



UPDATE ON GALS-K / PAST RENT ISSUE

As mentioned at the June & September 2005 AC / GB meetings, the STCU and the Ministry of Education and Science (MES) established a working group to discuss the issue of two amounts of money:

First, the UAH 299,129.42 originally paid by the State Treasury at the request of the MES to cover the Gals-K claim under the first court case (#3/335 – 26/06/03). In this respect, the MES had verbally and officially requested the return of this amount on various occasions (i.e. letters dated 16/12/04, 09/03/05, 14/03/05) – and more recently in August 2005 – whereby MES asked STCU to sign and confirm this debt amount held in our Bank account. It has been the STCU intention to amend this proforma to also include the US\$139K Ukrainian debt to the STCU so that both amounts are documented in any officially signed confirmation by MES and STCU;

Second, the approximately \$139,000 paid by the STCU for rent due in 1998-1999, due to the non-payment by the GoU, resulting in the outstanding issue of its reimbursement to the STCU and the Parties.

In respect to the MES requests to return this UAH 229K, on each occasion we advised the MES and reminded First Deputy Minister A. M. Ghourji and his staff that the STCU was still expecting a formal response to the letter (dated 24 December 2004) from the STCU Governing Board Chairman, V. Alessi, to then-Minister of Education and Science, M. K. Kremen, to the effect that: “The STCU Parties agree in principle to return these funds to the Ministry. But in return, the STCU Parties strongly request that Minister Kremen pursue with the Cabinet of Ministers the compensation for the amount owed to the STCU (US\$140K) while the expected modifications to the Ukrainian governmental budget are made in the weeks ahead.”

To date no such response has been forthcoming, despite several formal requests.

First WG (Gals-K) Meeting (8 June 2005). The MES representatives advised that more documentation was needed to justify any budget request to cover the US\$139K. The MES reps particularly wanted documentary proof of budgetary approval for the STCU rent made by the Treasury or Ministry of Foreign Affairs (MFA). The MES requested that STCU check to see whether such documents were available at the STCU. Also, MES requested documentary evidence of some agreement between the STCU, MFA, and Gals-K that approved the arrangement for paying the rent to Gals-K using Ukrainian state budget funds approved for this purpose. **NB:** The STCU had previously requested (via official letter) MES assistance to acquire this very same information from the Ukrainian governmental agencies, but MES later requested that STCU to pursue this information from the Ukrainian governmental agencies.

STCU Actions from First WG Meeting. A letter was sent to the MFA of Ukraine on 21 July 2005 requesting the needed budgetary information; a meeting with MFA financial officials followed on 22 August 2005. The outcome of the meeting was the MFA provided the budget funds approved for STCU during the years 1999 to 2003 (the year when GoU responsibility for STCU was transferred to MES). Prior to 1999, the GoU had made a separate budget allocation to the STCU as a “Ukrainian organization” (approved yearly by the GoU parliamentary budget process), and these funds was dispersed through the Ministry of Finance. The MFA also confirmed by letter that there was no agreement between them and the previous (Gals-K) landlord with respect to paying rent.

We located all the GoU-approved budget figures for 1996, 1997, 1998 & 1999 pertaining to the STCU. The missing figures for 1995 proved impossible to find as there was probably no published budget in that year (further, it appears that our rent for 1995 may have been paid out of the budget of the Ukrainian Space Agency).

After obtaining the required information, the STCU sent a detailed letter to the MES defining all aspects of the issues involved (See attached letter from STCU ED to MES, dated 7th September). Subsequently a second session of the STCU-MES Working Group (Gals-K) was held.

Second WG (Gals-K) Meeting (16 September 2005). Mrs. Latpi (CFO-MES) chaired the meeting and the STCU CAO and CFO represented the STCU. After long discussions over the presented budgetary documentation from 1995-2002 plus other documents, Mrs. Latpi initially advised that they did not have sufficient or required documents. The STCU reps stated our position (1) the *de facto* acceptance of the GoU to approve and allocate the budget amounts for rent payment for all those years, plus (2) the GoU obligations under the STCU Establishing Agreement and acknowledgement of such in various other official documents was proof enough. Mrs. Latpi finally agreed and verbally confirmed that the MES would initiate a request to Cabinet of Ministers to provide for a budgetary compensation item in the 2006 state budget for the STCU's \$139K.

