные эффекты 2020 года имеют тенденцию к переходу на 2021 год в полном объеме. В этой связи для индустрии производителей электронной и бытовой техники важны меры государственной поддержки и увеличение переходных периодов по введению новых затратных требований регулирования. Учитывая высокий уровень локализации производства, от эффективности принятых мер государственной поддержки будет зависеть сохранение рабочих мест и поступлений в бюджеты всех уровней.

ЕАЭС: ТР ЕАЭС 048/2019 «О ТРЕБОВАНИЯХ К ЭНЕРГЕТИЧЕСКОЙ ЭФФЕКТИВНОСТИ ЭНЕРГОПОТРЕБЛЯЮЩИХ УСТРОЙСТВ». НЕОДНОЗНАЧНЫЕ ТРЕБОВАНИЯ К СОБСТВЕННЫМ ИСПЫТАТЕЛЬНЫМ ЛАБОРАТОРИЯМ

ПРОБЛЕМА

ТР ЕАЭС 048/2019 позволяет применять схему декларирования соответствия 1д на основании собственных доказательств, при этом исследования (испытания) разрешается проводить в том числе в собственных неаккредитованных испытательных лабораториях (центрах). В ТР ЕАЭС 048/2019 установлено существенное ограничительное требование к собственным лабораториям – они должны быть зарегистрированы и осуществлять деятельность на территории ЕАЭС. Аналогичная практика использования собственных лабораторий при декларировании применяется и в Европейском союзе, но с одним важным отличием: лаборатория может располагаться и осуществлять свою деятельность в любой стране, так как результаты испытаний в лаборатории никак не зависят от ее местоположения. Создание лабораторий изготовителя на территории ЕАЭС повлечет за собой затраты, исчисляемые миллионами долларов, и значительное увеличение сроков вывода новой продукции на рынок, что приведет к снижению налоговых поступлений от реализации продукции.

РЕКОМЕНДАЦИИ

- Комитет предлагает разрешить при декларировании соответствия серийно выпускаемой продукции по схеме 1д использовать протоколы испытания из собственных лабораторий изготовителя, расположенных и зарегистрированных за пределами ЕАЭС, выпустив соответствующие совместные разъяснения ЕЭК и Минпромторга России.
- Комитет призывает отложить введение новых затратных для индустрии требований о подтверждении соответствия продукции на два года – до 1 сентября 2024 года.

РФ: ОБРАЩЕНИЕ С ОТХОДАМИ

ПРОБЛЕМА

С 2017 года все российские производители и импортеры обязаны ежегодно декларировать объемы произведенной (импортированной) и введенной в обращение на территории Российской Федерации готовой продукции и ее упаковки и либо отчитываться о ее утилизации, либо уплачивать экологический сбор. Нормативы утилизации были установлены на трехлетний период до 2020 года, в настоящее время проходит обсуждение проекта распоряжения Правительства Российской Федерации «Об утверждении нормативов утилизации отходов от использования товаров на 2021-2023 годы», который предусматривает повышение нормативов утилизации для бытовых приборов и компьютерной техники на 5% ежегодно. Увеличение экологических платежей является негативным фактором, оказывающим дополнительную нагрузку на локализованные предприятия по производству бытовых приборов и компьютерной техники, что, с учетом сложной экономической ситуации, может привести к снижению объема производства, сокращению рабочих мест и поступлений в бюджеты всех уровней. Правительству Российской Федерации в рамках разработки комплекса стимулирующих мер необходимо рассмотреть вопрос сохранения на 2021 год нормативов утилизации для производителей бытовых приборов и компьютерной техники на уровне 2020 года.

РЕКОМЕНДАЦИИ

- Комитет призывает учесть сложившуюся экономическую ситуацию и не увеличивать нагрузку на производителей

бытовых приборов и компьютерной техники, сохранив для них на 2021 год нормативы утилизации на уровне 2020 года.
- Комитет выражает крайнюю озабоченность раздающимися призывами повысить действующие, экономически обоснованные нормативы утилизации и ставки экологического сбора и призывает все заинтересованные стороны сосредоточиться на построении эффективной общероссийской системы сбора, транспортировки и сортировки отходов, ради создания которой и вводился экологический сбор.

РФ: МАРКИРОВКА ТОВАРОВ И ДОКУМЕНТАРНАЯ ПРОСЛЕЖИВАЕМОСТЬ

ПРОБЛЕМА

С 1 января 2019 года вступило в силу Распоряжение Правительства Российской Федерации от 28 апреля 2018 года № 792 р «Об утверждении перечня отдельных товаров, подлежащих обязательной маркировке средствами идентификации», в который пилотно вошли некоторые фототовары. Однако известно, что в целях полной прослеживаемости товаров Правительство намерено к 2025 году ввести обязательную маркировку всех групп товаров, аналогичные процессы идут и на наднациональном уровне ЕАЭС. При этом сохраняется неопределенность в отношении подходов к идентификации отдельных видов товаров и, соответственно, обеспокоенность участников рынка. Приветствуя усилия по легализации оборота товаров и повышению прозрачности рынка, Комитет обращает внимание на то, что рынок бытовой техники на сегодняшний день в России является одним из наиболее легальных и прослеживаемых, на нем практически отсутствуют такие явления, как контрабанда и контрафакт, а все производимые и импортируемые бытовые приборы имеют все возможности для полной индивидуальной идентификации и прослеживаемости (серийные номера и т. п.) на протяжении всего цикла оборота продукции. Комитет положительно оценивает проведенный ФНС и ФТС России эксперимент по документарной прослеживаемости импортных товаров, коснувшийся бытовых холодильников и стиральных машин, результатом которого стал разработанный Минфином России проект постановления Правительства Российской Федерации «О создании национальной системы прослеживаемости товаров», в особенности в части нераспространения иных систем контроля оборота товаров на территории Российской Федерации на товары, подлежащие прослеживаемости, и полагает, что система документарной прослеживаемости с интеграцией индивидуальных средств идентификации продукции, используемых производителями бытовой техники, в полной мере отвечает принципам полной прослеживаемости и контроля за оборотом товаров.

РЕКОМЕНДАЦИИ

- Комитет призывает изучить результаты эксперимента по документарной прослеживаемости и использовать в отношении однозначно идентифицируемых и прослеживаемых товаров, таких как бытовая техника, предоставляемые законодательством возможности идентификации по имеющейся идентификационной маркировке производителей, что позволит внедрить систему прослеживания в нашей отрасли максимально быстро, эффективно, безболезненно и без существенных затрат со стороны производителей, чтобы не допустить необоснованного повышения стоимости готовой продукции.
- Комитет выражает готовность к участию в разработке системы идентификации бытовой техники по имеющейся маркировке производителей с участием всех заинтересованных сторон на основе накопленного европейского опыта.
- Комитет предостерегает от излишней спешки в вопросе перевода эксперимента по документарной прослеживаемости в требования ко всем участникам рынка и призывает к взвешенному подходу к поэтапной реализации прослеживаемости.

ЧЛЕНЫ КОМИТЕТА

Ariston Thermo Rus • BEKO LLC • Brother LLC • BSH Bytowyje Pribory OOO • Delonghi • Electrolux • GROUPE SEB-VOSTOK ZAO • Kaercher • LIEBHERR-RUSSLAND • Mitsubishi Electric (Russia) LLC • Philips LLC • Procter & Gamble • Samsung Electronics • SMEG Russia LLC • Whirlpool RUS.

КОМИТЕТ ПО ГОСТИНИЧНОМУ ДЕЛУ И ТУРИЗМУ

Председатель:
Бертран Дюгаст, Accor Russia

Координатор комитета:
Ксения Бортник

МНОГОПЛАНОВОЕ РАЗВИТИЕ

В марте-июне 2020 года в большинстве отелей наблюдался очень низкий уровень активности; торговые точки были закрыты, а заполняемость была минимальной. В летний период и после окончания периода изоляции гостиничная индустрия начала медленно восстанавливаться, особенно в туристических регионах России, таких как Сочи или Калининград.

При этом большинство владельцев гостиниц, особенно в Москве, стараются найти возможность уплатить налоги, особенно налоги на недвижимость, при этом неся убытки от гостиничной деятельности из-за отсутствия международного бизнеса и ограничений на встречи и собрания.

В результате открытие большинства новых отелей было перенесено до получения дальнейших указаний, сотрудники отелей, которые уволились в период с марта и по настоящее время, в большинстве случаев не были заменены. Гостиничная индустрия в целом сталкивается с существенной утечкой кадров из-за снижения заработной платы и лишения премий, многие отели не смогли воспользоваться кредитом, предоставленным властями, либо из-за структуры капитала их владельцев, либо ввиду того, что их ОКВЭД не соответствовал требованиям, либо ввиду того, что они не были зарегистрированы как МСП.

По мере того, как кризис продолжался, льгот по НДС, предоставленных в летнем квартале, стало недостаточно, поскольку приходилось платить долги по налогам за 1 квартал, несмотря на текущее падение доходов всех отелей в городе. Необходимость оплачивать текущие расходы отелей, такие как заработная плата, была настолько критической, что Москва сейчас является одним из городов с самым резким падением цен на отели во время пандемии по сравнению со всеми другими европейскими столицами. При этом здесь самый высокий уровень загрузки до конца сентября.

Чтобы ослабить бремя текущих расходов и позволить операторам и владельцам сохранить рабочие места и инвестиции в развитие качества услуг и активы, требуется отсрочка уплаты НДС до середины 2021 года, включая пересмотр налоговых льгот по налогу на имущество и его отмену за 2020 год. Дальнейшая отсрочка уплаты налогов, удерживаемых с зарплаты, и взносов в фонды, предназначенные для выплат вознаграждения персоналу, также необходима для восстановления достаточного денежного потока в целях обеспечения повседневной работы отелей. Необходимо срочно пересмотреть базу налогообложения гостиниц на основе общей выручки и прибыльности гостиничного бизнеса, поскольку существующая модель больше не соответствует действительности.

Отели остаются надежным источником рабочих мест как для квалифицированных, так и для неквалифицированных специалистов, поэтому сохранение рабочих мест должно быть приоритетом в этот продолжительный кризисный период. По самым оптимистичным прогнозам, гостиничный и туристический бизнес восстановится к 2023 году. К концу 2023 года будет достигнут уровень 2019 года. Таким образом, все отели продолжат сокращать штат и сокращать расходы в 2020 и 2021 годах, особенно если не будут пересмотрены графики налоговых платежей и налоговая база. Поэтому очень важно ослабить бремя текущих расходов и избежать массовых простоев или банкротств.

ПРОБЛЕМА

Электронная виза упростит применяемый в настоящее время процесс получения визы и, соответственно, будет стимулировать поток приезжих с деловыми целями и с целью отдыха в Российскую Федерацию, а также увеличит объем воздушного движения и, как следствие, увеличит расходы туристов в России (что приведет к увеличению поступления налогов в бюджет РФ), поскольку будут упрощены формальности, а также минимизированы время и затраты, необходимые для стандартного процесса подачи заявления на визу.

Основываясь на опыте использования альтернативы визового режима «Паспорта болельщика» (Fan ID), внедренного властями России при проведении чемпионата мира по футболу 2018 года, и принимая во внимание недавние серьезные проблемы, с которыми столкнулась отрасль после внедрения электронной визы в Санкт-Петербурге в октябре 2019 года (около 5-10% всех лиц, оформивших электронную визу, были признаны не имеющими права на въезд), мы хотели бы поделиться с вами нашими соображениями и рекомендациями в целях обеспечения бесперебойного и эффективного процесса применения e-visa для всех заинтересованных сторон и путешественников.

РЕКОМЕНДАЦИИ

Процесс подачи заявления на получение электронной визы должен быть четким и простым для путешественника, чего, к сожалению, не удалось добиться в настоящее время в отношении процедур запроса электронных виз в российских регионах, где действует электронная виза.

Мы настаиваем на координации различных органов, участвующих в процессе выдачи визы и в таможенном оформлении, чтобы разработать четкий и единый процесс.

Процедура подачи заявки на электронную визу должна быть простой для путешественника и предусматривать надлежащую проверку учетных данных путешественника, указанных в форме заявления (в частности, имя, номер паспорта, дату рождения), с данными путешественника в паспорте. Проверка должна осуществляться МИД до выдачи электронной визы.

Главным обязательным требованием является надлежащая проверка со стороны МИД персональных данных лиц, направляемых в командировки, в частности имени, фамилии, номера паспорта, в онлайн-анкете электронной визы по сравнению с отсканированным паспортом до выдачи электронной визы и направления его запрашивающей стороне.

Чрезвычайно важно принять во внимание тот факт, что сотрудники авиакомпаний и аэропортов не имеют возможности и юридических оснований проверить данные электронной визы в аэропорту вылета, и поэтому авиакомпании должны быть освобождены от штрафов за возможные ошибки путешественника или мошенничество.

И последнее, но не менее важное: в зонах прилета основных международных аэропортов России необходимо создать службы поддержки пассажиров (с предоставлением сервиса на круглосуточной основе), которые позволят пассажирам в случае необходимости скорректировать свои электронные визы так же, как это было успешно реализовано во время чемпионата мира по футболу 2018 года и доказало необходимость и важность для всех участвующих сторон.

ПРОБЛЕМА

Одним из ключевых факторов восстановления гостиничной индустрии в таких городах, как Москва и Санкт-Петербург, является проведение конференций и встреч.

Однако сбор большого количества людей во время текущей пандемии влечет за собой определенные риски и проблемы. Отели, компании и частные лица, посещающие встречи, должны согласовать с властями и соблюдать строгие, приемлемые и понятные правила.

РЕКОМЕНДАЦИИ

На данный момент Роспотребнадзор дает только следующие общие рекомендации в отношении продуктов питания и напитков: МР 3.1/2.1.0193-20 «Рекомендации по профилактике новой коронавирусной инфекции (COVID-19) в учреждениях, осуществляющих деятельность по предоставлению мест для временного проживания (гостиницы и иные средства размещения)» и МР 3.1/2.3.6.0190-20 «Рекомендации по организации работы предприятий общественного питания в условиях сохранения рисков распространения COVID-19».

Сейчас мы ищем согласованные на международном уровне модели и передовые методы для проведения средних и крупных мероприятий в конференц-залах отелей и конференц-центрах. Рекомендации Роспотребнадзора касаются следующих вопросов:

Как изменить размер конференц-зала для безопасного размещения всех участников, как организовать перемещение в конференц-зале, как провести эффективную дезинфекцию и на каких ключевых моментах сосредоточить внимание, конкретные рекомендации по системе кондиционирования воздуха, как четко отображать инструкции по охране труда и технике безопасности в конференц-залах, как оптимизировать бесконтактное общение между сотрудниками отеля и участниками, как организовать кофе-паузы, обед и ужин, будь то комплексный обед или фуршет, чтобы снизить риск заражения.

Убедительно просим вас рассмотреть возможность проведения рабочей встречи с участием наших экспертов для обсуждения и выработки совместных предложений по этим вопросам, а также разработать четкую и корректируемую концепцию гигиенических требований для предотвращения распространения COVID-19, чтобы отрасль могла возобновить работу.

ПРОБЛЕМА

За последние 20 лет гостиничный бизнес в Москве претерпел изменения за счет прихода в сектор международных операторов отелей. С открытием отелей класса люкс и гостиниц поскромнее появились новые рабочие места и возможность построить карьеру в сфере гостиничного бизнеса. Международные компании привнесли новые стандарты в культуру обслуживания клиентов, развитие персонала и управление финансами в гостиничном бизнесе. По мере развития местного бизнеса тысячи людей приобрели основные навыки работы, обслуживания клиентов и взаимодействия с ними.

С ростом и диверсификацией появляется возможность строить карьеру как в своем городе, стране, так и за границей. В этом и заключается проблема. Следующее поколение рассматривает работу в этой сфере как первый шаг, но не может представить свою будущую карьеру в этом бизнесе, поэтому молодые люди уходят из гостиничного бизнеса в ту сферу,

которая требует меньше физических затрат, где можно больше отдыхать. Работа в режиме 24/7, по-видимому, не устраивает миллениалов, и текучка кадров возрастает. Молодежь поступает на работу, которая предусматривает меньше возможностей для карьерного роста и меньшую зарплату.

Многие школы гостиничного менеджмента и технические колледжи также принимают студентов, которые не выбирают сознательно индустрию гостеприимства с точки зрения карьерного роста, при этом получают навыки и знания, рассматривая иные варианты на будущее. Такие студенты и кандидаты часто меняют работу, ищут себя, тем самым создавая несогласованность в командном подходе к обслуживанию клиентов, увеличивают расходы на обучение, ввод в профессию новых сотрудников и поиск новых кандидатов.

РЕКОМЕНДАЦИИ

Образование в сфере гостиничного менеджмента должно соответствовать требованиям XXI века. Необходимо адаптировать методы обучения и содержание программ к современным реалиям гостиничного бизнеса, чтобы сконцентрироваться на тех, кто наиболее в этом заинтересован, немедленно отсеивая тех, кто ищет временное трудоустройство. Обучение должно быть в большей степени ориентировано на практику, такие современные предметы как управление и развитие персонала должны быть включены в теоретический курс. Теория должна сочетаться с практикой на рабочем месте, аналогично системе дуального обучения, которая используется в Центральной Европе и теперь также применяется в Великобритании.

Перед студентами ставятся амбициозные задачи, в ходе решения которых молодые люди доказывают свою жизнеспособность в индустрии. И вместе с тем студенты получают представление о бизнесе и в ходе своей работы сталкиваются с реальными жизненными условиями и проблемами, которые вносят вклад в получение опыта работы в процессе обучения.

Студенты, получившие такое дуальное образование в сфере гостиничных услуг и кейтеринга, ведения бухгалтерского учета, ресторанного бизнеса или в качестве шеф-повара, ищут работу в странах, где гостиничные услуги пользуются большим спросом, и качественный уровень таких сотрудников после получения диплома демонстрирует истинный дух и стремление работать в отрасли и стать лидерами отрасли в будущем.

ПРОБЛЕМА

Первое, что делают туристы по прибытии в российские аэропорты, – стараются найти самый быстрый и легкий путь к своему отелю. Прежде чем они доберутся до указателей «Аэроэкспресс» или стоянки такси, их останавливают частные таксисты, предлагающие неоправданно высокие цены, которые могут в десять раз превосходить стандартный тариф от аэропорта до их отеля. Таким образом происходит обман гостей, которые рискнули воспользоваться подобными услугами. Водитель такси объясняет пассажиру, что он может заплатить картой по прибытии в отель, и пассажир платит, даже не предполагая, что стоимость проезда будет такой высокой. К сожалению, к тому времени, когда пассажир получит уведомление от своего банка и увидит общую сумму, будет уже слишком поздно, поскольку операции с подтверждением PIN-кода не могут быть отменены. Обманутый пассажир не может обратиться в полицию, поскольку такие таксисты обычно работают не по найму, и поэтому могут устанавливать свои собственные цены.

РЕКОМЕНДАЦИИ

Необходимо усовершенствовать взаимодействие с администрацией аэропортов, чтобы размещать в аэропортах уведомления о борьбе с мошенничеством, или, в качестве альтернативы, оповещать пассажиров на выходе о месте стоянки Яндекс.Такси.

РЕГУЛЯТОРНАЯ ГИЛЬОТИНА: ДАЛЬНЕЙШАЯ СУДЬБА ВОПРОСА

В начале 2019 года Правительство Российской Федерации объявило о запуске механизма «регуляторной гильотины», которая должна ускорить инвестиционный рост и резко сократить число мешающих бизнесу законов.

В Комитет АЕБ по гостиничному делу и туризму входят представители крупных международных гостиничных сетей люксового сегмента, которые отвечают самым высоким требованиям предоставления гостиничных услуг гостям Москвы и России.

На практике гостиницы сталкиваются с излишними и завышенными требованиями со стороны регуляторов, основанными на нормах и требованиях законодательства, которое устарело либо ужесточилось за последнее время.

Примером требований законодательства советского периода прошлого века являются предписания Роспотребнадзора. Отели, к которым предъявляются эти требования, считают такие проверки несовместимыми с требованиями международных стандартов гостиничного бизнеса. Это серьезное препятствие для ведения бизнеса и поддержания высокого уровня обслуживания гостей столицы, которое в конечном итоге не представляет собой адекватную защиту прав потребителей. Также стоит отметить, что зачастую на практике гостиницы сталкиваются с тем, что представители одного регулятора по-разному интерпретируют нормы законодательства, предъявляя различные требования к предоставлению гостиничных услуг.

РЕКОМЕНДАЦИИ

Комитет по гостиничному делу и туризму поддерживает предложение Правительства Российской Федерации о сокращении и пересмотре нормативной базы, которая создает дополнительные трудности для ведения бизнеса в России.

В то же время Комитет считает, что работа механизма реализации «регуляторной гильотины» над устаревшими законодательными нормами должна быть четко структурирована, последовательна, предметна, эффективна и осуществлена в соответствии с реалиями ведения бизнеса.

Комитет считает, что, отсекая устаревшие нормы, а по сути, не создавая новую законодательную нормативную базу, механизм не даст должного результата, а лишь создаст ненужные препоны. Время на доработку большого массива нормативно-правовой базы должно быть сопоставимо с объемом работы над ним.

Комитет АЕБ по гостиничному делу и туризму ведет совместную работу с правительством Москвы, штабом Мэра Москвы по защите прав предпринимателей над усовершенствованием требований и норм законодательства, регулирующих сферу предоставления гостиничных услуг, для выработки прагматичных предложений в соответствии с современными потребностями бизнеса в рамках реального времени.

ЧЛЕНЫ КОМИТЕТА

Accor Groupe • Ararat Park Hyatt Moscow • Hotel Baltschug Kempinski Moscow • Marriott Novy Arbat Hotel Leasing LLC • Mercure Ibis Adajio Moscow Centre Bakhrushina • Radisson Collection Hotel Moscow • Renaissance Moscow Monarch Centre Hotel • Ritz-Carlton, Moscow • Sokotel LLC (Sokos Hotels St. Petersburg) • Swissotel Krasnye Holmy Moscow.

КОМИТЕТ ПО СТРАХОВАНИЮ И ПЕНСИОННОМУ ОБЕСПЕЧЕНИЮ

Председатель:
Александр Лоренц, SAFMAR NPF AO

Заместитель председателя:
Владимир Сухинин, BNP Paribas CARDIF Insurance company

Координатор комитета:
Татьяна Листровая (tatiana.listrovaya@aebrus.ru)

Комитет АЕБ по страхованию и пенсионному обеспечению – это группа руководителей-единомышленников, специалистов по страховым и пенсионным системам, а также специалистов в сфере юриспруденции. Мы работаем над различными правовыми инициативами, и одна из наших основных задач – улучшить рыночные условия для страховщиков и пенсионных фондов, работающих в России. Мы стремимся найти осуществимые компромиссы между участниками отрасли, регулирующими органами и конечным потребителем. Ниже мы выделяем ключевые проблемы, которые повлияли на наши отраслевые сегменты в 2020 году.

ОБЩАЯ СИТУАЦИЯ НА РЫНКЕ СТРАХОВАНИЯ

Подобно многим другим секторам российской экономики, российская страховая отрасль столкнулась с экономическими последствиями COVID-19. В то время как страховые премии остались на прежнем уровне, если сравнивать первое полугодие 2020 года с аналогичным периодом 2019 года, но некоторые страховые продукты, например, страхование ВЗР, пострадали довольно значительно. Кроме того, пандемия осложнила работу страховых компаний с большим количеством сотрудников, часть из которых пришлось перевести на удаленную работу. Кроме того, необходимо проанализировать эффективность различных каналов продажи, и требуется ускорить процесс цифровизации и реорганизовать взаимодействие с клиентами с учетом меняющегося потребительского поведения. Некоторая надежда возлагается на новую концепцию Маркетплейс Центрального Банка России, которая создаст несколько платформ, на которых страховые компании и другие поставщики страховых продуктов смогут продавать свои продукты широкой публике в безопасной среде, которая поддерживается различными другими платформами цифрового правительства (например, госуслуги.ру или мос.ру). Эти платформы будут интегрироваться с этими правительственными сайтами, получать данные о клиентах и хранить операции в личном кабинете/кабинете каждого зарегистрированного гражданина.

Пенсии в РФ

Ниже представлены основные тенденции на российском пенсионном рынке:

- **Консолидация**
  Российский пенсионный рынок продолжает консолидироваться и сосредотачивается вокруг нескольких крупных государственных пенсионных фондов. В настоящее время существует 49 лицензированных пенсионных фондов. Концентрация высока: около 90% активов принадлежит 10 крупнейшим фондам.

- **Повышение прозрачности**
  Под эгидой Центрального банка России российский пенсионный рынок становится более прозрачным, и некоторые фонды все чаще публикуют свои фактические инвестиционные портфели на регулярной основе.

- **Улучшение регулирования и надзора**
  Вопреки распространенному мнению, особенно на Западе, российский пенсионный рынок, на самом деле, строго регулируется. За отклонениями от заявленных инвестиционных стратегий строго следят так называемые специализированные депозитарии, которые контролируют инвестиционные портфели всех пенсионных фондов в России. Эти специализированные депозитарии ежедневно регистрируют изменения инвестиционного портфеля и обязаны немедленно сообщать о любой возможной подозрительной деятельности в Центральный банк.

- **Перспективы пенсионной реформы неясны**
  Накопительная часть пенсий остается замороженной уже в течение нескольких лет. Инвестиционный доход сейчас является основным драйвером рынка, что не позволяет пенсионным фондам вкладывать средства в какие-либо стратегии роста. Некоторое время назад правительство выдвинуло концепцию «гарантированного пенсионного продукта». Однако, отчасти из-за пандемии, неясно время внедрения этой концепции или будет ли она вообще введена. Ясно, что экономике России нужна стратегия, которая будет способствовать развитию долгосрочных сбережений, и жизнеспособный пенсионный рынок должен быть ключевой целью такой стратегии.

- **Цифровизация пенсионной отрасли в России остается проблемой**
  Крупные фонды сталкиваются с трудностями оцифровывания своих отношений с клиентами обязательного пенсионного страхования, не в последнюю очередь из-за того, что все еще действуют правила, которые формально требуют фактической физической пересылки по почте в бумажной форме через почтовое отделение миллионам клиентов. Также с учетом неопределенности предстоящей пенсионной реформы пенсионные фонды вкладывают в ИТ меньше, чем другие игроки финансового рынка. В этом смысле четкая стратегия правительства была бы очень полезной, поскольку она также позволяет фондам сформулировать четкую стратегию цифровой трансформации.

НЕГАТИВНЫЕ ПОСЛЕДСТВИЯ COVID-19 ДЛЯ СТРАХОВОГО РЫНКА РОССИЙСКОЙ ФЕДЕРАЦИИ И НЕОБХОДИМОСТЬ ГОСУДАРСТВЕННОЙ ПОДДЕРЖКИ

Введенные в апреле текущего года Центральным банком Российской Федерации регуляторные послабления (regulatory reliefs) для страхового рынка в связи с пандемией COVID-19 в целом поддержали его участников. В период, когда происходила перестройка моделей функционирования компаний, некоторое ослабление регуляторных правил (например, продление сроков предоставления отчетности, мораторий на штрафы за несоблюдение сроков и т. п.) было своевременной мерой поддержки бизнеса. Вместе с тем возрос объем отчетности, к которой добавились отчеты по принятым в компаниях антивирусным мерам. Кроме того, меры поддержки носят единовременный характер, тогда как проблемы, вызванные первым всплеском пандемии весной и ростом числа заболевших осенью 2020 года, продолжают оказывать самое негативное влияние на страховой рынок. Страховщики нуждаются в долгосрочных программах оказания помощи, которые позволят им сосредоточиться на предоставлении страховых услуг клиентам и развитии новых видов страхования в текущих непростых экономических условиях.

Такие негативные последствия в полной мере спровоцированы замедлением экономических процессов в связи с введенными ограничениями на ведение бизнеса, снижением покупательной способности страхователей, в том числе и юридических лиц.

Первыми о проблемах в реальном предоставлении услуг заявили страховщики по добровольному медицинском страхованию, в связи с фактическим запретом со стороны государства на предоставление медицинской помощи застрахованным при установлении диагноза COVID-19. Это привело к возникновению претензий и негативной реакции со стороны страхователей и в дальнейшем может вызвать рост обращений застрахованных лиц к финансовому омбудсмену и в суды Российской Федерации. Состояние форс-мажора при введении ограничительных мер государством объявлено не было, и это существенно ослабляет позицию страховщиков в споре в связи с невозможностью обеспечить предоставление медицинских услуг по программам добровольного медицинского страхования. Представляется, что издание специального разъяснения Банком России позволило бы ожидать более взвешенной позиции от судов или при внесудебном урегулировании споров при возникновении требований от застрахованных лиц, в том числе и в рамках применения закона о защите прав потребителей.
Хозяйствующие субъекты во многих секторах экономики начали нести беспрецедентные убытки. Специализированные страховщики коммерческих (торговых кредитов) могут столкнуться с нарастанием кризиса неплатежей. И в этом контексте введение Правительством Российской Федерации моратория на объявление процедуры банкротства в отношении отдельных категорий компаний, что является страховым случаем в этом виде страхования, значительно способствует стабилизации ситуации. Однако введенный мораторий на объявление банкротства истекает 7 января 2021 года, и в ожидании изменения подверженности риску кредитные страховщики могут столкнуться с невозможностью приобретения традиционной перестраховочной защиты на зарубежных рынках. Учитывая, что в 2019 году совокупный размер торговых кредитов на территории России, предоставленных поставщиками своим контрагентам при поддержке страховых компаний, составил в среднем 5-5,5 триллиона рублей (3-4% ВВП), ограниченная емкость программ страхования и перестрахования в этом сегменте, могут оказать крайне негативное влияние на скорость и объемы торгового оборота или привести к удорожанию стоимости альтернативных решений. В странах ЕС выделенные государственные гарантии кредитным страховщикам составляют уже более 40 млрд евро[1].

Представляется, что в Российской Федерации неплатежеспособность компаний в некоторых секторах может принять лавинообразный характер и объем застрахованного товарооборота может снизиться на 20-40%.

В целях смягчения воздействия пандемии COVID-19, сохранения возможности предоставления страхового покрытия предприятиям, представляется целесообразным рассмотреть возможность оказания кредитным страховщикам государственной поддержки путем предоставления национальной перестраховочной емкости Российской Национальной Перестраховочной Компанией в отношении страхования торговых сделок на территории Российской Федерации. Заинтересованные страховщики, Комитет по страхованию и пенсионному обеспечению АЕБ предприняли попытку инициировать обсуждение проблемы на площадке ВСС, однако до настоящего времени решение не найдено.

Снижение платежеспособного спроса страхователей неизбежно приводит к нарушению платежной дисциплины и по договорам страхования, в течение первого полугодия 2020 года наблюдается увеличение абсолютного и относительного размера дебиторской задолженности по уплате страховой премии. Страховщики вынуждены предоставлять дополнительные рассрочки по уплате платежей страхователям для сохранения действия страхового покрытия, что приводит и в дальнейшем приведет в еще большем размере к нарушению установленных национальным регулятором нормативов на величину этого вида активов.

Волатильность курса рубля по отношению к основным иностранным валютам неизбежно приведут к росту страховых выплат по видам страхования, прямо или косвенно зависящим от приобретения товаров иностранного производства, в частности по таким массовым видам страхования, как страхование автомобильного каско и ОСАГО.

Вызывает также большую озабоченность и состояние основных активов страховщиков в условиях падения доходности по банковским депозитам, акциям и облигациям большинства российских и иностранных эмитентов.

Все перечисленное выше вызывает напряжение балансов страховщиков и ставит под угрозу выполнение действующих требований национального регулятора к их финансовой устойчивости. В таких непростых экономических условиях пред-

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AJOC_2020_091_I_0001

ставляется целесообразным перенести сроки введения новых, более жестких норм в части допустимых активов страховщиков, включая долю дебиторской задолженности, разрешенные нормативы учета доли перестраховщиков, особенно при перестраховании автомобильного каско и ОСАГО, на более поздние сроки – к 1 июля 2022 года.

ВЕСНОЙ 2020 ГОДА БАНКОМ РОССИИ, ВО ИСПОЛНЕНИЕ ПОРУЧЕНИЯ ПРЕЗИДЕНТА РОССИЙСКОЙ ФЕДЕРАЦИИ О ПРИНЯТИИ МЕР ПО СНИЖЕНИЮ ПОЛНОЙ СТОИМОСТИ ИПОТЕЧНЫХ ЖИЛИЩНЫХ КРЕДИТОВ, БЫЛА РАЗРАБОТАНА И ОПУБЛИКОВАНА НОВАЯ КОНЦЕПЦИЯ РЕГУЛИРОВАНИЯ РЫНКА ИПОТЕЧНОГО СТРАХОВАНИЯ

Предложения, изложенные в Концепции, вызвали серьезную обеспокоенность всех профессиональных участников финансового рынка: как страховых компаний, так и банков. Основные опасения связаны с прогнозированием ряда существенных проблем как для клиента, так и для экономики в случае реализации положений Концепции.

В первую очередь существенный удар будет нанесен по конкурентной среде рынка ипотечного страхования, который и на данный момент нельзя назвать высококонкурентным. Отсутствие свободной конкуренции как основного драйвера для развития любого рынка в конечном счете негативно отразится на потребителе, лишив его возможности самостоятельного выбора доступной и качественной услуги.

При доработке Концепции важно обеспечить реализацию следующих основных моментов:

- Введение свободной конкуренции на рынке путем отказа от текущего процесса аккредитации страховых компаний, в результате чего банки будут принимать договоры страхования, заключенные с любой компанией, работающей на страховом рынке в соответствии с законодательством Российской Федерации. Такое положение дел позволит страховщикам конкурировать по уровню и качеству оказываемых услуг, особенно если объем минимального покрытия будет регламентироваться государством.
- Сохранение и поддержка возможностей для развития продаж ипотечного страхования через альтернативные каналы (агентства недвижимости, онлайн-игроки, прямые продажи), что также усилит свободную конкуренцию и приведет к закономерному итогу: снижению стоимости страхования для клиентов.
- Стимулирование инноваций, клиентоориентированных практик и качественного сервиса на рынке ипотечного страхования путем заинтересованности страховщиков конкурировать в вопросе качества предоставляемых продуктов.
- Обеспечение понятных и прозрачных условий страхования и адекватной стоимости страхового продукта для клиента, а также открытой и доступной информации о характеристиках продукта.

Ипотечное страхование имеет перспективы для того, чтобы стать локомотивом роста не только банкострахового сектора, но и всего российского рынка страхования, однако для его эффективной поддержки и развития важно сохранение необходимого баланса интересов всех участников рынка.

СТРАХОВАНИЕ D&O

Договоры добровольного страхования имущественных интересов членов органов управления и должностных лиц юридических лиц (далее – «страхование D&O») заключаются с целью обеспечить получение надлежащего возмещения убытков, причиненных лицу и его акционерам недобросовестными или неразумными действиями (бездействиями) членов его органов управления.

При этом в России страхование D&O не является распространенной практикой, что, прежде всего, связано с нормами действующего налогового законодательства: невозможность организаций отнести на расходы для целей уплаты налога на прибыль страховые премии по договорам страхования D&O и обязанность членов органов управления уплачивать налог на доходы физических лиц (далее – «НДФЛ») с сумм страховых премий, вносимых за них из средств работодателей.

Правительством Российской Федерации в этом году был внесен проект Федерального закона № 969592-7, которым предлагается частично освободить физических лиц от уплаты НДФЛ с сумм страховых премий, оплаченных работодателями, дополнив пункт 3 статьи 213 Налогового кодекса Российской Федерации следующими словами: «а также по договорам добровольного страхования гражданской ответственности членов советов директоров акционерных обществ».

АЕБ поддерживает инициативу авторов законопроекта, однако считает, что указанная в законопроекте формулировка не является оптимальной и требует уточнения, так как она не учитывает в том числе следующие особенности страхования D&O:

- По договорам страхования D&O страхуются интересы не только членов совета директоров, но и членов иных органов управления и должностных лиц: исполнительных органов, главных бухгалтеров, руководителей филиалов и т. д.
- Договоры страхования D&O в России чаще являются договорами страхования финансовых рисков или комбинированными (смешанными) договорами страхования финансовых рисков и гражданской ответственности.
- Договоры страхования D&O заключаются не только акционерными обществами, а юридическими лицами различных организационно-правовых форм, в том числе обществами с ограниченной ответственностью. Риск возникновения убытков в результате действий члена органа управления не зависит от организационно-правовой формы лица.

Также считаем необходимым внести изменения в статью 263 Налогового кодекса Российской Федерации в части расширения перечня расходов на добровольное страхование, принимаемых для целей налога на прибыль организаций. Отсутствие такой возможности существенно ограничивает спрос на заключение договоров страхования D&O и является сдерживающим фактором развития страхования, которое улучшит финансовую устойчивость организаций.

РЕКОМЕНДАЦИИ

- Дополнить пункт 3 статьи 213 Налогового кодекса Российской Федерации следующими словами: «а также по договорам добровольного страхования имущественных интересов

членов органов управления и (или) должностных лиц».
- Дополнить пункт 1 статьи 263 Налогового кодекса Российской Федерации подпунктом 9.4.), изложив его в следующей редакции: «9.4.) добровольное страхование имущественных интересов членов органов управления и (или) иных должностных лиц».

УСЛОВИЯ РАЗРЕШЕНИЯ ДОСТУПА ИНОСТРАННЫХ СТРАХОВЩИКОВ (ПЕРЕСТРАХОВЩИКОВ) ПУТЕМ ОТКРЫТИЯ ФИЛИАЛОВ (ОТДЕЛЕНИЙ)

В соответствии с обязательствами РФ в секторе страховых услуг при присоединении к ВТО (Протокол от 16.02.2011 года, ратифицированный 21.07.2012 №126-ФЗ) Минфин РФ подготовлен новый вариант законопроект о ключевых требованиях при условии доступа и деятельности иностранных страховщиков в форме филиала (отделения) вместо дочернего общества со 100% участием. Такие изменения должны вступить в силу с 22.08.2021, и могут оказать заметное влияние на решения иностранных страховщиков начать деятельность в России, создать условия для расширения перечня услуг для российских страхователей. При этом обязательства такого отделения гарантируются капиталом материнской страховой (перестраховочной) компании, активы которой в соответствии с Протоколом не могут быть менее 5 млрд долл. США (т.е. около 340,0 млрд руб.). Законопроект был инициирован в 2018 году, однако до настоящего времени, в том числе и редакции законопроекта, вынесенного на общественное обсуждение в 2020 году, большинство его положений вступают в противоречие с практикой упрощения условий доступа на национальные рынки при открытии филиалов иностранных страховщиков.

Современная редакция российского законопроекта не упрощает условия коммерческого доступа иностранных страховых компаний в виде филиалов по сравнению с условиями открытия дочерних компаний, а во многом делает его и более жестким, и непредсказуемым. В частности, это касается размера первоначального гарантийного депозита, который должен соответствовать минимальному размеру уставного капитала с учетом видов страховой деятельности, но при этом филиал не вправе размещать его по собственному усмотрению, а обязан держать сумму денежных средств от 240 до 960 млн руб. (до 12,0 млн евро) на специальном счете в Агентстве по страхованию вкладов, не имея возможности получать инвестиционный доход. Размер такого депозита подлежит корректировке ежеквартально и делает непредсказуемым экономические условия деятельности иностранного страховщика.

Вызывает большую озабоченность предусмотренная законопроектом обязанность иностранного страховщика передавать в РНПК 10% от перестрахования риска по договору страхования, заключенного филиалом в РФ. Во-первых, эта норма технически не выполнима, т.к. договоры перестрахования зачастую заключаются в отношении всех географических локаций деятельности международного страховщика, и во-вторых, вступает в противоречие с требованиями к надежности перестрахования в ряде юрисдикций, поскольку кредитный рейтинг РНПК (BBB) существенно ниже, требуемых в силу норм платежеспособности, в том числе и Директива 2009 Solvency II ЕС.

Наконец, законопроект ставит возможность открытия филиала в зависимость от наличия соглашения между органами страхового надзора страны регистрации иностранного страховщика и РФ. Таких соглашений на сегодняшний день нет, и это требование не предусмотрено национальными обязательствами 2011 года.

Комитет неоднократно высказывался в пользу нахождения взвешенного подхода при выборе способов регулирования учреждения и деятельности филиалов иностранных страховщиков, учитывающего масштаб предполагаемых операций по страхованию и характер принимаемых рисков: например, требуя максимального финансового обеспечения и его локализации для видов страхования, связанных с интересами граждан, и упростив их для филиалов, осуществляющих страхование в рамках корпоративных имущественных программ международных компаний, или в сфере международного перестрахования, где, начиная с 1991 года операции давно разрешены в режиме трансграничной торговли.

РЕКОМЕНДАЦИИ

При подготовке законопроекта необходимо учесть юридический статус филиала, предоставляющий страховые услуги только в составе материнской компании иностранного страховщика. Это должно найти свое отражение в требованиях к открытию и деятельности филиала (гарантийный фонд, страховые резервы, активы, управление филиалом). В части филиалов иностранных перестраховщиков требование о размере гарантийного фонда должно учитывать современные возможности предоставления услуг в режиме трансграничной торговли в отсутствие таких обременений. Условия открытия филиалов иностранных страховщиков могут быть значительно упрощены с учетом первоначальных ограничений к иностранным страховщикам, получающим такое право. Из законопроекта должны быть исключены требования, не предусмотренные национальными обязательствами РФ и рассматриваемые, как неоправданные административные барьеры для доступа на национальный страховой рынок РФ.

ЧЛЕНЫ КОМИТЕТА

AIG Insurance Company, JSC • Allianz IC OJSC • BNP Paribas CARDIF Insurance company • Chubb Insurance Company, LLC • CMS Russia • Credendo – Ingosstrakh Credit Insurance LLC • Euler Hermes • EY • General Reinsurance AG • Generali Russia & CIS • MAI Insurance Brokers • Renaissance pensions JSC NSPF • SAFMAR NPF AO • SCOR Moscow Representative Office • SOCIETE GENERALE Strakhovanie Zhizni LLC • SOGAZ Insurance Group • Tinkoff Online Insurance, JSC • VSK Insurance House (SAO VSK) • Zetta Insurance Company Ltd. • ZURICH RELIABLE INSURANCE, JSC.

КОМИТЕТ ПО ИНФОРМАЦИОННЫМ ТЕХНОЛОГИЯМ И ТЕЛЕКОММУНИКАЦИЯМ

Председатель:
Эдгарс Пузо, Atos

Заместители председателя:
Глеб Вершинин, SAP CIS; **Вадим Перевалов**, Baker McKenzie;
Александра Шмигирилова, Ericsson

Координатор комитета:
Светлана Ломидзе (svetlana.lomidze@aebrus.ru)

ПЕРСПЕКТИВЫ РАЗВИТИЯ РЕГУЛИРОВАНИЯ ТЕЛЕКОММУНИКАЦИОННЫХ И ИНФОРМАЦИОННЫХ ТЕХНОЛОГИЙ В РОССИИ

ВВЕДЕНИЕ

В 2020 году пандемия коронавируса привела к серьезному повышению спроса на различные ИТ-решения, значительно усилив темпы цифровой трансформации российской экономики. Широкая поддержка усилий Правительства российскими и международными телекоммуникационными и ИТ-компаниями, многие из которых предоставили расширенный доступ к своей инфраструктуре и сервисам, стали залогом устойчивости российской экономики в период самоизоляции.

Цифровая трансформация и достижение «цифровой зрелости» ключевых отраслей экономики и социальной сферы впервые вошли в обновленные цели развития согласно указу «О национальных целях развития Российской Федерации на период до 2030 года», подписанному Президентом РФ 21 июля 2020 года. Правительство РФ ведет разработку показателей уровня цифровой зрелости и соответствующую корректировку национальных проектов, включая программу «Цифровая экономика». Усиленными темпами продолжается реализация курса на импортозамещение за счет широких мер поддержки российских ИТ-компаний, стимулирования государственного спроса на отечественные продукты, а также за счет ограничения конкуренции.

Опыт других европейских стран показывает, что ограничительные меры, направленные на защиту внутреннего рынка, не ведут в долгосрочной перспективе к созданию конкурентоспособных продуктов мирового уровня. Однако при этом возможен обратный эффект, когда на иностранных рынках будут вводиться ограничения в отношении российских продуктов.

РОССИЙСКОЕ ЗАКОНОДАТЕЛЬСТВО О ПЕРСОНАЛЬНЫХ ДАННЫХ

10 октября 2018 года Российская Федерация подписала протокол, вносящий изменения в Конвенцию Совета Европы о защите физических лиц при автоматизированной обработке персональных данных от 1981 года, что позволит сблизить законодательство России и Европейского союза в отношении обработки персональных данных.

2 декабря 2019 года вступил в силу закон о введении значительных штрафов за несоблюдение требований локализации баз персональных данных. Размеры штрафов варьируются от 1 до 18 млн рублей для компаний и от 100 до 800 тыс. рублей для генеральных директоров и иных топ-менеджеров. Штрафы в размере 4 миллионов рублей уже были наложены судом на компании Twitter и Facebook.

21 июля 2020 года Правительство России внесло в Госдуму законопроект (https://sozd.duma.gov.ru/bill/992331-7) о порядке обезличивания персональных данных, требования и методы обезличивания таких данных утвердит Роскомнадзор. Для уничтожения персональных данных в ИТ-системах законопроект предписывает использовать только средства защиты, сертифицированные ФСТЭК или ФСБ, что создаст оператором дополнительные сложности при выполнении требований закона о своевременном уничтожении персональных данных.

ЕВРОПЕЙСКОЕ ЗАКОНОДАТЕЛЬСТВО О ПЕРСОНАЛЬНЫХ ДАННЫХ

25 мая 2018 года вступил в силу Регламент ЕС по общим принципам защиты данных (General Data Protection Regulation). Регламент имеет экстерриториальный характер и применим к ряду российских компаний, которые в случае его неисполнения могут быть привлечены к значительной финансовой ответственности (например, штраф в размере 20 млн евро).

После принятия решения Судом Европейского союза по делу C-311/18 (Schrems II) 16 июля 2020 года, в европейском законодательстве также возникла неопределенность, допустимо ли передавать персональные данные с территории ЕС на территорию России. Полагаем, что решение данной проблемы требует более активного сотрудничества между государственными органами России и ЕС.

ОГРАНИЧЕНИЕ ДОСТУПА К ИНФОРМАЦИИ В ИНТЕРНЕТЕ

В последнее время Роскомнадзор неоднократно указывал на неэффективность механизма блокировок информационных ресурсов (например, веб-сайтов, мобильных приложений), нарушающих информационное законодательство.

18 июня 2020 года Роскомнадзор по согласованию с Генеральной прокуратурой Российской Федерации снял требования по ограничению доступа к мессенджеру Telegram. Решение, принятое Роскомнадзором, дает основание полагать, что сайт или мобильное приложение может быть разблокировано во внесудебном порядке, если компания приняла необходимые меры к исполнению российского законодательства. Полагаем, что подобную практику целесообразно применять и в отношении прочих ресурсов.

ХРАНЕНИЕ ПОЛЬЗОВАТЕЛЬСКИХ СООБЩЕНИЙ И ИНФОРМАЦИИ О ПОЛЬЗОВАТЕЛЯХ

Сохраняется неопределенность в отношении реализации «пакета Яровой», в частности, в отношении обязанности операторов связи и организаторов распространения информации по хранению текстовых сообщений, голосовой информации, изображений, звуков, видео и иных сообщений пользователей услугами связи. С 1 июля 2018 года указанные данные должны храниться до 6 месяцев с момента окончания их приема, передачи, доставки и (или) обработки.

В связи с пандемией COVID-19, операторы связи и бизнес-сообщество рассчитывают на ослабление/изменение некоторых требований закона.

БЕЗОПАСНОСТЬ КРИТИЧЕСКОЙ ИНФОРМАЦИОННОЙ ИНФРАСТРУКТУРЫ

1 января 2018 года вступил в силу Федеральный закон «О безопасности критической информационной инфраструктуры Российской Федерации».

В конце мая Минцифры России предложило осуществить переход на «преимущественное использование» российского ПО и оборудования на объектах КИИ. В соответствии с этим предложением владельцы объектов КИИ будут обязаны перейти на преимущественное использование ПО из российского реестра и реестра программного обеспечения ЕАЭС (Евразийского экономического союза) до 1 января 2021 года, российского оборудования – до 1 января 2022 года.

Принятие предлагаемых требований в текущем виде может привести к сбою обеспечивающих функционирование объектов КИИ ИТ-систем, а у субъектов КИИ возникнут существенные необоснованные затраты на закупку нового оборудования и ПО при еще не истекшем сроке жизненного цикла уже установленного оборудования и ПО. Кроме того, существует риск нарушения договоренностей ВТО в случае принятия актов, ограничивающих покупку иностранной продукции субъектами КИИ, многие из которых являются негосударственными компаниями.

РЕКОМЕНДАЦИИ

- Привлекать экспертов международных ассоциаций и профессиональных объединений к участию в рабочих группах и экспертных советах исполнительной и законодательной властей при проработке правового режима актуальных для современной цифровой экономики концепций (большие данные, интернет вещей и т. д.).
- Выработать сбалансированный подход к распределению затрат между бизнесом и государством в отношении реализации «пакета Яровой».
- Выработать официальную позицию по европейскому регламенту (GDPR), возможности трансграничной передачи персональных данных из ЕС в Россию и наоборот, а также подходы, позволяющие эффективно имплементировать изменения, предусмотренные модернизированной Конвенцией Совета Европы, в российское законодательство о персональных данных.
- Дать официальные разъяснения и создать условия для более широкого практического применения операторами п. 7 ч. 1 ст. 6 Закона 152-ФЗ (обработка персональных данных необходима для осуществления прав и законных интересов оператора или третьих лиц) для целей обоснования обработки персональных данных.
- Дать официальные разъяснения для бизнеса в отношении:
  - применения Федерального закона «О безопасности критической информационной инфраструктуры Российской Федерации» к компаниям;
  - механизма оценки и принятия решений в соответствии с Федеральным законом «О безопасности критической информационной инфраструктуры Российской Федерации».
- Отказаться от принятия нормативно-правовых актов, предписывающих частным компаниям осуществить переход на «преимущественное использование» российского программного обеспечения и оборудования на объектах критической информационной инфраструктуры.
- Ускорить принятие законодательной базы для новых технологий, чтобы исключить отставание от мирового рынка высоких технологий.

СОСТОЯНИЕ И ТЕНДЕНЦИИ РАЗВИТИЯ РОССИЙСКОГО ТЕЛЕКОММУНИКАЦИОННОГО РЫНКА

Российский рынок телекоммуникаций по-прежнему отличается высокой степенью консолидации.

Количество телефонов, смартфонов, планшетов и модемов, подключенных к мобильному интернету (основному драйверу роста доходов операторов) в России составляет около 100 миллионов.

Инновации стимулируют развитие общества, полностью охваченного подключением к Интернету. Развивается перспективный сегмент рынка – интернет вещей (IoT), предполагающий подключение к сети различных объектов. Уже сегодня подключения M2M в мире демонстрируют годовой рост в 40%. С появлением IoT этот сегмент ожидает взрывное развитие.

На данный момент по объему Enterprise-рынка интернета вещей среди российских отраслей с большим отрывом лидирует транспортная отрасль – 13,1 млрд рублей. Эта сумма в значительной степени формируется системами автотранспортной

телематики (они составляют порядка 44% от текущего количества всех M2M-подключений).

Еще одним востребованным сегментом корпоративного ИКТ-рынка является информационная безопасность. Согласно прогнозу IDC, к 2022 году среднегодовой темп роста рынка корпоративных ИБ-услуг составит 3,9%. Этому способствует рост числа киберугроз – одно только развитие интернета вещей в ближайшие годы спровоцирует лавинообразное увеличение числа устройств, подключенных к глобальной сети. Наличие угроз с такого количества неуправляемых или слабо управляемых устройств приведет к необходимости обеспечивать защиту как существующих онлайн-сервисов, так и вновь подключаемых объектов.

Новое поколение мобильной связи 5G является сейчас наиболее обсуждаемым вопросом в области телекоммуникаций. Одним из самых сложных вопросов является вопрос выделения частот для развертывания сетей связи 5G.

Наиболее распространенным частотным диапазоном для внедрения сетей 5G по всему миру является диапазон 3400-3800 МГц. Это объясняется тем, что в большинстве стран в этом диапазоне есть достаточно широкие свободные полосы частот – около 100 МГц на оператора, которые могут быть использованы для передачи растущих объемов трафика. Широкая доступность этого диапазона во многих странах делает его приоритетным при разработке пользовательских устройств: в первую очередь смартфонов.

Еще одна область частот, которая используется для развития сетей 5G в мире, – это диапазоны частот свыше 26 ГГц. Сегодня в этих диапазонах работают только операторы в США. В перспективе к ним присоединятся и другие страны, в первую очередь Европа (ожидается в 2021 году) и Южная Корея.

В Российской Федерации наиболее перспективный диапазон (3400-3800 МГц) занят в основном военными и спутниковыми системами связи, которые не планируется переводить на другие частоты в ближайшее время. Операторы и производители оборудования ожидают от регулятора решения вопроса выделения/расчистки частот как можно скорее, иначе Россия может существенно отстать во внедрении и развитии нового поколения связи от остального мира.

ЧЛЕНЫ КОМИТЕТА

ABB • Accenture • AIG Insurance Company JSC • ALRUD Law Firm • Antal Russia • Atos • Baker Botts • Baker McKenzie • Bayer • Beiten Burkhardt • Brother • Capital Legal Services • CMS Russia • Coleman Services UK • Credit Agricole • Dassault Systems • Deloitte • Dentons • Egorov Puginsky Afanasiev & Partners • Ericsson • EY • General Electric • Google Russia • HSBC Bank • JTI • Morgan Lewis • Noerr • Nokia Solutions & Networks • Orange Business Services • PwC • Pepeliaev Group • Philips • PwC • Sanofi • SAP C.I.S • SCHNEIDER GROUP • Siemens LLC • TeliaSonera International Carrier • Tieto • VEGAS LEX Advocate Bureau • Zurich Reliable Insurance.

КОМИТЕТ ПО МАШИНОСТРОЕНИЮ И ИНЖИНИРИНГУ

Председатель:
Филипп Пегорье, Alstom Transport Rus LLC

Заместитель председателя:
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Координатор комитета:
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ПРОИЗВОДСТВО И ПРИВЛЕЧЕНИЕ ИНВЕСТИЦИЙ

Ассоциация европейского бизнеса уделяет особое внимание такой экономической категории, как локализация процессов инжиниринга, производства и последующего сервисного обслуживания продукции отраслей машиностроения на территории России, и содействию включения российской продукции машиностроения в глобальные цепочки поставок. Рост доли прибавочной стоимости, создаваемой иностранным хозяйствующим субъектом на российском рынке, способствует экономическому росту регионов, развитию национальной отрасли поставщиков, технологий, производства, управления и повышения российских производственных компетенций.

Рост уровня локализации во многом обеспечивается целенаправленной государственной политикой в сфере привлечения зарубежных инвестиций и компетенций в строительство локальных мощностей по производству как финальной продукции машиностроения, так и компонентов различных уровней, а также материалов, необходимых для ее производства. Данного рода механизмы включают в себя как меры прямого, краткосрочного воздействия – создание ОЭЗ, налоговые и таможенные преференции, государственные субсидии и прочее, так и меры, имеющие долгосрочное, опосредованное влияние – стимулирование развития малого и среднего бизнеса, выступающего в роли поставщиков, совершенствование образовательной базы для подготовки конкурентоспособных кадров, упрощение бюрократических процессов.

Комитет активно занимается вопросом развития локализации в России, регулярно проводя встречи и консультации по этому вопросу.

ПРОБЛЕМЫ

Комитет выделяет три блока проблем в сфере развития предприятий зарубежных компаний в России.

Фундаментальный блок

- Стремление к замене закупок локальными продуктами государственными и муниципальными компаниями, которые часто являются аналогами, уступающими в ряде характеристик импортным оригиналам, может повлечь ухудшение качества продукции, создаваемой внутри России. Неразвитость системы производства локальных компонентов и материалов влияет негативно на качество финальной продукции из-за недостатков на предыдущих стадиях производства. В итоге они приносят большие издержки в конечном продукте как для компаний, так и для государства.
- Экономическая база под стратегию и программу локализации не вполне подготовлена. Реализация программы напоминает больше ручное управление. При этом ее осуществление противоречит экономическим законам и общемировым тенденциям по разделению труда. Так, в мире существует тенденция к концентрации производств ключевых компонентов в одном месте. Развитие же локальных производств идет для сокращения логистических издержек и использования произведенной продукции, в первую очередь на локальных рынках, в связи с чем объем рынка, а также потенциал экспорта локализованного товара на экспортные рынки имеет определяющее значение при принятии решения об инвестициях в проекты по локализации. Недооценка подобных общемировых тенденций в России при развитии местного производства создает проблему, которая приводит к тому, что международные компании не могут обосновать экономическую целесообразность проектов по организации производства в России.
- Слишком низкая емкость внутреннего рынка РФ, вызванная крайне ограниченным платежеспособным спросом, для обоснования экономической целесообразности организации локального производства, особенно в случаях производства компонентов автоматизации производства, тогда как в России слабо развит пул инжиниринговых компаний и производителей комплексных решений, а мотивация для развития экспорта из России недостаточная.
- Весьма высокая стоимость кредитов, необходимых для развития технологической базы предприятий, что сдерживает их модернизацию.
- Высокие административно-бюрократические барьеры, сложность и постоянные изменения российского законодательства в части организации производства приводят к высокому уровню административных расходов. Международные компании вынуждены иметь в своем штате значительное количество специалистов исключительно для подготовки документов и отслеживания необходимых изменений в процессах, тогда как большинство поставщиков технологий и готовых продуктов – это небольшие компании, которые не

могут себе этого позволить. Также и для получения государственных субсидий требуется подготовка большого количества документов, а также участие в конкурсе, что требует значительного отвлечения времени сотрудников без гарантии на успех.

Технологический блок

- Низкий уровень автоматизации и изношенность оборудования на многих предприятиях, потенциально подходящих на роль поставщиков, что приводит к низкому качеству и высокой стоимости продукции таких предприятий.
- Несоответствие организации производственных процессов и качества компонентов и материалов, производимых локальными поставщиками, международным стандартам и требованиям систем менеджмента качества, предъявляемым к поставщикам международными компаниями, что затрудняет процесс включения российских производителей в глобальные цепочки поставок.
- Низкая производительность труда (в среднем по РФ – меньше трети от уровня США).
- Нехватка подготовленного персонала («голубых воротничков» и инженеров), способного работать с новейшим оборудованием и технологиями. Хотя ситуация с этим в последнее время улучшается, она по-прежнему остается довольно острой.

Инфраструктурный блок

- Недостаточная развитость инфраструктуры (за исключением нескольких регионов), а также высокие административно-бюрократические барьеры в ряде регионов.
- Высокие накладные расходы.
- Слабый уровень развитости малого и среднего бизнеса, который во всем мире является основой компонентной отрасли.

РЕКОМЕНДАЦИИ

Комитет предлагает следующие принципы, с помощью которых государство могло бы стимулировать иностранные инвестиции в российские производственные мощности.

- Разработать эффективные механизмы защиты объектов собственности и иностранных инвестиций, а также снизить административную нагрузку на инвесторов, ограничив проверочную и надзорную функцию госорганов.
- Обеспечить льготный период для инвестиционных промышленных проектов, в зависимости от их типа и сроков окупаемости, тем самым разделив риски.
- Продолжить создание технопарков с полной инфраструктурой, включающей производственные помещения, используя положительный опыт некоторых регионов.
- Применить к компаниям, имеющим более 40% иностранного капитала и экспортирующим более 30% своей продукции за пределы Таможенного союза, специальный налоговый режим.
- Освободить резидентов технопарков от арендной платы на 5–8 лет, а также от ряда налогов по аналогии с ОЭЗ. Развитие технопарков в части приглашения резидентов должно происходить с прицелом на установление связей между ними и построение технологических цепочек. В первую очередь в такие технопарки необходимо приглашать компании, производящие компоненты, считающиеся обязательными для локализации. Оценка успешности технопарков должна производиться не по количеству/объемам привлеченных инвестиций, а по количеству и сложности реализованных на их территории производственных цепочек.
- Обеспечить финансовую поддержку локальному среднему бизнесу при его соответствии (или четко обозначенном намерении соответствовать) требованиям иностранных инвесторов по качеству продукции (или при наличии согласованной программы изменений по достижению соответствия в ближайший год).
- Изменить подход к локализации производства в РФ, сделав упор на развитие направлений, по которым у российских производителей имеются наибольшие компетенции, с учетом возможности их встраивания в мировые цепочки поставок. Обеспечить льготный режим импорта продукции, в которой применяются российские комплектующие.
- В целях стимулирования платежеспособного спроса обеспечить возможность получения кредитов с низкой процентной ставкой как для производителей продукции, так и для ее покупателей.
- Обеспечить поддержку экспорта продукции путем предоставления экспортных кредитов, государственных гарантий, страхования рисков участников экспортных сделок, субсидирования стоимости транспортировки по территории Российской Федерации.
- Улучшить инфраструктуру и привлекательность регионов, где планируется развивать производство с целью привлечения высококвалифицированных специалистов.
- Создание и развитие кадрового потенциала в стране с современными компетенциями посредством организации образовательных программ в учебных заведениях по мировым стандартам с программами обмена студентами между учебными заведениями России и зарубежных стран, а также с привлечением зарубежных специалистов или людей с зарубежным опытом. Данные программы не должны ограничиваться вузами в центральных регионах страны.
- Упрощение режима для посещения РФ высококвалифицированными зарубежными специалистами по рабочими визам.

ПРОБЛЕМА

Политика импортозамещения продукции российского государства была реализована в Постановлении Правительства РФ от 17 июля 2015 г. № 719 «О подтверждении производства промышленной продукции на территории Российской Федерации», в котором в качестве основного критерия признания российского происхождения продукции принят принцип выполнения обязательных технологических операций на территории страны. Данное требование коснулось практически всех

основных отраслей промышленности, причем как перечень обязательных операций, так и список регулируемых отраслей продолжают постоянно расширяться.

Перечни производственных операций разрабатывались на основе действующего производственного процесса предприятий, которые уже являются монополистами в своей отрасли, поэтому данный принцип только усиливает их монопольное положение и полностью исключает их из конкурентной борьбы, устраняет стимулы для технологического развития производства и совершенствования технического уровня продукции, снижения ее себестоимости и повышения экономической эффективности и конкурентоспособности. Кроме того, покупатели такой продукции обречены на использование технически отсталой техники по завышенным ценам.

В качестве альтернативы принципу обязательных производственных операций в автомобильной промышленности был введен принцип выбора производственных операций и существенного расширения их перечня, а также присвоения каждой операции определенного количества баллов. В зависимости от суммы баллов, присвоенных продукции, производитель получает доступ к тем или иным формам государственной поддержки. Несмотря на прогрессивность нового метода, призванного предоставить больше свободы производителям в выборе операций, в нем имеется ряд недостатков.

Перечень операций

Выбор операций, включенных в новый перечень, представляется неоптимальным. Например, излишне большое количество вновь введенных операций связанно с производством автомобильной электроники. Поскольку требование об изготовлении электронных блоков на территории РФ ранее не ставилось перед автомобилестроителями, то большинство из них оказались не готовы к освоению их производства. Учитывая критичность электронных систем и, соответственно, ПО для них в современном автомобиле, стоимость их разработки крайне высока, а отладка и испытания занимают весьма много времени. Крайне экономически неэффективным представляется разработка отдельной версии ПО для российского рынка с передачей прав интеллектуальной собственности на эту версию зарегистрированной в РФ компании. Маловероятно также использование российского ПО в качестве единственного, устанавливаемого на выпускаемых по всему миру автомобилях международных производителей. Следует учесть и тот факт, что в России в целом слабо развито производство автомобильных электронных систем.

В перечень производственных операций включено также применение российских лакокрасочных материалов, хотя даже российские автопроизводители отказываются от их применения.

РЕКОМЕНДАЦИИ

Поскольку балльная система оценки производства в Постановлении Правительства Российской Федерации № 719 может быть применена для всех отраслей промышленности, довести до представителей Минпромторга и Минэкономразвития позицию международных инвесторов, развивающих производство в Российской Федерации, о том, что в существующем виде она не дает объективную оценку локализации производства. Требуется либо ее тщательная настройка, которая учитывала бы специфику производства разных категорий одного товара, а также развитие послепродажной поддержки, доступность запчастей, развитие компетенций местного персонала и др., либо замена ее интегральной системой, которая оценивала бы инвестиционную деятельность на территории РФ в целом, например, оценка на основе добавленной стоимости.

ЧЛЕНЫ КОМИТЕТА

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РЕГУЛИРОВАНИЕ ТОРГОВОЙ ДЕЯТЕЛЬНОСТИ

ПРОБЛЕМЫ

ТОРГОВЛЯ В УСЛОВИЯХ ПАНДЕМИИ

Розничная и оптовая торговля остро ощутили на себе последствия пандемии в России. По данным Росстата и Минпромторга России, падение розничного товарооборота в апреле 2020 года составило в годовом выражении свыше 23%, в мае – более 19%, в июне – почти 8 %, в июле – около 3 %, в августе – на 2,7% и в сентябре – еще на 3%. За январь–сентябрь 2020 года продажи оказались ниже показателей прошлого года на 4,8%.

