

**It is especially worth noting that some of our efforts resulted in certain positive steps by the government thanks to the commitment of many EBA members to lobbying for common issues and understanding of government.**

- About 120 government guest speakers at EBA meetings in Kyiv and Regional Branches.
- Updated edition of the EBA Report 'Barriers to Investment in Ukraine' representing the collective view of EBA members on solving corporate and industry related problems forwarded to the Ukrainian authorities and presented to European Commission officials in Brussels.

## TAX

- Special VAT accounts were not introduced as intended. The EBA Tax Committee appealed to the Parliamentary Committee on Finance and Banking in terms of the Draft Law on Amendments to the VAT Law of Ukraine concerning application of separate bank accounts for VAT. The EBA expressed its members' concerns about additional financial burden on taxpayers which might be caused by the introduction of these accounts. As a result, the Draft Law was withdrawn from the parliamentary agenda in 2007.
- The EBA's proposals on VAT promissory notes were heard by both customs and tax authorities of Ukraine. Following the EBA meeting with the Head of the State Customs Service of Ukraine (SCSU) and the EBA appeals to the State Tax Administration (STAU) and the SCSU, both authorities prepared the joint Order on Amendments to the Procedure for Sharing Information on Tax Promissory Notes Turnover, Registration and Payment. The above-mentioned common Order is aimed at enhancing the mechanism for sharing information about VAT promissory notes at the central level between the SCSU and the STAU.
- The EBA got involved in drafting the Tax Code of Ukraine. Being a member of the Public Collegiums of the State Tax Administration and the Ministry of Finance and representing the interests of its membership, the EBA worked within the focus groups of the STAU and working group within the Ministry for Finance to draft respective chapters of the Draft Tax Code of Ukraine. As the outcome the final version of the Draft Tax Code approved by the Government contains certain positive amendments in tax legislation, for instance, in terms of VAT application for services supplied to non-residents and the right of companies being registered as VAT payers for less than 12 months to apply for VAT refund.

## CORPORATE GOVERNANCE

- Some of the EBA proposals on enforcement of property rights protection in Ukraine were supported by the President of Ukraine. Namely, following appeals by the EBA to top officials, the President of Ukraine promulgated his Decree No 103/2007 on Measures to Reinforce Protection of Property Rights in order to safeguard steadfast observance of the constitutional principle of securing the protection of rights of all subjects of ownership rights, prevention of misuse in the sphere of administration of state property objects.
- The Draft Law on Joint Stock Companies passed its first reading in Parliament. Following the above-mentioned Decree of the President, work on the Joint Stock Companies Law (Draft JSC Law) was intensified both at government and parliamentary level. The EBA Legal Committee took an active part in the Parliamentary Working Group on refining the Draft JSC Law and elaborated its comments to the Draft Law in question. The EBA also held EuroDebates called "The Joint Stock Companies Law: Pros & Contras". During the EuroDebates session EBA members, government officials and journalists expressed and discussed different standpoints on the pros & contras of the Draft JSC Law. Following these actions by the EBA the Draft JSC Law was adopted by Parliament in the first reading.
- The EBA became an active member of the Special Intergovernmental Anti-raiding Commission and the EBA Legal Committee developed and passed its proposals on necessary legislative amendments for solving the issue of illegal raiding in Ukraine for consideration by the said Commission.

## **REAL ESTATE**

- The EBA Real Estate Committee developed the Analytical Review IN CLOSE UP: Land Property Rights devoted to the EBA Real Estate Committee Priority for 2007 as to foreign investors rights to acquire property rights to non-agricultural land plots. It was presented to the Ukrainian authorities and mass media during the round table discussion on 26.03.07. This Review tackles the problem of foreign investors' rights to obtain property rights to non-agricultural land plots in Ukraine by describing the problem caused by the weak legal technique of Article 82 of the Land Code, namely in terms of the list of legal entities entitled to obtain property rights to non-agricultural land plots in Ukraine. The EBA's efforts and proposals prescribed in the Analytical Review were heard and included in the Draft Law on Amendments to the Land Code No 4035 registered in Parliament on 30.07.07.
- On several occasions the EBA attended the Public Council under the State Agency on Land Resources to discuss possible ways in which the Draft Law on Land Market could be improved, as it is needed for lifting the moratorium on the sale of agricultural land plots. The EBA Real Estate and Legal Committee leaders joined the WG on Harmonization of Ukrainian Land Legislation whereto the EBA proposals to the Draft Law on Land Market were submitted. Some of the EBA's concerns were enlightened in the new version of the Draft devoted to regulation of relations on the agricultural land market. The respective Draft Law on Agricultural Land Market was developed by the Secretariat of the President of Ukraine. It was also analyzed by members of the EBA Real Estate Committee and a number of observations and proposals were prepared.