The MES representatives then requested that STCU sign their reconciliation debt letter to confirm the debt of UAH 229K. The STCU refused on the basis that the MES had not responded to the STCU Governing Board Chairman's letter of December 2004. The MES representatives thought that they had and tried to find the letter without result. They confirmed that they would write a new letter to the effect that the MES was doing all possible to resolve this problem and it would request the Government to repay the STCU (\$139K) via the 2006 state budget. The STCU also requested that MES provide a copy of the MES request letter to Cabinet of Ministers with respect to the extra budget item for the compensation / reimbursement amount of \$139K in the 2006 Budget. MES agreed to provide.

MES Actions Following Second WG Meeting. STCU received a letter from First Deputy Minister Ghourziy dated 5th October 2005 (see attached letter and translation), apparently in response to the 16 September WG meeting. However, the MES letter appears to overturn the understandings and agreements reached by the STCU-MES Working Group.

First, the MES repeats its request that the STCU to confirm the debt to MES and repay the UAH 299K to a MES-designated bank account. The MES letter goes on to state that the letter from the STCU Governing Board Chairman to former Minister Kremen cannot connect repayment of the MES funds to the question of the STCU's \$139K allegedly owed by the Ukrainian government. MES letter repeated its position that the UAH 299K transferred to STCU was specifically linked to the Gals-K court case, and because this court case was thrown out, the MES funds could not be used for any other reason and must be returned.

Second, the MES letter addresses the documentary evidence gathered by STCU regarding the issue of the STCU's \$139K. Here, the MES questioned the "unreasonable increase" in rent in 1999 and why the STCU had not used the approved Ukrainian state budget funds in 1999. **NB:** Apparently, the First Deputy Minister did not accept the explanations in the 7 September STCU letter to him, namely that the rent increases were due to the dramatic UAH devaluation during the 1998-1999 financial crisis and that the Ministry of Finance had officially informed the STCU that the GoU could not release payments to STCU during this period (see attached MinFin letter and translation).

The MES letter concludes that for the STCU to claim a \$139K debt from the GoU, the STCU must provide yet more documentation that "...confirms the debt, explanation and a proof concerning usage of money for rent payment over limits regarding the law 'State budget of Ukraine for 1999'...".

Current STCU Secretariat Position. The STCU Secretariat now feels that, given the more recent MES letter on this issue, the STCU-MES Working Group cannot achieve any resolution, and that no further discussions with the MES, nor

any further investigation for more documents, will be useful, constructive, or beneficial in resolving this issue. The Secretariat believes that only further discussions with the GoU at a higher political level will achieve any progress.

The Secretariat therefore requests instructions from the STCU Governing Board as to what the next steps should be, particularly with regards to the MES request to return the MES funds.

Letter by STCU to MES

Mr. A. M. Ghourji
Senior Deputy Minister
Ministry of Education & Science

7th September 2005

Dear Mr. Ghourji,

I wish to extend to the Ministry of Education and Science (MES) the appreciation of the STCU for the initial rounds of working group meetings that took place during the summer months. All three groups identified issues that required further work, and I hope that the groups can meet within the next few days to review the status of these issues. I have a meeting of the STCU and its Parties (U.S., Canadian, and European Union) in Brussels in the third week of September, and I will be informing the Parties of the current state of affairs with these working groups.

I wish to draw your attention to the current status of one particular working group, which is addressing the remaining issues involving the former premises of the STCU headquarters. We call this working group the "Gals-K Working Group".

Following the first Working Group Meeting which took place in your offices on 8th June 2005 the STCU and MES mutually agreed to the following tasks:-

The STCU would try to find proof from documentary evidence of the following:

1. What funds were budgeted and approved in the Government of Ukraine's Budget for the STCU and available to either Ministry of Finance, Ministry of Foreign Affairs or other Government body at the time for the payment of rental dues for the years between 1995 to 2002.
2. That there existed an agreement between representatives of the Government of Ukraine with Gals-K to confirm the payment of rent to Gals-K for the STCU office.