Продовольственная торговля смогла продолжить работу, но прошла через целый ряд непростых этапов. Первый был связан с авральным удовлетворением резко выросшего спроса населения на ряд продуктов длительного хранения и введением усиленных противоэпидемических мер в торговых объектах. На втором этапе продовольственной торговле пришлось столкнуться с пропускными режимами регионов и препятствиями для межрегиональных перевозок товаров. За этим последовало введение регионами масочных режимов и трудности как в обеспечении на начальном этапе достаточного предложения масок в торговом ассортименте, так и в плане взаимодействия с покупателями, нарушающими предписания властей.

В сегменте продовольственной торговли в основном пострадали магазины разных форматов, расположенные в торговых центрах, и в так называемых траффиковых локациях, т. е. находящиеся вблизи объектов транспорта, предприятий, бизнес-центров и т. п. Сказался и переток розничных покупателей в сетевые магазины. Таким образом, ограничения отразились в основном на показателях торговых предприятий малого и среднего бизнеса. К тому же бизнес несет повышенные расходы на противоэпидемические мероприятия, логистику, персонал и т. п. В целом же продовольственная торговля за январь–август потеряла около 2,2% оборота по сравнению с аналогичным периодом 2019 года, хотя крупные торговые предприятия, как правило, сумели сохранить и даже отчасти нарастить оборот.

Торговля непродовольственными товарами в силу введенных ограничений была вынуждена в марте прекратить операции в своих объектах и только с июня постепенно восстанавливает бизнес, неся существенные дополнительные расходы на противоэпидемические мероприятия. При этом даже расширение такого канала продаж, как электронная коммерция, смогло лишь отчасти скомпенсировать выпавшие обороты и прибыль. За период с января по август непродовольственная торговля сократилась на 7,8% по сравнению с аналогичным периодом 2019 года. По оценкам экспертов, более-менее полного восстановления непродовольственного торгового бизнеса следует ожидать не ранее, чем в 2021 году.

Онлай-торговля испытала значительное повышение спроса и существенно нарастила свои обороты, хотя ей также пришлось столкнуться со многими регуляторными ограничениями и предписаниями.

Вместе с тем ситуация для торговли в целом могла бы оказаться значительно серьезнее, если бы не меры поддержки, принятые государством по стимулированию спроса через прямую финансовую помощь населению, а также меры поддержки бизнеса, в первую очередь в части компенсаций средств на уплату кредитов и поддержку занятости, отсрочки обязательств по кредитам, налогам и пр.

Главный вопрос для торговли осенью 2020 года заключается в том, по какому сценарию будет развиваться пандемия, в частности, какими ограничениями в отношении торговли государство ответит на очередной всплеск инфекции. Такая ситуация неопределенности вредна для восстановления и дальнейшего развития торговли.

К тому же анализ опыта начального этапа пандемии показывает, что многие осложнения для торгового бизнеса были сопряжены с непредсказуемостью действий властей, не оставлявших времени на подготовку к вводимым ограничительным и мониторинговым мерам, с избыточностью ряда ограничительных требований, а также с отсутствием должной скоординированности действий региональных властей.

РЕКОМЕНДАЦИИ

Ассоциация европейского бизнеса призывает Правительство России и соответствующие федеральные органы исполнительной власти заблаговременно разработать в диалоге с бизнесом ре-

гламенты работы торговли на случай второй волны пандемии, которые бы:

- исключали закрытие торговых объектов при условии выполнения четко обозначенных санитарных противоэпидемических предписаний, в том числе исключали привязку разрешений работы предприятий потребительского рынка к определенным пороговым значениям площади объектов (400 и 800 кв. м);
- обеспечивали необходимую предсказуемость и согласованность действий федеральных и региональных органов власти, а также инструменты их постоянного диалога с торговым бизнесом для решения оперативных проблем и задач;
- исключали применение избыточных и заведомо невыполнимых предписаний в отношении торговли, как, например, по использованию в торговых и логистических объектах рециркуляторов (устройств УФ-обеззараживания воздуха закрытого типа).

Важной мерой поддержки торговли стала бы также компенсация государством затрат торговых предприятий на противоэпидемиологические меры (закупку средств индивидуальной защиты, средств дезинфекции и оплату услуг организаций по дезинфекции, затрат на тестирование сотрудников на COVID-19 и др.).

Наконец, Ассоциация европейского бизнеса считает важным включить в состав системообразующих предприятий России соответствующие компании не только розничной, но и мелкооптовой и оптовой торговли в силу их значимости для бесперебойного снабжения бизнесов и, тем самым, конечных потребителей необходимыми товарами.

ГОСУДАРСТВЕННОЕ РЕГУЛИРОВАНИЕ ТОРГОВЛИ

Федеральный закон № 273-ФЗ от 3 июля 2016 г. «О внесении изменений в Федеральный закон «Об основах государственного регулирования торговой деятельности в Российской Федерации» и «Кодекс Российской Федерации об административных правонарушениях»» внес значительные изменения в государственное регулирование потребительского рынка.

По официальному обоснованию, данные поправки были призваны укрепить продовольственную безопасность и устранить недобросовестные практики на рынке. Фактически они стали беспрецедентным вмешательством государства в свободу договорных отношений между контрагентами, навязав принципиально новую, так называемую «фронт-маржинальную», модель взаимодействия торговли и поставщиков.

Переход на новый формат взаимоотношений в предельно сжатые сроки, установленные законом, потребовал от всех участников рынка мобилизации значительных ресурсов. Кроме того, ввиду недостаточной проработанности текста поправок, участникам рынка потребовались разъяснения Федеральной антимонопольной службы, которые появились всего за 6 недель до истечения переходного периода. Существенные затруднения бизнес испытал и в первой половине 2017 года из-за массовых проверок исполнения данного закона, когда территориальные управления ФАС в каждом регионе истребовали у торговых предприятий колоссальные объемы документов.

В конечном счете большинство участников рынка сумело адаптироваться к новому законодательству, но стало очевидно, что принятые поправки серьезно усложнили условия ведения бизнеса, особенно для субъектов малого и среднего предпринимательства как в торговле, так и в пищевой индустрии. Драматическое ограничение возможности для поставщиков пользоваться услугами торговых сетей по продвижению и логистике товаров, в целом повышение прозрачности закупочных цен привели к росту ценовой конкуренции, в условиях которого упала конкурентоспособность именно малого и среднего бизнеса.

Поправки ноября 2018 года в Закон о торговле, касающиеся запрета возвратов продовольственных товаров, вновь особенно сильно ударили по позициям малого и среднего бизнеса на потребительском рынке.

Параллельно в конце 2018 года Правительством Российской Федерации была инициирована процедура оценки фактического воздействия (далее – ОФВ) поправок 2016 года, призванная установить эффективность данных изменений с учетом заявленных целей. Согласно опубликованному отчету об ОФВ, более 80% из 1,5 тыс. представителей торговых сетей и поставщиков назвали эффективность поправок низкой.

В апреле 2020 года группа депутатов Государственной Думы Российской Федерации внесли в парламент проект Федерального закона «О внесении изменения в статью 8 Федерального закона «Об основах государственного регулирования торговой деятельности в Российской Федерации» в части установления обязанности Правительства Российской Федерации устанавливать предельно допустимые розничные цены на отдельные виды социально значимых продовольственных товаров первой необходимости».

Предложенная законодательная инициатива стала очередной попыткой вмешаться в регулирование цен. Введение предложенных поправок не только существенно ограничило бы конституционную свободу экономической деятельности в России, но также грозило серьезным нарушением всей экономики взаимоотношений внутри товаропроводящей цепи, а также пагубно сказалось бы на малом и среднем бизнесе.

Данные поправки пришлись на и без того крайне сложный для потребительского рынка период распространения новой коронавирусной инфекции. В марте 2020 года торговые компании и производители продуктов питания столкнулись с резким ростом спроса на ряд социально значимых товаров. Одновременно с этим резкое падение курса национальной валюты в конце марта – начале апреля привело к чувствительному повышению себестоимости продуктов питания у производителей – в среднем около 5-15 %. Соответственно, в случае реализации данной законодательной инициативы потребительскому рынку России пришлось бы испытать дополнительные деструктивные потрясения.

САМОРЕГУЛИРОВАНИЕ

Вследствие радикального усиления государственного регулирования торговли в 2016 году развитие саморегулирования на потребительском рынке оказалось «замороженным» до адаптации участников рынка к работе по новым правилам. Диалог между участниками саморегулирования удалось возобновить только во второй половине 2017 года, когда началась работа по адаптации Кодекса добросовестных практик (КДП) с учетом новой законодательной реальности, а с ней и дискуссия о перспективах саморегулирования в России и будущем его механизме. В марте 2018 года Рабочая группа Межотраслевого экспертного совета представила согласованную версию новой редакции Кодекса, однако Палата поставщиков заблокировала его принятие из-за неудовлетворенности некоторых ассоциаций поставщиков результатами Рабочей группы.

В 2018-2019 годах процесс саморегулирования пришлось, по сути, перезапускать при активном содействии А. Шаронова, ректора Московской школы управления «Сколково», который возглавил Комиссию по соблюдению КДП. Торговые сети подтвердили приверженность действующей редакции Кодекса добросовестных практик и решениям Комиссии по соблюдению КДП, за исключением тех решений Комиссии, которые были официально оспорены палатой торговли. Параллельно представители торговых сетей и поставщиков возобновили переговоры по доработке отдельных положений Кодекса. Сама же Комиссия по добросовестным практикам перешла на более регулярный и системный режим работы.

В конце 2019 года был создан реестр компаний, присоединившихся к Кодексу добросовестных практик, в котором на данный момент зарегистрировались главным образом торговые компании. Также был разработан институт урегулирования споров на уровне компаний посредством работы КДП-контролеров для разрешения возникающих спорных ситуаций по исполнению Кодекса.

К сожалению, согласованное было решение по условиям применения штрафных санкций оказалось заблокированным некоторыми участниками палаты поставщиков. Тем не менее в настоящее время продолжается активное обсуждение иных возможных изменений Кодекса добросовестных практик – в частности, относительно согласования объемов и условий заказа каждой партии товара.

Приверженность торговли саморегулированию подтверждается и тем фактом, что в марте 2020 года ряд торговых компаний в связи с возросшим спросом на отдельные виды товаров и объективными сложностями, вызванными пандемией коронавируса, ввели мораторий на применение штрафных санкций в отношении добросовестных поставщиков и производителей за недопоставку товаров до нормализации ситуации на потребительском рынке.

РЕКОМЕНДАЦИИ

Безусловно подтверждая свою убежденность в контрпродуктивности изменений закона о торговле 2016 и 2018 годов, Комитет по розничной торговле считает исключительно вредным любое дальнейшее ужесточение государственного регулирования торговой деятельности. Комитет обращает особое внимание на то обстоятельство, что стремление к чрезмерному регулированию гражданско-правовых отношений между торговлей и поставщиками уводит потребительский рынок России в сторону от принципов рыночной экономики к единообразному администрированию и, фактически, к упразднению всей многогранности существующих на рынке взаимоотношений его участников. Это, несомненно, влияет в целом на деловой и инвестиционный климат в стране, в секторе торговли, а также способно существенно понизить эффективность бизнес-процессов.

В конечном счете можно исходить из того, что дальнейший рост регулятивных и финансовых обременений торговли при сокращении прибыльности торгового бизнеса станет фактором снижения предпринимательской активности в этой отрасли, которая до сих пор остается одним из сегментов российской экономики, сохраняющим способность успешно справляться с возникающими проблемами, и который продолжает привлекать капиталовложения – как российские, так и иностранные.

Комитет по розничной торговле считает целесообразным инициировать аналогичную процедуру ОФВ в отношении поправок в Закон о торговле, касающихся запрета возвратов, и в целом ввести мораторий на дальнейшие ужесточения законодательства для индустрии торговле.

При этом Ассоциация всецело поддерживает усилия участников рынка, направленные на развитие системы саморегулирования, которая стимулировала бы участников рынка расширять применение добросовестных практик.

В дальнейшем необходимо создать эффективный механизм, в рамках которого любые инициативы по регулятивным изменениям в сфере торговли, включая изменения самого Закона о торговле, должны в первоочередном порядке рассматриваться в рамках саморегулирования представителями ассоциаций торговых компаний (включая малые и средние форматы торговли) и поставщиков.

СТРАТЕГИЧЕСКОЕ РАЗВИТИЕ ТОРГОВЛИ

ПРОБЛЕМА

Торговля является одним из главных секторов российской экономики и крупнейшим работодателем страны. Вместе с тем на сегодняшний день на государственном уровне отсутствует долгосрочная стратегия развития торговли, которая отражала бы сложившиеся реалии и служила бы ключевым документом, определяющим государственную политику и, соответственно, практические действия государственных органов всех уровней в отношении данной отрасли, обеспечивала бы предсказуемость инвестиционного климата, а также увязывалась бы с планами по развитию смежных отраслей (сельхозпроизводство, транспортная инфраструктура, здравоохранение и т. п.).

РЕКОМЕНДАЦИИ

Считаем необходимым, чтобы Правительство Российской Федерации приняло Стратегию развития торговли, отразив в ней следующие основополагающие условия эффективного развития отрасли:

- содействие развитию конкуренции в торговле, предсказуемость госрегулирования, развитие механизмов саморегулирования;
- содействие росту объемов продовольственной торговли, а не статистического количества торговых объектов;
- поддержка покупательной способности населения, в том числе за счет внедрения программ продовольственной помощи;
- поддержка инвестиционной привлекательности оптовой и розничной торговли;
- системная поддержка предприятий МСБ в сфере торговли;
- поддержка развития и обеления сегмента оптовой торговли;
- поддержка отечественных производств современного складского и торгового оборудования;
- государственное содействие предприятиям торговли в развитии систем контроля качества и безопасности реализуемых продовольственных товаров;
- оптимизация информационного взаимодействия всех звеньев товаропроводящей цепи между собой и с государством, в том числе путем создания единого интерфейса для передачи данных в системы прослеживаемости;
- развитие подготовки квалифицированных кадров для продовольственной логистики, оптовой и розничной торговли, повышение престижа профессии;
- борьба с «региональным протекционизмом» (то есть с формальными и неформальными барьерами для проникновения на рынок региона товаров из других субъектов Российской Федерации) в рамках межрегиональной интеграции в сфере продовольственных рынков;
- недопустимость государственного регулирования цен или наценок на потребительские товары (возможно, за исключением чрезвычайных ситуаций);
- внедрение в Российской Федерации международных стандартов безопасности и качества товаров (в том числе в целях повышения экспортного потенциала продукции).

РЕГУЛИРОВАНИЕ АЛКОГОЛЬНОГО РЫНКА

ПРОБЛЕМА: ДЕКЛАРИРОВАНИЕ ПИВНОЙ ПРОДУКЦИИ

В настоящий момент продолжает действовать требование о декларировании пива, пивных напитков, сидра, пуаре и медовухи. С учетом функционирования ЕГАИС данное требование является рудиментарным.

РЕКОМЕНДАЦИИ

Отменить декларирование пивной продукции.

ПРОБЛЕМА: ЛИЦЕНЗИРОВАНИЕ

В настоящее время действует неоправданно жесткое регулирование в области лицензирования: аннулирование и приостановка лицензии предусмотрены практически за любое нарушение (включая незначительные ошибки в документации). С учетом того, что в регионах практикуется включение всех магазинов одной торговой сети в общую лицензию, нарушение, допущенное одним магазином, влечет за собой остановку продаж алкогольной продукции всеми магазинами данной торговой сети соответствующего региона.

К тому же в ряде регионов наблюдается протекционизм, а именно навязывание особых условий при получении или продлении лицензий, а также преференциальных условий для продаж алкогольной продукции местных производителей.

Отсутствуют унифицированные правила указания адреса объекта. На практике они варьируются от региона к региону. Например, в Нижегородской области достаточно указание адреса до номера дома, а в Москве адрес необходимо указывать вплоть до номеров помещения и комнаты. При этом лицензирующий орган делает запрос в ЕГРН на предмет нумерации помещений. В итоге получается, что если из-за незначительного ремонта, например, в офисной части, поменялась нумерация помещений во всем магазине, то необходимо переоформлять лицензию и проходить новые лицензионные проверки.

Крайне обострилась проблема с налоговой задолженностью. Информация о наличии налоговой задолженности или о неуплате штрафов юридических лиц не всегда корректно отражается в Государственной информационной системе о государственных и муниципальных платежах (ГИС ГМП). Более того, участники алкогольного рынка не располагают доступом к содержащейся в ГИС ГМП информации, и, соответственно, не имеют возможности своевременно проверить, правильно ли указаны в системе их налоговые обязательства, числящиеся за организациями штрафы, насколько корректно отражена произведенная оплата с тем, чтобы можно было предоставить в лицензирующий орган документы, свидетельствующие о погашении задолженности или уплате штрафа. В силу вышеуказанных причин торговые компании встречаются в своей работе с необоснованными отказами лицензирующих органов в выдаче лицензий либо даже с приостановкой действующих лицензий.

Отсутствуют унифицированные правила проведения выездной лицензионной проверки в каждом регионе. Например, в Москве проверка проходит с аудио/видеофиксацией, в Тамбовской области нет выездной проверки, в Липецкой области проверка проходит по аналогии с проверкой на соискание лицензии на закупку, хранение, поставку АП – в каждом регионе приходится подстраиваться под особенности конкретного лицензирующего органа.

Региональный протекционизм может также проявляться следующим образом:

- двойная – псевдо-добровольная – сертификация;
- требование ежемесячной подачи декларации об объемах оборота алкоголя, что создает избыточное давление на бизнес;
- введение собственных правил торговли – региональные ми-

нимальные розничные цены, запрет на торговлю алкоголем в объекте лицензирования по усмотрению лицензиата, разрешение на торговлю только в строго определенном месте магазина (на полке в отделе);
- блокирование бизнеса через отказы в выдаче лицензии в случае невыполнения требований определенных ведомств.

РЕКОМЕНДАЦИИ

- Принять соответствующие законопроекты «О внесении изменений в Федеральный закон «О государственном регулировании производства и оборота этилового спирта, алкогольной и спиртосодержащей продукции»(https://sozd.duma.gov.ru/bill/875219-7, https://regulation.gov.ru/projects#npa=99718) с целью:
  - исключения возможности отказа в выдаче лицензии при несоответствии в документах сведений о здании данным, обнаруженным в ходе проверки;
  - введения ускоренного и упрощенного порядка выдачи/обновления лицензии в случае перемены официального адреса по решению соответствующих органов власти (с сохранением прежнего физического местонахождения указанных в лицензии здания или помещения);
  - отмены требования об отсутствии налоговой или штрафной задолженности как условия выдачи лицензии;
  - выдачи отдельной лицензии на каждый объект;
  - формирования единого порядка действий в случае приостановки действия лицензии;
  - исключения требования о наличии складского помещения у соискателя лицензии на розничную продажу алкогольной продукции.
- Принять единый регламент по лицензированию розничной продажи алкогольной продукции.
- Принять единый регламент проведения выездной лицензионной проверки.
- Рассмотреть возможность отмены лицензирования торговли алкогольной продукцией ввиду повсеместного внедрения ЕГАИС.

ПРОБЛЕМА: РАССТОЯНИЕ ДО СОЦИАЛЬНЫХ ОБЪЕКТОВ

В каждом регионе России установлены свои нормативы по минимально допустимому расстоянию от детских, образовательных, медицинских, военных и других учреждений до объектов торговли, реализующих алкогольную продукцию. Для торговых предприятий возникают риски аннулирования лицензии при невольном несоблюдении минимального расстояния, например в случаях, когда социальные объекты возникли в пределах данного минимально допустимого расстояния позже открытия объекта торговли. Для таких случаев пункт 11 ст. 16 171-ФЗ предусматривает возможность сохранения лицензии и ее продления, но не более чем на 5 лет.

РЕКОМЕНДАЦИЯ

Рассмотреть возможность сокращения перечня социальных объектов, уточнить порядок применения данного регулирования с целью исключения возможности его «обратной силы», определить единые требования к расстоянию и способам расчета в каждом регионе.

ПРОБЛЕМА: ОНЛАЙН-ТОРГОВЛЯ АЛКОГОЛЬНОЙ ПРОДУКЦИЕЙ

В настоящее время онлайн-торговля алкогольной продукцией запрещена. В то же время на рынке действует большое количество нелегальных торговцев, а механизмы эффективной борьбы с ними отсутствуют. В настоящее время Правительство Российской Федерации разрабатывает правила онлайновой торговли алкогольной продукцией. Ассоциация поддерживает усилия Правительства и Росалкогольрегулирования в этом направлении.

РЕКОМЕНДАЦИИ

- Принять проект Федерального закона «О государственном регулировании производства и оборота этилового спирта, алкогольной и спиртосодержащей продукции и об ограничении потребления (распития) алкогольной продукции» (в части осуществления розничной продажи алкогольной продукции дистанционным способом с использованием информационно-телекоммуникационной сети «Интернет»).
- Отменить запрет на рекламу алкогольной продукции в Интернете. Устранить проблему в толковании данного запрета. С учетом письма ФАС России от 20 июля 2016 г. № АК/49414/16 целесообразно скорректировать пп. 8 п. 2 ст. 21 Федерального закона от 13.03.2006 г. № 38-ФЗ «О рекламе».

ПРОБЛЕМА: ВСТУПЛЕНИЕ В СИЛУ 468-ФЗ «О ВИНОГРАДАРСТВЕ И ВИНОДЕЛИИ В РОССИЙСКОЙ ФЕДЕРАЦИИ» (ДАЛЕЕ – ЗАКОН)

В настоящее время Закон вызывает очень много вопросов, таких как:
- на сегодняшний день не определен федеральный орган исполнительной власти, осуществляющий полномочия в области виноградарства и виноделия и, соответственно, – отсутствует орган, который вправе давать официальные разъяснения по выполнению требований Закона;
- нет понимания, распространяются ли требования Закона на продукцию, которая была закуплена до вступления Закона в силу;
- нет понимания, каким образом указывать информацию о сорте и годе урожая в случае, если винодельческая продукция изготовлена из винограда различных сортов и различных лет урожая;
- как присваивать правильно наименование продукции, в случае если термины в Законе не соответствуют терминам в соответствующих ГОСТах, а именно: в Законе указано «вино с защищенным географическим указанием» и «вино с защищенным наименованием места происхождения», а согласно ГОСТ 55242-2012 эти термины обозначены как «вино защищенного географического указания» и «вино защищенного наименования места происхождения».

РЕКОМЕНДАЦИИ

Определить федеральный орган исполнительной власти, осуществляющий полномочия в области виноградарства и виноделия.

Внести изменения в Закон о виноградарстве и виноделии в Российской Федерации в плане приведения его в соответствие с ГОСТом, а также готовящимся Техническим регламентом Таможенного союза.

Внести изменения в Закон о виноградарстве и виноделии в Российской Федерации в плане решения имеющихся вопросов и определения уполномоченного ФОИВа.

ЗАКОН ОБ ОТХОДАХ

ПРОБЛЕМЫ

РАСШИРЕННАЯ ОТВЕТСТВЕННОСТЬ ПРОИЗВОДИТЕЛЯ

В сентябре 2019 года Заместитель Председателя Правительства Алексей Гордеев дал поручение Минприроды России в срок до 3 октября 2019 года разработать Концепцию совершенствования механизма расширенной ответственности производителей (РОП). Представленные в январе и феврале 2020 года редакции концепции РОП ставили перед собой цель создать экономические стимулы для производителей упаковки к использованию вторичных материалов и, таким образом, переходу к циклической экономике. Однако ряд предложений, содержащихся в предлагаемых редакциях, нес угрозу уничтожения системы расширенной ответственности производителя как таковой и сведения на нет проводимой производителями и импортерами товаров и упаковки работы по сбору и переработке отходов.

В частности, Минприроды России предлагало перенести ответственность за утилизации упаковки на производителя упаковки, а также применить 100% норматив утилизации, введя таким образом фискальный механизм в виде обязательной уплаты экологического сбора без возможности для производителей и импортеров товаров и упаковки самостоятельно исполнять РОП. Реализация данных предложений приведет к ликвидации уже созданной инфраструктуры по утилизации отходов полного цикла (от сбора до непосредственно утилизации). Более того, при введении 100% экологического сбора торговые компании будут вынуждены оплачивать повышенную (примерно на 70%) стоимость экологического сбора, что значительно увеличит финансовую нагрузку.

В марте 2020 года новый курирующий вице-премьер Виктория Абрамченко согласовала перенос сроков утверждения концепции РОП. В данный момент ведется активная работа по обсуждению положений концепции со всеми заинтересованными сторонами в рамках рабочей группы при вице-премьере. Финальная версия концепции РОП должна быть представлена к IV кварталу 2020 года.

РЕГИОНАЛЬНЫЕ ОПЕРАТОРЫ

В настоящее время при заключении договоров с региональными операторами по обращению с ТКО компании-члены АЕБ сталкиваются с рядом проблем. Главная из них: в разных регионах Российской Федерации применяются разные методы коммерческого учета ТКО даже в тех случаях, когда компаниями используется идентичное оборудование для накопления ТКО.

Постановление Правительства Российской Федерации от 12.11.2016 г. № 1156 (п.15 раздела V формы утвержденного типового договора) подразумевает выбор способа учета твердых коммунальных отходов в соответствии с Правилами коммерческого учета объема и (или) массы твердых коммунальных отходов, утвержденными постановлением Правительства Российской Федерации от 3 июня 2016 г. № 505 «Об утверждении Правил коммерческого учета объема и (или) массы твердых коммунальных отходов». Таким образом, допускается использование ряда способов для учета ТКО:

- расчетным путем, исходя из нормативов накопления ТКО;
- расчетным путем, исходя из количества и объема контейнеров для складирования ТКО;
- исходя из массы ТКО, определенной с использованием средств измерения.

При этом выбор способа учета не регламентирован и фактически оставлен на усмотрение регионального оператора, а не бизнеса.

Кроме того, активно обсуждается возможность новой реформы системы обращения с отходами, что грозит значительным ростом финансовой и административной нагрузки на торговые компании – в частности, в связи с повышением ставок экосбора и новыми требованиями по организации сбора и логистики тары и потребительских товаров, утративших потребительские свойства.

РЕКОМЕНДАЦИИ

- Минприроды России предусмотреть в концепции РОП установление дифференцированного подхода к установлению ставки экосбора и механизмов стимулирования роста показателей по сбору и переработке вторичных ресурсов, извлекаемых из получаемых отходов, с их последующим использованием в обороте.
- Минприроды России предусмотреть в концепции РОП установление ставок экологического сбора на основе утвержденных методик расчета ставок экологического сбора на базе обоснованных методов оценки затрат на сбор (заготовку), транспортировку, обработку, утилизацию единичного изделия или единицы массы изделия, утратившего свои потребительские свойства, в которую могут быть включены затраты на создание объектов инфраструктуры, предназначенных для указанных целей.
- Минприроды России предусмотреть в концепции РОП сохранение возможности для импортеров и производителей товаров и упаковки иметь выбор – уплачивать экологический сбор или реализовывать проекты по сбору и утилизации отходов самостоятельно или через специализированные ассоциации.

- Правительству Российской Федерации/Российскому экологическому оператору дать четкие указания региональным операторам относительно отказа от использования способа учета расчетным путем, исходя из нормативов накопления ТКО для указанных видов торговых объектов.
- Установить, что для компаний, взаимодействующих с региональными операторами, являющимися собственниками полигонов, учет ТКО осуществляется исходя из массы ТКО, определенной с использованием средств измерения.
- Провести широкое обсуждение и оценку регулирующего воздействия инициатив по реформированию системы обращения с отходами с участием представителей компаний из сектора оптовой и розничной торговли, включая малый и средний бизнес.

ПРОДОВОЛЬСТВЕННЫЕ ПОТЕРИ

ПРОБЛЕМА

В настоящее время в России, как и во всем мире, нарастает осознание важности борьбы за сокращение продовольственных потерь. Согласно данным Еврокомиссии (2011 год), на производство и дистрибуцию приходится примерно 39%, 40% – на конечного потребителя, на общепит – 14% и на торговлю – 5% всех потерь в товаропроводящей цепи.

Сокращению потерь при производстве в первую очередь способствует внедрение новых технологий и соответствующее обучение персонала. Для сокращения продовольственных потерь при хранении и транспортировке целесообразно стимулировать внедрение новых видов упаковок, которые позволят увеличить сроки годности товара, особенно скоропортящегося. Торговые компании, со своей стороны, стремятся к оптимизации и автоматизации процедур заказа, что позволит избежать затоваривания складов.

Более того, важную роль играет продовольственная благотворительность, которая помогает предотвращать продовольственные потери за счет передачи нуждающимся слоям населения продуктов питания, не утративших свои потребительские свойства, но подлежащих утилизации. В апреле 2020 года Президент Российской Федерации дал поручение об исключении из налога на прибыль продуктов, передаваемых благотворительным и социально-ориентированным организациям. Соответствующие поправки были внесены в часть вторую Налогового кодекса Российской Федерации (законопроект № 959325-7) и должны вступить в силу 1 января 2021 года.

Вместе с тем, продукты питания при безвозмездной передаче в благотворительность по-прежнему будут облагаться налогом на добавленную стоимость.

РЕКОМЕНДАЦИИ

В решении проблемы необходимо сделать упор на использование аналитики больших данных для оптимизации логистических процессов и управления заказами в торговле, проведение просветительской и образовательной работы среди потребителей, улучшения технологий переработки и принятия законодательства, позволяющего стимулировать проактивную работу бизнеса в данном направлении (включая продовольственную благотворительность).

Отменить налог на добавленную стоимость на продукты питания, передаваемые на благотворительность.

РЕГУЛИРОВАНИЕ ТРАНСГРАНИЧНОЙ ЭЛЕКТРОННОЙ ТОРГОВЛИ В РОССИЙСКОЙ ФЕДЕРАЦИИ

ПРОБЛЕМА

В течение последних 8 лет Правительство и экспертное сообщество обсуждают вопросы регулирования трансграничной онлайн-торговли в России.

Электронная торговля в России – самый быстрорастущий по объему и важности канал сбыта для многих предприятий. По существующим оценкам, трансграничный сегмент составляет более 30% рынка электронной торговли с объемом продаж более 500 млрд рублей в 2019 году. По состоянию на середину 2020 года «Почта России» ввозит из-за рубежа более 1 млн посылок в день. Ожидается, что в 2020 году трансграничный сегмент составит более 40% объема онлайн-продаж. Трансграничный сектор является основой коммерческой экосистемы для многих заинтересованных лиц и включает в себя обработку информации, продажи, платежи и поставку товаров из более чем 100 стран для российских потребителей.

ПЛЮСЫ И МИНУСЫ

- Российские участники рынка, работающие на общем режиме налогообложения, обеспокоены тем, что текущее регулирование негативно влияет на конкуренцию. Зарубежный продавец освобожден от НДС и должен оплачивать пошлину только при превышении порога стоимости посылок в размере 200 евро. Это несправедливо в отношении местных производителей и компаний, занимающихся электронной торговлей с российскими потребителями в пределах страны. Бюджет России недополучает налоговые и таможенные доходы. Отечественные производители и розничные компании терпят убытки из-за преимуществ внешних конкурентов. Правительством России принято решение о постепенном снижении порога беспошлинного ввоза, передаче «Почте России» и другим логистическим компаниям функции уполномоченного оператора по дистанционной уплате пошлин и сборов за физических лиц, что создаст ожидаемое равенство между российскими и иностранными компаниями. В то же время обсуждаемое предложение о «бондовых складах», когда пошлины и сборы будут уплачиваться не сразу, а в момент вывоза приобретенного товара из таможенного склада, размещенного на территории России, требует более внимательного изучения с целью недопущения перетока классического импорта в режим «бондовых складов».
- Другие участники рынка предполагают, что введение НДС и таможенных пошлин для трансграничных продаж приведет

к негативным последствиям для российских потребителей в плане роста цен и сокращения ассортимента. Возникнут новые торговые барьеры, что повлияет на бизнес, связанный с трансграничным торговым каналом. Ожидается также, что постепенное увеличение доходов от налогов и сборов окажется меньше затрат Правительства и инвестиций на организацию взимания дополнительных налогов и сборов и контроля за этим.

РЕКОМЕНДАЦИИ

Важно использовать международный и российский опыт. В частности, в Российской Федерации был проведен эксперимент «Почты России» и ФТС, в рамках которого все необходимые таможенные сборы по товарам, перемещаемым в МПО, уплачивались «Почтой России». Распространение этого опыта на весь поток трансграничной торговли окажет положительное воздействие нового регулирования на потребителей в России, на развитие внутренней логистики и сферы финансовых услуг, в том числе «Почты России», спрогнозировать затраты Федеральной налоговой службы и Федеральной таможенной службы России в случае взимания НДС и (или) таможенных пошлин в трансграничной онлайн-торговле. Предметом особого анализа также должен стать опыт Правительства России при сборе «Налога на Google» с января 2017 года.

ПРОСЛЕЖИВАЕМОСТЬ

ПРОБЛЕМА

За последние годы в России по линии различных ведомств внедрен ряд электронных систем, предназначенных для контроля и учета движения товаров на потребительском рынке. К ним, в частности, относятся ЕГАИС, «Меркурий», система маркировки. В настоящее время разрабатывается система документальной прослеживаемости импортных товаров. Все это уже привело к значительным издержкам участников рынка оптовой и розничной торговли (закупка необходимого оборудования, разработка/адаптация соответствующих ИТ-решений и бизнес-процессов, обучение собственного персонала и партнеров). Отсутствие единых стандартов для таких систем (единый каталог товаров, унифицированная ИТ-платформа, стандарты маркировки, принципы прослеживаемости и т. п.) резко снизили эффективность внедрения таких систем и увеличили нагрузку на участников рынка, особенно среди субъектов малого и среднего предпринимательства.

РЕКОМЕНДАЦИИ

Для эффективной работы единой национальной системы прослеживаемости необходимо выполнить следующие ключевые, на наш взгляд, условия:

- Определить ответственное ведомство и поручить ему разработку единого интерфейса для передачи бизнесом данных об обороте товаров в рамках всех существующих и разрабатываемых (над)национальных информационных систем, исключив дублирующие функции.
- Утвердить «дорожную карту» с четкими сроками внедрения прослеживаемости для каждой из запланированных категорий товаров, с проведением пилотных проектов с достаточным переходным периодом, на протяжении которого не будут применяться штрафные санкции, с избежанием параллельного внедрения маркировки в нескольких категориях, чтобы оптимизировать нагрузку на бизнес (включая малый и средний бизнес).
- Обеспечить включение категорий товаров в системы прослеживаемости только по результатам проведения оценки целесообразности и оценки регулирующего воздействия, в том числе, с точки зрения инвестиционного климата, а также целей развития малого и среднего предпринимательства.
- Обеспечить гармонизацию требований прослеживаемости на пространстве ЕАЭС во избежание создания дополнительных торговых барьеров.
- Детально описать предлагаемую систему в части:
  - прав, обязанностей и ответственности бизнес-модели коммерческого оператора системы (с основными положениями проектов нормативных правовых актов);
  - описания процесса взаимодействия частного оператора с рынком (в части запретительных и разрешительных функций);
  - описания процесса взаимодействия с государственными органами (в части запретительных и разрешительных функций);
  - наличия или отсутствия дополнительных коммерческих посредников при работе с системой;
  - обеспечения конфиденциальности информации, составляющей коммерческую тайну.
- Согласовать с участниками рынка (в том числе объединениями малого и среднего бизнеса) формат и порядок предоставления данных из информационной системы.
- Для предотвращения недобросовестной конкуренции исключить доступ участников оборота товаров к данным, имеющим высокую коммерческую чувствительность для других компаний-участников системы прослеживаемости (например, к информации о логистической цепочке или продажах клиентам – юридическим лицам).
- Не допустить введения несоразмерной (в том числе уголовной) ответственности за незначительные нарушения порядка работы в рамках такой системы участниками бизнеса. Рассмотреть возможность использования данных, получаемых через систему маркировки и прослеживаемости, для более четкого разделения ответственности за оборот фальсифицированной продукции между продавцом и производителем.

ТОВАРНЫЕ (ИНВЕНТАРНЫЕ) ПОТЕРИ

ПРОБЛЕМА

Текущее регулирование: в настоящее время торговые сети несут потери от хищения товаров в залах самообслуживания («неизвестные потери») в размере от 0,5 до 1,7 процентов от выручки. При этом указанные товарные потери носят объективный, неизбежный для данного формата торговли характер и не могут быть снижены до нуля даже при внедрении самых совершенных систем обеспечения сохранности товаров. Специфика реализации

товаров в магазинах самообслуживания также не позволяет установить конкретные лица, виновные в пропаже каждой отдельной единицы товара.

Объективный характер подобных затрат и невозможность установления виновных лиц были отмечены Высшим Арбитражным Судом Российской Федерации при рассмотрении «дела Ашана»[1], который установил, что подобные затраты могут быть учтены для целей налогообложения на основании пункта 2 статьи 265 Налогового кодекса Российской Федерации (НК РФ) при условии соответствия их требованиям пункта 1 статьи 252 НК РФ, без обязательного представления документов, выдаваемых уполномоченным органом государственной власти в подтверждение факта отсутствия лиц, виновных в хищении.

Вместе с тем, действующее законодательство Российской Федерации по вопросам фиксации и учета товарных потерь (НК РФ, Приказ Министерства финансов Российской Федерации от 13.06.1995 г. № 49 «Об утверждении методических рекомендаций по инвентаризации имущества и финансовых обязательств») не учитывает объективные черты современной розничной торговли и сложившиеся подходы к оценке товарных потерь (см. Решение Высшего арбитражного суда Российской Федерации (ВАС РФ) от 04.12.2013 г. № ВАС-13048/13 по «делу Ашана»). Оно представляется недостаточно определенным и морально устаревшим. К тому же отсутствуют и необходимые разъяснения ФНС России и (или) Минфина России, устанавливающие единый стандарт налогового контроля по вопросам учета товарных потерь.

Все это приводит к тому, что налоговые органы по-разному подходят к оценке обоснованности учета товарных потерь в целях налогообложения прибыли и в отдельных случаях игнорируют объективный и неизбежный характер возникновения товарных потерь, несмотря на меры, предпринимаемые розничными сетями для их предотвращения.

Предъявляемые в некоторых случаях аномально высокие требования для подтверждения расходов в виде хищений товаров неустановленными лицами приводят к существенным административным и временным затратам со стороны организаций розничной торговли. Несовершенство действующего законодательства Российской Федерации и несогласованность подходов налоговых органов к оценке товарных потерь создают значительную правовую неопределенность к оценке налоговых последствий реализации товаров, объективно сопряженной с фактами неустановленных хищений. Как результат, бизнес фактически сталкивается с дополнительным налогообложением товарных потерь либо вынужден принимать на себя налоговые риски.

По мнению Комитета АЕБ по розничной торговле, решение вопроса об учете товарных потерь носит комплексный характер и сопряжено как с необходимостью совершенствования нормативной базы (НК РФ, порядка проведения инвентаризаций и оформления их результатов), так и с потребностью в выработке единых стандартов осуществления налогового контроля за правомерностью учета расходов в виде недостач товаров при налогообложении прибыли.

РЕКОМЕНДАЦИИ

Комитет по розничной торговле АЕБ предлагает следующие решения данной проблемы:

- Установка порогового значения (в виде процентной доли от общей суммы) для инвентарных потерь, объем которых может быть учтен в налогооблагаемой базе на основании упрощенного пакета подтверждающих документов.
- Актуализация действующего приказа Минфина России от 13.06.1995 г. № 49 «Об утверждении методических рекомендаций по инвентаризации имущества и финансовых обязательств» с учетом объективных характеристик розничной торговли и позиции ВАС РФ по «делу Ашана».
- Выработка в рамках ФНС России единообразного подхода по осуществлению налогового контроля за правомерностью учета товарных потерь в целях налогообложения прибыли.

[1] Решение ВАС РФ от 04.12.2013 г. № ВАС-13048/13

ЧЛЕНЫ КОМИТЕТА

Auchan Russia • H&M Hennes & Mauritz LLC • IKEA DOM LLC • Lenta LLC • LEROY MERLIN Russia • M.Video • METRO AG Representative office • OBI Russia.

КОМИТЕТ ПРОИЗВОДИТЕЛЕЙ СЕМЯН

Председатель:
Владимир Дружина, KWS

Заместитель председателя:
Денис Журавский, Syngenta

Директор по взаимодействию с органами государственной власти:
Татьяна Белоусович (tatiana.belousovich@aebrus.ru)

Комитет производителей семян, созданный в 2014 году как Подкомитет, получил статус Комитета в соответствии с решением Правления АЕБ в марте 2015 года. В настоящее время он объединяет 7 ведущих международных компаний – производителей и импортеров семян.

Усилия Комитета сосредоточены на формировании консолидированной позиции компаний-членов по ключевым вопросам селекции и семеноводства и ее представлении путем взаимодействия с органами государственной власти, общественными организациями, отраслевыми союзами и ассоциациями с целью формирования и поддержания благоприятного климата для развития бизнеса.

Специалисты компаний-членов Комитета входят вместе с коллегами из Комитета производителей средств защиты растений в состав двух межведомственных Рабочих групп: по противодействию контрафактным семенам и пестицидам на российском рынке и по коммуникациям и информационной поддержке. Кроме того, в Комитете сформирована рабочая группа по биотехнологиям.

ВВЕДЕНИЕ

По данным профессиональных маркетинговых исследований, мировой рынок семян продолжает демонстрировать стабильный, пусть и небольшой, рост. Поддержание тенденции стабильного роста производства необходимого количества высококачественных семян полевых и овощных культур – основа надежного обеспечения продовольствием увеличивающегося населения планеты.

Сегодня для продолжения поступательного развития сельского хозяйства России принципиальное значение имеют инновационные агротехнологии, позволяющие развивать эффективность и рост сельскохозяйственного производства и оптимизировать себестоимость сельскохозяйственной продукции.

СОЗДАНИЕ УСЛОВИЙ ДЛЯ ЛОКАЛИЗАЦИИ ПРОИЗВОДСТВА СЕМЯН В РОССИИ

ПРОБЛЕМА

Правительство Российской Федерации продолжает выражать озабоченность зависимостью российских аграриев от поставок импортных семян по ряду значимых сельскохозяйственных культур. В качестве одного из путей решения этой проблемы рассматривается локализация международными компаниями производства семян на территории России. Продолжается активное обсуждение критериев локализации в сфере семеноводства. Приложение к Постановлению Правительства Российской Федерации от 17 июля 2015 г. № 719 «О подтверждении производства промышленной продукции на территории Российской Федерации» устанавливает требования к промышленной продукции в целях ее отнесения к продукции, произведенной на территории Российской Федерации, применительно к различным индустриям. Для продукции семеноводства подобные требования пока отсутствуют.

В ряде нормативно-правовых актов содержится требование о ведении на территории Российской Федерации первичного семеноводства (производства родительских форм гибридов либо суперэлиты сортов), а также научно-исследовательской селекционной деятельности по выведению новых сортов и родительских линий гибридов. Вряд ли можно считать подобное требование экономически и профессионально обоснованным, особенно на начальном этапе локализации. Прежде всего, ведение первичного семеноводства возможно только при соблюдении особых условий, включая наличие специальных изолированных зон размножения, специальной дорогостоящей технологии, техники и оборудования для поддержания и сохранения генетической чистоты, сортовых и посевных качеств родительских форм, а также гарантированную защиту прав интеллектуальной собственности. Оно может быть реализовано скорее как финальный этап локализации производства семян при наличии экономической целесообразности. Кроме того, в других индустриях (станкостроении, автомобилестроении, специальном машиностроении и др., представленных в Приложении к Постановлению Правительства Российской Федерации от 17 июля 2015 г. № 719) подобное требование – ведение в Российской Федерации научно-исследовательских разработок и производства высокотехнологичных компонентов – отсутствует.

РЕКОМЕНДАЦИИ

Члены Комитета выражают готовность инвестировать средства для производства семян на территории Российской Федерации и строительства производственных мощностей. До 40% семян, продаваемых компаниями-членами Комитета в России, уже

производятся на ее территории. Компании имеют или запланировали к открытию свои научно-исследовательские и селекционные станции, занимаются производством семян гибридов и сортов основных полевых культур, ими созданы лаборатории по определению качества семян. Кроме того, положено начало строительству собственных заводов: компания KWS – завода по производству семян сахарной свеклы на территории ОЭЗ «Липецк», компания Euralis Semences, объединившаяся с компанией Caussade Semences Group в Lidea, – завода по производству семян полевых культур в Павловском районе Воронежской области.

Однако требование переноса на территорию Российской Федерации производства родительских форм гибридов в настоящее время представляется необоснованным и никоим образом не стимулирует компании к дальнейшему развитию собственного производства в Российской Федерации.

Создание соответствующих экономических и правовых условий для локализации производства семян в России позволит, с одной стороны, уменьшить зависимость российских сельхозпроизводителей от импорта семян и связанных с ним рисков, с другой стороны, сохранить высокий потенциал урожайности.

РЕГУЛИРОВАНИЕ ОБОРОТА СЕМЯН

ПРОБЛЕМА

В последние годы активизировалась разработка проекта Федерального закона «О семеноводстве» (далее – Проект), продолжающаяся более 10 лет. АЕБ всецело поддерживает усилия Минсельхоза России сформировать для одной из ведущих отраслей сельского хозяйства надлежащую нормативно-правовую базу, отвечающую взаимным интересам государства и бизнеса, и участвует в обсуждении законопроекта в соответствии с установленными процедурами.

Текущая версия Проекта вызывает у компаний-производителей семян как международных, так и отечественных, обеспокоенность прежде всего своими бюрократическими барьерами. Вводится целый ряд новых требований, выражающихся в усилении контроля, который касается не только качества семян, что корректно и логично, но и мест производства, хранения и реализации семян. Создаются препятствия для развития бизнеса, в том числе для локализации производства семян в России. Данные требования распространяются и на семена, производимые в России, и на импортируемые семена, что подразумевает контроль за местами производства, хранения и реализации семян на территории иностранных государств. Последнее должно быть увязано с законодательством стран-импортеров. Кроме того, Международной организацией экономического сотрудничества и развития (OECD), членом которой является Россия, разработаны правила и схемы, устанавливающие требования к выращиванию, проведению полевой инспекции, сертификации и маркировке семян по семи группам сельскохозяйственных растений. В качестве инспекторов могут выступать как представители органов государственной власти, так и представители компаний – оригинаторов семян. Семена, прошедшие процедуру сертификации по схемам OECD, получают статус семян гарантированного сортового качества. Таким образом, контроль за всем процессом производства семян, начиная с высева и заканчивая реализацией, отсутствует, не говоря уже о контроле мест производства, хранения и реализации семян на территории иностранных государств-импортеров.

АЕБ был направлен ряд обращений в Минсельхоз и Минэкономразвития с просьбой устранения избыточных требований и приведения положений Проекта в соответствие с нормами Федерального закона от 27.12.2002 г. № 184-ФЗ «О техническом регулировании» и Федерального закона от 31.07.2020 г. № 248-ФЗ «О государственном контроле (надзоре) и муниципальном контроле в Российской Федерации», а также с правом Евразийского экономического союза и Европейского союза.

РЕКОМЕНДАЦИИ

Комитет нацелен на продолжение конструктивного взаимодействия с органами государственной власти, включая Администрацию Президента Российской Федерации, с целью разъяснения негативных последствий избыточных требований Проекта для развития отечественного семеноводства и их исключения.

СОВЕРШЕНСТВОВАНИЕ СИСТЕМЫ ГОССОРТОИСПЫТАНИЙ

ПРОБЛЕМА

Государственные испытания сортов и гибридов являются одним из ключевых инструментов формирования государственной политики в сфере селекции и семеноводства.

Для получения объективных результатов государственных испытаний необходимо выполнение следующих условий:

- соблюдение методики закладки госсортопытов: обязательное наличие стандартов для сравнения, соблюдение принципа рандомизации, взятие проб для учета урожайности;
- соблюдение агротехнических мероприятий для обеспечения роста и развития растений: соответствующая подготовка почвы, внесение удобрений, использование средств защиты растений.

В договор на оказание услуг на проведение госсортоиспытаний между компанией-заявителем и госсортучастком (ГСУ) включены соответствующие пункты: 2.1.1 Методика государственного испытания и 2.1.2 Агротехнические мероприятия. Однако есть ГСУ, которые не выполняют взятые на себя обязательства, нарушая условия договора. В таком случае при недостаточном питании почвы и при отсутствии или недостаточной защите от болезней и вредителей сорта и гибриды проходят «естественный отбор», что является нарушением принципа объективности госсортоиспытаний.

Приказом № 143 от 31.08.2018 г. «Об утверждения положения об оказании ФГБУ «Госсорткомиссия» услуг, относящихся к его основным видам деятельности, за плату» была значительно повышена стоимость госсортоиспытаний. Однако качество их проведения далеко не всегда остается на заявленном в договорах с компаниями уровне.

РЕКОМЕНДАЦИИ

Повышению уровня проведения госсортоиспытаний и объективности оценки их результатов в значительной степени способствует конструктивный диалог между Госсорткомиссией и компаниями-заявителями. Комитет начал взаимодействие с Госсорткомиссией с момента своего учреждения и продолжает его на регулярной основе. Проводятся рабочие встречи по обсуждению актуальных вопросов проведения госсортоиспытаний, эксперты компаний-членов Комитета принимали участие в работе по обновлению методик госсортоиспытаний на хозяйственную полезность кукурузы и подсолнечника.

Позиция Комитета по вопросу совершенствования системы госсортоиспытаний предусматривает решение следующих задач:

- Обеспечение четкого выполнения процедуры оформления разнарядок на поставку образцов семян сортов и гибридов для проведения госсортоопытов: своевременное информирование компаний-заявителей о текущих изменениях, касающихся наименования или адреса местонахождения испытательной станции; соблюдение сроков выдачи разнарядок и др.
- Совершенствование процедуры проведения госсортоопытов: обеспечение ГСУ специализированной техникой для закладки госсортоопытов, соблюдение методики закладки госсортоопытов и выполнение агротехнических мероприятий для обеспечения роста и развития растений, своевременное информирование компаний-заявителей об исключении (снятии) с испытаний сорта/гибрида в связи с недостаточной информацией (в частности отсутствием результатов тестов на отличимость, однородность, стабильность (ООС) от стран-членов ЕС), некорректным оформлением документации и другими техническими причинами; предоставление возможности компаниям-заявителям полноценного посещения ГСУ.
- Предоставление компаниям обоснований, лежащих в основе критериев принятия решения о включении сорта/гибрида в Государственный реестр селекционных достижений, допущенных к использованию на территории Российской Федерации. Влияние на принятие решения дополнительных критериев: технологическая выравненность, выход товарной продукции, транспортабельность и др.
- Оптимизация ведения Государственного реестра селекционных достижений, допущенных к использованию на территории Российской Федерации: разработка порядка перерегистрации сорта/гибрида по истечении 10 лет после включения их в Государственный реестр с последующим продлением регистрации по просьбе заявителя без проведения повторных испытаний.
- Предоставление возможности представителю Комитета присутствовать на заседаниях Экспертной комиссии в качестве наблюдателя.

ЗАКЛЮЧЕНИЕ

Обладая значительным потенциалом, Комитет видит свое развитие как в привлечении новых членов, так и в укреплении и расширении взаимодействия с органами государственной власти, отраслевыми союзами и ассоциациями, общественными организациями. Приоритетными задачами являются:

- Оптимизация процедуры регистрации новых сортов и гибридов.
- Создание условий для локализации производства семян в России:
  - наличие благоприятной нормативно-правовой среды для развития селекции и семеноводства;
  - обеспечение охраны прав интеллектуальной собственности в сфере селекции и семеноводства;
  - формирование условий для ведения международными компаниями научной деятельности в сфере селекции;
  - установление четких правил и критериев локализации производства семян с целью признания их семенами российского производства.

ЧЛЕНЫ КОМИТЕТА

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КОМИТЕТ ПО КОМПЛАЕНС И ЭТИКЕ

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ПРИМЕНЕНИЕ НОВЫХ ТЕХНОЛОГИЙ В КОМПЛАЕНС В ДИНАМИЧЕСКИ МЕНЯЮЩЕМСЯ МИРЕ

ПРОБЛЕМА

Вспышка пандемии COVID-19 заставила компании пересмотреть свои приоритеты во многих сферах. Она очевидно привела к серьезным финансовым потрясениям как для компаний, так и для работников во всех отраслях. В связи с тем, что многие компании возобновляют свою деятельность, готовясь к предстоящим виткам «новой реальности», сохраняются и будут возникать новые комплаенс-вызовы, к которым необходимо серьезно отнестись.

РЕКОМЕНДАЦИИ

Компаниям необходимо быть гибкими, подстраиваться к стремительным изменениям в отраслях и на рынке в целом, при необходимости пересматривая свои стратегические цели – и делать это с учетом приверженности этическим и комплаенс-принципам.

Компании должны обращать внимание на ценность осознанной комплаенс-культуры и укреплять культуру этического поведения и бизнес-этики во избежание усиления негативных финансовых последствий кризиса. Текущая ситуация и так достаточно сложна, чтобы осложнять ее еще и правовыми последствиями, вызванными нарушениями в сфере комплаенс, включая уголовно наказуемые.

ПРОБЛЕМА

Количество законодательных требований постоянно возрастает. В условиях регуляторного давления комплаенс-специалисты получают все новые задачи, которые требуют незамедлительного внимания и исполнения. Как поддерживать «золотой стандарт» соответствия в быстро меняющейся регуляторной среде?

РЕКОМЕНДАЦИИ

Комплаенс становится неотъемлемым элементом корпоративной культуры и позволяет построить бизнес, опираясь на высокие корпоративные стандарты. Корпоративная культура в организации имеет определяющее значение. Построение корпоративной культуры находится в зоне ответственности генерального директора, при этом требует вклада каждого сотрудника. Понимание корпоративных ценностей важно для создания доверительной рабочей среды. Наличие политик и процедур на сегодняшний день является недостаточным. Необходимо гармонично встроить данные процедуры в деятельность организации, то есть создать баланс между адекватным контролем и приемлемым риском.

ПРОБЛЕМА

Стремительный рост развития технологий остановить нельзя. Независимо от нашего желания технологии проникают во все сферы человеческой жизни. Комплаенс не является исключением. Применение искусственного интеллекта позволяет строить взаимосвязи между объектами. Технологический прогресс является драйвером применения технологий и ставит новые вызовы перед функцией комплаенс. Деятельность комплаенс-подразделений осуществляется с помощью современных автоматизированных систем. Зачастую данные системы не связаны между собой и не являются гибкими по отношению к регуляторным изменениям, что требует значительных затрат на их модернизацию. Возникает вопрос, какое влияние оказывает стремительное развитие технологий на комплаенс?

РЕКОМЕНДАЦИИ

Стратегия компании определяет применение технологий в организации в целом и во всех ее направлениях. Немаловажным фактором является разумное использование технологий. Необходимо учитывать уровень зрелости самой компании, наличие методологии и внутренних процессов, готовность персонала к автоматизации. Грамотное применение новых технологий способствует прогрессу организации во всех ее направлениях. Новые технологии зачастую вызывают недоверие, что является понятной человеческой реакцией на все новое. Для изменения образа мышления нужно время. Необходимо осознать, что новые технологии приносят пользу, а не приводят к нежелательным последствиям.

ПРОБЛЕМА

Применение новых технологий осложняется требованиями регулятора, связанными с персональными данными, конфликтами в законодательстве различных юрисдикций.

РЕКОМЕНДАЦИИ

Компании должны соблюдать определенные правовые рамки при сборе и обработке персональных данных в коммерческой деятельности. Как правоохранительные и разведывательные органы, так и многонациональные частные компании участвуют в трансграничном сборе данных. Это означает, что к их деятельности могут быть применимы правовые рамки двух стран: одни на территории, где собираются данные, а другие на территории, где обрабатываются данные. Когда правовой режим разных стран содержит противоречивые положения или требования, это может создать запутанные ситуации, которые требуют экспертного анализа.

ПРОБЛЕМА

Современные технологии не всегда используются на благо общества. Комплаенс-специалистам становится все сложнее и сложнее справляться со своими обязанностями, так как мошенники не стоят на месте. Количество кибератак растет год от года (а в 2020 году ситуация особенно усугубляется связанными с пандемией обстоятельствами и изменениями, на которые вынужденно пошли государства и к которым приспосабливается тем или иным образом бизнес). Что сегодня должен знать и уметь хороший комплаенс-специалист?

РЕКОМЕНДАЦИИ

Комплаенс-специалистам необходимо расширять свои компетенции для работы с большими данными. Самой востребованной областью экспертизы становится умение работать с данными и строить алгоритмы по оценке рисков. Вместе с тем даже самые новые технологии требуют наличия компетентных специалистов, которые сумеют правильно применить результаты их использования. Это является возможным только при условии своего постоянного профессионального развития и умения оперативно развивать и адаптировать навыки, процессы, контроли к изменяющимся регуляторным и бизнес-реалиям.

ВСТУПИЛ В СИЛУ ЗАКОН ПО АНТИМОНОПОЛЬНОМУ КОМПЛАЕНСУ

ПРОБЛЕМА

12 марта 2020 г. вступили в силу дополнения в Закон «О защите конкуренции» об организации системы внутреннего обеспечения соответствия требованиям антимонопольного законодательства, так называемого антимонопольного комплаенса. Наряду с уже существующими институтами предупреждения и освобождения от ответственности, целью института антимонопольного комплаенса является предотвращение нарушений антимонопольного законодательства. Дополнениями было введено понятие системы внутреннего обеспечения соответствия требованиям антимонопольного законодательства и предусматриваются основные требования к разработке и внедрению соответствующих комплаенс-программ. Одновременно с этим данный законопроект предусматривает размещение информации об антимонопольной комплаенс-программе на корпоративном сайте.

Однако, вопреки ожиданиям, что в КоАП в качестве дополнительной меры по стимулированию внедрения таких программ также будет внесено дополнение о снижении административного штрафа (в случае, если нарушение имело место, несмотря на принятые превентивные меры), в действующий КоАП эти изменения не были внесены, что несколько нивелировало интерес к данной проблематике. Вместе с тем всем очевидно, что антимонопольное законодательство не должно нарушаться. И содержащееся в КоАП положение о снижении штрафа при наличии действенной системы антимонопольного комплаенса не должно быть единственным стимулом для организации антимонопольного комплаенса в компании, и организация комплаенса не должна осуществляться с единственной лишь целью смягчения ответственности.

Также следует отметить, что проект нового КоАП предусматривает норму в Примечании 2 к статье 27.1, в которой наличие антимонопольного комплаенса вновь прямо указывается как специальное смягчающее обстоятельство при таких нарушениях индивидуальными предпринимателями или юридическими лицами антимонопольного законодательства, как злоупотребление доминирующим положением на товарном рынке, заключение ограничивающего конкуренцию соглашения, осуществление ограничивающих конкуренцию согласованных действий, координация экономической деятельности, недобросовестная конкуренция.

Для смягчения ответственности согласно проекту нового КоАП должны будут быть выполнены в совокупности два условия:

- организация системы внутреннего антимонопольного комплаенса до момента совершения административного правонарушения (а при длящемся нарушении – до выявления антимонопольным органом признаков административного правонарушения);
- нарушение антимонопольного законодательства обнаружено и прекращено на момент возбуждения дела об административном правонарушении в связи с реализацией мер системы антимонопольного комплаенса.

РЕКОМЕНДАЦИИ

Бизнесу по-прежнему следует обратить внимание на позицию ФАС России как в отношении того, что наличие программы антимонопольного комплаенса представляет собой «лучшую рыночную практику», так и в отношении того, какие элементы такая программа должна содержать, чтобы быть эффективной. Особенно антимонопольный комплаенс становится актуальным в связи с участившимися случаями уличения Федеральной антимонопольной службой иностранных компаний и их дочерних обществ в нарушении законодательства.

ОБРАБОТКА ПЕРСОНАЛЬНЫХ ДАННЫХ СОТРУДНИКОВ В УСЛОВИЯХ ПАНДЕМИИ COVID-19

Эпидемия COVID-19 вынудила многие компании переводить значительное количество сотрудников на удаленную форму работы, что повлекло за собой возникновение дополнительных сложностей с точки зрения обработки персональных данных, а также негативно повлияло на осуществление мониторинга работодателем действий своих сотрудников.

ПРОБЛЕМА

Во-первых, пандемия COVID-19 повлияла на возникновение новых способов обработки данных со стороны операторов. Например, в соответствии с Указом Мэра Москвы от 5 марта 2020 г. № 12-УМ, все работодатели Москвы обязаны обеспечить измерение температуры тела работникам на рабочих местах с обязательным отстранением от нахождения на рабочем месте лиц с повышенной температурой. В соответствии со ст. 10 Федерального закона «О персональных данных» температура тела относится к специальным категориям персональных данных, поскольку является информацией о состоянии здоровья субъекта персональных данных. Обработка таких данных допускается исключительно при наличии письменного согласия. Роскомнадзор опубликовала сообщение, что согласие работника на измерение температуры не требуется, поскольку меры по выявлению заболевания связаны с определением возможности выполнения трудовых функций. Разъяснение Роскомнадзора не содержит ссылок на положения законодательства, дающие право работодателю проводить измерения температуры тела, равно как и отстранять от работы сотрудников в связи с невозможностью ими исполнять свои трудовые обязанности при изменении температуры тела. Это сообщение не является правовым актом, обязательным к исполнению, и, таким образом, создает для компаний риски привлечения к ответственности в судебном порядке по искам со стороны субъектов персональных данных.

РЕКОМЕНДАЦИИ

Обсуждение с субъектами законотворческой деятельности возможности внесения изменений в Федеральный закон «О персональных данных» с целью либерализации требований к согласиям на обработку персональных данных, в том числе возможность обработки специальных категорий персональных данных с получением согласия в любой приемлемой форме в случае, если обработка персональных данных необходима для осуществления прав и законных интересов оператора персональных данных.

ПРОБЛЕМА

Во-вторых, удаленный режим работы потребовал обработки персональных данных на устройствах, которые принадлежат сотрудникам, а также на корпоративных устройствах, находящихся вне помещений работодателя. Сама по себе данная проблема не является новой, но, очевидно, что с подобным масштабом удаленной обработки персональных данных российская экономика сталкивается впервые.

РЕКОМЕНДАЦИИ

В связи с этим особую актуальность приобретают следующие мероприятия:

- ревизия процессов обработки персональных данных, внесения изменений в ранее разработанные перечни и способы обработки персональных данных;
- корректировка локальных нормативных актов работодателей в связи с изменением характеристик информационных систем персональных данных;
- контроль за актуальностью сведений, содержащихся в реестре операторов персональных данных и своевременное внесение в него изменений;
- обеспечение конфиденциальности персональных данных техническими средствами.

Заинтересованным органам государственной власти совместно с операторами персональных данных собрать и обобщить лучшие практики управления рисками, связанными с обработкой персональных данных сотрудниками, работающими вне офиса, а также обрабатывающими персональные данные, полученные работодателем, на личных устройствах.

ПРОБЛЕМА

В-третьих, мониторинг действий сотрудников приобретает дополнительную сложность, поскольку увеличивается число проверяемых устройств и процессов. Для целей проведения мониторинга действий сотрудников с использованием технических средств работодатель в подавляющем большинстве случаев полагается на согласие субъекта персональных данных, которое может быть отозвано. Отзыв согласия на обработку персональных данных может сделать невозможным такую обработку, и является крайне вероятным способом защиты со стороны недобросовестных сотрудников при проведении расследований.

РЕКОМЕНДАЦИИ

Работодателям провести оценку актуальности положений трудовых договоров, а также локальных нормативных актов для установления ясного перечня случаев, в которых мониторинг действий сотрудников допускается, и проанализировать законные основания для такого мониторинга, а также заранее сформировать правовую позицию в отношении дополнительных оснований для обработки персональных данных в случае отзыва согласия.

В РОССИЙСКОЙ ФЕДЕРАЦИИ МОЖЕТ БЫТЬ ВВЕДЕНА УГОЛОВНАЯ ОТВЕТСТВЕННОСТЬ ЗА СОБЛЮДЕНИЕ ИНОСТРАННЫХ САНКЦИЙ

ПРОБЛЕМА

В 2018 году инициативная группа депутатов Государственной Думы зарегистрировала проект федерального закона, который предполагает дополнить главу 29 Уголовного кодекса Российской Федерации статьей 284.2 и ввести уголовную ответственность за

отказ в заключении и исполнении сделок из-за иностранных мер ограничительного характера – санкций Евросоюза, США и прочих государств, союзов и организаций. Согласно тексту документа, уголовная ответственность предусматривается за совершение действий (бездействия) в целях исполнения решения иностранного государства о введении мер ограничительного характера. Данное действие (бездействие) должно повлечь ограничение или отказ в совершении операций или сделки либо в заключении такой сделки. Ответственность предусмотрена также и за совершение гражданином Российской Федерации умышленных действий, способствующих введению таких ограничительных мер. После рассмотрения законопроекта в первом чтении от представителей бизнес-сообществ были направлены несколько обращений с целью внесения ряда корректив в законопроект. Несмотря на заявленные цели по защите интересов граждан, российских юридических лиц и Российской Федерации, принятие законопроекта в текущей редакции, может нанести непоправимый ущерб российскому деловому климату. В случае принятия данного документа с текущими формулировками с большой долей вероятности можно предположить, что значительная часть международного бизнеса может принять решение о прекращении своей деятельности на территории Российской Федерации. Данный законопроект усугубляет и без того сложную ситуацию для ведения бизнеса в Российской Федерации. Любая ответственность за соблюдение требований применимых юрисдикций может привести к самым трагичным последствиям как для международного бизнеса, так и для экономики Российской Федерации в целом.

