Ukraine and the Association Agreement

Implementation monitoring
December 1, 2016 — November 1, 2017

UCEP UKRAINIAN CENTRE FOR EUROPEAN POLICY
Konrad Adenauer Stiftung
Kingdom of the Netherlands

© 2017, Ukrainian Centre for European Policy

Ukraine and the Association Agreement

Implementation monitoring
December 1, 2016 — November 1, 2017

This report was prepared with the assistance of the Konrad Adenauer Foundation in Ukraine within the project "Strengthening of cooperation with civil society in the Eastern Partnership countries and Russia" at the expense of the Ministry of Foreign Affairs of Germany.

As well as with the assistance of MATRA European Partnership programme financed by the Ministry of Foreign Affairs of the Netherlands.

The contents of this publication is the sole responsibility of NGO "Ukrainian Center for European Policy" and its partners.

UKRAINIAN CENTRE FOR EUROPEAN POLICY

Konrad Adenauer Stiftung

Kingdom of the Netherlands

Review:

Liubov Akulenko, executive director of NGO "UCEP"

Dmytro Naumenko, senior analyst of NGO "UCEP"

Olena Stepanenko, EU law expert of NGO "UCEP"

Yevheniy Kovtun, EU law expert of NGO "UCEP"

Editor:

Svitlana Chernetska, NGO "UCEP"

Authors:

Andriy Andrusevych — expert, Resource and Analytical Center "Society and Environment"

Anna Vasylenko — EU law expert

Hanna Dobrynska — EU law expert

Robert Zeldi — manager, tax and legal services department, "EY Ukraine"

Iryna Kovalenko — independent expert on corporate law

Zoriana Kozak — senior analyst, Resource and Analytical Center "Society and Environment"

Yevheniy Kovtun — EU law expert of NGO "UCEP"

Dmytro Lutsenko — an independent expert in the field of technical regulation and national quality infrastructure

Hennadii Riabtsev — director for special projects, Scientific-Technical Center "Psychea"

Viktor Liashko — expert of the Reanimation Package of Reforms

Dmytro Naumenko — energy policy expert of NGO "UCEP"

Volodymyr Sevriukov — chairman of the civic union "Association of the Marine Business of Ukraine"

Olena Stepanenko — EU law expert of NGO "UCEP"

Anatolii Stovbun — advisor to the Head of the Trade union of workers in construction and industry of construction materials of Ukraine on safety and hygiene at work issues

Viacheslav Cherkashyn — expert of the Reanimation Package of Reforms on tax and customs policies

Content

Methodology

The report draws on the results of research into the status of implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part (hereinafter referred to as the Association Agreement). We analyzed the status of implementation by Ukraine of EU standards that had to be implemented in national legislation during the period from December 1, 2016 to November 1, 2017.

The Euro-integration processes currently taking place in Ukraine are developing at different speeds, with varying complexity and quality. However, their ultimate goal, in accordance with the Preamble of the Association Agreement, is "to align[1] such legislation progressively with the corresponding EU acquis[2], and to maintain such alignment."[3]

In this report, we assess the status of implementation of the Association Agreement based on the following criteria:

– A commitment is deemed to be fulfilled when the national legislation of Ukraine in a particular area is fully aligned with the relevant EU requirements, as set forth in the Association Agreement. We only consider the amendments that have been introduced rather than draft amendments[4];

– The scope and quality of alignment allow for the effective application of the aligned legislation in practice.

For the purposes of assessment, the list of commitments and the scope of their implementation is selected based on the provisions of the Articles of and Annexes to the Association Agreement, where it is possible to establish clear and unambiguous links to the commitments specified therein to specific acts of the EU acquis (or parts thereof). In some cases, when the Agreement contains references to other international commitments of Ukraine and which, under the Association Agreement, have the same or preferential status, they are also subject to the analysis of this report.

In the event of a conflict between the provisions of the Association Agreement and the provisions of other international commitments of Ukraine

1) Alignment is the process of adapting to changing conditions; in international law, alignment is the process of bringing national legislation into line with the standards of international law by improving national legislation (introducing amendments, adopting new legal acts), concluding or joining international treaties

2) Acquis communautaire of the European Union, sometimes called the EU acquis (literally "commonly acquired by the Community" is the accumulated legislation of the EU including, but not limited to, the legal acts of the European Union adopted within the framework of the European Community, the Common Foreign and Security Policy and cooperation in the field of Justice and Home Affairs.

3) The wording in the original English text is as follows "gradually approximating Ukraine's legislation", hence, for the purposes of this report, the terms "approximation of legislation" and "alignment of legislation" shall be deemed identical.

4) However, we also analyze draft legal acts (for example, draft laws of Ukraine, draft bylaws, etc.) relevant as of the date of writing the report to describe the logic of the process of adaptation, but they are not taken into account when assessing the implementation of commitments.

as to which version of an act should be implemented (old or new), as well as a conflict regarding the terms of fulfillment of a commitment, we were guided by the following rule:

- With regard to implementation, Ukraine's energy sector commitments to the Energy Community are seen as top priority,
- The deadlines for fulfilment are specified in the Annexes to the Association Agreement (for example, addition of new lists of EU acts to the program commitments under the Association Agreements, decisions of the Association Council, etc.),
- There are general obligations, when the Agreement leaves the deadlines for implementation to the discretion of the parties. In this case, the deadline for implementation specified in the relevant implementation plans of the Government of Ukraine is accepted as the basis.

As regards the commitments directly stipulated by the Association Agreement, the specific deadlines are determined depending on the date of entry into force of the individual provisions of the Agreement, namely:

- Provisions that have been applied temporarily since November 1, 2014 (provisions of the sectoral part of the Agreement);
- Provisions that have been applied temporarily since January 1, 2016 (Free Trade Area with the EU);
- Provisions not covered by the provisional application regime and entered into force after the full ratification of the Agreement (after September 1, 2017).

The basic unit of assessment is an expert opinion, which summarizes the scope of work performed to implement specific EU act(s) and expert assessment of the quality of implementation processes. The assessment results can be expressed in two ways, which (in addition to the conclusions in the narrative part of the report) can be viewed graphically for each EC act subject to assessment, for example:

Directive of the European Parliament and the Council

The commitment has been fulfilled to the full extent

Directive of the European Parliament and the Council

The commitment has not been fulfilled to the full extent

The phrase "The commitment has not been fulfilled to the full extent" may mean one of the following options:

- Implementation is not taking place, or is at the stage of drafting legislation/initiatives;
- There has been some progress in aligning, but the standards of the

EU acquis in a certain area stipulated by the Association Agreement have not been transposed into the national legislation of Ukraine in the scope and / or with the quality which makes it possible to implement them (enforce) in practice;

- Some progress has been made in implementing the acquis communautaire provided for in the Association Agreement[5] but no steps have been taken to bring national legislation into line with EU acquis requirements;

- During the assessment period, amendments were made to national legislation resulting in non-compliance with the relevant EU acquis as regards a commitment that had been positively assessed before.

The structural parts of the expert opinion in a certain area (as regards individual fields) are as follows:

Review of commitments that should have been fulfilled from November 1, 2014 (during the previous assessment periods):

Assessment of the progress in the fulfillment of commitments that were analyzed in the previous monitoring reports.

I. As of November 1, 2017, Ukraine had to fulfill the following requirements:

Assessment of the progress in fulfillment of the commitments with the deadlines set for the period from December 1, 2016 to November 1, 2017 (according to the deadlines set in the Association Agreement or other relevant international commitments of Ukraine), providing answers to the following questions:

1. What are the benefits of relevant standards?

Description of the essence of the EU act(s) and the corresponding regulatory mechanisms.

2. What has been done to implement the commitments?

Analysis and assessment in the context of individual measures taken to fulfill the commitments as regards the alignment of national legislation with the requirements of the EU acquis and their implementation.

II. Conclusions

Assessment of the fulfillment of the commitments described in the main body of the report.

III. Recommendations

Practical recommendations concerning the further steps to be taken for full implementation of the commitments under the Association Agreement.

5) For example, when Ukraine de facto began to fulfill certain commitments originating from other international agreements or commitments that had existed prior to the signing of the Association Agreement.

Summary

Under the Association Agreement, by the end of 2025, Ukraine must align its legislation with EU legislation and implement (transpose) the provisions of approximately EU 550 acts into its legislation. Of course, it is a matter of gradual implementation, and each document has its own deadlines and requirements regarding the procedure of implementation.

For the period from December 1, 2016 to November 1, 2017, Ukraine had to fulfil its commitments under the Association Agreement and align its legislation with EU legislation in ten areas that comprise a total of 86 commitments regarding implementation of EU legal acts:

1) Technical barriers to trade – 5 commitments

2) Customs and trade facilitation – 2 commitments

3) Energy cooperation – 13 commitments

4) Taxation – 1 commitments

5) Environment – 10 commitments

6) Transport – 19 commitments

7) Company law – 6 commitments

8) Consumer protection – 14 commitments

9) Social policy – 12 commitments

10) Public health – 4 commitments

The fulfilment of commitments is the most advanced in two areas:

— technical barriers to trade (as regards framework legislation)

— energy efficiency in buildings.

One of the factors that influenced the outcome is that the implementation of technical regulation commitments began more than 5 years ago. Another factor is the active stance of key stakeholders, namely: the Ministry of Economic Development and Trade of Ukraine, the State Agency for Energy Efficiency and Energy Conservation of Ukraine, the Ministry of Regional Development, Construction and Housing and Communal Services, and the Committee on Fuel and Energy Complex of the Verkhovna Rada, and as well as individual MPs of Ukraine, international partners of Ukraine and a number of public organizations.

In the field of technical regulation, Ukraine has fulfilled its commitments concerning the horizontal (framework) legislation. Thus far, some minor issues remain unresolved as regards the application of the new legislation in the work of businesses and government bodies, as well as in the process of passing judgments. However, these issues are insignificant and can be

resolved through further application of the regulations in practice. In the area of energy performance of buildings, basic laws were adopted aimed to launch the implementation of individual sectoral policies in the field of improvement of the energy efficiency of buildings.

Ukraine has also successfully implemented regulations related to the following areas:

— consumer protection concerning goods which, appearing to be other than they are, endanger the health and safety of consumers;

— environment as regards environmental impact assessment and water resource management;

— social policies on the safety protection of pregnant workers and equal treatment in matters of social security;

— company law as regards annual accounts of certain types of companies.

All other commitments are at different stages of implementation and cannot be considered fulfilled.

The most difficult situation has arisen concerning approximation of legislation in the field of maritime transport, where almost no legal acts have been drafted.

Note:

The information in the report is presented as of December 12, 2017.

Technical Barriers to Trade

Technical Barriers to Trade

Author

Dmytro Lutsenko

I. Review of commitments that should have been fulfilled from November 1, 2014 to November 1, 2016

In the field of technical regulation, Ukraine as a whole completed the harmonization of its horizontal legislation with EU legislation. At present, Ukraine's legal framework in this area includes seven laws, namely:

- Law of Ukraine No. 2407-III "On Accreditation of Conformity Assessment Bodies" dated May 17, 2001 (with amendments of December 22, 2011 and January 15, 2015);
- Law of Ukraine No. 2735-VI "On State Market Supervision and Control of Non-Food Products" dated December 2, 2010 (entered into force on July 5, 2011);
- Law of Ukraine No. 736-VI "On General Safety of Non-Food Products" dated December 2, 2010 (entered into force on July 5, 2011);
- Law of Ukraine No. 3390-VI "On Liability for Damage Caused by a Defective Product" dated May 19, 2011 (entered into force on September 17, 2011);
- Law of Ukraine No. 1315-VII "On Standardization" dated June 5, 2014 (entered into force on January 3, 2015);
- Law of Ukraine No. 1314-VII "On Metrology and Metrological Activity" dated June 5, 2014 (entered into force on January 1, 2016);
- Law of Ukraine No. 124-VIII "On Technical Regulations and Conformity Assessment" dated January 15, 2015 (entered into force on February 10, 2016).

As can be seen from the above, Ukraine significantly over-fulfilled its obligations under the Association Agreement as regards harmonization of its horizontal legislation, and accomplished a lot even before the formal launch of work on these commitments. However, some of these laws need to be amended due to:

1) interference in their content during the drafting process;

2) need for improvement based on the consequences of enforcement (including corrupt practices and misunderstandings during inspections and judicial practice).

Adoption and enactment of horizontal legislation has provided a legal basis for the adoption and implementation in Ukraine of European vertical (sectoral) legislation in the form of national technical regulations for specific types of products or phenomena. Despite the fact that the deadline for Ukraine's commitment to develop and adopt technical regulations for first products has not passed yet, Ukraine is somewhat ahead of the schedule for some types of products. Currently, negotiations are underway concerning conclusion of Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) on the three priority sectors (low-voltage equipment, electromagnetic compatibility and machine-building products). It is yet unknown when this agreement might be signed and come into force.

Currently, it can be argued that there are several aspects that negatively affect Ukraine's effective implementation of its ACAA preparation commitments for the types of products listed in Annex III to the Association Agreement:

1) interference with the content of draft technical regulations in the process of their approval, which leads to distortions and deviations from European standards, makes it necessary to introduce changes after approval, and, therefore, unjustifiably slows down the process of bringing Ukrainian legislation in line with EU legislation;

2) low capacity of a number of Ukrainian government bodies responsible for development and approval of such drafts as regards comprehension of European approaches and practices and their proper implementation;

3) low level of understanding of European standards and practices on the part of Ukrainian producers and conformity assessment bodies and state control bodies.

II. As of November 1, 2017 Ukraine had to fulfill the following commitments:

Main responsible party: Ministry of Economic Development and Trade (MERT).

Position in the Association Agreement: Art. 56 of the Association Agreement "Approximation of Technical Regulations, Standards, and Conformity Assessment – Horizontal (Framework) Law", Annex III "List of Legislation for Alignment, with a Timetable for its Implementation" to Chapter 3 "Technical Barriers to Trade", Title IV "Trade and Trade-related Matters".

Deadline: January 1, 2017.

Units of measurement

1. **Council Directive 80/181/EEC** of 20 December 1979 on the approximation of the laws of the Member States relating to units of measurement and the repeal of Directive 71/354/EEC;

Setting requirements for accreditation and market surveillance related to the marketing of products.

2. **Regulation (EC) No. 765/2008 of the European Parliament and of the Council** of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products;

General safety of products

3. **Directive 2001/95/EC of the European Parliament and of the Council** of 3 December 2001 on general product safety;

Liability for defective products

4. **Council Directive 85/374/EEC** of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products;

Common framework for the marketing of products

5. **Decision No. 768/2008 of the European Parliament and of the Council** of 9 July 2008 on a common framework for the marketing of products;

Horizontal (Framework) Legislation

Council Directive 80/181/EEC of 20 December 1979 on the approximation of the laws of the Member States relating to units of measurement and the repeal of Directive 71/354/EEC

What are the benefits of relevant standards?

Council Directive 80/181/EEC requires that all Member States introduce the metric system and common symbols for the units of measurement (including on packaged goods and packages).

What has been done to implement the commitments?

In fulfillment of the version of the Law of Ukraine "On Metrology and Metrological Activity" dated June 5, 2014, the MERT issued Order No. 914 "On Approval of Representations of Basic SI Units, Names and Representations of Derived SI units, Decimal Multiples and Submultiples of SI Units, Permitted Non-Systemic Units, as well as their Symbols and the Rules of Application of Measurement Units and Representation of their Names and Symbols" dated August 4, 2015.

The said Order of the Ministry of Economic Development was drafted on the basis of D2 document of the International Organization of Legal Metrology (OIML), but since Directive 80/171/EEC conforms with this international instrument, the order complies with European norms.

Since Ukraine is a member of the Metre Convention and applies the metric system, the rules of the order have long been implemented. Businesses also actively use the new Rules of Application of Measurement Units and Representation of their Names and Symbols (as regards representation of these names in the Cyrillic and Latin alphabets) intended to eliminate potential technical barriers to trade between Ukraine and the EU.

Regulation (EC) No. 765/2008 of the European Parliament and of the Council of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products

What are the benefits of relevant standards?

Regulation (EC) No. 765/2008 implies the following:

– Setting out requirements for the accreditation of conformity assessment bodies in the EU;

– Establishment of common EU rules for the market surveillance and border control of manufactured products (other than food).