## **ENVIRONMENT**

- Following the EBA proposals included in the EBA Report on Barriers to Investment in Ukraine and expressed during the Round Table with the Ministry of Fuel and Energy and Ministry of Environmental Protection organized by the EBA Fuel & Energy Committee, the Special Agency on the Kyoto Protocol was established under the Ministry of Environmental Protection. This agency also successfully established the National Registry of CO2 emissions and consequently Ukraine joined the International Transaction Log. This was the last precondition for the opportunity of full execution of Kyoto Protocol mechanisms in Ukraine. Thus, Ukraine is capable of carrying out emissions trading and joint implementation projects on reducing emission, which may become a significant opportunity for Ukrainian companies to attract additional financial resources.

## **INTELLECTUAL PROPERTY**

- After adoption of amendments to the Customs Code of Ukraine envisaging establishment of the IP objects customs register, something for which the EBA fought for in 2006, two more supplementary legal acts were developed and approved. They reflected EBA proposals on improving measures on prevention of IPR infringement during the movement of goods through the customs border. The major achievement prescribed by the one of the Resolutions is the ex-officio function of the customs authorities ensuring control over the movement of goods containing IPR objects that is not limited to the objects registered. The other legal act is aimed at ensuring compensation of expenses connected with acts by the customs authorities of Ukraine regarding promotion of IPR protection and envisages guarantees in the form of a security deposit or banking guarantee equal to Euros 5000. This sum of money is too burdensome for small and medium-sized businesses and the EBA suggested decreasing the sum of the security deposit or equivalent guarantee in the respective Order, which is stressed in the EBA Investment Paper.
- In the course of harmonization of Ukrainian legislation with WTO requirements, the Ukrainian Parliament approved and the President signed the Law on Amending Certain Legislative Acts of Ukraine as to the Legal Protection of Intellectual Property (regarding fulfillment of requirements related to the accession of Ukraine to the WTO). This Law reflects one of the major concerns of the EBA Intellectual Property WG members, namely, to counteract the repeated return of counterfeit products, as well as equipment and materials used for their production, into civil use. It introduces amendments to both the Civil and Criminal Codes of Ukraine stipulating not only seizure of counterfeit goods, equipment and materials used for their production, but also for destruction of counterfeit goods.

## **CUSTOMS PROCEDURES**

- The State Customs Service developed a the new version of the Customs Code of Ukraine aimed at harmonization and simplification of customs procedures in accordance with the International Convention on Harmonized and Simplified Customs Procedures (Kyoto Convention). For several years the EBA lobbied for adjustment of Ukrainian customs procedures to international requirements. Ukraine finally joined the Kyoto Convention last year and in 2007, being a member of a group on harmonizing Ukrainian customs legislation

with the requirements of the Kyoto Convention, the EBA initiated analysis of the draft version of the new Customs Code.

- The EBA defended the rights of importers to preliminary documentary control at customs check points. Taking into account the fact that legislative framework was not adjusted to the progressive Cabinet of Ministers Resolution No 269 providing for preliminary documentary control, the issue of its legality emerged at government level and some authorities initiated abolition of this Resolution. In order to save such a progressive norm the EBA took part in an intergovernmental meeting to lobby for further development of preliminary documentary control in Ukraine. The result of this meeting was that all authorities, except for the State Veterinary Service, agreed to delegate control over certain types of goods to customs officers in the form of preliminary documentary control. Following this meeting the State Customs Service appealed to the Cabinet of Ministers of Ukraine to accelerate adoption of the Law on Preliminary Documentary Control and to provide respective amendments to Resolution No 1569 dividing types of control between state authorities at customs check points. The EBA supports this initiative so as to ensure clear division of control responsibilities between the authorities.

