

*The National Emblem of Ukraine*

**MINISTRY OF JUSTICE OF UKRAINE**

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**The Ukrainian National Committee  
Under the International Chamber of Commerce  
(ICC Ukraine)**

*Re: Renewal of the Interagency Working Group composition*

In response to the letter of the Ukrainian National Committee under the International Chamber of Commerce (ICC Ukraine) dated 19 August 2014 № 530 concerning the renewal of the composition of the Interagency Working Group (IWG) for Implementation of the "Single Window - Local Solution" Technology in the Operations Area of Pivdenna Customs and Ports of Odessa Region the Ministry of Justice proposes to include in IWG **Anton Volodymyrovych Yanchuck**, Deputy Minister of Justice of Ukraine for European Integration.

At the same time, the Ministry of Justice has studied the Draft Resolution of the Cabinet of Ministers of Ukraine "On Establishment of the Interagency Working Group for Trade and Logistics Facilitation" (hereinafter - the "Draft Resolution") and hereby provides the comments and suggestions within its competence.

**Concerning the Draft Resolution**

1. Paragraph 1 of the Draft Resolution proposes to establish an interagency working group for trade and logistics facilitation composed of the *top executives of central executive power bodies, institutions, enterprises, organizations, and professional and industry associations as shown in the attached list.*

In order to provide a clear statement of the legal standard we suggest that Item 1 of the Draft Resolution should read as follows: Establish the Interagency Working Group for Trade and Logistics Facilitation (hereinafter referred to as the "Interagency Working Group"), whose composition is shown in the enclosure."

2. Paragraph 3 of the Draft Resolution proposes to appoint the State Fiscal Service, the Ministry of Economic Development and Trade and Ministry of Infrastructure the authorities responsible for trade and logistics facilitation and provision for the implementation of the National Strategy for Trade and Logistics Facilitation.

In accordance with Part 2, Article 19 of the Constitution of Ukraine, the bodies of state power and local self-government and their officials *shall only act on the basis, within the competence limits and in the manner envisaged by the Constitution and Laws of Ukraine.*

However, Part 1, Article 3 of the Law of Ukraine "On the Central Authorities" indicates that the activities of the ministries and other central executive bodies shall be guided by the Constitution of Ukraine, this Law and other Laws of Ukraine, decrees of the President of Ukraine and resolutions of the Verkhovna Rada of Ukraine adopted in accordance with the Constitution and Law of Ukraine, acts of the Cabinet of Ministers of Ukraine and other legislative acts of Ukraine.

According to Part 3 of the said Article the Provisions on ministries and other central executive bodies shall be approved by the Cabinet of Ministers of Ukraine.

Thus, the provisions of Item 3 of the Draft Resolution shall be the subject of the normative legal acts legal regulation that determine the functions of each individual executive power body (Provision on the relevant CEPB) excluding from them the powers, which are not required by Law, and therefore require removal from the Draft Resolution.

3. Item 4 of the Draft Resolution proposed to the State Fiscal Service, the Ministry of Economic Development and Trade, Ministry of Finance, Ministry of Infrastructure, Ministry of Foreign Affairs, Ministry of Health, Ministry of Agrarian Policies and Food, Ministry of Ecology and Natural Resources, Ministry of Internal Affairs, the Security Service and Administration of the State Border Service to provide IWG with the drafts of the normative-legal and administrative acts relating to the procedures of international trade, logistics, control and clearance at the state border of goods and transport vehicles crossing the state border, for consideration and approval.

According to Parts one and two of Article 50, Law of Ukraine "On the Cabinet of Ministers of Ukraine" the right of initiative in adoption of acts of the Cabinet of Ministers of Ukraine shall be exercised by the Members of the Cabinet of Ministers of Ukraine, central executive authorities, state collegial bodies, the Council of Ministers of the Autonomous Republic of the Crimea, state regional administrations and Kyiv and Sevastopol administrations. Draft acts of the Cabinet of Ukraine are prepared by the *ministries and other central executive authorities, state collegial bodies, the Council of Ministers of the Autonomous Republic of the Crimea, regional administrations and Kyiv and Sevastopol administrations.*

For the above reasons, we offer to cancel Item 4 of the Draft Resolution.

### **Concerning the Draft of the IWG Officials Composition**

4.3. In view of the developed practice, it should be noted that the composition of the Interagency Working Group for Trade and Logistics Facilitation is an annex to the Resolution of the Cabinet of Ministers of Ukraine, that is why the words "APPROVED by the Cabinet of Ministers of Ukraine" shall be replaced with the words "Annex to the Resolution of the Cabinet of Ministers of Ukraine".

5. The word "Officials" in the name of the Annex shall be deleted in view of Item 1 of the Draft Resolution and in consideration of such acts preparation practice.

6. In accordance with the second Paragraph of Item 7, the Standard Provision on the Consultative, Advisory and other Auxiliary Bodies Established by the Cabinet of Ministers of Ukraine approved by the Cabinet of Ministers of Ukraine on 17 June 2009 as # 599 (hereinafter – the "Standard Provision") an auxiliary body shall include Chairman (Co-Chairmen), Deputy (Deputies) Chairman, Members of the Cabinet of Ministers of Ukraine, representatives of the central and local executive bodies (subject to consent of their Chairmen), and subject to consent of the representatives of the local self-government authorities, other state bodies, enterprises, institutions and organizations and People's Deputies of Ukraine.