РЕКОМЕНДАЦИИ

Поскольку пока рассмотрение законопроекта перенесено на другое пленарное заседание без указания даты, то целесообразно вести последовательный мониторинг статуса законопроекта и при возобновлении его рассмотрения предпринимать активные шаги в соответствии с ходом его рассмотрения (обращаться с предложением о проведении повторной экспертизы законопроекта, а также о предоставлении экспертизы о потенциальном влиянии законопроекта на отдельные отрасли экономики Российской Федерации; направлять соответствующие обращения от ассоциаций бизнеса, в том числе от ассоциаций иностранного бизнеса, союзов производителей и союзов потребителей, и т. п.).

ЧЛЕНЫ КОМИТЕТА

AIG Insurance Company, JSC • Air France • Akzo Nobel Coatings LLC • ALD Automotive • ALRUD Law Firm • AO Deloitte & Touche CIS • Astellas Pharma ZAO • AstraZeneca Pharmaceuticals LLC • Atlas Copco, JSC • Baker McKenzie • BEITEN BURKHARDT Moscow • BNP Paribas CARDIF Insurance company • Boehringer Ingelheim • BRAND & PARTNERS LLC • British American Tobacco Russia • Bryan Cave Leighton Paisner (Russia) LLP, Russian branch • Caterpillar Eurasia LLC • Center-invest Bank • Chiesi Pharmaceuticals LLC • CMS Russia • Coleman Services UK • Continental Tires RUS OOO • Control Risks • Credendo – Ingosstrakh Credit Insurance LLC • Credit Agricole CIB AO • DAIMLER KAMAZ RUS OOO (DK RUS OOO) • DANONE RUSSIA, JSC • De Lage Landen Leasing • Dentons • DHL Express • Dow Europe GmbH Representation office • Dr. Reddy's Laboratories Ltd. • Drees & Sommer • Egorov Puginsky Afanasiev & Partners (EPAM) • Euler Hermes • EY • General Motors CIS • Generali Russia & CIS • GlaxoSmithKline Trading, JSC • Grata International • HEINEKEN BREWERIES, LLC • Hempel AO • Hino Motors, LLC • HSBC Bank (RR) OOO • Hyundai Truck and Bus Rus LLC • IKEA DOM LLC • Imperial Tobacco Sales and Marketing • Inchcape Holding LLC • John Deere Rus, LLC • KPMG AO • Kuehne+Nagel • LANXESS LLC • Liniya Prava Law Firm • M.Video • MAN Truck & Bus RUS LLC • Mannheimer Swartling • Mercedes-Benz Financial Services Rus OOO/Mercedes-Benz Bank Rus OOO/Mercedes-Benz Capital Rus OOO • Mercedes-Benz Russia • Merck LLC • Michelin • Noerr OOO • Nokia • Novo Nordisk A/S • Pepeliaev Group, LLC • Peugeot Citroën Rus (Groupe PSA) • Philips LLC • Porsche Russland • PPG Industries LLC • PwC • Refinitiv SA - Moscow branch • Repsol Exploracion S.A. • Risk Advisory Group Ltd • Robert Bosch OOO • Roche Diagnostics Rus LLC • ROCKWOOL • Rödl & Partner • Rosbank • SAP CIS • Scania-Rus LLC • Schneider Electric Joint Stock Company • SCHNEIDER GROUP • SERVIER • Shell Exploration and Production Services (RF) B.V. • Siemens LLC • SOCIETE GENERALE Strakhovanie Zhizni LLC • Syngenta • Tinkoff Online Insurance, JSC • TMF Group • Total E&P Russie • Toyota Motor • Urus Advisory Ltd. • Volkswagen Group Rus (Audi/Bentley/Lamborghini/ Škoda/ Volkswagen/Volkswagen Commercial Vehicles) • Whirlpool RUS • ZURICH RELIABLE INSURANCE, JSC.

КОМИТЕТ ПО ТАМОЖНЕ И ТРАНСПОРТУ

Председатель:
Дмитрий Чельцов

Заместители председателя:
Сергей Гусев, Electrolux; **Вильгельмина Шавшина**, EY

Координатор комитета:
Ксения Бортник

ВВЕДЕНИЕ

Эксперты Комитета по таможне и транспорту на постоянной основе проводят анализ действующих нормативно-правовых актов, регулирующих деятельность в сфере транспорта и таможенного дела, а также проектов новых документов. На основе проведённого анализа Комитет вырабатывает рекомендации по снижению рисков ведения бизнеса, готовит предложения о внесении изменений в действующее законодательство, а также о корректировке проектов нормативно-правовых актов.

Члены Комитета АЕБ входят в состав Общественного совета при ФТС России и Экспертно-консультативного совета по реализации таможенной политики при ФТС России. Эксперты Комитета входят в состав Комиссий и Экспертной группы Общественного совета при ФТС России, а также постоянных комиссий Экспертно-консультативного совета по реализации таможенной политики при ФТС России.

Комитет выступает посредником в конструктивном диалоге между органами власти и бизнес-сообществом по вопросам транспортного и таможенного регулирования с целью улучшения условий осуществления предпринимательской деятельности посредством повышения качества государственного управления в этих сферах.

В настоящее время Комитетом определены наиболее актуальные проблемы и предлагаются пути их решения.

РАЗВИТИЕ ИНСТИТУТА УПОЛНОМОЧЕННОГО ЭКОНОМИЧЕСКОГО ОПЕРАТОРА

Введенные в 2018 году новые положения по регулированию деятельности Уполномоченного экономического оператора (УЭО) придали новый импульс развитию данного института. Появились новые операторы из числа таможенных представителей, статус УЭО учитывается при категорировании участников внешнеэкономической деятельности, достигнуты договорённости по основным требованиям к системе учета УЭО.

ПРОБЛЕМА

С практической точки зрения, на сегодняшний день препятствием для дальнейшего развития института УЭО является ограниченный набор упрощений, предоставляемых в соответствии с законодательством. Действующие операторы и компании, претендующие на получение статуса УЭО, заинтересованы в новых упрощениях, которые могли бы способствовать ускорению товарооборота и совершенствованию таможенных процедур. В частности, речь идет о решении вопроса о возможности осуществления маркировки товаров на складах УЭО; расширении практики периодического декларирования ввозимых товаров для УЭО с постепенным переходом на оплату таможенных платежей при подаче итоговой декларации (совмещение выпуска до подачи и периодического декларирования); предоставлении права перевозчикам – УЭО декларировать товары, доставляемые из интернет-магазинов в адрес физических лиц, и уплачивать за них таможенные платежи, и о многих других упрощениях в сфере таможенного оформления.

РЕКОМЕНДАЦИИ

ЕЭК предусмотреть/разработать новые виды упрощений для уполномоченных экономических операторов на основе обобщения имеющегося опыта по текущему законодательству, а также учитывая лучшие мировые практики. Комитет АЕБ по таможне и транспорту готовит консолидированные предложения по внесению изменений в законодательство таможенного союза.

АДМИНИСТРАТИВНАЯ ОТВЕТСТВЕННОСТЬ ЗА НАРУШЕНИЯ ТАМОЖЕННЫХ ПРАВИЛ

ПРОБЛЕМА

После внесения многочисленных изменений в главу 16 Кодекса Российской Федерации об административных правонарушениях сохраняется проблема несовершенства формулировок описания диспозиций правонарушений, а также неадекватности и несоразмерности санкций, установленных за отдельные нарушения таможенных правил.

РЕКОМЕНДАЦИИ

По мнению Комитета, системное решение проблемы несовершенства законодательства об административной ответственности за нарушения таможенных правил возможно только в результате внесения изменений в соответствующую главу

Кодекса Российской Федерации об административных правонарушениях, подготовленных на основе предложений экспертного сообщества с учётом сложившейся правоприменительной практики.

В связи с этим Комитет одобряет принятие Федерального закона от 23.06.2016 г. № 207-ФЗ «О внесении изменений в Кодекс Российской Федерации об административных правонарушениях» и Федерального закона от 23.06.2016 г. № 213-ФЗ «О внесении изменений в Кодекс Российской Федерации об административных правонарушениях в части совершенствования административной ответственности за нарушение таможенных правил», проекты которых были разработаны при непосредственном участии экспертов Комитета. Кроме того, Комитет приветствует принятие в первом чтении подготовленного ФТС России законопроекта № 130151-7 «О внесении изменений в Кодекс Российской Федерации об административных правонарушениях (в части уплаты штрафов за административные правонарушения в области таможенного дела)».

При этом Комитет отмечает, что в вышеназванных законодательных актах нашли своё решение далеко не все существующие проблемы несовершенства законодательства об административной ответственности за нарушения таможенных правил.

По мнению Комитета, в настоящее время наиболее актуальными вопросами, требующими скорейшего решения, являются проблемы, обусловленные несовершенством норм, установленных в части 3 статьи 16.1, части 1 статьи 16.2, части 3 статьи 16.12, а также в статье 16.15 Кодекса Российской Федерации об административных правонарушениях.

В связи с вышеизложенным, представляется крайне необходимым в рамках работы над новой редакцией Кодекса Российской Федерации об административных правонарушениях провести полную ревизию главы 16 Кодекса с целью приведения положений Кодекса в соответствие с нормами Таможенного кодекса ЕАЭС и Федерального закона «О таможенном регулировании в Российской Федерации…», а также устранения системных проблем, выявленных в правоприменительной практике, в части неоднозначности описания диспозиций правонарушений и несоразмерности предусмотренных санкций (неадекватности наказания) степени общественной опасности, экономического ущерба и неблагоприятных последствий правонарушений.

НАНЕСЕНИЕ МАРКИРОВКИ ДО ВВОЗА ТОВАРОВ

ПРОБЛЕМА

После вступления в силу Договора о Евразийском экономическом союзе (ЕАЭС), многие импортеры сталкиваются с отказами таможенных органов в выпуске товаров и привлечением к административной ответственности, включая конфискацию товаров, в случаях ввоза товаров без маркировки единым знаком обращения продукции ЕАС и/или иной обязательной маркировки, предусмотренной техническими регламентами. Согласно требованиям технического регулирования, единый знак обращения продукции на рынке (ЕАС) и иная маркировка должны быть нанесены на продукцию до ее выпуска в обращение. Документы о соответствии выдаются (регистрируются) при условии, что продукция соответствует требованиям технического регулирования, включая требования по маркировке. Исходя из этого, таможенные органы считают, что предоставленные импортерами сертификат или декларация о соответствии не относятся к товарам, которые на момент регистрации таможенной декларации не соответствуют требованиям по их маркировке.

Однако из Решения Совета ЕЭК от 18.04.2018 № 44 «О типовых схемах оценки соответствия» следует, что выпуск продукции в обращение осуществляет импортер, что возлагает на него ряд обязательств, связанных с последующим обращением данной продукции на рынке, в том числе обязательства перед потребителями. Также данным решением предусмотрено, что выдача сертификата соответствия и регистрация декларации о соответствии предшествуют нанесению на продукцию знака ЕАС.

Соответственно, описанный выше подход таможенных органов представляет собой технический барьер во взаимной торговле с третьими странами, что противоречит целям принятия технического регулирования (п. 1 ст. 52 Договора о ЕАЭС), принципам его применения (пп. 16 п. 1 ст. 51 и ст. 55 Договора о ЕАЭС) и обязательствам России в рамках ВТО. В результате такого подхода таможенных органов, в целях избежания претензий с их стороны и задержек в выпуске товаров, многие импортеры вынуждены обеспечивать нанесение требуемой маркировки за рубежом. Если импортер не может в силу своих договорных отношений возложить эту обязанность на продавца товаров, то ему приходится обращаться к услугам третьих лиц и нести связанные с этим расходы, которые увеличивают стоимость товаров.

После консультаций с бизнесом, а также учитывая сложившуюся практику по данному вопросу, ФТС России изданы разъяснения (письмо от 14.06.2018 № 14-88/35479) о возможности условного выпуска товаров для целей нанесения на них импортером знака ЕАС под обязательство о предоставлении документов соответствия после выпуска. Практика применения данного разъяснения в разных таможенных органах отличается. В результате, импортеры находятся в разных конкурентных условиях. Кроме того, данное разъяснение не распространяется на возможность нанесения русифицированной маркировки на товары, несмотря на то, что в другом разъяснении (письмо ФТС России от 15.08.2018 № 01-11/50898) ФТС России указала, что ее отсутствие на ввозимых товарах, как и отсутствие знака ЕАС, не является достаточным основанием для возбуждения дела об административном правонарушении по ч. 3 ст. 16.2 КоАП РФ.

РЕКОМЕНДАЦИИ

По мнению Комитета, по указанным выше причинам издание упомянутых писем ФТС России не позволило снять имеющиеся проблемы. Это временная полумера. Для целей применения

технического регулирования понятие «выпуск продукции в обращение» следует понимать не как выпуск товаров таможенными органами в терминологии таможенного законодательства ЕАЭС, а как действия импортера, осуществившего ввоз такой продукции, по ее распространению на территории Союза в ходе коммерческой деятельности на безвозмездной или возмездной основе. Комитетом подготовлены предложения по внесению изменений в Договор о ЕАЭС и Решение Комиссии Таможенного союза от 15.07.2011 г. № 711.

До внесения указанных выше изменений, по мнению Комитета, в целях полного избежания претензий со стороны таможенных органов и задержек в выпуске товаров, импортёрам следует организовать нанесение требуемой обязательной маркировки товаров до их ввоза на территорию Российской Федерации. Также рекомендуем использовать положения приведенных выше Рекомендаций и писем ФТС при ввозе образцов продукции для проведения испытаний.

При этом, учитывая вступление в силу Таможенного кодекса ЕАЭС, ФЗ «О таможенном регулировании», нового Порядка регистрации деклараций о соответствии продукции требованиям технических регламентов ЕАЭС, новых Типовых схем оценки соответствия продукции и нового Порядка ввоза продукции, в отношении которой устанавливаются обязательные требования в рамках ЕАЭС, необходимо подготовить новую уточнённую и дополненную редакцию совместных Разъяснений ФТС России и Росаккредитации о порядке ввоза товаров в качестве проб и образцов для целей проведения испытаний. Кроме того, представляется целесообразным в 2020 году провести анализ практического применения разъяснений ФТС России, по итогам которого внести изменения в них.

ПОДТВЕРЖДЕНИЕ СТРАНЫ ПРОИСХОЖДЕНИЯ

В соответствии с «Непреференциальными Правилами определения страны происхождения товаров, ввозимых на таможенную территорию Евразийского экономического союза», утвержденными Решением Совета ЕЭК от 13 июня 2018 № 49, происхождение товаров, в общем случае подтверждается декларацией о происхождении товара (пункт 23), а в некоторых случаях – сертификатом о происхождении товара (пункты 24, 25). По общему правилу, установленному пунктом 7 статьи 109 Таможенного кодекса Евразийского экономического союза (ТК ЕАЭС), подача декларации на товары не сопровождается представлением таможенному органу документов, подтверждающих сведения, заявленные в декларации на товары (в том числе документов о происхождении товара). При этом в соответствии с пунктом 6 статьи 80 ТК ЕАЭС допускается представление копий (в том числе бумажных копий электронных документов) указанных документов, если Договором о Евразийском экономическом союзе от 29 мая 2014 г., международными договорами и актами в сфере таможенного регулирования и (или) международными договорами государств-членов с третьей стороной не установлено обязательное представление оригиналов таких документов.

Непреференциальные правила не содержат прямого требования представлять оригиналы сертификатов о происхождении товаров при их таможенном декларировании (в отличие, например, от Решения Совета ЕЭК от 14 июня 2018 г. № 60 «Об утверждении Правил определения происхождения товаров из развивающихся и наименее развитых стран», в пункте 30 которого такое прямое требование установлено).

ПРОБЛЕМА

Однако на практике таможенные органы в обязательном порядке всегда требуют представление именно оригинала сертификата происхождения, устанавливают при этом требования к форме сертификата. В случае непредставления оригинала при таможенном декларировании, импортеры вынуждены уплачивать обеспечение таможенных пошлин и налогов исходя из ставки антидемпинговой пошлины, что приводит к замораживанию финансовых средств на долгие месяцы. В условиях эпидемиологических ограничений по всему миру, получение оригинала сертификата затруднительно, а в некоторых случаях невозможно, поскольку многие Торгово-промышленные палаты перешли оформление сертификатов исключительно в электронном виде.

Пунктом 25 Непреференциальных правил предусмотрена возможность применения электронной системы верификации происхождения товаров, в случае использования таможенными органами которой оригинал сертификата о происхождении товаров может не представляться. На сайте Евразийской экономической комиссии опубликована «информация об электронных базах данных уполномоченных органов третьих стран, которые могут быть использованы для проверки выданных ими сертификатов о происхождении товара в рамках преференциальной и непреференциальной торговли». Указанные положения свидетельствуют о том, что требование таможенных органов о представлении оригинала на бумажном носителе сертификата происхождения избыточно и не основано на законодательстве.

Компании-участницы Ассоциации европейского бизнеса отмечают, что такая интерпретация Непреферецальных правил имеет место только в Российской Федерации. При ввозе товаров в другие страны ЕАЭС оригиналы непреференциальных сертификатов происхождения не требуются при декларировании, таможенные органы сверяют номер сертификата, указанный в имеющейся у импортера копии, с электронной базой данных, и разрешают выпуск товаров. При этом в рамках контроля после выпуска, в случае сомнений относительно страны происхождения, импортер обязан представить оригинал сертификата происхождения.

РЕКОМЕНДАЦИИ

Представляется целесообразным внести изменения в Решение Совета ЕЭК от 13 июня 2018 № 49, которые бы позволили устранить неоднозначное трактование Непреференциальных правил определения страны происхождения товаров.

Весьма важным представляется активизация работы по созданию условий для скорейшего перехода на электронную верификацию сертификатов происхождения посредством электронного взаимодействия между Российской Федерацией и государствами – основными торговыми партнерами, прежде всего, в Европе.

До внедрения системы электронной верификации, по мнению компаний-членов АЕБ, возможен отказ от представления оригинала сертификата происхождения при наличии копии сертификата и информации о данном сертификате в электронной базе данных Евразийской экономической комиссии.

ЧЛЕНЫ КОМИТЕТА

Akzo Nobel Coatings • Allen & Overy Legal Services • ALRUD Law Firm • Arval • Atlas Copco • Baker McKenzie • BAT • BAYER • BCLP • BEITEN BURKHARDT • Bonduelle-Kuban LLC • BMW Russland Trading • Cargill • Caterpillar Eurasia • CMS Russia • Corteva Agriscience • Danone • Delonghi • Dentons • DHL Express • DHL Global Forwarding • DLA Piper • Electrolux • EPAM • EY • Ferrero Russia • FM LOGISTIC VOSTOK • General Motors CIS • Groupe SEB Vostok • Honda Motor RUS • John Deere Rus • Imperial Tobacco Sales and Marketing • IRU • JCB • JETRO • Johnson Matthey PLC • KPMG • Leroy Merlin • L'Oreal • Nestle • Noerr • OBI • Pepeliaev Group • Peugeot Citroën Rus (Groupe PSA) • Philips • Porsche Russland • Procter & Gamble • PwC • Roca • ROCKWOOL • Saint-Gobain • Schneider Electric • SCHNEIDER GROUP • Siemens • Specta • Total E&P Russie • VEGAS LEX Advocate Bureau • VOLKSWAGEN Group Rus • Zentis.

КОМИТЕТ ПО ФИНАНСАМ И ИНВЕСТИЦИЯМ

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ВВЕДЕНИЕ

Несмотря на то, что, как известно, в России бюджетно-налоговые требования и правила соблюдаются с завидной степенью добросовестности, за последние несколько лет страна столкнулась с некоторой стагнацией в своих попытках диверсифицировать экономику, стремясь при этом повысить эффективность производства во всех секторах. Начало 2020 года ознаменовалось январским назначением Михаила Мишустина на пост премьер-министра. После того как он был переведен из Федеральной налоговой службы в Правительство, многие считали, что этот технократ назначен для обеспечения своевременного исполнения национальных проектов, являющихся краеугольным камнем планируемого восстановления экономики России. Центральный банк успешно принял ряд мер по таргетированию инфляции, а также наметилось постепенное снижение кредитных ставок в целях стимулирования экономического роста. Проводимая Правительством консервативная политика привела к заметному снижению уровня иностранного долга государства и достижению рекордных значений уровня валютных резервов, а также позволила восполнить фонд национального благосостояния, в результате чего средства фонда стали доступны для использования в проектах развития.

В марте пандемия COVID добралась до России, и Правительство было вынуждено ввести режим строгой изоляции, что привело к застою в экономике. Эксперты сходятся во мнении, что РФ фактически удалось в значительной степени эффективно справиться с негативным влиянием пандемии, особенно по сравнению со странами Запада. Основной удар COVID пришелся на второй квартал года, однако восстановление экономики было быстрым благодаря росту потребительского спроса. В текущий момент падение российского ВВП оценивается в 3,5%, что заметно ниже, чем изначально ожидаемый уровень падения в диапазоне от 6,5% до 8%.

В дальнейшем стране придется решать проблему влияния экономической ситуации этого года на потенциал позитивного эффекта от реализации национальных проектов. Пандемия отсрочила их осуществление на 4 года, в связи с чем полной реализации таких проектов не стоит ожидать вплоть до 2025 года; необходимо также учитывать, что органы власти без особого рвения подошли к поддержке сектора МСП, а участие государства в экономике продолжило расти.

Поскольку в РФ инфляция находится под контролем и в наличии имеются значительные ресурсы, в ближайшем будущем страна не столкнется с системными угрозами. При этом повышение производительности остается трудной задачей, для решения которой потребуются прямые иностранные инвестиции, доступ к лучшим в своем классе технологиям, а также управление соответствующими процессами посредством доступа на мировые рынки. Самым главным вызовом, с которым сталкивается Россия, является возможность дальнейшей изоляции и отрыва от таких ресурсов в связи с политической ситуацией в Европе и США.

ЛОКАЛИЗАЦИЯ

Политика импортозамещения (локализации), запущенная Правительством в 2014 году, сейчас выходит на новый этап: фокус смещается с разрешения главным образом инвестиционных задач на развитие и передачу технологических компетенций с целью создания ориентированных на экспорт отраслей производства.

Несмотря на пандемию нового коронавируса и вызванные ею ограничения, иностранные компании, представляющие самые различные отрасли промышленности (автомобильную, фармацевтическую, ИТ и пр.), демонстрируют стабильную заинтересованность в участии в проектах локализации. Вместе с тем одним из основных факторов является повышение эффективности мер государственной поддержки. Например, одним из механизмов такой поддержки являются специальные инвестиционные контракты (СПИК), по которым на сентябрь 2020 года общий объем инвестиций составил 807,8 млрд руб.

Последними на данный момент изменениями, внесенными в отношении СПИК, являются поправки в Федеральный закон «О промышленной политике в Российской Федерации», утвержденные Правительством Российской Федерации в июле 2020 года («СПИК 2.0»). Основными изменениями относительно СПИК 1.0 являются отмена минимального инвестиционного порога для проектов (ранее данный порог составлял 750 млн руб.), продление сроков контрактов (до 15 лет в отношении инвестиций до 50 млрд руб. и до 20 лет в отношении инвестиций свыше 50 млрд руб.), а также обязательное использование современных технологий. Основные факторы, стимулирующие компании к заключению СПИК 2.0, остались без изменений:

стабильность бизнес-условий для инвесторов, налоговые льготы, ускоренная процедура получения статусов «российский производитель» и «единственный поставщик» в рамках госзаказов (для проектов, бюджет которых превышает 3 млрд руб.).

Правительство также предоставляет участвующим компаниям-инвесторам иные меры стимулирования, в частности различные региональные меры поддержки. Так, Правительство Москвы предоставляет компаниям, получившим статус производственных комплексов (более 40 крупных производственных предприятий, включая предприятия с иностранным капиталом), налоговые и прочие льготы, а в 2020 году к таким льготам добавился инвестиционный налоговый вычет. После внедрения дополнительных финансовых инструментов у компаний появятся возможности для обновления их основных фондов, модернизации производства, а также реализации стратегических проектов.

РЕКОМЕНДАЦИИ

Новые и усовершенствованные меры поддержки, безусловно, крайне привлекательны для иностранных инвесторов. В то же время при принятии инвестиционных решений важными для европейских компаний факторами остаются стабильность российского законодательства и условий налогообложения, дальнейшее упрощение механизмов локализации, а с учетом влияния пандемии – и сбалансированность поддержки Правительства в отношении как отраслей, наиболее затронутых COVID, так и прочих отраслей.

Мы также считаем, что передовой опыт Москвы в отношении принятия мер поддержки локализованных на данной территории предприятий может быть применен и другими регионами России с учетом местной специфики.

«ЗЕЛЕНОЕ ФИНАНСИРОВАНИЕ» И ВНЕДРЕНИЕ ПРИНЦИПОВ ОСВО В РОССИИ

Так называемые «факторы ОСВО» (окружающая среда, социальные вопросы и внутрикорпоративные отношения) становятся все более важными для международного финансового сектора. Многие крупные инвесторы, такие как Blackrock, Европейский инвестиционный банк или Пенсионный фонд Норвегии, приняли решения или заявили о прекращении финансирования проектов и компаний, ответственных за большие объемы выбросов парниковых газов в атмосферу, поскольку основанные на принципах ОСВО инвестиционные продукты в среднем демонстрируют большую эффективность по сравнению с обычными финансовыми продуктами. С 2014 года глобальный рынок «зеленых» облигаций вырос с 51 до 690 млрд долл. США (по состоянию на 2019 год); при этом объем ОСВО-активов увеличился с 8 до 18 трлн долл. США.

Принимая во внимание эти данные, нельзя не отметить, что значимость ОСВО-факторов достигла того уровня, на котором игроки на глобальных финансовых рынках уже не могут ее игнорировать: низкая эффективность ОСВО-деятельности может привести к росту стоимости внешнего финансирования в самом ближайшем будущем. Это является дополнительным вызовом как для самой России, так и для компаний, ведущих в ней свою деятельность, поскольку структура экономики страны до сих пор зависима от углеводородов и сохраняющихся санкций, наложенных странами Запада.

РЕКОМЕНДАЦИИ

Чтобы избежать негативного влияния на ВВП и дальнейшего падения стоимости активов правительству России следует рассмотреть возможность внедрения более амбициозного нормативного регулирования в области охраны окружающей среды, а также мер поддержки, которые бы стимулировали компании к повышению эффективности своей ОСВО-деятельности.

ПОЛУЧЕНИЕ НЕОБХОДИМОЙ ФИНАНСОВОЙ И ИНОЙ ИНФОРМАЦИИ У КОНТРОЛИРУЕМЫХ КОМПАНИЙ

В настоящее время законодательство Российской Федерации в недостаточной мере регулирует предоставление компаниями информации своим акционерам и учредителям.

Чтобы осуществить свои права, предусмотренные Федеральным законом № 208-ФЗ «Об акционерных обществах» от 26.12.1995 (включая права, предусмотренные статьей 32 данного федерального закона), акционеры обязаны запросить у соответствующих компаний необходимую документацию и информацию, на основании которой принимаются решения касательно процедуры голосования на общем собрании акционеров. Но поскольку перечень таких необходимых к предоставлению документов и информации, а также срок предоставления таких документов и информации не регулируются законодательством (за исключением перечня документов, указанного в статье 91), компании имеют возможность не предоставлять отдельных документов и сведений.

Акционерам необходимо получить от контролируемых компаний полную и достоверную информацию, опубликованную в финансовой отчетности и пояснениях к ней, поскольку в обратном случае они не имеют возможности незамедлительно и в полном объеме анализировать экономическую деятельность таких контролируемых компаний.

РЕКОМЕНДАЦИИ

- Обязать контролируемые компании предоставлять запрашиваемую финансовую информацию и юридически значимые документы в течение четко установленных сроков, которые должны быть прописаны в законе, или в порядке, предусмотренном локальными нормативными актами соответствующих компаний.

  Рекомендации по регулированию сроков предоставления документов по запросу акционеров: в течение 10 дней с даты

соответствующего запроса (при условии, что по состоянию на дату запроса у компании имеются необходимые документы), а для запросов на предоставление документов и информации, необходимых для принятия решений по процедуре голосования на очередных и внеочередных собраниях акционеров, – не позднее чем за 3 рабочих дня до даты проведения соответствующего Общего собрания акционеров.

- По запросу акционеров, контролируемые компании должны быть обязаны предоставлять таким акционерам, владеющим как минимум 25% голосующих акций, детализированные данные и пояснения по бухгалтерским и прочим финансовым документам, информацию, касающуюся связанных с компанией сторон, а также информацию касательно процедур и органов управления дочерних предприятий контролируемых компаний.

СОГЛАСИЯ НА СДЕЛКИ С ЗАИНТЕРЕСОВАННОСТЬЮ

Процедура одобрения Советом директоров или Общим собранием акционеров сделки с заинтересованностью законодательно не регулируется. В частности, не было принято никаких решений касательно проверки членов советов директоров компаний или сторон сделок с заинтересованностью в процессе голосования об одобрении таких сделок.

РЕКОМЕНДАЦИИ

При предоставлении Совету директоров на утверждение сделки с заинтересованностью компания должна предоставить информацию касательно заинтересованности или незаинтересованности каждой из сторон такой сделки, а также каждого из членов Совета директоров. Такая информация может быть предоставлена в форме заявления об обстоятельствах за подписью уполномоченного представителя компании, в отношении которой установлено отсутствие заинтересованности в совершении одобряемой сделки. Такое заявление также должно включать в себя информацию, полученную от членов Совета директоров (касательно того, контролируют ли они те или иные компании, являются ли они близкими родственниками соответствующих лиц и пр.), а также информацию, полученную от сторон сделки.

Необходимо решить вопрос касательно одобрения сделок, в которых фактически заинтересованы акционеры, члены Совета директоров или единоличный исполнительный орган компании. В частности, фактическая заинтересованность может быть выявлена в форме прямых и косвенных выгод таких акционеров или директоров, которые могут быть получены ими в связи с самой сделкой или ее осуществлением.

Принятие детально прописанных правил и требований может помочь повысить качество корпоративного управления.

ЧЛЕНЫ КОМИТЕТА

ABB • Accor Groupe • AGC Glass Europe • ALD Automotive • ALRUD Law Firm • American Express Bank • American Institute of Business and Economics • Antal Russia • AO Deloitte & Touche CIS • Arval • Auto Partners • AVIS Russia (Bilantilia Corp., duly authorized representative of Avis in the territory of the Russian Federation) • Baker Botts L.L.P. • BEITEN BURKHARDT Moscow • BMW Russland Trading • BRAND & PARTNERS LLC • Caterpillar Eurasia LLC • Citibank AO • Credendo – Ingosstrakh Credit Insurance LLC • Creon Capital S.a.r.l • De Lage Landen Leasing • Debevoise and Plimpton LLP • Dentons • Deutsche Bank Ltd. • Drees & Sommer • Egorov Puginsky Afanasiev & Partners (EPAM) • Euler Hermes • EY • FCA Russia • Generali Russia & CIS • Gerald Sakuler • Grata International • HeidelbergCement Rus • HELLENIC BANK PCL • Heroes S.r.l • Hino Motors, LLC • HSBC Bank (RR) OOO • Hyundai Truck and Bus Rus LLC • IBFS Europe GmbH • Inchcape Holding LLC • ING Wholesale Banking in Russia • INVESTMENT COMPANY IC RUSS-INVEST • John Deere Rus, LLC • Kia Motors Rus • Knauf Group CIS (OOO Knauf Gips) • KPMG AO • LeasePlan Rus • Legrand LLC • LEROY MERLIN Russia • Lincoln International CIS Holding B.V., Branch in Moscow • MAI Insurance Brokers • MAN Truck & Bus RUS LLC • Mannheimer Swartling • Mazars • Mercedes-Benz Financial Services Rus OOO/Mercedes-Benz Bank Rus OOO/Mercedes-Benz Capital Rus OOO • Mercedes-Benz Russia • MonDef • MOST SERVICE, member of Bruck Consult • Natixis Bank JSC • NOBLE HOUSE Group Russia • Noerr OOO • Norton Rose Fulbright (Central Europe) LLP • OTP Bank JSC • PEAC Leasing AO • Pepeliaev Group, LLC • Peugeot Citroën Rus (Groupe PSA) • PwC • Raiffeisenbank AO • Renaissance pensions JSC NSPF • Rödl & Partner • Rosbank • Rosbank Leasing • SANOFI-AVENTIS REP OFFICE • Scania-Rus LLC • Schneider Electric Joint Stock Company • SCHNEIDER GROUP • Segula Technologies Russia LLC • SERVIER • Tikkurila • TMF Group • UniCredit Bank AO • Urus Advisory Ltd. • Vaillant Group Rus LLC • VEGAS LEX Advocate Bureau • Viruni Capital Partners • VISA • Volvo Cars, LLC • Volvo Vostok NAO • YIT • ZURICH RELIABLE INSURANCE, JSC.

КОМИТЕТ ПО ТРУДОВЫМ РЕСУРСАМ

Председатель:
Ирина Аксенова, Coleman Services UK

Координатор комитета:
Светлана Нечаева (svetlana.nechaeva@aebrus.ru)

Комитет по трудовым ресурсам был создан в 1995 году. В настоящее время в его составе работают четыре подкомитета: подкомитет по оценке, обучению и развитию персонала; подкомитет по компенсациям и льготам; подкомитет по трудовому праву; подкомитет по рекрутменту.

В качестве своих целей мы видим:
- развитие российского рынка труда;
- лоббирование интересов членов Комитета в бизнес-сообществах, правительственных и законодательных органах и на всех уровнях, необходимых для осуществления деятельности членов АЕБ на территории Российской Федерации;
- информирование деловых кругов и правительственных институтов России о состоянии дел в области человеческих ресурсов;
- выработку решений по вопросам, возникающим у членов Ассоциации в работе с персоналом в нашей стране;
- содействие обмену опытом между иностранными и российскими специалистами по кадрам;
- помощь членам АЕБ в расширении их контактов и в их скорейшей адаптации к российской деловой среде. Комитет работает в соответствии с изменениями на рынке труда Российской Федерации, включая изменения, вызванные мировой экономической ситуацией, демографическими трендами, новшествами в российской законодательной базе. Комитет способствует применению в России лучших мировых практик и стандартов в области человеческих ресурсов.

ПОДКОМИТЕТ ПО ОЦЕНКЕ, ОБУЧЕНИЮ И РАЗВИТИЮ ПЕРСОНАЛА

В текущих реалиях компаниям, работающим на российском рынке, приходится сталкиваться с рядом вызовов, в частности: наличие нормативных барьеров для применения зарубежных практик; изменение традиционных методов управления персоналом в связи с переходом на удаленную работу.

Нормативно-правовая база накладывает ограничения на компании в применении систем автоматизации иностранного происхождения, а также предъявляет требования к хранению и трансграничной передаче персональных данных. Это не дает компаниям в полной мере воспользоваться уже сложившимися сервисными экосистемами в управлении талантами и затрудняет внедрение передовых практик менеджмента.

Переход на удаленную работу в условиях пандемии коронавируса заставляет компании пересматривать свои подходы к управлению персоналом и подстраиваться под сложившиеся обстоятельства.

Согласно опросам, проведенным в период самоизоляции, 40% компаний-респондентов приостановили отбор персонала. Примерно столько же опрошенных компаний полностью перевели очные собеседования в онлайн-формат. Треть опрошенных компаний полностью перевела обучение в онлайн-формат. 40% опрошенных компаний отмечают, что текущие события приведут к пересмотру основных стратегических направлений развития компании и подхода к управлению персоналом.

Подкомитет по оценке, обучению и развитию персонала видит своей целью распространение лучших практик и технологий, сбор и популяризацию HR-практик, приносящих наибольший измеримый результат для бизнеса, а также содействие в выборе степени локализации международных практик для российских реалий. Комитет совместно с членами Ассоциации будет искать возможности в сложившейся ситуации и предоставлять практические рекомендации по применению общемировых практик с учетом локальных нормативных ограничений.

ПОДКОМИТЕТ ПО КОМПЕНСАЦИЯМ И ЛЬГОТАМ

2020 год стал непростым для функции управления персоналом, особенно подразделений по компенсациям и льготам. Компании вынуждены были сокращать штат, отправлять сотрудников в отпуск или простой. Компании адаптировались к кризисной ситуации, применяя все меры, которые могли себе позволить.

БАЗОВЫЙ ОКЛАД

Средний процент повышения окладов за прошлый год составил 8,5%. К некоторым сотрудникам большинство организаций продолжает применять индивидуальный подход

при принятии решения об изменении заработной платы. Для таких сотрудников средний процент изменения уровня вознаграждения превышает процент увеличения фонда оплаты труда по организации в целом. В будущем году компании особенно дифференцируют подход к повышениям оклада в зависимости от уровня должности.

ПРОГРАММЫ СТИМУЛИРОВАНИЯ

В 2020 году большинство компаний выплатило премии по результатам работы за 2019 год, в частности те, в которых премии выплачивались в апреле. Большая часть компаний не планирует изменять КПЭ в связи со сложным годом для выполнения показателей. На протяжении последних лет структура компенсационного пакета не претерпевает значительных изменений – по мере роста уровня должности в организационной структуре компании наблюдается увеличение доли премиальной части: от 10-15% у линейного персонала до 50% и выше у руководителей старшего и высшего звена. В целях определения размеров премий компании комбинируют общекорпоративные (командные) и индивидуальные показатели эффективности.

ЛЬГОТЫ ДЛЯ РАБОТНИКОВ

Состав пакета льгот, вопреки ожиданиям, также не претерпел существенных изменений. По-прежнему наиболее популярными составляющими социального пакета являются оплачиваемая мобильная связь, программы добровольного медицинского страхования и страхования жизни. Транспортные льготы и льготы на питание были частично отменены в период пандемии, в то время как некоторые компании добавили в льготный пакет телемедицину и корпоративных психологов. Увеличилось число компаний, которые запускают программу оздоровления сотрудников.

ОСОБЕННОСТИ ПРОГРАММ ДОПОЛНИТЕЛЬНОЙ МОТИВАЦИИ

По-прежнему многие компании проявляют интерес к программам долгосрочной мотивации руководителей. Усилившаяся популярность данных программ в период кризиса 2015 года не ослабевает. В большинстве компаний участниками программ долгосрочной мотивации являются топ-менеджеры уровней CEO, CEO-1, CEO-2, а также руководители некоторых структурных подразделений и филиалов. Наиболее популярными показателями, используемыми в рамках программ долгосрочной мотивации, остаются показатели прибыли, такие как чистая прибыль, EBITDA, а также показатели акционерного дохода.

Среди нематериальной мотивации лидируют такие инструменты, как внутреннее обучение, корпоративные мероприятия, признание, программы ротации, наставничество, гибкий график, который стал особенно актуален а период массовой удаленной работы.

ПОДКОМИТЕТ ПО ТРУДОВОМУ ПРАВУ

ЭЛЕКТРОННЫЙ КАДРОВЫЙ ДОКУМЕНТООБОРОТ

Необходимость перехода на электронный кадровый документооборот в России ускорила законодательный процесс. Федеральным законом от 16 декабря 2019 г. № 439-ФЗ были внесены изменения в Трудовой кодекс Российской Федерации и установлена возможность ведения информации о трудовой деятельности в электронном виде (так называемые «электронные трудовые книжки»). Последующие законодательные акты и нормативные акты Правительства Российской Федерации создали базу для постепенного перехода на электронные трудовые книжки с 1 января 2020 года.

К сожалению, законодательный перевод в электронный формат других кадровых документов затянулся. На практике этот процесс был существенно ускорен в период ограничений из-за пандемии COVID-19. Компании были вынуждены в кратчайшее время перевести на работу из дома значительную часть работников. Это было невозможно без фактического перехода на электронный документооборот, в том числе кадровый. Несмотря на то, что работодатели не имели возможности оформить такой переход в полном соответствии с действующими нормами Трудового кодекса Российской Федерации, Правительство в лице Минтруда фактически узаконило сложившийся упрощенный формат. Разумеется, для европейского бизнеса было бы намного более комфортно, если бы в ближайшее время были приняты нормативные акты, которые урегулировали бы сложившийся на практике перевод кадрового документооборота в электронный формат. Это позволило бы минимизировать существующие правовые риски использования электронных кадровых документов без надлежащей поддержки законодательными нормами, и тем самым существенно улучшило бы инвестиционный климат в стране.

ДИСТАНЦИОННЫЙ/УДАЛЕННЫЙ ТРУД

Глава 49-1 Трудового кодекса Российской Федерации, регулирующая условия труда работников вне постоянных рабочих мест, была введена еще Федеральным законом от 5 апреля 2013 г. № 60-ФЗ. Тем не менее, до начала 2020 года эта форма организации трудовых отношений использовалась работодателями в сравнительно ограниченном масштабе. Этому способствовали в том числе и относительно малая гибкость новых норм. Так, законодатель не предусмотрел возможности совмещения работы в офисе и дистанционно, в то время как на практике было установлено, что такое совмещение позволяет существенно нейтрализовать негативные последствия работы вне офиса – ослабление связей с коллегами, усложнение организации коллективной работы, затруднение постоянного контроля со стороны работодателя за деятельностью работника.

Условия пандемии COVID-19 и введенные властями жесткие противоэпидемические ограничения сделали переход

на дистанционный труд единственной альтернативой полному закрытию предприятий для большинства работодателей. Почти полугодовой опыт работы «из дома» в масштабах всей страны показал огромный потенциал этой формы трудовых отношений как для работодателей, так и для работников. Текущие опросы показывают, что значительное число компаний не собирается полностью возвращать всех работников в офисы и на другие рабочие места и планирует и дальше работать удаленно. Тем не менее, для столь масштабного перехода на дистанционную работу нормы текущей редакции Трудового кодекса Российской Федерации стали уже тесными. Работодатели нуждаются в более гибком регулировании, и в первую очередь в возможности совмещения дистанционной работы и труда на рабочих местах.

В настоящее время в Государственной Думе рассматривается законопроект с новой редакцией Главы 49-1 Трудового кодекса Российской Федерации. Проект позволяет в значительной степени решить указанную проблему. Комитет по трудовым ресурсам АЕБ будет принимать самое активное участие в обсуждении законопроекта для внесения в него изменений в интересах компаний-членов Ассоциации.

ПРЕДОСТАВЛЕНИЕ ТРУДА РАБОТНИКОВ (ПЕРСОНАЛА)

Федеральный закон № 116-ФЗ от 5 мая 2014 г., вступивший в силу с 1 января 2016 г., предусматривающий значительные ограничения командирования для работы в других организациях, остается, по мнению бизнес-сообщества, одним из существенных препятствий для дальнейшего экономического развития. К сожалению, все попытки дальнейшего развития законодательной базы с тем, чтобы нормы вышеуказанного закона о деятельности по предоставлению труда работников между аффилированными компаниями заработали, по-прежнему наталкиваются на упорное сопротивление профсоюзов. Последние блокируют прохождение любых законопроектов в этой части. К большому сожалению европейского бизнес-сообщества, перспективы создания правовых условий для успешной работы механизма предоставления труда работников в России все еще далеки от реализации.

ПРЕДОТВРАЩЕНИЕ КОНФЛИКТА ИНТЕРЕСОВ И КОНКУРЕНЦИИ СО СТОРОНЫ РАБОТНИКОВ

На протяжении многих лет европейский бизнес предлагает ввести в российское трудовое законодательство нормы, направленные на регулирование вопросов конкуренции со стороны работников и не допускающие конфликт интересов со стороны работников как минимум в течение периода работы у конкретного работодателя. Действующая редакция Трудового кодекса Российской Федерации, хотя и предусматривает возможность увольнения работника в случае непринятия им мер по предотвращению или урегулированию конфликта интересов, стороной которого он является (п. 7.1 ч. 1 ст. 81 Трудового кодекса Российской Федерации), но данная норма применима лишь в отношении определенного круга лиц (например, в государственных учреждениях) и не может применяться работодателями – коммерческими организациями. Таким образом, европейский бизнес, с одной стороны, обязан внедрять политики о недопущении конфликта интересов, об антикоррупционных требованиях и несет за это высокую ответственность, а с другой стороны – не имеет возможности применить должные меры ответственности к работникам, допустившим нарушения данных требований. В связи с этим представляется крайне необходимым урегулировать данные вопросы на уровне федерального закона и в числе прочих мер предусмотреть возможность увольнения работников коммерческих организаций в связи с нарушением ими положений о неконкуренции и ограничении конфликта интересов.

ПОДКОМИТЕТ ПО РЕКРУТМЕНТУ

В последние годы роль HR-специалиста в компаниях все чаще трансформируется в роль бизнес-партнера, способного к выполнению не только операционных задач, но и умеющего предложить и реализовать планы по существенному улучшению и оптимизации бизнес-процессов компании и поддержать руководителей в достижении их бизнес-целей через HR-инструменты. Таким образом, идет логическое расширение профессиональных компетенций сотрудников кадровых подразделений. Рабочий темп ускоряется, производительности труда уделяется все больше внимания. В этой связи стремительно развивается и рынок HR-технологий. Буквально каждую неделю появляется новый продукт, направленный на сокращение временных затрат HR-специалиста и повышение профессионализма сотрудников. Автоматизируется все, что возможно автоматизировать: подбор персонала от скрининга резюме до собеседования по компетенциям (чат-ботами и видео-интервью уже никого не удивить), адаптация, оценка, обучение, администрирование – все переходит в онлайн-приложения, при этом Россия не может пока «догнать» ушедший далеко в технологическом плане мир Европы и Америки.

На рынке труда в настоящее время наблюдается определенный кадровый голод наряду с избытком кандидатов. Этот парадокс обусловлен существенным ускорением изменений и возрастающей конкуренцией практически во всех сферах экономики. Высококонкурентный, технологически развивающийся и быстро меняющийся рынок требует от сотрудников определенных профессиональных и личностных компетенций, которые можно встретить далеко не у каждого кандидата, находящегося на рынке труда. В результате компании переманивают и «перекупают» лучших специалистов, а кандидаты, не имеющие необходимых рынку компетенций, остаются не у дел.

Несмотря на спад экономики, вызванный пандемией коронавируса, компании стремятся сохранить высокоэффективных сотрудников и сотрудников с высоким потенциалом, в свою очередь сотрудники стали более осторожны при принятии решения о смене работы. Для привлечения лучших специалистов компании активно развивают бренд работодателя, все активнее применяются маркетинговые инструменты в HR.

Новый опыт, полученный во время карантина, ускорил распространение онлайн-технологий в подборе персонала, были опробованы новые подходы к найму (например, кросс-наем).

В рекрутменте в настоящее время можно выделить три направления: Executive Search (точечный подбор руководителей высшего звена и редких специалистов), классический рекрутмент (подбор руководителей среднего звена и высококвалифицированных специалистов), массовый подбор. Также активно развивается альтернативный способ найма сотрудников – аутсорсинг персонала. Уже достаточно широко распространенный в Европе Interim Management (временное предоставление управленческих ресурсов и навыков) в России только начинает развиваться.

Подкомитет по рекрутменту персонала видит свою миссию в распространении лучших практик и технологий в области подбора персонала, в сотрудничестве со смежными комитетами для оказания практической помощи компаниям из различных отраслей экономики в решении их бизнес-задач.

ЧЛЕНЫ КОМИТЕТА

Accenture • Accor Groupe • AIG Insurance Company, JSC • Air France • ALD Automotive • ALRUD Law Firm • ALSTOM Transport Rus LLC • American Institute of Business and Economics • ANCOR • Angelini Pharma Rus LLC • Antal Russia • AstraZeneca Pharmaceuticals LLC • Atlas Copco, JSC • Auchan Russia • Avito (LLC KEH eCommerce) • Baker McKenzie • BAYER • BEITEN BURKHARDT Moscow • Bonduelle-Kuban LLC • BP • British American Tobacco Russia • Brother LLC • Bryan Cave Leighton Paisner (Russia) LLP, Russian branch • BSH Bytowyje Pribory OOO • Cargill LLC • CBSD/Thunderbird • Chevron Neftegaz Inc. Moscow Branch • Chiesi Pharmaceuticals LLC • Citibank AO • Coleman Services UK • Continental Tires RUS OOO • Credit Agricole CIB AO • Creon Capital S.a.r.l • Delonghi • Deutsche Bank Ltd. • DHL Express • DHL Global Forwarding • DSM • Epiroc Rus LLC • Equinor Russia AS • Ericsson • Euler Hermes • EY • FERRONORDIC • Foodcard • Gasunie • GfK Rus • H&M Hennes & Mauritz LLC • HEINEKEN BREWERIES, LLC • HELLENIC BANK PCL • Henkel Rus OOO • Hino Motors, LLC • Honda Motor RUS LLC • HSBC Bank (RR) OOO • Hyundai Motor CIS • IE Business School • IKEA DOM LLC • ING Wholesale Banking in Russia • Intermark Relocation • IWM • John Deere Rus, LLC • KPMG AO • Legrand LLC • LEROY MERLIN Russia • M.Video • MAI Insurance Brokers • Mazars • Mazda Motor Rus • METRO AG Representative office • Michelin • MMC Rus • Morgan Lewis • NAVIEN RUS, LLC • NOBLE HOUSE Group Russia • Nordea Bank • Novartis Group Russia • OBI Russia • Orange Business Services • Oriflame • Orion Pharma LLC • Pepeliaev Group, LLC • Peugeot Citroën Rus (Groupe PSA) • Philip Morris Sales and Marketing • Porsche Russland • PPG Industries LLC • PwC • Renault Russia • Repsol Exploracion S.A.• Richemont • Robert Bosch OOO • ROCKWOOL • Rödl & Partner • SAFMAR NPF AO • SCHNEIDER GROUP • Segula Technologies Russia LLC • SERVIER • Shell Exploration and Production Services (RF) B.V. • Siemens LLC • Signify Eurasia LLC • Specta • Staff-UP, LLC recruitment agency • TOTAL VOSTOK LLC • Unipro PJSC • Vaillant Group Rus LLC • Viessmann LLC • VISA • Vitus Bering Management Ltd. • Volkswagen Group Rus (Audi/Bentley/Lamborghini/Škoda/Volkswagen/Volkswagen Commercial Vehicles) • Volvo Vostok NAO.

КОМИТЕТ ПО ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ

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ПАРАЛЛЕЛЬНЫЙ ИМПОРТ

ЗАПРЕТ ПАРАЛЛЕЛЬНОГО ИМПОРТА ТОВАРОВ/РЕГУЛИРОВАНИЕ ИСЧЕРПАНИЯ ПРАВА НА ТОВАРНЫЙ ЗНАК

ПРОБЛЕМА

Действующим российским законодательством и международными договорами о Евразийском экономическом союзе однозначно и недвусмысленно решен вопрос параллельного импорта – ввоз на территорию ЕАЭС товаров, содержащих определенные средства индивидуализации, без согласия правообладателя запрещен. По общему правилу параллельный импорт является незаконным и подлежит запрету в соответствии с нормами законодательства о товарных знаках.

Право запрещать параллельный импорт вытекает из общих правомочий владельца товарного знака, составляющих его исключительное право на товарный знак. Ввоз на территорию Российской Федерации товаров, на которых размещены товарные знаки, с целью введения в гражданский оборот на территории Российской Федерации, является самостоятельным видом использования товарных знаков и без разрешения правообладателя товарных знаков является незаконным.

Для обеспечения баланса интересов правообладателя и прав других лиц законодательством установлен принцип исчерпания права на товарный знак. Четвертая часть Гражданского кодекса Российской Федерации, воспроизводя регулирование, введенное Законом «О товарных знаках, знаках обслуживания и наименованиях мест происхождения товаров» в начале 2000-х гг., устанавливает «национальный» принцип исчерпания права на товарный знак. Национальный принцип исчерпания права подразумевает, что правообладатель не может запрещать другим лицам использовать товарный знак в отношении товаров, которые были введены в гражданский оборот на территории Российской Федерации непосредственно правообладателем или с его согласия.

Схожие положения об исчерпании права на товарный знак содержатся также в Соглашении Таможенного союза «О единых принципах регулирования в сфере охраны и защиты прав интеллектуальной собственности», а также в Договоре о создании Евразийского экономического союза. Соглашение и Договор устанавливают для государств-участников Таможенного союза и Евразийского экономического союза (Республики Беларусь, Республики Казахстан, Российской Федерации, Республики Армения и Республики Кыргызстан) региональный принцип исчерпания права на товарный знак. Во многом похожая модель регионального принципа исчерпания права на товарный знак применяется и на территории Европейского союза.

Для многих членов Ассоциации европейского бизнеса вопрос параллельного импорта в России является чрезвычайно важным. Несмотря на последние положительные тенденции в эволюции судебной практики, укрепившие позицию о незаконности параллельного импорта судебными инстанциями в течение последних четырех лет, правообладатели сталкиваются с новыми острыми проблемами.

В сентябре 2020 года Федеральная антимонопольная служба вынесла решение, признав действия двух правообладателей по защите своих прав на товарные знаки от несанкционированного ввоза в Россию маркированных товаров третьими лицами в рамках параллельного импорта недобросовестной конкуренцией (ст. 14.8 Закона о защите конкуренции). Несмотря на действующий в ЕАЭС и Российской Федерации региональный принцип исчерпания права, требующий согласия правообладателя на ввоз, ФАС фактически легализовала ввоз товаров из иностранных государств без согласия правообладателя.

Мы полагаем, что такое решение ФАС не только приводит к правовой неопределенности, но и вступает в противоречие с российским законодательством и международными договорами Российской Федерации.

В настоящее время в России ведется активная дискуссия об изменении принципа исчерпания права на товарный знак с национального/регионального на международный, как в целом, так и в отношении определенного перечня товаров. Подобная инициатива исходит от отдельных государственных органов.

Также очень тревожной для правообладателей является обсуждаемая ныне инициатива по внесению изменений в законодательство Российской Федерации и принятию нормативных актов, ограничивающих исключительность права на товарный знак, и фактически устанавливающих ответственность правообладателя за действия, направленные на реализацию и защиту предоставленных ему законом исключительных прав посредством борьбы с

параллельным импортом. Запрет параллельного импорта при региональном режиме исчерпания прав на товарный знак является системообразующим правовым институтом в праве Европейского союза и поддерживается как Европейским судом справедливости, так и национальными судами. Более того, в судебной практике формируются подходы, способствующие максимально простому и понятному порядку взаимодействия между правообладателями и таможенными органами для предотвращения параллельного импорта[1].

Позиция о недопустимости либерализации параллельного импорта в условиях национального или регионального режима исчерпания прав на товарный знак также поддерживается Международной ассоциацией по товарным знакам (INTA)[2].

РЕКОМЕНДАЦИИ

Комитет считает, что действующее российское законодательство, так же, как и законодательство Таможенного союза и Евразийского экономического союза, регулирующие вопросы исчерпания права на товарный знак, не требуют изменений. Рекомендуется продолжать активное сотрудничество, участие в дискуссиях и консультациях на всех уровнях и площадках для донесения позиции членов АЕБ до всех заинтересованных лиц и государственных органов, включенных в процесс.

Кроме того, при выработке позиций по вопросу параллельного импорта рекомендуется учитывать обширный опыт Европейского союза, в котором действует аналогичный (региональный) принцип исчерпания прав на товарный знак.

ЭФФЕКТИВНОЕ ПРОТИВОДЕЙСТВИЕ ПРОИЗВОДИТЕЛЯМ И РАСПРОСТРАНИТЕЛЯМ КОНТРАФАКТНОЙ ПРОДУКЦИИ

ПРОБЛЕМА

Общая низкая эффективность мер, направленных на противодействие контрафакту на внутреннем рынке, приводит к наличию большого числа поддельных товаров, прежде всего, в секторе товаров народного потребления. В то время как таможенные органы Российской Федерации выработали достаточно эффективные централизованные механизмы противодействия контрафакту, и эти механизмы опираются на квалифицированные кадры сотрудников таможенных органов на местах и в центральном аппарате ФТС, которые специализируются на борьбе с контрафактом, соответствующая практика иных правоохранительных органов России нуждается в существенном улучшении.

При этом очевидно, что эффективность увеличения штрафов или иного ужесточения санкций за правонарушения, связанные с производством и распространением контрафактной продукции, уменьшается ввиду слабости механизмов привлечения к административной и уголовной ответственности за незаконное использование товарных знаков.

РЕКОМЕНДАЦИИ

Комитет рекомендует разработать и ввести в действие нормативные плановые ежеквартальные количественные показатели изъятой контрафактной продукции на территориальной основе для сотрудников органов внутренних дел и Роспотребнадзора, дифференцированные в зависимости от распространенности контрафактной продукции на рынке того или иного региона.

Рекомендуется организовать централизованные учет, обработку полученных данных и контроль выполнения плановых показателей, их дальнейшую дифференциацию на региональной основе, стимулирование сотрудников территориальных подразделений к их выполнению.

В рамках повышения эффективности работы правоохранительных органов считаем целесообразным организацию и проведение ежегодных семинаров на региональном и федеральном уровнях для сотрудников органов внутренних дел и Роспотребнадзора, специализирующихся на борьбе с контрафактом, с привлечением представителей правообладателей.

ГЕОГРАФИЧЕСКИЕ УКАЗАНИЯ И НАИМЕНОВАНИЯ МЕСТ ПРОИСХОЖДЕНИЯ ТОВАРОВ

ПРОБЛЕМА

В силу вступил Федеральный закон от 26 июля 2019 г. № 230-ФЗ «О внесении изменений в часть четвертую Гражданского кодекса Российской Федерации и статьи 1 и 23.1 Федерального закона «О государственном регулировании производства и оборота этилового спирта, алкогольной и спиртосодержащей продукции и об ограничении потребления (распития) алкогольной продукции».

Закон вводит новое средство индивидуализации – географические указания («ГУ»). Режим географических указаний предполагает намного более простые требования, предъявляемые к товару и производственному процессу.

До настоящего времени у производителей имелась лишь одна эффективная возможность получить правовую охрану указания на место производства их товаров – наименования мест происхождения товаров (§3 гл. 76 Гражданского кодекса Российской Федерации) («НМПТ»). Однако НМПТ имеют крайне жесткие требования, предъявляемые к самому товару и процессу его производства. В частности, особые свойства товара должны исключительно определяться характерными для данного географического объекта природными условиями и людскими факторами, и на территории этого географического объекта должны осуществляться все стадии производства

[1] The Hague District Court, 15 April 2020 (Armani v ITG)
[2] INTA. Parallel Imports/Gray Market https://www.inta.org/topics/parallel-imports/

товара, оказывающие существенное влияние на формирование особых свойств товара.

Новый закон – очень важное изменение правового режима коллективных средств индивидуализации, предусматривающее введение нового средства индивидуализации в российское право и расширяющее возможности иностранных обладателей исключительных прав на географические указания и наименования мест происхождения товаров по получению их защиты в российской юрисдикции. Закон проясняет порядок регистрации прав региональной ассоциацией производителей товаров, что особенно актуально для обладателей исключительных прав на географические указания и НМПТ, охраняемых по праву стран ЕС.

Представляется, что принятые поправки никак не заполнили существующий пробел в возможности использования таких коллективных средств индивидуализации на иностранных языках в рекламе.

В части 11 статьи 5 Федерального закона от 13 марта 2006 г. № 38-ФЗ «О рекламе» определено, что при производстве, размещении и распространении рекламы должны соблюдаться требования законодательства Российской Федерации, в том числе требования гражданского законодательства и законодательства о государственном языке.

В пункте 2 статьи 3 Федерального закона от 1 июня 2005 г. № 53-ФЗ «О государственном языке Российской Федерации» среди прочего установлено, что в случаях использования в рекламе наряду с государственным языком Российской Федерации иностранного языка тексты на русском языке и на иностранном языке должны быть идентичными по содержанию и техническому оформлению.

В пункте 3 этой же статьи определен перечень исключений для некоторых средств индивидуализации: фирменные наименования, товарные знаки и знаки обслуживания. Однако наименования мест происхождения товаров, так же как и географические указания, не включены в указанный перечень исключений. В связи с этим использование НМПТ и ГУ на иностранном языке, зарегистрированных в России на основании полученной регистрации в иностранных государствах, может быть признано нарушением законодательства о рекламе.

РЕКОМЕНДАЦИИ

Предлагается привести нормы Федерального закона «О государственном языке Российской Федерации» в соответствие с нормами гражданского законодательства, законодательства о техническом регулировании и законодательства о защите прав потребителей, дополнив перечень средств индивидуализации, в отношении которых допускается использование иностранных языков, иными средствами индивидуализации, включая наименования мест происхождения товаров и географические указания.

ТОВАРНЫЕ ЗНАКИ, ЗНАКИ ОБСЛУЖИВАНИЯ И НАИМЕНОВАНИЯ МЕСТ ПРОИСХОЖДЕНИЯ ТОВАРОВ ЕВРАЗИЙСКОГО ЭКОНОМИЧЕСКОГО СОЮЗА

ПРОБЛЕМЫ

3 февраля 2020 г. в Москве подписан Договор о товарных знаках, знаках обслуживания и наименованиях мест происхождения товаров Евразийского экономического союза (ЕАЭС) (далее – «Договор»).

Договор предусматривает получение охраны товарного знака на территории всех государств Евразийского экономического союза (Армении, Беларуси, Казахстана, Киргизии и России) на основе регистрации товарного знака Союза.

Представляется целесообразным утвердить на межгосударственном уровне методические рекомендации, обязательные для применения всеми ведомствами государств Союза, по вопросам проверки соответствия заявленного обозначения требованиям Договора. Наличие таких рекомендаций позволило бы избежать существенных различий в подходах национальных ведомств при регистрации национальных товарных знаков, наличие которых будет приниматься во внимание при регистрации товарных знаков Союза.

За основу межгосударственных рекомендаций может быть принят раздел IV «Проверка соответствия заявленного обозначения требования законодательства Российской Федерации» Руководства по осуществлению административных процедур и действий в рамках предоставления государственной услуги по государственной регистрации товарного знака, знака обслуживания, коллективного знака и выдаче свидетельств на товарный знак, знак обслуживания, коллективный знак, их дубликатов, утвержденного Приказом ФГБУ ФИПС от 20.01.2020 г. № 12.

Полагаем, что создание общей открытой базы национальных заявок и товарных знаков, зарегистрированных в государствах-участниках ЕАЭС, существенно упростит процедуру подготовки заявки на товарный знак Союза к подаче, что, в свою очередь, приведет к росту популярности процедуры регистрации товарных знаков Союза.

Общая открытая база национальных товарных знаков и товарных знаков ЕС успешно функционирует в Европейском союзе.

В соответствии с п. 4 ст. 3 Договора споры, касающиеся нарушения исключительного права на товарный знак Союза на территории государства-члена, разрешаются в соответствии с законодательством этого государства. При этом Договор не содержит правила определения юрисдикции судами государств-участников, что может повлечь неопределенность в спорах о нарушении прав на товарные знаки ЕАЭС, в том числе в сети Интернет.

При решении этого вопроса рекомендуется обратиться к опыту Европейского союза в части разрешения споров о нарушении прав на товарные знаки ЕС.

Участники АЕБ полагают, что правила определения юрисдикции, установленные Регламентом ЕС № 2017/1001 (EUTMR), а также выводы из сложившейся в Европейском союзе судебной практики могут быть положены в основу решения обозначенной проблемы в спорах о нарушении прав на товарные знаки ЕАЭС.

На наш взгляд, нерешенным в рамках Договора остается вопрос территориальности применения такой санкции, как запрет третьим лицам использовать товарный знак Союза или обозначение, сходное с ним до степени смешения, в случае выявления нарушения товарного знака Союза. Точнее, в соответствии с действующими правовыми нормами такой запрет изначально распространяется на территорию государства-участника, в котором испрашивается защита.

Этот вопрос нашел отражение в судебной практике Европейского союза, согласно которой запрет выдается в отношении всей территории ЕС. Исключением может быть ситуация, когда ответчик доказал отсутствие введения потребителей в заблуждение на определенной территории; в таком случае соответствующая страна – участник ЕС может быть исключена и зоны действия запрета (см., в частности, решение Суда Европейского союза по делу C-223/15).

РЕКОМЕНДАЦИИ

Рекомендуется инициировать обсуждение приведенных выше вопросов на всех уровнях и площадках с участием всех заинтересованных лиц, государственных и межгосударственных органов с целью выработки оптимальных решений, а также выявления иных проблем, с которыми заявители и правообладатели товарных знаков Союза могут столкнуться в будущем, с целью их последующего устранения.