The EU System of accreditation is intended to provide independent verification of the technical competence of persons carrying out different types of conformity assessment. Accreditation is carried out on the basis of common international standards and ensures credibility of the results of the work carried out by accredited persons. In this way, technical barriers to trade are eliminated.

What has been done to implement the commitments?

In order to align national legislation with the requirements of Regulation (EC) No. 765/2008, the following changes were made:

– In order to implement the EU requirements for accreditation to the Law of Ukraine "On Accreditation of Conformity Assessment Bodies" dated May 17, 2001, amendments were made dated 22.12.2011 and 15.01.2015.

– To implement EU requirements for market surveillance and border control of manufactured products (other than food), the Law of Ukraine "On State Market Surveillance and Control of Non-Food Products" dated December 2 and 13, 2010 and subordinate acts thereto were adopted.

As a result:

– The Law of Ukraine "On Accreditation of Conformity Assessment Bodies" as a whole meets the European requirements;

– The Law of Ukraine "On State Market Surveillance and Control of Non-Food Products" as a whole meets the European requirements but needs to be amended due to interference in its content at the stage of drafting and detected as a result of enforcement.

The Law on Accreditation is actively enforced, specifically:

– A state organization for accreditation of and supervision over conformity assessment bodies was created – the National Accreditation Agency of Ukraine (hereinafter – the NAAU) – approved by Order No. 161 of the MERT "On Approval of the NAAU Regulation" dated February 8, 2017;

– The NAAU signed a bilateral agreement on mutual recognition with the European Cooperation for Accreditation (EA) in most areas of accreditation (except for medical laboratories and determination of the effects of greenhouse gases) and is working on the introduction of European accreditation rules for bodies applying for notifications.

Implementation of the Law on Market Surveillance:

– To a certain extent, it was distorted due to abuses, disregard of the requirements of the Law and lack of their understanding by both supervisors and business entities;

– It was suspended for a long time as a result of a moratorium on inspection of business entities;

– The situation is even more complicated due to the insufficient number of MERT personnel to coordinate, assess the functioning of the system and maintain the information systems stipulated in the laws.

Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety

What are the benefits of relevant standards?

Directive 2001/95/EC envisages the following:

– Establishment of the general requirement that in absence of any binding requirements to products, such products should be safe and a list of criteria to ensure compliance with this requirement;

– Establishment of the powers of supervisory authorities with regard to products that do not comply with the general safety requirement;

– Establishment of the requirements applicable to the functioning of the Community Rapid Information System (RAPEX).

What has been done to implement the commitments?

The Law of Ukraine "On the General Safety of Non-Food Products" and 5 subordinate acts thereto were adopted. The law as a whole complies with European standards but requires some changes to ensure its 100% compliance with Directive 2001/95/EC.

The implementation of the Law "On the General Safety of Non-Food Products" was accompanied by the same problems as the Law On Market

Surveillance, in addition, the RAPEX-like national rapid information system provided for by the Law was not properly created and put into operation (in spite of the EU's material assistance).

Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products

What are the benefits of relevant standards?

Council Directive 85/374/EEC sets the following mechanisms:

- Mechanisms of civil liability for damage caused by defective products;
- Principle of the producer's liability without fault;
- Cases when the producer is exempt from liability;
- Other aspects and rules of civil liability.

What has been done to implement the commitments?

On May 19, 2011, the Law of Ukraine "On Responsibility for Damage Caused by Defective Products" was adopted, which in general complies with European legislation. This Law also amended the Civil Code of Ukraine and the Law of Ukraine "On Protection of Consumer Rights" to eliminate conflicts and differentiate various liability modes for movable goods and immovable property. The law is directly applicable and does not require any by-laws.

During two years since the Law "On Responsibility for Damage Caused by Defective Products" was adopted (as of the end of 2013 – more recent data are unavailable), more than 130 court decisions have been adopted on the basis of this law, which attests to its active application.

Decision No. 768/2008 of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products

What are the benefits of relevant standards?

Decision No. 768/2008 of the European Parliament and of the Council is intended for drafters of New Approach EU directives and regulations and provides a menu of modules enabling the legislator to choose procedures needed to regulate a specific type of product. The decision, in particular, contains:

- Model structure of the relevant EU legislation;

- Possible conformity assessment procedures (modules);
- Requirements for notified conformity assessment bodies.

What has been done to implement the commitments?

The requirements of the Decision are enshrined in the Law of Ukraine "On Technical Regulations and Conformity Assessment" and in ensuing CMU Resolution No. 95 "On Approval of Conformity Assessment Modules Used to Develop Conformity Assessment Procedures and Rules for Application of Conformity Assessment Modules" dated January 13, 2016.

The Law of Ukraine "On Technical Regulations and Conformity Assessment" has a high degree of compliance with EU legislation but needs to be amended. Relevant amendments have already been developed and submitted to the Verkhovna Rada (draft law No. 6235 dated March 24, 2017).

The "module" resolution of the CMU also requires some amendments in order to ensure its full compliance with Decision No. 768/2008.

Based on the Law "On Technical Regulations and Conformity Assessment" and the "module" resolution of the CMU, technical regulations are being developed and approved on the basis of EU New Approach directives in pursuance of Annex III to the Association Agreement (transposition of the EU vertical (sectoral) legislation).

Customs matters and trade facilitation

Common Transit and SAD
(Single Administrative Document)

Authors

Yevheniy Kovtun

Robert Zeldi

Main responsible party: Ministry of Finance of Ukraine (MoF).

Partner: State Fiscal Service of Ukraine (SFS)[1].

Position in the Association Agreement: Ukraine has to fulfill a number of commitments aimed at simplifying customs formalities, in particular, approximation of the national legislation on common transit and SAD specified in Title IV (Trade and Trade-Related Matters), Annex XV(15) (Approximation of Customs Legislation), Article 84 of the Association Agreement.

I. As of November 1, 2017 Ukraine had to fulfill the following commitments[2]

EU regulations on customs matters and trade facilitation:

- Convention of May 20, 1987 on a Common Transit Procedure;
- Convention of May 20, 1987 on the Simplification of Formalities in Trade in Goods.

In the period from January 1, 2016 to January 1, 2017, Ukraine was to

1) In accordance with the Plan of Implementation of the Convention on the Simplification of Formalities in Trade in Goods and the Convention On a Common Transit Procedure, approved by CMU Directive No. 391-p "On Approval of the Plans of Implementation of Certain Acts of EU Legislation in the Field of Taxation, Customs and Trade Facilitation Developed by the Ministry of Finance".

2) According to CMU Directive No. 847 p "On the Implementation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part," dated 17.09.2014, the deadline for their implementation was December 2015. However, CMU Directive No. 217-p "On Amendments to Directive No. 847 of the Cabinet of Ministers of Ukraine dated September 17, 2014" dated January 18, 2016, postponed the deadline for fulfilment of the plan of implementation of these conventions to December 2016, and introduction of a common electronic data interchange system was postponed to January-December 2017. The Association Agreement as an international legal document ratified by Law of Ukraine No. 1678-VII "On Ratification of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part," dated 16.09.2014, has a greater legal force compared to CMU directives as subordinate legal acts on organizational and regulatory matters, therefore, the deadlines for task fulfilment are determined in accordance with the Annexes to the Association Agreement, which stipulate that the provisions of these conventions must be implemented into Ukrainian legislation within 1 year from the date of entry into force of the Association Agreement.

fulfill two obligations in the field of customs[3]:

1) Introduction of a common electronic data interchange system for goods in transit – stipulated in Convention of May 20, 1987 on a Common Transit Procedure;

2) Introduction of a single administrative document to be used for common transit, import or export – stipulated in Convention of May 20, 1987 on the Simplification of Formalities in Trade in Goods.

According to our estimates, as of November 1, 2017, Ukrainian legislation was partially aligned with the provisions of these conventions.

Convention on a Common Transit Procedure

What are the benefits of relevant standards?

The Convention on a Common Transit Procedure contains provisions laying down requirements for the transit of goods between the European Union (hereinafter referred to as the EU) and the European Free Trade Association (hereinafter referred to as the EFTA), as well as between the EFTA states by introducing a common transit procedure regardless of the kind and origin of goods.

Accession to this Convention provides Ukraine with a number of advantages, including:

- inclusion in the common transit system of the EU and introduction of a common transit procedure with European countries;

- improvement of the customs control of transit and improvement of counteraction to violations of customs legislation in relation to the movement of goods across the EU-Ukraine border.

These innovations are designed to improve the logistics of international traffic. Thus, the common electronic system should accelerate information exchange between customs authorities – virtually in a real time mode – and, consequently, improve the efficiency of customs control. Businesses and economic operators will be able to track information on the status of the movement of goods, save time and costs due to simplification of customs control, as well as minimize risks for goods during international transportation.

The Convention on a Common Transit Procedure also provides for establishment and maintenance of the NCTS[4] at the national level. This system serves as a tool for computerized management and control of transit procedures. Due to this, economic operators involved in foreign trade activity

3) In accordance with the Note Verbale of the General Secretariat of the Council of the European Union of 30 September 2014, the provisional application of the provisions of Title IV, including Article 84 and Annex XV of the Association Agreement, was to take effect on 1 January 2016.

4) NCTS – New Computerized Transit System.

(hereinafter referred to as FTA) can submit the data of their transit declarations to customs authorities in an electronic form, with the subsequent electronic interchange of these data between the customs authorities of transit states. Therefore, the use of the NCTS improves the efficiency of transit procedures, accelerates and ensures the security of international logistics operations.

Convention on the Simplification of Formalities in Trade in Goods

What are the benefits of relevant standards?

The Convention on the Simplification of Formalities in Trade in Goods contains provisions introducing the single administrative document to be used for any import or export procedure and for common transit procedures applicable in trade between the Parties[5] irrespective of the type and origin of goods. Accordingly, the formalities related to trade in goods between the Contracting Parties shall be carried out using a single document as a single customs declaration. Unification of the ways and procedures for completing customs declarations with EU/EFTA countries significantly facilitates and accelerates the movement of goods among international counterparties.

Any third country may become a Contracting Party to this Convention, if invited to do so by the depositary of the Convention following the decision of the Joint Committee[6]. To this intent, candidate countries should conduct preparatory work on customs matters, align their legislation with the standards of the Convention on the Common Transit Procedure and the Convention on the Simplification of Formalities in Trade in Goods and implement them with regard to the practical application of their provisions.

What has been done to implement the commitments?

The Verkhovna Rada of Ukraine (hereinafter referred to as the VRU), in due time, should approximate Ukrainian legislation to the requirements of the above-mentioned Conventions, i.e. to adopt framework legislation that could launch a mechanism for facilitating the movement of goods between Ukraine and the EU and establish the conformity of national transit procedures with European standards enshrined in the provisions of the Conventions. Thus, on December 29, 2016, the Verkhovna Rada registered draft law No. 5627 proposed by the CMU "On Amendments to the Customs Code of Ukraine as Regards Bringing Transit Procedures in Line with the Convention on a Common Transit Procedure and the Convention on the Simplification of Formalities in Trade in Goods"[7]. The draft law was drafted by the Ministry of Finance[8]. Its

5) The term "Parties" stands for the EU and EFTA countries.

6) Joint Committee is a body that advises on introducing amendments to these Conventions and on any other measures necessary for their application.

7) As of 04.12.2017, draft Law No. 5627 dated 29.12.2016 is pending consideration in the VRU.

8) According to the Committee on Taxation and Customs Policy.

provisions should be aimed at introducing a single customs declaration in Ukraine identical to that used in the EU countries, as well as at developing and maintenance of the NCTS system.

Instead, the draft law does not provide for any specific changes and mechanisms for introduction of a common transit procedure. It contains general amendments to the Customs Code that rather than establish the mechanism merely make references to the provisions of Convention on a Common Transit Procedure and Convention on the Simplification of Formalities in Trade in Goods as regards declaration of goods and application of the procedure for completing customs declarations. It is envisaged that the procedure for fulfilment of customs formalities "shall be established by the central executive body responsible for shaping and implementation of the state tax and customs policy"[9]. Therefore, the responsibility for establishment of a clear-cut procedure for completion and use of customs declarations and regulation of the customs transit control procedure rests with the authorities in charge of these areas – i.e. the Ministry of Finance and the SFS. Therefore, in order to implement the provisions of the Conventions, it is necessary to develop new bylaws, to amend existing ones, and to adapt the existing IT systems of Ukrainian customs authorities for interoperability with the information systems of EU customs administrations.

Draft law No. 5627 dated 29.12.2016 stipulates that for the purpose of customs control revenue bodies shall use a single automated information system (hereinafter – the SAIS) and a national subsystem of the EU/EFTA computerized transit system designed to support interoperability between the SAIS and NCTS. Interestingly, the SAIS was established by Order No. 1341[10] of the State Customs Service of Ukraine in 2010 and so far it has been rather effectively used. It is a comprehensive electronic system designed to provide information support to customs operations in Ukraine (including control over movement of goods in transit). Given the tasks and functions of the SAIS, it can be argued that this is a closed system for electronic data collection, storage and exchange operated by customs authorities only.

As regards operation of the NCTS, the MoF[11] adopted Order No. 1193[12], whereby codes for individual documents and types of customs declarations are brought in line with the Convention on the Common Transit Procedure and the Convention on the Simplification of Formalities in Trade in Goods. Hence, during customs clearance of goods Ukrainian customs declarations will indicate numerical codes harmonized with European legislation. This can well

9) According to draft Law No. 5627 dated 29.12.2016 "On Amendments to the Customs Code of Ukraine as Regards Bringing Transit Procedures in Line with the Convention on a Common Transit Procedure and the Convention on the Simplification of Formalities in Trade in Goods".

10) Order No. 1341 of the SMS of Ukraine "On Approval of the Regulation on the Single Automated Information System of the State Customs Service of Ukraine" dated 04.11.10.

11) The Ministry of Finance's response to UCEP's request for access to public information dated 06.07.2017.

12) Order № 1193 of the Ministry of Finance "On Approval of Changes to Certain Agency-Specific Classifications of Information on State Customs Matters Used to Complete Customs Declarations" dated 28.12.2016.

be seen as progress in the implementation of the standards of the Conventions.

However, it is obvious that harmonization of the procedure for indicating information classifiers with the requirements of the Community is not enough if there is no real operative common transit system between Ukraine and the EU countries. Establishing information exchange between the European NCTS and the Central Database of Customs Authorities (SAIS) is a de minimis condition for commitments associated with establishment of a single electronic data interchange system concerning goods in transit to be considered fulfilled. Instead, currently Ukrainian and European IT systems of customs bodies are different in terms of functions, purposes and features, use different reference systems, and operate in different regulatory environments.

That is, it is necessary to create and launch a full-fledged national subsystem of the computerized transit system that would meet the requirements of the Convention, including the exchange of information with foreign economic operators. This requires additional funds for development and introduction of relevant software. In addition, adequate functioning of the NSTC involves introduction of a number of legal and regulatory concepts and mechanisms that are currently lacking in Ukrainian legislation, such as the concept of "customs debt", "transit guarantee system", etc.

The obligation to introduce the SAD to be used for the common transit procedure is stipulated in Article 76 of the Association Agreement. Therefore, its application and establishment of common standards to simplify administrative procedures in the field of customs operations should be settled in national legislation. Indeed, draft law No. 5627 dated 29.12.2016 provides for declaration of goods moving between the EU/EFTA countries and Ukraine using customs declarations that have to be completed following the procedure established in the Convention on a Common Transit Procedure and the Convention on the Simplification of Formalities in Trade in Goods. This reference provision attests to the draft law drafters' intention to harmonize the national forms of customs declarations or any other tax documents related to transit, import or export with Community forms.

Despite the fact that the framework draft law[13] amending the Customs Code to adapt the SAD provisions is still pending consideration by the Verkhovna Rada, a number of by-laws have already been adopted to regulate detailed procedures in this area. Including:

- **Order No. 246** of the Ministry of Finance "On Approval of Sample Forms of the Single Administrative Document, Additional Sheets, Additions and Specifications, and their Technical Description" dated 22.02.2012;

- **CMU Resolution No. 450** "Matters Related to Use of Customs Declarations" dated May 21, 2012, whereby the Regulation on Customs Declarations and their Forms was approved;

13) Draft Law No. 5627 "On Amendments to the Customs Code of Ukraine as Regards Bringing Transit Procedures in Line with the Convention on a Common Transit Procedure and the Convention on the Simplification of Formalities in Trade in Goods" dated 29.12.2016.