In view of the stated above, paragraph thirteen of the Draft Officials Composition of IWG after the words "Chairman (Deputy Chairman) of Security Service of Ukraine" shall be amplified with the words in brackets ("subject to their consent").

7. The word "Administration" shall be deleted from the paragraph fourteen of the Draft Officials Composition of IWG as Article 8 of the Law of Ukraine "On the State Border Service of Ukraine" stipulates that the State Border Service of Ukraine and the activities of the central executive body that implements the state policy in the field of state border protection *shall be managed by Head of the State Border Service of Ukraine.*

8. The Draft Officials Composition of IWG should be refined in consideration of the paragraph six, Sub-Item 3, Item 20 of the Rules of Drafting Acts of the Cabinet of Ministers of Ukraine

approved by the Cabinet of Ministers of Ukraine on 06 September 2005 as # 870, according to which in the text of the documents to be approved under resolutions or Instructions, and in that of annexes the abbreviated names of the state authorities shall be used, and the word "Ukraine" shall not be indicated in the names of the central executive bodies.

### **Concerning the Draft Provision on IWG**

9. In Item 1 of the Draft Provision on IWG (hereinafter - the "Draft Provision") the words "permanent coordination and advisory" should be replaced with the words "temporary consulting and advisory" to match Part one of Article 48, Law of Ukraine "On the Cabinet of Ministers of Ukraine", in accordance with which the Cabinet of Ministers of Ukraine may form *temporary consultative, advisory* and other auxiliary bodies in order to ensure their powers.

10. Item 2 of the Draft Provision determines that the IWG activity is guided by the Constitution and laws of Ukraine, acts of the President of Ukraine and Cabinet of Ministers of Ukraine, other legislative acts, international treaties of Ukraine and this Charter.

Under Item 2 of the Standard Provision the activity of the consultative, advisory or other auxiliary body shall be regulated by the Constitution and laws of Ukraine, as well as *decrees of the President of Ukraine, resolutions of the Verkhovna Rada of Ukraine adopted in accordance with the Constitution, laws of Ukraine, acts of the Cabinet of Ministers of Ukraine and the said Provision.*

In view of the above, Item 2 of the Provision needs some additional work.

11. Item 3 of the Draft Provision proposes to identify the main tasks of IWG, including the *development and consideration* of draft laws and other legal acts aimed at international trade and logistics facilitation (fourth paragraph) and implementation of the "single window" mechanism at the state border checkpoints of Ukraine for sea, river, air, rail and road traffic located in the territories of ports, airports, railway stations and other transportation hubs of Ukraine (sixth paragraph).

In this regard it should be noted that the legal nature of the subsidiary bodies is that their activities must be focused on the study of problematic issues that arise in the activities of the body, under which they are established, and following the outcomes of such study presenting their *proposals and recommendations*, that is their work is solely *providing advice* to the body, under which they are established.

Since the powers under paragraphs four and six of Item 3, Draft Provision, which are proposed to be entrusted to IWG, are the powers of authority inherent in the central executive bodies, the paragraphs mentioned above require improvement.

12. Paragraph three, Item 4, Draft Provision, needs some additional work in order to bring it into compliance with Subitem 2, Item 5, Standard Regulations, in accordance with which any subsidiary body shall be entitled to involve the representatives of the central and local executive bodies, local self-government authorities, enterprises, institutions and organisations (*in consultation with their top managers*), as well as independent experts (by agreement) to take part in their activity.

13. Subitem 5 of the Draft Regulation determines that IWG shall consist of Head, two Vice-Heads, Members of IWG, experts working on a voluntary basis, and the Secretariat.

The said Subitem needs some additional work in order to remove the words "experts working on a voluntary basis, and the Secretariat" to bring it in line with the paragraph two, Item 7, Standard Regulation, in accordance with which the subsidiary body composition shall include Chairman (Co-Chairmen), Deputy (Deputies) Chairman, Members of the Cabinet of Ministers of Ukraine, representatives of central and local executive bodies (in consultation with their leaders), as well as the representatives of local self-government authorities, other state bodies,

enterprises, institutions and organizations, and people's deputies of Ukraine subject to their consent.

14. Paragraph four, Item 7, Draft Provision, requires editorial revision concerning the words "and may also discuss other issues related to the entrusted tasks".

15. Item 8 of the Draft Provision provides that in order to ensure the professional elaboration of the issues assigned to IWG each of its Members shall be assigned the subordinate branch specialists (in number of three persons) as experts and provide their participation in the work and meetings of IWG. In the first place, such experts shall be united into permanent or temporary working and expert groups.

In this regard it should be noted that Item 5 of the Standard Regulation specifies among the rights of a subsidiary body the one to form, if necessary, permanent or temporary working groups to carry out its tasks.

At this, under paragraphs six and seven, Item 6 of the Draft Provision, the IWG Head's competence shall include, in particular, the establishment, if necessary, the permanent or temporary working and expert groups, as well as approval of changes to such groups composition on submission of the central executive bodies, institutions, enterprises, organizations, professional and branch associations represented in IWG.

Given the stated above, Item 8 of the Draft Provision should be removed because it governs the internal affairs of the formation of *temporary working and expert groups* and shall be resolved at the Meetings of IWG in accordance with the established procedure.

16. In paragraph one, Item 9 of the Draft Provision word "simple" must be removed to satisfy the requirements of paragraph two, Item 9, Standard Regulations, according to which the suggestions and recommendations shall be considered approved, if more than half of the subsidiary body members present at the meeting voted in its favour.

Signed

Anton Yanchuk,

Deputy Minister