НАРУШЕНИЕ ПРАВ НА ТОВАРНЫЙ ЗНАК КАК ОСНОВАНИЯ ДЛЯ ЕГО ВКЛЮЧЕНИЯ В ТАМОЖЕННЫЙ РЕЕСТР ОБЪЕКТОВ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ (ТРОИС)

ПРОБЛЕМА

До 2020 года сложилась практика таможенных органов, согласно которой сотрудники ФТС России настаивали на том, что заявление о включении товарного знака в ТРОИС должно содержать сведения и документы об уже совершенных нарушениях товарного знака путем ввоза товаров, маркированных этим товарным знаком. При отсутствии указанных сведений и подтверждающих их документов в подаваемом в ФТС пакете документов таможенные органы могли отказать заявителю во включении его товарного знака в ТРОИС.

Однако Верховный суд Российской Федерации с такой позицией не согласился, отметив в своем Определении от 22.01.2020 г. № 305-ЭС19-17108 по делу № А40-241863/2018[3], что толкование пункта 25 Административного регламента Федеральной таможенной службы по исполнению государственной функции по ведению таможенного реестра объектов интеллектуальной собственности, утвержденного Приказом ФТС России от 13.08.2009 № 1488[4] как предписывающего предоставлять вместе с заявлением дополнительные сведения об уже свершившихся фактах нарушения прав правообладателя является неверным, поскольку не соответствует цели мер по защите прав на объекты интеллектуальной собственности. Иначе действия таможенных органов по ведению ТРОИС будут связаны лишь с фактами уже свершившихся правонарушений, что лишает смысла ведение ТРОИС как средства, способствующего выявлению и оперативному пресечению правонарушений и защиты прав правообладателей.

При этом по состоянию на лето 2020 года и ФТС, и Минфин России продолжают считать предоставление доказательств уже имевших место нарушений необходимым условием включения товарного знака в ТРОИС.

РЕКОМЕНДАЦИИ

Представляется, что эти расхождения в толковании нормативных положений могут быть устранены лишь путем корректировки таможенного законодательства, и, вслед за ним, соответствующего подзаконного регулирования.

На наш взгляд, предпочтение следует отдать позиции Верховного суда Российской Федерации, так как она в наибольшей степени отвечает целям функционирования таможенных органов в целом и ТРОИС в частности.

В связи с этим предлагается изложить ч. 1 ст. 328 Федерального закона от 03.08.2018 г. № 289-ФЗ «О таможенном регулировании в Российской Федерации и о внесении изменений в отдельные законодательные акты Российской Федерации» следующим образом:

«1. Правообладатель, заинтересованный в защите его прав на объекты интеллектуальной собственности в связи с ввозом товаров в Российскую Федерацию или вывозом товаров из Российской Федерации либо при совершении иных действий с товарами, находящимися под таможенным контролем, вправе подать в федеральный орган исполнительной власти, осуществляющий функции по контролю и надзору в области таможенного дела, заявление о включении соответствующего объекта интеллектуальной собственности в таможенный реестр (далее — заявление).»

[3] Определение Судебной коллегии по экономическим спорам Верховного Суда Российской Федерации от 22.01.2020 г. № 305-ЭС19-17108 по делу № А40-241863/2018

[4] Аналогичное положение содержится в действующем административном регламенте.

В случае внесения указанных (или аналогичных) изменений в законодательство рекомендуется исключить п. 19.3 из Административного регламента по ведению ТРОИС, утвержденного Приказом ФТС России от 28.01.2019 г. № 131.

Предложенные изменения позволят упростить процедуру включения товарного знака в ТРОИС, что, в свою очередь, позволит правообладателем более оперативно и эффективно осуществлять защиту исключительных прав от параллельных импортеров и от импортеров контрафактной продукции.

ПРЕДОСТАВЛЕНИЕ РЕГИСТРАТОРАМИ ДОМЕННЫХ ИМЕН СВЕДЕНИЙ ОБ АДМИНИСТРАТОРАХ ДОМЕНОВ – ФИЗИЧЕСКИХ ЛИЦАХ

ПРОБЛЕМА

В настоящее время нарушения исключительных прав на различные результаты интеллектуальной деятельности все чаще совершаются на различных сайтах в сети Интернет. По смыслу Федерального закона от 27.07.2006 г. № 149-ФЗ «Об информации, информационных технологиях и о защите информации» за информацию, размещаемую на том или ином сайте в сети Интернет, отвечает владелец этого сайта, а также администратор домена, на котором расположен такой сайт.

В связи с этим правообладателям зачастую требуется выяснить, кто является администратором домена. При этом если администратором доменного имени является физическое лицо, то соответствующие данные отсутствуют в публичном доступе.

Более того, в последнее время регистраторы доменных имен зачастую отказывают правообладателям в предоставлении указанных сведений, даже по мотивированному письменному запросу (в том числе и адвокатскому запросу), ссылаясь на охрану указанных сведений законодательством о персональных данных.

При этом регистраторы ссылаются, в частности, на п. 4 ст. 6.1 Федерального закона от 31.05.2002 г. № 63-ФЗ «Об адвокатской деятельности и адвокатуре в Российской Федерации», который содержит положение о том, что в предоставлении адвокату запрошенных сведений может быть отказано в том числе и тогда, когда запрошенные сведения отнесены законом к информации с ограниченным доступом. Относя персональные данные граждан к информации с ограниченным доступом, регистраторы отказывают в предоставлении соответствующих сведений.

В результате правообладатель лишается возможности выяснить личность администратора домена, нарушающего исключительные права правообладателя, в досудебном порядке, что существенным образом затрудняет защиту этих прав.

РЕКОМЕНДАЦИИ

Указанную проблему рекомендуется решить путем внесения соответствующих правок в законодательство о персональных данных и (или) об адвокатуре.

В частности, рекомендуется предусмотреть, что адвокат, представляющий интересы своего клиента, вправе по письменному мотивированному запросу получать доступ к персональным данным физических лиц, в том числе и администратором доменов.

При этом предоставление такого права именно адвокату можно объяснить тем, что полученные адвокатом персональные данные третьих лиц будут охраняться законом как адвокатская тайна, которая гарантирует субъекту персональных данных уровень защиты его прав и законных интересов не ниже, чем предусмотренный в Федеральном законе от 27.07.2006 г. № 152-ФЗ «О персональных данных».

ЧЛЕНЫ КОМИТЕТА

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ИЗМЕНЕНИЯ В МЕХАНИЗМЕ РЕГУЛИРОВАНИЯ СПЕЦИАЛЬНЫХ ИНВЕСТИЦИОННЫХ КОНТРАКТОВ

Специальные инвестиционные контракты (СПИК) были внедрены в 2014 году (СПИК 1.0). Механизм СПИК 1.0 предполагал принятие частным инвестором обязательства реализовать инвестиционный проект по локализации нового или модернизации уже существующего производства в обмен на гарантии от государства обеспечить стабильность условий деятельности инвестора и предоставить иные меры стимулирования. По данным Фонда развития промышленности, по состоянию на 31.07.2019 заключено 45 таких контрактов с участием РФ.

В августе 2019 года вступили в силу поправки в Федеральный закон № 488-ФЗ, а также в Налоговый и Бюджетный кодексы Российской Федерации, которые внесли существенные изменения в механизм регулирования СПИК (СПИК 2.0). К настоящему времени также подготовлен пакет подзаконных актов (касательно порядка заключения, расторжения, изменения СПИК, правил формирования перечня современных технологий, представления инвестором отчетности по исполнению контракта, пр.), без которых СПИК 2.0 не сможет реально заработать (пакет документов еще окончательно не утвержден и находится в стадии доработки).

Часть из уже внесенных в законодательство поправок может сделать СПИК 2.0 более доступным и интересным для потенциальных инвесторов инструментом. Например, отменен минимальный порог инвестиций (ранее он составлял 750 млн руб. по СПИК с участием РФ), увеличен максимальный срок действия СПИК (до 15 лет, если объем инвестиций не превышает 50 млрд руб., и до 20 лет, если объем инвестиций будет выше указанной суммы). Данные законодательные новеллы предусматривают, что к СПИК могут применяться положения Гражданского кодекса РФ об обязательствах и договорах. Это может дать сторонам больше гибкости при структурировании своих прав и обязанностей в рамках контракта (в то же время пока неясно, будет ли у инвестора на практике возможность предлагать какие-либо изменения). Кроме того, положительным моментом можно считать установление пределов ответственности инвестора совокупной стоимостью примененных к нему мер стимулирования. АЕБ также приветствует внесение изменений в ст. 78 Бюджетного кодекса (Федеральный закон № 295-ФЗ), благодаря которым в рамках СПИК становится потенциально возможным предоставление бюджетных субсидий на долгосрочной основе.

Также в рамках реформы СПИК планируется расширение сферы применения СПИК, в том числе на деятельность, связанную с добычей природных ресурсов, обеспечением электроэнергией, газом и паром, кондиционированием воздуха, водоснабжением и водоотведением.

С другой стороны, механизм СПИК 2.0 вызывает у потенциальных инвесторов ряд вопросов. Так, новеллы пока не предлагают инвесторам дополнительных мер поддержки по сравнению с теми, что были предусмотрены для участников СПИК 1.0 ранее, на которые они рассчитывали при обсуждении обновления механизма. А некоторые меры поддержки представляются даже менее доступными по сравнению со СПИК 1.0. Например, стабильность условий деятельности теперь гарантируется только в тех случаях, когда это прямо предусмотрено федеральными и региональными нормативными правовыми актами в соответствующих сферах регулирования. Также следует отметить, что СПИК 2.0 не содержит формально установленных положений касательно привлечения третьих сторон к участию в контрактах (в отличие от СПИК 1.0, в рамках которых имелась возможность официально привлекать третьи стороны к участию в СПИК со стороны инвесторов), что может быть важным для осуществления проектов с несколькими участниками. Все это потенциально может снизить привлекательность СПИК в глазах инвесторов.

Однако следует упомянуть, что наиболее радикальным изменением, содержащимся в новом механизме СПИК, является смещение его фокуса: из механизма поддержки производства СПИК 2.0 фактически превратился в механизм, требующий создания либо трансферта современных технологий в РФ для производства конкурентоспособной продукции. Стимулирование разработки и внедрения современных технологий для производства конкурентоспособной продукции в РФ безусловно должно приветствоваться.

Но с этим нововведением связан и основной вызов для потенциальных инвесторов, так как пока не до конца ясно, что будет признаваться современной технологией для целей заключения СПИК (Минпромторг России в настоящее время собирает предварительные предложения заинтересованных лиц о включении в перечень видов современных технологий), как сложится

практика проведения экспертиз технологий для включения в перечень и практика включения технологий в перечень по инициативе инвесторов (по новым правилам СПИК может быть заключен только в отношении технологии, уже включенной в перечень, утвержденный Правительством РФ).

Кроме того, сама процедура заключения СПИК 2.0 (контракт будет заключаться по результатам открытого или закрытого тендера, победителями которого могут быть признаны сразу несколько инвесторов со своими проектами) предполагает теперь многоступенчатый и достаточно сложный порядок отбора заявок и их оценки, что, с одной стороны, делает процесс более прозрачным, а, с другой стороны, усложняет и без того достаточно ресурсоемкий для частной стороны процесс. Применение в отношении отдельных проектов правила работы с ними в зависимости от очередности поступления заявок также вызывает определенные опасения, связанные с конкуренцией.

Текущие проекты подзаконных актов, призванные регулировать процедуру включения технологий в перечень, а также порядок заключения СПИК 2.0, вызывают ряд вопросов (как технического, так и более принципиального характера) и требуют уточнения (например, в отношении того, будет ли вправе инвестор предлагать какие-либо изменения в проект СПИК).

РЕКОМЕНДАЦИИ

АЕБ в целом позитивно оценивает механизм СПИК 2.0, но привлекательность этого инструмента будет зависеть во многом от того, будут ли учтены предложения по совершенствованию текущих проектов подзаконных актов, а также от того, насколько эффективно будет построена работа с потенциальными инвесторами (в том числе на стадии включения технологий в перечень и его актуализации). Компания АЕБ будет следить за развитием событий и готова принять участие в доработке механизма СПИК 2.0 в целях повышения его привлекательности для инвесторов.

«ПОТРЕБИТЕЛЬСКИЙ ЭКСТРЕМИЗМ» НА ТЕРРИТОРИИ РАЗЛИЧНЫХ РЕГИОНОВ РОССИЙСКОЙ ФЕДЕРАЦИИ

ПРОБЛЕМА: ПРЕДЪЯВЛЕНИЕ ПРЕТЕНЗИЙ ПО КАЧЕСТВУ ТОВАРА БЕЗ ВОЗВРАТА/ПРЕДОСТАВЛЕНИЯ САМОГО ТОВАРА

Закон о защите прав потребителей не устанавливает обязательного характера досудебного урегулирования споров, в частности обязательство потребителя предоставить товар для проверки его качества до подачи соответствующей претензии. К негативным последствиям такого регулирования относятся: лишение ответчика права на проверку качества; увеличение нагрузки на судебную систему; невозможность забрать товар у потребителя, который может им пользоваться в период судебного разбирательства; увеличенный период начисления штрафных санкций (не с момента предоставления товара, а с даты получения претензии) и, соответственно, их сумма.

РЕКОМЕНДАЦИИ

Для предотвращения злоупотреблений со стороны потребителей на законодательном уровне может быть закреплено, что игнорирование процедуры досудебного разрешения спора влечет отказ в удовлетворении требования о взыскании неустойки и штрафа, а также что сроки удовлетворения требований должны исчисляться не с даты поступления претензии от потребителя, а с момента проверки качества товара, а в случае назначения экспертизы качества товара – с момента проведения экспертизы, сроки которой ограничены согласно п. 5 ст. 18 Закона о защите прав потребителей.

ПРОБЛЕМА: НЕСОРАЗМЕРНЫЕ СУММЫ НЕУСТОЕК

Согласно Закону о защите прав потребителей (п. 6 ст. 13) в пользу потребителя взыскивается неустойка в размере 1% в день от стоимости товара за весь период просрочки и штраф в размере 50% от суммы, присужденной в пользу потребителя. На практике суммы неустойки и штрафа в пользу потребителей иногда составляют до 300–400 % от изначальной стоимости товара, что противоречит принципам гражданского законодательства. Огромные суммы взысканий являются привлекательными для недобросовестных потребителей.

РЕКОМЕНДАЦИИ

АЕБ признает необходимость наличия защитного механизма для потребителей, сталкивающихся с нарушением своих прав. В то же время АЕБ считает, что размер неустойки должен определяться по правилам ст. 395 ГК РФ, которая отсылает к ключевой ставке Банка России. Ассоциация также полагает, что общий размер всех штрафных санкций необходимо ограничить стоимостью товара.

ПРОБЛЕМА: ОТВЕТСТВЕННОСТЬ ЗА ДЕЙСТВИЯ ТРЕТЬИХ ЛИЦ

Из положений ч. 1 ст. 20 и ст. 23 Закона о защите прав потребителей следует, что за нарушение согласованного срока устранения недостатков товара ответчик, допустивший такое нарушение, несет ответственность перед потребителем. В судебной практике установилась тенденция, когда ответственность за действия лица, осуществлявшего ремонт товара (например, автомобиля), несет не само это лицо, а продавец или импортер такого товара. Причем продавцы и импортеры несут ответственность за третьих лиц даже в том случае, если между ними нет никаких правоотношений.

РЕКОМЕНДАЦИИ

АЕБ полагает, что положения законодательства не должны вести к безвиновной ответственности за действия иных лиц. По мнению АЕБ, данная норма подлежит корректировке в части предъявления дальнейших претензий в судебном порядке только в адрес лица, допустившего нарушение прав потребителей.

ПРОБЛЕМА: РАСПРОСТРАНЕНИЕ ИНСТИТУТА ЗАЩИТЫ ПРАВ ПОТРЕБИТЕЛЕЙ НА ЮРИДИЧЕСКИЕ ЛИЦА

В настоящее время мы отмечаем тенденцию по применению положений Закона о защите прав потребителей в рамках рассматриваемых в арбитражных судах споров между юридическими лицами. Так, например, юридическое лицо может приобрести (по договору уступки) у потребителя его право требования, например, в отношении неустойки в размере 1% в день, после чего обращается в арбитражный суд с иском о взыскании с продавца, импортера или производителя товара огромных штрафных санкций, которые в отношениях между юридическими лицами никогда не взыскиваются. При этом отметим, что зачастую потребитель уступает свое право требования, в отношении которого еще не был подан иск в суд общей юрисдикции и которое основывается исключительно на положениях Закона о защите прав потребителей (ч. 1 ст. 23). Использование юридическими лицами возможностей, предоставляемых им Законом о защите прав потребителей, ведет к злоупотреблениям и взысканиям с ответчиков значительных денежных сумм, а не к восстановлению прав потребителей.

РЕКОМЕНДАЦИИ

Поскольку потребитель обладает особым статусом, так как считается слабой стороной во взаимоотношениях, Закон о защите прав потребителей предусматривает повышенную защиту его прав. По этой причине законодателем в отношении нарушений прав потребителей была установлена существенная неустойка в размере 1% в день или 365% в год. Юридическое лицо, не имеющее статуса потребителя согласно Закону о защите прав потребителей, не должно пользоваться предоставляемыми потребителям правами и средствами защиты таких прав и не должно иметь возможности предъявлять претензии в отношении ответчика, с которым оно не состоит в договорных отношениях. АЕБ считает, что в отношении уступки прав требования неустойки, предусмотренных Законом о защите прав потребителя, необходимо ввести ограничение. В противном случае режим повышенной правовой защиты будет и дальше применяться к профессиональным юридическим лицам, участвующим в гражданских правоотношениях. Также по мнению АЕБ, подобные случаи должны рассматриваться в судах общей юрисдикции, поскольку, по своей сути, они не носят экономического характера.

ЗАКОНОПРОЕКТ, ВНОСЯЩИЙ ИЗМЕНЕНИЯ В ЗАКОН О ЗАЩИТЕ ПРАВ ПОТРЕБИТЕЛЕЙ И ВОЗМОЖНОСТЬ ПРОВЕДЕНИЯ ВНЕПЛАНОВЫХ ПРОВЕРОК (ЗАКОНОПРОЕКТ № 755217-7 ОТ 16.07.2019)

В законопроекте предлагается:

- закрепить невозможность снижения суммы штрафных санкций;
- 100% суммы штрафа присуждать в пользу общественного объединения или местного органа власти при их обращении с иском в защиту прав потребителя (сейчас 50%);
- обязать государственный орган проводить внеплановые проверки по заявлению общественного объединения.

АЕБ считает, что при принятии законопроекта баланс в правоотношениях между продавцом и потребителем будет существенно нарушен; предлагаемые изменения в части взыскания 100% штрафа в пользу общественного объединения или органа власти направлены на ущемление прав потребителей; расширение круга лиц может потенциально привести к созданию дополнительного инструмента недобросовестной конкуренции и повысит нагрузку на государственные органы власти.

АНТИМОНОПОЛЬНОЕ ЗАКОНОДАТЕЛЬСТВО: ПРОБЛЕМА ПОСЛЕДНИХ ПОПРАВОК

За прошедший год Федеральная антимонопольная служба России (ФАС России) предложила ряд новых и доработала имеющиеся законодательные инициативы с целью внесения существенных изменений в текущее законодательство в определенных сферах. В первую очередь важно выделить законопроект об антимонопольном комплаенсе, который после долгих лет обсуждения как внутри ФАС России, так и с бизнес-сообществом был внесен в Государственную Думу Российской Федерации. Предлагая законодательно закрепить этот уже распространенный в российской практике и активно пропагандируемый ФАС России институт, проект пока не содержит ответов на ключевой вопрос, которым задается каждая компания, которая оценивает для себя целесообразность введения системы антимонопольного комплаенса. Вопрос заключается в возможных последствиях для компании, внедрившей в своей деятельности систему антимонопольного комплаенса, но, несмотря на это, допустившей нарушение антимонопольного законодательства. В аналитической записке, касающейся законопроекта, отмечается, что компания, внедрившая такую систему и согласовавшая ее с ФАС, но в отношении которой, несмотря на это, был выявлен факт нарушения соответствующих требований законодательства, имеет право требовать освобождения от ответственности, если принимаемые ею меры соответствуют утвержденным мерам по обеспечению антимонопольного комплаенса. Тем не менее до тех пор пока такая возможность не будет указана непосредственно в тексте этого либо дальнейших законопроектов, у компаний, которые ввели данную систему, не будет прямо закрепленных гарантий на смягчение или освобождение от ответственности в ситуации, когда нарушение все же было допущено, несмотря на предпринятые ими усилия. При этом важно помнить, что уже сейчас применение мер антимонопольного комплаенса позволит компании, которая их внедрила, снизить периодичность проведения в отношении нее плановых проверок со стороны антимонопольных органов или вовсе получить освобождение от таких проверок.

В сфере регулирования иностранных инвестиций также произошли изменения – ФАС получила право требовать приостановления совершения сделок с участием иностранных инвесторов в отношении любых, а не только стратегических российских хозяйственных обществ. Такое приостановление возможно вплоть до того, как (i) ФАС принято решение о том, что нет необходимости информировать председателя Правительственной комиссии по контролю за осуществлением ино-

странных инвестиций в Российской Федерации («Комиссия») о совершаемой сделке; или (ii) председателем Комиссии принято решение об отсутствии необходимости ее предварительного согласования. Вместе с тем, среди прочего, не понятны критерии, по которым сделка подлежит рассмотрению председателем Комиссии. Такая неопределенность явно мешает инвесторам, ведущим свою деятельность в России, осуществлять последовательное и долгосрочное планирование. Кроме того, сейчас возобновлена работа над законопроектом об усилении контроля за иностранными инвестициями. Посредством данного законопроекта ФАС намеревается не только получить возможность требовать императивного согласования сделок иностранных инвесторов в отношении российских стратегических обществ, но также и российских организаций (в том числе некоммерческих), которые не являются хозяйственными обществами, но которые участвуют в осуществлении стратегических видов деятельности.

Продолжается работа над другими не менее значимыми проектами, которые были заявлены ФАС ранее. Среди них отдельно необходимо отметить (i) так называемый «пятый антимонопольный пакет», который направлен на уточнение антимонопольного регулирования в условиях цифровой экономики, а также ужесточение правил согласования сделок; (ii) законопроект об изменении регулирования субъектов естественной монополии; (iii) законопроект о реформе тарифного регулирования; а также (iv) законопроект о разрешительном порядке создания унитарных предприятий и осуществления их деятельности.

РЕКОМЕНДАЦИИ

АЕБ с пристальным вниманием следит за последними предложениями ФАС по изменению российского антимонопольного законодательства.

Ассоциация приветствует инициативу ФАС по внедрению института антимонопольного комплаенса в действующие в России нормативно-правовые акты; при этом АЕБ в очередной раз подчеркивает важность отражения выгод и преимуществ для компаний, имеющих такие программы антимонопольного комплаенса.

Мы советуем членам АЕБ провести предварительную оценку потенциального эффекта предлагаемых ФАС России инициатив, а также принимать активное участие в общественных обсуждениях как новых, так и ранее представленных проектов, разработанных регулятором.

ЧЛЕНЫ КОМИТЕТА

Advocates Bureau Yug • Akzo Nobel Coatings LLC • ALD Automotive • Allen & Overy Legal Services • ALRUD Law Firm • AO Deloitte & Touche CIS • ART DE LEX law firm • AstraZeneca Pharmaceuticals LLC • Atlas Copco, JSC • Auchan Russia • Baker Botts L.L.P. • Baker McKenzie • BASF • BEITEN BURKHARDT Moscow • BEKO LLC • Bellerage Alinga • BMW Russland Trading • BP • BRAND & PARTNERS LLC • Bryan Cave Leighton Paisner (Russia) LLP, Russian branch • Carnelutti Russia • Caterpillar Eurasia LLC • Clifford Chance • CMS Russia • DANONE RUSSIA, JSC • Dentons • DLA Piper • Egorov Puginsky Afanasiev & Partners (EPAM) • EkoNiva-Technika Holding, LLC (part of EkoNiva group) • Eversheds Sutherland • EY • General Motors CIS • Gowling WLG (International) Inc • Grata International • GROUPE SEB-VOSTOK ZAO • HeidelbergCement Rus • HEINEKEN BREWERIES, LLC • Henkel Rus OOO • HSBC Bank (RR) OOO • JUNGHEINRICH • JURALINK • Kia Motors Rus • KPMG AO • L'Oreal • Legrand LLC • Lidings Law Offices, Moscow • M.Video • Mannheimer Swartling • Mazars • Merck LLC • MOL-Russ LLC • Morgan Lewis • Nissan Manufacturing Rus • NOBLE HOUSE Group Russia • Noerr OOO • Nokia • Nordea Bank • Novo Nordisk A/S • Orange Business Services • Pepeliaev Group, LLC • Peugeot Citroën Rus (Groupe PSA) • Philip Morris Sales and Marketing • Philips LLC • Porsche Russland • Procter & Gamble • PwC • Refinitiv SA - Moscow branch • Renaissance pensions JSC NSPF • Renault Russia • Repsol Exploracion S.A. • Rödl & Partner • Rouse & Co. International (UK) Ltd. in Moscow, Branch of PLC • SANOFI-AVENTIS REP OFFICE • Scania-Rus LLC • Schulze, Brutyan and Partners LLC • SECRETAN TROYANOV SCHAER S.A. • Shell Exploration and Production Services (RF) B.V. • Shevyrev and partners, Bureau of attorneys • Siemens LLC • SOCIETE GENERALE Strakhovanie Zhizni LLC • Stada CIS • Syngenta • Tinkoff Online Insurance, JSC • TMF Group • Toyota Motor • VEGAS LEX Advocate Bureau • VISA • Volkswagen Group Rus (Audi/Bentley/Lamborghini/Škoda/Volkswagen/Volkswagen Commercial Vehicles) • Volvo Cars •Zetta Insurance Company Ltd. • ZURICH RELIABLE INSURANCE, JSC.

КОМИТЕТ ПО МИГРАЦИОННЫМ ВОПРОСАМ

Председатель:
Людмила Ширяева, EY

Заместители председателя:
Андрей Слепов, BEITEN BURKHARDT; **Алексей Филипенков**, Visa Delight;
Екатерина Элекчян, CMS Russia

Координатор комитета: **Анна Арсентьева** (anna.arsentyeva@aebrus.ru)

ВВЕДЕНИЕ

В соответствии с законодательством для осуществления трудовой деятельности в России временно пребывающий в стране иностранный гражданин должен иметь следующие документы, подтверждающие право на работу: разрешение на работу и рабочую визу или патент (патент необходим гражданам, прибывающим в РФ в безвизовом порядке, которые не отвечают критериям, установленным для высококвалифицированных специалистов). Получить разрешение на работу можно воспользовавшись одной из двух действующих в настоящее время процедур: (i) процедура, установленная для высококвалифицированных специалистов, (ii) процедура для всех остальных.

РАЗРЕШЕНИЕ НА РАБОТУ ДЛЯ ВЫСОКОКВАЛИФИЦИРОВАННЫХ СПЕЦИАЛИСТОВ (ВКС)

К высококвалифицированным специалистам (ВКС) относятся иностранные граждане, как правило, руководители или специалисты, обладающие уникальными знаниями и профессиональными навыками, доход которых должен составлять не менее 167 тыс. рублей в месяц. Для них установлен более упрощенный порядок получения разрешений на работу и виз, действующих до трех лет, отсутствие необходимости получения квот и другие преференции.

ПРОБЛЕМЫ

В настоящее время некоммерческие организации не имеют возможности привлекать ВКС. Комитетом уже направлялись предложения в соответствующие ведомства по изменению данного положения законодательства. Также предусмотренное требование о выплате ВКС установленного законом уровня заработной платы (вознаграждения) ежеквартально не менее трех минимальных окладов ВКС (501 тыс. рублей) идет вразрез с действующим трудовым законодательством в случаях, когда ВКС отсутствует на работе по уважительной причине. В соответствии с миграционным законодательством невыплата ежеквартальной суммы заработной платы (вознаграждения) указанного уровня в период болезни, нахождения в отпуске по беременности и родам, неоплачиваемом отпуске будет расцениваться как неисполнение работодателем требований по выплате ВКС заработной платы установленного уровня и повлечет штрафы и наказание в виде лишения возможности привлекать ВКС в течение двух лет.

По мнению Комитета, для регулирования вопросов, связанных с конфликтом миграционного, налогового и трудового права, необходимо выработать специальные, более гибкие подходы и закрепить их в действующем законодательстве.

РЕКОМЕНДАЦИИ

До момента разрешения вопроса оплаты труда ВКС в период отсутствия на работе по уважительной причине рекомендуем соблюдать требования действующего законодательства, поскольку несоблюдение установленных требований может повлечь невозможность привлечения ВКС в течение двух лет.

ОБЗОР ВОПРОСОВ, СВЯЗАННЫХ С СИТУАЦИЕЙ С COVID-19

Информация в данном разделе соответствует ситуации, действующей в период подготовки данного меморандума, и может меняться исходя из изменений эпидемиологической обстановки и связанных с этим изменений в российском законодательстве и практике. В связи с чем компаниям рекомендуется уточнять действующий порядок въезда иностранных граждан, а также другие положения законодательства в момент принятия решений для целей бизнеса.

(I) Высококвалифицированные специалисты (ВКС)

В связи с эпидемиологической ситуацией в мире и в стране Правительством Российской Федерации был введен ряд ограничительных мер на въезд в Российскую Федерацию иностранных граждан, предусмотренных Распоряжением Правительства Российской Федерации от 16 марта 2020 г. № 635-р.

Распоряжением Правительства Российской Федерации от 16 марта 2020 г. № 635-р (далее – «Распоряжение Правительства») предусмотрена возможность однократного въезда на территорию РФ иностранных граждан в статусе высококвалифицированных иностранных специалистов («ВКС») на территорию РФ, включенных в списки, согласованные с профильными федеральными органами исполнительной власти («ФОИВ»).

Несмотря на принятый Правительством комплекс мер, компании, обеспечивающие возвращение своих высококвалифицированных сотрудников в РФ, сталкиваются с рядом проблем, связанных с организацией согласования въезда иностранных сотрудников на территорию РФ:

1) Проблема: определение профильного ФОИВа

Для подачи обращения на оформление разрешения на въезд ВКС компании необходимо определить профильный ФОИВ. На практике компании-члены столкнулись со сложностями в определении ФОИВа, в ведении которого находится организация-работодатель/заказчик работ (услуг). Код ОКВЭД не всегда позволяет точно определить, какой ФОИВ является профильным для организации. Многие компании, включая иностранные юридические лица, действующие в РФ через свои представительства/филиалы, столкнулись с отказами в принятии документов со стороны ФОИВов, которые они определили в качестве профильных.

2) Проблема: отсутствие порядка подачи документов, сроков

Отсутствует также порядок, регламентирующий подачу обращений (включая список необходимых документов), сроки рассмотрения запросов от компаний. Отсутствие четкого регламента приводит к частым отказам со стороны ФОИВов в принятии документов несмотря на то, что ФОИВы в соответствии с действующим законодательством должны рассматривать обращения компаний и направлять в ФСБ России и МВД России списки иностранных граждан, которым разрешен въезд.

РЕКОМЕНДАЦИИ

- Разработать и опубликовать четкие критерии отнесения российской организации или иностранной компании, действующей в РФ через представительство/филиал, к сфере ведения соответствующих ФОИВов на основе кодов ОКВЭД или иных критериев. Довести эти критерии до сведения работодателей и соответствующих министерств.

- Разработать на уровне Правительства единый порядок подачи и рассмотрения документов для согласования списков иностранных работников. Необходимо, чтобы данный порядок предусматривал определенные краткие сроки для согласительных процедур в ФОИВах и сроки направления списков в ФСБ России (Пограничную службу ФСБ России), МВД России и получения разрешения на въезд в РФ.

3) Проблема: указание пунктов пропуска через границу

С учетом принятых изменений в Распоряжение Правительства при формировании списков на въезд ФОИВы требуют от компаний указывать конкретный пункт пропуска через государственную границу РФ и дату въезда ВКС. Однако ввиду отсутствия на данный момент регулярного воздушного сообщения между РФ и большинством стран, постоянно меняющейся эпидемиологической обстановки в мире, а также отсутствия установленных сроков рассмотрения обращений определение точных дат и пунктов пропуска на момент обращения представляется практически невозможным.

РЕКОМЕНДАЦИЯ

Исключить данное требование или изменить сроки предоставления информации по дате и пункту пропуска.

4) Проблема: невозможность въезда членов семьи ВКС

В Распоряжении Правительства не установлен порядок въезда в РФ членов семьи ВКС. Однако данный вопрос является актуальным, так как многие ВКС проживают в России вместе с семьей и хотели бы въехать в страну совместно с членами семьи. Дети иностранных сотрудников обучаются в российских школах и при отсутствии возможности вернуться вынуждены прерывать свое обучение в России. В некоторых случаях данный фактор ведет к отказу от продолжения трудовой деятельности в России со стороны руководящих работников крупных иностранных компаний или их российских дочерних предприятий, имеющих важное значение для экономики РФ.

РЕКОМЕНДАЦИЯ

Внести соответствующие изменения в Распоряжение Правительства о разрешении въезда сопровождающих членов семьи ВКС.

5) Проблема: сложности въезда в РФ ВКС, являющихся гражданами стран, утвержденных Правительством РФ

Несмотря на то что Распоряжение Правительства (с приложением списка стран) не содержит прямых ограничений на въезд лиц, включая ВКС, являющихся гражданами разрешенных, согласно списку, стран, МВД России придерживается позиции, что лица-граждане данных стран, могут въезжать в РФ с целью осуществления трудовой деятельности, только будучи ВКС и по установленной для ВКС процедуре – по списку. И действительно сотрудники компаний-членов АЕБ, имеющие гражданство/вид на жительство в иностранных государствах, указанных в приложении, при попытке пересечения границы РФ сталкиваются с требованиями о необходимости включения их в ВКС-списки на въезд, несмотря на возможность пересечения границы РФ гражданами упомянутых стран без каких-либо дополнительных согласований в соответствии с указанным документом. Таким образом, лица, имеющие статус ВКС, оказываются в худшем положении, чем граждане и резиденты стран, указанных в Распоряжении Правительства, въезжающие на основании других видов виз. Представляется, что данное ограничительное толкование не соответствует цели Распоряжения Правительства и может приводить к необоснованному ограничению прав иностранных граждан стран или лиц, постоянно проживающих в странах, указанных в приложении к Распоряжению Правительства.

РЕКОМЕНДАЦИЯ

МВД РФ необходимо разъяснить порядок применения новых положений в отношении граждан и лиц, постоянно проживающих в странах, из которых разрешен въезд в РФ, включая ВКС, и установить, что они могут въезжать в РФ также с целью работы, безотносительно процедуры включения в список, применимый к ВКС, при наличии необходимых документов.

(II) Лица, осуществляющие наладку и техническое обслуживание оборудования

Положениями абзаца 8 пункта 2 Распоряжения Правительства предусмотрено разрешение на въезд иностранных граждан, уча-

ствующих в проведении наладки и технического обслуживания оборудования иностранного производства, при условии их включения в список, направляемый в ФСБ России и МВД России ФОИВом, в сфере ведения которого находится организация-заказчик оборудования иностранного производства.

ПРОБЛЕМА

При реализации данного положения Распоряжения Правительства на практике компании-члены АЕБ сталкиваются с теми же проблемами, которые существуют при согласовании списков на въезд ВКС, что не позволяет компаниям оперативно осуществлять наладку и техническое обслуживание оборудования иностранного производства и ведет к задержкам запуска новых производств, приостановкам исполнения инвестиционных проектов.

(III) Въезд в РФ иностранных граждан, имеющих вид на жительство

Распоряжением Правительства (касательно вопроса въезда любыми видами транспорта, включая воздушный) установлено, что въезд в РФ разрешен иностранным гражданам, постоянно проживающим на территории Российской Федерации (за исключением лиц, указанных в абзаце 13 пункта 2 Распоряжения Правительства Российской Федерации от 27 марта 2020 г. № 763-р). При этом в абзаце 13 пункта 2 Распоряжения Правительства Российской Федерации от 27 марта 2020 г. № 763-р (касательно въезда и выезда наземными видами транспорта) указаны иностранные граждане, постоянно проживающие на территории Российской Федерации и находящиеся в Российской Федерации, имеющие право на однократный выезд из Российской Федерации в страну гражданства. Смысл указанного исключения не понятен и создает неопределенность в части допустимости многократного въезда и выезда иностранных граждан, имеющих вид на жительство в РФ, в связи с чем данное исключение требует уточнения во избежание правовой неопределенности и для формирования единообразной правоприменительной практики.

РЕКОМЕНДАЦИЯ

Разрешить многократный въезд в РФ и выезд из РФ иностранным гражданам, имеющим вид на жительство в РФ.

(IV) Изоляция для ВКС

В соответствии с Постановлением Главного государственного санитарного врача РФ от 30 марта 2020 г. № 9 «О дополнительных мерах по недопущению распространения COVID-2019», иностранным гражданам и лицам без гражданства, прибывающим в целях осуществления трудовой деятельности, необходимо выполнять требования по изоляции сроком на 14 календарных дней со дня прибытия на территорию Российской Федерации, что не позволяет иностранным сотрудникам оперативно приступить к исполнению своих должностных обязанностей и затрудняет налаживание и восстановление производственных процессов.

РЕКОМЕНДАЦИЯ

Исключить требование по изоляции иностранных граждан, имеющих статус высококвалифицированных специалистов и прибывающих в страну в целях осуществления трудовой деятельности, и предоставить таким лицам возможность применять национальный режим, то есть установить в отношении высококвалифицированных специалистов и сопровождающих членов семьи требования и ограничительные мероприятия, аналогичные тем, которые действуют в отношении российских граждан (подп. 6.2. п. 6 Постановления Главного государственного санитарного врача РФ от 30 марта 2020 г. № 9) с сохранением требований, установленных п. 1 Постановления Главного государственного санитарного врача РФ от 18 марта 2020 г. № 7.

ОБЫЧНАЯ ПРОЦЕДУРА ОФОРМЛЕНИЯ РАЗРЕШЕНИЯ НА РАБОТУ

Данная процедура в значительной степени утратила значение, которое имела до введения регулирования ВКС, однако по разным причинам до сих пор применяется. Процесс оформления сопряжен с рядом дополнительных требований к работодателям и является более сложным и длительным, а разрешение, полученное по обычной процедуре, действует один год. Таким образом, работодателям необходимо проходить все этапы процедуры ежегодно, а в некоторых случаях, включая квотирование.

ПРОБЛЕМЫ

1) Квота на привлечение и использование иностранных работников

В настоящее время процедура получения квоты на привлечение иностранных работников – забюрократизированный и долгий процесс. Процедура не гарантирует получение квоты и связана с большим количеством сложностей. Ввиду вышеуказанного сохранение квотирования рабочих мест для работников, получающих разрешения на работу в обычном порядке, представляется необоснованным и нецелесообразным.

2) Экзамены по русскому языку, истории и основам законодательства

Для оформления разрешения на работу по стандартной процедуре необходимо предоставить сертификат, подтверждающий сдачу иностранным сотрудником экзамена по русскому языку, истории и основам законодательства России, что серьезно осложняет процесс направления сотрудника на работу и планирование бизнеса компаний в РФ. При этом владение русским языком зачастую не является важным, поскольку коллеги иностранного работника владеют иностранным языком либо в компании имеются квалифицированные переводческие кадры.

РЕКОМЕНДАЦИИ

Комитет считает необходимым пересмотреть процедуру подачи и утверждения заявок на квоту, расширить список неквотируемых

профессий для квалифицированных иностранных работников, а также рассмотреть возможность отменить необходимость прохождения экзамена по русскому языку, истории и основам законодательства для квалифицированных специалистов, приезжающих в РФ на основании визы.

ПАТЕНТЫ

Для иностранных граждан, прибывающих в РФ на безвизовой основе (а именно, для граждан Азербайджана, Молдавии, Таджикистана, Узбекистана и Украины) и не являющихся ВКС, законодательно предусмотрено оформление патентов для осуществления трудовой деятельности в РФ. Патенты выдаются в упрощенном порядке и без учета квот.

Патент выдается иностранному гражданину на срок от 1 до 12 месяцев и может неоднократно продлеваться на период от 1 до 12 месяцев. При этом общий срок действия патента с учетом продлений не может превышать 12 месяцев со дня выдачи.

Срок действия патента считается продленным на период, за который иностранным гражданином внесен фиксированный платеж. Если платеж не внесен, то действие патента прекращается со дня, следующего за последним днем оплаченного периода.

Фиксированный платеж за патент также является авансовым платежом по налогу на доходы физических лиц (НДФЛ) и его сумма должна зачитываться в счет уплаты НДФЛ.

Во время пандемии Указом Президента РФ от 18 апреля 2020 г. № 274 разрешено оформлять патенты без учета требований к сроку подачи документов для его оформления, к заявленной цели визита и выезду из РФ.

Также внесены изменения в действующее законодательство, позволяющие переоформлять патент без выезда из РФ неограниченное количество раз.

ПРОБЛЕМЫ

При привлечении к трудовой деятельности иностранных граждан, имеющих патент, существуют следующие проблемы.

Касательно зачета авансовых платежей по патенту в счет уплаты НДФЛ – на практике при взаимодействии с налоговыми органами возникают сложности, что влечет за собой дополнительные разбирательства в связи с уже уплаченным и неучтенным налогом.

Также иностранные граждане, имеющие патент, не могут осуществлять трудовую деятельность в другом субъекте России даже в случае их направления в командировку, поскольку Приказом Минздравсоцразвития России от 28 июля 2010 г. № 564н такая возможность предусмотрена только для иностранных граждан, которым выдано разрешение на работу или разрешено временное проживание. В настоящее время обсуждается возможность внесения изменений в указанный Приказ с целью решения данного вопроса.

Следующая проблема относится к невозможности привлечения к трудовой деятельности иностранных граждан, имеющих патент, представительствами и филиалами иностранных юридических лиц, поскольку представительства и филиалы, через которые иностранные юридические лица осуществляют свою деятельность в России, не включены в список работодателей, которые могут привлекать к трудовой деятельности иностранных граждан, имеющих патент, установленный п. 1 ст. 13.3 Федерального закона от 25 июля 2002 г. № 115-ФЗ «О правовом положении иностранных граждан в Российской Федерации».

РЕКОМЕНДАЦИИ

Мы рекомендуем работодателям учитывать вышеуказанные особенности привлечения к трудовой деятельности иностранных граждан, имеющих патент, и соблюдать установленные правила, включая ограничения. В свою очередь Миграционный комитет продолжит работать над внесением в законодательство изменений, направленных на предоставление иностранным юридическим лицам, осуществляющим свою деятельность в РФ через представительства и филиалы, права на прием на работу иностранных работников, имеющих патенты.

НОВЫЕ ПРАВИЛА МИГРАЦИОННОГО УЧЕТА

С 7 сентября 2020 года вступили в силу поправки в Федеральный закон № 109-ФЗ «О миграционном учете иностранных граждан и лиц без гражданства в Российской Федерации».

Основные положения внесенных поправок:

- Иностранные граждане, имеющие в собственности жилое помещение, могут выступать принимающей стороной для других иностранных граждан.
- Документы на регистрацию иностранных граждан (касается тех, кто имеет РВП или ВНЖ) подаются лично или в электронном виде через портал Госуслуг либо через МФЦ.
- При подаче документов на регистрацию в электронном виде необходимо предоставить оригиналы документов на право пользования жилым помещением в орган миграционного учета.
- Уведомление о прибытии может быть предоставлено в орган миграционного учета непосредственно иностранным гражданином в следующих случаях:
  - владелец помещения имеет уважительные причины, по которым он не может подать уведомление (например, болезнь);
  - жилое помещение принадлежит данному иностранному гражданину на праве собственности (при предъявлении документов на право собственности);
  - владелец помещения – физическое лицо (в том числе и иностранное), постоянно проживающее за рубежом, либо иностранное юридическое лицо или организация, находящиеся за рубежом. В этом случае к заявлению о прибытии прилагается нотариально удостоверенное согласие принимающей стороны на фактическое проживание (нахождение) у нее данного иностранного гражданина.
- Принимающая сторона может предоставить уведомление о прибытии иностранного гражданина лично, в электронном виде через портал Госуслуг, через МФЦ либо направить в

орган миграционного учета Почтой России. В случае подачи документов в электронном виде отрывной талон уведомления подписывается усиленной электронной подписью ответственного работника органа миграционного учета, распечатывается и вручается иностранному гражданину.
- При нахождении иностранного гражданина в гостинице, санатории, пансионате, кемпинге, доме отдыха снятие с учета по прежнему адресу места пребывания не осуществляется.

ПРОБЛЕМА

Основной проблемой является отсутствие утвержденного административного регламента в отношении вступивших в силу поправок. Как результат, в территориальных подразделениях МВД нет единого и четкого понимания практической реализации вступивших в силу поправок.

Предусмотренная законом возможность получения услуги в электронном виде через портал Госуслуг на момент написания данного меморандума не реализована.

РЕКОМЕНДАЦИИ

На практике при постановке и снятии с миграционного учета иностранных сотрудников можно столкнуться с различным толкованием новых требований закона в каждом отдельном территориальным подразделении МВД России. Комитет АЕБ по миграционным вопросам рекомендует фиксировать каждый подобный случай и обращаться в ГУВМ МВД России или к руководителю территориального органа МВД России, в который компания обращалась для целей постановки на учет, с просьбой разъяснить основания для требований, если они противоречат разъяснениям ГУВМ МВД России.

УВЕДОМЛЕНИЯ

Работодатель обязан уведомить миграционные органы о заключении, прекращении или расторжении трудового/гражданско-правового договора с иностранным гражданином в течение трех рабочих дней с момента наступления любого из перечисленных событий. Указанное требование относится ко всем категориям иностранных граждан, включая осуществляющих трудовую деятельность на основании разрешения на работу (в том числе ВКС) или патента, временно или постоянно проживающих в России и осуществляющих трудовую деятельность без разрешений на работу на основании межправительственных соглашений и в иных случаях, предусмотренных действующим законодательством.

Кроме того, работодатель обязан уведомить миграционные органы о выплате заработной платы/вознаграждения в отношении ВКС на ежеквартальной основе.

В соответствии с действующим Кодексом об административных правонарушениях, в случае нарушения сроков подачи указанного уведомления на работодателя может быть наложен штраф в размере от 400 000 рублей до 1 000 000 рублей (в зависимости от региона осуществления деятельности).

ПРОБЛЕМА

Согласно Постановлению Верховного Суда РФ 7 июня 2018 г. № 83-АД18-6, уведомлять миграционные органы о заключении и расторжении трудовых договоров с гражданами Республики Беларусь не требуется, привлечение к ответственности за неуведомление о заключении трудового договора с гражданами Республики Беларусь неправомерно. На практике представители миграционных органов могут не разделять указанную позицию.

Возникают сложности с заполнением формы уведомления, в частности:
- отсутствует образец по заполнению уведомлений; например, заполнение уведомления о заключении договоров со студентами-гражданами ЕАЭС вызывает сложности;
- отсутствует возможность уведомления о расторжении договора по соглашению сторон.

Возможность подачи работодателем уведомления о подписании трудового договора с гражданами ЕАЭС и иностранными гражданами, осуществляющими трудовую деятельность по патентам, поставлена в зависимость от наличия в базе данных МВД информации о постановке их на миграционный учет. При этом иностранные граждане из ЕАЭС в момент подачи уведомления имеют законное право находиться на территории РФ без миграционного учета.

Некорректное заполнение формы уведомления может повлечь наложение административного штрафа за нарушение правил заполнения формы уведомления.

На практике уведомления, отправленные по почте, могут быть возвращены отправителю по различным причинам. Кроме того, существуют разночтения, какое территориальное подразделение ГУВМ МВД России необходимо уведомить, и что считать датой заключения договора.

РЕКОМЕНДАЦИИ

Необходимо направлять уведомления в миграционные органы в сроки и согласно порядку, предусмотренному действующим законодательством, а не опираясь на частное мнение представителей миграционных органов на местах.

Непосредственно перед отправлением уведомления необходимо убедиться в следующем:
- в соответствии используемых форм действующему законодательству;
- в правильности адреса территориального подразделения миграционных органов в официальных источниках.

МЕЖПРАВИТЕЛЬСТВЕННЫЕ СОГЛАШЕНИЯ В ОБЛАСТИ МИГРАЦИИ

В настоящее время действует ряд международных соглашений, регулирующих вопросы трудовой миграции. Согласно данным соглашениям, упрощены процедуры оформления виз и разрешений

на работу для осуществления трудовой деятельности граждан одного государства на территории другого.

Соглашения с Правительствами Франции, Республики Корея и рядом других стран предусматривают упрощенные процедуры для работников одной группы компаний, работников филиалов и представительств иностранных юридических лиц, молодых специалистов. В том числе, работодатели могут получать разрешения на работу в ускоренном порядке и без учета квот, а также оформлять рабочие визы сроком действия до одного года с возможностью их дальнейшего продления. Представительствам юридических лиц Республики Корея для привлечения граждан Республики Корея в пределах численности, определенной при аккредитации на территории РФ, не требуется оформление разрешений на работу.

Для граждан государств-членов Евразийского экономического союза (ЕАЭС) предусмотрен ряд преференций, в том числе осуществление трудовой деятельности без получения разрешений на работу или патентов на территории государств Союза. В настоящий момент без оформления разрешения на работу или патента трудовую деятельность в России могут осуществлять граждане республик Беларусь, Армения, Казахстан и Кыргызстан. При этом работодатель обязан соблюдать общие требования миграционного законодательства при приеме на работу таких иностранных граждан, в том числе уведомлять миграционные органы о заключении и расторжении с ними трудовых и гражданско-правовых договоров.

Постановка на миграционный учет для работников-граждан государств-членов ЕАЭС и членов их семей может осуществляться в течение 30 суток с даты прибытия в РФ.

Более важное значение приобретает принцип взаимности между государствами, на основе которого, в частности, формируется список стран для возобновления международных перелетов и на основе которого резиденты (имеющие статус постоянно проживающих) и граждане соответствующих стран приобретают больше возможностей для въезда в РФ в условиях пандемии COVID-19.

ПРОБЛЕМА

Несмотря на упрощенный режим оформления разрешительных документов, трудовым мигрантам из Франции и Республики Корея необходимо подтверждать владение русским языком, знание истории России и основ законодательства. Данное требование может являться непреодолимым препятствием для работников одной группы компаний, которым владение русским языком не требуется при переводе работников внутри группы компаний для временной работы на проектах в России, а также для молодых специалистов, которые приезжают не только с целью осуществления трудовой деятельности, но и с целью изучения российской культуры и языка.

РЕКОМЕНДАЦИИ

С целью оптимизации временны́х и иных затрат необходимо учитывать положения межправительственных соглашений и неукоснительно следовать требованиям миграционного законодательства при найме иностранных граждан, на которых распространяются положения соответствующих соглашений.

Межправительственные соглашения, упрощающие порядок осуществления временной трудовой деятельности, с другими государствами, несомненно, способствуют улучшению делового климата и притоку иностранных инвестиций в российскую экономику. Ассоциация европейского бизнеса приветствует заключение таких соглашений.

ОТВЕТСТВЕННОСТЬ ПРИГЛАШАЮЩЕЙ СТОРОНЫ ЗА ПРЕБЫВАНИЕ ИНОСТРАННОГО ГРАЖДАНИНА НА ТЕРРИТОРИИ РФ

В конце 2018 года вступил в силу Федеральный закон № 216-ФЗ «О внесении изменения в статью 16 Федерального закона «О правовом положении иностранных граждан в Российской Федерации».

В соответствии с данным законом, за несвоевременный выезд иностранного гражданина из России отвечает приглашающая сторона. Согласно принятым изменениям, приглашающая сторона должна следовать мерам по обеспечению соблюдения приглашенным иностранным гражданином режима пребывания (проживания) в России в части соответствия заявленной им цели въезда, т. е. фактически осуществляемой в период пребывания (проживания) в нашем государстве деятельности или роду занятий, а также по обеспечению своевременного выезда по истечении определенного срока пребывания.

Исходя из текста закона, перечень и правила применения указанных мер устанавливаются Правительством РФ.

Также принят Федеральный закон от 19 июля 2018 г. № 215-ФЗ «О внесении изменения в статью 18.9 Кодекса Российской Федерации об административных правонарушениях».

На приглашающую сторону могут быть наложены штрафные санкции, если иностранный гражданин не соблюдает заявленную цель приезда в Россию. Физические лица, пригласившие в Россию иностранного гражданина по частным делам и предоставившие ему жилье, также несут обязанность по обеспечению его своевременного выезда по истечении определенного срока пребывания в РФ. В противном случае с них может быть взыскан штраф в размере от 2 до 4 тыс. рублей. Введены штрафы за то же правонарушение для должностных лиц и организаций (45-50 тыс. рублей и 400-500 тыс. рублей соответственно). Кроме того, аналогичным образом решено наказывать за непринятие мер по соблюдению приглашенным лицом заявленной цели въезда в Россию.

Миграционный комитет АЕБ уже около года активно участвует в деятельности рабочей группы по реализации механизма «регуляторной гильотины» в сфере миграции. Это прямой диалог с Правительством и МВД России на уровне замминистра.

В сфере миграции достаточно мало устаревших требований, но по регламенту деятельности всех рабочих групп в рамках «регу-

ляторной гильотины» любые проекты профильных подзаконных актов (а по факту и проекты законов) должны проходить обязательное согласование с рабочей группой. Среди основных вопросов, которые рассматривала рабочая группа, стоит отметить проект Постановления Правительства об обязанностях приглашающей стороны во исполнение вышеуказанного Федерального закона № 216-ФЗ. Данное Постановление Правительства вступило в силу 25 сентября 2020 года и содержит следующие требования:

- Предоставление иностранному гражданину доступных контактных данных допускается по электронной почте и только один раз. Таким образом, изначальное обязательное требование о вручении лично под роспись было исключено по предложению бизнеса.
- Реализация приглашающей стороной гарантий материального, медицинского и жилищного обеспечения (то есть, по сути, сохранены уже действующие обязательства).
- Оказание содействия в реализации цели въезда. В постановлении указан конкретный перечень действий приглашающей стороны.

  Например, если цель въезда «деловая», то действия приглашающей стороны должны включать организацию проведения совещаний, конференций, переговоров делового или коммерческого характера, заключение контрактов или их продление.

  Если цель въезда «рабочая», то действия приглашающей стороны должны включать трудоустройство, предоставление рабочего места, оформление трудового договора или гражданско-правового договора.

  При этом указанные конкретные перечни действий приглашающей стороны могут вступить в противоречие с новым перечнем целей поездок при оформлении виз, который в настоящий момент разрабатывается.

  В проекте, по которому Миграционный комитет АЕБ отправил свои комментарии и предложения в рамках рабочей группы по реализации механизма «регуляторной гильотины» в сфере миграции, можно отметить следующие планируемые изменения:
  - Цель въезда по деловой визе сформулирована слишком широко: «в целях осуществления деловых поездок». То есть возможные любые деловые мероприятия, а не только указанные в Постановлении Правительства (см. выше).
  - Монтажная виза переводится в разряд рабочих. При этом трудовой договор между приглашающей стороной и лицом, въезжающим на основании монтажной визы, не заключается.

- Уведомление МВД об утрате контактов с иностранным гражданином в течение 2 рабочих дней с момента утраты таких контактов. Этот пункт не применяется в случае повторного въезда иностранного гражданина, например, по многократной деловой визе, о котором приглашающей стороне не известно.

ПРОБЛЕМА

К сожалению, в Постановлении Правительства указан конкретный перечень действий приглашающей стороны, который не включает некоторые очевидные пункты, как например, посещение выставок, если цель въезда «деловая».

Если цель въезда «рабочая», то приглашающей стороне иногда сложно соблюсти требование Постановления Правительства о предоставлении рабочего места, особенно в период пандемии, когда работодателям рекомендуется переводить работников на дистанционный труд, поскольку при дистанционном труде рабочее место не создается.

Комитет АЕБ поддерживает меры по совершенствованию государственной миграционной политики, в том числе по предотвращению фактов нарушения иностранными гражданами и лицами без гражданства режима пребывания в России. При этом важно отметить, что приглашающая сторона подчас не имеет реальных инструментов воздействия на иностранных граждан по обеспечению их выезда из РФ, и требования по повышению ответственности в этой сфере лишь создают дополнительную административную нагрузку на приглашающую сторону-работодателя.

ВИД НА ЖИТЕЛЬСТВО (ВНЖ) И ГРАЖДАНСТВО В РФ

В течение последнего года произошли существенные изменения миграционного законодательства в отношении процедур, связанных с получением вида на жительства и гражданства РФ. Получение ВНЖ или гражданства РФ стало особенно актуальным для иностранных граждан во время пандемии, т.к. эти статусы во многих случаях делают возможным пересечение границ России в обоих направлениях, что для некоторых некоторых категорий иностранных граждан является существенным аргументом для начала процессов, связанных с обретением ВНЖ и гражданства РФ.

Ниже перечислены основные категории иностранных граждан, которые могут обратиться за получением ВНЖ без получения разрешения на временное проживание:

- высококвалифицированный специалист и члены его семьи;
- иностранный гражданин, имеющий родителя, сына или дочь, которые состоят в гражданстве РФ;
- квалифицированные специалисты из перечная профессий, утвержденных Правительством РФ и проработавших по этой должности не менее 6 месяцев;
- иностранный гражданин, закончивший российский вуз с отличием по очной форме обучения;
- иностранный гражданин, родившийся в РСФСР и состоявший в гражданстве СССР;
- иностранный гражданин, признанный носителем русского языка.

Также вступили в действие существенные поправки в закон о гражданстве РФ, позволяющие иностранным гражданам не отказываться от своего гражданства при получении российского.

При наличии ВНЖ в упрощенном порядке гражданство РФ могут получить иностранные граждане:

- которые состоят в браке с гражданином РФ, имеющим регистрацию по месту жительства в РФ, а также хотя бы одного общего ребенка в этом браке;

- имеют хотя бы одного родителя, имеющего российское гражданство и проживающего на территории Российской Федерации;
- родились на территории РСФСР и имели гражданство бывшего СССР;
- состоят не менее трех лет в браке с гражданином Российской Федерации;
- являющиеся родителями дееспособных совершеннолетних граждан РФ;
- получили после 1 июля 2002 года профессиональное образование по основным профессиональным образовательным программам, имеющим государственную аккредитацию, в образовательных или научных организациях Российской Федерации на ее территории и осуществляют трудовую деятельность в Российской Федерации в совокупности не менее 1 года до дня обращения с заявлением о приеме в гражданство;
- граждане республики Беларусь, Казахстана, Молдавии и Украины;
- квалифицированные специалисты, которые осуществляют трудовую деятельность не менее 1 года до дня обращения с заявлением о приеме в гражданство РФ по профессии из перечная профессий, утвержденных Правительством РФ;
- признанные носителем русского языка.

ПРОБЛЕМА

Основной проблемой при получении ВНЖ или гражданства РФ является подача документов на обретение этих статусов. Отсутствие четкого и единого стандарта к списку документов и порядку их заполнения приводит к тому, что иностранным гражданам приходится многократно пытаться подать документы. При этом требования инспекторов к подаваемым документам и их заполнению могут быть диаметрально противоположными, а также могут различаться по регионам.

РЕКОМЕНДАЦИИ

Быть готовым к многократным попыткам сдачи документов и меняющимся требованиям представителей государственных органов, осуществляющих прием документов.

АДМИНИСТРАТИВНАЯ ОТВЕТСТВЕННОСТЬ ЗА НАРУШЕНИЕ МИГРАЦИОННОГО ЗАКОНОДАТЕЛЬСТВА

Действующим законодательством РФ предусмотрены строгие санкции и существенные штрафы в отношении как юридических лиц, так и физических лиц, включая иностранных граждан, в случае их привлечения к ответственности за совершение нарушений в сфере миграции.

ПРОБЛЕМА

В ряде случаев размеры административных штрафов, а также последствия привлечения к ответственности, предусмотренные текущим законодательством, представляются несоразмерными правонарушениям. Проект нового КоАП в целом не улучшает эту ситуацию.

В частности, чрезмерной мерой видится возможность запрета на въезд в Россию иностранному гражданину в случае его привлечения к административной ответственности два и более раз в течение трех лет, вне зависимости от тяжести и общественной опасности совершенного административного правонарушения, а также без учета своевременного исполнения иностранным гражданином постановления о привлечении к административной ответственности. Особенно остро этот вопрос касается иностранных граждан, являющихся единоличным исполнительным органом юридических лиц.

РЕКОМЕНДАЦИИ

Учитывая усиление контроля в сфере миграции со стороны МВД России (включая планы по введению обязательной дактилоскопии для иностранных работников, включая ВКС), компаниям и иностранным гражданам рекомендуется неукоснительно соблюдать требования российского законодательства, включая правила пребывания на территории РФ.

В частности, мы советуем придерживаться следующих рекомендаций:

- обеспечить постоянное наличие у иностранного гражданина и его работодателя полного пакета необходимых миграционных документов на случай проверки;
- отслеживать наличие штрафов, информации об административных правонарушениях, а также запретов на въезд иностранных граждан через электронные сервисы МВД России.

ЧЛЕНЫ КОМИТЕТА

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КОМИТЕТ ПО КОММУНИКАЦИЯМ И СВЯЗЯМ С ОБЩЕСТВЕННОСТЬЮ

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Комитет по коммуникациям и связям с общественностью был создан в 2008 году в целях объединения экспертов в области PR и корпоративных коммуникаций, а также создания площадки для обмена информацией и консультирования по вопросам применения успешных международных PR-практик в России. Комитет проводит регулярные встречи и мероприятия для PR-специалистов, заинтересованных в повышении уровня профессионализма и налаживании связей с ключевыми стейкхолдерами. К участию в таких встречах приглашаются как представители компаний-членов АЕБ, так и внешние эксперты.

В условиях глобализации коммуникационного пространства и постоянно растущего влияния социальных медиа тема кризисных коммуникаций и управления репутационными рисками приобретает особую актуальность, что находит свое отражение в повестке Комитета. Актуальный для PR-отрасли тренд, связанный с процессами цифровизации экономики и возрастающей ролью социальных медиа в коммуникациях, также формирует и в перспективе продолжит формировать одно из ключевых направлений работы Комитета. Комитет ставит своей задачей отслеживать развитие по данному направлению и выступать в роли дискуссионной площадки. Комитет уделяет большое внимание взаимодействию с органами власти (GR) и другими группами стейкхолдеров, в том числе с профессиональными ассоциациями, экспертным сообществом и НКО.

В настоящее время одной из ключевых для PR-индустрии является тема традиционных и новых медиа. В рамках данного направления Комитет проводит ежегодные «Встречи со СМИ» – встречи с ведущими медиа (ТАСС, РИА Новости, Russia Today, «Ведомости», «Коммерсант», «Эксперт» и др.). Данный формат дает возможность PR-специалистам получить профессиональные рекомендации и повысить свои компетенции по планированию новостного контента, работе с инфоповодами в цифровом информационном пространстве и продвижению корпоративных новостей на федеральном уровне.

В фокусе внимания Комитета неизменно остается тема устойчивого развития и корпоративной социальной ответственности бизнеса (КСО). Международные исследования показывают, что на современном этапе все группы стейкхолдеров уделяют большое внимание теме устойчивого развития и корпоративной социальной ответственности. В этой связи такие важные тренды, как глобализация информационного пространства и кросс-функциональное взаимодействие в корпоративном секторе, придают теме устойчивого развития и КСО в повестке Комитета особое значение. Ведущие европейские компании обладают высоким уровнем экспертизы в данной сфере и уделяют особое внимание внедрению данных практик на глобальном уровне.

В свете темы устойчивого развития и КСО Комитет по коммуникациям и связям с общественностью выступает в роли надежного партнера и стремится к повышению уровня информированности общественности о необходимости внедрения ответственных практик ведения бизнеса, в том числе посредством включения в повестку таких вопросов, как минимизация операционного воздействия на окружающую среду, использование возобновляемых ресурсов, повышение эффективности производства и др. Комитет по коммуникациям и связям с общественностью намерен проявлять в рамках данного направления дальнейшую активность и расширять взаимодействие с другими Комитетами АЕБ с целью организации и проведения совместных встреч, которые могли бы стать эффективной площадкой для расширения взаимодействия со стейкхолдерами.

Одним из ключевых направлений работы Комитета является проведение встреч с российскими и международными экспертами. Данный формат включен в повестку Комитета в целях информирования его членов по широкому спектру вопросов, связанных с трендами и вызовами отрасли на глобальном уровне, а также их соотнесения с российскими реалиями. В современных условиях набор компетенций и навыков PR-профессионала требует постоянных обновлений и инноваций. Именно поэтому данный аспект находится в центре постоянного внимания Комитета.