- **Order No. 651** of the Ministry of Finance "On Approval of the Procedure for Completion of Customs Declarations in the Form of the Single Administrative Document" dated May 30, 2012;
- **Order No. 657** of the Ministry of Finance "On Fulfilment of Customs Formalities in Accordance with the Declared Customs Procedure" dated May 31, 2012.

Therefore, harmonization of the Ukrainian legislation on the conformity of SAD forms used in customs operations with the standards of the Conventions had been launched long before the Association Agreement was signed. On the other hand, the practical application of the EU-borrowed rules for customs declaration procedures needs to be improved.

For example, according to the Convention on the Simplification of Formalities in Trade in Goods, information filled in different entries of the customs declaration should involve "the usual trade description" of the product that makes it possible to classify it. This provision was implemented by Order No. 651 of the Ministry of Finance: "indicate the name and usual trade description of the product that makes it possible to classify it (the physical characteristics of the goods in an amount sufficient to definitively assign a UKTZED code to it)[14]".

The main objective of the Convention on the Simplification of Formalities in Trade in Goods is to implement simplified relevant administrative practices in the national customs system of the country, specifying the minimum amount of information in the SAD. At the same time, by-laws expand the amount of information to be entered in the corresponding SAD entries. Having to indicate unnecessary information in customs documents is a very negative factor in the work of the Ukrainian customs, for it takes a lot of time and involves potential incidental mistakes during completion of documents. And customs authorities can impose liability for such mistakes, as they may be viewed as misrepresentation.

Art. 83 of the Association Agreements established the Customs Sub-Committee responsible for regular consultations and monitoring of the implementation and administration of customs matters, including "customs cooperation issues, cross-border customs cooperation and management, technical assistance, origin rules and trade facilitating as well as mutual administrative assistance in customs matters". The first meeting of the Sub-Committee took place on June 15, 2017, where the rules and procedures for its work were approved[15].

Following the adoption of draft law No. 5627 of 29.12.2016, within the framework of the further work of the Subcommittee, it is necessary to create the conditions of work of the customs authorities of Ukraine that could bring their activity in line with the provisions of the Conventions and European

14) Ukrainian classification of goods for foreign trade.

15) Resolution No. 1/2017 of EU-Ukraine Customs Sub-Committee "On Approval of the Rules of Procedure of this Sub-Committee" dated June 15, 2017.

practices. Only then can we launch negotiations with EU representatives on granting the status of a Contracting Party to Ukraine. For Ukraine to ratify the Convention on a Common Transit Procedure and the Convention on the Simplification of Formalities in Trade in Goods, an EU Party should invite it to accede to the said Conventions as a Contracting Party. This is possible only after the full implementation of the standards of the conventions. Today, Ukraine is only an observer in EU/EFTA working groups.

Energy cooperation

Energy

Authors

Dmytro Naumenko

Hennadii Riabtsev

I. Review of commitments that had to be fulfilled from November 1, 2014 to November 1, 2016

The field of energy efficiency is one of the instances where the transposition of European directives into national legislation takes place in the reverse direction: first supplementing laws and secondary legislation were adopted without any framework law that would set forth basic goals and policies for achieving a better level of energy efficiency.

The process of preparation for the fulfilment of the requirements of "old" Directive 2006/32 had begun before the Association Agreement was signed – in 2011-2012 when Ukraine became a Contracting Party to the Treaty Establishing Energy Community. On November 25, 2015, in accordance with the requirements of the Directive, the National Energy Efficiency Action Plan was adopted[1], whereunder by 2020 energy consumption should decrease by 9% compared to the average final domestic energy consumption for the period of 2005-2009.

Apart from that, several secondary legal acts were approved to regulate certain aspects of housing stock energy modernisation and energy services (Law of Ukraine No. 327-VIII "On Introducing New Investment Opportunities, Guaranteeing the Rights and Legitimate Interests of Business Entities to Conduct Large-Scale Energy Modernisation" and Law of Ukraine No. 328-VIII "On Amendments to the Budget Code of Ukraine as Regards Introduction of New Investment Opportunities, Guaranteeing the Rights and Legitimate Interests of Business Entities to Conduct Large-Scale Energy Modernisation") and Law of Ukraine No. 2866-III "On Association of Co-Owners of Multi-Apartment Houses (ACMH)", which gave impetus to the development of the markets of ACMH and the energy service but did not generate any major progress because of their inconsistency with other legislation and distortion of the market mechanism[2]. Also, during the evaluation period, several technical standards were adopted

1) CMU Resolution No. 1228-p "On the National Action Plan for Energy Efficiency by 2020" dated November 25, 2015

2) Thus, as of July 2017, in Ukraine there were 27111 ACMHs managing only 20% of multi-apartment houses

that determine the technical characteristics of the energy consumption of new buildings (so-called DBNs), as well as new national ISO 50000 standards for energy audit and energy management.

Besides, since the end of 2014, there has been work performed on alignment of the national legislation of Ukraine with the requirements of Directive 2010/30 on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products[3], including revision of existing and introduction of new technical regulations for labelling energy-absorbing products[4] and legislative enshrinement of the energy labelling system following the EU pattern[5]. By mid-2017, of the nine technical regulations that Ukraine had to implement in accordance with Annex XVII (27) of the Association Agreement and the Treaty Establishing Energy Community eight were adopted (updated) and the last one (labelling of domestic ovens and range hoods) was undergoing harmonisation with other central executive bodies (CEBs). The standards of the new technical regulations are only partially implemented due to the fact that the full-fledged implementation of the energy labelling system in Ukraine and its recognition by the EU is constrained by the incompleteness of reforms in the technical regulation system as a whole (thereby blocking the mutual recognition of technical regulations) and the state supervision system (which makes it impossible to fully control the energy label accuracy).

In the field of energy audit and energy management regulation, the first legislation was adopted in the late 90's, which gave an initial impetus to the development of this market. But after the abolition of major legislative acts regulating energy audit activities in 2015[6], this sector actually found itself outside the regulatory framework and the accreditation of energy audit organisations was also abolished. As a result, state bodies ceased to issue energy audit certificates to specialised organisations. In 2013, an attempt was made to pass the draft law "On Energy Audit" through the Verkhovna Rada in accordance with the requirements of the Directive 2010/31, but the attempt failed and at the beginning of 2017 this activity remained legislatively unregulated.

3) On July 4, 2017, Directive 2010/30 was repealed by new Regulation 2017/1369 setting updated requirements for the energy labelling system based on the progress made in reducing the energy consumption of household appliances in recent years.

4) The total list of delegated EU legislation in the field of energy labelling includes 16 regulations.

5) CMU Resolution No. 702 "On Approval of Technical Regulations on Energy Labelling" dated August 07, 2013

6) Order of the Ministry of Regional Development, Construction, Housing and Communal Services of Ukraine No. 120 "On Repealing Certain Orders of the State Committee of Energy Saving of Ukraine" dated 29.05.2015

II. As of November 1, 2017 Ukraine had to fulfil the following commitments:

Energy Efficiency

Position in the Agreement: Title V, Chapter 1, Art. 341, Annex XXVII (27) – sector: "Energy Cooperation", sub-sector "Energy Efficiency".

List of EU acts:

1. Framework **Directive 2012/27/EU** of the European Parliament and of the Council of 25 October 2012 on energy efficiency, repealing Directives 2004/8/EC on the promotion of cogeneration and 2006/32/EC on energy end-use efficiency and energy services.

Deadline: October 15, 2017 (determined in accordance with the timetable of the Energy Community).

Main responsible party: Ministry of Economic Development and Trade (hereinafter – MEDT)

2. **Directive 2010/31/EU** of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings: sets requirements for the energy efficiency of buildings and repeals previous Directive 2002/91/EC on the energy performance of buildings.

Deadline: November 1, 2017.

Main responsible party: Ministry of Economic Development and Trade (hereinafter – MEDT)

3. Framework **Directive 2009/125/EC** of the European Parliament and of the Council of 21 October 2009 establishing a framework for the setting of ecodesign requirements for energy-related products (revised) repealing previous Directive 2005/32/EC that set ecodesign requirements for energy-using products supplemented with a number of implementing regulations, such as:

3.1. **Commission Regulation (EC) No. 278/2009** of 6 April 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for no-load condition electric power consumption and average active efficiency of external power supplies;

3.2. **Commission Regulation (EC) No. 244/2009** of 18 March 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for non-directional household lamps;

3.3. **Commission Regulation (EC) No. 245/2009** of 18 March 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for fluorescent lamps without

integrated ballast, for high intensity discharge lamps, and for ballasts and luminaires able to operate such lamps, and repealing Directive 2000/55/EC of the European Parliament and of the Council;

3.4. **Commission Regulation (EC) No. 107/2009** of 4 February 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for simple set-top boxes;

3.5. **Commission Regulation (EC) No. 1275/2008** of 17 December 2008 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for standby and off mode electric power consumption of electrical and electronic household and office equipment;

3.6. **Commission Regulation (EU) No. 813/2013** of 2 August 2013 implementing Directive 2009/125/EC of the European Parliament and of the Council with regard to ecodesign requirements for space heaters and combination heaters;

3.7. **Commission Regulation (EC) No. 643/2009** of 22 July 2009 implementing Directive 2005/32/EC of the European Parliament and of the Council with regard to ecodesign requirements for household refrigerating appliances.

Deadline: November 1, 2017.

Main responsible party: State Agency on Energy Efficiency and Energy Saving of Ukraine (hereinafter – SAEE)[7].

Framework Legislation

Directive 2012/27 on energy efficiency

What are the benefits of relevant EU standards?

Directive 012/27 on energy efficiency is one of the so-called EU framework directives in the area of energy efficiency that sets the framework for a number of interconnected targets, policies and measures aimed at helping the EU achieve its strategic goal of reducing energy consumption by 20% by 2020[8]. To this end, Directive 2012/27 obliges all EU Member States to use energy more efficiently at all stages of the energy chain, from its generation to

7) The main responsible party for this Directive changed. According to the initial Action Plan on the Implementation of the Association Agreement approved by Resolution No. 847-p of the Cabinet of Ministers of Ukraine dated September 17, 2014, the main responsible CEB in the field of establishment of the requirements for ecodesign was the Ministry of Ecology, but later Resolution No. 1057 of the CMU dated December 16, 2015 appointed the SAEE as the main responsible party in this area.

8) This indicator is part of the EU 2020 Strategy approved in 2007 which envisages a 20% reduction in greenhouse gas emissions, a 20% increase in energy efficiency and a 20% increase in the share of renewable energy in the EU energy balance.

final consumption[9].

Directive 2012/27 is a comprehensive document that includes a set of individual policies and measures aimed at household consumers and industry to help them achieve the maximum possible energy savings. Technically, EU Member States are free to choose specific mechanisms for imposing obligations on end-users to reduce their energy consumption or to introduce other, alternative policy measures, as long as they achieve the following:

- Savings of the annual energy sales to final customers by energy supply companies or retail energy sales companies should amount to at least 1.5% of the annual sales (for the period from January 1, 2014 to December 31, 2020), but EU Member States can achieve these savings by applying specific measures that are best suited to each individual country (for example, by improving the efficiency of heating systems, installing energy efficient windows, etc.);

- The public sector should serve as an example for other sectors of the economy, and central governments of the EU member states each year have to modernise at least 3% of the area of the buildings they occupy or own. In addition, each EU member state has to conduct public procurement of energy efficient buildings, products and services;

- Energy consumers should be able to effectively measure the amount of energy they consume through opportunities of individual consumption metering and free access to such metering and billing data;

- Large industrial companies must carry out mandatory energy audits of their consumption in order to identify opportunities for reducing consumption[10], while SMEs and other final energy consumers should get incentives and opportunities for such audits;

- New energy generating installations should undergo monitoring to assess their energy efficiency, while enterprises involved in transmission and distribution of electricity and transportation and distribution of natural gas should have incentives for improving energy efficiency (these should be ensured by national energy regulators when setting tariffs);

- EU Member States should adopt policies that would maximise the national capacity for application of efficient heating and cooling technologies, including cogeneration;

- EU Member States can create and maintain programs of financial and technical support for consumers who wish to take measures to improve energy efficiency, including through the establishment of national Energy Efficiency Funds;

9) On November 30, 2016, based on the results of the implementation of Directive 2012/27 in the EU member states and in order to achieve EU's better competitiveness on the world market, the European Commission proposed to update Directive 2012/27 and set a new target for reducing energy consumption by 30% by 2030

10) Companies that implement a system of energy management and environmental management (which by default include energy audits or reviews) are exempted from this requirement.

• EU Member States should create conditions for establishment and development of a market for energy services and ensure access of SMEs thereto, as well as create systems of qualification and accreditation for energy efficiency market players.

In order to achieve the 20% energy efficiency target by 2020, individual EU member states have the right to set their own indicative targets for achieving a better level of energy efficiency based on their national characteristics and rely on them when calculating energy consumption, energy savings, or energy efficiency values. Each EU Member State should detail the way to achieve the calculated energy efficiency indicator in the National Energy Efficiency Action Plans (updating this indicator every 3 years) and regularly evaluate its achievement in annual reports.

What has been done to implement the commitments?

Approximation of legislation. It took more than 2 years to draw up a framework law that would set national targets and policies in the field of energy efficiency following the EU pattern. It was on September 18, 2017, when the **draft Law of Ukraine "On Energy Efficiency"**, developed by the SAEE in cooperation with experts from the Energy Community Secretariat, was presented to the public for discussion[11].

This draft law, just like Directive 2012/27, requires that Ukraine should establish a national energy efficiency target by 2020, adopt and report on the National Energy Efficiency Action Plan, as well as a number of sectoral energy efficiency policies that need to be detailed in separate (but related to the framework law) legislative acts.

With regard to national targets, the requirements for Ukraine, as a member of the Energy Community and not an EU Member State, are less stringent, given the difference in the economic development of our countries. Thus, consumers in Ukraine will be obliged to save at least 0.7% of the total annual sales of energy to consumers (in the EU – no less than 1.5%) by December 31, 2020, the thermo-modernisation of buildings used by public authorities should be carried out in the equivalent of 1% of the total area of such buildings per year[12] (in the EU – not less than 3%), etc.

Regarding sectoral energy efficiency policies, the draft law proposes to define the framework for:

– Thermo-modernisation of residential, non-residential buildings, as well as buildings owned by state and local authorities;

– Taking into account the energy efficiency criterion in public procurement;

– Principles of energy audit and energy management;

11) As of November 22, 2017, the draft law was undergoing harmonisation procedures in the MEDT.

12) This obligation covers buildings with a heated area of more than 500 square meters that do not meet the minimum requirements for energy efficiency of buildings. After January 1, 2019, it is proposed to reduce this figure to 250 square meters, i.e. to the level set by Directive 2012/27.

– Requirements for eco-design of products related to energy consumption;

– Aspects of introduction of smart metering systems;

– Rationing of the consumption of fuel and energy resources;

– Promotion and encouragement of energy efficiency among consumers;

– Basic principles of energy service provision;

– Other policies in the field of energy efficiency.

Apart from this, during the assessment period, legislators adopted several other framework laws (the so-called "Energy Efficiency Package") that specify the provisions of Directive 2012/27, including the following:

On March 23, 2017, amendments were introduced to **Law of Ukraine No. 327-VIII "On Introduction of New Investment Opportunities, Guarantees of the Rights and Legitimate Interests of Business Entities for Large-Scale Energy Modernisation"** setting requirements for public procurement of energy services;

On June 8, 2017, they adopted **Law of Ukraine No. 2095-VIII "On the Energy Efficiency Fund"** that establishes the principles of activity and organisation of the institution that will provide financial support for complex projects for energy modernisation of residential buildings, mainly for ACMHs in multi-storey buildings. Currently, the by-laws required to launch the Fund in 2018 are being drafted[13].

On June 22, 2017, **Law of Ukraine No. 2119-VIII "On Commercial Metering of Thermal Energy and Water Supply"**, was adopted; it establishes the system of commercial metering of the consumption of various types of energy and provision of appropriate metering information to consumers of such services, which will allow consumers to pay only the cost of actually consumed services and will provide strong incentives for savings[14].