The MES would:

1. Also search for proof of documentary evidence of Items 1 and 2 above, and
2. The MES would also pursue an official response to the letter from STCU Governing Board Chairman Dr. Victor Alessi to Minister Kremen (dated 27/12/2004) which deals with the issue of the UAH299,129.42 being held by STCU and the US\$139,199 owed in past rental debt by the Ukrainian Government to the STCU Parties (Annex 9).

Since that initial meeting the STCU met with the Ministry of Foreign Affairs and discussed these issues. The MFA agreed to supply us with the budgeted amounts for the years in which they were responsible for the STCU. This is for

the years covering 2000 to 2002. (See attached letter Annex 1) from the Ministry of Foreign Affairs dated 26/08/05 Ref:212/36 926 2906 for budgeted amounts held by MFA for STCU)

Prior to 2000, the STCU had a specific budget line in the Government of Ukraine's budget where approved state funds were allocated for the payment of STCU rent. We were able to confirm the Government-approved budget allocations for the STCU for the years 1996, 1998, and 1999 through the official Verhovna Rada web site (Rada.Gov.UA site). (See Annex 2). However, the STCU has not been able to find budget information for 1995 & 1997. The STCU has officially requested the Ministry of Finance to provide information for budget year 1995 & 1997; We are currently awaiting these 1995 & 1997 budget figures which we shall forward to you once received.

This completes Item 1 of the STCU tasks as agreed at the first Working Group meeting.

With respect to Item 2, the STCU searched its archives and has not found any documentary evidence of a contract or written agreement between a representative entity of the Government of Ukraine and Gals-K in respect to the lease payments in question. The Ministry of Foreign Affairs also has confirmed that it has no record of such an agreement between Gals-K and the Ministry (See Annex 1).

At this point, the STCU effort has documented the following:

1. Under its international agreement signed by the Government of Ukraine, the Government of Ukraine is responsible for providing, at its own expense, premises in Kyiv for the STCU Headquarters (Article IX of the Agreement on the Establishment of the Science & Technology Centre in Ukraine – See Annex 3).
2. A letter from the Ukrainian Cabinet of Ministers (5 May 1995 – Annex E) signed by B. Plitin, confirms the use of the premises at Labororny Pereulok 3 by the STCU. This position was re-confirmed in a letter from the Ministry of Foreign Affairs (23 January 2003 – Annex 6). The latter refers to the Government of Ukraine's responsibility to provide the STCU with appropriate premises at the expense of the Ukrainian government.
3. The STCU signed a five-year lease agreement between the STCU and Gals-K on 26 May 1995 (Annex 4). The Government of Ukraine provided budgeted funding for the purposes of paying rental invoices on this lease, as provided to the STCU by Gals-K. Sufficient funds from this budget allocation were available for these Gals-K invoices up until the period in 1999 when the rental debt of US\$ 139,199.00 to STCU parties arose.
4. From 1995 to 1999, the STCU was treated as a Ukrainian entity entitled to its own specific budget allocation within the Ukrainian state budget, and state funds were approved and allocated to this STCU budget line for the purposes of financing the rental payments under the STCU-Gals-K lease agreement. Between 1995 and 1999, the Ukrainian government approved and provided state funds to this STCU budget line, and these funds were expended by the Treasury according to rental invoices provided to STCU by Gals-K.
5. In 1999, the amount of state funds approved by the Government of Ukraine and provided to the STCU budget line was UAH 290,000, and in 1998 is was UAH 270,000. However, due to the financial crises in 1998 and various other budget constraints, the Government of Ukraine failed to meet its obligations towards the STCU and stopped paying the rent invoices in 1999. A letter dated 05/03/99 (Annex 7) was received from the Ministry of Finance and in the last paragraph it refers to the Government of Ukraine's inability to pay the debts for rent. This ultimately necessitated the STCU making 3 payments totaling US\$139,199 to Gals-K. The STCU Governing Board (which includes an official representative of Ukraine), in written decisions, had approved the use of STCU Financing Party funds as mentioned above to pay the shortfall in Ukrainian funding for the STCU rent, with the clear stipulation that the Government of Ukraine would recover these STCU Party funds in the next budget year.