Комитет по коммуникациям и связям с общественностью строит свою работу и действует в рамках миссии АЕБ. Все встречи и мероприятия, организуемые Комитетом, направлены на формирование и поддержание репутации АЕБ как ответственного партнера и участника общественных отношений, разделяющего принципы открытости, инклюзивности и взаимодействия с внешними аудиториями по широкому спектру вопросов. Комитет призывает компании АЕБ к обмену лучшими практиками в целях взаимного обогащения.

ЧЛЕНЫ КОМИТЕТА

ABB • Accor Groupe • Allianz IC OJSC • ALRUD Law Firm • American Institute of Business and Economics • ANCOR • Angelini Pharma Rus LLC • Antal Russia • AO Deloitte & Touche CIS • Ararat Park Hyatt Moscow • Arval • AstraZeneca Pharmaceuticals LLC • Atlas Copco, JSC • AVIS Russia (Bilantilia Corp., duly authorized representative of Avis in the territory of the Russian Federation) • Avon Beauty Products Company, LLC • Baker McKenzie • BAYER • BEITEN BURKHARDT Moscow • Benteler Automotive LLC • BNP Paribas Bank JSC • Boehringer Ingelheim • Bonduelle-Kuban LLC • BP • British American Tobacco Russia • Bryan Cave Leighton Paisner (Russia) LLP, Russian branch • BSH Bytowyje Pribory OOO • Caterpillar Eurasia LLC • CEETRUS, LLC • Chadbourne & Parke LLP • Chevron Neftegaz Inc. Moscow Branch • Clifford Chance • CMS Russia • Commerzbank (Eurasija) AO • Continental Tires RUS OOO • Corteva Agriscience • Creon Capital S.a.r.l • DANONE RUSSIA, JSC • Dassault Systems LLC • Debevoise and Plimpton LLP • Dentons • DHL Express • Dow Europe GmbH Representation office • DSM • Egorov Puginsky Afanasiev & Partners (EPAM) • Enel Russia • ENGIE • Essity LLC • Euler Hermes • Evonik • EY • Ferrero Russia, CJSC • Gasunie • GAZ Group • Generali Russia & CIS • Haldor Topsoe LLC • HELLENIC BANK PCL • Hino Motors, LLC • Hotel Baltschug Kempinski Moscow/Baltschug Ltd. • Hyundai Motor CIS • IE Business School • IKEA DOM LLC • Imperial Tobacco Sales and Marketing • ING Wholesale Banking in Russia • Intermark Relocation • Iveco Russia LLC • John Deere Rus, LLC • Kesarev • LafargeHolcim • LeasePlan Rus • Legrand LLC • Lipetsk SEZ JSC • Lundbeck Rus • Macro-Advisory Ltd. • Mazars • Merck LLC • Messe Frankfurt Rus Ltd. • METRO AG Representative office • Mitsubishi Electric (Russia) LLC • Morgan Lewis • MOST SERVICE, member of Bruck Consult • NAVIEN RUS, LLC • Nestle Rossiya LLC • Noerr OOO • Nokia • Novo Nordisk A/S • Orange Business Services • Oriflame • Pepeliaev Group, LLC • Philip Morris Sales and Marketing • Philips LLC • Procter & Gamble • Promaco-TIAR • Publicity Consulting Group, an ECCO Network Affiliate in Russia • PwC • Raiffeisenbank AO • Renaissance Moscow Monarch Centre Hotel • Repsol Exploracion S.A. • ROCKWOOL • Rödl & Partner • SANOFI-AVENTIS REP OFFICE • Scania-Rus LLC • SCHNEIDER GROUP • SERVIER • Shell Exploration and Production Services (RF) B.V. • Siemens LLC • Signify Eurasia LLC • Sokotel LLC (Sokos Hotels St. Petersburg) • Stada CIS • Subaru Motor • Swissotel Krasnye Holmy Moscow • Syngenta • TABLOGIX • TechSert • Tikkurila • Unipro PJSC • Urus Advisory Ltd. • VEGAS LEX Advocate Bureau • Volkswagen Group Rus (Audi/Bentley/Lamborghini/Škoda/Volkswagen/Volkswagen Commercial Vehicles) • Volvo Vostok NAO • Yamaha Motor CIS LLC.

КОМИТЕТ ПО ОЦЕНКЕ СООТВЕТСТВИЯ ПРОДУКЦИИ

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СИНХРОНИЗАЦИЯ СТАНДАРТИЗАЦИИ И ТЕХНИЧЕСКОГО РЕГУЛИРОВАНИЯ

ПРОБЛЕМА

На текущем этапе развития системы подтверждения соответствия Евразийского экономического союза процедура оценки рисков не может быть реализована в полном объёме, делая модель подтверждения соответствия на основе применения стандартов единственно возможной с практической точки зрения. При этом во всём мире наблюдается непрерывное развитие уровня техники и технологий, которое, в свою очередь, требует своевременной модификации (обновления) перечней стандартов, гармонизированных с техническими регламентами. Для этого национальные органы по стандартизации достаточно своевременно публикуют новые версии стандартов. Однако в ряде случаев мы видим несогласованность деятельности наднационального регулятора и национальных органов по стандартизации. Такая несогласованность приводит к ситуации, когда обязательная оценка соответствия новых видов продукции становится невозможной. Кроме того, сложный и многоступенчатый порядок внесения изменений в перечни стандартов к техническим регламентам ЕАЭС затягивает актуализацию, а следовательно, и возможность применения соответствующих современных стандартов на длительный срок, что делает крайне затруднительным вывод на рынки современной инновационной продукции.

РЕКОМЕНДАЦИИ

- Внести изменения в действующий порядок внесения изменений в перечни стандартов к техническим регламентам ЕАЭС с целью упрощения процедуры их согласования для ускорения процессов по внедрению на наднациональном уровне современных стандартов.
- Обеспечить заблаговременное изменение перечня стандартов с тем, чтобы испытательные лаборатории имели возможность запланировать действия по подготовке испытательной базы и расширению области аккредитации к дате вступления новых стандартов в силу.
- Предусматривать максимально возможно широкий временной интервал переходных периодов, в течение которых старые и новые версии стандартов будут оставаться действующими и могут использоваться в целях испытаний на соответствие требованиям технических регламентов.
- В случаях отсутствия правил и методов исследований, испытаний и измерений в утвержденных стандартах, применимых непосредственно к заявляемой продукции, предоставить возможность применять утверждённые национальные, международные и межгосударственные стандарты, содержащие такие правила и методы.
- Исключить возможность вступления в действие регламентов до завершения плана мероприятий, необходимых для их реализации, обеспечив принятие пакетом всех необходимых для их применения документов.

НЕОДНОЗНАЧНОСТЬ ПОЛОЖЕНИЙ ТЕХНИЧЕСКИХ РЕГЛАМЕНТОВ

ПРОБЛЕМА

- За время, прошедшее со вступления в силу первых технических регламентов Таможенного союза в рамках ЕврАзЭС, сложилась необходимая инфраструктура и сформировался рынок услуг по оценке соответствия. Вместе с этим, у заявителей, аккредитованных лиц и надзорных органов часто возникают различия в трактовке положений нормативно-правовых актов в области технического регулирования.

РЕКОМЕНДАЦИИ

- Создать с участием органов исполнительной власти, надзорных органов, бизнес-ассоциаций, общественных объединений официальный орган в составе ЕАЭК, который будет на регулярной основе заниматься обобщением правоприменительной практики и будет наделён полномочиями по разъяснению неоднозначных положений технических регламентов Евразийского союза. Для национальных технических регламентов подобный орган следует организовать при Министерстве промышленности и торговле Российской Федерации.
- Эффективным инструментом разрешения обозначенной выше проблемы могло бы стать издание руководства по применению технических регламентов по аналогии с практикой издания Blue Guide, принятой в Европейском союзе.

НЕСОВЕРШЕНСТВО ПОНЯТИЙНОГО АППАРАТА НА ПРИМЕРЕ ТЕРМИНА «ВЫПУСК В ОБРАЩЕНИЕ»

ПРОБЛЕМА

Ключевые понятия в праве в целом и в техническом регулировании в частности должны единообразно пониматься всеми субъектами правоотношений. Одним из ключевых и наиболее важных понятий, используемых в техническом регулировании, является понятие «выпуск продукции в обращение», так как именно с моментом осуществления выпуска продукции в обращение связано возникновение многих прав и обязанностей, имеющих отношение к обеспечению и подтверждению соответствия продукции обязательным требованиям.

Определение этого термина, установленное в пункте 2 Протокола о техническом регулировании в рамках ЕАЭС (приложение № 9 к Договору о ЕАЭС от 29.05.2014 г.), не в полной мере отвечает принципу правовой определённости, что влечёт за собой различное понимание и разнообразную правоприменительную практику как среди государств-членов ЕАЭС, так и среди субъектов правоотношений в Российской Федерации.

РЕКОМЕНДАЦИИ

Внести изменения в Протокол о техническом регулировании в рамках ЕАЭС в части определения термина «выпуск продукции в обращение» с целью обеспечения его максимальной правовой определённости и единообразного понимания. Новое определение следует сформировать с учётом сложившейся правоприменительной практики в государствах-членах ЕАЭС (в том числе и прежде всего с учётом различий в правоприменении), а также с учётом лучших мировых практик нормативного регулирования этого ключевого понятия.

ИЗБЫТОЧНОСТЬ ОБЯЗАТЕЛЬНЫХ ПРОЦЕДУР ОЦЕНКИ СООТВЕТСТВИЯ

ПРОБЛЕМА

Обязательные процедуры подтверждения соответствия, введённые для продукции большинством технических регламентов ЕАЭС (ТС), предполагают обязательство заявителей привлекать на договорной основе третью сторону для проведения испытаний и оценки соответствия продукции. При этом, доступные заявителям схемы оценки соответствия серийно производимой продукции, подлежащей подтверждению соответствия в форме сертификации, предполагают, вне зависимости от потребности изготовителя, анализ состояния производства, понимаемый регуляторами как физический аудит производства. Большинство добросовестных изготовителей привлекают в качестве независимой стороны консультантов авторитетных экспертных организаций в своей стране, однако результаты их деятельности по формальным основаниям не могут учитываться для целей оценки стабильности производства сертифицируемой продукции в странах ЕАЭС.

Кроме того, типовые схемы оценки соответствия, в том числе их последняя редакция (Решение Совета ЕЭК № 44 от 18 апреля 2018 г.) предполагают проведения испытаний в аккредитованной или собственной лаборатории, расположенной на территории ЕАЭС. Следует отметить, что, несмотря на формальные требования по проведению испытаний в аккредитованных лабораториях ЕАЭС и усилившийся контроль соблюдения таких требований, по ряду показателей безопасности по-прежнему отсутствует необходимая испытательная база для проведения сертификационных испытаний. Подобная ситуация особенно характерна для ресурсоёмких и высокотехнологичных отраслей, где количество испытательных центров не только в ЕАЭС, но и во всём мире ограничено. Даже при наличии таких испытательных центров на территории ЕАЭС фактически повторное проведение испытаний на соответствие требованиям гармонизированных стандартов в ряде случаев экономически нецелесообразно для изготовителей и препятствует выводу на рынок ЕАЭС инновационной продукции.

Продолжающиеся изменения требований по оформлению доказательной базы (в частности протоколов испытаний) для регистрации декларации о соответствии по схеме 1д приводят к повторной оценке продукции по одинаковым (одним и тем же) параметрам безопасности. Наиболее показательным примером, можно считать принятый Технический регламент Евразийского экономического союза ТР ЕАЭС 048/2019 «О требованиях к энергетической эффективности энергопотребляющих устройств», требования которого не позволяют заявителю использовать результаты испытаний, проведённых в иностранной лаборатории.

РЕКОМЕНДАЦИИ

- Предусмотреть в соответствующих положениях технических регламентов возможность учитывать при сертификации серийно производимой продукции результаты аудита производства изготовителя признанными на международном уровне экспертными организациями, если содержание проведенной проверки производства позволяет органу по сертификации сделать вывод о способности изготовителя стабильно производить продукцию, соответствующую техническим регламентам ЕАЭС.
- Рассмотреть вопрос о заключении международных договоров о взаимном признании процедур и документов оценки соответствия продукции, в том числе протоколов испытаний.
- Предусмотреть в соответствующих положениях технических регламентов Евразийского союза возможность использования в целях подтверждения соответствия продукции обязательным требованиям технических регламентов ЕАЭС результатов испытаний продукции на соответствие требованиям международных стандартов, полученных в признанных на международном уровне аккредитованных лабораториях, в том числе, отвечающих требованиям ISO 17025.

- Допускать к применению схемы подтверждения соответствия в виде декларирования соответствия на основании доказательств, полученных заявителем, без обязательного привлечения третьей стороны.
- Руководствоваться при разработке правовых норм в области технического регулирования принципом пропорциональности, соблюдая баланс между необходимостью снижения рисков, связанных с продукцией, и нагрузкой на экономических операторов, вынужденных нести дополнительные материальные издержки и сталкиваться с задержками времени вывода продукции на рынок.

ДИСТАНЦИОННЫЙ АНАЛИЗ СОСТОЯНИЯ ПРОИЗВОДСТВА

ПРОБЛЕМА

Особые условия ведения хозяйственной деятельности в 2020 году, обусловленные всемирной пандемией, поставили экономических субъектов и органы государственной власти перед необходимостью поиска нестандартных решений. Одним из самых важных решений в области технического регулирования, принятых в этот период, стало разрешение на осуществление дистанционного анализа (дистанционной оценки) состояния производства с использованием технических средств связи и фиксации аудио и видеоматериалов. Использование этого инструмента разрешено на временной основе, исключительно до конца 2020 года.

РЕКОМЕНДАЦИИ

Органам государственной власти, осуществляющим нормативное правовое регулирование в области подтверждения (оценки) соответствия продукции, а также надзор за деятельностью аккредитованных органов по сертификации, провести комплексный системный анализ практики проведения дистанционного анализа состояния производства, по результатам которого рассмотреть вопрос о сохранении на постоянной основе возможности использования такого способа осуществления анализа состояния производства. Правила проведения дистанционного анализа состояния производства могут быть уточнены на основе результатов такого анализа.

ЧЛЕНЫ КОМИТЕТА

ABB • Avon Beauty Products Company, LLC • BASF • Bonduelle-Kuban LLC • Brother LLC • BSH Bytowyje Pribory OOO • Caterpillar Eurasia LLC • Continental Tires RUS OOO • Corteva Agriscience • DANONE RUSSIA, JSC • DLA Piper • Doosan Infracore Co. Representative Office in Russia • Dow Europe GmbH Representation office • Electrolux • Ericsson • Ferrero Russia, CJSC • GE (General Electric International (Benelux) B.V.) • GROUPE SEB-VOSTOK ZAO • H&M Hennes & Mauritz LLC • Harley-Davidson Russia and CIS • Hempel AO • Henkel Rus OOO • Hino Motors, LLC • Hitachi Construction Machinery Eurasia Limited Liability Company • IKEA Purchasing Services Russia • Imperial Tobacco Sales and Marketing • JCB Russia LLC • John Deere Rus, LLC • Kaercher • Komatsu CIS, LLC • L'Oreal • LafargeHolcim • Legrand LLC • Merck LLC • Michelin • Mitsubishi Electric (Russia) LLC • Nestle Rossiya LLC • Nike • Noerr OOO • Nokia • Nokian Tyres Ltd • Oriflame • Philip Morris Sales and Marketing • Philips LLC • Procter & Gamble • Renault Russia • ROCKWOOL • Saint-Gobain • Samsung Electronics • Scania-Rus LLC • Schneider Electric Joint Stock Company • SCHNEIDER GROUP • SECRETAN TROYANOV SCHAER S.A. • TechSert • Tikkurila • VEGAS LEX Advocate Bureau • Volvo Cars • Yamaha Motor CIS LLC.

КОМИТЕТ ПО НЕДВИЖИМОСТИ

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МЕРОПРИЯТИЯ ДЛЯ БЕЗОПАСНОГО ОСУЩЕСТВЛЕНИЯ СТРОИТЕЛЬНЫХ (ОТДЕЛОЧНЫХ) РАБОТ В НЕБЛАГОПРИЯТНОЙ ЭПИДЕМИОЛОГИЧЕСКОЙ СИТУАЦИИ

ПРЕДЫСТОРИЯ ВОПРОСА

2020 год прошел под знаком новой проблемы, с которой бизнес Российской Федерации, да и мира в целом еще не сталкивался – пандемия новой коронавирусной инфекции.

Коронавирусная инфекция COVID-19 – потенциально тяжелая острая респираторная инфекция, вызываемая коронавирусом SARS-CoV-2 .

Заболевание впервые было зафиксировано в декабре 2019 года в г Ухань, столице Китайской провинции Хубей и с того момента распространилось по всей планете, развившись до масштабов 27 млн зараженных и более 870,000 погибших к сентябрю 2020 года.

В связи с эпидемией Всемирной организацией здравоохранения (ВОЗ) 30 января 2020 г. объявлена чрезвычайная ситуация международного значения в области здравоохранения, а 11 марта 2020 г. распространение вируса было признано пандемией.

ПРОБЛЕМА

Локальные эпидемии и глобальная пандемия новой коронавирусной инфекции поставили строительный бизнес в Российской Федерации и других странах перед совершенно новыми вызовами:

- ограничения работы предприятий ряда стран, за исключением обеспечивающих жизнедеятельность городов и государств, – вплоть до полной остановки заводов ряда стран на непрогнозируемые периоды, остановки отгрузок продукции, не относящейся к товарам первой необходимости;
- ограничения передвижения грузов между странами – вплоть до полного запрета пересечения границ государств для продукции, кроме товаров первой необходимости, отсутствующих в конкретной стране;
- ограничения передвижения людей между странами, в т. ч. в рамках профессиональной деятельности, включая рабочие ресурсы и управленческий персонал, – вплоть до полного запрета на пересечение границ;
- ограничения перемещения людей внутри страны – вплоть до ограничений на передвижение даже в пределах города;
- карантинные мероприятия как для зараженных новой коронавирусной инфекцией, так и для людей, контактировавших с больными;
- отсутствие соответствующей законодательной базы, четких и однозначных официальных рекомендаций на федеральном уровне по действиям организаций и предприятий как в случае приостановки их работы, так и в случае возобновления/продолжения их деятельности.

РЕКОМЕНДАЦИИ

В случае дальнейшего ухудшения эпидемиологической ситуации, связанной с ростом заболеваемости COVID-19 , или при возникновении аналогичных эпидемий необходимо актуализировать законодательную базу и выпустить на федеральном уровне однозначные, непротиворечивые рекомендации для применения строительными организациями:

- В отношении гражданского кодекса Российской Федерации – уточнение понятия «форс-мажор» и отнесение эпидемий на определенном уровне их развития к категории обстоятельств непреодолимой силы.
- В части трудового законодательства – закрепление понятия «удаленного рабочего места», требований к его организации работодателем, формирование перечня трудовых функций, которые могут осуществляться в удаленном режиме, определение порядка осуществления трудовых функций в удаленном режиме (рабочее время, время отдыха, трудовой распорядок, контроль рабочего времени, обмен кадровыми документами в удаленном режиме), определение порядка перевода сотрудников на удаленный режим работы, включая обмен кадровыми документами о переводе на удаленную работу в электронном виде.
- В части норм охраны труда, СанПин – формирование федеральных требований к безопасному производству строительных работ (как в отношении объектов нового строительства, так и при выполнении ремонтных и отделочных работ, в т. ч. в действующих зданиях) при эпидемиях заболеваний, передающихся воздушно-капельным путем, включая организацию строительной площадки и рабочих мест, мониторинг состояния здоровья работников, специфичные нормы выдачи СИЗ, требования к выдаче инструмента, требования к личной гигиене и дезинфекции помещений

и поверхностей, дистанцирование, маршрутизацию потоков, меры безопасности при погрузочно-разгрузочных работах, а также работах, не позволяющих обеспечить дистанцирование, требования по организации питания и проживания рабочих, требования по сокращению посещений строительных объектов внешними специалистами (строительный контроль, авторский надзор), требования к минимизации количества рабочих в одну смену и организации смен без пересечения бригад, мероприятия, направленные на обеспечение эпидемиологической безопасности населения.

- Актуализация нормативной базы, касающейся ведения журналов производства работ, авторского надзора – с внесением положений, разрешающих ведение таких журналов в электронном виде и закреплением порядка обмена такими журналами в электронном формате.
- Актуализация нормативной базы, касающейся выдачи Проектной/Рабочей документации в производство работ – с внесением положений, разрешающих передачу Рабочей документации в производство работ в электронном виде и закреплением порядка обмена такой Проектной/Рабочей документацией в электронном формате.
- Актуализация градостроительного кодекса и законодательства о закупках в части закупки строительных работ – включение права подрядчика на осуществление замены применяемого оборудования/материалов на ближайшие по техническим характеристикам аналоги в случае остановки работы соответствующего завода в связи с эпидемиологическими ограничениями, в т. ч. с внесением соответствующих изменений в проектно-сметную документацию по согласованию с заказчиком и автором проекта с внесением соответствующих пометок в журнал авторского надзора и без повторного прохождения экспертизы проектно-сметной документации в случае отсутствия существенных отклонений от технических характеристик, предусмотренных базовой проектно-сметной документацией.
- В части законодательства о защите персональных данных и конфиденциальной информации – актуализации требований о хранении и передаче персональных данных, конфиденциальной информации в случае необходимости обмена такими данными при удаленной работе.
- При актуализации законодательной и нормативной базы рекомендуем осуществлять консультирование с профессиональными участниками строительного рынка и некоммерческими организациями в сфере строительства и проектирования с целью учета фактических обстоятельств, выявленных такими организациями при осуществлении ими строительной и проектной деятельности в 2020 году.

ОБЗОР ЗАКОНОДАТЕЛЬНЫХ И ДОГОВОРНЫХ НОРМ, КОТОРЫЕ ТРЕБУЮТ АКТУАЛИЗАЦИИ, ЧТОБЫ В СЛУЧАЕ ПОДОБНЫХ ЭПИДЕМИЙ БЫЛ ОДНОЗНАЧНО ПОНЯТЕН ПОРЯДОК ДЕЙСТВИЙ И СОСТАВ ОБЯЗАННОСТЕЙ СТОРОН ДОГОВОРА АРЕНДЫ

ПРОБЛЕМА

Недостаточность существующих законодательных норм для урегулирования отношений арендодателей и арендаторов, соблюдения баланса их интересов. Отсутствие судебной и договорной практики по этим вопросам.

ОСНОВОПОЛАГАЮЩИЕ УТВЕРЖДЕНИЯ

Существующая норма п. 4 ст. 614 Гражданского кодекса Российской Федерации (ГК РФ) позволяет арендатору потребовать уменьшения арендной платы, если в силу обстоятельств, за которые он не отвечает, условия пользования, предусмотренные договором аренды, или состояние имущества существенно ухудшились, как правило, применяется в довольно ограниченном ряде случаев, таких как ремонт в здании[1], прекращение подачи электроэнергии[2] и т. п. Существуют сомнения, что она будет широко использоваться в «постковидных» спорах.

Попытка государства отрегулировать отношения между арендатором и арендодателем в период пандемии – принятие и последующее изменение ст. 19 Федерального закона от 01.04.2020 г. № 98-ФЗ (далее – «Закон № 98-ФЗ»)[3] – лишь подчеркнула необходимость кооперации сторон. Так, нормы этой статьи, наиболее четко направленные на защиту интересов арендатора, в основном относятся к определенным категориям арендаторов (из так называемых пострадавших отраслей бизнеса, то есть, например, физкультурно-оздоровительная деятельность, деятельность туристических агентств, деятельность музеев и зоопарков, гостиничный бизнес, общественное питание и т. д.), тогда как большинство арендаторов к ним не относится.

Пунктом 3 ст. 19 Закона № 98-ФЗ предусмотрено право арендатора требовать уменьшения арендной платы. Верховный суд Российской Федерации подтверждает[4], что арендная плата подлежит уменьшению, но размер сниженной арендной платы определяется с учетом размера, на который обычно снижается арендная плата в сложившейся ситуации. Таким образом, неопределенность в этом вопросе до сих пор не разрешена.

[1] Постановление Арбитражного суда Поволжского округа от 12.05.2017 г. № Ф06-20323/2017 по делу № А65-25310/2016
[2] Постановление Арбитражного суда Московского округа от 05.07.2016 г. № Ф05-8666/2016 по делу № А40-115211/15
[3] Федеральный закон от 01.04.2020 г. № 98-ФЗ «О внесении изменений в отдельные законодательные акты Российской Федерации по вопросам предупреждения и ликвидации чрезвычайных ситуаций»
[4] Ответ на Вопрос 5 «Обзора по отдельным вопросам судебной практики, связанным с применением законодательства и мер по противодействию распространению на территории Российской Федерации новой коронавирусной инфекции (COVID-19) № 2» (утв. Президиумом Верховного Суда Российской Федерации 30.04.2020 г.)

Что касается арендодателей, то в качестве мер поддержки для них предусмотрены налоговые льготы, однако данные меры поддержки практически не оказали никакого регулирующего воздействия на арендные отношения.

Когда пострадавшими становятся обе стороны правоотношений, разумнее становится не конкурировать, а кооперироваться в целях сохранения бизнеса.

Ввиду возможности «второй волны пандемии», а следовательно, введения новых ограничений, необходимо актуализировать законодательство, в том числе в плане общих договорных и конкретно – арендных отношений, сделать его более гибким и сбалансированным.

Не хватает «кодекса лучших практик» (в том числе международных), которым стороны могли бы руководствоваться при введении новых ограничений в целях наиболее комфортного сотрудничества (или его прекращения).

РЕКОМЕНДАЦИИ

Представляется, что существующие нормы законодательства разумно оставить «как есть». П. 4. ст. 614 ГК РФ доказал свою применимость в условиях, не относящихся к введению ограничительных мер. Возможность его применения в «постковидных» спорах невелика, но этот вывод может быть скорректирован судебной практикой. Что касается ст. 19 Закона № 98-ФЗ, то, с одной стороны, очевидны ее несовершенства, с другой – дальнейшие изменения недавно принятых норм могут вызвать еще большую правовую неопределенность, поэтому здесь также имеет смысл дождаться судебной практики.

Не дожидаясь судебных решений, бизнес-ассоциациям разумно выработать «кодекс лучших практик», которым сторонам будет рекомендовано руководствоваться при введении новых ограничений в целях наиболее комфортного сотрудничества (или его прекращения). Часть таких рекомендаций в случае признания участниками рынка могла бы быть имплементирована в законодательстве.

«Лучшие практики» должны отражаться в договорах и учитываться в ходе их исполнения. К таким «лучшим практикам» могут относиться следующие условия:

- Максимально детальное указание в договоре цели использования помещения, с учетом всех важных параметров (например, какая часть площади используется под ту или иную деятельность). Важно также, чтобы назначение арендуемых помещений не противоречило разрешенному использованию всего здания и земельного участка согласно градостроительным регламентам.
- Право арендатора на уменьшение арендуемой площади в случае наступления определенных обстоятельств (ограничительные меры государства, падение доходов до определенного уровня и т. д.) в обмен на разумную компенсацию арендодателю. Компромиссным вариантом может быть также предоставление арендатору права на сдачу части помещений в субаренду с оговоркой о том, что арендодатель не может отказать в согласовании субаренды без причины.
- Сторонам важно пересмотреть условие об одностороннем отказе от исполнения договора аренды в целом: такая возможность должна быть у каждой стороны. В случае арендодателя – в связи с невнесением арендной платы дольше определенного периода, в случае арендатора – при отказе арендодателя от уменьшения площадей, сдаваемых арендатору, или если ограничительные меры длятся дольше определенного периода. Еще одним вариантом для арендатора будет согласование «окон возможностей» – периодов, в которые арендатор вправе без санкций в одностороннем порядке отказаться от договора, например, (один раз в три года).
- Максимальная детализация арендной платы, таким образом, чтобы можно согласовать отказ от оплаты явно неиспользуемых помещений (парковка) или услуг арендодателя (например, еженедельная влажная уборка).
- Разумно предусмотреть в договоре аренды отдельный раздел – о правилах ведения переговоров. В них можно предусмотреть общий порядок ведения переговоров – ответственных за их ведение лиц, способы коммуникаций (включая онлайн), сроки согласования предложений, порядок подписания документов, а также ответственность за нарушение этого порядка. Важно также предусмотреть комфортное завершение переговоров – возможность их прекращения в случае если стороны не нашли точек соприкосновения. Можно также использовать посреднические процедуры (медиация), в том числе при арбитражных судах и бизнес-ассоциациях, предварительно урегулировав порядок их использования в договорах.
- По мнению Верховного суда Российской Федерации[5], отсутствие у должника необходимых денежных средств, если оно вызвано установленными ограничительными мерами, может быть признано основанием для освобождения от ответственности за неисполнение или ненадлежащее исполнение обязательств по правилам ст. 401 ГК РФ. Оно допустимо в случае, если разумный и осмотрительный участник гражданского оборота, осуществляющий аналогичную деятельность, не мог бы избежать неблагоприятных финансовых последствий, вызванных ограничительными мерами. Таким образом, тяжелое финансовое положение может потенциально стать основанием для освобождения арендатора от ответственности в связи с форс-мажором. Представляется важным следование этой практике, в том числе, на договорном уровне, то есть, дополнительное урегулирование в договорах возможности освобождения от ответственности в такой ситуации.

[5] «Обзор по отдельным вопросам судебной практики, связанным с применением законодательства и мер по противодействию распространению на территории Российской Федерации новой коронавирусной инфекции (COVID-19) № 1» (утв. Президиумом Верховного Суда Российской Федерации 21.04.2020 г.)

- Арендная плата в иностранной валюте устанавливается в пределах «валютного коридора», т. е. указываются предельные значения стоимости валюты в случае колебаний курса, либо согласовываются возможность перехода на внесение арендной платы в рублях в случае существенного роста курса валюты.

В целом, стороне важно просчитывать, что нанесет ей меньше ущерба: оставить ситуацию «как есть» или пойти на определенные уступки.

ОСНОВНЫЕ ПРОБЛЕМЫ РАЗВИТИЯ И ВНЕДРЕНИЯ МОДУЛЬНЫХ ТЕХНОЛОГИЙ В РОССИИ

ПРОБЛЕМА

В течение последних 5 лет рынок модульного строительства в России развивается медленно. Основная причина – отсутствие у девелоперов готовности тестировать технологические ноу-хау, так как для этого нужны значительные изменения в существующих бизнес-процессах и технологиях возведения объектов недвижимости.

Тем не менее, в связи с запуском схем проектного финансирования и эскроу-счетов, изменилась себестоимость девелоперских проектов. И задача по снижению затрат стала еще более актуальной.

Для решения вопроса внедрения модульных технологий в России, в первую очередь необходимо создание и развитие инструментов, а также практик для сравнения затрат, разработанных на экспертном уровне. Они дадут возможность расчета финансовой модели для каждого объекта с учетом проектных и строительных рисков.

Девелоперы смогут спрогнозировать выгоду от внедрения тех или иных инноваций.

Точные данные, подтверждающие снижение себестоимости, откроют новые перспективы для реализации пилотных проектов. Производители инновационных технологий будут мотивированы на их разработку, тестирование и улучшение новых продуктов.

В настоящий момент начата разработка калькулятора экономической эффективности на примере сантехнических модулей совместно с Институтом налогового менеджмента и экономики недвижимости НИУ ВШЭ.

Выводы и цифры иллюстрируют экономический эффект от внедрения Prefab в девелоперском бизнесе. Использование модульных блоков заводского качества по сравнению со строительным исполнением позволяют снизить:

- в 10–12 раз проектные риски, такие как банкротство подрядчиков, срывы сроков, повышение стоимости материалов и работ, низкое качество возводимых объектов и затраты на исправление недостатков; а также последующие расходы на компенсационные выплаты;
- в 3 раза трудоемкость на объекте;
- в 40 раз затраты на администрирование проекта.

Весной 2019 года, в начале пандемии в России, сантехнические модули впервые использовались в социальном строительстве. Медицинское общежитие для врачей и персонала инфекционной больницы в Новой Москве на 735 мест было возведено меньше, чем за месяц. Такие рекордные сроки стали возможны, в том числе, благодаря Prefab-технологиям.

Текущие государственные инициативы по поддержке строительной отрасли недостаточны для развития новых технологий в России. Во многом из-за отсутствия централизованной поддержки модульного строительства на законодательном уровне:

- нет базы инновационных решений под контролем соответствующих ИОГВ. В результате – низкая осведомленность представителей отраслевых госструктур о существующих технологических решениях;
- нет площадки для знакомства девелоперов и представителей производств под контролем государства;
- слабая поддержка инноваций в строительной отрасли.

РЕКОМЕНДАЦИИ

Включение модульных технологий на этапе проектирования социальных объектов помогут производителям реализовать потенциал, будут стимулировать качественную конкуренцию. В целом это будет способствовать развитию строительного рынка в России.

Создание единого информационного агрегатора по модульному строительству, объединяющего государство, девелопмент, инвесторов и производителей со всего мира позволит аккумулировать знания и опыт, а также, внедрение и использование модульных технологий в коммерческих и государственных проектах.

НОРМАТИВНАЯ БАЗА В СФЕРЕ СТРОИТЕЛЬСТВА

ПРОБЛЕМА

Строительство в России регулирует огромное количество различных технических требований. При этом некоторые требования не только не учитывают существующее развитие технологий, но и зачастую противоречат друг другу, что существенно затрудняет получение всей необходимой разрешительной документации и выполнение строительных работ.

В рамках общего подхода, называемого «регуляторной гильотиной», российские власти пытаются сократить количество обязательных требований в сфере строительства. 1 августа 2020 г. вступил в силу новый перечень СНиП и ГОСТ для застройщиков и строительных подрядчиков, утвержденный Постановлением Правительства Российской Федерации от 04.07.2020 г. № 985 («ППРФ 985»). Помимо правок технического характера (замена

утративших силу СНиП и ГОСТ на актуальные), были внесены содержательные корректировки в обязательные стандарты. Число обязательных для соблюдения требований в строительной сфере сократилось с 10 до 7 тысяч. Но, на наш взгляд, даже после такого значительного сокращения количество обязательных требований и правил, в том числе устаревших, остается просто колоссальным.

Важно отметить, что новый перечень требований не имеет «обратной силы»: проектная документация, разработка которой началась до 1 августа 2020 г., при подаче на первичную или повторную экспертизу проверяется на соответствие прежнему перечню обязательных правил, утвержденному Постановлением Правительства Российской Федерации от 26.12.2014 г. № 1521 («ППРФ 1521»).

Кроме того, ППРФ 985, на наш взгляд, не учитывает требования Градостроительного кодекса Российской Федерации («ГрК») в части определения применимых технических требований при экспертизе проектной документации. Согласно пункту 5.2 статьи 49 ГрК РФ, технические требования определяются не по дате начала разработки документации, а по дате градостроительного плана земельного участка («ГПЗУ») с учетом даты подачи проектной документации на экспертизу.

На практике, если застройщик, получивший ГПЗУ более полутора лет назад, начнет разработку проектной документации до 1 августа 2020 г. и будет, согласно указанию ППРФ 985, руководствоваться старыми требованиями (т. е. по ППРФ 1521, а не по ППРФ 985), существует риск того, что орган экспертизы выдаст отрицательное заключение на такую проектную документацию. Это может произойти, если орган экспертизы в такой ситуации правомерно будет руководствоваться ГрК (имеющим большую юридическую силу), а не ППРФ 985.

Данный риск подтверждается и позицией Минстроя России, который в своем письме от 14.08.2020 г. № 25756-ОГ/08, посвященном применению ППРФ 985, прямо сослался на соответствующие нормы ГрК, проигнорировав буквальные формулировки упомянутого постановления.

РЕКОМЕНДАЦИИ

Полагаем, что при установлении порядка применения технических требований в строительстве необходим более системный подход, учитывающий иерархию нормативно-правовых актов.

Также при принятии подобных нормативно-правовых актов следовало бы учитывать суть технического регулирования строительства, которое будет гарантировать качество и безопасность строительных работ и их результатов, не создавая при этом излишних административных барьеров.

В частности, вероятно, следовало бы придавать «обратную силу» тем техническим требованиям, которые устраняют очевидные ошибки и непосредственно влияют на безопасность. В то же время в части тех требований, которые «смягчают» техническое регулирование, необходимо дать застройщику право выбора по собственному усмотрению применять более строгие или мягкие требования.

ОБЗОР ПЕРЕЧНЯ ЗАКОНОДАТЕЛЬНЫХ ИСТОРИЙ, КОТОРЫЕ ТРЕБУЮТ АКТУАЛИЗАЦИИ, ЧТОБЫ В СЛУЧАЕ ПОДОБНЫХ ЭПИДЕМИЙ БЫЛ ОДНОЗНАЧНО ПОНЯТЕН ПОРЯДОК ДЕЙСТВИЙ И СОСТАВ ОБЯЗАННОСТЕЙ СТОРОН ДОГОВОРА СТРОИТЕЛЬНОГО ПОДРЯДА

ВЛИЯНИЕ ЭПИДЕМИЙ НА ПОРЯДОК И СРОКИ ИСПОЛНЕНИЯ ОБЯЗАТЕЛЬСТВ ПО ДОГОВОРУ СТРОИТЕЛЬНОГО ПОДРЯДА

ПРОБЛЕМА

Новая коронавирусная инфекция (COVID-19), с которой мир столкнулся в 2020 году, оказала и продолжает оказывать огромное влияние на многие жизненно важные сферы общества. Строительная отрасль также приняла на себя удар вследствие ограничения передвижения людей и грузов между странами и внутри Российской Федерации, ограничений в работе органов власти, заморозки и полной остановки работ на многих объектах строительства, отсутствия релевантного законодательного регулирования.

Новые реалии стали диктовать свои правила, вследствие чего возникла необходимость принятия на законодательном уровне ряда поправок, чтобы в случае ухудшения эпидемиологической ситуации, связанной с новым ростом заболеваемости COVID-19, а также в случае возникновения подобных эпидемий был четко регламентирован порядок действий участников рынка и, в частности, сторон договора строительного подряда.

В период пандемии стороны договора строительного подряда столкнулись с неопределенностями в отношении порядка и сроков исполнения своих обязательств по договору, а также по поводу возможности прекращения таких обязательств ввиду принятых на территории Российской Федерации ограничительных мер.

Верховным Судом Российской Федерации 21 апреля 2020 г. был выпущен Обзор по отдельным вопросам судебной практики, связанным с применением законодательства и мер по противодействию распространению на территории Российской Федерации новой коронавирусной инфекции (COVID-19) № 1, который постарался ответить на вышеуказанные вопросы, однако участники гражданского оборота по-прежнему не защищены в случае возникновения подобных эпидемий мирового масштаба в будущем.

РЕКОМЕНДАЦИИ

Для поддержания сторон договора строительного подряда и устойчивого функционирования строительной отрасли реко-

мендуется предпринять следующие основополагающие меры в сфере гражданских правоотношений:

- Скорректировать понятие обстоятельств непреодолимой силы («форс-мажора») в Гражданском кодексе Российской Федерации путем отнесения возникновения подобного рода эпидемий мирового значения к обстоятельствам непреодолимой силы для предотвращения в дальнейшем возникновения большого количества споров о природе эпидемий и порядке исполнения обязательств по договору или же принять новый федеральный закон, в котором определить и детализировать понятие обстоятельств непреодолимой силы именно в разрезе строительных работ, а также установить порядок действий сторон в рамках соответствующих правоотношений.
- Дополнить статью 716 Гражданского кодекса Российской Федерации положениями, наделяющими подрядчика правом приостановить работу в случае наступления на территории Российской Федерации соответствующей эпидемиологической ситуации.
- Предусмотреть на уровне подзаконных актов регламент приостановки выполнения строительных работ в связи с наступлением форс-мажорных обстоятельств и их последующего возобновления. При этом необходимо учитывать дополнительные временные и финансовые затраты, которые могут возникать у подрядчиков в связи с временной демобилизацией и консервацией строительной площадки, а также возобновлением работ в будущем, и предусмотреть соответствующее распределение рисков между сторонами правоотношений по договору строительного подряда.

УТОЧНЕНИЕ ПОНЯТИЯ «НЕРАБОЧИЕ ДНИ» ПРИМЕНИТЕЛЬНО К СТРОИТЕЛЬНЫМ РАБОТАМ

ПРОБЛЕМА

Рабочие дни в период с 30 марта 2020 г. по 11 мая 2020 г. в несколько этапов были объявлены Президентом Российской Федерации нерабочими (Указами от 25 марта 2020 г., 2 апреля 2020 г. и 28 апреля 2020 г.) (далее – «Указ»).

В связи с Указом у сторон договора строительного подряда возник вопрос о необходимости исполнения обязательств по таким договорам, принимая во внимание, что строительные работы зачастую ведутся непрерывно, а также в связи с тем, что трудовое законодательство дает определения только «выходным дням» и «нерабочим праздничным дням».

РЕКОМЕНДАЦИИ

- Дать определение в Гражданском кодексе Российской Федерации или же внести соответствующие правки в Трудовой кодекс Российской Федерации в части понятия «нерабочие дни» применительно к строительным работам, разъяснив, что «нерабочие дни» не наделяют стороны договора строительного подряда правом на перенос сроков исполнения своих обязательств по таким договорам.
- В случае принятия в будущем нормативно-правовых актов, аналогичных по смыслу и содержанию Указу, детально урегулировать в них понятие «нерабочие дни» и его применение в различных типах гражданских правоотношений, включая договоры строительного подряда.

КОМИТЕТ ПО ОХРАНЕ ТРУДА, ЗДОРОВЬЯ, ОКРУЖАЮЩЕЙ СРЕДЫ И БЕЗОПАСНОСТИ

Председатель:
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ОХРАНА ТРУДА И ЗДОРОВЬЯ

ПРОБЛЕМА

В сложившихся условиях необходимо осознать, что происходящие в настоящее время изменения затрагивают организацию труда и связанные с ним факторы риска. С точки зрения охраны труда и техники безопасности наблюдаются существенные изменения, на которые организациям настоятельно рекомендуется обратить более пристальное внимание. Концепция устойчивого развития часто применяется в отношении вопросов экологии, охраны окружающей среды и экономики. Но это еще не все. В настоящее время также можно зафиксировать смену взгляда на роль человеческого фактора с человекоцентричного, узкого, к более широкой, интегрированной перспективе, в связи с чем концепция индивида начинает рассматриваться по-новому. Данная тенденция отражается в исследованиях рефлексивности, психологической концепции, которая отходит от предыдущей концепции, рассматривавшей совокупный вклад отдельных сотрудников в контексте общего организационного и стратегического планирования, в сторону более широкого внедрения концепта благополучия сотрудников, что позволяет обеспечить дополнительный рост, высокую адаптивность и в конечном итоге превращение человеческого фактора в основной элемент капитала организаций. Основными компонентами нового подхода являются индивидуальный рост и развитие, а также инструменты, используемые организациями для достижения персональных целей. В текущей ситуации понимание проистекающих из такого гибкого подхода выгод и факторов роста является для организации источником необходимых возможностей.

По данным проведенного исследования, несмотря на то что работа из дома может быть возможна не для всех сотрудников, а в отдельных случаях такой режим работы может оказаться нежелательным, такая форма организации работы может дать сотрудникам «толчок», благодарю которому вырастут их адаптивные способности, что в свою очередь поможет им стать более вовлеченными в деятельность работодателя и более эффективно добиваться достижения собственных целей и целей организации. Для достижения данной цели, с организационной точки зрения, необходимо проделать существенную работу по внедрению изменений.

РЕКОМЕНДАЦИИ

Чтобы адаптироваться к новым требованиям работы организаций, необходимо внедрять новые формы работы из дома, благодаря которым можно было бы побороть неразбериху и неуверенность. Важно обеспечить достаточную безопасность оборудования и линий связи с использованием безопасных интернет-протоколов. Организовать рабочее место, время и связь с коллективом, а также разъяснить корпоративные цели при удаленной работе. Признать важность психического здоровья сотрудников, а также внедрить эффективную систему поддержки и консультирования. Многие сотрудники оказались неподготовлены для работы в новых условиях. Многие из них стали работать сверх установленного рабочего времени, не сумев достичь необходимого баланса между работой и домашними делами. Основными вызовами станут всестороннее переосмысление концепции взаимодействия между сотрудниками, осуществление удаленного управления, поддержание вовлеченности и мотивации коллективов при работе в удаленном режиме, обеспечение непрерывности и высокого качества работы. В тех компаниях, сотрудники которых должны в обязательном порядке посещать свое рабочее место, должны строго соблюдаться меры безопасности, что зачастую требует тщательного пересмотра подходов к организации рабочего процесса. Новые концепции должны появиться не только в сфере логистики и организации деятельности, но также в контексте анализа факторов незащищенности и дополнительного стресса на рабочем месте. Признание факта наличия растущего стресса на рабочем месте требует создания эффективной системы, которая бы помогала сотрудникам справляться со стрессом, повышать свои навыки и компетенции, а также расти профессионально, несмотря на эмоциональную нагрузку. Обеспечение надлежащего перехода к таким новым формам организации рабочего процесса создаст новые возможности, которые могут быть реализованы посредством повышения гибкости и уровня интеграции.

ПОЛИТИКА В ОБЛАСТИ ИЗМЕНЕНИЯ КЛИМАТА

ПРОБЛЕМА

За последние месяцы международная политика в области изменения климата потерпела целый ряд поражений. В частности, в рамках Конференции ООН по изменению климата (COP25), основной площадки, предназначенной для решения

соответствующих вопросов, не было достигнуто согласия относительно применимых в международном масштабе механизмов разрешения проблем, связанных с изменением климата. Из-за пандемии следующая Конференция (COP), проведение которой планировалось в конце 2020 года, была перенесена на конец 2021 года с оговоркой о возможности переноса и этого срока. Более того, учитывая замедление темпов роста экономик стран мира, можно сделать вывод о том, что выбросы загрязняющих веществ стали менее существенным фактором. Как бы то ни было, за последние месяцы был достигнут существенный прогресс в области внедрения международных структур. Важно отметить, что были определены группы показателей, которые будут установлены в отношении перерасчетов, которые авиакомпании могут быть вынуждены провести в связи с введенными Международной организацией воздушного транспорта (IATA) ограничениями на выбросы. Также Система компенсации и сокращения выбросов углерода для международной авиации (CORSIA), занимающаяся пересмотром данных по выбросам авиакомпаний, объявила о внедрении новых типов показателей. Также был создан реестр таких показателей в целях выполнения технических требований в рамках торговли выбросами и привлечения в CORSIA новых государств-участников.

Некоторыми странами были запущены новые и расширены действующие инициативы в данной сфере. Следует отметить, что ведущие свою деятельность на международном уровне корпорации продолжают работу над выполнением принятых на себя обязательств по сокращению своих выбросов, а также, в отдельных случаях, выбросов своих поставщиков. Как следствие, у экспертов по вопросам климата прибавилось работы, спрос на которую, согласно их прогнозам, также вырастет в скором времени.

Российским законодателям удалось добиться определенного прогресса в последнее время, однако на данный момент не сложилось ясной концепции, которая могла бы сориентировать компании относительно того, что им ожидать в дальнейшем, в том числе в долгосрочной перспективе.

РЕКОМЕНДАЦИИ

Рекомендуем ускорить принятие законодательных мер для облегчения ведения российскими компаниями своей деятельности на международных рынках углерода. Мы убеждены, что чем более широкий круг вопросов будет охвачен нормативным регулированием, тем больше российских предприятий сможет воспользоваться преимуществами, предоставляемыми в рамках такого регулирования, в том числе на международном уровне.

БЕЗОПАСНОСТЬ

ПРОБЛЕМА

2020 год естественным образом стал годом управления рисками и кризисными ситуациями. Профессионалы в этой области шутят, что этот и, скорее всего, 2021 год – это своего рода «подарок», реальная проверка на устойчивость бизнеса. Многие не прошли этот тест.

Доктор Дэвид Рубенс, Управляющий директор Института стратегических рисков в Лондоне, который любезно согласился поделиться своим видением, считает, что конец 2020 года будет временем выживания и стабилизации, однако для тех организаций, которые разделяют принципы управления рисками и кризисными ситуациями, поддержания непрерывности бизнеса и устойчивости бизнеса, 2021 год будет годом новых возможностей.

Для многих организаций вызовы, с которыми они столкнулись в последние месяцы, были разрушительны до такой степени, которую было трудно представить до COVID. Наверное, не осталось ни одной бизнес-модели, которая смогла бы не только устоять, но и остаться полностью рабочей в «новом мире».

Помимо вызовов появились и возможности. Как будто COVID нажал кнопку перезагрузки, и мы все начинаем с чистого листа вне зависимости от размеров бизнеса. У нас у всех появилась возможность заново открыть себя. Будем ли мы делать бизнес в 2021 году? Конечно! Будем ли мы его делать также, как в 2019 году? Конечно, нет. Владельцы и руководство компаний должны видеть в COVID не столько разрушителя старого порядка, сколько создателя нового.

И в этом новом порядке выиграют те организации, которые не просто рассматривают себя гиперконкурентными и сверххищниками, а те, которые в состоянии построить взаимовыгодные отношения со своими партнёрами и клиентами, создавая возможности через поддержку и сотрудничество.

РЕКОМЕНДАЦИИ

- Принять тот факт, что мир уже не будет прежним.
- Искать новые возможности и развивать практики, которые поддержат начинания.
- Продолжать тестировать планы по поддержанию непрерывности бизнеса – «идеальный шторм» еще не закончился.
- Следить за регуляторными и иными изменениями.
- Внимательно мониторить конкурентную среду.

ЧЛЕНЫ КОМИТЕТА

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КОМИТЕТ ПО МАЛОМУ И СРЕДНЕМУ БИЗНЕСУ

Председатель:
Андреас Битци, quality partners.

Координатор комитета:
Татьяна Морозова (tatiana.morozova@aebrus.ru)

ВВЕДЕНИЕ

Начиная с марта 2011 года, Комитет по малому и среднему бизнесу объединяет компании малого и среднего предпринимательства, входящие в Ассоциацию, и представляет их интересы. Комитет стремится выявлять конкретные потребности европейских компаний малого и среднего предпринимательства, работающих на российском рынке, и содействовать продвижению справедливых правил ведения бизнеса, используя этичное и эффективное сотрудничество компаний и обмен информацией между ними. Конечная цель заключается в улучшении делового климата для субъектов малого и среднего предпринимательства в России, позволяющего им выступать в качестве дополнительной движущей силы экономического роста и модернизации. Приоритетными направлениями деятельности Комитета, в частности, являются:

- установление новых деловых связей с другими членами АЕБ и местными компаниями;
- предложение платформы для взаимодействия с российскими государственными органами и регуляторами;
- создание площадки для обмена информацией, лучшими практиками и новостями соответствующих рынков;
- регулярное предоставление своим членам актуальной отраслевой/межотраслевой информации;
- взаимодействие с субъектами малого и среднего предпринимательства из государств-членов ЕС при поддержке посольств/торговых представительств.

ОБЗОР РЫНКА И МАКРОЭКОНОМИЧЕСКИХ АСПЕКТОВ

В последнее время деятельность малых и средних предприятий является одним из основных вопросов в повестке дня внутренней политики. В целом деятельность субъектов малого и среднего предпринимательства в России регулируется Федеральным законом № 209-ФЗ от 24.07.2007. В данный закон несколько раз вносились изменения; в настоящее время закон действует в последней редакции от 08.06.2020. В начале последнего экономического кризиса, в 2015 году, Государственная Дума Российской Федерации приняла закон о создании Федеральной корпорации по развитию малого и среднего предпринимательства, образованной путем слияния Агентства кредитных гарантий и Российского Банка поддержки малого и среднего предпринимательства. До создания Корпорации все инструменты по поддержке малого предпринимательства в России были разрознены. По мнению правительства, создание «единого окна» означало упрощение таких процедур.

Основная цель корпорации заключается в оказании финансового, инфраструктурного, имущественного, правового и методологического содействия, а также в предоставлении гарантий и поручительств для субъектов малого и среднего предпринимательства. Кроме этого, корпорация должна способствовать увеличению доли участия субъектов малого и среднего предпринимательства в государственных закупках. Например, субъекты малого и среднего предпринимательства вправе обратиться в суд в случае нарушения их прав при проведении торгов на размещение заказов для государственных или муниципальных нужд. Еще одной мерой, предпринятой правительством Российской Федерации, является создание единственной структуры по поддержке экспорта – Российского экспортного центра (РЭЦ) – путем организационного слияния Российского агентства по страхованию экспортных кредитов и инвестиций (ЭКСАР) и Эксимбанка. Несмотря на то что эти и другие меры, такие как усилия по улучшению делового климата, которые привели к повышению позиции России в рейтинге Doing Business Всемирного банка со 112 места в 2013 году до 31 места в 2019 году, определенно способствовали стабилизации сектора малого и среднего предпринимательства во время кризиса, некоторые известные проблемы и структурные сдерживающие факторы еще не были устранены.

Общее увеличение количества малых и средних предприятий, которое мы отмечали несколько лет назад, в настоящее время сменило направление в сторону их уменьшения; в целом количество таких предприятий сначала выросло с 2,241,650 в 2015 году (учитывались лишь юридические лица, ИП в расчет не принимались) до 2,768,614 в 2017 году, однако далее оно существенно снизилось до 2,336,710 (из которых 2,128,435 – микропредприятия, 191,036 – малые, а 17,239 – средние предприятия). Данные официальной статистики не показывают влияния пандемии коронавируса на ситуацию в данной сфере. Это может быть связано с определенным отставанием в возможной ликвидации МСП. Еще одним фактором может послужит тот факт, что многим компаниям, отвечающим критериям отнесения к МСП, но не включенным в официальный реестр МСП, удалось зарегистрироваться в реестре после объявления российским Правительством мер поддержки малого и среднего предпринимательства. Значительное снижение общего количества МСП, которое наблюдалось с июля по август 2020 года, обусловлено техническими причинами – аналогичная ситуация может наблюдаться каждый год. Количество сотрудников МСП

(за исключением ИП) составило 12,9 млн человек против 13,73 млн человек тремя годами ранее.

Абсолютное большинство организаций в реестре МСП составляют микропредприятия – 2,128,435 (при этом на долю малых и средних предприятий приходится 191,036 и 17,239 соответственно). Наиболее широко МСП представлены в таких отраслях как строительство/недвижимость и торговля. В совокупности доля субъектов малого и среднего предпринимательства в структуре ВВП и занятости остается очень низкой в международном сравнении: около 22%. Согласно целям, определенным в рамках национальных проектов, к 2024 году доля указанных субъектов должна вырасти до 32,5%. К 2030 году Правительство планирует добиться роста этой доли до уровня в 40%.

Причины слабого развития российского малого и среднего предпринимательства хорошо известны: сложность получения кредитов под разумные проценты, дискриминация в доступе к договорам закупок, особенно со стороны компаний с государственным участием, а также административные барьеры и низкая эффективность государственных программ, включая программы предоставления субсидий субъектам малого и среднего предпринимательства в регионах. В течение периода ограничений, введенных в условиях пандемии COVID-19, поддержка государством МСП была по большей части ориентирована на отдельные сектора экономики. Другими словами, сегмент МСП в целом столкнулся с серьезными трудностями, не получая от государства той поддержки, которая была ему нужна. Можно предположить, что в ближайшее время доля МСП сократится в противоположность заявленным Правительством целям.

Комитет по малому и среднему бизнесу направит свои усилия на вовлечение российских органов власти в диалог с целью поиска решений, которые помогут европейским МСП, а также МСП в целом более эффективно использовать возможности, имеющиеся на российском рынке. Действительно, в течение последних двух месяцев главными темами обсуждения были меры поддержки МСП, направленные на противодействие негативному воздействию вызванного COVID-19 экономического кризиса.

ПРОБЛЕМЫ

КРИТЕРИИ ОТНЕСЕНИЯ ПРЕДПРИЯТИЙ К МСП

В настоящее время компания считается МСП, если количество ее сотрудников составляет не более 15 (микропредприятия), 100 (малые предприятия) и 250 (средние предприятия). Максимальный размер дохода, установленный для указанных категорий предприятий, составляет 120 млн рублей (микропредприятия), 800 млн рублей (малые предприятия) и 2 млрд рублей (средние предприятия).

В марте 2020 года президент Владимир Путин поставил вопрос о соответствии указанных критериев реальной ситуации в секторе МСП, а также о необходимости внесения в них корректировок для обеспечения их максимального соответствия стоящим перед правительством целям по содействию развитию малого и среднего бизнеса. Как следствие, данный вопрос был поднят Министерством экономического развития под руководством Максима Решетникова, которое обратилось к бизнесу за предоставлением соответствующих данных.

РЕКОМЕНДАЦИИ

Комитет по малому и среднему бизнесу Ассоциации европейского бизнеса собрал соответствующие данные среди своих членов. После этого 19.05.2020 Комитет направил в Министерство экономического развития письмо с рекомендацией оставить критерии, касающиеся максимального количества сотрудников предприятий для всех трех категорий МСП на текущем уровне. Относительно же предельных значений дохода, Комитет рекомендовал повысить максимальные значения для всех трех категорий с целью их адаптации к текущему уровню экономического развития и реальному состоянию экономики России до следующих значений:

- микропредприятия: 150 млн руб. вместо 120 млн руб.;
- малые предприятия: 1 млрд руб. вместо 800 млн руб.;
- средние предприятия: 4 млрд руб. вместо 2 млрд руб.

Минэкономразвития предоставило ответ на рекомендацию Комитета АЕБ по малому и среднему бизнесу 02.07.2020 года. По мнению министерства, необходимость внесения изменений в установленные на текущий момент критерии отсутствует. В качестве основного аргумента Министерство экономического развития заявило, что увеличение максимальных значений приведет к снижению объема поступлений в государственный бюджет, в связи с чем указанные значения должны остаться без изменений.

КРИТЕРИИ И ПОРЯДОК ВКЛЮЧЕНИЯ КОМПАНИЙ НАЛОГОВЫМИ ОРГАНАМИ РОССИИ В ОФИЦИАЛЬНЫЙ РЕЕСТР МСП

В условиях текущих ограничений, связанных с COVID-19, и вызванного пандемией спада экономики, в связи с которыми Правительством РФ был принят ряд мер поддержки МСП, направленных прежде всего на помощь «наиболее пострадавшим отраслям», многие удовлетворяющие критериям отнесения к МСП компании могут выяснить, что они не включены в официальный реестр МСП или исключены из него. При этом данные реестра являются основным критерием, на основании которого принимается решение о наличии у компании права на получение мер поддержки, введенных Правительством РФ, а также региональными органами власти. Отметим, что ранее многие компании просто не придавали значения включению в реестр, поскольку они не видели особой выгоды от наличия официального статуса МСП. Для многих организаций-членов АЕБ, а также сторонних компаний факт невключения в реестр оказался неожиданностью, в связи с чем такие компании обратились к Ассоциации и Комитету по малому и среднему бизнесу за разъяснением касательно установленных критериев и порядка внесения в реестр соответствующих сведений. В настоящее время отдельные компании, полностью удовлетворяющие правовым критериям отнесения к МСП, могут с легкостью направлять свои обращения в налоговые органы и добиться внесения (возврата) соответствующих сведений в реестр, используя онлайн-

портал для МСП, при условии, что они находятся в собственности российских и (или) частных лиц. При этом неизвестным остается причина, по которой некоторые компании, которые ранее числились в реестре, были внезапно и без предоставления какой-либо информации об этом исключены из него. Предприятия, доля иностранного участия в которых составляет свыше 49%, должны будут привести доказательства того, что их иностранные материнские компании также соответствуют российским критериям отнесения к МСП. Для этого в рамках данной процедуры должен быть назначен уполномоченный на совершение соответствующих действий аудитор, а иностранная компания должна предоставить и легализовать необходимые документы. Такие действия требуют существенных затрат времени и расходов, к тому же нет гарантии, что их совершение принесет желаемый результат.

РЕКОМЕНДАЦИИ

Комитет по малому и среднему бизнесу Ассоциации европейского бизнеса рекомендует упростить соответствующие процедуры и сделать их более прозрачными:

- Включенное в реестр предприятие должно автоматически информироваться по электронной почте за 30 дней до даты предполагаемого исключения из реестра с указанием причины исключения. Это даст предприятиям достаточное количество времени для принятия соответствующих мер.
- В случае с МСП, доля иностранного участия в которых составляет более 49%, рекомендуется упростить процедуру таким образом, чтобы продление регистрации могло осуществляться не ежегодно, а, например, раз в два года. Таким образом можно снизить трудозатраты, а также финансовые затраты как со стороны налоговых органов, так и со стороны налогоплательщиков.
- Следует перейти от работы с бумажными документами, необходимыми для внесения компаний в реестр, а также для продления их регистрации, к работе с документами в электронной форме.

ИСКЛЮЧЕНИЕ БОЛЬШИНСТВА КОМПАНИЙ МСП ИЗ СПИСКОВ НА ПОЛУЧЕНИЕ ГОСУДАРСТВЕННОЙ ПОДДЕРЖКИ В СВЯЗИ С ПАНДЕМИЕЙ COVID-19

В условиях вызванного COVID-19 кризиса, который затронул Россию так же глубоко, как и прочие страны по всему миру, правительство РФ быстро приняло необходимые меры и заявило о поддержке малого и среднего предпринимательства. Такие меры должны были существенно облегчить ситуацию в сегменте МСП. Однако практически все эти меры оказались направлены на поддержку так называемых «наиболее пострадавших отраслей», а абсолютное большинство МСП осталось без господдержки, при том что кризис затронул практически все существующие предприятия. Единственной мерой, которая бы охватила весь сектор МСП, могла бы стать мера по снижению ставки социальных отчислений до 15% для всех предприятий, что существенно облегчило бы положение многих компаний. В этой связи стоит отметить, что летом – в начале осени 2020 года многие компании МСП прекратили свою деятельность в связи с проблемами с ликвидностью, причем в дальнейшем мы можем столкнуться с новой волной банкротства предприятий.

Также существенным фактором поддержки предприятий во многих западных странах является концепция временного сокращения рабочего времени. В рамках данного режима работы работодатель имеет возможность реагировать на внезапное временное падение спроса, сокращая рабочее время сотрудников и одновременно пропорционально сокращая их заработную плату. Государство в течение ограниченного периода времени и в определенном объеме компенсирует сотрудникам их потери в заработной плате. В некоторых странах государство компенсирует сотрудникам компаний до 80% указанных потерь, в других государство компенсирует данные потери в большем объеме, в третьих – в меньшем. Например, если на протяжении полугода количество рабочих часов уменьшается на 50%, то работодатель в свою очередь также снижает затраты на заработную плату на 50%. Если государство компенсирует сотруднику 80% недополученной им части заработной платы, то такой сотрудник получит 80% от потери половины своей заработной платы в виде компенсации, в связи с чем в конечном итоге такой сотрудник получит 90% от своей докризисной зарплаты. Таким образом можно уменьшить влияние режима сокращения рабочего времени на сотрудников, а также снизить риск существенного снижения экономического благополучия населения в связи с переходом на сокращенные графики работы.

РЕКОМЕНДАЦИИ

Учитывая вероятность наступления второй волны кризиса, а также возникновения в будущем новых пандемических ситуаций с аналогичными последствиями или иных кризисов, мы рекомендуем пересмотреть концепцию поддержки в первую очередь «наиболее пострадавших отраслей». Реальность такова, что кризис сказывается на всей экономике и в текущих условиях существует риск возникновения цепной реакции. Поддержка компаний МСП должна быть более широкой, доступ к ней должны иметь все субъекты МСП, например на основании конкретных финансовых показателей. Необходимо устранить имеющиеся чрезмерные бюрократические барьеры, мешающие компаниям получать необходимую поддержку.

Также рекомендуем рассмотреть возможность применения концепции режима сокращенного рабочего времени, описанной выше, чтобы предотвратить вынужденное увольнение компаниями МСП большого количества своих сотрудников.

Если предложенные концепции будут рассмотрены и решения по ним будут приняты в самое ближайшее время, то Правительство будет готово принять конкретные меры при наступлении в будущем любых кризисных ситуаций, а компании МСП и их сотрудники будут лучше защищены от краткосрочного воздействия кризисов.

АДМИНИСТРАТИВНЫЕ БАРЬЕРЫ ПРИ ВЕДЕНИИ ПРЕДПРИНИМАТЕЛЬСКОЙ ДЕЯТЕЛЬНОСТИ

Изменения законодательства могут принести большую пользу малому и среднему предпринимательству, однако в настоящее время большая часть объявленных изменений носит декларативный характер, трудна для понимания, а точная информация о законопроектах недостаточна и труднодоступна. Количество мер кон-

троля и объем административной бумажной работы приводят к практической невозможности соблюдения всех требований. Кроме этого, возможная необъективность некоторых госслужащих неблагоприятно влияет на и без того сложный процесс. Вследствие этого директора субъектов малого и среднего предпринимательства вынуждены вносить существенный личный вклад в процесс для преодоления данных бюрократических преград.