On June 22, 2017, **Law of Ukraine No. 2118-VIII "On Energy Efficiency of Buildings"**, was adopted; it specifies the minimum requirements for energy efficiency of buildings and an energy efficiency certification system in accordance with the EU requirements, which will make it possible for building owners to obtain reliable information about the energy consumption of the building and information on energy-efficiency measures (see information on Directive 2010/31 for a detailed analysis of this draft law).

13) The Energy Efficiency Fund should receive its initial capital from international partners of Ukraine (EU and Germany, expected amount – UAH 800 million) and from the state budget (the draft budget 2018 envisages the funding of UAH 1.6 billion for the Fund).

14) Thus, this law establishes that suppliers of services in the field of thermal energy and centralised supply of hot and cold water have to provide 100% of the metering equipment for heat and hot water within 1 year from the date of its entry into force (no later than 23 June 2018), which should contribute to reduction of unmetered water consumption in internal building systems by ¾ and reduction of thermal energy consumption by 15-20% during 1-3 years.

In addition, on November 9, 2017, an important auxiliary legislative act was passed (which is not expressly provided for by Directive 2012/27 but bears great importance for the launch of energy modernisation of the housing sector in Ukraine) – i.e. **draft law No. 1581-d "On Utility Services"**[15] – aimed to address a number of problematic issues associated with ACMHs, which should become the main player in the energy modernisation market in Ukraine.

On November 30, 2017, the draft law on development of highly efficient cogeneration in Ukraine (aimed at aligning Ukrainian legislation with the requirements of Article 14 of Directive 2012/27) drawn up by the SAEE was presented at a meeting of the Government Office for European and Euro-Atlantic Integration; the draft law was submitted for consideration to the CMU on October 10. It envisages introduction of:

– comprehensive assessment of the application of high-efficiency cogeneration (to be updated every 5 years);

– analysis of costs and benefits of high-efficiency cogeneration capacity for heat generating units with a capacity of more than 20 MW;

– establishment of qualification values to be complied with by high-efficiency cogeneration units;

– guarantees of the origin of electric energy produced by high-efficiency cogeneration.

In order to implement the aforementioned laws, a number of by-laws are being drafted[16] (most of them fall within the scope of responsibility of the Ministry of Regional Development); mainly they are of a methodological nature and are of critical importance for the implementation of the sectoral policies envisaged by Directive 2012/27. However, the responsible parties within the CEB system currently experience a critical lack of competent professionals and practice in the field drafting such documents[17], which have to be in line with the best EU practices to ensure that the process of implementation of the sectoral policies should be as fast and as proficient as possible.

Putting into practice. During the assessment period, one of the practical steps taken by the state to implement the requirements of Directive 2012/27 and the National Energy Efficiency Action Plan was the launch (from October 2014) and deployment of a government energy efficiency program for households living in private houses and for ACMHs who want to take measures to improve energy efficiency – i.e. the so called Program of "Warm" Loans[18] (hereinafter – the Program), which on November 8, 2017 was extended up to 2020.

15) On November 17, the draft law was sent to the President for signature.

16) According to various estimates, in the area of energy efficiency of residential buildings alone their number should be 100 to 120 acts, while today less than half is developed.

17) Such as, for example, the Methodology of Calculation of Energy Savings Due to the Implemented Energy Efficiency Measures, Implementation of Energy Management System For State-Owned Buildings, Monitoring of Energy Consumption by State-Owned Buildings, etc.

18) CMU Resolution No. 1056 of October 17, 2011, with amendments and supplements.

The program provides for partial compensation of loans received by program participants (ACMHs and households living in private houses) in partner banks of the Program, which varies for different types of energy efficiency activities, including:

– **20%** of the principal of the loan: to purchase biomass boilers (35% if the participant is a recipient of a housing subsidy or a grantee);

– **35%**: for energy-efficiency measures by individual private households;

– **40%**: for energy efficiency measures by ACMHs (grantees have the right to receive 70% compensation);

– also, participants in the program may receive **additional compensation from local authorities** (its amount varies; as a rule, it is partial compensation of the interest rate), if the municipality signed an agreement with the SAEE (as of November 2017, 310 such agreements were signed) and allocated funds for this from the local budget.

The Program quickly became popular, mainly in households living in private houses. However, due to very limited funding, the Program has attained rather limited results (within the country): for the entire period of its duration, partner banks granted loans in the amount equivalent to EUR 150 million, the state compensated program participants for EUR 52 million. According to the SAEE's estimates, the achieved savings of energy resources amount to about 150 million cubic meters of natural gas. The plans for financing the program of "warm" loans in 2018 did not change, the expected amount of funds to be allocated by the state for compensation will be UAH 400 million (about EUR 12.5 million), of which only UAH 190 million will be allocated to the most problematic sector of ACMHs.

Moreover, at the end of 2016, a first energy service agreement was concluded in the budget area under the ESCO scheme, when the cost of energy modernisation will be paid due to savings of future utility and energy costs. In total, as of November 2017, only 19 such agreements were signed in Ukraine.

Obligatory energy audits for large industrial enterprises are not mandatory in Ukraine today, schemes for supporting SMEs in energy audits and informing them about best practices in the field of energy management have not been created, despite the relevant requirement in Art. 8 of Directive 2012/27. Therefore, a national scheme should be set up to provide incentives for applying the best practices of energy saving in the industrial sector[19].

19) However, Directive 2012/27 itself does not require actual implementation of energy saving measures identified as a result of the audit.

Energy Efficiency of Buildings

Directive 2010/31 on the energy performance of buildings

What are the benefits of relevant EU standards?

Directive 2010/31 on the energy performance of buildings is designed to improve the energy performance of buildings in the EU, taking into account the climatic and other local characteristics of each of the EU Member States. There is a good reason why the EU gives so much attention to the housing sector, since the need to create special legislation to improve its energy efficiency is due to the fact that buildings account for about 40% of the total energy consumption in the EU and 36% of total CO2 emissions. This situation is due to different levels of energy consumption by buildings of different ages. Thus, about 35% of buildings in the EU were built over 50 years ago, and, therefore, consume five times more energy than new buildings of the same class. Hence, according to the European Commission, improving energy efficiency of buildings can reduce the overall energy consumption in the EU by 5-6% and reduce CO2 emissions by 5%.

Directive 2010/31 complements and broadens the framework terms of Directive 2012/27 as regards reduction of energy consumption in the building sector[20] by setting cost-optimal minimum EU requirements for energy efficiency indicators for new buildings and those undergoing modernisation (renovations) as well as a unified methodology for their calculation[21]. In addition, the Directive also identifies other measures to improve energy efficiency in the EU building sector, such as the following:

– Introduction of a system of **energy efficiency certificates that must be included** in all advertisements for the sale or lease of buildings to improve consumer awareness;

– Member States should introduce heating and air-conditioning inspection schemes or introduce measures that will have a comparable effect;

– By December 31, 2020, **all new buildings** in the EU should have almost **zero energy consumption**[22] (state buildings by December 31, 2018);

– Member States should prepare a list of **national financial incentives** to support energy efficiency improvements in buildings.

On November 30, 2016, the European Commission proposed to update

20) Here and below the term energy consumption means the energy used for the purpose of heating, hot water supply, cooling, ventilation and lighting in buildings.

21) The methodology for calculating energy efficiency indicators is set out in a separate Commission Delegated Regulation 244/2012 of 16 January 2012, indicators for each EU Member State are provided in the national energy efficiency performance reports.

22) Buildings with very high energy efficiency. Almost zero or very low energy consumption in such buildings is achieved due to the fact that they use a lot of energy from renewable sources produced directly in or near the building.

Directive 2010/31 in order to create better incentives for using "smart" technologies in buildings and simplify the current regulation. Also, the European Commission presented a database of new buildings in the EU – the **EU Building Stock Observatory** (https://ec.europa.eu/energy/en/eubuildings) – to ensure better traceability of energy consumption by buildings in the EU.

What has been done to implement the commitments?

On June 22, 2017, Law of Ukraine No. 2118-VIII "On Energy Efficiency of Buildings", was adopted. Following the pattern set in Directive 2010/31, it establishes mandatory minimum requirements for the energy efficiency of buildings, introduces a system of energy efficiency certification for buildings (mandatory for new buildings, state-owned buildings[23] and buildings undergoing thermo-modernisation), requirements for the professional certification of persons who will issue such certificates and energy auditors, as well as sets the main mechanisms for improving the energy efficiency of buildings and financial support for energy efficiency measures[24].

The mechanism of mandatory certification is as follows: new construction projects and existing buildings undergoing thermo-modernisation shall be subject to energy efficiency certification aimed at determining its actual values, assessment of the conformity of these indicators with the minimum requirements for energy efficiency of buildings, development of recommendations for increasing the energy efficiency of the building taking into account local climatic conditions and feasibility calculations. Certificates of energy efficiency will be issued for a period of 10 years.

The new law also finally set the legislative framework for regulating activities in the market of energy audit services. It lays down the rules for certification of the relevant specialists, the rules of the work of relevant self-regulatory organisations and energy auditors, as well as the rules for reporting and disclosure of the results of work of energy auditors, which in general meet the requirements of Directives 2012/27 and 2010/31. Moreover, currently the state standards for energy audits and energy management are being harmonised with the relevant EU standards, which should result in creation of a modern regulatory framework for the activity of energy auditors.

For the full implementation of the standards envisaged by the law, it is necessary to adopt a number of by-laws (mainly methodological ones and a number of documents in the field of technical standards), which are currently prepared by the responsible CEBs.

23) With heated area of over 250 square meters.

24) Also, a separate item in the law (Article 15) sets forth the obligation to approve the National Plan for Increasing the Number of Buildings with Near-Zero Energy Consumption, which should be reviewed every 5 years.

Requirements for ecodesign of consumer products

Directive 2009/125, establishing a framework for the setting of ecodesign requirements for energy-related products

What are the benefits of relevant EU standards?

Directive 2009/125 is one of the central EU acts (along with Directive 2010/30 on energy labelling requirements) aimed at promoting energy savings in energy-related consumer products[25]. Specifically, this Directive establishes the framework for introducing minimum requirements for ecodesign, which all energy-related products sold and/or used in the EU should conform to[26].

What is ecodesign? Ecodesign is a set of regulations that **oblige** manufacturers[27] to take environmental aspects into account at the design stage (before the product is produced and put on the market) of energy-related products in order to improve the environmental characteristics of the product throughout its lifecycle. As a result, manufacturers are expected to help reduce energy consumption by such products and reduce negative environmental effects.

Manufacturers should create a so-called "ecological profile" for products that fall within the scope of Directive 2009/125, which shall include assessment of the environmental impact at all stages of the product lifecycle: from selection of raw materials prior to production, packaging, distribution, installation, repair and utilisation of the product.

Ecodesign requirements are general (not limited to specific aspects for each individual product) and specific ones (measurable in physical units), for example, setting minimum requirements for energy/environmental efficiency per product unit[28], which, in turn, can be expressed in degrees to ensure gradual introduction and regulation of the supply chain.

The Ecodesign Directive is closely linked to Directive 2010/30 on energy labelling requirements: in fact, they make up an integral system, since ecodesign provides incentives for energy savings/better environmental performance on behalf on the supply end (production) while energy labelling works on behalf of the demand end, providing accurate and reliable information to consumers about energy/environmental characteristics and encouraging them to choose

25) The substantiation for introducing a better energy efficiency policy for energy-related household products was analysed in detail in Report II, see. p. 19-20.

26) However, these requirements do not apply to vehicles used to transport persons or cargo.

27) Also, these rules apply to importers who supply products produced outside the EU to the EU market.

28) A more detailed example: Technical Regulation No. 548/2014 (transformers) sets out minimum allowed values of maximum load and no-load energy loss for a 16-step increase in rated power from 1 to 3,150 kVA for two types of transformers, as well as the Peak Efficiency Index values for transformers of 3,150–100,000 kVA.

products with the best characteristics. As a result, the combination of eco-design and energy labelling is a powerful tool for improving energy efficiency in energy-related products.

How does the ecodesign system work and what products does it cover? Of course, ecodesign requirements should not be too burdensome for producers of energy-related products in terms of development of appropriate technologies and should not create excessive barriers to innovation. That is why Directive 2009/125 and related implementing regulations cover only the products:

– which use energy (e.g. heaters, refrigerators, lamps, etc.) or are energy related (e.g. windows, taps, shower heads, etc.);

– whose annual sales in the EU market exceed 200,000 units;

– which have a confirmed significant impact on the EU environment;

– which have significant potential for improvement in terms of their impact on the environment without entailing excessive costs;

How is ecodesign used? Following selection based on the above criteria, the requirements for ecodesign are set as follows:

– Energy consumers are grouped into "lots";

– Technology and market for each lot are studied and recommendations are made;

– Discussions and consultations with all stakeholders are held;

– Technical regulations/implementation documents for each product group are developed, discussed, approved and put in place;

– Regulations are directly applicable in all EU Member States and apply to all products placed on the market or put into operation.

Today in the EU, there are 24 product groups covered by ecodesign and/or energy labelling requirements including 57 products; the technical standards for their ecodesign/energy labelling are set out in the relevant implementing directives/regulations.

What has been done to implement the commitments?

In accordance with the list in Appendix XXVII (27) of the Association Agreement, Ukraine had to implement "old" Directive 2005/32 and 8 implementing regulations. The plan for implementation of EU directives and regulations in the field of ecodesign[29] already includes new versions of these EU legal acts, but contains only 5 implementing regulations. Given the fact that of the 3 "old" implementing directives that were not included in the implementation plan 2 were replaced with new regulations and one more Directive was included in the current regulation, the list of EU acts in the field of ecodesign that are subject to implementation in accordance with the sectoral commitments under the Association Agreement seems to consist

29) Approved by CMU Decree No. 475-p dated May 14, 2015.

of updated Framework Directive 2009/125 and seven related implementing regulations (see above).

On the other hand, Ukraine began to reform the system of technical regulation in order to eliminate technical barriers to trade between Ukraine and the EU, as provided for in Chapter 3, Title IV of the Association Agreement. Within this commitment, the Strategy for Development of the Technical Regulation System by 2020[30] was drawn up; it also provides for the development of new technical regulations in accordance with the requirements of Directive 2009/125, as well as the requirements of 24 implementing regulations. Therefore, as of November 2017, it can be assumed that Ukraine should implement at least 8 implementing regulations directly referred to in the Agreement and 16 other regulations in the framework of the reform of the technical regulation system (for a full list, see Technical Regulation Strategy, Section 6).

During 2016-2017, the SAEE, with the EU's technical assistance, was drafting appropriate amendments to national legislation, in particular by developing a mechanism for transposition to the current legislation of the framework requirements of Directive 2009/125 and drafting new technical regulations. Various models of such transposition were considered, however, it was finally decided to set out the framework requirements for ecodesign in the draft Law of Ukraine "On Energy Efficiency" (for its analysis, see the review of the requirements of Directive 2012/27) as a separate article providing for transposition of ecodesign requirements in the form of technical regulations. This is exactly what was done – p. 2 of Art. 15 of the latest version of the draft law "On Energy Efficiency" stipulates that "the requirements for ecodesign of energy-related products and the limits for these requirements are established by technical regulations on the basis of the relevant legislative acts of the European Union".

The process of adopting technical regulations to implement the requirements of implementing regulations on ecodesign is also underway – they are at the stage of drafting and pending approval.

As of November 2017, draft CMU resolutions that have to enforce the following technical regulations were drafted and submitted for harmonisation with other CEBs:

1. Technical regulation establishing the **framework for setting ecodesign requirements** (requirements of Directive 2009/125, list of Appendix XXVII of the Association Agreement);

2. Technical regulation regarding ecodesign requirements for **household refrigerating appliances** (requirements of Regulation No. 643/2009, list of Appendix XXVII of the Association Agreement).

3. Technical regulation regarding ecodesign requirements for **glandless standalone circulators and glandless circulators integrated in products**

30) Approved by CMU Decree No. 844-p dated August 19, 2015.