6. From 2000 to 2002, the Ukrainian government shifted the STCU budget line under the state budget of the Ministry of Foreign Affairs, and during those years, continued to approve state funds for this STCU budget line. However, these funds were never made available by the Ministry to the STCU to finance the rental invoices received from Gals-K during that period, The STCU worked with the Government of Ukraine through the Ministry of Finance to recover all of the 1999 through 2002 funds approved by the Government for the STCU within the MFA budget. The STCU sent the MFA an invoice for this amount in 2000 and by a letter dated 27/12/2000 from the Ministry of Foreign Affairs (Annex 10) the MFA confirmed money would not be transferred for financing the rent because of building ownership and legality issues with the landlord, Gals-K.

The STCU position is that the payments of the Gals-K rental invoices by the Treasury during 1995-1999 (Annex 8) is de facto evidence of the Government of Ukraine's recognition and acceptance of its continuing obligation under Article IX of the STCU Establishing Agreement (Annex 3). The period of non-payment of the STCU rent between the years 2000-2002 does not negate this de facto acceptance of the Government of Ukraine obligation. Nor do the shortfalls in Ukrainian budgetary financing in 1999 negate the de facto acceptance of the Government of Ukraine that it was (and still is) obligated to fully finance the rental payments for the STCU premises.

Based upon the information that we gathered to date, the STCU feels that it has fulfilled the information requests from the first Working Group meeting, and now the STCU wishes to arrange a second Working Group meeting when convenient, but before 16 September 2005, to discuss the STCU findings and move to the next step. The STCU wishes the Working Group to meet prior to 16 September because of the meeting of the STCU Financing Parties (the governments of Canada, European Union, United States) in Brussels already mentioned. The STCU also wishes to discuss what progress has been made by MES in respect to its tasks cited above, particularly with respect to STCU's required and requested response to the 2004 letter from the STCU Chairman of the Governing Board to Minister of Education and Science Kremen. (Annex 9).

At the next working group meeting, we also request the attendance of Ms. Svitlana Vasilievna Kuzmina of the Ministry of Foreign Affairs, who has indicated her verbal agreement to attend this meeting to discuss these issues in detail.

We look forward to receiving your reply in due course.

Yours sincerely,

Andrew Hood
Executive Director
STCU

c.c:
Curtis Bjelejac CFO STCU
David Cleave CAO STCU
Svitlana Vasilievna Kuzmina - MFA
Maria Burtseva – MES

List of Annex Attachments:

- 1):Letter from the Ministry of Foreign Affairs dated 26/08/05 Ref: 212/36 926 2906
- 2):Budget Information for the Years 1996, 1997, 1998, 1999
- 3):Article IX of the Agreement on the Establishment of the Science & Technology Centre in Ukraine.
- 4):Original Lease Agreement between STCU & Gals-K dated 26th May 1995

- 5): Cabinet of minister letter dated 5th June 1995 signed by B. Plitin
- 6): Letter from Ministry of Foreign Affairs dated 23rd January 2001
- 7): Letter from Ministry of Finance dated 5th March 1999 ref:05-403/86272
- 8): STCU letter dated 22nd March 2005 in response to the MES letter 09/03/05 Ref: 1/11-906
- 9): STCU Governing Board Letter (Mr. Vic Alessi) to MES dated 27/12/04
- 10): Letter dated 27th December 2000 from Ministry of Foreign Affairs Ref: 7.2-578

Letter by MES in reply to STCU letter above – Translation

Unofficial translation

From: Ministry of Education and Sciences of Ukraine
Ref.05/10/05 # 1/11-5823

In view of the current fruitful cooperation between the MES and the STCU, including formation and regular functioning of mutual working groups, we wish to draw your attention to a group regarding financial commitments and ask to quicken making decisions on the two main tasks which are discussed in this group.

1. The first task is concluded in paying back to MES by the STCU the budget money of 299129,42 UAH, which the Ministry had transferred to the STCU by a payment draft dated 30/04/2004 with the purpose to pay off the debt for the STCU premises rent according to the Lease Agreement with Gals-K Ltd. (referring the Civil Court decision dated 12/11/2004 # 3/335-2/308).