РЕКОМЕНДАЦИИ

Ясно, что уменьшение уровня бюрократизации и коррупции является первоочередным вопросом для субъектов малого предпринимательства в России. Мы приветствуем любое упрощение процесса регистрации и смягчение прочих административных требований, предъявляемых к малым и средним предприятиям. Помимо этого, мы считаем, что упрощение методик контроля за безопасностью и охраной труда, противопожарной охраной, а также за соблюдением трудового законодательства и других правил принесет большую пользу. Мы предлагаем ввести требование, согласно которому финансовая и налоговая отчетность должна подготавливаться не чаще чем раз в год. Замена регистрации по юридическому адресу регистрацией компании по домашнему адресу собственника или генерального директора может также способствовать упрощению создания субъектов малого предпринимательства. С другой стороны, необходимо поддерживать и поощрять деловую добросовестность субъектов малого и среднего предпринимательства и соблюдение ими законодательства. В целях привлечения внимания делового сообщества к истории деловой этики субъектов малого и среднего предпринимательства Комитет и АЕБ должны способствовать ведению регулярного диалога или создать соответствующую платформу при поддержке правительства Российской Федерации и других общественных организаций.

ТРУДОВОЕ ЗАКОНОДАТЕЛЬСТВО, НАПРАВЛЕННОЕ НА ЗАЩИТУ ПРАВ РАБОТНИКОВ

Трудовое законодательство претерпело существенные изменения к лучшему с момента создания Российской Федерации, однако в нем все еще содержатся некоторые избыточные положения о защите прав работников. Данные правила не позволяют работодателям с легкостью адаптироваться к быстро меняющейся экономической среде, что оказывает особо отрицательное воздействие на малые компании, у которых отсутствуют надлежащие финансовые или временные ресурсы для восполнения последствий применения жестких административных правил.

РЕКОМЕНДАЦИИ

Мы предлагаем увеличить срок отработки при увольнении по собственному желанию до 3 месяцев для менеджеров среднего и высшего звена и до 1 месяца для работников более низкого уровня. Такое положение уже существует в ряде европейских стран. Это предоставит субъектам малого и среднего предпринимательства большее время для поиска новых сотрудников, а также это будет выгодно для сотрудников, которые получат более высокое выходное пособие. Мы также предлагаем упростить и либерализовать систему регулирования заключения срочных трудовых договоров. Это существенно увеличит возможности собственников малых компаний, вынужденных реагировать на изменения деловой среды.

ЧЛЕНЫ КОМИТЕТА

Credendo – Ingosstrakh Credit Insurance LLC • Creon Capital S.a.r.l • DAF Trucks Rus LLC • Dentons • DHL Express • DISPAK, LLC • Egorov Puginsky Afanasiev & Partners (EPAM) • EKE Group • ERM (Environmental Resources Management) • EY • Ferrero Russia, CJSC • FM LOGISTIC VOSTOK • Foodcard • Generali Russia & CIS • Gestamp Russia • Helene Moris • HELLENIC BANK PCL • HERBALIFE NUTRITION • Heroes S.r.l • Hino Motors, LLC • HUMAN SEARCH, OOO • IE Business School • Intermark Relocation • International Hotel Investments (Benelux) B.V., Branch of IHI, Private Limited Liability Company • International School LLC • International SOS • INVESTMENT COMPANY IC RUSS-INVEST • Italcantieri • IWM • JTI Russia • JURALINK • Juralink G-nius • KfW IPEX-Bank Representative Office • Kuehne+Nagel • KUUSAKOSKI OY (Petromax AO) • LANXESS LLC • LIEBHERR-RUSSLAND • Lighthouse Russia BV • Lincoln International CIS Holding B.V. • Branch in Moscow • Macro-Advisory Ltd. • MAI Insurance Brokers • Mannheimer Swartling • Mazars • Mercedes-Benz Russia • Messe Frankfurt Rus Ltd. • MonDef • Moskva-Krasnye Holmy LLC • MOST SERVICE, member of Bruck Consult • NOBLE HOUSE Group Russia • Nordea Bank • Oriflame • Pavia e Ansaldo • Pepeliaev Group • LLC • Perfetti Van Melle Co. • Ltd • Philip Morris Sales and Marketing • Polish Business Club in Moscow • Port Hamburg Marketing • Publicity Consulting Group, an ECCO Network Affiliate in Russia • PwC • quality partners. • Raiffeisenbank AO • Renaissance Moscow Monarch Centre Hotel • Robert Bosch OOO • Rödl & Partner • Royal Norwegian Consulate General in St. Petersburg • SAF-HOLLAND • SCANDINAVIAN INTERIORS JSC • SCHNEIDER GROUP • SECRETAN TROYANOV SCHAER S.A. • SPEAKUS Ltd • Special economic zone "STUPINO QUADRAT" • Spectrum holding Ltd • Stockholm School of Economics in Russia • Subaru Motor • Swissotel Krasnye Holmy Moscow • TABLOGIX • TechSert • TMF Group • TNT • Toyota Motor • Unipro PJSC • Urus Advisory Ltd. • Viruni Capital Partners • Vitus Bering Management Ltd. • Vlasta-Consulting, LLC • VSK Insurance House (SAO VSK) • Welcome Abroad Relocations • Zentis Russland LLC.

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ИЗМЕНЕНИЕ СОГЛАШЕНИЙ ОБ ИЗБЕЖАНИИ ДВОЙНОГО НАЛОГООБЛОЖЕНИЯ

ПРОБЛЕМА

В рамках своего выступления 25 марта 2020 г. Президент Российской Федерации предложил внести корректировки в соглашения об избежании двойного налогообложения со странами, являющимися «транзитными», через которые проходят «значительные ресурсы российского происхождения». Данные корректировки заключаются в повышении ставки налога на доходы в форме дивидендов с 5% до 15%, а также установлении ставки в 15% в отношении процентов, выплачиваемых в пользу иностранных компаний, расположенных в указанных странах.

В дополнение указанного сообщения Минфин России выпустил информационное обращение, согласно которому изменения, которые планируются в части повышения ставки налога у источника на доходы в виде дивидендов и процентов, коснутся так называемых транзитных юрисдикций. Как правило, компании в таких юрисдикциях созданы для целей применения пониженных ставок, установленных соглашениями об избежании двойного налогообложения. Это относится, в первую очередь, к Кипру и ряду других аналогичных юрисдикций.

Позднее Минфин России направил письма с указанным предложениями в адрес Республики Кипр, Мальты, а также Герцогства Люксембург. Затем аналогичное письмо также было направлено в Королевство Нидерланды.

По состоянию на октябрь 2020 г. в соглашения с Республикой Кипр и Мальтой внесены изменений, соответствующие Протоколы подписаны обеими сторонами, изменения вступят в силу с 1 января 2021 г. В отношении Герцогства Люксембург Минфином России опубликован проект Протокола.

Исходя из текста данных Протоколов следует, что действовавшие ранее оценочные критерии применения пониженной 5%-й ставки при выплате дивидендов и освобождения – в случае выплаты процентов – заменены на две группы критериев, основанных на статусе получателя доходов (формальные критерии). Например, в отношении дивидендов правом на пониженную 5%-ю ставку и на освобождение в случае выплаты процентов имеют следующие получатели:

(A) лица с особым статусом: (i) страховое учреждение или пенсионный фонд; или (ii) Правительство, политическая организация, орган местного самоуправления; или (iii) Центральный Банк;

(B) публичные компании, то есть компании, акции которых котируются на зарегистрированной фондовой бирже при условии, что не менее чем 15% акций, дающих право голоса в такой компании, находятся в свободном обращении, при условии годового 15%-го участия в российской компании, выплачивающей дивиденды.

Таким образом, из перечня лиц, имеющих право на применение пониженной 5%-й ставки по дивидендам и освобождения от налогообложения у источника в отношении процентных выплат, были исключены все частные компании, независимо от объемов их прямого инвестирования в Российскую Федерацию и доли участия в российской компании, выплачивающей дивиденды.

Такой подход ущемляет права частных иностранных инвесторов в России, а также противоречит задаче стимулирования обмена товарами, работами и услугами, которую в первую очередь выполняют Соглашения между государствами об избежании двойного налогообложения. Иностранные инвесторы, уже вложившие средства в российскую экономику, поставлены перед фактом повышенного налогообложения на возврат своих денежных средств через дивиденды, что, безусловно, негативно влияет на экономику их проектов в России и снижает дальнейшие перспективы развития своего бизнеса в России. В отношении же новых инвесторов это устанавливает повышенные барьеры для выхода на российский рынок, заставляя повышать стоимость своей продукции и услуг для того, чтобы экономика проекта оставалась прибыльной.

РЕКОМЕНДАЦИИ

- Предусмотреть исключения к применению повышенной ставки налога в части дивидендного и процентного доходов в отношении частных компаний, прямо инвестирующих в Россию денежные средства в размере, согласованном в Соглашении об избежании двойного налогообложения, и владеющих не менее, чем 15 процентами капитала компании, выплачивающей дивиденды, в течение периода 365 дней, включающего день выплаты дивидендов.

- Предусмотреть исключения к применению повышенной ставки налога в части дивидендного и процентного доходов в отношении компании, соответствующей двум критериям: (1) 50 процентов капитала такой компании прямо принадлежит публичной компании, акции которой котируются на зарегистрированной фондовой бирже и (2) такая компания прямо владеет не менее, чем 15 процентами капитала компании, выплачивающей дивиденды, в течение периода 365 дней, включающего день выплаты дивидендов.

НДС С ЭЛЕКТРОННЫХ УСЛУГ

ПРОБЛЕМА

С 01.01.2019 вступил в силу новый режим обложения электронных услуг российским НДС. По новым правилам, все иностранные организации, которые оказывают электронные услуги российским покупателям, обязаны встать на учет в налоговых органах РФ и самостоятельно подавать отчетность по НДС и уплачивать его в российский бюджет. Указанные требования не имеют каких-либо исключений и распространяются даже на разовые сделки, внутригрупповые сделки и сделки с незначительной стоимостью.

Более того, исходя из ряда официальных разъяснений Минфина и ФНС России, постановка иностранной организации на налоговый учет в РФ по любому основанию (в том числе в качестве иностранного поставщика электронных услуг) влечет обязанность этой организации самостоятельно отчитываться и уплачивать НДС по всем сделкам, облагаемым российским НДС, а не только по электронным услугам («иная реализация»). При этом не урегулирован ряд технических вопросов, связанных с этим требованием, включая вопросы документального оформления сделок по «иной реализации» и права российских покупателей на вычет входящего НДС по таким сделкам.

Указанный режим идет вразрез с мировой практикой и создает необоснованные административные сложности для иностранных поставщиков электронных услуг. Этот режим требует от иностранных компаний детальных знаний российского налогового законодательства, а также сложной и зачастую дорогостоящей доработки ИТ-систем. Для средних и мелких иностранных компаний новые правила являются барьером для входа на российский рынок. Одновременно страдают интересы российских налогоплательщиков, которые теряют доступ к новым технологиям и инновационным цифровым продуктам либо несут налоговые риски, связанные с полным или частичным невыполнением российских требований иностранным поставщиком.

Острота перечисленных проблем частично сглажена Письмом ФНС России от 24.04.2019 № СД-4-3/7937@. Этим письмом, текст которого разрабатывался при активном содействии АЕБ, ФНС фактически «позволила» российским покупателям добровольно удерживать и уплачивать НДС по электронным услугам и «иной реализации» и принимать этот НДС к вычету. Однако данный механизм прямо противоречит Налоговому кодексу РФ и может применяться лишь при наличии достаточного контроля иностранного поставщика над действиями российского покупателя.

РЕКОМЕНДАЦИИ

- Ограничить сферу действия режима иностранными компаниями, оказывающими электронные услуги российским физическим лицам и/или индивидуальным предпринимателям.
- Устранить технические пробелы действующего режима.

ПРЕИМУЩЕСТВА

- Улучшение инвестиционного климата.
- Устранение необоснованных барьеров в международной торговле услугами.
- Снижение издержек и рисков участников налоговых отношений.
- Определенность для налогоплательщиков.

РАЗГРАНИЧЕНИЕ ОБЛАГАЕМОГО И НЕОБЛАГАЕМОГО ИМУЩЕСТВА

ПРОБЛЕМА

Федеральные законы от 29.11.2012 № 202-ФЗ, от 24.11.2014 № 366-ФЗ и от 03.08.2018 № 302-ФЗ предусмотрели отмену налогообложения движимого имущества. Однако на практике налоговые органы квалифицируют машины и оборудование как недвижимое имущество, поскольку они «связаны со зданием», в котором находятся, и «составляют сложный неделимый объект». В результате налогоплательщики при вводе в эксплуатацию новых производственных линий или модернизации существующих лишаются законного права на освобождение от налога на имущество.

В результате цель отмены «налога на модернизацию», заявленная в п. 1.1.3 Основных направлений налоговой политики на 2014–2016 гг., разд. 2 Основных направлений налоговой политики на 2015–2017 гг. и п. 3.1 Основных направлений бюджетной, налоговой и таможенно-тарифной политики на 2019–2021 гг., не достигнута.

Данная цель подтверждена в Постановлении Конституционного Суда РФ от 21.12.2018 № 47-П и Определениях Судебной коллегии по экономическим спорам Верховного Суда РФ от 16.10.2018 по делу № А68-10573/2016, от 12.07.2019 по делу № А05-879/2018.

РЕКОМЕНДАЦИИ

Необходимо непосредственно в Налоговом кодексе РФ разграничить облагаемое и необлагаемое имущество, чтобы исключить повышенное налогообложение создания и модернизации производства. Для этого следует законодательно установить четкие критерии облагаемого (необлагаемого) оборудования и

(или) возможность определения перечня такого оборудования постановлением Правительства РФ.

ПРЕИМУЩЕСТВА

- Снижение издержек и рисков участников налоговых отношений.
- Определенность для налогоплательщиков.
- Стимулирование процессов модернизации производства.

НАЛОГООБЛОЖЕНИЕ ВНУТРИГРУППОВЫХ УСЛУГ

ПРОБЛЕМА

В целях снижения издержек транснациональные корпорации используют так называемые сервисные компании, которые обслуживают участников группы, или аккумулируют специфические функции, связанные с организацией бизнес-процессов корпорации, на уровне материнской компании. Такая деятельность компании-исполнителя в интересах компаний-получателей приносит последним выгоду за счет отсутствия необходимости приобретать аналогичные услуги у третьих лиц или организовывать осуществление необходимых функций собственными силами.

Практика налогового администрирования последних лет была отрицательной для налогоплательщиков и, по существу, приводила к практической невозможности учета российскими налогоплательщиками расходов на приобретение услуг от компаний группы. Издав письмо от 06.08.2020 № ШЮ-4-13/12599@ («Письмо»), ФНС России сделала первый шаг к выработке единообразных подходов к проведению налогового контроля данного вида расходов. Вместе с тем проблема учета расходов на приобретение внутригрупповых услуг является многогранной, в связи с чем не все ее аспекты покрываются данными в Письме разъяснениями. В частности, Письмо не затрагивает ряд важных методологических вопросов, как, например, вопрос применения к сумме понесенных исполнителем затрат ключей распределения (ключей «аллокации») при косвенном механизме ценообразования, а также не вносит ясность в вопрос разграничения услуг и акционерной деятельности.

РЕКОМЕНДАЦИИ

Продолжить работу по выработке единых правил и порядка взаимодействия для налогоплательщиков и налоговых органов при учете расходов на приобретение внутригрупповых услуг, в том числе, в части выработки разумных и учитывающих лучшие бизнес-практики, соответствующие положениям Руководства ОЭСР по трансфертному ценообразованию, подходов к:

- определению цены услуг с использованием обоснованных ключей распределения;
- разграничению оказанных услуг и деятельности в интересах акционеров;
- ограничению полномочий территориальных налоговых органов в проведении детального анализа ценообразования по договору под видом проверки экономической обоснованности затрат;
- получению информации в отношении иностранного исполнителя посредством международного обмена информацией между налоговыми органами.

ПРЕИМУЩЕСТВА

- Унификация российских правил и практических подходов налоговых органов с международными правилами и подходами с учетом открытости глобальной отчетности международных групп и автоматического обмена информацией, что позволит минимизировать поводы и основания для инициирования компетентными иностранными органами взаимосогласительных процедур из-за различия в подходах к учету данного вида затрат.
- Повышение (сохранение) инвестиционной привлекательности российского рынка для иностранных инвесторов за счет определения понятных правил налогового администрирования.

ПРАВОВАЯ НЕОПРЕДЕЛЕННОСТЬ И ФОРМАЛЬНЫЙ ПОДХОД ПРИ ПРИМЕНЕНИИ ПОЛОЖЕНИЙ СТ. 54.1 НК РФ, И НЕОБОСНОВАННОЕ ПРИВЛЕЧЕНИЕ К ОТВЕТСТВЕННОСТИ ЗА УМЫШЛЕННУЮ НЕУПЛАТУ НАЛОГОВ

ПРОБЛЕМА

Сохраняющаяся неопределенность применения как отдельных положений ст. 54.1 НК РФ, так и статьи в целом негативно влияет на интерес иностранного бизнеса инвестировать в экономику России. В частности, это связано с формальным применением положений ст. 54.1 НК РФ со стороны налоговых органов – в некоторых случаях даже при отсутствии ущерба для бюджета.

Практика свидетельствует о необоснованном применении положений п. 1 данной статьи об «искажении сведений», приводящем к запрету на учет расходов/вычетов, при допущении налогоплательщиком даже незначительных ошибок в документах, бухгалтерском/налоговом учете. Положения данного пункта используются вместо или наряду п. 2 статьи в ситуациях, когда обязательство исполнено иным лицом (т.е. не лицом–стороной договора и (или) не лицом, которому обязательство по исполнению сделки передано по договору или закону) без учета того, должен или мог ли налогоплательщик знать, что обязательство будет исполняться иным лицом, а не контрагентом. Кроме того, налоговые органы не всегда учитывают, что хозяйствующие субъекты вправе вести свою деятельность любым не запрещенным законом способом, в т. ч. путем организации исполнения своих обязательств с привлечением третьих лиц (например, субподрядчиков). Такой подход на практике приводит к необоснованному отказу в признании расходов/вычетов при наличии претензий к контрагентам 2-го и последующих звеньев даже в случае, если непосредственный контрагент является реальным экономическим субъектом, который

должен самостоятельно нести ответственность за привлекаемых им контрагентов.

На практике налоговые органы также не всегда устанавливают действительные налоговые обязательства сторон сделки (не осуществляют т. н. «налоговую реконструкцию»), в результате чего сумма доначисляемых налогов может превышать сумму налогов, неуплаченную в бюджет.

Особой проблемой являются случаи объективного вменения при привлечении налогоплательщиков к ответственности на основании п. 3 ст. 122 НК РФ за умышленную неуплату налогов со ссылкой на ст. 54.1 НК РФ без указания в актах и решениях налоговых органов на конкретные доказательства и обстоятельства, подтверждающие совершение именно умышленного налогового правонарушения.

РЕКОМЕНДАЦИИ

Для разрешения сложившихся проблем необходимо принятие соответствующих разъяснений на уровне ФНС России в отношении следующих вопросов:

- корректная квалификация нарушений ст. 54.1 НК РФ и недопущение формального подхода при применении указанной статьи;
- толкование «исполнения обязательства» в целях применения пп. 2 п. 2 ст. 54.1 НК РФ в соответствии с положениями гражданского законодательства, а также с учетом оценки обстоятельств установления и проверки налогоплательщиком его непосредственного контрагента на предмет того, что тот является реальным экономическим субъектом (с точки зрения наличия функций, рисков и активов), поскольку именно такой контрагент исполняет обязательства перед налогоплательщиком и несет риски, связанные с привлечением им контрагентов для исполнения соответствующих обязательств;
- недопущение привлечения к ответственности за нарушение налогового законодательства контрагентами 2-го и последующих звеньев;
- определение действительного размера налоговых обязательств с учетом реального характера фактически совершенной сделки и ее действительного экономического смысла;
- недопущение произвольного привлечения к ответственности за умышленную неуплату налогов;
- учет обстоятельств, исключающих вину в совершении налогового правонарушения, в случае содействия налогоплательщика в выявлении лиц, причастных к налоговым схемам.

ПРЕИМУЩЕСТВА

- Правовая определенность и единообразный подход при применении ст. 54.1 НК РФ.
- Прекращение практики необоснованного привлечения к ответственности за действия контрагентов 2-го и последующих звеньев, а также практики необоснованного привлечения к умышленной ответственности.
- Снижение налоговых рисков ведения предпринимательской деятельности, улучшение делового и инвестиционного климата.

ИЗБЫТОЧНОЕ ВМЕШАТЕЛЬСТВО ПРАВООХРАНИТЕЛЬНЫХ ОРГАНОВ В НАЛОГОВЫЙ КОНТРОЛЬ И УГРОЗА НЕОБОСНОВАННОГО УГОЛОВНОГО ПРЕСЛЕДОВАНИЯ РУКОВОДИТЕЛЕЙ ДОБРОСОВЕСТНЫХ НАЛОГОПЛАТЕЛЬЩИКОВ

ПРОБЛЕМА

Положения уголовного законодательства все чаще становятся инструментом необоснованного давления на бизнес в связи с избыточным вмешательством правоохранительных органов в налоговый контроль, что приводит к излишней криминализации экономических отношений, чрезмерной уголовной репрессии в отношении предпринимателей, а также к дублированию правоохранительной и контрольно-надзорной деятельности. Такая ситуация является следствием, в частности, следующих проблем:

- уголовная ответственность и налоговая ответственность на практике недостаточно разграничены;
- риск квалификации налоговых преступлений как длящихся (последствия такого подхода по своей сути равнозначны отмене сроков давности по налоговым преступлениям);
- уголовное преследование в отношении руководителей или иных служащих организации-налогоплательщика за налоговые злоупотребления контрагентов (неуплату налогов «фирмами-однодневками»);
- квалификация нарушений при исчислении налогов как мошенничества (ст. 159 УК РФ) в случае возмещения налогов из бюджета, что влечет более строгое наказание и отсутствие возможности освобождения от уголовной ответственности в связи с возмещением ущерба;
- рост количества возбуждаемых уголовных дел по признакам уклонения от уплаты налогов после полной уплаты соответствующих сумм налогов по результатам налоговых проверок до возбуждения уголовных дел;
- привлечение к ответственности за неисполнение обязанностей налогового агента в случаях, когда отсутствует факт заведомой ложности представленного агентом расчета налога;
- установление порогов для привлечения к уголовной ответственности в абсолютных суммах без учета масштаба бизнеса и совокупной суммы уплачиваемых налогов (крупный размер – от 15 млн руб., особо крупный – от 45 млн руб. в течение трехлетнего периода безотносительно доли неуплаченных налогов);
- отсутствие единообразного подхода к расчету суммовых порогов и возможности эффективного оспаривания рассчитанных следствием сумм.

Такой подход в условиях сложности и противоречивости налогового законодательства приводит к эскалации напряженности в налоговых отношениях, чрезмерному вмешательству правоохранительных органов в хозяйственную деятельность,

коррупционным проявлениям и ухудшению инвестиционного климата. Это очевидно противоречит неоднократно заявленной Президентом РФ экономической и уголовной политике государства, направленной на формирование благоприятной деловой среды, декриминализации нарушений в предпринимательской сфере, и недопустимости даже формальных возможностей для злоупотребления правом для давления на бизнес.

РЕКОМЕНДАЦИИ

Сложившаяся в правоприменительной практике ситуация требует разрешения, в первую очередь, на уровне постановления Пленума ВС РФ. В связи с тем, что принятое 26 ноября 2019 г. постановление Пленума ВС РФ № 48 «О практике применения судами законодательства об ответственности за налоговые преступления» не внесло правовую определенность в большинство наиболее существенных вопросов применения уголовного законодательства по налоговым преступлениям, требуется принятие новых дополнительных разъяснений ВС РФ. Применительно к проблемам, которые не будут или не могут быть разрешены разъяснениями ВС РФ, требуется внесение изменений в уголовный закон.

Соответствующие предложения по совершенствовании уголовного законодательства и практики его применения были разработаны рабочей группой АЕБ по налоговым преступлениям и направлены в ВС РФ, Государственную Думу, Администрацию Президента РФ и Минфин России.

ПРЕИМУЩЕСТВА

- Увеличение эффективности борьбы с уклонением от уплаты налогов посредством более рационального использования ресурсов правоохранительных органов.
- Избежание излишней криминализации экономических отношений и чрезмерной уголовной репрессии в отношении предпринимателей.
- Повышение гарантий защиты прав добросовестных налогоплательщиков.
- Уменьшение коррупционных проявлений.
- Улучшение инвестиционного климата и стимулирование предпринимательской инициативы.

ЧЛЕНЫ КОМИТЕТА

Alrud • Auchan • Baker McKenzie • BAT • Beiten Burkhardt • BCLP • BNP Paribas Bank • Boehringer Ingelheim • BP • Brand & Partners • BSH Bytowyje Pribory • Cargill • Carnelutti Russia • Citibank • Clifford Chance • CMS Russia • CNH Industrial Russia • Commerzbank (Eurasija) • Continental Tires RUS • Corteva Agriscience • Credit Agricole CIB • Creon Capital S.a.r.l • Daimler Kamaz Rus • Deloitte • Dentons • Deutsche Bank Ltd. • DHL Express • Enel Russia • EPAM • Eversheds Sutherland • EY • Ferrero Russia • General Motors CIS • Guardian Glass • Haval Motor Rus • Hino Motors • HSBC Bank (RR) • IKEA DOM • Imperial Tobacco Sales and Marketing • JTI Russia • Juralink • Kia Motors Rus • Knauf Group CIS • KPMG • L'Oreal • LafargeHolcim • Lidings Law Offices • Loyens & Loeff N.V.• M.Video • Mazars • Mercedes-Benz Financial Services Rus • METRO AG • Michelin • Nike • Nissan Manufacturing Rus • Noerr • Nokian Tyres Ltd • OBI Russia • Olson Consulting • Oriflame • PEAC Leasing • Pepeliaev Group • Philip Morris Sales and Marketing • Procter & Gamble • PwC • Raiffeisenbank • Renault Russia • Repsol Exploracion S.A. • Rockwool • Rödl & Partner • Sanofi Russia • Schneider Group • Shell Exploration and Production Services (RF) B.V. • Schlumberger • Siemens • Solvay Vostok • Tikkurila • Total Vostok • Toyota Motor • Unipro • Volkswagen Group Rus • Whirlpool Rus • Zurich Reliable Insurance.

РАБОЧАЯ ГРУППА ЛАКОКРАСОЧНОЙ ИНДУСТРИИ

Председатель:
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Рабочая группа лакокрасочной индустрии была создана в 2016 году с целью согласования интересов производителей лакокрасочных изделий, работающих в России.

Рабочая группа принимала активное участие в процессе разъяснения последствий применения статьи 18 Федерального закона Российской Федерации от 31.12.2014 г. № 488-ФЗ о государственных закупках и последующего законодательства в отношении создания преимуществ для продукции, произведенной в Российской Федерации, по сравнению с выпускаемой за рубежом. В сферу интересов участников входит четкое понимание норм и толкования законодательства, чтобы можно было создать равные условия для компаний, осуществляющих производство в Российской Федерации, как находящихся в собственности российских лиц, так и иностранных. По мнению Рабочей группы, правительству следует четко определить, что подразумевается под местным (или «локализованным») производством, включая степень применения местного сырья и другие критерии. Рабочая группа сотрудничает с другими ассоциациями и департаментами правительства, в том числе с Минпромторгом, с целью принятия законодательства и дорожных карт для различных отраслей, что должно обеспечить устойчивый рост предложения конкурентоспособного местного сырья.

Рабочая группа обменивается информацией о международных санкциях и ответных санкциях с тем, чтобы каждый отдельный участник мог выработать свой собственный план действий. Позиция Рабочей группы заключается в том, что свободная от санкций среда и нормализация международных отношений являются желательными и будут способствовать росту индустрии производства лакокрасочных покрытий.

Рабочая группа обменивается информацией между своими членами о наличии на рынке контрафактной продукции и действиях своих участников, направленных на борьбу с мошенничеством, включая сотрудничество с компетентными органами.

Рабочая группа поддерживает полное применение норм свободной торговли на всей территории Евразийского экономического союза в отношении лакокрасочных покрытий в том виде, в котором нормы свободной торговли применяются, в частности, к некоторым другим отраслям промышленности.

Создание равных стандартов между Россией и Европой для тестирования лакокрасочных материалов имеет важное значение для повышения эффективности и сокращения дублирования усилий. Это не только ускорит внедрение в России европейских технологий, но и будет способствовать применению российских технологий за рубежом, а также позволит снизить издержки.

Рабочая группа продолжит реализацию Технического регламента Евразийского экономического союза «О безопасности химической продукции» (ТР ТС 041/2017) и соответствующего законодательства, которое вступит в силу в июне 2021 года. Рабочая группа поддерживает вступление в силу нового Техрегламента ТР ТС 041/2017 «О безопасности химической продукции».

ЧЛЕНЫ РАБОЧЕЙ ГРУППЫ

Akzo Nobel Coatings LLC • Allnex Belgorod LLC • Hempel AO • Jotun Paints LLC • PPG Industries LLC • Resinex Rus • Tikkurila.

РАБОЧАЯ ГРУППА ПРОИЗВОДИТЕЛЕЙ НЕПРОДОВОЛЬСТВЕННЫХ ПОТРЕБИТЕЛЬСКИХ ТОВАРОВ

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О ПЕРСПЕКТИВАХ ВНЕДРЕНИЯ ОБЯЗАТЕЛЬНОЙ МАРКИРОВКИ ТОВАРОВ ПОВСЕДНЕВНОГО СПРОСА СРЕДСТВАМИ ИДЕНТИФИКАЦИИ

ПРОБЛЕМА

В настоящий момент в России активно внедряется и развивается система маркировки и прослеживаемости товаров повседневного спроса. Предполагается, что данная система окажет поддержку добросовестным производителям и органам государственной власти в борьбе с оборотом контрафактной продукции.

Члены рабочей группы поддерживают инициативы по борьбе с оборотом контрафактной продукции для обеспечения безопасности граждан РФ и обеспечения доступа потребителей к высококачественным товарам добросовестных производителей, в том числе с применением тех или иных высокотехнологичных решений.

Тем не менее, в настоящий момент опыт внедрения маркировки средствами идентификации товаров повседневного спроса вызывает озабоченность у производителей и может оказать значительный отрицательный эффект на отрасли, затронутые необходимостью обязательной маркировки, особенно в период распространения COVID-19 и связанных с ним негативных последствий для экономики:

- Внедрение системы маркировки средствами идентификации на производстве или на таможенном складе при импорте товаров подразумевает многомилионные инвестиции на приобретение и установку оборудования, программного обеспечения (ПО), а также на работу по его установке и интеграции в производственные и телекоммуникационные процессы производителей товаров повседневного спроса; инвестиции на внедрение track & trace системы, интеграцию и адаптацию складского программного обеспечения, модернизацию линий сборки товаров и других складских операцией.
- Дальнейшее использование системы маркировки средствами идентификации подразумевает регулярные закупки специализированных кодов стоимостью 50 копеек за одну единицу, что, учитывая объемы производства товаров повседневного спроса, подразумевает ежегодные многомилионные издержки для бизнеса.

Таким образом, высокие затраты, связанные с внедрением маркировки, могут привести к ощутимому росту цен товары повседневного спроса, сокращению их ассортимента и ограничить доступность товаров в рознице в связи с замедление движения товара по логистическим цепочкам.

Не меньшую озабоченность вызывает механизм принятия решений о внедрении маркировки средствами идентификации в отдельных отраслях. Такие стратегически важные для бизнеса решения необходимо принимать в открытом диалоге с представителями отрасли и профильными ведомствами, курирующими ту или иную отрасль.

РЕКОМЕНДАЦИИ

Чтобы маркировка средствами идентификации стала действительно эффективным решением для борьбы с контрафактной продукцией и увеличением уровня прослеживаемости тех или иных товаров, а не только дополнительной финансовой нагрузкой на бизнес, до внедрения маркировки в той или иной отрасти необходимо:

- определить критический порог контрафакта для принятия решения о внедрении системы прослеживаемости в отрасли;
- оценить долю контрафакта на рынке и обосновать необходимость внедрения системы прослеживаемости в соответствующей отрасли;
- инициировать диалог с отраслью о необходимости внедрения системы прослеживаемости и технических деталях ее внедрения; оценить готовность всех участников оборота маркированной продукции;
- сформировать межведомственную позицию о целесообразности внедрения маркировки;
- предусмотреть разумные переходные периоды, которые дадут отрасли провести необходимые работы по внедрению системы прослеживаемости без ущерба для индустрии и потребителей;
- обеспечить юридически значимую базу для введения моратория на привлечение к ответственности за ошибки при передаче данных между участниками оборота в течение переходного периода;
- подготовить соответствующую законодательную инфраструктуру, гармонизированную с другими регуляторными нормами как внутри страны – участницы Евразийского Экономического союза, так и между странами – участницами.

Дальнейшее внедрение маркировки средствами идентификации в парфюмерной отрасли будет проходить более эффективно в случае соблюдения следующих рекомендаций:

- Обеспечить перенос срока вступления в силу обязательной маркировки парфюмерной продукции на 1 апреля 2021 года, чтобы дать возможность участникам оборота беспрепятственно реализовать продукцию в рамках высокого сезона. Этот период особенно важен для парфюмерной индустрии, поскольку она относится к одной из наиболее пострадавших индустрий от мероприятий, направленных на предупреждение распространения COVID-19.
- Продлить переходный период для оборота немаркированной продукции, выпущенной в обращение до даты обязательной маркировки до 1 октября 2022 года.
- Установить добровольную передачу данных между участниками оборота через ЭДО до 1 апреля 2021 года и мораторий на привлечение к ответственности за ошибки при передаче данных между участниками оборота в течение переходного периода.
- Учитывая специфику отрасли и высокий объем импортируемой продукции, обеспечить возможность импортерам наносить маркировку средствами идентификации на складах импортеров на территории РФ после процедур таможенного оформления в рамках, поскольку маркировка на таможенном складе приводит к усложнению логистической цепочки и дополнительным расходам в том числе удорожании процедуры таможенного оформления.

О ПОВЫШЕНИИ ДО 100% НОРМАТИВА УТИЛИЗАЦИИ НА ОТХОДЫ ТОВАРОВ И УПАКОВКИ, ПОДЛЕЖАЩИЕ УТИЛИЗАЦИИ ПОСЛЕ УТРАТЫ ИМИ ПОТРЕБИТЕЛЬСКИХ СВОЙСТВ

ПРОБЛЕМА

В августе 2019 года началась активная дискуссия о необходимости повышения норматива утилизации товаров, входящих в утвержденный распоряжением Правительства РФ № 2970-р от 28 декабря 2017 года «Перечень товаров, подлежащих утилизации после утраты ими потребительских свойств», до 100%, а также введения моратория на самостоятельное обеспечение производителями выполнения нормативов утилизации.

Производители парфюмерно-косметической продукции (ПКП) и товаров бытовой химии (ТБХ) используют алюминиевую, пластиковую, в том числе и ПЭТ, упаковку в своей продукции повседневного спроса.

В соответствии с лучшими международными практиками большинство производителей ПКП и ТБХ ведут активную работу по минимизации своего воздействия на окружающую среду в процессе всего жизненного цикла своей продукции: от этапа разработки формулы и производства до использования и утилизации посредством различных стратегий устойчивого развития. При разработке своих инвестиционных программ производители учитывают постепенное, аргументированное и согласованное с индустрией повышение ставок экологического сбора и нормативов утилизации, а также развитие инструментов самостоятельной реализации РОП.

Фактическая отмена инструментов самостоятельного исполнения РОП посредством повышения норматива утилизации до 100% и введения моратория на самостоятельное обеспечение производителями выполнения нормативов утилизации поставит под удар собственные экологические программы производителей ПКП и ТБХ, в том числе связанные с самостоятельной реализацией РОП, вызовет рост потребительских цен на значительную часть продукции повседневного спроса, а также окажет отрицательное воздействие на инвестиционный климат РФ в целом, превратив РОП из инструмента стимулирования развития отрасли переработки пластиковых, металлических и иных отходов в дополнительный фискальный сбор.

Тем не менее ответственные производители ПКП и ТБХ, реализуя собственные глобальные программы устойчивого развития, в целом поддерживают институт РОП как таковой при условии тщательно выверенной и согласованной с отраслями производителей товаров повседневного спроса и производителей вторичного сырья стратегии развития соответствующих индустрий, включающей в себя в том числе планомерное, предсказуемое и аргументированное повышение норматива утилизации, ставки экологического сбора и иных инструментов РОП.

РЕКОМЕНДАЦИИ

В отношении вопроса повышения норматива утилизации целесообразно оценить все значимые факторы и рассмотреть возможность предсказуемого, постепенного и аргументированного повышения соответствующего норматива, а также возможность введения достаточного переходного периода в рамках системного диалога регулирующих органов и бизнес-сообщества.

Повышение норматива следует обсуждать с привлечением экспертных, научных и бизнес-кругов для того, чтобы избежать значительных экономических рисков и обеспечить эффективность принимаемых мер.

Что касается введения моратория на самостоятельную реализацию РОП, данное ограничение представляется чрезмерным, т. к. превратит РОП из инструмента развития отрасли переработки пластика, металлов и иных упаковочных материалов, а также отрасли производства качественного вторичного сырья в дополнительную фискальную нагрузку на бизнес. Таким образом, рабочая группа рекомендует сохранить возможность самостоятельной реализации РОП.

ЧЛЕНЫ РАБОЧЕЙ ГРУППЫ

Avon • Electrolux • Henkel • Herbalife • L'Oreal • Oriflame • Procter & Gamble • Yves Rocher.

РАБОЧАЯ ГРУППА ПО ПРОИЗВОДСТВУ И ОБОРОТУ ТАБАЧНОЙ ПРОДУКЦИИ

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Рабочая группа по производству и обороту табачной продукции была создана в 2013 году. Она объединяет производителей табачных изделий, совокупная доля рынка которых составляет порядка 95%[1], а общие инвестиции в экономику Российской Федерации превысили 8 млрд долларов США.

Рабочая группа стремится обеспечить формирование устойчивого и предсказуемого законодательного режима в отрасли, добиваясь принятия четких и последовательных правовых норм в области регулирования производства и оборота табачных изделий, мер противодействия незаконной торговле ими, а также регулирования производства, оборота, и налогообложения альтернативной никотиносодержащей продукции и устройств, предназначенных для потребления никотина способами, отличными от курения табака.

СИСТЕМА АКЦИЗНОГО НАЛОГООБЛОЖЕНИЯ ТАБАЧНЫХ ИЗДЕЛИЙ НА ОСНОВЕ ТРЕХЛЕТНЕГО ЦИКЛА ПЛАНИРОВАНИЯ В НАЛОГОВОМ КОДЕКСЕ

ПРОБЛЕМА

Действующий подход по трехлетнему планированию акцизного налогообложения табачной отрасли в Российской Федерации соответствует передовому международному опыту в области налоговой политики.

Необходимо отметить, что последнее десятилетие характеризуется ростом налоговой нагрузки и снижением ценовой доступности легальной табачной продукции.

В результате многолетнего роста акцизов и снижения ценовой доступности легальных сигарет происходит насыщение российского рынка нелегальной продукцией и сокращение легального рынка на фоне значительной разницы в ставках акциза на табачную продукцию между государствами ЕАЭС (разрыв в ставках акцизов между сигаретами в ЕАЭС и Российской Федерации приводит к 2–3-кратной разнице в конечных ценах для потребителя).

Общий объем реализованных в России нелегальных сигарет по экспертным оценкам в 2019 году составил 34 млрд штук. Недополученные доходы бюджета от акцизов и НДС по оценкам экспертов составили не менее 100 млрд рублей в 2019 году, 53 млрд рублей в 2018 году и 31 млрд рублей в 2017 году. При сохранении сложившихся на российском табачном рынке негативных тенденций суммы выпадающих доходов бюджета могут возрасти еще существеннее.

Таким образом, если фискальная политика государства по увеличению ставок акцизов на табачную продукцию вплоть до 2017 года приводила к определенному росту доходов федерального бюджета при низкой доле нелегальной торговли сигаретами, то за последние 3 года, несмотря на продолжающийся рост ставок акцизов, происходит снижение доходов бюджета из-за сокращения легального рынка.

В сентябре 2020 года Правительством и Государственной Думой было принято решение о резком (20%-ном) увеличении уровня акцизов на табачную продукцию и об увеличении адвалорной составляющей до 16% с 2021 года. Примечательно, что годом ранее, в Налоговом кодексе Российской Федерации был принят сбалансированный подход к ставкам акцизов, и на 2020-22 гг. было запланировано ежегодное повышение акцизов на 4%, в связи с ростом нелегальной торговли в России и необходимостью гармонизации ставок акцизов в России и странах ЕАЭС.

Повышение в 2021 году акцизов на 20% приведет к значительному увеличению цены пачки – в среднем со 120 до 140 рублей. Значительный рост цен на сигареты вследствие резкого роста акцизов приведет к резкому увеличению объема нелегального рынка, который может вырасти в 2 раза – по экспертным оценкам с нынешних 15% до 29%.

На фоне снижения реальных располагаемых доходов населения и при наличии на рынке нелегальных сигарет по цене 50–70 рублей за пачку значительная часть потребителей перейдет на нелегальную продукцию.

Рациональным подходом к индексации ставок акцизов на табачную продукцию был бы предсказуемый и постепенный их рост с учетом прогнозируемой Правительством Российской

[1] По данным аудита розничной торговли Nielsen за 1 полугодие 2020 года.

Федерации инфляции и уровня реальных располагаемых доходов потребителей.

РЕКОМЕНДАЦИИ

Рекомендуется продолжить сложившуюся эффективную практику акцизного налогообложения табачных изделий на основе трехлетнего цикла планирования, исключая в дальнейшем повышение налоговых ставок в уже утвержденном трехлетнем периоде на превышающую инфляцию величину. Обеспечение умеренных темпов роста ставок акциза, во избежание роста нелегальной торговли, сможет обеспечить как рост налоговых поступлений, так и постепенное снижение потребления табачных изделий.

НЕЗАКОННАЯ ТОРГОВЛЯ ТАБАЧНЫМИ ИЗДЕЛИЯМИ

ПРОБЛЕМА

За период с 2015 года по 2019 год объем нелегальной табачной продукции в России вырос почти в 15 раз с 1,1% до 15,6%, (согласно данным агентства Nielsen). Ежегодно Россия теряет миллиарды рублей из-за нелегальной торговли табачными изделиями. По экспертным оценкам, общий объем реализованных в России нелегальных сигарет в 2019 году составил 34 млрд штук. Общие потери бюджета в виде недополученных акцизов и НДС в 2019 году превысили 100 млрд рублей. При сохранении сложившихся на российском табачном рынке негативных тенденций суммы потерь бюджета могут возрасти еще существеннее.

Рост поставок нелегальных табачных изделий с территории стран-членов Евразийского экономического союза (ЕАЭС) связан с существенной ценовой разницей на табачную продукцию. Так, средневзвешенная цена пачки сигарет в России в 2020 году составляет около 120 рублей, а цены на нелегально ввезенную в Российскую Федерацию продукцию из стран ЕАЭС (Беларусь, Кыргызстан, Казахстан, Армения) начинаются от 30 рублей за пачку сигарет.

Такому ценовому разрыву способствует значительный разрыв в ставках акциза между Российской Федерацией и остальными членами ЕАЭС, а также отсутствие контроля при осуществлении торговых операций в рамках единого таможенного пространства. Поэтому указанная проблема уже не может решаться вне рамок согласования акцизной политики на табачные изделия между странами-партнерами по ЕАЭС.

В целях решения этой проблемы по инициативе Российской Федерации участниками Евразийского экономического союза было разработано Соглашение о принципах ведения налоговой политики в области акцизов на табачную продукцию государств-членов ЕАЭС. Сближение ставок акцизов поможет сформировать в ЕАЭС цивилизованный рынок табачной продукции и минимизировать нелегальный трансграничный переток продукции. В Соглашении закрепляется механизм сближения ставок акцизов путем установления индикативной ставки с 2024 года на пять лет с последующей установкой новых значений такой ставки. Диапазоны допустимого отклонения фактических ставок, также фиксируемые в Соглашении, позволяют учитывать уровень социально-экономического развития каждой страны. В декабре 2019 года Соглашение было подписано всеми странами-членами ЕАЭС и направлено для ратификации.

Помимо того, что незаконная торговля влечет за собой прямую потерю доходов государственного бюджета и негативные последствия для участников табачного рынка, она способствует росту организованной преступности, увеличивает количество нелегальных производителей и каналов сбыта и приводит к сокращению рабочих мест на производствах, выпускающих продукцию в соответствии с законодательством Российской Федерации.

РЕКОМЕНДАЦИИ

В целях скорейшего устранения предпосылок к незаконному обороту в России табачных изделий из других стран-членов ЕАЭС, целесообразно ускорить выполнение внутригосударственных процедур, необходимых для ратификации Соглашения о принципах ведения налоговой политики в области акцизов на табачную продукцию государств-членов ЕАЭС.

В то же время очевидна необходимость принятия срочных законодательных и регуляторных мер, направленных на усиление ответственности за нелегальный оборот табачной продукции и повышение эффективности правоприменительной практики в Российской Федерации.

Необходимо установить для физических лиц лимиты на ввоз и перевозку для личного потребления немаркированных сигарет; кратно повысить в КоАП размеры административных штрафов за оборот нелегальной табачной продукции; ввести единую минимальную цену табачной продукции как универсальный порог, ниже которого производители табачной продукции не могут устанавливать розничные цены на сигареты.

Также необходимо ввести уголовную ответственность за незаконное перемещение табачной и алкогольной продукции в крупном размере через Государственную границу Российской Федерации с государствами-членами ЕАЭС. Сейчас в Уголовном кодексе Российской Федерации (УК РФ) предусмотрена только ответственность за незаконное перемещение через таможенную границу Таможенного союза, что позволяет контрабандистам безнаказанно перемещать нелегальную подакцизную продукцию на территорию России из других государств-членов ЕАЭС.

Часть законопроектов уже были внесены в Госдуму и получили концептуальную поддержку Правительства Российской Федерации (получены положительные официальные отзывы), однако до сих пор находятся на рассмотрении. Задержка в

принятии указанных законодательных инициатив негативно сказывается на состоянии легального табачного рынка в России и ведет к росту потерь бюджета, ввиду чего представляется целесообразным их срочное рассмотрение и принятие в приоритетном порядке.

Также представляется целесообразным разработка и введение четкого регламента уничтожения конфискованной нелегальной продукции, средств, использованных для ее производства и увеличение размера штрафов за оборот нелегальной продукции, а также введение ответственности за незаконное перемещение табачной продукции через государственную границу Российской Федерации.

Необходимо отметить, что Правительством Российской Федерации ведется работа по подготовке новой редакции Кодекса Российской Федерации об административных правонарушениях (КоАП РФ), где предлагается предусмотреть ответственность как за ввод в оборот и реализацию табачной продукции без маркировки средствами идентификации, так и за производство и реализацию табачной продукции без специальных или акцизных марок, при этом размеры штрафов предлагается сохранить на уровне, установленном действующей редакции КоАП РФ, который представляется крайне низким для эффективного пресечения случаев реализации нелегальной табачной продукции.

Анализ правоприменительной практики привлечения лиц к административной ответственности согласно действующим положениям части 4 статьи 15.12 КоАП РФ показывает, что в условиях незначительных размеров административных штрафов для физических лиц и должностных лиц (4–5 тыс. рублей и 10–15 тыс. рублей, соответственно) по сравнению с размерами административных штрафов для юридических лиц (200–300 тыс. рублей) физические лица берут на себя ответственность за оборот нелегальной продукции, тем самым освобождая юридическое лицо от уплаты значительного административного штрафа.

В данной связи представляется необходимым рассмотреть вопрос о введении более значимых штрафов в новой редакции КоАП РФ как для физических лиц, так и для должностных лиц и индивидуальных предпринимателей, так как низкие штрафы для физических и должностных лиц несоразмерны незаконным доходам, получаемым от торговли нелегальной продукцией.

Повышение размера административных штрафов будет способствовать обеспечению действенного превентивного эффекта с целью профилактики и предотвращения совершения правонарушений в указанной сфере, что позволит существенно сократить объемы реализации нелегальной табачной продукции в России.

В целях борьбы с производством контрафактной продукции на территории Российской Федерации необходим запуск системы мониторинга поставок и отслеживания перемещения производственного оборудования, как это предусмотрено российским законодательством.

В рамках ЕАЭС, в целях контроля за транзитным и трансграничным перемещением табачной продукции через территорию Российской Федерации, предусмотреть обеспечительные механизмы, гарантирующие либо выбытие перемещаемой табачной продукции с территории Российской Федерации, либо уплату акцизов по действующим российским ставкам.

МАРКИРОВКА И ПРОСЛЕЖИВАНИЕ ТАБАЧНОЙ ПРОДУКЦИИ

ПРОБЛЕМА

С 1 марта 2019 г. в России запущена маркировка табачной продукции средствами цифровой идентификации и контроль вывода ее из оборота в рознице посредством погашения кодов на онлайн-кассах. С 1 июля 2020 г. вступили в силу требования о прослеживаемости перемещения табачной продукции в оптовом звене и о применении электронного документооборота всеми участниками оборота. Полномасштабный запуск системы маркировки и прослеживания позволяет рассчитывать на недопущение незаконной табачной продукции в каналы легальной торговли, при этом проблема притока незаконной продукции из сопредельных стран остается актуальной, ввиду сложившейся практики ее продаж в обход требований о применении онлайн-касс.

Практика работы в новых условиях выявила недоработки программного обеспечения, в результате которых произошли сбои отгрузок от производителей к дистрибьюторам. Устранение ошибок в оформлении электронного документооборота потребовало большого количества ручного труда специалистов как на стороне производителей, так и на стороне оператора.

РЕКОМЕНДАЦИИ

Ключевая задача на период до конца 2020 года — скорейшая стабилизация работы системы прослеживания в части электронного документооборота. Необходимо также законодательно закрепить ответственность поставщиков ЭДО за качество и стабильность предоставляемых ими услуг.

Стабилизация работы системы позволит в соответствии с законодательными требованиями решить задачу доступа участников оборота к рыночной информации и осуществить отказ от применения бумажных марок.

РЕГУЛИРОВАНИЕ ИННОВАЦИОННОЙ НИКОТИНОСОДЕРЖАЩЕЙ ПРОДУКЦИИ

ПРОБЛЕМА

В настоящее время в Российской Федерации активно развивается рынок инновационной никотиносодержащей продукции (НСП),

основанной на процессе потребления (вдыхания) аэрозоля, содержащего никотин, образующегося путем нагревания табака или никотиносодержащей жидкости, без горения.

31 июля 2020 г. Президентом Российской Федерации был подписан закон о внесении поправок в Федеральный закон № 15 – ФЗ «Об охране здоровья граждан от воздействия окружающего табачного дыма и последствий потребления табака» в части регулирования никотиносодержащей продукции. Закон приравнивает потребление никотиносодержащей продукции и традиционных изделий, вводит запрет рекламы НСП, продажу несовершеннолетним.

Также закон содержит нормы, относящиеся к предмету технического регулирования на уровне ЕАЭС, а именно ограничение по содержанию никотина в жидкостях для ЭСДН в 20 мг/мл.

Запрет на жидкости для ЭСДН с содержанием никотина больше 20 мг/мл не является научно обоснованной мерой и приведет к ограничению конкуренции и росту нелегального рынка. Запрет никотиновых пэков также является чрезмерным, т. к. при должном регулировании такая продукция дает возможность снизить риски для здоровья для российских курильщиков при переключении на нее.

Инновационная продукция имеет очевидный потенциал в части снижения вреда здоровью населения за счет перехода на нее потребителей традиционных сигарет, поэтому ограничение доступа потребителей к таким продуктам и к информации о них является непропорциональной и необоснованной мерой.

РЕКОМЕНДАЦИИ

Рабочая группа считает необходимым на основе научных исследований и «риск-ориентированного» подхода разработать и ввести комплексное техническое регулирование инновационной никотиносодержащей продукции на пространстве ЕАЭС, учитывающее ее влияние на здоровье по сравнению с традиционной табачной продукцией. Данное регулирование должно включать технические требования к такой продукции, составу, упаковке и маркировке, информированию совершеннолетних курильщиков о воздействии такой продукции на здоровье. Дополнительно необходимо установить регламент научной оценки альтернативной никотиносодержащей продукции и требования к научным исследованиям в части ее воздействия на организм человека по сравнению с табакокурением.

ЧЛЕНЫ РАБОЧЕЙ ГРУППЫ

British American Tobacco Russia • Imperial Tobacco Sales and Marketing • JTI Russia • Philip Morris Sales and Marketing.

РАБОЧАЯ ГРУППА ПО МАРКИРОВКЕ ТОВАРОВ СРЕДСТВАМИ ИДЕНТИФИКАЦИИ В СИСТЕМЕ ПРОСЛЕЖИВАЕМОСТИ

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ОБЯЗАТЕЛЬНАЯ МАРКИРОВКА ТОВАРОВ СРЕДСТВАМИ ИДЕНТИФИКАЦИИ

ПРОБЛЕМА

2 февраля 2018 г. было заключено Соглашение о маркировке товаров средствами идентификации в Евразийском экономическом союзе (ЕАЭС) (ратифицировано в Российской Федерации Федеральным законом от 3 августа 2018 г. № 281-ФЗ (вступил в силу 14.08.2018 г.).

Согласно указанному Соглашению, в рамках ЕАЭС по решению Совета Евразийской экономической комиссии может быть введена маркировка товаров (см. п. 1 ст. 3).

Запрещаются хранение, транспортировка, приобретение и реализация на территориях государств-членов немаркированных товаров, подлежащих маркировке (см. ст. 4).

Федеральным законом № 487-ФЗ от 31 декабря 2017 г. внесены изменения в Федеральный закон «Об основах государственного регулирования торговой деятельности в Российской Федерации», которыми предусмотрена возможность введения обязательной маркировки отдельных видов товаров средствами идентификации (см. п. 7 ст. 8 редакции, вступающей в силу с 01.01.2019 г.).

Во исполнение указанных положений Правительством Российской Федерации было выпущено два распоряжения:

- Распоряжение Правительства Российской Федерации от 28.04.2018 г. № 791-р «Об утверждении модели функционирования системы маркировки товаров средствами идентификации в Российской Федерации».

  Основные положения:
  - описываются принципы функционирования системы маркировки товаров;
  - устанавливается организационная структура, координатором данной системы выступает Минпромторг, который регулирует деятельность ФОИВ и участников оборота товаров в части внедрения системы маркировки, разрабатывает проекты соответствующих нормативных актов и т. п.
- Распоряжение Правительства Российской Федерации от 28.04.2018 г. № 792-р «Об утверждении перечня отдельных товаров, подлежащих обязательной маркировке средствами идентификации» (вступило в силу с 1 января 2019 г.).

В настоящее время обязательная маркировка введена или планируется к вводу в таких категориях, как табачная продукция, обувь, лекарства, шубы, фотоаппараты и лампы-вспышки, шины и покрышки, товары легкой промышленности, духи и туалетная вода. Кроме того, идут эксперименты по внедрению цифровой маркировки для молочной продукции, кресел-колясок, велосипедов, упакованной воды.

Текущее законодательство об обязательной маркировке товаров все еще имеет значительное количество пробелов и неточностей, что создает непредсказуемые условия работы для бизнеса, значительно усложняет бизнес-процессы, повышает непродуктивные издержки добросовестных участников рынка.

РЕКОМЕНДАЦИИ

Поддерживая стремления Правительства Российской Федерации в сфере борьбы с незаконным оборотом промышленной продукции, компании-члены АЕБ считают необходимым внедрять системы прослеживаемости и маркировки широкого перечня потребительских товаров только по результатам оценки баланса выгод и издержек субъектов экономической деятельности, их готовности к внедрению предлагаемых мер и при подтверждении технической реализуемости систем прослеживаемости. Для реализации такого подхода к внедрению систем прослеживаемости и маркировки предлагают:

- Предусмотреть включение каждой конкретной категории продукции в перечень продукции, подлежащей обязательной маркировке средствами идентификации, только по результатам проведения:
  - оценки участниками рынка целесообразности внедрения прослеживаемости/маркировки данной категории товаров/продукции с учетом подтвержденных объемов контрафакта к общему объему предлагаемой к маркировке категории товаров/продукции в денежном и физическом выражении, а также необходимых финансовых затрат всей товаропроводящей цепи от производства до конечного потребителя с публикацией результата такой оценки для бизнес-сообщества на официальном сайте Минпромторга или на сайте профильного министерства;

- оценки успешности пилотного проекта, включающего в себя масштабное тестирование системы по всей товаропроводящей цепи в течение периода времени, достаточного для выявления недостатков и их устранения (в том числе климатические и сезонные особенности, а также специфику оборота отдельных категорий товаров и прочие особенности);
- оценки регулирующего воздействия (в том числе применительно к последствиям для субъектов малого и среднего бизнеса, конечных потребителей).

Предусмотреть возможность проведения оценки фактического воздействия по результатам включения каждой категории в систему маркировки.

Пилотные проекты и промышленные внедрения в тех секторах, где обязательная маркировка уже введена, демонстрируют определенные негативные последствия для участников ВЭД. В этой связи при оценке целесообразности внедрения маркировки необходимо учесть последствия для участников внешнеторговой деятельности (экспорт и импорт), принимая во внимание специфику категорий товаров, на которых предполагается распространить систему маркировки.

При оценке целесообразности внедрения маркировки учесть особенности бизнес-процессов, при которых предлагаемый к маркировке товар/продукция используется в качестве компонента/составляющего для производства нового товара, а также учесть случаи, когда реализация предлагаемого к маркировке товара/продукции осуществляется как дополнительная, неосновная (нишевая) деятельность участников рынка.

Методика оценки целесообразности внедрения маркировки должна быть согласована профильным ведомством с участниками рынка и иметь статус не ниже уровня Постановления Правительства Российской Федерации.

Предусмотреть возможность развития и внедрения альтернативных способов борьбы с контрафактом, вместо системы обязательной маркировки.

- Разработать совместно с участниками отрасли «дорожную карту» для каждой из категорий товаров, подлежащих обязательной маркировке средствами идентификации, содержащую реалистичные и достаточные для участников рынка сроки внедрения требований по обязательной маркировке, предусматривающую поэтапное введение требований по маркировке и прослеживаемости таких товаров, проведение пилотных проектов, а также достаточные сроки для анализа итогов пилотных проектов и устранения выявленных недостатков, установление согласованных с участниками рынка переходных периодов, в течение которых не будут применяться штрафные санкции.
  - Обеспечить единый стандарт систем считывания, обработки данных маркировки для всех вновь подпадающих под маркировку категорий, чтобы избежать ненужных затрат на внедрение дублирующих систем прослеживаемости, в том числе с учетом используемых на уровне ЕАЭС систем.
  - Исключить возможность параллельного внедрения и (или) эксплуатации (применения) разных систем прослеживаемости/маркировки, в одной и той же товарной категории, чтобы не допустить возникновения двойной нагрузки на бизнес (включая малый и средний бизнес), в том числе с учетом используемых на уровне ЕАЭС систем.).
  - Должны быть утверждены достаточные и согласованные с бизнесом сроки выведение из оборота остатков немаркированной продукции для каждого звена цепочки поставок.
- В условиях множественности государственных систем прослеживаемости товаров, предусмотреть возможность для участников оборота передавать данные об обороте товара через единый интерфейс (в частности, для ЕГАИС, системы «Меркурий», маркировки ЦРПТ, документальной прослеживаемости ФНС), без взимания пошлин/платы за пользование таким интерфейсом.
- По мере расширения номенклатуры маркируемых товаров предусмотреть пересмотр стоимости генерации контрольной информации на единицу товара в сторону существенного ее снижения.

  В порядке оплаты за коды маркировки предусмотреть постоплату, таким образом стимулируя оператора к более качественному предоставлению услуг участникам системы маркировки.

- При импорте предусмотреть возможность нанесения кодов маркировки на территории Российской Федерации не только на таможенных складах, но и на складах импортеров (после осуществления импортерами таможенного декларирования и выпуска таможенными органами товаров для внутреннего потребления).
- Разработать и утвердить общий подход/концепцию системы маркировки в рамках ЕАЭС на базе единого, согласованного между участниками ЕАЭС набора стандартов.
- Установить области ответственности каждого из участников системы прослеживаемости и маркировки, а также санкции за нарушения. Не допустить введения несоразмерной (в том числе, уголовной) ответственности за нарушения порядка работы в рамках такой системы участниками оборота продукции.

  Рассмотреть возможность использования данных, получаемых через систему маркировки и прослеживаемости, для более четкого разделения ответственности за оборот контрафактной и фальсифицированной продукции.

- Определить на законодательном уровне порядок предоставления доступа к информации, содержащейся в ГИС МТ, с учетом интересов всех участников рынка, а также установить положения отнесения информации к конфиденциальной.

Обеспечить надлежащую защиту оператором системы коммерческой информации участников оборота и определить его ответственность в Кодексе Российской Федерации об административных правонарушениях за «утечку» данных и разглашение конфиденциальной информации третьим лицам.

- С внедрением системы маркировки снизить профиль риска/объем контрольно-надзорных мероприятий в отношении добросовестных участников оборота маркированной продукции, сфокусировав усилия контролирующих органов на искоренении черного рынка.
- Разработать критерии в рамках риск-ориентированного подхода и утвердить индикаторы, служащие основанием для инициирования надзорных мероприятий, связанных с выявлением нарушений законодательства в сфере маркировки товаров средствами идентификации.
- Предусмотреть комплекс мер поддержки фискального (налоговые льготы) и нефискального (гранты, льготные кредиты, меры для улучшения бизнес-среды) характера для предприятий малого бизнеса, участвующих в системе маркировки.
- Содействовать распространению лучших практик и обмену опытом внедрения систем прослеживаемости и маркировки.
- Обеспечить соблюдение интеллектуальных прав на товарный знак при импорте маркированных товаров в соответствии с Протоколом об охране и защите прав на объекты интеллектуальной собственности (приложение № 26 к Договору о Евразийском экономическом союзе).
- Учитывая ситуацию, сложившуюся в связи с пандемией коронавируса, срыв поставок оборудования и остановку заводов по всему миру, общее негативное экономическое состояние и недопустимость дополнительной финансовой нагрузки на юридические и физические лица в условиях кризиса и поиска государством действенных мер стимулирования, отложить введение обязательной маркировки товаров, предусмотренную действующим законодательством Российской Федерации, а также приостановить расширение перечня товаров, подлежащих обязательной маркировке, сроком минимум на 1 год.

ЧЛЕНЫ РАБОЧЕЙ ГРУППЫ

AstraZeneca Pharmaceuticals LLC • Auchan Russia • BEITEN BURKHARDT Moscow • Chiesi Pharmaceuticals LLC • CMS Russia • DANONE RUSSIA, JSC • DHL Express • DSM • Egorov Puginsky Afanasiev & Partners (EPAM) • ERM (Environmental Resources Management) • H&M Hennes & Mauritz LLC • Harley-Davidson Russia and CIS • HEINEKEN BREWERIES, LLC • Henkel Rus OOO • HERBALIFE NUTRITION • Honda Motor RUS LLC • IKEA Purchasing Services Russia • JCB Russia LLC • Mazda Motor Rus • Mercedes-Benz Russia • Merck LLC • METRO AG Representative office • Michelin • Mitsubishi Electric (Russia) LLC • MMC Rus • MOST SERVICE, member of Bruck Consult • Nestle Rossiya LLC • Nike • Nokian Tyres Ltd • Oriflame • Philip Morris Sales and Marketing • Philips LLC • Procter & Gamble • Promaco-TIAR • quality partners. • Renault Russia • Samsung Electronics • SCANDINAVIAN INTERIORS JSC • Shell Exploration and Production Services (RF) B.V. • Tikkurila • Vlasta-Consulting, LLC • Volvo Vostok NAO • Yamaha Motor CIS LLC • Yusen Logistics Rus LLC.

РАБОЧАЯ ГРУППА ПО МОДЕРНИЗАЦИИ И ИННОВАЦИЯМ

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ОБЩАЯ СИТУАЦИЯ В ИННОВАЦИОННОЙ СФЕРЕ

Инновации в промышленности имеют решающее значение для глобального экономического роста. Однако сама промышленность сталкивается с беспрецедентными проблемами, которые должны решать и предприятия, и правительства: это необходимость создания гиперперсонализированного опыта и продуктов, снижения затрат и повышения эффективности или внедрения новых бизнес-моделей и источников роста, которые помогут завоевать доверие потребителей. Чтобы не сдавать свои позиции, предприятия должны включаться в четвертую промышленную революцию. Технологии четвертой промышленной революции позволяют предприятиям позиционировать производство как источник конкурентных преимуществ и способствуют достижению целей в области устойчивого развития.

Большинство действующих государственных программ и инициатив сосредоточены в основном на российских поставщиках, а среди европейских компаний лишь единицы включены в такие программы. Нам необходимо демонстрировать профессионализм и опыт европейских компаний, их заинтересованность и готовность оказать комплексную техническую поддержку, особенно в сфере автоматизации и робототехники. Мы должны присоединиться к этим межрегиональным образовательным и консультационным программам и проектам по внедрению, направленным на повышение производительности и эффективности.

