

Position of the Union of Entrepreneurs and Employers regarding the draft law amending the Act on State-Guaranteed Export Insurance (no. in the Journal of Laws UD484)

- **Poland is one of the most involved countries in helping Ukraine. However, participating in the process of rebuilding and modernizing the country requires significant investments, which are difficult to carry out without an appropriate system of insurance and guarantees.**
- **The answer to this need is the amendment of the Act on State-Guaranteed Export Insurance, which introduces numerous mechanisms that can help Polish entrepreneurs. The proposed mechanisms will largely facilitate the participation of businesses in the Ukraine rebuilding project. Both new and existing KUKI (Export Credit Insurance Corporation) support mechanisms will be available to a wider range of entities, including Polish foreign branches of companies.**
- **KUKI will be able to assume the risk of damages resulting from "extraordinary risk." KUKI's activities will also be directed toward investments in the energy transformation sector.**
- **Not only exporters but also entities making "direct foreign investments" will be able to benefit from KUKI's assistance, which can significantly help in the process of rebuilding Ukraine.**
- **The Union of Entrepreneurs and Employers supports the proposed solutions, although it points out that their effectiveness will largely depend on the efficiency of procedures and financial resources allocated for this purpose.**

On February 21, 2023, the Ministry of Development and Technology published a draft law amending the Act on State-Guaranteed Export Insurance (UD484, hereinafter referred to as the "KUKI Act") on the website of the Government Legislation Centre. In February, the Union of Entrepreneurs and Employers (ZPP) wrote about the announcements of new solutions, citing a statement by the President of KUKI[1], and now we know the specific proposals for amending the law.

Since the first days of the Russian Federation's aggression against Ukraine, Poland has been one of the most involved countries in helping our eastern neighbors. For the Union of Entrepreneurs and Employers, humanitarian and military aid to Ukraine is extremely important, and a particular project for us is "EUROPE-POLAND-UKRAINE. REBUILD TOGETHER", under which we have organized numerous conferences and meetings of Polish, Ukrainian, and European politicians and business representatives. We talked about how Polish companies can participate in this extremely difficult but necessary project, and how to ensure that it benefits both sides.

The Ukraine reconstruction project is an initiative that requires significant resources and involves a high level of risk. The Export Credit Insurance Corporation (KUKI) plays a crucial role in this regard. One of the most important mechanisms currently offered by this institution is the insurance of commercial receivables, which translates into an increased ability to supply Ukrainian partners with essential products (medicines, food, and building materials) through the export of Polish products.

However, Polish entrepreneurs have long been pointing out that one of the most significant barriers to investment in Ukraine, especially under conditions of such high risk and uncertainty, is inadequate

protection of investments and capital. One of the most important demands in this area is the creation of an effective system of investment insurance, including real estate, production facilities, and all necessary infrastructure. There are still no effective mechanisms in this area, which makes it difficult for Polish companies to participate in the Ukraine reconstruction project, which could be an exceptional opportunity for them to be present in the Eastern market and develop, which will directly translate into the strength of the Polish economy.

The solution to the above problems is supposed to be the amendment of the law on the Export Credit Insurance Corporation (KUKI), which, in addition to existing mechanisms for protecting the export of goods to the Ukrainian market, is also to introduce insurance for investments made by Polish companies in Ukraine in green-field projects and acquisitions, as well as insurance for the participation of Polish suppliers of goods and contractors in reconstruction and modernization projects in Ukraine. This means that KUKI will have new tools at its disposal that are not directly related to exports, but will enable action, among others, in the area of energy transformation.

Undoubtedly, the energy transformation of Poland is one of the most important challenges that we will face in the coming years. The European Green Deal imposes numerous obligations on our country, particularly in the area of reducing CO2 emissions, which require very intensive investments in renewable energy sources. Additionally, the geopolitical situation, especially in the context of Russian aggression towards Ukraine, makes it necessary to achieve not only independence from hydrocarbons from the East, but (at least to a large extent) from imported hydrocarbons altogether. The experiences of recent months indicate that only in this way will we be able to protect ourselves from the serious and real risk of the use of energy resources in the policies of states that are not always sympathetic to Poland and Europe. Certainly, enabling KUKI to support investments in this area should be evaluated positively, especially given the very high cost of energy transformation.

The draft law also provides for the possibility of providing Polish companies with insurance against extraordinary risks associated with wartime activities. Article 2 will include paragraph 8b stating that KUKI will assume the risk arising from damages resulting from events defined as extraordinary risks (in cases specified in the mentioned provision). The definition of extraordinary risk will be determined by the Council of Ministers based on the provisions to be included in Article 2, paragraph 10. Such solutions may be useful, among others, for Polish transport companies.

Very significant is also the proposed change to Article 6 (1) of the Act, which provides for a significant expansion of the catalogue of entities that will be able to use the support instruments available to KUKI. These entities will include, among others:

"entrepreneurs having a place of residence or registered office on the territory of the Republic of Poland, who carry out:

a) export of national products and services, with the reservation of paragraph 2,

b) direct investment abroad, including through dependent entrepreneurs having a registered office abroad;".

This is an extremely important change, as the previous wording of Art. 6(1) only applied to entrepreneurs "engaged in the export of domestic products and services." The proposed law will therefore expand the competences of KUKI to also support entities making direct foreign investments, i.e. those that want to operate directly in the East. This need has been expressed

multiple times by Polish businesses, which can obtain a very important impetus for development through expansion into the large Ukrainian market.

This is not the only very important change in Art. 6. Paragraph 1 point 2 of this article will state that "branches of foreign entrepreneurs, subject to paragraph 2," will also be eligible for support from KUKI. This means that appropriate instruments can be directed to foreign entities that have branches in Poland. Such companies pay taxes in Poland and support the Polish labor market, and thanks to KUKI's assistance, they will have a chance to further develop, among other things, by increasing exports. Importantly, the existence of such a mechanism improves the investment environment in Poland and can help increase the interest of entities that want to make direct investments here. Such a solution can also help attract Ukrainian companies to our country.

Considering all the proposed changes, the Union of Entrepreneurs and Employers evaluates the amendment project positively. However, it should be noted that even the best support mechanisms will not work properly without appropriate operating practices. The investment process in Ukraine, in the context of rebuilding and modernizing the country, can be a great opportunity for the development of Polish entrepreneurship and, therefore, the Polish economy, but it also involves significant risks due to military actions. Therefore, guarantee and insurance mechanisms must be financially secured and the KUKI's practice of using procedures must be fast and transparent. Only in this way will it be possible to effectively minimize the investment risk in the East.

[1] <https://zpp.net.pl/wp-content/uploads/2023/02/10.02.2023-Komentarz-ZPP-w-sprawie-wsparcia-inwestycji-polskich-przedsiębiorców-na-Ukrainie-i-zapowiedzi-planowanej-w-tym-celu-nowelizacji-ustawy-z-dnia-7-lipca-1994-r.-o-gwarantowanych-przez-Skarb-Pans.pdf>