- The EBA blocked introduction of restrictive tax criteria for companies enjoying a favorable customs regime. The EBA's concerns about the draft criteria to be included in the customs White List were related to the requirement to pay taxes and duties to a level of more than 10% of gross income (for producers) and more than 10% of sales volume (for other enterprises). Another requirement emphasized by the EBA in its comments on the draft criteria was a provision that a company is allowed to enjoy a favorable customs regime only when no criminal proceedings upon infringement of tax legislation by a company were ever initiated. This actually means that despite a court decision or even when a case was closed because no elements of crime existed, the company would not be able to enjoy a favorable customs regime. Following appeals by the EBA to the state authorities in this respect the SCSU organized a working meeting of the EBA, STAU and the Ministry of Finance to discuss the EBA's concerns. As to the second EBA concern the STAU admitted an editorial mistake in the draft and, consequently, the wording will be amended. As to the first concern the EBA was supported by the SCSU and a respective appeal was addressed to the Ministry of Finance, according to which any tax burden requirement should be introduced only after clear evaluation of its aftereffects.

## **TECHNICAL REGULATION**

- The EBA lobbied for reducing the list of goods subject to mandatory certification. Thus, a significant range of products, including foodstuffs and industrial products, were excluded from the List of Goods Subject to Mandatory certification in Ukraine approved by the Order of the State Committee for Technical Regulation and Consumer Policy.

- The EBA lobbied for abolition of mandatory certification of food products. Even when there were some legislative initiatives on resumption of obligatory certification of imported agricultural products the EBA appealed to the President, who then vetoed the respective Law.

## **FRANCHISING**

- The EBA Franchising Working Group was launched to work on facilitating a regulatory environment for the franchising business in Ukraine. The EBA Franchising Working Group members studied the issues faced by companies in this respect and developed a new chapter to the EBA Report "Barriers to Investment in Ukraine". The EBA appealed to different government authorities, including the Cabinet of Ministers of Ukraine, to pinpoint the problem of registration of franchising agreements and organized a number of meetings with government officials. Summing up the EBA's efforts, the State Committee for Regulatory Policy and Entrepreneurship, Ministry of Science and Education and the State Department of Intellectual Property (SDIP), supported proposals made by the EBA Franchising Working Group in terms of amending the Civil Code and developing a clear procedure for the registration of franchising agreements. Moreover, the SDIP agreed to collaborate with the EBA in order to promote respective legislative amendments in terms of entitling the SDIP to carry out registration of franchising agreements.

## **TRAVEL & TOURISM**

- The EBA Travel and Tourism Committee prepared its Analytical Review. It is focused on improving the railway ticketing system (within the framework of one of the major priorities of the EBA Travel & Tourism Committee for 2007). The Review was sent to the respective state authorities and received positive responses to its proposals. According to the response from state rail operator Ukrzaliznytsia, the sale of railway tickets via the Internet will be implemented and applied in Ukraine in 2008. Moreover, Ukrzaliznytsia supported the EBA proposal to arrange the sale of tickets by tourist companies and specialized agencies, which corresponds to EU practice. This will be implemented in the course of reform of the Ukrainian railway system. The EBA

also supported the draft CMU Resolution on Amendments to the Procedure of Serving Citizens with Railway Transport, dated 02.08.07, which proposed to abolish the requirement of submission of one's passport when buying railway tickets. It came into force on 14.11.07.

- On 18.06.07, during the 11th meeting of the Council on Issues of Cooperation between Ukraine and the European Union, the EU-Ukraine Agreement on Facilitation of the Visa Regime and Readmission was signed. On 13.11.07 Members of the European Parliament voted to ratify the Readmission and Visa Facilitation Agreements with Ukraine. The next and final step from the European side should be ratification of documents by the EU Council of Ministers. The Agreement prescribes significant preferences for Ukrainian citizens. In particular, it defines the categories of Ukrainians who have the right to receive five-year multiple visas (journalists, businessmen, members of official delegations, relatives of Ukrainians who have the right to stay in EU countries). The need to issue such visas for businessmen was earlier proposed by the EBA Investment Paper.