Новая редакция СПИК, подготовленная Министерством промышленности и торговли РФ, находится на стадии реализации. СПИК 2.0 утверждается комиссией, в составе которой только российские эксперты, специалисты из других стран не допускаются. Кроме того, выполнение СПИК 2.0 может повлечь за собой различные обязательства и ответственность, включая налоговые и даже уголовные расследования, если плановые объемы доходов от производства не будут достигнуты. Поэтому крайне важно включаться в процесс подготовки соответствующих нормативных документов.

Государственная поддержка и меры стимулирования крайне важны для внедрения современных цифровых решений и экологичных энергоэффективных технологий. Активность в этой сфере также может оказать положительное влияние на имидж АЕБ. Кроме того, это поможет расширить рынок для энергоэффективных решений, то есть компании-члены АЕБ смогут привлечь дополнительных клиентов для продажи изоляционных материалов, приводов и эффективных двигателей, внедрения систем DSC на энергоемких автоматических производственных объектах. Предыдущая государственная программа в сфере энергоэффективности была практически приостановлена примерно с 2014 года.

Экспорт (промышленных товаров) является одним из главных национальных приоритетов, озвученных президентом, а также высокопоставленными государственными чиновниками, в частности из Министерства промышленности и торговли РФ. Для поддержки развития экспорта было создано специальное государственное учреждение – Российский экспортный центр (РЭЦ). Поддержка в основном заключается в целевом финансировании и страховании контрактов. Однако, авторы программы не в полной мере учли особенности международных цепочек поставок, экспортных рынков и вопросов качества. Маркетинговые исследования в области импорта и экспорта показывают, что промышленный экспорт соотносится с импортом компонентов, поэтому неограниченный доступ к компонентам иностранного производства необходим для повышения конкурентоспособности российской промышленности, что выгодно членам АЕБ как поставщикам компонентов.

Стимулирование локализации высокотехнологичного производства и технологических компетенций в России остается одной из важнейших задач развития инновационной экономики, особенно чувствительной к человеческому и культурному факторам. Развитие инноваций влечет за собой изменение культуры, ментальности, мировоззрений, стереотипов поведения. Но, вероятно, эти изменения оказались недостаточно глубокими, поскольку, например, инфраструктура инновационного рынка, созданная в последние годы, не работает. Рынок не производит услуг, для которых был создан: есть инфраструктура, но в ней нет содержания. Инновации производят люди, и система отношений, в которой они функционируют, должна способствовать производству инноваций. Примечателен тот факт, что наиболее зрелым рынком в России в настоящее время является рынок информационных технологий, который в советское время даже не существовал. Этот рынок не имеет проблем с так называемым «советским наследием», в то время как другие рынки продолжают

бороться со сложившимися в советское время механизмами стандартизации и сертификации.

Внедрение инновационных продуктов/услуг должно поддерживаться развитием норм технического регулирования, которые часто отсутствуют либо опираются на устаревшие подходы (примеры: большинство технологий для умных сетей и умных городов, накопители энергии для управления спросом и предложением электроэнергии). При этом новые федеральные/отраслевые стандарты целесообразно создавать (а также обновлять существующие) на основе международных стандартов в противовес локальным нормам – это важное условие конкурентоспособности на международных рынках.

В 2014-2015 гг. начались серьезные изменения в макроэкономической и геополитической конъюнктуре, что, безусловно, отразилось на инновационной сфере. Экономические санкции влияют на возможности развития технологических инноваций, поскольку научно-технологическая сфера России страдает от ухудшения политических отношений с развитыми в научно-техническом отношении странами.

В условиях острой конкуренции в сфере высоких технологий особое внимание следует уделять стимулированию локализации НИОКР и развитию передовых и наукоемких технологий для увеличения добавленной стоимости.

РЕКОМЕНДАЦИИ

Политика внедрения инноваций не должна сводиться к поддержке научно-исследовательской деятельности. Необходимо обеспечить сбалансированность правительственной политики по нескольким аспектам.

Во-первых, политика должна поддерживать инновационную деятельность как в крупных компаниях, так и на средних и малых предприятиях, поскольку оба этих сектора играют существенную и зачастую взаимодополняющую роль в инновационных системах. Также необходимо стимулировать компании, побуждая их к инвестициям в инновации.

Во-вторых, необходимо обеспечить открытость системы инноваций для зарубежных источников, которые должны дополнять, а не заменять российские источники. Политика России в сфере научных исследований становится в большей степени направленной на расширение международного сотрудничества – такая же открытость требуется для поддержки обучения и аккумулирования инновационных возможностей в компаниях.

В-третьих, следует уделять больше внимания спросу на создание знаний. До настоящего времени философия продвижения технологий достаточно сильно влияла на инновационную политику и делала чрезмерный акцент на предложении. Такой подход имеет существенные ограничения в условиях рыночной экономики, где знания клиентов играют существенную роль в формировании инноваций.

В-четвертых, основное внимание в рамках инновационной политики необходимо уделять повышению экспортного потенциала российской инновационной продукции и продукции с добавленной стоимостью в глобальном масштабе.

В целях обеспечения такого баланса России необходимо создавать и поддерживать движущие силы перемен. Федеральное правительство не может и не должно выполнять все самостоятельно. Вместо этого следует поддерживать благоприятную деловую среду и способствовать тому, чтобы другие брали инициативу на себя. В некоторых случаях это будет означать поощрение наращивания потенциала, например, на региональном уровне, где администрация зачастую не обладает достаточными возможностями для формирования и внедрения специально разработанной инновационной политики. Слишком большие объемы финансирования НИОКР до сих пор выделяются без достаточного контроля и учета или определенных требований к результатам, что приводит к нецелесообразным тратам. Чтобы сосредоточить государственные НИОКР в центрах с достаточным количеством исследовательских компетенций, необходимо применять принцип приоритетности и избирательности. Перспективы развития инновационной сферы России зависят от правильности выбора приоритетных направлений, способности найти не яркие и престижные, а полезные для общества проекты, приносящие комплексные результаты. Возможность развития международного сотрудничества не только в науке, но и в разработке новых технологий на доконкурентных стадиях, – важнейший фактор, влияющий на перспективы инновационной сферы РФ.

ОБНОВЛЕННЫЙ МЕХАНИЗМ СПЕЦИАЛЬНЫХ ИНВЕСТИЦИОННЫХ КОНТРАКТОВ (СПИК-2)

Рабочая группа АЕБ по модернизации и инновациям приложила существенные усилия для тщательного анализа обновленного механизма специальных инвестиционных контрактов (СПИК-2) с акцентом на его технологических и правовых аспектах. Рабочая группа АЕБ по модернизации и инновациям провела ряд специальных встреч, посвященных теме СПИК-2, которые послужили площадкой для обсуждения ключевых задач инновационного развития и распространения передовых технологий в России, перспектив реализации высокотехнологичных проектов с поддержкой СПИК-2, преимуществ и недостатков СПИК-2 по сравнению со СПИК-1 в части защиты инвесторов.

Специальный инвестиционный контракт (СПИК-1) предоставлял инвестору особый режим, как, например, налоговые льготы и субсидии в обмен на инвестиционную деятельность. Общие условия федерального СПИК определены максимальным сроком (10 лет) и минимальным объемом инвестиций (750 млн рублей).

Хотя СПИК является одним из видов инвестиционного инструмента, он рассматривается как форма локализации производства, которая гарантирует отсутствие дискриминации на публичных тендерах и может обеспечить получение статуса «единственного поставщика». Однако, реальный опыт свидетельствует о том, что некоторые компании испытывали трудности с получением обещанных выгод и с выполнением всех обязательств, соответствующих условиям СПИК-1. Большинство проектов в рамках СПИК-1 охватывают такие отрасли, как автомобилестроение, фармацевтика, электроника и оборудование для нефтегазовой отрасли.

СПИК-2 является значительным шагом в улучшении инвестиционного климата, особенно в отношении налоговых льгот и обязательств. Налоговые льготы предоставляются как на федеральном, так и на региональном уровнях, а обязательства ограничены размером предоставленных фискальных мер государственной поддержки.

СПИК-2 изначально создавался как инструмент инновационного развития, трансфера технологий и внедрения современных технологий для производства товаров, конкурентоспособных на мировом рынке. После его реализации появится возможность получить соответствующие меры государственной поддержки (налоговые льготы, гарантия стабильности правовых условий для ведения бизнеса, локализация промышленной продукции, доступ к государственным заказам, в том числе на основе единственного поставщика, и другие меры поддержки).

Для большинства иностранных инвесторов статус «Сделано в России» может стать самой важной и привлекательной частью нового законодательства. Однако, «доступ к государственным закупкам в качестве единственного поставщика (при условии инвестиций в размере более 3 млрд российских рублей)» может быть трудно достижимым, особенно для малых и средних компаний, и новых инвесторов.

Одна из ключевых задач СПИК-2 – включение в процесс малого и среднего бизнеса, в связи с чем устранен порог входа по минимальной сумме инвестиций 750 млн руб. Однако, новый подход требует обширной документации и процедур, которые могут стать ограничительными для иностранных МСП, особенно для компаний, не имеющих опыта на Российском рынке. Более активное участие фармацевтических и автомобильных компаний выглядит естественным, учитывая масштаб их рынка в России, объем инвестиций и уже устоявшееся местное присутствие.

Заключение СПИК-2 будет проводиться посредством конкурса, а не простой процедуры подачи заявок. СПИК-2 определил процедуру проведения конкурсного отбора для разработки и внедрения технологий, включенных в утвержденный Правительством РФ перечень передовых современных технологий. Материалы для списка технологий были, однако, собраны только от российских предприятий и научных кругов.

Установлена процедура экспертизы технологий для оценки заявок с точки зрения конкурентоспособности предлагаемых технологий. Однако, в состав экспертного совета не допускаются иностранные эксперты, что может существенно ухудшить результаты такой экспертизы, ее достоверность и полноту, особенно в отношении долгосрочной конкурентоспособности предлагаемых технологий. Другая проблема может заключаться в субъективизме экспертного совета без международной экспертизы. Долгосрочный период предполагаемых проектов может потребовать исключительных маркетинговых стратегических знаний, чтобы обеспечить глобальную конкурентоспособность продуктов, спрос на эти технологии и соответствующие продукты в течение всего срока реализации проекта.

COVID-19 И ИННОВАЦИИ

Начиная с марта 2020 года, тема пандемии COVID-19 лидирует в мировых экономических новостях. В связи с этим рабочая группа АЕБ по модернизации и инновациям хотела бы обратить внимание на две проблемы, связанные с COVID-19. Еще до пандемии сфера электронной коммерции показывала высокий рост как во всем мире, так и в России. Пандемия стала катализатором еще большего роста. Рост электронной коммерции в России превысил в 10 раз рост реальной экономики в 2019 году. По данным Яндекса, в 2020 году в России 62 миллиона человек пользовались услугами продаж через Интернет. Согласно прогнозу, к 2021 году эта цифра вырастет до 66 миллионов, и основной причиной такого прироста является пандемия и необходимость оставаться дома. Продажи на Ozon увеличились на 115 процентов в течение 2020 года также благодаря пандемии. Ожидается, что к 2024 году доля продаж через Интернет вырастет на 26 процентов по сравнению с 2020 годом.

Существует по крайней мере две проблемы в сфере электронной коммерции: a) большинство россиян оплачивают товары, купленные через Интернет, наложенным платежом. Систему можно усовершенствовать. Китайская модель оплаты через счет эскроу, которую использует Alipay, может повысить эффективность платежной системы, используемой в сфере электронной коммерции в России, поскольку предусматривает списание средств со счета клиента только после получения товара. b) 73% товаров из-за границы доставляются Почтой России; доставка занимает около трех недель, в то время как клиенты ожидают доставку в течение 5 дней. Сроки доставки необходимо сократить. Также может быть использована китайская модель партнерства с традиционными предприятиями розничной торговли, что снизит потребность в дорогостоящих инвестициях в логистическую инфраструктуру. Такие российские интернет-магазины как Ozon и Wildberries уже пользуются этой моделью.

ВАЖНОСТЬ ПРАВ ИНТЕЛЛЕКТУАЛЬНОЙ СОБСТВЕННОСТИ И ВТО/ТРИПС

Вступив в ВТО, Россия приняла на себя все обязательства в рамках Соглашения по торговым аспектам прав интеллектуальной собственности (Соглашение ТРИПС), а также дополни-

тельные обязательства по вопросам прав интеллектуальной собственности (ПИС), содержащиеся в Соглашении Рабочей группы ВТО. Соглашение ТРИПС устанавливает минимальные стандарты для защиты авторских и смежных прав, товарных знаков, наименований мест происхождения товаров, промышленных образцов, патентов, топологий интегральных схем и неразглашаемой информации. Кроме того, Соглашение ТРИПС устанавливает минимальные стандарты защиты ПИС в административных и гражданских делах и, по крайней мере, в отношении пиратства в сфере авторского права и контрафакции товарных знаков, в уголовных делах и разбирательствах на границе.

Защита прав интеллектуальной собственности приносит пользу экономике с точки зрения ВВП, занятости, налоговых поступлений, развития и конкурентоспособности. Помимо этого, наличие ПИС способствуют прямым иностранным инвестициям и научно-техническому обмену. Для того чтобы в полной мере реализовать потенциал в области прямых иностранных инвестиций, России понадобится действенное законодательство в сфере ПИС и наличие эффективных мер по его применению.

Ненадлежащая и неэффективная защита авторских прав, включая онлайн-пиратство, продолжает оставаться серьезной проблемой, наносящей ущерб рынку легального контента как в России, так и в других странах. В России продолжают работать несколько сайтов, способствующих интернет-пиратству в сфере видеоигр, музыки, фильмов, книг и телевизионных программ. В РФ было принято законодательство, позволяющее правообладателям добиваться судебных запретов по распоряжению суда, однако шаги по устранению причины проблемы предприняты не были, а именно проведение расследования и преследование в судебном порядке владельцев крупных коммерческих сайтов, продающих такие пиратские материалы, включая программное обеспечение.

Россия представляет собой процветающий рынок контрафактной продукции из Китая, которая поступает в страну через Казахстан, Кыргызстан и Азербайджан. Аналогичным образом контроль за исполнением законодательства по борьбе с торговлей контрафактными товарами в Интернете, включая одежду, обувь, спортивные товары, фармацевтическую продукцию и электронные устройства, является недостаточным. Важно отметить, что низкий уровень защиты прав интеллектуальной собственности является серьезным препятствием для развития инноваций в России.

Локальным производителям, где бы они ни находились, необходимо интегрировать их операционную деятельность в глобальные цепочки поставок, поскольку это связано с удовлетворением потребностей клиентов в соответствии с тенденциями четвертой промышленной революции. Снижение стоимости, доступность и простота приобретения наилучших компонентов имеет решающее значение для повышения конкурентоспособности и экспортного потенциала российской промышленности в глобальных условиях.

Ограничения, связанные с покупкой зарубежного программного обеспечения, например, других лучших в своем классе компонентов, могут напрямую повлиять на конкурентоспособность и стоимость российских продуктов, проектов и решений.

РЕКОМЕНДАЦИИ

- Устранить недостатки, связанные с процедурами применения норм гражданского права.
- Усовершенствовать процедуры административного правоприменения.
- Усовершенствовать меры противодействия правонарушениям в сети Интернет.
- Устранить недостатки в уголовном праве и процедурах в области ИС.
- Усилить таможенный контроль в отношении параллельной торговли.
- Улучшить координацию между правоохранительными органами в борьбе с контрафакцией и пиратством.
- Установить эффективный диалог и сотрудничество между российскими властями и обладателями прав интеллектуальной собственности.
- Повысить уровень осведомленности о контрафакции и пиратстве и сопутствующем экономическом и социальном вреде среди высокопоставленных должностных лиц и широкой общественности.

ЗАДАЧИ В СФЕРЕ ЛОКАЛИЗАЦИИ, ПОВЫШЕНИЯ ПРОИЗВОДИТЕЛЬНОСТИ И УЛУЧШЕНИЯ КАЧЕСТВА

На протяжении последних нескольких лет локализация была обусловлена двумя факторами: обесценением рубля в 4-м квартале 2014 года наряду с внедрением новых правил, положений и процедур, призванных способствовать импортозамещению и расширению местного производства в России.

Локализация, обусловленная снижением обменного курса, во многих случаях принесла пользу в том, что большая часть производственно-сбытовой цепочки осуществляется или производится в России, поскольку российское производство стало более конкурентоспособным. Конкуренция на рынке должна способствовать обеспечению устойчивости этих выгод за счет повышения производительности и качества.

Нововведенные правила, положения и процедуры способствовали росту местного производства, однако также создается впечатление, что способы их внедрения привели к снижению конкуренции в ряде секторов, создав неравные условия конкуренции среди компаний – российских и иностранных – занимающихся производством товаров на территории России, что стало одной из причин ограничения повышения производительности и качества.

Существенное падение потенциала экономического роста России с примерно 4-5% в ноябре 2016 года до 1,5-3,0% в ноябре 2018 года, по оценкам Всемирного банка, является

поводом для беспокойства и признаком того, что, по-видимому, существует необходимость пересмотра политических мер, в т. ч. локализации производства, с целью усиления конкуренции и повышения производительности и качества для обеспечения роста российской экономики.

РЕКОМЕНДАЦИИ

Провести пересмотр правил, положений, процедур и указаний по внедрению, сосредоточив внимание только на тех секторах, которые считаются стратегическими для положений о локализации. Для других секторов провести пересмотр правил, положений и принципов в целях обеспечения равных условий для всех участников рынка, занимающихся производством на территории России, а также для усиления конкуренции в целях повышения производительности и качества для обеспечения роста российской экономики.

КАДРОВОЕ ОБЕСПЕЧЕНИЕ ИННОВАЦИОННОЙ ЭКОНОМИКИ

Постоянные изменения в технологиях, связанные с развитием и внедрением цифровых решений, влияют на бизнес-стратегии компаний и их потребности в кадрах. В результате появляются новые требования к цифровой грамотности, развитию профессиональных (в том числе инженерных) компетенций и поведенческой культуры. При этом недостаток квалифицированного персонала ощущается на всех уровнях руководства и исполнения. Кадровое обеспечение инновационного развития возможно только при наличии развивающей среды, которая способствует расширению профессиональных контактов для обмена знаниями, возможности приглашения внешних экспер-тов, формированию разнообразных по опыту команд, обучению и переобучению собственных работников.

На рынке ИТ ощущается огромный дефицит рабочей силы, не хватает примерно 500,000 ИТ-специалистов. Особое внимание следует уделять развитию компетенций в современных промышленных цифровых сферах основных отраслей российского рынка, таких как тяжелое машиностроение, энергетика и природные ресурсы, транспорт, логистика и медицина. Экономика XXI века основана на экосистемах с высокой добавленной стоимостью, где реальное и виртуальное сливаются в процессе производства товаров и формирования опыта. Платформы для организации виртуального опыта выводят производительность на новый уровень, расширяя возможности команд, которым поручено создавать новые предложения.

Правительство и бизнес должны подготовить текущую и будущую рабочую силу к тому, что новые отраслевые практики, связанные с большими данными и искусственным интеллектом (ИИ), дополненной реальностью, аддитивным производством, коботизацией и передовыми инструментами моделирования, в процессе внедрения инноваций будут ориентированы именно на людей. Решающее значение в отрасли будут иметь те, кто обеспечит будущую рабочую силу лучшими знаниями, навыками и опытом. От степени автоматизации производственных систем здесь мало что зависит. Опираясь на прагматичную государственную политику и стратегии, связанные с навыками, ведущие компании смогут расширить возможности своей рабочей силы следующими способами:

- обеспечение готовности рабочей силы будущего к профессиональной деятельности после школы/университета/колледжа;
- прогнозирование обязанностей и навыков будущего для удовлетворения будущих потребностей;
- организация непрерывного обучения и повышения квалификации имеющейся рабочей силы в рамках государственной политики и корпоративных стратегий;
- преобразование знаний, навыков и опыта уходящих на пенсию сотрудников в ценные корпоративные активы;
- поддержание привлекательности критически важных научных и инженерных профессий для представителей новых поколений;
- содействие цифровой трансформации систем образования для достижения этих целей.

Среди позитивных явлений в деле подготовки кадров заслуживает внимания возросший интерес государства и компаний с государственным участием к внедрению передовых практик обучения и развития, в том числе проведение федеральных и региональных конкурсов, привлечение квалифицированных специалистов по управлению персоналом и управлению проектами из международных компаний. Тема инноваций и цифровых технологий перестает быть просто модной и выходит на уровень осознанного применения внутри компаний.

Отдельно стоит отметить развитие движения WorldSkills, особенно в части подготовки к профессиям будущего (конкурс Future Skills), как платформу для внедрения культуры средне-срочного и краткосрочного обучения и переобучения. Другой пример: ряд технических вузов внедряет персонализированное обучение новым навыкам на основе продуктового подхода.

Сложность в развитии компетенций заключается в необходимости соответствовать постоянно меняющимся требованиям, то есть учиться на протяжении всей жизни (life-long learning). На практике организация работы на большинстве предприятий и система высшего образования не соответствуют модели постоянного обучения и развития. Кроме того, затруднено применение в российских компаниях эффективных практик организации работы, включая облачные решения, из-за нормативных ограничений по использованию иностранного ПО и трансграничной передаче персональных данных.

РЕКОМЕНДАЦИИ

Для внедрения культуры постоянного обучения необходимы следующие условия: работа над реальной и востребованной

инновационной задачей, возможность обмениваться идеями и практиками, учиться у коллег и внешних экспертов, организация работы распределенных команд, постоянное обновление полученного опыта, масштабирование успешных практик вузов, укрепление сотрудничества образовательных учреждений с бизнесом, стимулирование развития среднесрочных курсов обучения и переобучения.

Необходима совместная системная работа бизнеса, научно-образовательных учреждений и государства по выявлению и описанию ключевых компетенций и потенциала российских кадров, развитию центров инженерных компетенций международного уровня и созданию образовательных межвузовских консорциумов для обеспечения конкурентного преимущества в инновационной экономике будущего.

ЧЛЕНЫ РАБОЧЕЙ ГРУППЫ

ABB • Agro-Chemie Kft. • ALRUD Law Firm • American Institute of Business and Economics • ANCOR • AO Deloitte & Touche CIS • AVIS Russia (Bilantilia Corp.) • Baker McKenzie • BAYER • BEITEN BURKHARDT Moscow • Benteler Automotive LLC • British American Tobacco Russia • Brunel CR B.V. Moscow Branch • BSH Bytowyje Pribory OOO • Caterpillar Eurasia LLC • Clifford Chance • CMS Russia • CNH Industrial Russia LLC • Commerzbank (Eurasija) AO • Confederation of Danish Industry • Corteva Agriscience • Credendo – Ingosstrakh Credit Insurance LLC • DAF Trucks Rus LLC • DANONE RUSSIA • JSC • Dassault Systems LLC • Debevoise and Plimpton LLP • DELCREDA • DEME Group • DLA Piper Rus Limited LLC Branch in St.Peterburg • Dow Europe GmbH Representation office • Electricite de France (EDF Russie) • Ericsson • European Space Agency, Permanent mission in the RF • Eversheds Sutherland • EY • Ferrero Russia, CJSC • FERRONORDIC • FM LOGISTIC VOSTOK • Gasunie • GE (General Electric International (Benelux) B.V.) • HEINEKEN BREWERIES, LLC • HELLENIC BANK PCL • Hino Motors, LLC • HYUNDAI CONSTRUCTION EQUIPMENT Co., LTD • Hyundai Motor CIS • Hyundai Truck and Bus Rus LLC • ING Wholesale Banking in Russia • International SOS • ISG support-GUS GmbH • Itella, OOO • JCB Russia LLC • JETRO • John Deere Rus, LLC • Johnson Matthey PLC • JUNGHEINRICH • JURALINK • KfW IPEX-Bank Representative Office • Kia Motors Rus • Komatsu CIS, LLC • Kuehne+Nagel • Legrand LLC • Lipetsk SEZ JSC • Mannheimer Swartling • Mercedes-Benz Russia • Merck LLC • MonDef • Morgan Lewis • MOST SERVICE, member of Bruck Consult • Nestle Rossiya LLC • Nissan Manufacturing Rus • Noerr OOO • Novartis Group Russia • Pavia e Ansaldo • PEAC Leasing AO • Pepeliaev Group, LLC • Philips LLC • PPG Industries LLC • Promaco-TIAR • Publicity Consulting Group, an ECCO Network Affiliate in Russia • PwC • quality partners. • Renault Russia • Roche Diagnostics Rus LLC • Rödl & Partner • Saint-Gobain • Samsung Electronics • Scania-Rus LLC • SCHNEIDER GROUP • SERVIER • Shell Exploration and Production Services (RF) B.V. • Siemens LLC • Signify Eurasia LLC • Special economic zone "STUPINO QUADRAT" • Subaru Motor • TABLOGIX • TechSert • Tikkurila • TMF Group • Unipro PJSC • VEGAS LEX Advocate Bureau • Volkswagen Group Rus (Audi/Bentley/Lamborghini/Škoda/Volkswagen/Volkswagen Commercial Vehicles) • Volvo Vostok NAO • Weir Minerals RFZ • Wirtgen-International-Service LLC • Yamaha Motor CIS LLC.

РАБОЧАЯ ГРУППА ПО РЕГУЛИРОВАНИЮ ХИМИЧЕСКОЙ ПРОМЫШЛЕННОСТИ

Председатель:
Анна Трунина, Dow Europe GmbH Representative office

Заместитель председателя:
Екатерина Сучалко, Merck

Координатор Рабочей группы:
Ольга Киричинская (olga.kirichinskaya@aebrus.ru)

ТЕХНИЧЕСКИЙ РЕГЛАМЕНТ ЕВРАЗИЙСКОГО ЭКОНОМИЧЕСКОГО СОЮЗА «О БЕЗОПАСНОСТИ ХИМИЧЕСКОЙ ПРОДУКЦИИ» (ТР ЕАЭС 041/2017)

Рабочая группа по регулированию химической продукции основана в 2017 году для обсуждения принятого Решением Совета Евразийской экономической комиссии № 19 от 3 марта 2017 г. Технического регламента «О безопасности химической продукции», который вызывает ряд вопросов у широкого круга представителей бизнеса, например, следующих отраслей: производство химического сырья, шинная индустрия, производство средств защиты растений, производство лакокрасочных материалов, бытовой химии и т. д. Технический регламент Евразийского экономического союза «О безопасности химической продукции» (ТР ЕАЭС 041/2017) (далее – Технический регламент) предусматривает разработку порядка формирования и ведения реестра, нотификации и регистрации веществ до 1 декабря 2018 г.

ПРОБЛЕМА

Рабочая группа АЕБ по регулированию химической продукции хотела бы выразить обеспокоенность компаний-импортеров и крупнейших инвесторов в российскую экономику сложившейся ситуацией с Техническим регламентом Евразийского экономического союза «О безопасности химической продукции» (ТР ЕАЭС 041/2017), принятым 03.03.2017 г. Сейчас любые организации, производящие и (или) импортирующие химические вещества и смеси, будь то сырье, материалы, готовая продукция и даже отходы (за редкими исключениями, установленными Техническим регламентом 041/2017), вне зависимости от тоннажа, входят в область деятельности, на которую распространяется проект решения ЕЭК. Установленные проектами документов сроки формирования Реестров химических веществ и смесей не позволят провести формирование Реестров в указанный период. Тысячи химических веществ на сегодняшний день не подлежат оценке соответствия в странах ЕАЭС, данных о них нет в информационных источниках стран Союза, либо они выпускаются в объеме менее одной тонны в год и не подлежат регистрации в других странах мира. Соответственно, найти данные об этих веществах в открытых источниках не представляется возможным. Также тысячи химических смесей не подлежат оценке соответствия в странах ЕАЭС и не требуют регистрации в других странах мира. Таким образом, чтобы сформировать Реестр смесей, для начала необходимо сформировать реестр веществ. В странах Союза отсутствует достаточное количество квалифицированных специалистов и оснащенных лабораторий, способных провести в установленные сроки экспертизу такой продукции и, в случае необходимости, ее испытания. Указанные в проектах правила повлекут значительные затраты (финансовые, временные, трудозатраты и пр.), которые во многом являются избыточными и необоснованными. Неприменение принципа поэтапности (в зависимости от годового тоннажа производимой и (или) импортируемой химической продукции) при введении нотификации и регистрации вместе с избыточными требованиями по предоставлению информации значительно усложнят деятельность крупных предприятий и могут оказаться невыполнимыми для средних и особенно малых предприятий (малотоннажное производство и импорт), а также с большой долей вероятности приведут к возникновению технических барьеров в торговле для инновационных химических веществ/смесей, которые являются прогрессивными инновационными разработками, но еще не успели завоевать рынки. Подход в целом согласуется с лучшими мировыми практиками, однако упущение отдельных существенных деталей делает его менее эффективным, а главное, необоснованно усложняет деятельность компаний. Наиболее оптимальный вариант — использовать опыт разработки, внедрения и функционирования существующих систем. Целесообразно внимательнее изучить европейский опыт и использовать лучшие из его особенностей.

РЕКОМЕНДАЦИИ

Принимая во внимание вышеизложенное, предлагаем:

- Внедрить пороговые значения (диапазоны тоннажа) для требований к предоставлению данных, то есть объем данных, запрашиваемых для нотификации и регистрации новых химических веществ, должен зависеть от тоннажа, изготовленного или импортированного и размещенного на рынке ЕАЭС. Это позволит избежать создания торговых барьеров, особенно в отношении малообъемных химических веществ, как это предусмотрено Регламентом (ЕС) № 1907/2006 (REACH).

- Отчет о химической безопасности должен запрашиваться только для нотификации новых химических веществ, произведенных или импортированных, при условии, что объем на рынке ЕАЭС превышает 1 тонну в год для каждого заявителя (в соответствии с EU REACH). Без установления порога для малотоннажной продукции потребуется слишком много данных/затрат для подготовки Отчета о химической безопасности и предоставления сведений в соответствии с требованиями о предоставлении документов для ведения национальной части реестра.

ЧЛЕНЫ РАБОЧЕЙ ГРУППЫ

Akzo Nobel Coatings LLC • Allnex Belgorod LLC • Avon Beauty Products Company LLC • BASF • Bayer • British American Tobacco Russia • Brother LLC • Caterpillar Eurasia LLC • Continental Tires RUS OOO • Dow Europe GmbH Representation office • Electrolux • GE • Hempel AO• Henkel Rus OOO • John Deere Rus, LLC • Johnson Matthey PLC • JTI Russia • Kaercher • Knauf Group CIS (OOO Knauf Gips) • LANXESS LLC • Merck LLC • Michelin • Philip Morris Sales and Marketing • Procter & Gamble • Renault Russia • Rockwool • SERVIER • Shell Exploration and Production Services (RF) B.V. • Solvay S.A. • Wacker Chemie Rus.

СЕВЕРО-ЗАПАДНЫЙ РЕГИОНАЛЬНЫЙ КОМИТЕТ

Председатель:
Антон Рассадин, BSH Bytowije Pribory

Заместители председателя:
Андреас Битци, quality partners.; **Елена Новоселова**, Coleman Services;
Вильгельмина Шавшина, EY

Координатор комитета: **Алла Оганесян** (alla.oganesian@aebrus.ru)

ВВЕДЕНИЕ

Северо-Западный региональный комитет был основан в Санкт-Петербурге в феврале 2010 года. В настоящее время в Комитете насчитывается около 100 компаний-членов, представляющих все секторы торгово-промышленной деятельности. В него входят компании из большинства стран Европы, но в силу географического расположения региона среди членов Комитета много скандинавских, в особенности финских (40%) компаний.

Основная задача Комитета состоит в создании более благоприятной деловой и инвестиционной среды в Северо-Западном регионе с целью содействия компаниям-членам. Северо-запад России включает Санкт-Петербург, Архангельскую, Вологодскую, Калининградскую, Ленинградскую, Мурманскую, Новгородскую и Псковскую области, республики Карелию и Коми и Ненецкий АО.

Наиболее важными задачами Комитета являются:
- предложение наилучших западных практик лоббирования в интересах компаний-членов;
- улучшение деловой среды, повышение прозрачности и создание возможностей для ведения честного бизнеса в регионе;
- взаимодействие с местными и федеральными органами власти с целью решения проблем или содействия компаниям-членам и секторам в их предпринимательской деятельности;
- создание платформы, например, подкомитетов или рабочих групп, для решения проблем своих членов в области ведения бизнеса;
- организация мероприятий и создание других возможностей для встреч с целью налаживания контактов;
- сотрудничество с консульствами и другими представительствами Европейского союза в регионе;
- сотрудничество с другими бизнес-ассоциациями;
- предоставление качественной информации в соответствии с потребностями компаний-членов.

Комитет организует ряд мероприятий в Санкт-Петербурге, которые уже стали популярными. Так, Форум «Северное измерение» привлекает сотни компаний. Организация этого форума на ежегодной основе уже стала традицией. Кроме того, Комитет проводит открытые заседания, круглые столы и другие мероприятия, посвященные обсуждению текущих вопросов и проблем предпринимательства.

В 2020 году Комитет существенно усилил свое взаимодействие с региональными органами власти и деловыми ассоциациями и свою коммуникационную активность для активного лоббирования интересов членов Комитета, их своевременного информирования о ситуации в регионе, ограничительных мерах в связи с пандемией COVID-19 и мерах поддержки, участия в разработке и реализации мер восстановления региональной экономики. Особо следует отметить высочайший уровень сотрудничества, на который Комитет вышел с экономическим блоком правительства Ленинградской области, во многом благодаря которому областные члены Комитета смогли восстановить нормальное функционирование своих предприятий после ограничительных мер в кратчайшие сроки и с максимальной эффективностью при всесторонней поддержке властей региона.

Комитет находится под управлением Координационной группы. На сегодняшний день ее членами являются: Андреас Битци (заместитель председателя, quality partners.), Наталья Капкаева (Port of Hamburg Marketing), Тимо Микконен (LLC ORAS Rus), Елена Новоселова (заместитель председателя, Coleman Servies UK), Антон Поддубный (Dentons); Антон Рассадин (председатель, BSH), Максим Соболев (ЮИТ), Анна Чехова (Commerzbank (Eurasija) AO), Вильгельмина Шавшина (заместитель председателя, EY).

ПОДКОМИТЕТ ПО ТРУДОВЫМ РЕСУРСАМ И МИГРАЦИОННЫМ ВОПРОСАМ

ВВЕДЕНИЕ

Санкт-Петербург является вторым по значению после Москвы и ключевым на северо-западе России инфраструктурным центром, а также вторым по численности населения мегаполисом страны. Основой экономики региона, а следовательно, главным источником налоговых поступлений и одним из ключевых факторов занятости населения является промышленный сектор Санкт-Петербурга и Ленинградской области. На долю промышленного комплекса приходится пятая часть работающего населения региона.

ЗАДАЧИ

Подкомитет работает по следующим направлениям:
- оценка, обучение и развитие персонала;
- компенсации и льготы;
- трудовое право;
- рекрутмент;
- миграционная политика.

ЦЕЛИ

Целью Подкомитета является обеспечение благоприятных условий для развития рынка трудовых ресурсов в Северо-Западном регионе посредством:
- создания площадки для эффективного трехстороннего диалога и взаимодействия между представителями органов власти, бизнеса, государственных учебных заведений;
- содействия обмену опытом между иностранными и российскими специалистами по кадрам с целью расширения областей применения в Северо-Западном регионе лучших мировых практик и стандартов в области человеческих ресурсов;
- поддержка иностранных компаний-членов АЕВ в вопросах, возникающих в работе с персоналом в регионе, в стране;
- поддержка иностранных компаний-членов АЕВ в вопросах миграционной политики Российской Федерации.

ПРОБЛЕМЫ

В рейтинге инвестиционно-привлекательных регионов России Санкт-Петербург и Ленинградская область занимают лидирующие позиции.

Интерес иностранных инвесторов к рынку Северо-Западного региона растет, при этом компании, начинающие работать на российском рынке, не всегда четко понимают особенности российского законодательства и специфику ведения бизнеса в России. Помимо этого при ведении деятельности в России иностранные компании часто сталкиваются со сложностями, вызванными правовыми коллизиями, пробелами в законодательстве или неоднозначными подходами в правоприменении по вопросам управления персоналом. Особым вопросом для иностранных компаний, ведущих деятельность в России, является вопрос привлечения иностранной рабочей силы.

РЕКОМЕНДАЦИИ

Целью Подкомитета является дальнейшее расширение информационного поля, профессиональная помощь и поддержка по вопросам, возникающим у иностранных компаний при работе с персоналом в регионе, по миграционным вопросам путем:
- привлечения к активному сотрудничеству представителей правительственных и законодательных органов; взаимодействия с государственными органами с целью упорядочивания применения существующих правовых норм и устранения правовых коллизий и пробелов, мешающих эффективной и продуктивной деятельности иностранных компаний с персоналом в России;
- содействия иностранным компаниям-членам АЕБ в расширении и укреплении деловых контактов в Северо-Западном регионе;
- проведения ежемесячных заседаний для обсуждения актуальных изменений на российском рынке труда, нововведений в российской законодательной базе.

ПОДКОМИТЕТ ПО ТАМОЖНЕ, ТРАНСПОРТУ И ЛОГИСТИКЕ

ОБЯЗАТЕЛЬНАЯ МАРКИРОВКА ТОВАРОВ СРЕДСТВАМИ ИДЕНТИФИКАЦИИ

В 2020 году получила дальнейшее развитие система обязательной маркировки отдельных товаров средствами идентификации. С 1 июля 2020 года обязательная маркировка действует для обуви и лекарственных средств (с некоторыми изъятиями), с 1 октября 2020 года — для фототоваров и духов (реализация нереализованных остатков без маркировки возможна до 30 сентября 2021 года). Более того, 1 ноября 2020 года начинается первый этап обязательной маркировки шин и автопокрышек, который предполагает запрет оборота немаркированной продукции с временным исключением для организаций оптовой и розничной торговли.

С 1 января 2021 года обязательная маркировка должна начать действовать в отношении товаров легкой промышленности. На данный момент также запущены пилотные проекты по маркировке нескольких групп товаров: молочная продукция (обязательная маркировка должна была быть введена в 2020 году, но эксперимент продлен до конца 2020 года), упакованная вода, кресла-коляски. В сентябре 2020 года официально была выдвинута инициатива запуска пилотного проекта по маркировке пива и пивных напитков.

ПРОБЛЕМА

После начала действия обязательной маркировки нанесение знаков идентификации на товар будет обязательно до его введения в оборот на территории России, в том числе для товаров, импортируемых из стран, не входящих в ЕАЭС.

РЕКОМЕНДАЦИИ

В соответствии с действующим законодательством в области обязательной маркировки импортируемые товары должны быть маркированы кодами идентификации до выпуска ввозимых в Россию товаров для внутреннего потребления. Соответственно, маркировка может осуществляться двумя способами: (1) на иностранном складе до упаковки товаров в транспортную упаковку и дальнейшего перемещения их через границу России; (2) при условии помещения товаров под процедуру таможенного склада, на складе в России до выпуска товаров для внутреннего потребления.

КАТЕГОРИРОВАНИЕ УЧАСТНИКОВ ВЭД

В июне 2020 года вступил в силу Приказ Минфина России от 21.02.2020 г. № 29н (далее — «Приказ»), определяющий порядок проведения категорирования участников ВЭД с целью применения тех или иных мер таможенного контроля. Приказом, по сравнению с ранее действовавшим Приказом ФТС России от 01.12.2016 г. № 2256 «Об утверждении Порядка автоматизированного определения категории уровня риска участников внешнеэкономической деятельности», уточнены условия отнесения лиц к одной из трех категорий (высокой, низкой и средней); определен порядок применения мер по минимизации рисков; установлены требования, по которым лицо исключается/включается в ту или иную категорию; изменен перечень критериев, характеризующих деятельность лиц, совершающих таможенные операции.

ПРОБЛЕМА

Несмотря на существенную доработку подходов категорирования, на практике, в процессе применения Приказа, участники ВЭД сталкиваются с рядом сложностей, в том числе следующими:

1. Одним из блокирующих критериев, определяющим невозможность применения низкой категории риска, является неисполнение или ненадлежащее исполнение лицом обязанностей при проведении таможенной проверки. Таким ненадлежащим исполнением обязанности таможенный орган может признать любую техническую ошибку, в частности, неточности в оформлении представленных документов, опечатки и др. На практике всего через несколько дней после допущенных неточностей компания может столкнуться, например, с кратным увеличением количества досмотров, запросов документов, что влечет существенные издержки.
2. Еще одним блокирующим критерием, в соответствии с Приказом, является наличие задолженности по уплате таможенных платежей и налогов без какого-либо минимального ограничения.
3. Доступ к информации о присвоенной категории риска открыт только участникам ВЭД, подписавшим Хартию добросовестных участников ВЭД, а также уполномоченным экономическим операторам (так как для последних низкий уровень риска присваивается автоматически при получении статуса). Иные участники ВЭД не имеют доступ к такой информации в личном кабинете участника ВЭД.

РЕКОМЕНДАЦИИ

Продолжить взаимодействие с уполномоченными органами государственной власти Российской Федерации, в частности Министерством финансов России и ФТС России, в процессе совершенствования ключевых положений Приказа, снижающих эффективность категорирования участников ВЭД.

В отношении критерия неисполнения обязанностей при проведении таможенной проверки мы рекомендуем участникам ВЭД полно и аргументировано отвечать на требования таможенного органа о предоставлении документов и сведений; использовать право на продление срока представления документов.

В части соблюдения остальных критериев рекомендуем рассмотреть возможность подписания Хартии добросовестных участников ВЭД или получения статуса уполномоченного экономического оператора.

ТРАНСПОРТНЫЕ ВЫЧЕТЫ

ПРОБЛЕМА

В последнее время таможенными органами проводятся массовые проверки по вопросу обоснованности вычетов транспортных расходов на перевозку по таможенной территории ЕАЭС при определении таможенной стоимости товаров, что впоследствии порождает большое количество арбитражных споров и противоречивых решений судов на этот счет.

Суть претензий таможенных органов заключается в следующем:

1. Для осуществления вычета на основании транспортных расходов, понесенных после пересечения границы ЕАЭС, выделение стоимости перевозки из цены товара и ее разделение на стоимость перевозки до таможенной границы Союза и после должно присутствовать не только во внешнеторговом договоре и (или) инвойсе иностранного продавца, но и в договоре перевозки и инвойсе, выставленном перевозчиком, которые должны быть представлены декларантом, несмотря на то, что он не является стороной договора с перевозчиком.
2. Вознаграждение экспедитора не может быть вычтено из таможенной стоимости в качестве расходов на перевозку.

По мнению таможенных органов, наличие у декларанта только информации и документов, предоставленных иностранным продавцом, и отказ перевозчика, с которым декларант не имеет договорных отношений, в предоставлении транспортного договора и счетов на перевозку не дает декларанту права на заявление данного вычета.

При этом, по мнению таможенных органов, экспедиторские услуги при транспортировке товаров до границы Союза подлежат включению в таможенную стоимость товаров.

РЕКОМЕНДАЦИИ

В целях достижения единообразия правоприменительной практики, в том числе судебной, а также создания ситуации правовой определенности для декларантов, необходимо внесение изменений в ТК ЕАЭС и (или) разработка акта ЕЭК, регламентирующего условия вычета транспортных расходов из таможенной стоимости товаров, в частности, определяющих возможность вычета расходов на экспедиторские услуги из та-

моженной стоимости товаров, а также о порядке представления подтверждающих расходы документов.

В части подтверждения транспортных расходов мы рекомендуем компаниям представлять в таможенные органы полный пакет соответствующих документов, согласующихся между собой, а также общее письмо-пояснение, которое вносило бы логику и ясность в части юридической природы документов и особенностей договорных отношений между всеми сторонами, участвовавшими в процессе отгрузки и доставки товаров на территорию Российской Федерации.

Для получения вычета необходимо также обеспечить выделение стоимости перевозки из цены товара и разделение ее на стоимость перевозки до таможенной границы Союза и после, которое должно быть прописано во внешнеторговом договоре и инвойсе продавца, а также в договоре перевозки и инвойсе, выставленном перевозчиком.

ВКЛЮЧЕНИЕ ДИВИДЕНДОВ В ТАМОЖЕННУЮ СТОИМОСТЬ ТОВАРОВ

ПРОБЛЕМА

Новой практикой таможенных органов является проведение таможенных проверок на предмет включения уплачиваемых в адрес «материнских» организаций за пределы Союза. В результате этого возросло количество судебных споров по данному вопросу.

В соответствии с ч. 9 ст. 39 ТК ЕАЭС, перечисляемые покупателем продавцу дивиденды или иные платежи в случае, если они не связаны с ввозимыми товарами, не включаются в таможенную стоимость ввозимых товаров. При этом, согласно п. 3 ч. 1 ст. 40 ТК ЕАЭС, часть дохода (выручки), полученного в результате последующей продажи, распоряжения иным способом или использования ввозимых товаров, которая прямо или косвенно причитается продавцу, подлежит включению в таможенную стоимость товара. Эти две нормы и стали камнем преткновения в спорах о включении дивидендов в таможенную стоимость товаров.

При этом дивиденды представляют собой часть чистой прибыли общества, которая распределяется в пользу участника этого общества пропорционально его доле в уставном капитале. Дивиденды являются финансовым результатом деятельности любой компании в целом и не обусловлены реализацией конкретных товаров.

РЕКОМЕНДАЦИИ

Мы рекомендуем компаниям отслеживать дальнейшую судебную практику по этому вопросу и быть готовыми к запросу таможенными органами документов и сведений в рамках проведения проверки корректности определения таможенной стоимости товаров, в частности правомерности невключения дивидендов в таможенную стоимость товаров.

В текущей ситуации также следует подготовить аргументы в обоснование того, что отчисления дивидендов не связаны с ввозимыми компанией товарами. В случае если дивиденды выплачиваются стороне внешнеторгового контракта, являющейся с декларантом взаимосвязанным лицом, следует также подготовить доказательства отсутствия влияния взаимосвязи сторон контракта на стоимость сделки.

РЕГУЛИРОВАНИЕ ИНСТИТУТА УПОЛНОМОЧЕННОГО ЭКОНОМИЧЕСКОГО ОПЕРАТОРА

С 2018 года в таможенное законодательство ЕАЭС вводятся положения, призванные придать новый импульс развитию института Уполномоченного экономического оператора (УЭО): предусмотрены три типа свидетельств УЭО с разным набором упрощений для каждого типа, расширен перечень упрощений для УЭО, зафиксировано положение о том, что УЭО относится к категории низкого уровня риска и др.

ПРОБЛЕМА

Однако на практике оказалось, что преимущества, которые дает статус УЭО компаниям-импортерам, нивелированы общими системными изменениями в таможенном оформлении товаров. Так, товары «обычных» импортеров зачастую выпускаются быстрее, чем товары УЭО, даже в случаях использования последними упрощения «выпуск до подачи декларации», что таможенные органы объясняют недостатками работы системы управления рисками.

Существует и проблема недоверия участников ВЭД к механизму предоставления таможенным органам удаленного доступа к системе учета УЭО. Участники ВЭД опасаются, что информация, полученная таможенными органами из системы учета или витрины данных, может быть использована в других целях, например, для налогового контроля.

Некоторые специальные преимущества, которые дает статус УЭО на практике не применяются или работают неэффективно. Так, отсутствует единообразие практики в части применения специальных упрощений, например, возможности непредоставления УЭО обеспечения при помещении под таможенную процедуру таможенного транзита товаров. УЭО в некоторых случаях до сих пор сталкиваются с требованиями таможенных органов о предоставлении обеспечения, когда по общему правилу этого требует закон, что снижает общую эффективность указанного специального упрощения.

РЕКОМЕНДАЦИИ

Продолжить взаимодействие с органами государственной власти Российской Федерации и с Евразийской экономической комиссией, в том числе в рамках Рабочей группы по развитию института УЭО в государствах-членах ЕАЭС, для решения ключевых проблемных вопросов, препятствующих эффективному применению преимуществ УЭО для бизнеса. Приори-

тетными направлениями являются принятие Решения ЕЭК о типовых требованиях к системе учета товаров УЭО; установление четких требований по удаленному доступу к сведениям из системы учета (не к системе учета!), включая ограничения использования таможенными органами информации из системы учета; доработка системы управления рисками исходя из закрепленного в ТК ЕАЭС положения о том, что УЭО относится к низкой категории риска; доработка механизмов действия специальных упрощений, которые дает статус УЭО.

ПОДКОМИТЕТ ПО НАЛОГОВЫМ И ПРАВОВЫМ ВОПРОСАМ

Основными задачами Подкомитета являются своевременное информирование его членов об изменении законодательной базы и налогового окружения, поиск возможных вариантов исключения или минимизации рисков, выработка предложений по совершенствованию нормативной базы, как на федеральном, так и на региональном уровнях, и взаимодействие с контролирующими государственными органами.

ПРОБЛЕМА

В настоящее время в целях применения пониженных налоговых ставок по налогу на прибыль организаций положениями Налогового кодекса Российской Федерации (НК РФ) устанавливаются объемы и предельные периоды осуществления капитальных вложений для региональных инвестиционных проектов (РИП), в следующих размерах:

- 50 млн рублей – в срок, не превышающий 3 лет со дня включения организации в реестр участников РИП;
- 500 млн рублей – в срок, не превышающий 5 лет со дня включения организации в реестр участников РИП.

В связи со сложной экономической ситуацией, обусловленной пандемией, выполнение инвесторами, реализующими РИП, указанных требований НК РФ в отношении периода вложений может оказаться затруднительным. В связи с этим возникает риск утраты участниками РИП права на применение мер налоговой поддержки, и реализация РИП будет существенно замедлена.

РЕКОМЕНДАЦИЯ

Рекомендуется обсудить с членами Подкомитета возможность обращения с предложением к компетентным органам власти субъектов Российской Федерации Северо-Запада о поддержке существенного увеличения или полной отмены предельных периодов осуществления капитальных вложений для РИП, совместной подготовке экономических обоснований и проектов нормативных актов по внесению изменений в НК РФ.

ПРОБЛЕМА

Въезд в Российскую Федерацию иностранному гражданину может быть не разрешен в случае, если иностранный гражданин два и более раз в течение трех лет привлекался к административной ответственности за совершение даже незначительного административного правонарушения на территории России.

РЕКОМЕНДАЦИЯ

Предлагается рассмотреть вопрос о внесении поправок в Федеральный закон «О порядке выезда из Российской Федерации и въезда в Российскую Федерацию» об изменении критериев для ограничения въезда в отношении иностранных граждан. Такие критерии целесообразно устанавливать, в частности, исходя из характера правонарушений, степени вины иностранца, наличия и тяжести ущерба.

ПОДКОМИТЕТ ПО СТРОИТЕЛЬСТВУ И НЕДВИЖИМОСТИ

ВВЕДЕНИЕ

Идеей создания Подкомитета стало объединение интересов различных компаний в следующих сферах деятельности: строительство, застройка, недвижимость, управление активами, юридические консультации, инвестиции и финансы, информация по производителям и поставщикам материалов и оборудования.

Строительный сектор вносит существенный вклад в промышленное и экономическое развитие страны и региона. Эта отрасль обеспечивает занятость более 300 тысяч работников Северо-Западного региона, а также способствует развитию производства строительных и отделочных материалов, логистических и иных услуг.

Деятельность компаний строительного сектора регулируется и ограничивается большим количеством законодательных актов и правил, устанавливаемых государством, местными органами и контролирующими организациями.

ПРОБЛЕМА

Правительство Санкт-Петербурга настаивает на участии застройщиков и инвесторов в развитии инфраструктуры города, в том числе: в строительстве объектов соцкультбыта, дорог, инженерных сетей и др. Город такие объекты выкупает или принимает в дар.

Органы власти всячески затягивают процесс приемки указанных объектов. Часто отказ в приемке объекта происходит по незначительным формальным основаниям. При этом весь период до принятия городом объекта застройщики и инвесторы вынуждены обслуживать объекты инфраструктуры за свой счет.

Региональная нормативно-правовая база практически не содержит регулирования в данном аспекте, а соглашения о передаче объектов в собственность города и законодательство не учитывают интересы инвесторов, в том числе при просрочке принятия.

РЕКОМЕНДАЦИЯ

Обсудить с руководством города смягчение требований при приемке объектов инфраструктуры и проработку правовых механизмов реализации проектов по строительству инфраструктурных объектов с учетом интересов инвесторов.

ПРОБЛЕМА

Государство активно реформирует законодательную базу в строительстве: обязательные ранее нормы становятся рекомендательными, появляются новые требования, в частности к информационному обеспечению деятельности (введение Информационной модели объекта капитального строительства). Требуется конкретизация требований, определение переходных периодов и т. п.

РЕКОМЕНДАЦИЯ

С помощью экспертов Ассоциации сформулировать предложения для конкретизации требований к работе с Информационной моделью объектов капитального строительства и направить соответствующие предложения в Минстрой.

ПРОБЛЕМА

В условиях экономической нестабильности страны активно используют протекционистские меры, стремясь защитить отечественного производителя. Государственными органами к производителям предъявляются требования по локализации. Использование нелокализованной продукции активно вытесняется из закупок предприятий с государственным участием. Прямая локализация производств требует больших капиталовложений и не всегда оправдана экономически. Как не потерять рынок и сохранить эффективность?

РЕКОМЕНДАЦИЯ

Находить и распространять лучшие практики локализации для членов Ассоциации.

ЧЛЕНЫ КОМИТЕТА

Abloy LLC (Russia) • Akzo Nobel N.V. • Alianz IC OJCS • Alstom Russia Ltd • Ancor • Antal • Ariston Thermo Rus • Astoria Hotel Complex JSC • Baker McKenzie • BASF • Beiten Burkhardt • Bellerage Alinga • Boskalis Offshore Contracting B.V. • British American Tobacco Russia • BSH Bytowyje Pribory OOO • Business Finland Oy • Caterpillar Eurasia LLC • Citibank AO • Coleman Services • Commerzbank (Eurasija) AO • Credit Agricole CIB AO • Danone Russia • Deloitte CIS • Dentons • DHL Express • DLA Piper Rus Limited LLC Branch in St. Petersburg • Dow Europe GmbH Representation office • Drees & Sommer • East Office of Finnish Industries • Egorov Puginsky Afanasiev & Partners • EKE Group • Eversheds Sutherland • EY • Faurecia • Finnish-Russian Chamber of Commerce • Finnvera Plc • Gestamp Russia • GfK • GROUPE SEB-VOSTOK ZAO • HeidelbergCement Rus • HEINEKEN BREWERIES, LLC • HELLENIC BANK PLC • Henkel Rus OOO • Heroes S.r.l • Human Search, OOO • Hyundai Motor CIS • IKEA DOM LLC • ING Wholesale Banking in Russia • Ingka Rus LLC • International Hotel Investments (Benelux) B.V. (Corinthia Hotel) • Italcantieri • Itella, OOO • JETRO • Jotun Paints LLC • JTI Russia • Jungheinrich Lift Truck • Juralink G-nius • Knauf Group CIS • KPMG AO • Kuehne+Nagel • KUUSAKOSKI OY (Petromax AO) • Legrand Group • Lenta LLC • METAProactive LLC • MOST SERVICE • Nissan Manufacturing Rus • Nokian Tyres Ltd. • Nordea bank • Novartis Group Russia • Novo Nordisk A/S • ORAS RUS LLC • Pekkaniska • Pepeliaev Group LLC • Philip Morris Sales & Marketing • Philips LLC • Ponsse OOO • Port Hamburg Marketing • Promaco-TIAR • PwC • quality partners. • Raiffeisenbank AO • Representative office of OMV Russia Upstream GmbH • ROCA • Rockwool • Rödl & Partner • Saint-Gobain CIS • SAF-NEVA • SATO Rus • Scandinavian Interiors • Scania-Rus LLC • SCHNEIDER GROUP • Siemens LLC • Smurfit Kappa • SOGAZ Insurance Group • Sokotel LLC • Specta • Spectrum Holding • Stockholm School of Economics in Russia • Tikkurila • TMF Group • Toyota Motor • Uniper Global Commodities SE • VOLKSWAGEN Group Rus OOO • VSK Insurance Joint Stock Company • Wienerberger • YIT • Yusen Logistics Rus LLC.

ЮЖНЫЙ РЕГИОНАЛЬНЫЙ КОМИТЕТ

Председатель:
Олег Жарко, Danone Russia

Заместители председателя:
Ральф Бендиш, CLAAS; **Любовь Попова**, VEGAS LEX

Координатор комитета:
Юлиана Передерий (juliana.perederiy@aebrus.ru)

ВСТУПЛЕНИЕ

Комитет действует с 2003 года и является первым региональным объединением в Ассоциации. На сегодняшний день в состав Южного регионального комитета входят 37 компаний: ведущие зарубежные инвесторы, международные банки, консалтинговые и инжиниринговые компании, подразделения которых действуют на территории Краснодарского края, Ростовской области и Республики Адыгея. Деятельность комитета направлена на решение вопросов, связанных с развитием бизнеса международных компаний в регионе, создание благоприятных условий для развития взаимовыгодного сотрудничества и взаимодействия с региональными властями.

Краснодарский край является ключевым партнером Южного регионального комитета по ряду объективных причин. В Национальном рейтинге состояния инвестклимата в субъектах Российской Федерации, проведенном АСИ, Краснодарский край занял 6-е место. Также край занимает 6-е место среди регионов Российской Федерации по общему объему инвестиций. Регион занимает 3-е место по численности населения после Москвы и Московской области. Это один из крупнейших рынков сбыта в Российской Федерации благодаря высокой численности населения и большому количеству туристов.

Пандемия коронавируса значительно повлияла на мировую экономику и повсеместно изменила формат деятельности предприятий, в том числе на юге России. Большая плотность населения и туристический поток усиливают угрозу распространения вируса в регионе.

Весь комплекс мер, предпринятых компаниями-членами Южного регионального комитета, позволил не допустить остановки деятельности жизненно-важных предприятий и выстроить работу бизнеса в совершенно новых условиях. Иностранные компании стали пионерами и экспертами в области внедрения дистанционного режима работы ввиду применения мировых практик и технологий цифровизации бизнес-процессов. Были предприняты всесторонние меры по защите персонала и социальной поддержке сотрудников.

ВЗАИМОДЕЙСТВИЕ С РЕГИОНАЛЬНЫМИ ОРГАНАМИ ВЛАСТИ С ЦЕЛЬЮ СОЗДАНИЯ УСЛОВИЙ ДЛЯ ПРИВЛЕЧЕНИЯ НОВЫХ И РАСШИРЕНИЯ ПРОЕКТОВ ДЕЙСТВУЮЩИХ ИНВЕСТОРОВ

Краснодарский край является одним из наиболее инвестиционно-привлекательных регионов Российской Федерации для иностранных инвесторов. Истории успешной реализации инвестиционных проектов зарубежными инвесторами в крае более 25 лет. Иностранные инвесторы в Краснодарском крае инициировали в 2003 году создание первого регионального объединения Ассоциации европейского бизнеса – Южного регионального комитета. Количество иностранных инвесторов, пришедших в Краснодарский край, отражает и кратный рост количества членов Южного регионального комитета за годы работы.

На сегодняшний день в Краснодарском крае действует более 30 крупных и средних предприятий и организаций, с участием транснациональных корпораций и крупных иностранных компаний, представляющих известные мировые бренды. В крае также действует большое количество торговых филиалов, представляющих крупные мировые компании.

Компании-члены Южного регионального комитета АЕБ активно развивают свои производства в Краснодарском крае. Следует отметить, что этот результат стал возможным благодаря плодотворному сотрудничеству и поддержке со стороны региональных, муниципальных органов власти и Законодательного собрания Краснодарского края, которая способствует реализации новых инвестиционных проектов и совместных инициатив членов Ассоциации европейского бизнеса.

Администрация и Законодательное собрание Краснодарского края выстроили эффективную систему взаимодействия с потенциальными и действующими инвесторами, активно привлекает представителей бизнеса для консультаций по широкому кругу вопросов в качестве экспертов.

Активно работает Региональный консультативный совет по иностранным инвестициям при губернаторе Краснодарского края. 14 из 18 компаний, входящих в консультативный совет, являются

членами Южного регионального комитета. Для осуществления текущей деятельности регионального консультативного совета по иностранным инвестициям сформированы рабочие группы по направлениям: продвижение инвестиционного имиджа Краснодарского края; законодательное регулирование и развитие промышленности; кадровое обеспечение инвестиций; вопросы устойчивого развития и корпоративного социального партнерства.

С целью анализа и обобщения существующего опыта, начиная с 2016 года, Консультативный совет по иностранным инвестициям при поддержке EY ежегодно готовит Меморандум о состоянии работы с иностранными инвесторами в Краснодарском крае.

Представители компаний-членов АЕБ входят в Комиссию по улучшению инвестиционного климата при губернаторе Краснодарского края, Совет по развитию промышленности при губернаторе Краснодарского края, экспертно-консультативный Совет Комитета Законодательного Собрания Краснодарского края по вопросам промышленности, инвестиций, предпринимательства, связи, потребительского и финансового рынков, внешнеэкономической деятельности, Экспертную группа АСИ по Краснодарскому краю.

РЕКОМЕНДАЦИИ

- Наладить информационное взаимодействие с консультативным советом по иностранным инвестициям при Правительстве Российской Федерации.
- Привлекать инвесторов, успешно реализовавших свои проекты, к работе с иностранными делегациями и потенциальными инвесторами.
- Состоявшимся инвесторам принимать активное участие в презентации инвестиционного потенциала региона на отраслевых и инвестиционных форумах.
- Рассматривать как ключевую аудиторию компании-члены АЕБ, которые работают в России, но не присутствуют в Краснодарском крае.
- Фокусировать усилия на работе с отдельными отраслевыми комитетами АЕБ, соответствующими стратегии развития Краснодарского края 2030.
- Использовать АЕБ как платформу для продвижения инвестиционного потенциала региона.

ВЗАИМОДЕЙСТВИЕ С ПАРТНЕРАМИ КАК ФАКТОР РАЗВИТИЯ БИЗНЕС-СРЕДЫ РЕГИОНА

Долгосрочные интересы иностранных инвесторов тесно связаны с российской экономикой, а компании, чьи производства расположены в Российской Федерации, являются ее неотъемлемой частью. От деятельности иностранных инвесторов в регионе возникает синергетический эффект: у компаний появляются российские партнеры, участвующие в бизнесе – поставщики сырья, специалисты по обслуживанию оборудования и т. д. Таким образом, в работу компаний дополнительно вовлекаются другие российские компании. Наличие инвестиционных проектов на территории Российской Федерации – это позитивный шаг как для компаний, которые здесь работают, так и для экономики региона присутствия и российской экономики в целом.

За годы работы Южный региональный комитет стал ведущей площадкой для консолидации позиции российских и международных компаний, работающих в Краснодарском крае благодаря взаимодействию с бизнес-объединениями, представляющими российский бизнес.

Участие в мероприятиях и взаимная поддержка проектов ТПП Краснодарского края, региональных отделений РСПП и Деловой России позволяют формировать единую позицию бизнеса и фокусировать усилия на актуальной бизнес-повестке.

Южный региональный комитет ведет активную информационную политику, продвигая повестку АЕБ. Информационным партнером Южного регионального комитета АЕБ для решения этих задач на протяжении шести лет выступает общественно-политический еженедельник Юг-Times.

Для развития конструктивного трехстороннего диалога «власть-бизнес-общество» Южный региональный комитет активно взаимодействует с Общественной палатой Краснодарского края.

С 2014 года Южный региональный комитет выступает соорганизатором программы «Время новых стратегий» совместно с Общественной палатой Краснодарского края, общественно-политическим еженедельником Юг-Times, Агентством инвестиций и международного сотрудничества и Краснодарским региональным отделением Российского союза промышленников и предпринимателей.

Программа «Время новых стратегий» стала одной из ключевых площадок общественного и экспертного обсуждения Стратегии социально-экономического развития Краснодарского края 2030. За семь лет в рамках программы «Время новых стратегий» были проведены более 20 конференций, круглых столов и стратегических сессий. С марта 2020 года мероприятия программы проводятся в онлайн-формате на платформе MS Teams, собирают большое количество заинтересованных участников и позволяют сохранить диалог бизнеса и органов власти в ситуации развития пандемии и ограничительных мер, введенных компаниями для защиты персонала.

РЕКОМЕНДАЦИИ

- Максимально использовать виртуальные коммуникации с учетом санитарно-эпидемиологической обстановки.
- Всесторонне поддерживать и развивать программу «Время новых стратегий» как одну из ключевых площадок для экспертного и общественного обсуждения актуальных вопросов развития Краснодарского края.
- Осуществлять мониторинг реализации стратегии 2030 и обсуждать с экспертами бизнеса перспективы и препятствия ее реализации.

КВАЛИФИЦИРОВАННЫЕ КАДРЫ ДЛЯ ИНВЕСТИЦИОННЫХ ПРОЕКТОВ

В работе Южного регионального комитета традиционно значимое место занимают вопросы, связанные с кадровым обеспечением инвестиционных проектов компаний. Мероприятия по этой тематике организует и проводит HR-подкомитет Южного регионального комитета.