(requirements of Regulation No. 641/2009, list of the Technical Regulation Strategy until 2020);

4. Technical regulation regarding ecodesign requirements for fans driven by **motors with an electric input power between 125 W and 500 kW** (requirements of Regulation No. 327/2011, list of the Technical Regulation Strategy until 2020);

5. Technical regulation regarding ecodesign requirements for **electric motors** (requirements of Regulation No. 640/2009, list of the Technical Regulation Strategy until 2020);

6. Technical regulation regarding the ecodesign requirements for **water pumps** (requirements of Regulation No. 547/2012, list of the Technical Regulation Strategy until 2020);

7. Technical regulation regarding the ecodesign requirements for **small, medium and large power transformers** (requirements of Regulation No. 548/2014, list of the Technical Regulation Strategy until 2020);

8. Technical regulation regarding ecodesign requirements for **directional lamps, light emitting diode lamps and related equipment** (requirements of Regulation No. 1194/2012, list of the Technical Regulation Strategy until 2020).

Another 15 technical regulations are being drafted, 1 technical regulation (**water-heating boilers operating on liquid or gaseous fuels**) was adopted in 2008 on the basis of "old" Directive 92/42 and must now be completely updated in accordance with the requirements of new Implementing Regulation No. 813/2013.

Oil

Main responsible party: Ministry of Energy and the State Agency of Ukraine Reserve[31]

Position in the Agreement:

For Directive 2009/119: Title V, Chapter 1, p. 338, Annex XXVII (27) – sector: "Energy Cooperation", sub-sector: "Oil".

For Directive 2009/28: list of commitments in accordance with the Treaty Establishing the Energy Community

Deadlines for implementation:

For Directive 2009/119: aligning of legislation – by November 1, 2017,

31) In accordance with Resolution No. 503-p of the Cabinet of Ministers of Ukraine dated June 21, 2017, the Ministry of Energy and Coal Industry responsible for the plan of implementation of Directive 2009/119/EC as a whole should be joined by the SAUR responsible for "creating strategic stocks of crude oil and petroleum products" and adoption of the framework law on the minimum stocks of crude oil and petroleum products.

enforcement – by November 1, 2025.

For Directive 2009/28: by January 1, 2014.

List of EU acts:

1. **Council Directive 2009/119/EC** of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products.

2. **Directive 2009/28/EC** of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (as regards promotion of the use of the renewable sources of engine fuel).

Creating Minimum Stocks of Crude Oil and/or Petroleum Products

Directive 2009/119 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products.

What are the benefits of relevant EU standards?

Directive 2009/119 envisages adoption of regulations to ensure that the total oil stocks maintained at all times correspond, at the very least, to 90 days of average daily net imports or 61 days of average daily inland consumption, whichever of the two quantities is greater. The choice of a specific mechanism for maintaining the stocks remains at the discretion of each EU Member State.

These stocks can be partially used to quickly overcome an emergency or local crisis caused by the sudden interruption of supply of oil, petroleum products and natural gas used for energy production. Servicing and renewal of the stocks will be assigned to a non-profit organisations acting in the general interest and not considered an economic operator.

What has been done to implement the commitments?

The plan of implementation of Directive 2009/119 was approved on April 8, 2015. According to paragraph 1.1.1 of the Plan, the Ministry of Energy and Coal Industry in coordination with the Energy Community Secretariat was to draft, and the Cabinet of Ministers in December 2015 was to adopt a legal act on stock model chosen by Ukraine. Paragraph 1.1.2 provided for drafting of a law on maintenance of minimum stocks of oil and petroleum products and its adoption in December 2016. However, the results included only:

– draft Law "On Strategic Stocks", containing "a large number of conceptual errors", that was drafted by the SAUR and presented on March 15, 2016;

– recommendations of experts concerning the volume of the minimum stocks (1.97 million tons in oil equivalent) and sources of funding for their creation (additional fee of UAH 0.40 per litre of motor gasoline and diesel sold in 2017-2023).

Neither was Paragraph 1.2.2 of the Plan implemented, whereby the Ministry of Energy had to submit to the Energy Community Secretariat statistical data on the stocks of oil and petroleum products on a monthly basis, and Paragraph 1.2.5, whereby reporting to the European Commission and the Energy Community Secretariat was to be launched on January 2017. As of November 1, 2017, no document provided for the fulfilment of these requirements.

In accordance with clauses 4 and 5 of Section 1.2 of the Plan, the Ministry of Energy undertook to build additional storage facilities for oil and/or petroleum products, in particular, in 2016, it was planned "to construct two crude oil storage facilities with a capacity of 50 thousand tons each". However, according to the Act of Scheduled Audit for Compliance of PJSC Ukrtransnafta with the Licencing Conditions for Conducting Business Operations Related to Transportation of Oil by Main Pipelines, only 55% of the planned funds were invested in the construction of storage facilities RVS-50000 No. 2 and 3 of LPDS Brody. At the same time, the said Act contains no information about the plans announced in December 2015 to construct a crude oil storage facility of 50,000 cubic meters within 21 months in the village of Smilne, Brody district, Lviv oblast. Instead, it indicates that the useful capacity of the 11 terminals of PJSC Ukrtransnafta (79 storage facilities) is 545 thousand cubic meters, which is twice less than the nominal value (1083 thousand cubic meters) (without taking into account 24 storage facilities withdrawn from operation, including for repair or for inspection). Moreover, in 2016, only 4 storage facilities were repaired.

Given the above, the reports of the Energy Community Secretariat dated September 1, 2016 and 2017 state that Ukraine has not made any progress in creation of oil stocks,.

Guided by this and the updated plan drawn by the SAUR, the Cabinet postpones the deadlines:

– for choosing a model of the minimum stocks of oil and petroleum products – from December 2015 to December 2017 (responsible agencies – the Ministry of Energy and Coal Industry and the State Statistics Service);

– for drawing up the draft law "On Minimum Oil and Petroleum Product Stocks" – from December 2016 to December 2017 (responsible agencies – SAUR, Ministry of Economic Development and Ministry of Finance);

– for implementation of all planned organisational measures – to the period after the law "On Minimum Oil and Petroleum Product Stocks" enters into force.

At the same time, it is not clear why the Cabinet in its order:

– shifted the responsibility for drafting the law "On Minimum Oil and Petroleum Product Stocks" from the Ministry of Energy and Coal Industry to the SAUR, although according to the Regulation, the said body only implements the state policy in the sphere of state reserves and entrusting it with responsibility for policy formation is contrary to Article 1, paragraph 2 of the Law Of Ukraine "On Central Executive Bodies";

– assigned the Antimonopoly Committee and the non-existent Association of Enterprises of the Oil and Gas Industry "to create legislative conditions for creating strategic stocks";

– in clause 5.2 of the Action Plan simultaneously used the terms "strategic stocks", "minimum stocks" and "proper level of stocks".

The latter is disturbing because, due to the unconsolidated nature of Ukrainian terminology, politicians and civil servants do not always distinguish between the notion of state reserves and minimum stocks of oil and/or petroleum products, equalisation provision and mobilisation reserves, which may lead to errors in policy making in this area.

The first results of work of European and Ukrainian experts within the EU technical support project "Assistance to Ukraine in the Process of Implementation of Energy Sector Reform in Line With Ukraine's International Commitments" as regards implementation of Directive 2009/119 were presented on November 8, 2017 at the meeting of the Working Group on Strategic Stocks of Oil and Petroleum Products established at the SAUR to replace the one created by Order No. 412 of the Ministry of Energy and Coal Industry dated July 2, 2015. The experts inter alia recommended:

– establishing the total volume of the minimum stocks of oil and petroleum products in Ukraine in the amount of 2 million tons in oil equivalent, specifically 580 thousand tons of crude oil, 460 thousand tons of gasoline and 930 thousand tons of diesel fuel;

– ensuring the maintenance in Ukraine of permanently physically available[32] stocks of crude oil and/or petroleum products in volumes equivalent to at least 90 days of average daily net imports;

– estimating the total cost of purchasing and storing oil stocks in the equivalent of USD 1.084 billion;

– choosing a basic model of maintenance of oil stocks providing a framework for the management of oil stocks by a specialised agency established as a state body including representatives of government bodies and economic operators responsible for maintaining the stocks.

32) Physical availability implies location of stocks that ensures they can be put in circulation or actually supplied to end users and to markets within the periods and under conditions that can alleviate supply problems that may arise.

Support for Renewable Types of Motor Fuel

Directive 2009/28 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC

What are the benefits of relevant EU standards?

Directive 2009/28 sets mandatory national targets for the share of energy from RES in the energy balance based on the country's statistical data and potential. By 2020, these targets should ensure achievement of 20% share of energy from RES in the energy consumption of the countries that are parties to the Energy Community Treaty and 10% share of energy from RES in transport by creating incentives for the use of environmentally friendly motor fuels (biofuels).

What has been done to implement the commitments?

On August 18, 2017, the Government approved the Energy Strategy of Ukraine for the period up to 2035 "Security, Energy Efficiency, Competitiveness". This document provides for the following:

– increasing the share of renewable energy in final consumption up to 11% by 2020 due to the development of a stable and predictable policy to stimulate its use and attract investment;

– promotion of use of biofuels for transport, increase of the share of renewable fuels in the balance of their consumption providing incentives for its increase;

– promotion of energy-efficient, rational and environment-friendly technologies at every stage of the process: from production to supply of petroleum products to end users.

In order to comply with the requirements of Directive 2009/28 as regards promotion of the use of energy from renewable sources:

– On November 1, 2016, Law No. 1713-VIII "On Amendments to Article 8 of the Law of Ukraine 'On Alternative Fuels'" was adopted; it abolished the requirements for maintaining the state register of economic operators engaged in economic activities in the field of production, storage and putting in circulation of liquid biofuels and biogas. The Law was adopted in pursuance of task 103 of the Deregulation Plan;

– On April 7, 2017, the Ukrainian Agency for Standardization reported having drafted of the first edition of the national standard "Biofuels and Bioliquids. GHG emissions. Technical Requirements", which complies with the requirements of Directive 2009/28, contains terms and definitions, requirements for the production of biofuels and bioliquids, as well as for their use for the purpose of reducing the amount of greenhouse gas emissions. The

standard should be completed by the end of 2017.

On September 22, 2017, at a VRU meeting on Fuel and Energy Committee (FEC), the SAEE once again presented the draft law "On Amendments to Certain Legislative Acts of Ukraine as Regards Development of the Sector of Production of Liquid Biofuels" (target I, task 187) that had been previously rejected by the Ministry of Energy, the MEDT and the State Regulatory Service of Ukraine. It provides for the mandatory addition of bioethanol and biodiesel to petroleum products sold in Ukraine, and for introduction of administrative liability for failure to comply with this requirement.

The SAEE argues that these measures are aimed at implementing Directive 2009/28, although all EU consumers are guaranteed access to the supply of regular petroleum products for conventional vehicles. The mandatory requirement to add biocomponents under penalties of law is discriminatory against market participants as well as against 60% of Ukrainian motorists whose vehicles are not adapted to the use of mixed fuels. The requirements of the draft law are contrary to Article 18-3 of the Commercial Code of Ukraine, which prohibits the authorities "to take actions that eliminate competition or unreasonably favour certain competitors in entrepreneurial activity" and fall within the scope of Article 166-3 of the Code of Ukraine on Administrative Offences, since they restrict production of certain goods, as well as the rights of entrepreneurs to buy and sell them. Despite these reservations, the SAEE keeps insisting on the need to adopt the proposed version of the document.

Prospection and Exploration of Hydrocarbons

Main responsible party: Ministry of Ecology and Natural Resources of Ukraine (hereinafter – Ministry of Ecology).

Position in the Agreement: Title V, Chapter 1, p. 338, Annex XXVII (27) – sector: "Energy Cooperation", sub-sector: "Oil".

Deadline for implementation: alignment and enforcement of legislation – by November 1, 2017.

List of EU acts:

1. **Directive 94/22/EC** of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons.

Promotion of the prospection, exploration and production of hydrocarbons

Directive 94/22 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons

What are the benefits of relevant EU standards?

Directive 94/22 seeks to strengthen integration in the domestic energy market by facilitating the prospection, exploration and production of hydrocarbons in implementing countries under conditions conducive to the development of competition in the most effective way. It provides for the introduction of common rules that ensure:

– equal and non-discriminatory conditions for obtaining permits for prospection, exploration and production of hydrocarbons to all organisations with the necessary resources (Articles 2, 5);

– granting the specified permits on a competitive basis in accordance with the regulated procedure and on the basis of objective, published criteria (Article 5);

– early notification of all organisations participating in the established procedures about all necessary information (Article 3).

What has been done to implement the commitments?

The Plan of Implementation the Directive 94/22 was approved on May 14, 2015. In pursuance of paragraph 1.2.1 of the Plan, on July 6, 2016, Order No. 246 of the Ministry of Ecology was signed approving the Regulation on the Commission on Subsoil Use. This decision aimed to accelerate the issuance of permits for prospection, exploration and production of hydrocarbons to all organisations with the necessary resources.

On November 2, 2016, the Cabinet of Ministers, by its decision No. 775, protected subsoil users from additional costs and withdrawal of permits when they need to be re-issued, for example, in case of reorganisation of the enterprise.

On July 4, 2017, Resolution No. 519 of the Cabinet of Ministers of Ukraine was adopted, whereby:

– failure of the subsoil user to fulfil the program of work on the already granted sites or detected violations of the rules of subsoil use cease to be grounds for refusal to grant, reissue, extend the validity period or make changes to the permit for subsoil use;

– the reasons for the refusal to extend the term of the permit for subsoil use now include the applicant's arrears in the payment of rent.

However, the Procedure amended based on Resolution No. 519 contains

no references to the Resolution "On Amendments to the Procedures Approved by Resolutions No. 594 and 615 of the Cabinet of Ministers of Ukraine, dated May 30, 2011" that was allegedly approved according to the formal statement of June 22, 2017. In this regard, attempts of the authorities to report on the approval of decisions that are still undergoing finalisation seem to be disturbing. For instance, the State Service of Geology and Mineral Resources of Ukraine officially announced the approval of the Rules for Prospection of Oil and Gas Fields on January 12, 2017, while the work on the relevant order of the Ministry of Ecology was completed on June 30.

Along with the systematic and unjustified postponements of the deadlines for drafting acts in the field of subsoil use, another area of concern is the poor quality of their preparation. Thus, in 2017, the State Regulatory Service of Ukraine did not approve a single document drafted by the State Service of Geology and Mineral Resources.

On September 4, 2017, First Deputy Chairman of FEC, O. Dombrovskyi expressed concern about the fact that Ukraine lagged behind the timetable for implementation of the Association Agreement. This, in particular, concerns the delays in adoption of the draft laws "On Amending Certain Legislative Acts of Ukraine Concerning Facilitation of Certain Aspects of the Oil and Gas Industry" (No. 3096-д) and "On Ensuring Transparency in Extractive Industries" (No. 6229), as well as "several dozen by-laws".

In May 2017, independent experts already drew the Government's attention to a number of problems related to the implementation of Directive 94/22 in Ukraine. They are inter alia due to:

– delay in adoption of the Code of Ukraine on Mineral Resources;

– poor quality of drafted legal acts in the field of subsoil use (since the beginning of 2017, the State Regulatory Service of Ukraine has not approved a single document prepared by the State Service of Geology and Mineral Resources);

– delays in the appointment of top managers of the State Service of Geology and Mineral Resources and ensuing numerous scandals, including even taking over the office of the head of the agency by force;

– increase in the number of unscheduled inspections of extractive industry enterprises resulting in suspension of their licenses;

– blocking of the issuance of permits for prospection of oil and gas fields by Councils;

– the need to get approval for works in 16 institutions and obtain 44 documents while there are no acceptable forms of risk sharing between investors and state enterprises in the implementation of joint projects;

– impossibility of auctioning permits for use of subsoil under the new rules due to the lack of properly examined applications (during the year there were only two auctions where only one lot related to the prospection of

hydrocarbons was sold).

Despite these warnings, the work on the implementation of Directive 94/22 intensified only after August 7, 2017, when O. Semerak, the Minister of Ecology, noted that "the State Service of Geology and Mineral Resources needs deep reform", which should not be limited to changing its leadership only.

In particular, in order to make local governments faster approve allocation of subsoil areas for use both through sale at an auction and without bidding, the State Service of Geology and Mineral Resources submitted draft amendments to articles 26, 43 and 46 of the Law of Ukraine "On Local Self-Government in Ukraine". On October 3, 2017, this document was included in the plan (the deadline for implementation is the fourth quarter of 2017).