As a result of this, the MES more than once informed about the purpose of the sum of money 299129,42 UAH and asked to return this money to the MES bank account in the State Treasury of Ukraine # 35218063000020, MF0820172, code 0027677.

We would kindly remind you that on both special co-working group meetings for financial commitments, held in June the 8th and in September the 16th, the question was raised and the Ministry representatives reminded regarding the repayment of 299129,42 UAH.

Nevertheless, on the 1st of October 2005 the abovementioned funds have not been returned.

Upon the STCU request, we need to draw your attention once more to the proposals, introduced in the letter dated 24/12/2004 # 8286 from the STCU Administrative Board Mr. Victor Alessi to the previous Minister, Prof. Vasyl Kremen regarding the STCU intention to connect repayment of this sum 299129,42 UAH with pay-off so-called Ukrainian Government debt before the STCU Financial Parties. So, referring the Article 4-5 of the Civil Code of Ukraine **the decisions of the Civil Court have to obligatorily be fulfilled on the whole territory of Ukraine and non-fulfillments of its decisions, decrees, and resolutions entail responsibility according to this Code and other Acts of Ukrainian legislation. That is why the aforementioned decision of the Kiev Civil Court is subjected to compulsory execution irrespective of other legal relationships between the Ministry and the STCU.**

Therefore, the question how the STCU will spend the sum of 299129, 42 UAH, which had been placed to the STCU account from the Ministry, is non-legitimate. In view of this fact and also that the so-called Ukrainian Government debt indicated by the STCU had not been registered officially in due course and work is being conducted within the frame of the working group between the Ministry and the STCU, we believe that it is reasonable not to connect the two different questions – a question of paying back the sum of 299129, 49 UAH and review of debt existence of Ukrainian Government before the STCU.

Hence, apart from the above said, and that the budget money has end use and can not be used for other purposes, the Ministry of Education and Science insists on urgent returning the sum of 299129,42 UAH on the account indicated before.

Referring requirements of the active legislation, we kindly ask you to submit to the MES the reconciliation report between the Ministry and the STCU (enclosed), signed by the STCU for the Ministry to be able to report about budget funds usage during 9 months of 2005.

2. The second task is to confirm whether in fact there is debt of Ukrainian Government before the STCU. And if there is, then it is necessary to define its amount.

In view of necessity to calculate a concrete figure which could be a debt of the Government before the STCU, the Ministry has examined additional documents of 1998-1999 given by the STCU, and we have to acknowledge the following problems:

- the sum from the budget for the Center in 1999 referring the Lease Agreement with Gals-K Ltd has been unreasonably **increased** for **214132, 95 UAH**, because according to the Law of Ukraine 'State Budget of Ukraine for 1999' it **exceeds** the amount of budget financing of the STCU for **285500, 0 UAH**.
- The Ministry was not submitted the statements of the STCU debt before Gals-K Ltd in 1998 and 1999, but as partial paying-off in 1998 and 1999 the sums of 39315, 0 UAH, 379273, 13 UAH and 146741, 15 UAH have been paid from the STCU bank account. In the same time, the STCU did not use the money from budget given by the Ukrainian State Treasury:
 - In 1998 – the sum of 39784, 97 UAH;
 - In 1999 – the sum of 56715, 07 UAH.

In this connection and with the purpose to settle this problem, we suggest you to provide the Ministry with appropriate documentation which confirms the debt, explanation and a proof concerning usage of money for rent payment over limits regarding the law 'State budget of Ukraine for 1999'.

We hope that solution of the aforementioned problems will contribute to effective cooperation between the Ministry and the STCU.

Best regards,

Appendix: 2 copies of the Statement of calculation verification

Signature

A.M.Gurjii
Senior Deputy Minister

Reconciliation report between the MES and the STCU
on the 1st of September 2005

Therefore to confirm that concerning the Court decision # 3/335 dated 26/06/2003 and regulation of Cabinet of Ministers of Ukraine # 18346/1/1-04 dated 23/04/2004 debt is 299129, 42 UAH.

	MES		STCU	
	Debit	Credit	Debit	Credit
Demand balance On 1/07/2005	299129, 42 UAH			

Signatures

MES
Senior Deputy Minister
A.M. Gurjii

STCU Director
B.A. Atamanenko