## **HEALTH CARE SYSTEM**

- In order to contribute to the Health Care System Reforms by: participating in the development and implementation of the obligatory medical insurance system and developing the reimbursement system, as well as by improving the private medical insurance sector the Project Medical Insurance and Reformation of the Health Care System in Ukraine was initiated within the framework of the EBA Health Care Committee. Two round table discussions with different stakeholders were held in accordance with the implementation plan of this project. As a result of activity for 2007 on this Project, the EBA Health Care Committee's position on the transition to the insurance-budget model, which was based on the results of monitoring and expert conclusions, was agreed. The international conference on medical insurance and health care system reform in Ukraine will be held at the beginning of next year in order to discuss the existing models and present the Committee's position. Experts from the reviewing countries as well as the other parties interested in this issue should be engaged in the Conference.

- In 2007 the monitoring of all possible models of reimbursement was completed by the EBA Health Care Committee. The basic proposal of the reimbursement system potential model (the national system of reimbursement) was prepared and passed to the State Service of Medical Drugs and Medical Devices during negotiations. Two rounds of negotiations based on proposals made by the EBA Health Care Committee were held with the State Service of Medical Drugs and Medical Devices of the Ministry of Health.

- In 2007 the members of the EBA Health Care Committee continued their participation in development of the Rules of Pharmaceutical Products Promotion as members of the working group (approved by the Order of the Ministry of Health dated 06.12.06). The Code of Marketing Practices of the EBA Health Care Committee was taken as a model. The draft Rules were submitted for discussion by interested market players and state authorities. The Rules were presented to the interested parties and the media during a press conference. The aim of the developed document is to support international standards on promoting medical drugs on the Ukrainian pharmaceutical market.

- Ukrainian legislation was amended according to the latest changes regarding protection of intellectual property rights in the Law of Ukraine on Medical Drugs. The key discrepancies of Ukrainian legislation with EU legislation, as reflected in the recent amendments, were identified during the EBA round table on Intellectual Property Rights Protection and Pharmaceutical Business Development in Ukraine.

- The harmonization of requirements on data exclusivity according to the scheme 10+1 years was included in the agenda of EU-Ukraine bilateral negotiations. This was confirmed at the meeting of EBA leadership with the EC Directorate General on Trade (DG TRADE) held on 13-14.11.07 in Brussels (Belgium). The recommendations on preventing violations of intellectual property rights at the stage of pre-registration dossier examination were received from EC experts and are in the process of being developed.

- In order to enhance anti-counterfeiting activities, draft amendments to the Criminal Code of Ukraine were approved within the framework of a joint working group of the State Inspection of Medical Drugs Quality Control and the EBA Health Care Committee. The amendments provide for liability for distribution of counterfeit products.

- The EBA Health Care Committee defined the selection criteria for public procurement of medical products. It is based on an assessment of producers (existence of Certificate of compliance to GMP or origination from a PIC/S member state, as well as producers of original products). This position was passed for consideration by the leadership of the Health Care sector and submitted to the Ministry of Economy of Ukraine.

- In order to harmonize Ukrainian legislation with European Directives, the members of the Subcommittee developed and submitted a Draft on the regulation of medical devices based on EU Directives 93/42/EEC, 90/385/EEC, 98/79/EEC on medical devices, active implants and medical devices for the diagnostics in vitro to the leadership of the State Service and the State Committee of Ukraine for Technical Regulation and Consumer Policy. The general provisions included the following – substitution of the procedure of registration by the procedure of conformity acknowledgment, implementation of the simplified procedure of the conformity acknowledgment for CE marked medical devices during the transition period followed by recognition of the CE mark after respective international agreements are signed. The technical regulations are at the final stage of government approval.

### **CROP PROTECTION INDUSTRY**

- The Procedure of State Trials, State Registration and Re-registration, Publication of the List of Pesticides and Agrochemicals Permitted for Use, approved by the Resolution No 295 dated 04.03.96 of the Cabinet of Ministers of Ukraine, was amended by Resolution No 1328 dated 21.11.07. These amendments are the result of effective cooperation between the Chemical Safety Department of the Ministry of Environmental Protection and the EBA Agrochemical Committee. Almost 90% of the EBA Agrochemical Committee's proposals were accepted by the Ministry of Environmental Protection and approved by Resolution No 1328. EBA Committee members regard these changes as a positive trend for further work on harmonization of Ukrainian legislation on crop protection with EU legislation on IPR protection.