In order to eliminate inconsistencies in the Procedure for Granting Special Permits for Use of Subsoil and the Procedure for Holding Auctions to Sell Special Permits for Use of Subsoil, the State Service of Geology and Mineral Resources drafted a package of amendments to be submitted in the fourth quarter of 2017.

To update the outdated Instruction on the Content, Form and Procedure for Submitting of Materials Related to Geological and Economic Evaluation of Oil and Gas Deposits, the Ministry of Ecology drafted an order. To facilitate economic activity in the field of subsoil use, a draft procedure of holding auctions for the sale of special permits for subsoil use "via electronic auction" was proposed.

The plan also incorporated draft resolutions of the Cabinet of Ministers:

– "On Making Amendments to the Classification of the Reserves and Resources of Mineral Resources of the State Subsoil Fund", which will ensure that subsoil users apply the provisions of the UN Framework Classification for Fossil Energy and Mineral Reserves 2009 (UNFC 2009);

– "On Amendments to the Methodology for Determining the Value of Reserves and Mineral Resources of Deposits or Subsoil Sites Allocated for Use", aiming to bring paragraphs 4 and 6 of the Methodology in line with UNFC 2009.

In accordance with the Plan of Implementation of Directive 94/22, by the end of 2016 a new version of the Code of Ukraine on Mineral Resources was to be adopted. However, its submission to the Verkhovna Rada was postponed to the fourth quarter of 2017 (target I, task 202).

On October 11, 2017, paragraph 65 was removed from the Action Plan on Deregulation of Economic Activity,, it implied introduction of a simplified procedure for the use of the land during geological exploration and was to be implemented in the first quarter of 2017. It can be assumed that the preparation of the relevant changes, as well as introduction of amendments to the Regulation on the Procedure for Granting Mining Allotment as regards cancellation of mining allotment for the oil and gas industry (implementation

deadline – the first quarter of 2017) for the Government are not worthy of attention since solutions for these issues are stipulated in draft law 3096-д.

Taxation

Taxation

Author

Viacheslav Cherkashyn

I. Review of commitments that should have been fulfilled from November 1, 2014 to November 1, 2016

Enhancement of tax system administration, improvement and development of the tax system (Chapter 4 Taxation, Article 351 of the Association Agreement).

During the specified period, the following laws were adopted:

1. No. 71-VIII "On Amendments to the Tax Code of Ukraine and Certain Laws of Ukraine (as regards tax reform)" dated December 28, 2014;

2. No. 643-VIII "On Amendments to the Tax Code of Ukraine as Regards Administration of the Value Added Tax" dated July 16, 2015;

3. No. 1797-VIII "On Amendments to the Tax Code of Ukraine as Regards Improvement of the Investment Climate in Ukraine" dated December 21, 2016.

These laws introduced the system of electronic administration of VAT and the Unified Register of Applications for the Refund of Budget Compensation (in chronological order of their receipt), which resulted in a reduction of budget VAT arrears[1].

Adaptation of taxation legislation (Chapter 4 Taxation, Article 353, Annex XXVIII (28) of the Association Agreement).

On November 14, 2017, the Verkhovna Rada of Ukraine adopted in the first reading draft law No. 6776-д on amendments to the Tax Code of Ukraine as regards balancing budget revenues in 2018. According to the draft law, the requirements of Article 10 of Council Directive No. 2011/64 dated 21.06.2011[2]

1) According to the State Fiscal Service, as of 01.09.2017 the outstanding amount of VAT claimed for refund from the budget amounts to UAH 11.7 bln.

2) Articles 7(2), 8, 9, 10, 11, 12, 14(1), 14(2), 14(4), 18 and 19 of Council Directives 2011/64/EC dated 21.06.2011 do not have an approved Implementation Schedule. The Association Agreement (Annex XXVIII) provides for negotiations within the framework of Cluster 1 meetings of the Subcommittee on Economy and other areas of sectoral cooperation of the Association Committee between Ukraine and the EU, and approval of the said Implementation Schedule.

on the structure and rates of excise duty applied to manufactured tobacco will be implemented starting on January 1, 2025:

– regarding the share of excise duty within the weighted average retail selling price of cigarettes at the level of at least 60%;

– by approving a schedule for a gradual increase of the specific rates of the excise tax on tobacco products and the minimum excise duty on tobacco products up to the level equivalent to EUR 90 per 1000 cigarettes by 2025 (currently the minimum rate for cigarettes in Ukraine is EUR 20 (UAH 596.05) per 1000 cigarettes).

Alignment with Company Law, Corporate Governance, Accounting and Auditing (Article 387, Annexes XXXIV (34), XXXV (35), and XXXVI (36)):

Adoption of Law of Ukraine No. 2164-VIII "On Accounting and Financial Reporting in Ukraine (as regards improvement of certain provisions)" dated 5 October 2017, which, starting on January 1, 2018, brings national accounting standards in line with the provisions of Directive No. 2013/34 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings and significantly extends the scope of application of the International Financial Reporting Standards in the country.

In 2017, there were no changes in the status of implementation of Directive No. 2008/118[3].

II. As of November 1, 2017, Ukraine had to fulfill the following commitments:

Main responsible party: Ministry of Finance of Ukraine (hereinafter – MinFin), State Fiscal Service (hereinafter – SFS), Ministry of Economic Development and Trade (MEDT) and Ministry of Agrarian Policy (hereinafter – MinAgro).

Position in the Association Agreement: Articles 84 and 353 of the Association Agreement, Annex XV (15) "Approximation of Customs Legislation" and Annex XXVIIII (28) to Chapter 4, Taxation, Title V, Economic and Sector Cooperation.

Indirect Taxation

Council Directive 2007/74 of 20 December 2007 on exemption from value added tax and excise duty of goods imported by persons traveling from third countries

3) Directive No. 2008/118 was analyzed in Report II, see p. 34-35

What are the benefits of relevant standards?

Council Directive 2007/74 of 20 December 2007 on exemption from value added tax and excise duty of goods imported by persons traveling from third countries aims to harmonize the quantitative restrictions relating to the exemption from value added tax and excise duty of the aforementioned category of goods, and sets forth the following:

- The Directive sets the excise duty threshold of EUR 430 for air and sea travelers, and EUR 300 for those traveling by land (including inland waterways).

- Member States may cut down the thresholds for travelers under 15 years of age irrespective of the type of transport, but the threshold cannot be less than EUR 150.

- Member States can cut down the thresholds for:

— travelers living in the frontier zone;

— cross-border commuters;

— crews of vehicles engaged in international transport.

- The Directive sets the following quantitative restrictions (max/min) on tobacco imports[4]:

— 200 cigarettes or 40 cigarettes;

— 100 cigarillos or 20 cigarillos;

— 50 cigars or 10 cigars;

— 250 g smoking tobacco or 50 g smoking tobacco.

- The Directive sets the following quantitative restrictions for the import of alcoholic beverages:

— A total of 1 litre of alcohol and alcoholic beverages of an alcoholic strength exceeding 22% vol, or undenatured ethyl alcohol of 80% vol and over;

— A total of 2 litres of alcohol and alcoholic beverages of an alcoholic strength not exceeding 22% vol.

- Exemptions concerning tobacco and alcoholic beverages shall not apply in the case of travelers under 17 years of age.

- EU countries may choose to distinguish between air travelers and other travelers by applying lower quantitative limits to the other travelers.

- Every four years the European Commission submits information on the implementation of the Directive to the Council of the EU. According to the latest report published in 2013, most EU countries are satisfied with the Directive and do not see any need to revise it.

4) The actual size of the restriction is chosen at the discretion of individual Member States within this range, and Member States may also set different quantitative limits for different categories of travelers based on the type of transport they use (but these should be within the permitted range).

What has been done to implement the commitments?

The relevant commitments are stipulated in paragraph 37 of the Action Plan for implementation of Title IV "Trade and Trade-Related Matters" of the Association Agreement for 2016-2019, approved by Decree No. 847-p of the Cabinet of Ministers of Ukraine dated September 17, 2014.

To fulfill the commitments undertaken by Ukraine, the following has been done:

• New Customs Code of Ukraine has entered into force (Law No. 4495-VI of March 13, 2012);

• In order to fully implement the provisions of Section 3 of Directive No. 2007/74, Government elaborated and submitted to Parliament:

— Draft law No. 3444 "On Amendments to the Customs Code of Ukraine (as regards implementation of the Association Agreement between Ukraine and the EU)" dated November 10, 2015, withdrawn on April 14, 2016 following the procedure for Government change;

— Draft law No. 4615 "On Amendments to the Customs Code of Ukraine (as regards implementation of the Association Agreement between Ukraine and the EU)" dated 06.05.2016, with proposals for improvement submitted by the specialized Committee on Taxation and Customs Policy of the Verkhovna Rada of Ukraine on 05.07.2016..

The Customs Code of Ukraine, adopted in 2012 includes a number of points (Articles 374 and 376) that partially take into account the requirements of Section 3 of Directive No. 2007/74. Thus, the rules on cigarettes, cigars and smoking tobacco are in full compliance with the EU acquis. However, for the full-fledged implementation of Section 3 of Directive No. 2007/74, the following additional changes must be made to the national legislation:

— to add the following excisable goods to the list of goods exempt from taxation: cigarillos, at the same time imposing special relevant restrictions;

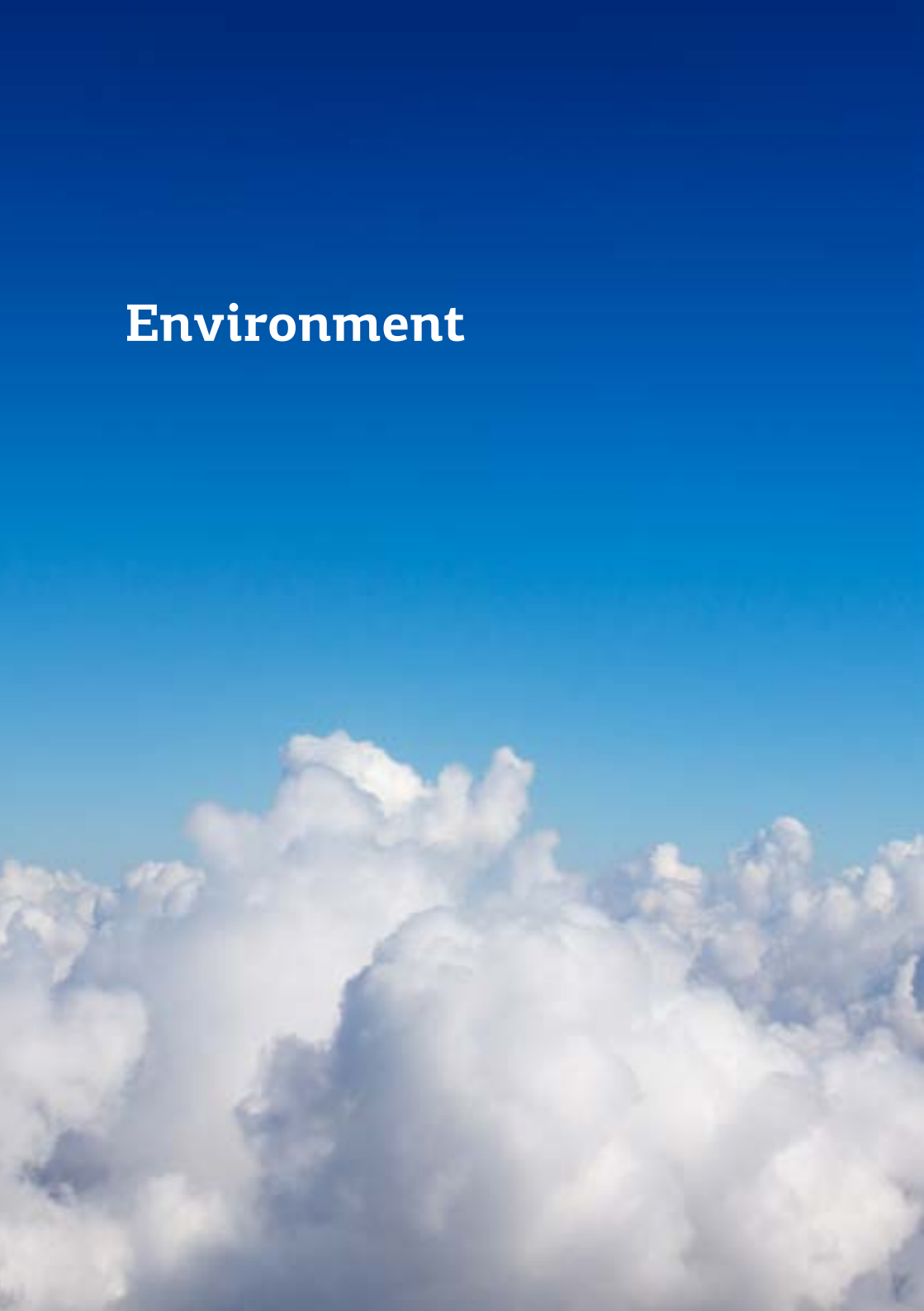
— to include restrictions on the weight of individual cigars and cigarillos (with a maximum weight of three grams each);

— to introduce a tax exemption provision for a specific amount of separately imported fuel (in a canister/portable container, but not exceeding 10 liters) for each motor vehicle.

It should be noted that Directive No. 2007/74 does not contain clear-cut additional conditions regarding the periodicity of preferential import of goods by persons. However, the preamble of the regulatory document indicates that the preferences are granted only in the case of non-commercial import, while Article 6 of the Directive sets, unfortunately, rather vague requirements as to when imports can be regarded as being of a non-commercial nature: (1) they take place occasionally, and (2) they consist exclusively of goods for the personal use or family use of the travelers, or of goods intended as presents. Therefore, the more clear guidelines of Ukrainian legislation (paragraph 3 of

Article 376 of the Customs Code) concerning the periodicity of the preferential import of goods (no more frequently than once in 24 hours) do not run contrary to the rules in force in the EU.

Environment



Environment

Author

Andriy Andrusevych

I. Review of commitments that had to be fulfilled from November 1, 2014 to November 1, 2016

Most of the measures to implement the Association Agreement in the field of environmental protection are aimed at approximation of the legislation of Ukraine to the requirements of the EU. The Agreement provides for the gradual approximation of Ukraine's legislation to the EU legislation and policies in the field of environmental protection, and its Annex XXX includes a list of 26 directives and 3 regulations which Ukrainian environmental legislation is to be aligned with within the framework of 8 areas, namely: environmental governance and integration of environment into other policy areas; air quality; waste and resource management; water quality and water resource management, including marine environment; nature protection; industrial pollution and industrial hazards; climate change and protection of the ozone layer; and genetically modified organisms (GMOs).

As of November 1, 2016, 13 directives and regulations were (fully or partially) implemented in accordance with the timetables of the Association Agreement.

For each directive and regulation, the Government developed and approved a separate implementation plan detailing the necessary legislative, institutional, organisational, and coordination measures, setting deadlines for the implementation of a particular measure and appointing a body in charge of the implementation.

On October 25, 2017, the Government of Ukraine approved a new Action Plan containing more than 2000 tasks. The text of the plan is not available yet.

In the field of environmental governance and integration of environment into other policy areas, four horizontal directives require implementation: on environmental impact assessment, on strategic environmental assessment, on public participation and on access to environmental information. So far, basic Law №2059-VIII "On Environmental Impact Assessment", dated May 23, 2017, has been adopted, however, it requires adoption of by-laws. The draft law on

Strategic Environmental Assessment (№6106) was adopted by the Verkhovna Rada of Ukraine in the first reading and referred for a repeat second reading. Its adoption is closely related with the implementation of the directive on public participation. The basic provisions of the directive on access to environmental information have already been implemented through the Law of Ukraine "On Access to Public Information".

In the field of waste management, considerable work is being done by the Ministry of Natural Resources, which opted for a systematic approach to reform in this area – it started off by analysing the existing policies, prioritising, conception, strategy, framework law, and thereupon developing and adopting the remaining necessary regulatory acts. On November 8, 2017, the Cabinet of Ministers of Ukraine approved

The National Strategy of Waste Management, whereby European waste management principles are introduced in Ukraine.

The area of water quality and water resource management differs from the other areas of implementation in terms of the fairly prompt development of the regulatory framework. A very important factor was the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Implementation of Integrated Approaches in the Management of Water Resources by Basin Principle". The so-called annotated structure of the Marine Strategy of Ukraine has been developed to implement Directive 2008/56/EC establishing a framework for community action in the field of marine environmental policy.