Одним из факторов, оказывающих существенное влияние на выбор компанией площадки для реализации инвестиционного проекта, является наличие в регионе крупных высших учебных заведений, способных подготовить специалистов с требуемым уровнем квалификации и знанием иностранных языков.

Многими компаниями реализуются стипендиальные программы с вузами и сузами, направленные на расширение кругозора и знаний в конкретных областях.

На протяжении семи лет при поддержке компаний-членов Южного регионального комитета АЕБ успешно работают Школы бизнеса в ведущих вузах Краснодара: Кубанском государственной аграрном университете, Кубанском государственном технологическом университете. В 2020 году состоялся первый выпуск слушателей Школы бизнеса Кубанского государственного университета. В каждой из Школ бизнеса 40 спикеров из 15 компаний, членов Южного регионального комитета АЕБ, в течение учебного года ведут занятия для студентов старших курсов, прошедших по конкурсу, и рассказывают о бизнес-процессах и бизнес-практиках международных корпораций. Для слушателей Школ бизнеса организуются экскурсии на предприятия. Завершается обучение защитойбизнес-кейсов,предложенныхкомпаниями-участниками проекта.

За время работы более 450 слушателей прошли обучение в Школах бизнеса. Данный проект отмечен наградой Общественной палаты Краснодарского края «Общественное признание». В условиях пандемии работа Школ бизнеса продолжается в онлайн-формате с марта 2020 года.

Представители компаний-членов Южного регионального комитета АЕБ на протяжении трех лет входят в состав экспертного совета и выступают наставниками победителей конкурса управленцев «Лидеры Кубани – движение вверх!», организованного администрацией Краснодарского края.

Одним из ключевых событий HR-повестки на юге России является ежегодная HR-конференция, которую Южный региональный комитет организует на протяжении 12 лет при поддержке Комитета АЕБ по трудовм ресурсам. В 2020 году на конференции обсуждались стратегии и практики бизнеса в условиях пандемии коронавируса.

РЕКОМЕНДАЦИИ

- Продолжать и развивать взаимодействие с вузами посредством Школ бизнеса, активно привлекая спикеров из разных стран в онлайн-формате.
- Расширять деятельность Школ бизнеса, создавая специальные группы для обучения молодых преподавателей.
- Тиражировать опыт работы Школ бизнеса на деловых и образовательных площадках.
- Способствовать всесторонней подготовке кадров для органов власти путем участия в институте наставничества для победителей кадрового конкурса управленцев «Лидеры Кубани – движение вверх!».
- Внедрить программу двойного наставничества от бизнеса и власти для кадров соответствующих направлений.
- Проводить тематические встречи по актуальным для представителей иностранного бизнеса и HR-сообщества региона вопросам.
- Содействовать дальнейшему развитию конструктивного диалога университетов и бизнеса в целях дальнейшей эффективной реализации инвестиционного потенциала региона.

ЗАКЛЮЧЕНИЕ

Южный региональный комитет АЕБ – признанный ведущий представитель международных компаний и инвесторов в регионе, обладающий высокой деловой репутацией.

Цель деятельности Комитета – максимально полное использование инвестиционных возможностей региона. Эта цель непосредственно связана с планами местных и региональных администраций по стимулированию динамичного развития экономики.

Южный региональный комитет АЕБ способствует взаимодействию инвесторов с региональными и муниципальными уровнями власти, знакомит с европейским опытом и передовыми технологиями в различных областях ведения бизнеса. Это усиливает существующие конкурентные преимущества Краснодарского края и юга России в целом, делает его более привлекательным для инвесторов и дает новые возможности для экономического развития региона.

ЧЛЕНЫ КОМИТЕТА

ABB • Advocates Bureau Yug • Allianz IC OJSC • ANCOR • Atos • Banca Inteza • BASF • Bayer JSC • BONDUELLE-Kuban LLC • Cargill LLC • Center-invest Bank • CLAAS • CHEP • Danone Russia • ERGO Insurance Company • EY • IKEA Purchasing Services Russia • Knauf Group CIS • KPMG AO • KWS RUS LLC • Legrand Group • Limagrain RU LLC • Nestle Rossiya LLC • Philip Morris Sales and Marketing • Philips LLC • PwC • Raiffeisenbank AO • Rosbank • Schneider Electric • Siemens LLC • SOGAZ Insurance Group • Syngenta • UniCredit Bank AO • VEGAS LEX Advocate Bureau • Volvo Cars LLC • VSK Insurance House • YIT.

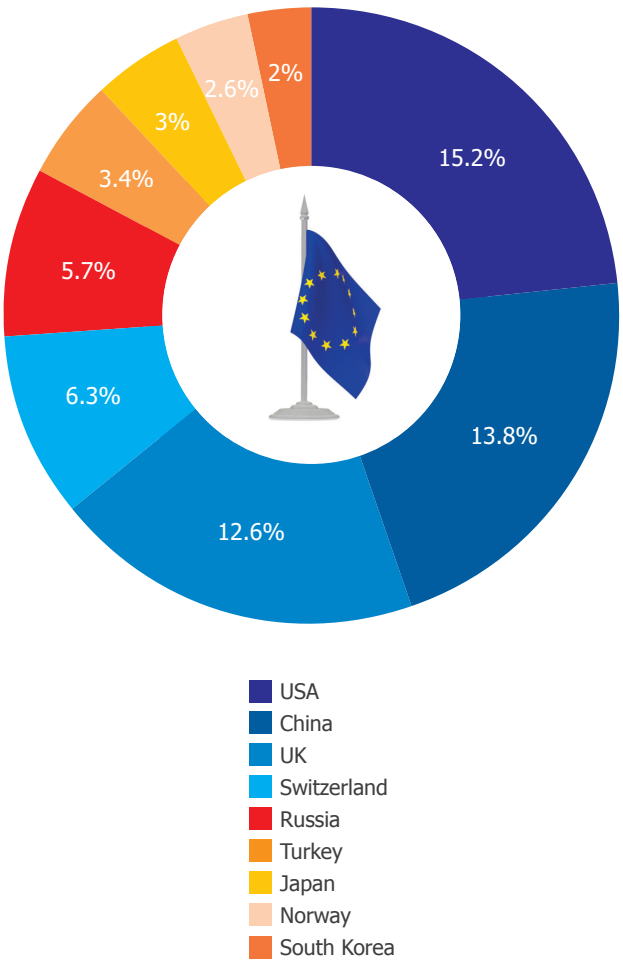
EU-Russia:
statistics and analytics

EU-RUSSIA TRADE

The European Union and Russia have an important bilateral trade relation.

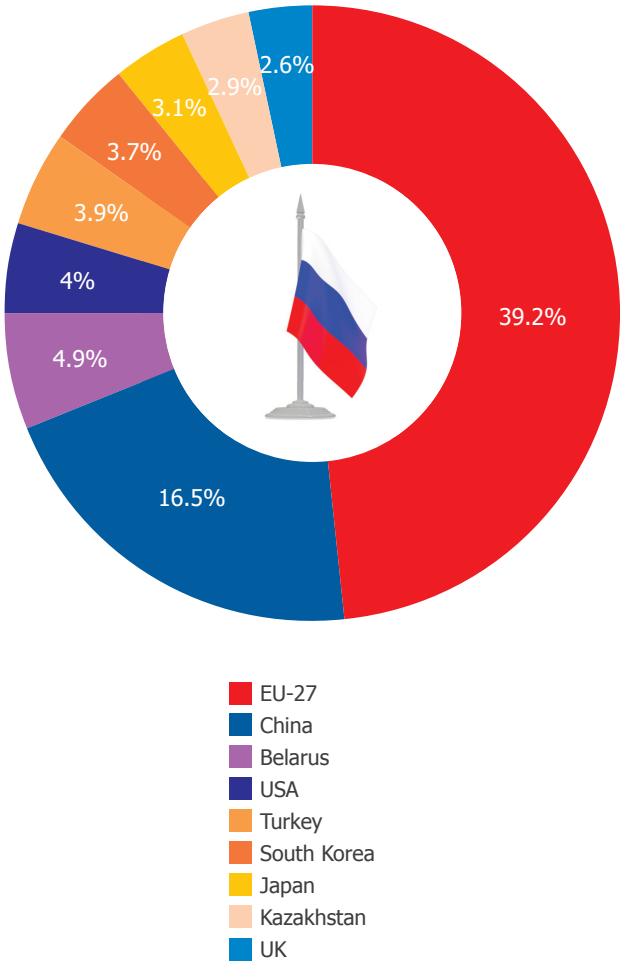
- Russia is the EU's fifth largest trading partner and the EU is Russia's largest trading partner, with a two-way trade in goods value of EUR 232 billion in 2019. In 2019 Russia was the origin of ca. 40% of EU imports of gas and 27% of EU imports of oil. Due to the large value of these imports, EU's trade deficit with Russia (EUR 57 billion in 2019) is only second to EU's trade deficit with China.
- EU-Russia bilateral trade in goods peaked in 2012, dropping by 43% between 2012 and 2016 from EUR 322 billion in 2012 to EUR 183 billion in 2016. Since 2016, bilateral trade has partially recovered. However, overall EU exports to Russia were in 2019 25% lower than in 2012, agri-food exports were 38% lower.
- In 2019 Russia was the destination of 4,1% of EU global exports, down from 6,7% in 2012. As for the origins of imports into Russia, the EU accounted in 2019 for 35%, down from 39% in 2012.
- As for exports of goods from Russia, in 2019 the EU was the destination of 42% of them, down from 50% in 2012.

EU TOP TRADING PARTNERS 2019, TOTAL GOODS, % EXTRA-EU



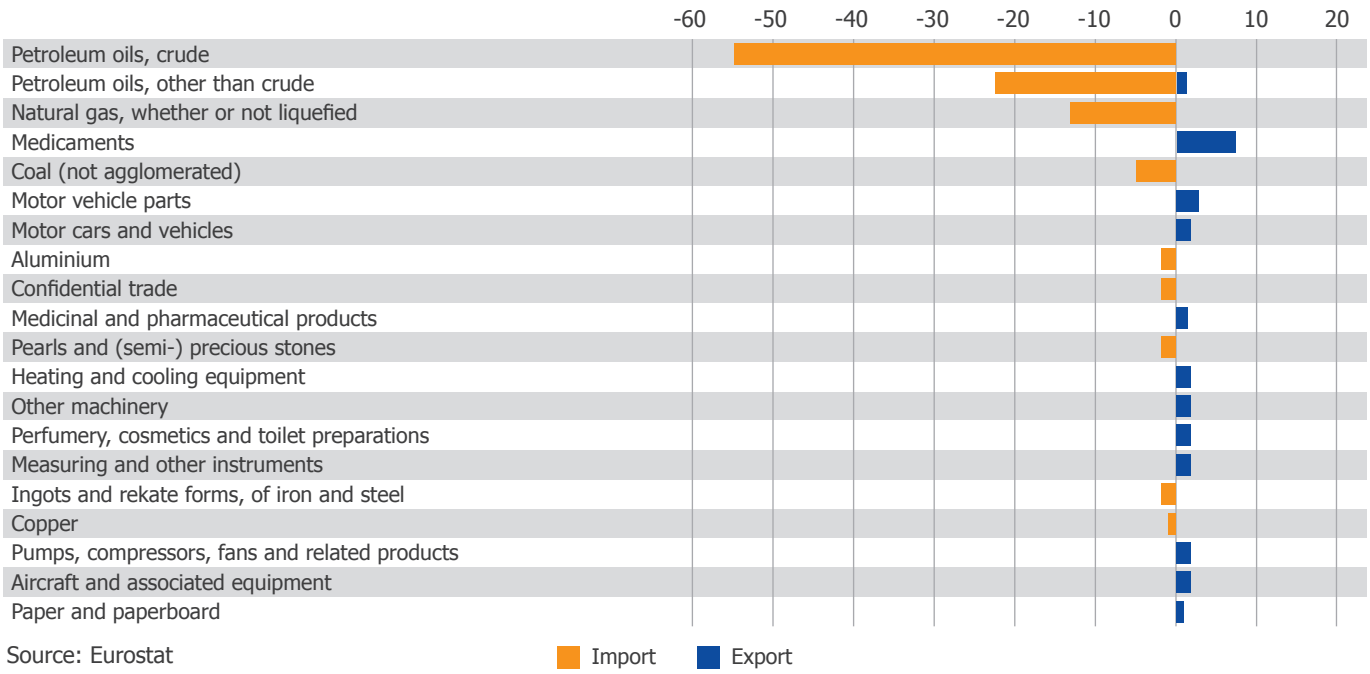
Source: Eurostat

RUSSIA TOP TRADING PARTNERS 2019, TOTAL GOODS, % WORLD



Source: Eurostat

MOST TRADED GOODS BETWEEN EU-27 AND RUSSIA, 2019 (EUR BLN)



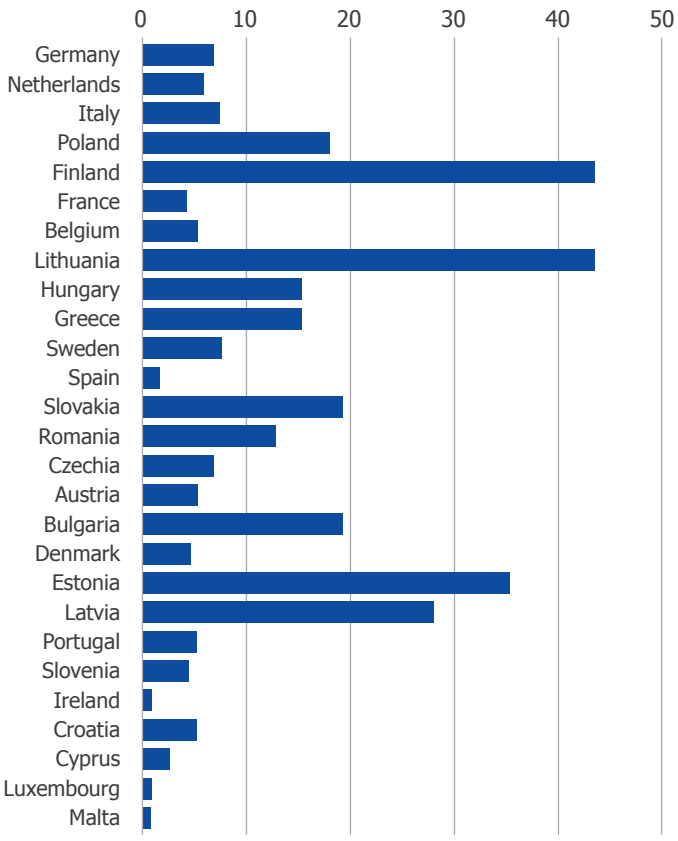
Source: Eurostat

EU-27 IMPORTS OF GOODS FROM RUSSIA, 2019

Country	EUR mln
Germany	27 886
Netherlands	21 415
Italy	14 324
Poland	14 227
Finland	8 916
France	8 169
Belgium	8 129
Lithuania	4 679
Hungary	4 517
Greece	4 079
Sweden	3 678
Spain	3 361
Slovakia	3 302
Romania	3 092
Czechia	2 934
Austria	2 107
Bulgaria	2 068
Denmark	1 424
Estonia	1 381
Latvia	1 170
Portugal	1 090
Slovenia	614
Ireland	389
Croatia	294
Cyprus	102
Luxembourg	24
Malta	12

Source: Eurostat

% OF RUSSIA IN EXTRA-EU-27 IMPORTS



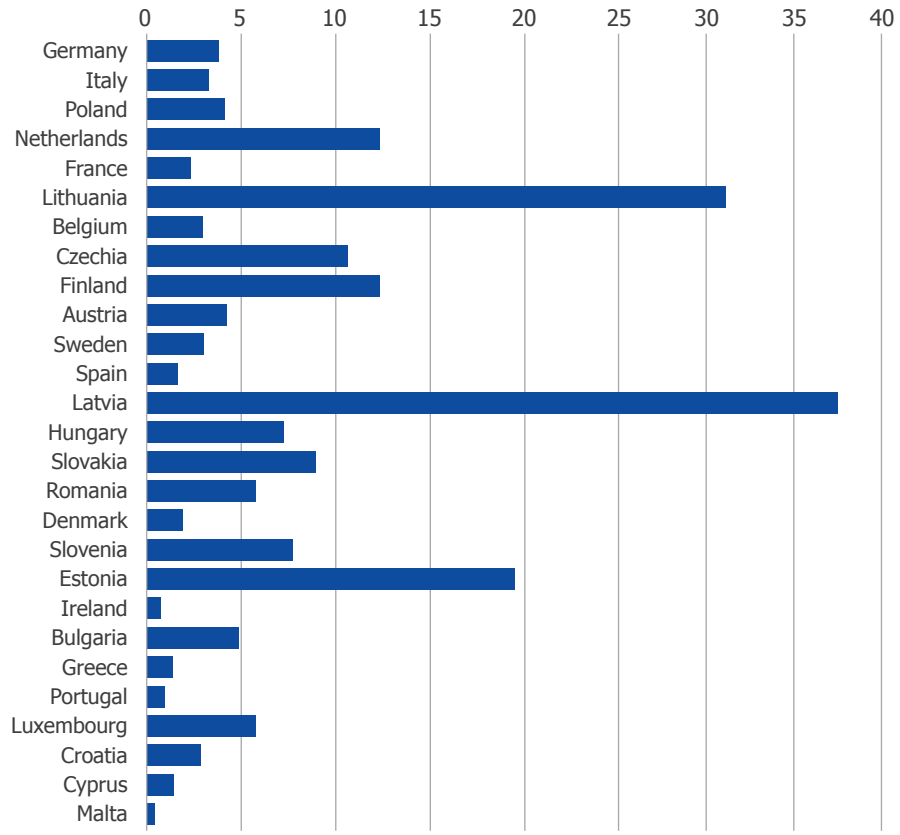
Source: Eurostat

EU-27 EXPORTS OF GOODS TO RUSSIA, 2019

Country	EUR mln
Germany	26 658
Italy	7 918
Poland	7 435
Netherlands	7 103
France	5 629
Lithuania	4 143
Belgium	4 139
Czechia	3 797
Finland	3 652
Austria	2 374
Sweden	2 067
Spain	2 054
Latvia	1 972
Hungary	1 785
Slovakia	1 451
Romania	1 015
Denmark	965
Slovenia	887
Estonia	867
Ireland	611
Bulgaria	522
Greece	209
Portugal	194
Luxembourg	169
Croatia	155
Cyprus	26
Malta	6

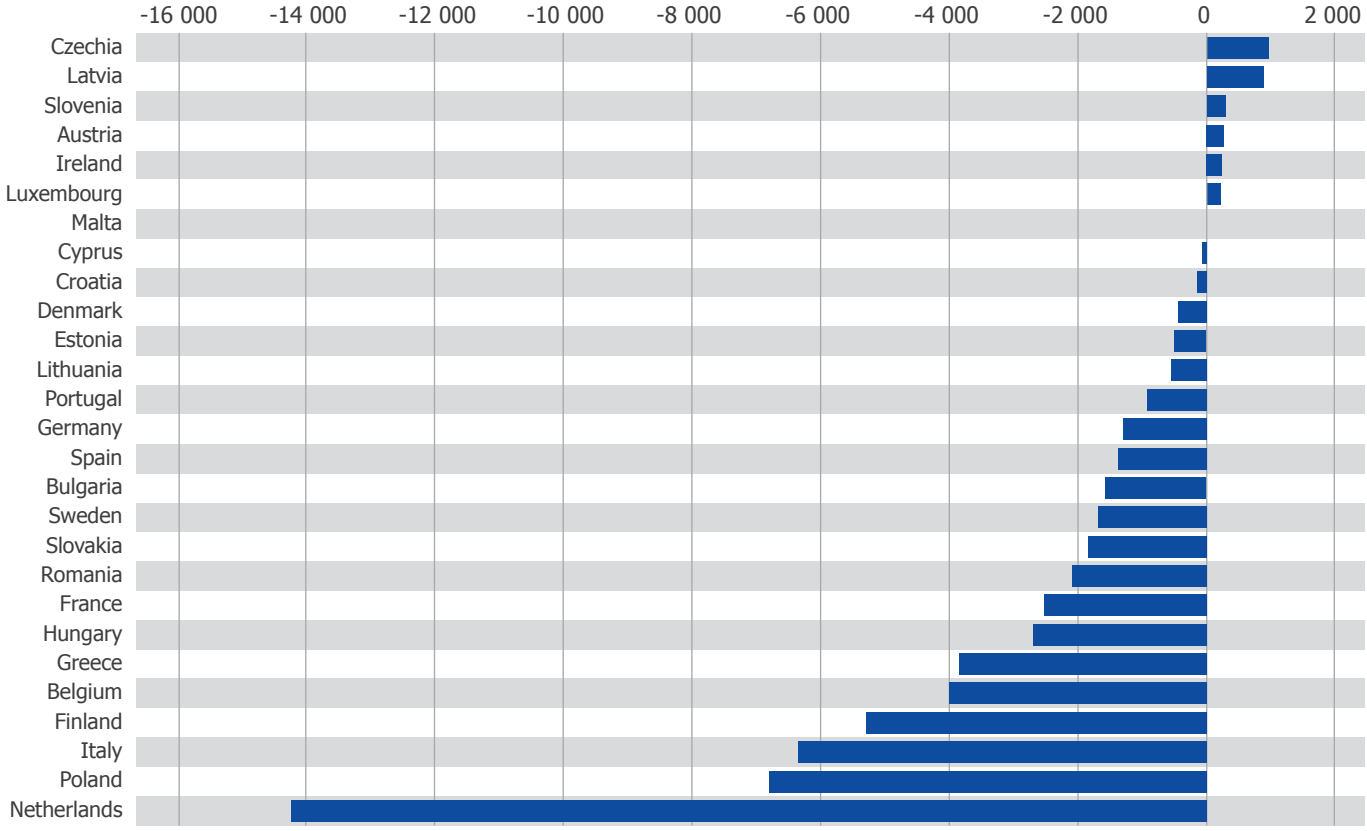
Source: Eurostat

% OF RUSSIA IN EXTRA-EU-27 EXPORTS



Source: Eurostat

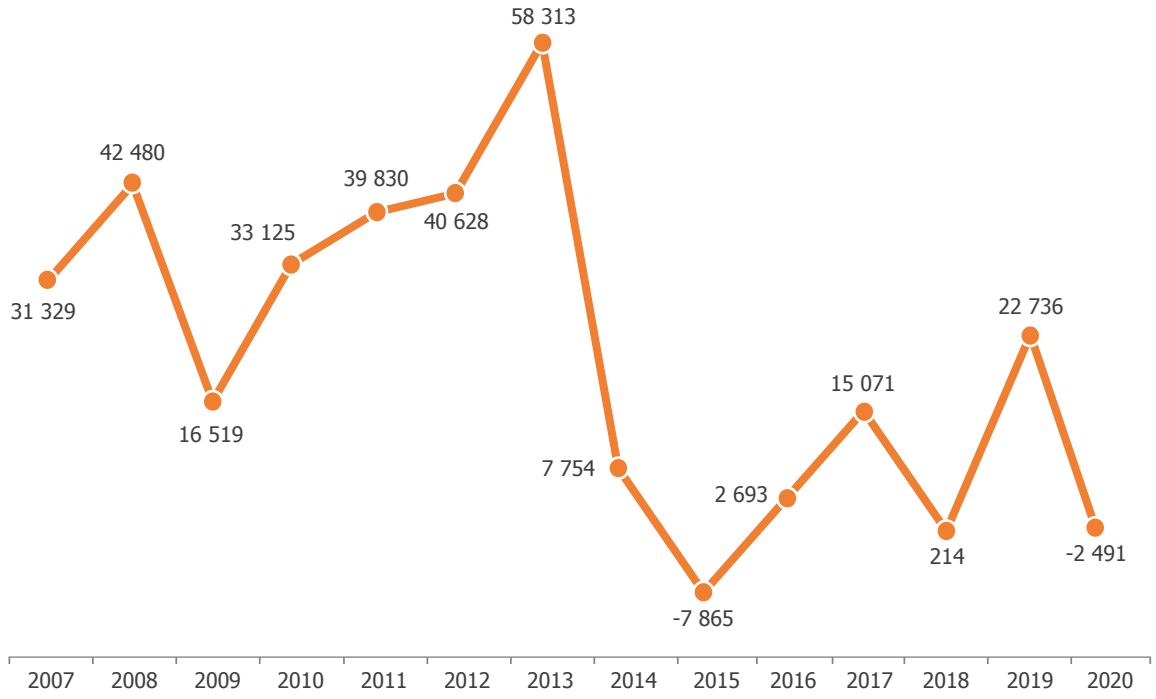
EU-27 TRADE BALANCE IN GOODS WITH RUSSIA, 2019 (EUR MLN)



Source: Eurostat

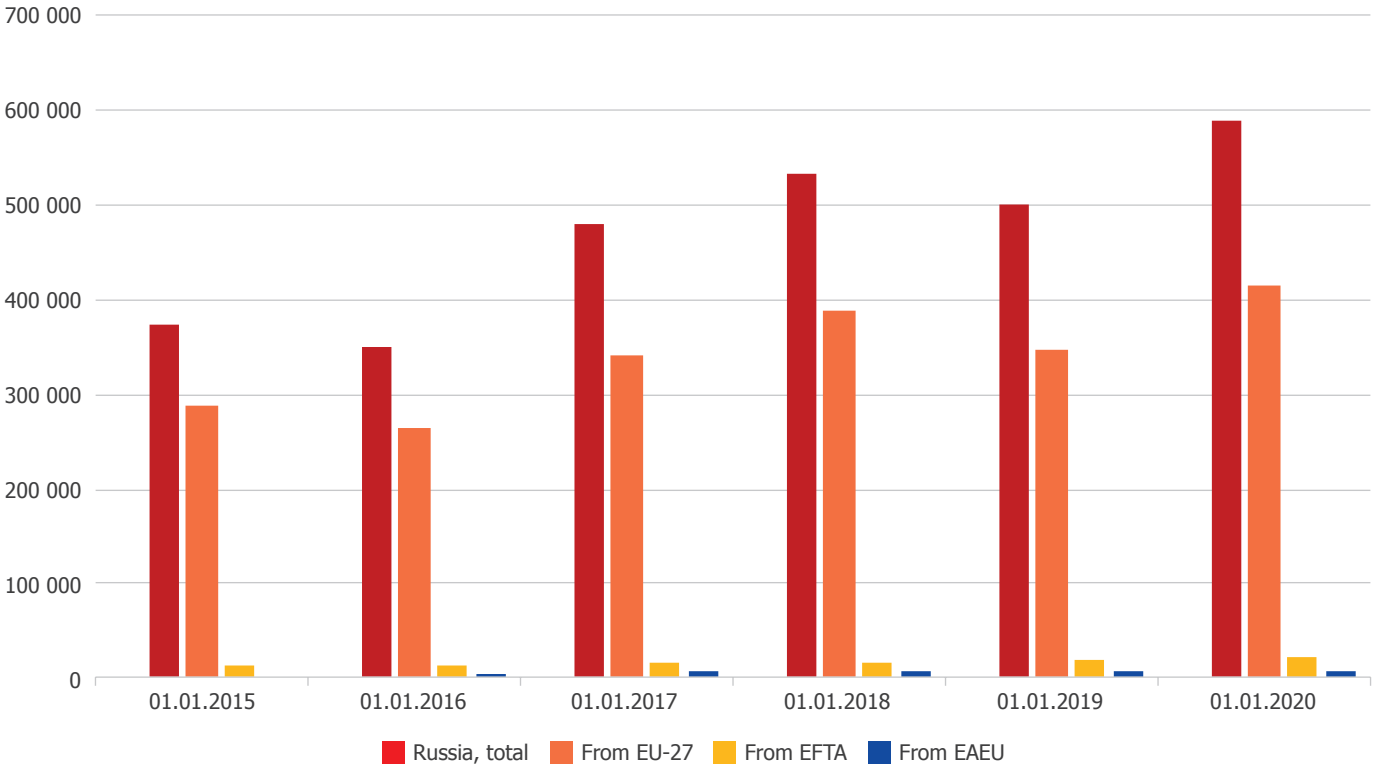
EU-RUSSIA FOREING DIRECT INVESTMENTS

EU-27 (AND UK) FDI IN RUSSIA (USD MLN)



Note: Direct investments in the Russian Federation by partner countries (participation in capital, reinvestment of income and debt instruments); 2020 = Q1 2020

FOREIGN DIRECT INVESTMENTS STOCK IN RUSSIA (USD MLN)



Source: Central Bank of Russia

RUSSIA INWARDS FOREIGN DIRECT INVESTMENTS BY PARTNER COUNTRIES (USD MLN)

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 (Q1)
EU-27 (+UK)	33 125	39 830	40 628	58 313	7 754	-7 856	2 693	15 071	214	22 736	-2 491
Austria	1 353	1 563	1 135	-326	841	407	1 071	-174	884	924	246
Belgium	467	112	214	755	-538	-19	35	-191	22	-45	131
Bulgaria	0	33	-82	4	13	1	8	43	14	18	5
Croatia	0	7	-5	14	1	0	0	-2	5	16	-1
Cyprus	12 287	12 999	1 985	8 266	3 158	-7 069	-436	8 674	-10 108	7 932	-3 143
Czechia	72	78	-187	36	109	54	171	73	-32	-101	5
Denmark	168	-11	38	25	-11	49	22	32	17	6	123
Estonia	-15	31	85	47	38	32	60	8	0	-3	1
Finland	347	217	349	216	124	-272	253	50	582	-276	10
France	2 592	1 107	1 232	2 121	2 224	1 686	1 997	854	1 134	2 044	959
Germany	3 196	2 234	2 265	335	349	1 483	224	470	341	245	818
Greece	-2	-5	-3	-2	1	0	0	0	-3	0	0
Hungary	374	454	683	736	534	-452	362	184	259	284	46
Ireland	2 326	5 306	9 877	10 399	-531	623	-1 789	889	-3 850	3 193	801
Italy	309	154	280	118	158	56	133	30	579	260	-535
Latvia	23	20	32	285	338	196	84	-58	60	119	-37
Lithuania	-2	8	42	8	-50	8	15	8	20	3	0
Luxembourg	2 892	4 106	10 814	11 638	-693	-5 770	-939	3 378	-506	-2 814	-1 136
Malta	16	4	16	47	10	41	57	63	39	13	-1
Netherlands	3 733	7 383	10 330	5 716	1 102	-246	165	-1 427	7 846	6 393	-1 578
Poland	17	6	17	-49	70	20	116	5	-27	67	2
Portugal	-1	10	6	0	7	0	2	1	3	-2	0
Romania	1	0	0	0	0	0	0	0	0	0	0
Slovakia	4	-26	4	3	-7	3	-3	-6	0	13	0
Slovenia	9	-23	14	50	22	14	15	-15	-10	-1	-1
Spain	-13	30	116	147	200	64	61	84	51	12	66
Sweden	1 831	2 025	1 322	-1 203	166	122	530	20	372	-250	-2 193
UK	1 142	2 007	46	18 927	120	1 112	478	2 076	2 522	4 686	2 919

Source: Central Bank of Russia

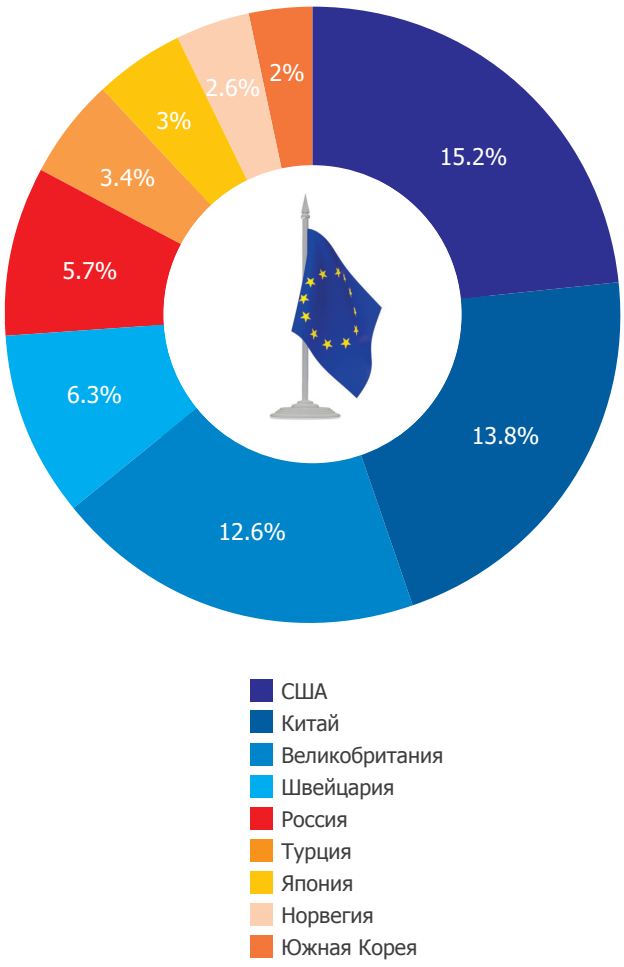
ЕС–Россия:
статистика и аналитика

ТОРГОВЛЯ МЕЖДУ РОССИЙСКОЙ ФЕДЕРАЦИЕЙ И ЕВРОПЕЙСКИМ СОЮЗОМ

Европейский союз и Россия поддерживают важные двусторонние торговые отношения.

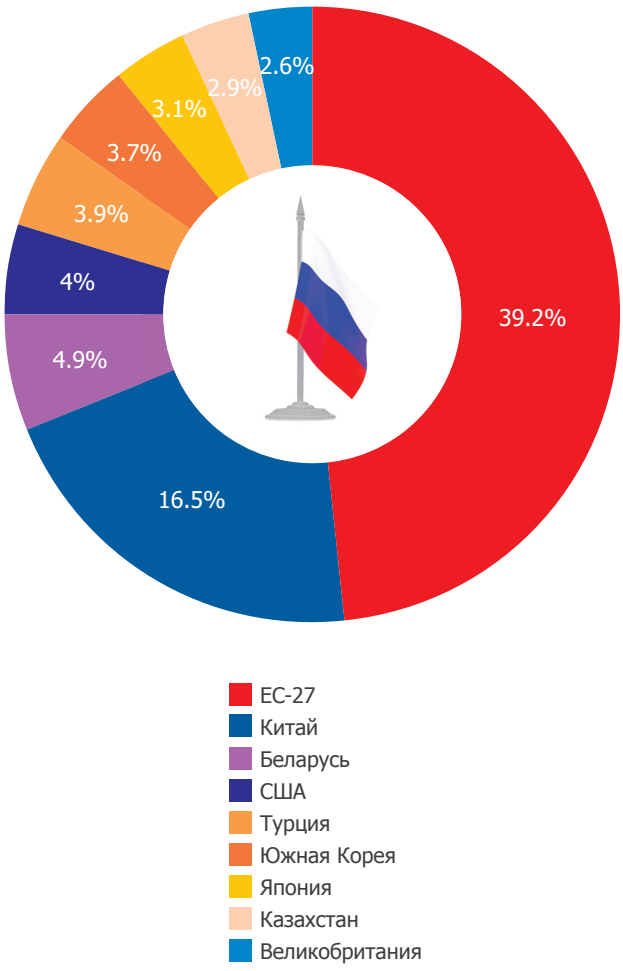
- Россия является пятым по величине торговым партнером ЕС, а ЕС – крупнейшим торговым партнером России. Объем двусторонней торговли товарами в 2019 году составил 232 млрд евро. В 2019 году Россия была импортером приблизительно 40% газа и 27% нефти в ЕС. Из-за большого объема сырьевого импорта торговый дефицит ЕС с Россией (57 млрд евро в 2019 году) уступает только торговому дефициту ЕС с Китаем.
- Двусторонняя торговля товарами между ЕС и Россией достигла пика в 2012 году, упав в период с 2012 по 2016 год на 43%, с 322 млрд евро в 2012 году до 183 млрд евро в 2016 году. С 2016 года двусторонняя торговля частично восстановилась. Однако общий экспорт ЕС в Россию в 2019 году был на 25% ниже, чем в 2012 году, а экспорт агропродовольственной продукции – на 38% ниже.
- В 2019 году на Россию приходилось 4,1% мирового экспорта ЕС, снизившись с 6,7% в 2012 году. Что касается происхождения импорта Российской Федерации, то на долю ЕС в 2019 году приходилось 35% общего объема российского импорта, что также является меньшим показателем, чем в 2012 году, когда цифры достигали 39%.
- Что касается экспорта товаров из России, то в 2019 году на страны Евросоюза приходилось 42%, по сравнению с 50% в 2012 году.

ВЕДУЩИЕ ТОРГОВЫЕ ПАРТНЕРЫ ЕВРОПЕЙСКОГО СОЮЗА В 2019 Г., % ТОВАРООБОРОТА ЗА ПРЕДЕЛАМИ ЕС



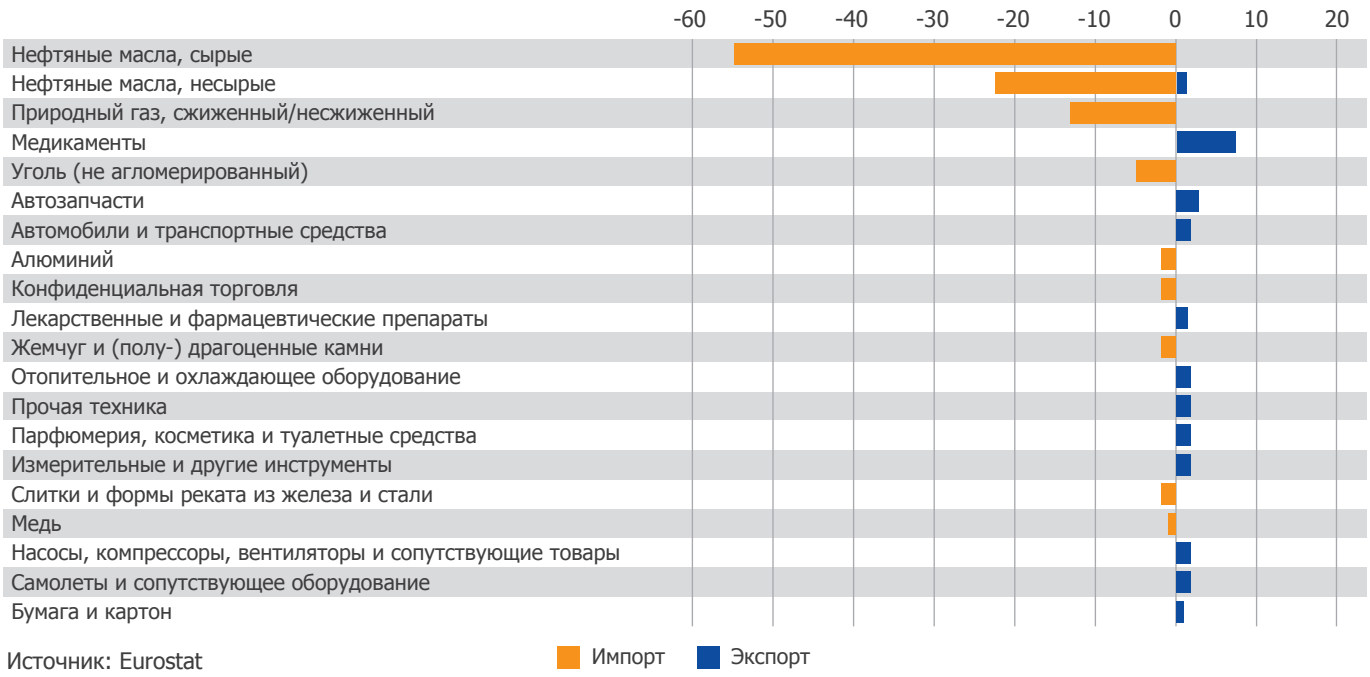
Источник: Eurostat

ВЕДУЩИЕ ТОРГОВЫЕ ПАРТНЕРЫ РОССИЙСКОЙ ФЕДЕРАЦИИ В 2019 Г., % ОТ ОБЩЕГО ТОВАРООБОРОТА



Источник: Eurostat

САМЫЕ ПРОДАВАЕМЫЕ ТОВАРЫ МЕЖДУ ЕС-27 И РОССИЕЙ, 2019 Г. (МЛРД ЕВРО)



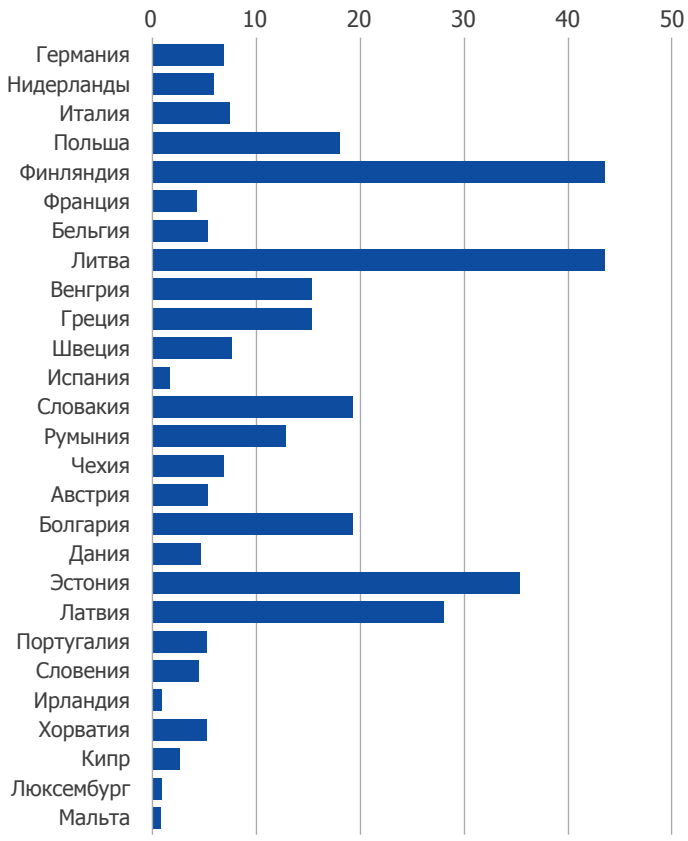
Источник: Eurostat

ИМПОРТ ТОВАРОВ В СТРАНЫ ЕВРОСОЮЗА ИЗ РОССИИ, 2019 Г.

Страна	Млн евро
Германия	27 886
Нидерланды	21 415
Италия	14 324
Польша	14 227
Финляндия	8 916
Франция	8 169
Бельгия	8 129
Литва	4 679
Венгрия	4 517
Греция	4 079
Швеция	3 678
Испания	3 361
Словакия	3 302
Румыния	3 092
Чехия	2 934
Австрия	2 107
Болгария	2 068
Дания	1 424
Эстония	1 381
Латвия	1 170
Португалия	1 090
Словения	614
Ирландия	389
Хорватия	294
Кипр	102
Люксембург	24
Мальта	12

Источник: Eurostat

% РОССИИ В ИМПОРТЕ ИЗ СТРАН ЗА ПРЕДЕЛАМИ ЕС-27



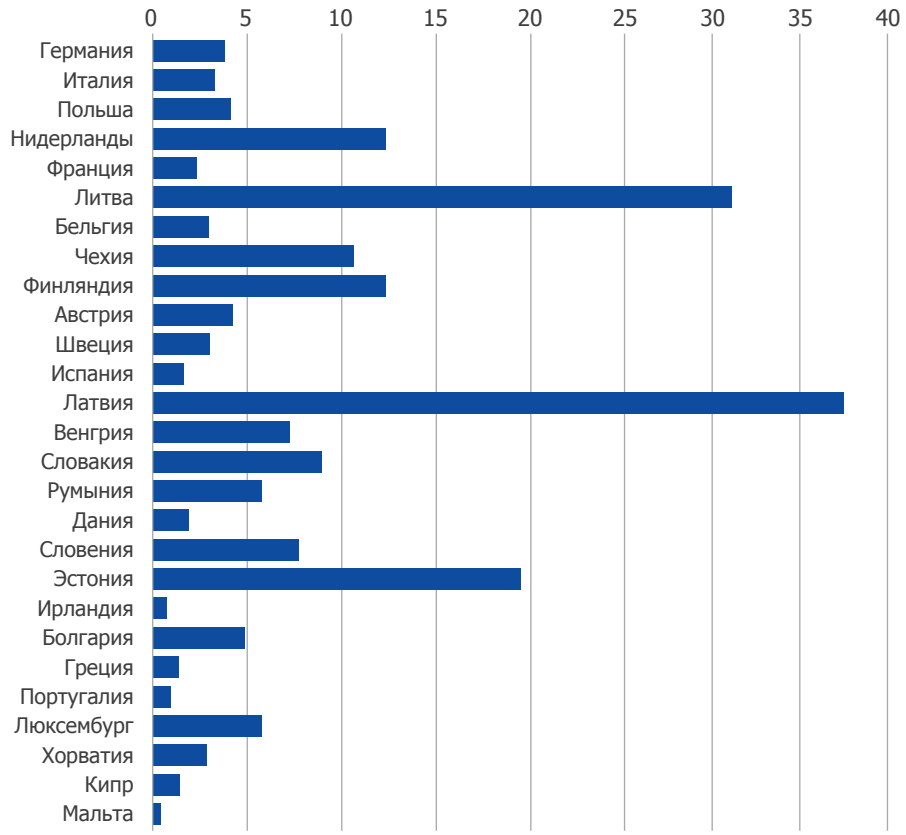
Источник: Eurostat

ЭКСПОРТ ТОВАРОВ ИЗ СТРАН ЕВРОСОЮЗА В РОССИЮ, 2019 Г.

Страна	Млн евро
Германия	26 658
Италия	7 918
Польша	7 435
Нидерланды	7 103
Франция	5 629
Литва	4 143
Бельгия	4 139
Чехия	3 797
Финляндия	3 652
Австрия	2 374
Швеция	2 067
Испания	2 054
Латвия	1 972
Венгрия	1 785
Словакия	1 451
Румыния	1 015
Дания	965
Словения	887
Эстония	867
Ирландия	611
Болгария	522
Греция	209
Португалия	194
Люксембург	169
Хорватия	155
Кипр	26
Мальта	6

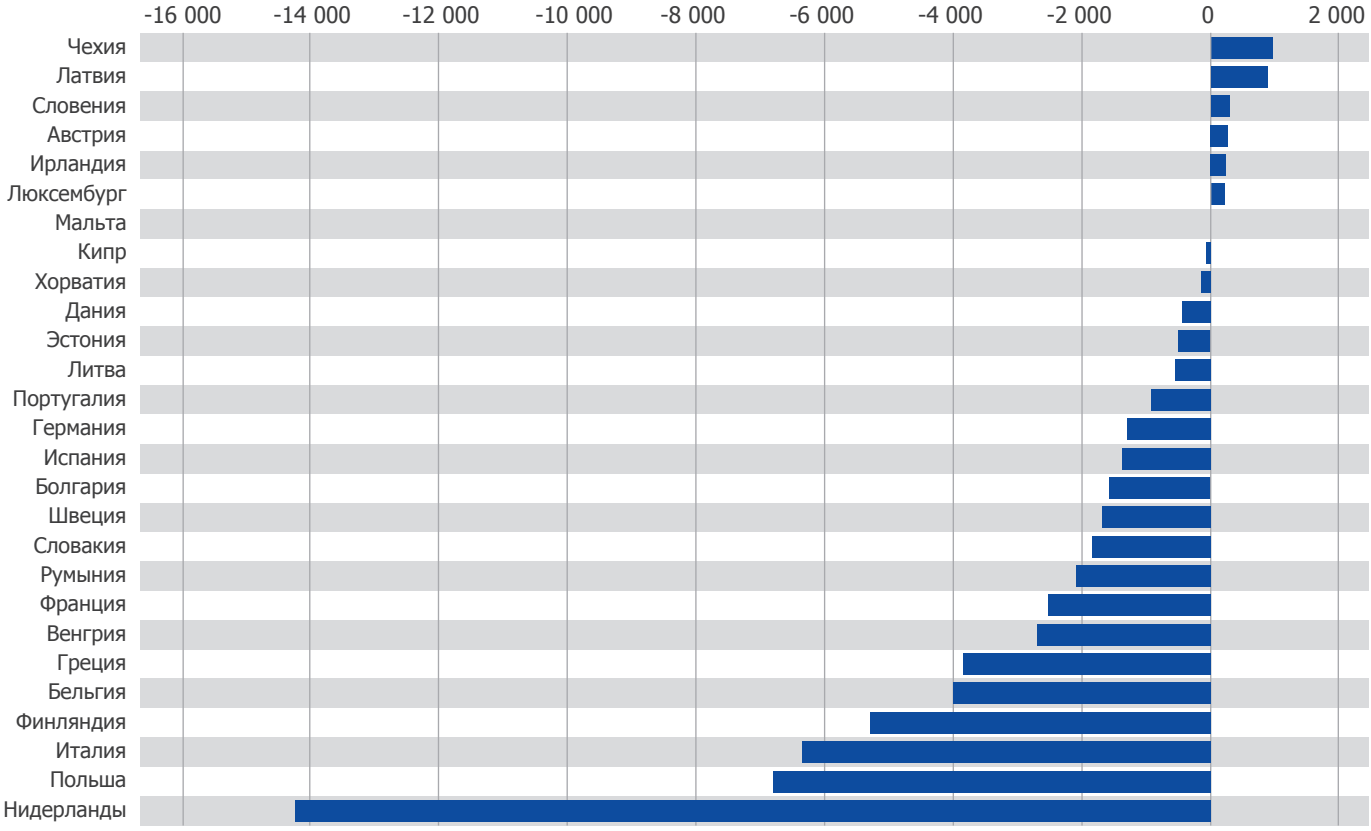
Источник: Eurostat

% РОССИИ В ЭКСПОРТЕ ЗА ПРЕДЕЛЫ ЕС-27



Источник: Eurostat

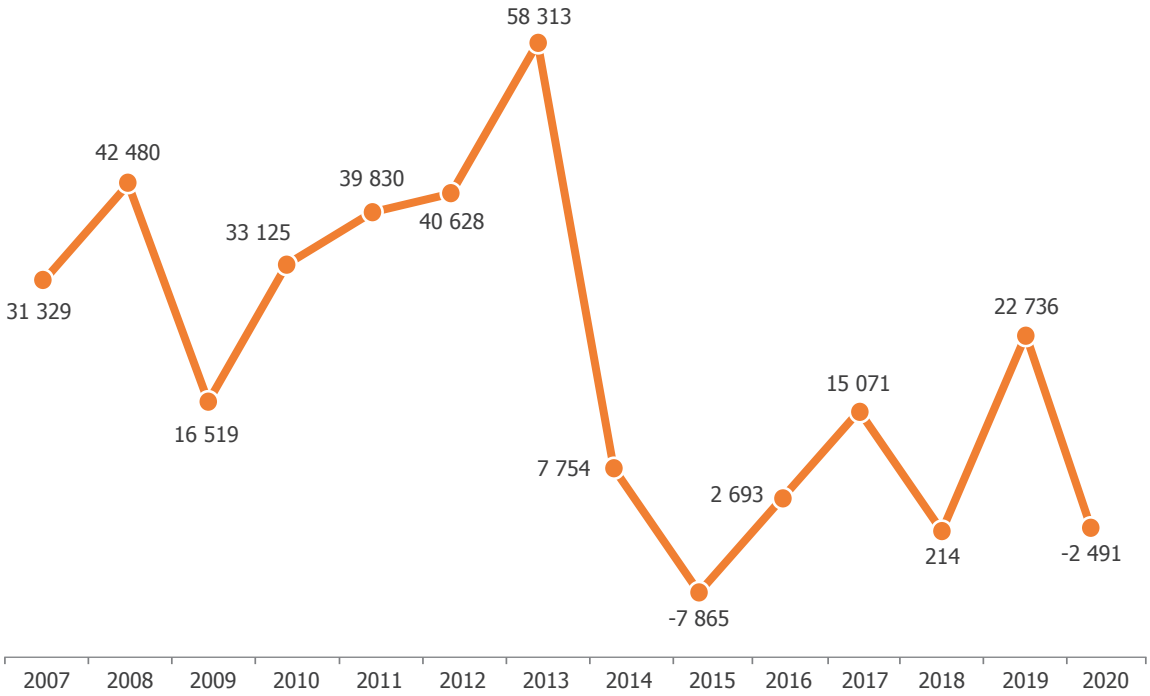
ТОРГОВЫЙ БАЛАНС СТРАН ЕВРОСОЮЗА С РОССИЕЙ, 2019 Г. (МЛН ЕВРО)



Источник: Eurostat

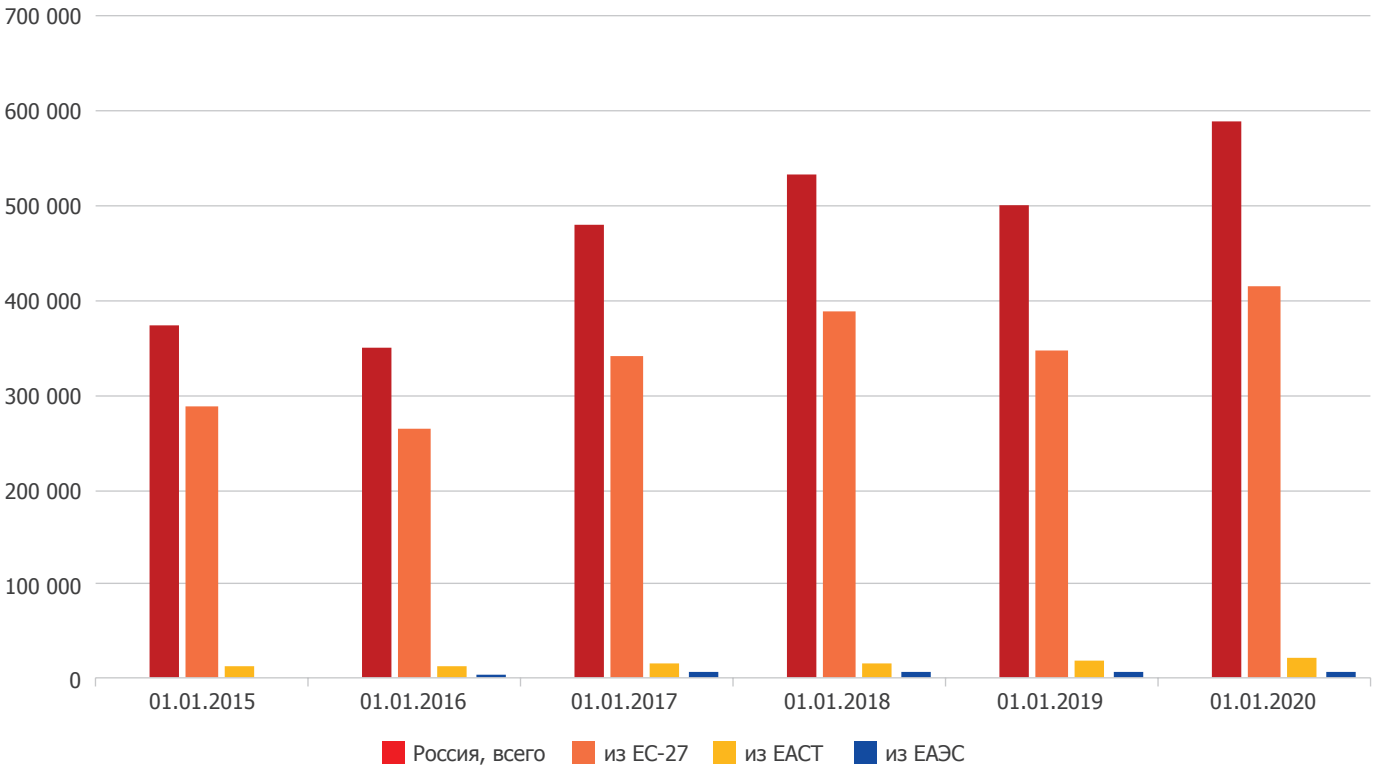
ЕС-РОССИЯ: ПРЯМЫЕ ИНОСТРАННЫЕ ИНВЕСТИЦИИ

ПРЯМЫЕ ИНВЕСТИЦИИ ИЗ СТРАН ЕС (И ВЕЛИКОБРИТАНИИ) В РОССИЮ (МЛН ДОЛЛ. США)



Примечание: прямые инвестиции в Российскую Федерацию по странам-партнерам (участие в капитале, реинвестирование доходов и долговые инструменты); 2020 = 1 кв. 2020 г.

ПРЯМЫЕ ИНВЕСТИЦИИ В РОССИЙСКУЮ ФЕДЕРАЦИЮ: ОСТАТКИ ПО СОСТОЯНИЮ НА ДАТУ (МЛН ДОЛЛ. США)



Источник: ЦБР

ПРЯМЫЕ ИНВЕСТИЦИИ В РОССИЙСКУЮ ФЕДЕРАЦИЮ ПО СТРАНАМ-ПАРТНЕРАМ (МЛН ДОЛЛ. США)

	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 (I кв.)
ЕС-27+ Великобритания	33 125	39 830	40 628	58 313	7 754	-7 856	2 693	15 071	214	22 736	-2 491
Австрия	1 353	1 563	1 135	-326	841	407	1 071	-174	884	924	246
Бельгия	467	112	214	755	-538	-19	35	-191	22	-45	131
Болгария	0	33	-82	4	13	1	8	43	14	18	5
Великобритания	1 142	2 007	46	18 927	120	1 112	478	2 076	2 522	4 686	2 919
Венгрия	374	454	683	736	534	-452	362	184	259	284	46
Германия	3 196	2 234	2 265	335	349	1 483	224	470	341	245	818
Греция	-2	-5	-3	-2	1	0	0	0	-3	0	0
Дания	168	-11	38	25	-11	49	22	32	17	6	123
Ирландия	2 326	5 306	9 877	10 399	-531	623	-1 789	889	-3 850	3 193	801
Испания	-13	30	116	147	200	64	61	84	51	12	66
Италия	309	154	280	118	158	56	133	30	579	260	-535
Кипр	12 287	12 999	1 985	8 266	3 158	-7 069	-436	8 674	-10 108	7 932	-3 143
Латвия	23	20	32	285	338	196	84	-58	60	119	-37
Литва	-2	8	42	8	-50	8	15	8	20	3	0
Люксембург	2 892	4 106	10 814	11 638	-693	-5 770	-939	3 378	-506	-2 814	-1 136
Мальта	16	4	16	47	10	41	57	63	39	13	-1
Нидерланды	3 733	7 383	10 330	5 716	1 102	-246	165	-1 427	7 846	6 393	-1 578
Польша	17	6	17	-49	70	20	116	5	-27	67	2
Португалия	-1	10	6	0	7	0	2	1	3	-2	0
Румыния	1	0	0	0	0	0	0	0	0	0	0
Словакия	4	-26	4	3	-7	3	-3	-6	0	13	0
Словения	9	-23	14	50	22	14	15	-15	-10	-1	-1
Финляндия	347	217	349	216	124	-272	253	50	582	-276	10
Франция	2 592	1 107	1 232	2 121	2 224	1 686	1 997	854	1 134	2 044	959
Хорватия	0	7	-5	14	1	0	0	-2	5	16	-1
Чехия	72	78	-187	36	109	54	171	73	-32	-101	5
Швеция	1 831	2 025	1 322	-1 203	166	122	530	20	372	-250	-2 193
Эстония	-15	31	85	47	38	32	60	8	0	-3	1

Источник: ЦБР

AEB MEMBERSHIP APPLICATION FORM / ЗАЯВЛЕНИЕ НА ЧЛЕНСТВО В АЕБ

Please, email a scan of completed and signed application form to: membership.application@aebrus.ru**, and send the original document by post /** Пожалуйста, вышлите скан заполненного и подписанного заявления на адрес: **membership.application@aebrus.ru**, а оригинал направьте почтой.

Calendar year/Календарный год: 2021

Name of your AEB Contact / Ваше контактное лицо в АЕБ:

1. COMPANY / СВЕДЕНИЯ О КОМПАНИИ

Company name in full, according to company charter in English & Russian. (Individual applicants: please indicate your business activities or the employer / Название компании в соответствии с уставом на русском и английском языках. (Для индивидуальных участников – описание предпринимательской деятельности или работодателя):

Legal address (and postal address, if different from legal address) / Юридический адрес (и фактический адрес, если он отличается от юридического):	**INN/KPP** / ИНН/КПП:	
	Phone Number / Номер:	**Fax number** / Номер факса:
	Website address / Страница в Интернете:	

2. CATEGORY: THE CATEGORY IS DETERMINED ACCORDING TO THE GLOBAL TURNOVER OF THE COMPANY/ КАТЕГОРИЯ: КАТЕГОРИЯ ОПРЕДЕЛЯЕТСЯ ГЛОБАЛЬНЫМ ОБОРОТОМ КОМПАНИИ

Please attach the signed letter on the company activities and its global annual turnover on the company letterhead / Просьба приложить официальное письмо на бланке организации с описанием деятельности компании и указанием ее глобального оборота, заверенное подписью.

	Please indicate the corresponding AEB Category/ Отметьте, пожалуйста, соответствующую категорию:	**Company's global annual turnover (EUR) /** Глобальный оборот компании (евро)	**AEB Membership Fee /** Членский взнос АЕБ
☐	**SPONSORSHIP** / Спонсорство	**--**	**12,000 EUR /евро**
☐	**CATEGORY A** / Категория А	**>500 million/миллионов**	**6,500 EUR /евро**
☐	**CATEGORY B** / Категория Б	**100-499 million/миллионов**	**4,000 EUR /евро**
☐	**CATEGORY C** / Категория С	**1-99 million/миллионов**	**2,500 EUR /евро**
☐	**CATEGORY D** / Категория Д	**<1 million/миллиона**	**800 EUR /евро**
☐	**CATEGORY I (EU/EFTA citizens only)**/ Индивидуальное (только для граждан Евросоюза/ ЕАСТ)	**--**	**1,000 EUR /евро**
☐	**CATEGORY R (rep. offices)** / Категория Р (companies registered in Russia by a rep. office only may join for the first two years with an adequate upgrade to follow) / компании, зарегистрированные в России только в качестве представительств, могут вступить на первые два года с последующим повышением категории до актуальной)	**--**	**3,000 EUR / евро**

Any non-EU/non-EFTA Legal Entities applying to become Associate Members must be endorsed by two Ordinary Members (AEB members that are Legal Entities registered in an EU/EFTA member state or Individual Members – EU/EFTA citizens) in writing / Заявление о вступлении в Ассоциацию любого юридического лица из страны, не входящей в Евросоюз/ЕАСТ, должно быть письменно подтверждено двумя юридическими лицами из Евросоюза/ЕАСТ или индивидуальными участниками-гражданами в Евросоюзе/ЕАСТ.

Individual AEB Membership is restricted to EU/EFTA member state citizens, who are individual entrepreneurs or who are employed by a company, which cannot join the AEB for the internal regulations / К рассмотрению принимаются заявления на индивидуальное членство от граждан Евросоюза/ЕАСТ, занимающихся индивидуальным предпринимательством или работающих в неевропейских компаниях, внутренняя политика которых не предполагает членство в АЕБ.

All applications are subject to the AEB Board approval / Все заявления утверждаются Правлением АЕБ.

3. CONTACT PERSON / КОНТАКТНОЕ ЛИЦО

Title, first name, surname / ФИО:	
Position in company / Должность:	
E-mail address / Адрес эл. почты:	

4. COUNTRY OF ORIGIN / СТРАНА ПРОИСХОЖДЕНИЯ

A. For a company / Компаниям: **Please specify the country of origin** / Указать страну происхождения компании[1]	
or B. For an individual applicant / Индивидуальным заявителям: **Please specify the country of which you hold CITIZENSHIP** / Указать гражданство	

Please fill in either A or B above / Заполните только графу А или В.

5. COMPANY DETAILS / ИНФОРМАЦИЯ О КОМПАНИИ

Company present in Russia since: _____ / Компания присутствует на российском рынке с:_____ г.

Company activities / Деятельность компании	**Primary** / Основная:		**Secondary** / Второстепенная:
Company turnover (euro) / Оборот компании (в евро)	**In Russia** / в России:	**Worldwide** / в мире:	☐ **Please do not include this in the AEB Member Database** / Не включайте это в справочник АЕБ
Number of employees / Количество сотрудников	**In Russia** / в России:	**Worldwide** / в мире:	☐ **Please do not include this in the AEB Member Database** / Не включайте это в справочник АЕБ

Please briefly describe your company's activities IN ENGLISH

6. HOW DID YOU LEARN ABOUT THE AEB / КАК ВЫ УЗНАЛИ ОБ АЕБ?

☐ **Personal Contact** / Личный контакт	☐ **Internet** / Интернет	☐ **Event** / Мероприятие
☐ **Media** / СМИ	☐ **Advertising Source** / Реклама	☐ **Other** / Другое

Signature of Authorised Representative of Applicant Company /
Подпись уполномоченного лица заявителя:

_____

_____

Date / Дата:

Signature of Authorised Representative of the AEB /
Подпись Руководителя АЕБ:

_____

_____

Date / Дата:

[1] In accordance with the country of registration and citizenship of the major owner / В соответствии со страной регистрации и гражданством мажоритарного собственника.

AEB SPONSORS 2020/2021

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Atos
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KPMG
Mercedes-Benz Russia
Merck
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METRO AG
Michelin
OBI Russia
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