Directive 2009/147/EC on the conservation of wild birds and Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora are at an early stage of implementation. A number of adopted environmental acts, if effectively enforced, can have a positive impact on settlements and birds, but will not ensure the proper fulfilment of commitments under these directives. The Ministry of Ecology and Natural Resources is drawing up a concept for the implementation of these directives. It should be noted that parts of the Bird Directive are included in the commitments within the Energy Community and the relevant deadlines for implementation have long been violated.

The largest achievement in the field of industrial pollution and industrial hazards is the recent adoption of the National Plan for Reducing Emissions from Large Combustion Plants (the final version is not yet publicly available). As regards the issue of integrated permits, relevant legislation was adopted only concerning the permit for special water use.

In the area of climate change, the key achievement is the Government's adoption of the Concept for Implementation of State Policy in the Field of Climate Change for the Period up to 2030 and the Strategy of Low Carbon Development of Ukraine up to 2050. The Ministry of Ecology has developed a road map for implementation of a system of monitoring, reporting and verification of greenhouse gas emissions and the national emissions trading

system. The draft law "On Ozone Depleting Substances and Fluorinated Greenhouse Gases" drafted by the Ministry of Ecology, is not yet publicly available.

The main achievement in the field of Genetically Modified Organisms was the drafting of a new version of the Law of Ukraine "On the State Biosafety System in the Creation, Testing, Transportation and Use of Genetically Modified Organisms" (hereinafter – GMOs). This draft law, which is currently undergoing interdepartmental harmonisation, was put up for public consultation on the website of the Ministry of Ecology. The proposed draft law takes into account the requirements for the release of GMOs into the environment, the transboundary movement of GMOs, and the use of GMOs in a closed system as set forth by the relevant directives and regulations.

The implementation of directives in the field of air quality has begun, however, it is at an initial stage. In this context, special attention should be given to the draft Concept for Reforming the State System of Environmental Monitoring that provides for optimisation of the existing monitoring system, switching from inter-agency monitoring to comprehensive assessment, establishment of a single observation network, creating conditions for technical re-equipment of monitoring, and compliance with the international commitments concerning provision of environmental information.

The situation with the implementation of Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels is critical, as the deadlines for its implementation have been long missed. As a result, the Secretariat of the Energy Community opened a case against Ukraine for its failure to comply with the relevant commitments. An analysis of the plan of implementation of the directive reveals that its authors had a fairly superficial idea of the subject of regulation. For example, it defines "adoption of a law of Ukraine" as the performance indicator for the implementation of a number of tasks (such as 2.1, 2.2, 2.5, etc.), while to introduce the necessary restrictions it was only necessary to amend the Technical Regulations. At the same time, the deadlines of implementation of the measures envisaged by the implementation plan have been repeatedly postponed. The most recent postponement took place on December 22, 2016, when the Cabinet of Ministers of Ukraine by its Resolution No. 973 extended the use of stove fuel and fuel oil with a sulphur content of more than 1% by December 31, 2017. This decision was substantiated referring to the necessity to get through the autumn-winter period and avoid threats to the energy security of the state.

Another challenging issue in the context of the further implementation of Directive 1999/32 is that of determining the authorised body. Partly this issue was settled on April 19, 2017, after the approval of the Regulation on the State Ecological Inspectorate of Ukraine. This body was assigned the responsibility for public oversight (control) over "the observance of ecological indicators of petroleum products (automobile petrol and diesel fuel) traded by business entities through wholesale and retail outlets". The State Inspectorate also has the right to carry out sampling and instrumental laboratory measurements of

"the environmental indicators of petroleum products".

In pursuance of the requirements of Directive 1999/32 as regards establishment of an effective system of sampling and testing methods, the Ministry of Energy and Coal Industry had to approve and enforce 36 national standards necessary to ensure the application of the Technical Regulation, of which, as of November 1, 2017, only 18 were adopted.

Some progress has been made in the implementation of Directive 94/63 on the control of volatile organic compound (VOC) emissions in terms of reducing oil product losses when loading and unloading road tankers and dispensing fuel to motor vehicles:

- by the end of 2017, the national standard "Methodology of Verification. Road Tankers Designed for Petroleum Products" (TC 63) is to be drafted;

- four standards of the DSTU EN 13012 "Petrol Filling Stations" (TC 146) have been adopted by "confirmation" and the first version of the DSTU EN 13617-1 standard "Petrol Filling Stations. Part 1. Safety Requirements for the Design and Performance of Dosing Pumps, Fuel-Handling Devices and Remote Pump Units (TC 93) has been drawn up.

Despite these achievements, in November 2016, the deadline for implementation of the tasks set out in paragraphs 1.1.1, 1.1.2 and 1.2.1 of the plan expired. However, the Cabinet of Ministers of Ukraine did not approve the draft resolution "On Approval of the Technical Regulation on Requirements for Storage, Transportation and Reloading of Fuel, Related Equipment and Service Stations", and the Ministry of Ecology did not approve the recommendations for supervising the work of petrol filling stations and did not conduct an inventory of terminals.

In addition, errors due to inaccurate translation of the directives into Ukrainian have not been corrected yet. For instance, the plan of implementation refers to petroleum products (namely automobile petrol, diesel fuel, kerosene, liquefied petroleum gas) as to бензин (petrol), to terminals as to термінал (station), to mobile containers as to мобільні контейнери (movable reservoirs), to service stations as to сервісні станції (service depots), and to loading installation as to вантажні крани (bulk unloader cranes). These mistakes recur in the translation of the directive posted on the website of the Verkhovna Rada.

II. As of November 1, 2017

Main responsible party: Ministry of Ecology and Natural Resources (hereinafter referred to as the Ministry of Ecology). As regards the directives on air quality, the responsible party is the Ministry of Energy and the Coal Industry.

Position in the Association Agreement: Ukraine should align its legislation with EU environmental legislation in accordance with Art. 363, Title V (Economic and Sector Cooperation), Annex XXX (30) to the Association Agreement.

As of November 1, 2017, Ukraine had to implement 10 EU acts in the following areas: environmental governance and integration of environment into other policy areas, water quality and water resource management, including marine environment, air quality, genetically modified organisms (GMOs), and waste and resource management.

Environmental governance and integration of environment into other policy areas

1) **Directive 2011/92/EC** on the assessment of the effects of certain public and private projects on the environment

2) **Directive 2001/42/EC** on the assessment of the effects of certain plans and programmes on the environment

Water quality and water resource management, including marine environment

1) **Directive 91/676/EC** concerning the protection of waters against pollution caused by nitrates from agricultural sources, as subsequently amended

2) **Directive 2000/60/EC** establishing a framework for Community action in the field of water policy, as subsequently amended

3) **Directive 91/271/EEC** concerning urban waste water treatment, as subsequently amended

Air quality

1) **Directive 2008/50/EC** of the European Parliament and of the Council on ambient air quality and cleaner air for Europe

2) **Directive 2004/107/EC** of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air

3) **Directive 98/70/EC** relating to the quality of petrol and diesel fuels

Genetically modified organisms (GMOs)

1) **Directive 2009/41/EC** on the contained use of genetically modified micro-organisms

Waste and resource management

1) **Directive 2008/98/EC** on waste

Environmental governance and integration of environment into other policy areas

Directive 2011/92/EC on the assessment of the effects of certain public and private projects on the environment (codification) (Art.4), (Art.5), (Art.7) (as of 01.11.2017, the Directive had to be partly implemented)

What are the benefits of relevant standards?

In general, the Directive establishes the basic requirements for the assessment of potential effects of certain types of business activity on the environment. Such assessment should be made prior to granting permission for business activity (for example, construction). As of November 1, 2017, the following rules of the Directive had to be implemented:

- determination of the criteria whereunder the projects listed in Annex I shall be subject to an environmental impact assessment, as well as procedures for determining which of the projects specified in Annex II, require an EIA (Article 4);

- determination of the scope of information to be provided by the developer (Art. 5);

- reaching agreements with neighbouring countries on the exchange of information and consultations (Art. 7).

These articles determine the scope of application of environmental impact assessment, requirements for the content of environmental impact assessment documentation prepared by the investor and the procedure for cross-border consultations if the planned business activity can have a significant impact on the environment of other countries.

What has been done to implement the commitments?

Law of Ukraine No. 2059-VIII "On Environmental Impact Assessment" dated May 23, 2017 was adopted. As a whole, the procedure for environmental impact assessment (hereinafter – EIA) specified in the law is based on the Directive. The types of projects subject to EIA are in accordance with Annex I and Annex II (at times, the list is more comprehensive). The requirements for the content of the EIA report are in line with the requirements of Article 5 of the Directive. The law sets forth the key requirements for the procedure of cross-border consultations, however it excludes the projects envisaged in the Annexes to the Directive that are not stipulated by the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). This exclusion is counter to the Directive but it may be justified as Ukraine is not an EU Member State.

The Law "On Environmental Impact Assessment" generally reproduces

the provisions of Directive 2011/92/EC, however some of its provisions do not comply with the requirements of the Directive. Thus, the term "planned activity" does not correspond to the term "project", and the concept of "development consent" is practically left out of the law.

The law will be put into effect on December 18, 2017. By this time, a number of by-laws must be adopted.

Part of the draft by-laws necessary for the implementation of the Law "On Environmental Impact Assessment" were made public in October 2017, namely:

1. Draft Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Submission of Documents for the Issue of an Environmental Impact Assessment Opinion and Keeping the Unified Register on Environmental Impact Assessment";

2. Draft Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Criteria for Determination of Planned Activity, its Extension and Change that are not Subject to Environmental Impact Assessment";

3. Draft Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Conducting Public Hearings in the Process of Environmental Impact Assessment".

These draft regulations were prepared with the EU's technical support. The aforementioned projects were put to public debate. As a whole, they require substantial refinement in order to harmonise them with each other and with the requirements of the Law "On Environmental Impact Assessment". With regard to some issues, the final versions of these acts can significantly affect the compliance of the national EIA mechanism with the provisions of Directive 2011/92/EC, even if formally compliant with the requirements of the Law. At the moment, there are also no published drafts of the other necessary by-laws.

The draft regulations that were made public are not in compliance with each other, contrary to the law and the provisions of the Directive. For example, they provide for a fee for conducting an environmental impact assessment by a public authority, although neither the Directive nor the law authorises state bodies to "conduct EIA" as a permit procedure. The procedure for publishing a notice on the beginning of public discussions is not agreed upon.

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (as of 01.11.2017, the Directive should have been fully implemented).

What are the benefits of relevant standards?

In general, the Directive sets requirements for the assessment of the

environmental impact of the implementation of "strategic" decisions: plans and programs in certain sectors (energy, transport, etc.). This assessment is, therefore, referred to as a "strategic environmental assessment" (SEA), although the Directive does not use this term. The scope of the Directive includes both national plans and programs as well as regional and local ones.

As of November 1, 2017, the following requirements had to be fully implemented:

- adoption of national legislation and determination of the authorised body (bodies);

- establishing a procedure for determining the plans or programs that require a strategic environmental assessment and setting the requirement that plans or programs for which a strategic environmental assessment is mandatory shall be subject to such an assessment (Article 3);

- establishment of a consultation procedure with environmental protection authorities and a procedure for consultation with the public (Article 6);

- reaching agreements with neighbouring countries on the exchange of information and consultations (Article 7)

The aforementioned articles envisage introduction of national legislation in this area, including the scope of strategic environmental assessment, SEA entities, procedure for involving state bodies in the field of ecology and cross-border consultations in the SEA (if the implementation of a program or plan can affect the environment of other states) etc. Just like Directive 2011/92/EC, this Directive sets requirements for ensuring public involvement in this process.

What has been done to implement the commitments?

On May 23, 2017, the draft law "On Strategic Environmental Assessment" was adopted by the Verkhovna Rada of Ukraine in the first reading. On November 7, 2017, the draft law was not supported by Parliament in the second reading and was returned to a repeat second reading.

The draft law "On Strategic Environmental Assessment" (No. 6106) broadly reproduces the SEA procedure provided for in Directive 2001/42/EC. At the same time, the draft contains a number of systemic shortcomings, which partly explains the veto imposed by the president in 2016. The latest version contains innovations that are inconsistent with the Directive, in particular as regards public discussion as a stage in the SEA. Thus, the draft submitted to the second reading defines the public as "one or more natural persons or legal entities, their associations, organisations or groups registered in the territory covered by the strategic planning document". That is, this rule limits the involvement of individuals in the discussion, if they are not registered in the territory where the discussion itself takes place. This requirement (restriction) regarding the place of "registration" does not comply with the Directive. For

example, this rule can create barriers for the development of energy projects in the exclusion zone. It would be very difficult to find out how many citizens and organisations involved in energy projects are registered there in order to engage them in discussions.

Water quality and water resource management, including marine environment

Directive 91/676/EC concerning the protection of waters against pollution caused by nitrates from agricultural sources, as subsequently amended (as of 01.11.2017, the Directive had to be partially implemented).

What are the benefits of relevant EU standards?

The purpose of the directive is to reduce and prevent water pollution with nitrates (their main source is fertilisers used to improve the growth of crops).

As of November 1, 2017, it was necessary to implement the following requirements of the Directive:

- adoption of national legislation and determination of the authorised body (bodies);

- identification of zones vulnerable to (accumulation) of nitrates (Article 3)

The said articles provide for the introduction of a legislative framework for the implementation of the measures envisaged by the Directive. The key measure is identification of "vulnerable zones" – i.e. the territories from which nitrates run off in water bodies and accumulate there (eutrophication).

What has been done to implement the commitments?

No policy-making measures have been taken to implement Directive 91/676/EC. The current state of the nitrate contamination of water from agricultural sources is being analysed, and a single approach to identification of the zones vulnerable to accumulation of nitrates is being harmonised.

Directive 2000/60/EC establishing a framework for Community action in the field of water policy, as subsequently amended (as of 01.11.2017, the Directive had to be partially implemented).

What are the benefits of relevant standards?

The Directive establishes the principles for water resource management, including water protection, ecosystem restoration, reduction of water pollution, and ensuring sustainable water use. The key tools introduced by the Directive include the basin water resource management principle: it involves management based on the river basin rather than on administrative divisions (e.g., oblasts or regions). It is also necessary to determine and formalise in legislation the boundaries of such basins (zoning) and establish basin councils with relevant functions and powers.

As of November 1, 2017, it was necessary to implement the following requirements of the Directive:

- adoption of national legislation and determination of the authorised body;

- legislative formalisation of the definition of the unit of hydrographic zoning of the territory of the country;

- elaboration of a regulation on basin management and charging it with the functions set forth in Article 3, Directive 2000/60/EC.

What has been done to implement the commitments?

On October 4, 2016, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine as Regards Implementation of Integrated Approaches in the Management of Water Resources Based on the Basin Principle".

To implement the requirements of the updated legislation, a number of regulatory acts have already been approved regarding:

- elaboration of river basin management plans;

- determining sub-basins and water management areas within river basin districts;

- approval of the boundaries of river basin districts, sub-basins and water areas;

- procedure for elaboration of water management balances;

- regulations on basin councils, which should become the platform for coordinating and resolving controversial and problematic water-related issues;

- a list of pollutants for determining the chemical status of surface and groundwater bodies.

Apart from this, draft regulatory and legal acts on the procedure for conducting the state monitoring of water; methods of determining surface and groundwater bodies; and methods of classification of surface water bodies based on their ecological and chemical status have been drafted.

The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine as Regards Implementation of Integrated Approaches in the Management of

Water Resources Based on the Basin Principle" generally complies with the requirements of Directive 2000/60/EC. The law has supplemented and revised the terminology related to integrated and basin management, including 17 terms of the 41 definitions of the Directive, and added 7 water-management-related terms that are not mentioned in the Framework Water Directive. The law has adopted the principles, structures and tools of basin management. It determined the units of the hydrographic zoning of the country's territory and the areas of the main river basins, and established the water resource management tool – i.e. the river basin management plan.

It is expected that implementation of river basin management plans will contribute to the attainment of the strategic environmental objective for all river basin areas – i.e. to achieve / maintain a "good" ecological status of surface and groundwater bodies, as well as "good" ecological potential of artificial or substantially altered surface water bodies.

This Directive has not been fully implemented since it is still necessary to approve a number of regulations.

Directive 91/271/EEC concerning urban waste water treatment, as subsequently amended (as of 01.11.2017, the Directive had to be partially implemented).

What are the benefits of relevant standards?

The Directive sets requirements for collecting, cleaning and discharging sewage in residential settlements (partly covering certain types of business activity, such as brewing). The Directive requires implementation of centralised collecting systems in residential settlements with more than 2 thousand inhabitants, sets requirements for such systems, secondary (biological) treatment, etc.

What has been done to implement the commitments?

In May 2017, the Law of Ukraine "On Amendments to the Law of Ukraine 'On Drinking Water and Drinking Water Supply'" was adopted, whereby the main requirements of Directive 91/271/EEC were implemented.

Implementation of the Law requires adoption of a number of by-laws, such as the rules for sewage reception to centralised collecting systems and the procedure for determining the amount of payment for excessive discharge of waste water to centralised collecting systems; the procedure for reuse of treated waste water and sludge provided that the maximum permissible concentrations of pollutants are complied with.

At present, the final versions (following public discussion) of the Rules for Sewage Reception to Collecting Systems and the Procedure for Determining the Amount of Payment for Excessive Discharge are being finalised.

The Law of Ukraine "On Amendments to the Law of Ukraine 'On Drinking Water and Drinking Water Supply'" and the relevant draft by-laws in general conform to the Directive. They establish the authority of local self-government bodies regarding sewage reception, and set forth the basic requirements and concepts concerning the population equivalent and obligatory nature of centralised collecting system.

Air quality

Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe (as of 01.11.2017, the Directive had to be partially implemented).

What are the benefits of relevant standards?

The Directive sets objectives for air quality in order to protect public health and the environment. To achieve the 2020 targets, the Directive combines a number of approaches: establishment of the limit values (limit values, target values and thresholds) for regulated substances (sulphur dioxide, nitrogen dioxide, particulates, lead, benzene and carbon monoxide, ozone), monitoring and assessment of pollution, elaboration of pollution reduction plans (where necessary). Particulate matter, depending on the size, is regulated as PM10 or PM2.5 (where 10 and 2.5 mean the diameter of the particulate matter in microns).

As of November 1, 2017, it was necessary to implement the following requirements of the Directive:

- adoption of national legislation and determination of the authorised body (bodies);

- establishment of the upper and lower assessment thresholds (Article 5), target and limit values (Articles 13, 14, 16.2, 17.1), and targets for reducing the impact of PM2.5 (particulate matter) (Article 15).

These articles require that a legislative framework should be introduced to achieve the objectives of the Directive and enshrine its principles. In particular, this implies the introduction of appropriate thresholds, limit and target values of concentration for a particular pollutant (substance), zoning (identification of zones and agglomerations for further monitoring, evaluation and improvement measures).

What has been done to implement the commitments?

In 2016, a draft Concept for Reform of the State System of Environmental Monitoring was elaborated; it was discussed with the public but was not adopted. The Concept proposes to optimise the existing monitoring system,

switch from inter-agency monitoring to comprehensive assessments, create a single monitoring network, establish conditions for technical re-equipment of monitoring, and fulfil international commitments regarding the provision of environmental information.

According to the report of the Ministry of Ecology on the implementation of the Association Agreement in 2016, legislators have developed methodological recommendations for the drafting of plans concerning the ambient air quality for the zones and agglomerations where the level of pollution exceeds the limit concentration values, but these recommendations are not available in the public domain. The report indicates that the existing monitoring network has been examined for conformity to the requirements of Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe and Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air.

However, there are no drafts of regulations that would implement the Directive.

Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air (as of 01.11.2017, the Directive had to be partially implemented)

What are the benefits of relevant standards?

The Directive establishes the target concentration values of arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air to prevent and reduce the negative impact of these substances on public health and the environment. In addition, it establishes common approaches and criteria for the assessment of their concentration, collection and access to this information.

As of November 1, 2017, it was necessary to implement the following requirements of the Directive:

- adoption of national legislation and determination of the authorised body (bodies);

- establishment of the upper and lower assessment thresholds (Article 4.6) and target values (Article 3);

Timetable: These provisions of the Directive should apply to arsenic, nickel, cadmium and benzo(a)pyrene for 3 years from the date of entry into force of this Agreement on the basis of the current situation in Ukraine. Upon entry into force of the Association Agreement, the Association Council will determine the timetable for Ukraine to implement these provisions so that

they would fully comply with the requirements of the Directive.

These articles require enshrinement in legislation of the limit concentration values for regulated substances in accordance with the Directive, the upper and lower assessment thresholds, which will make up the basis for future actual assessment of their content in the air and zoning for monitoring purposes. The assessment thresholds are set by the Directive itself (Annex II).

What has been done to implement the commitments?

The measures for alignment with this Directive are identical to those implemented to approximate legislation to Directive 2008/50/EC of the European Parliament and of the Council on ambient air quality and cleaner air for Europe. There are currently no drafts of regulatory and legal acts that would implement this Directive.

Directive 98/70/EC relating to the quality of petrol and diesel fuels (as of 01.11.2017, the Directive should have been fully implemented).

What are the benefits of relevant standards?

The Directive prohibits the sale of leaded petrol, sets requirements for the quality of petroleum products, in particular regarding the content of lead and sulphur in them, it aims at limiting the harmful effects of petrol and diesel fuel for road transport on human health and the environment and establishes the obligation of the countries that implement it to monitor the compliance of these petroleum products with the requirements of the European standards EN 228 and EN 590 based on the analytical methods specified in these documents. Thereunder, the states have to:

– Adopt the national legislation and appoint an authorised body (bodies);

– prohibit the sale of leaded petrol (Article 3.1);

– introduce their own fuel quality monitoring systems that would provide reliable data on the compliance of petroleum products with the requirements of EN 228 and EN 590 (Article 8);

– submit annual reports on the scope of sales and quality of fuel in its territory, in particular regarding the geographic availability of unleaded petrol and diesel fuel with a sulphur content of less than 10 mg / kg;

– introduce a system of response in the event of sudden changes in the supply of raw materials that could make it difficult to comply with the established requirements (Articles 7 and 8).

What has been done to implement the commitments?

The requirement to ban the sale of leaded petrol was fulfilled as early as

on January 1, 2003, due to the adoption of the Law of Ukraine on Prohibition of the Importation and Sale in the Territory of Ukraine of Leaded Petrol and Lead Additives for Petrol dated 15.11.2001.

Requirements for the quality of petrol and diesel fuels are set in the Technical Regulation on Requirements for Road Vehicle Petrol, Diesel, Ship and Boiler Fuels, approved by CMU Resolution No. 927 dated 01.08.2013. According to the Regulation, from January 1, 2018, only Euro5 standard petrol can be sold in Ukraine, with the quality parameters in compliance with the Directive.

No assessment of national fuel consumption (due to the lack of monitoring of the quality and safety of petroleum products) required by the Directive and the Implementation Plan was implemented.

The National Standardisation Work Program for 2017, as amended on July 24 and September 28, 2017, envisages adoption, by the end of 2017, of 32 standards aimed at the implementation of the Directive. As of November 1, 2017, eight of them were approved, three are in the editing stage, 18 were sent back for revision, and three are in the initial stage of drafting.

By January 1, 2018, the Ministry of Energy and Coal Industry has to draft Technical Regulations on Requirements for Aviation Petrol and Jet Fuels that would comply with the requirements of Directive 98/70/EC (Plan task 32). However, it is unlikely that this and the above-mentioned tasks will be fulfilled due to the lack of funding.

Genetically modified organisms (GMOs)

Directive 2009/41/EC on the contained use of genetically modified micro-organisms (as of 01.11.2017, the Directive should have been fully implemented).

What are the benefits of relevant standards?

The Directive sets requirements for the contained use of genetically modified microorganisms (hereinafter referred to as GMM) (i.e., in conditions where such organisms do not have direct contact with the environment or humans). The key requirements include establishment of a GMM-associated risk assessment system based on their four classes, notification of their first use, and need for obtaining a permit for risk classes 3-4.

As of November 1, 2017, the following requirements of the Directive should have been fully implemented:

– adoption of national legislation and determination of the authorised body (bodies);

– classification of GMM and ensuring that users conduct risk assessment

(Article 4);

– application of the general principles and appropriate containment and other protective measures specified in Annex IV (Article 5);

– establishment of notification procedures (Articles 6-9);

– establishment of criteria for contingency plans (Articles 13-15);

– establishment of a system of confidentiality (Article 18).

What has been done to implement the commitments?

A new version of the Law of Ukraine "On the State Biosafety System in Creation, Testing, Transportation and Use of Genetically Modified Organisms" was developed. The draft law underwent public discussion but has not been adopted yet.

In general, it complies with Directive 2009/41/EC. The basic changes suggested in the new version concern supplementing definitions of individual terms or introduction of new ones – regarding the term GMO. The supplemented points include adding the methods of genetic material change, as well as those which do not lead to genetic modification, the definition of "environmental risk assessment", and extension of the definition of "GMO treatment". The main principles of state policy on GMO management include "establishment of a general system of notification and information exchange on transboundary movements of GMOs, promoting an adequate level of protection in the area of safe transportation, processing and use of GMOs that may adversely affect the conservation and sustainable use of biodiversity, taking into account the risks to human health". The scope of regulation of the draft law includes transboundary movements of GMOs, it contains provisions regulating the contained use of GMOs, and extends the applicable powers of the CMU and the relevant CEBs.

Waste and resource management

Directive 2008/98/EC on waste (as of 01.11.2017, the Directive had to be partially implemented)

What are the benefits of relevant standards?

This is the basic EU waste management Directive, which establishes the main requirements for waste management (except for radioactive, some agricultural, sewage, etc.): 5-level waste management hierarchy, the "polluter-pays" principle, increased responsibility of the producer, the principles of the relevant permit system, planning, target values for operations with some waste (for example, the level of household waste recycling).

As of November 1, 2017, the following requirements of the Directive had to be fully implemented:

- adoption of national legislation and determination of the authorised body (bodies); Timetable: These provisions of the Directive had to be implemented within 3 years from the date of entry into force of the Agreement;

- drawing waste management plans in accordance with the five-tier waste hierarchy and waste prevention programs (Chapter V of Directive 2008/98/EC).

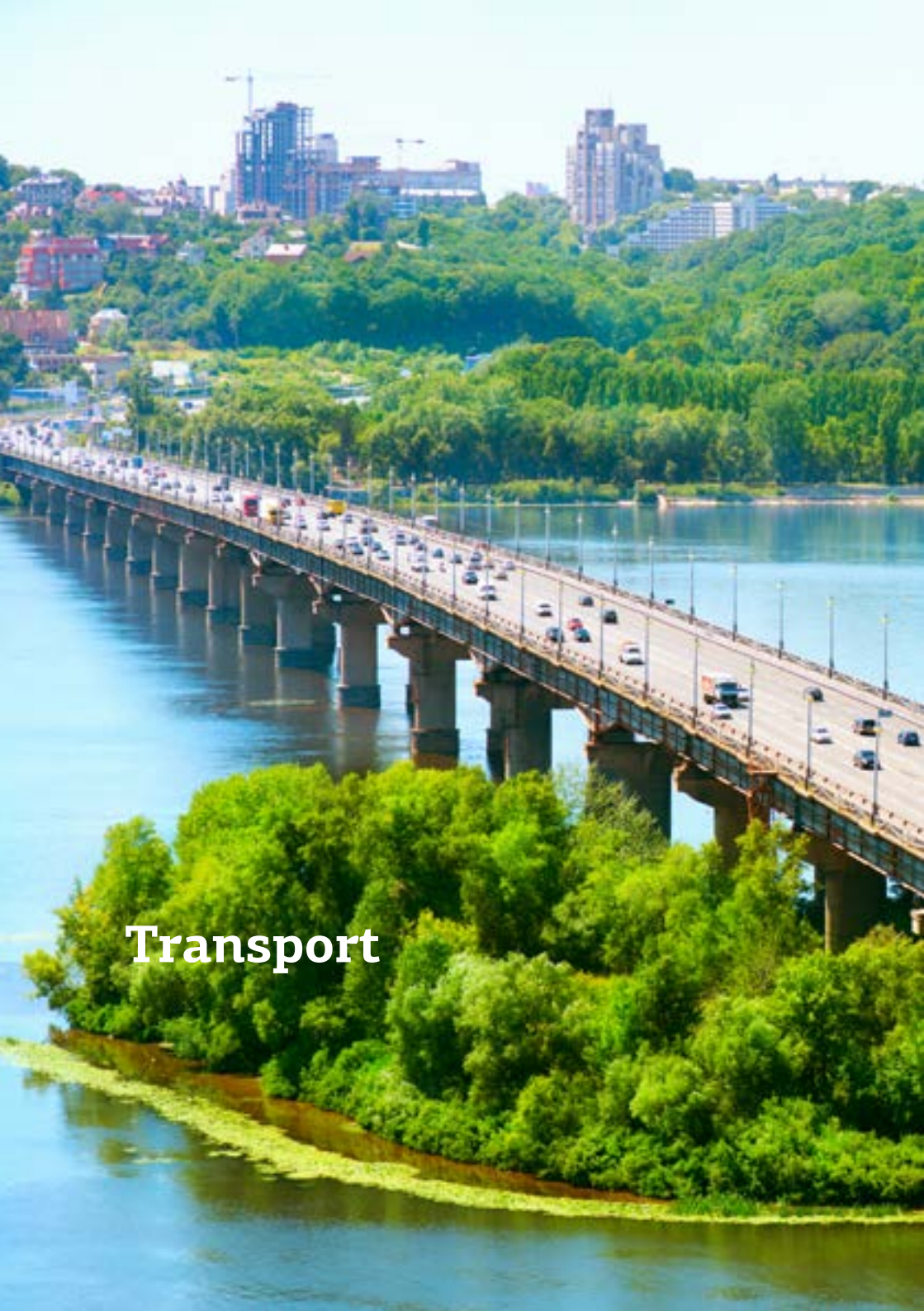
The above changes require adoption of basic national legislation in this area that would implement the provisions of the Directive. In addition, it is necessary to elaborate waste prevention programs and waste management plans covering the entire territory of Ukraine.

What has been done to implement the commitments?

On November 8, 2017, the Cabinet of Ministers of Ukraine approved the National Waste Management Strategy, which introduces the European principles of handling all types of wastes: solid household, industrial, construction, hazardous, agricultural waste, etc.

At the same time, to implement the Directive it is necessary to adopt a law on waste and a number of by-laws that do not yet exist. It is expected that the new draft law will be developed in the near future based on the strategy.

Pending consideration in the Verkhovna Rada of Ukraine are a number of draft laws submitted by MPs and some of them do not comply with the Directive.



Transport

Transport

Authors

Olena Stepanenko

Volodymyr Sevriukov

I. Review of commitments that had to be fulfilled from November 1, 2014 to November 1, 2016

In accordance with the commitments undertaken by Ukraine under the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, (hereinafter referred to as the Association Agreement) during the period from 1 November 2014 until 1 November 2016 national legislation had to be aligned with 3 EU Acts contained in Annex XXXII to Chapter VII Transport of the Association Agreement.

Unfortunately, there are no tangible results with regard to implementation of any of these directives.

Road transport

According to the timetables specified in Annex XXXII to the Association Agreement, in the previous period (by November 1, 2016) national legislation had to be partly aligned (as regards international traffic and transportation) with the requirements of the following EU acts:

1) **Council Directive 92/6/EEC** on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community;

2) **Directive 2009/40/EC** of the European Parliament and of the Council on roadworthiness tests for motor vehicles and their trailers;

3) **Directive 2008/68/EC** of the European Parliament and of the Council on the inland transport of dangerous goods.

After the Verkhovna Rada of Ukraine officially returned (on February 21, 2017) the Eurointegration draft law in the field of road transport (No. 4683) for revision, at the end of May this year, the Ministry of Infrastructure of Ukraine (hereinafter – the Ministry of Infrastructure) posted two new draft laws on its website for public discussion. One of them (in the field of the roadworthiness of wheeled vehicles) included the provisions of the first two of the above EU Directives. At present, the draft law of Ukraine "On Amendments to Certain

Legislative Acts of Ukraine in the Field of Roadworthiness of Wheeled Vehicles in Accordance with the Requirements of the Association Agreement between Ukraine, of the one Part, and the European Union, the European Atomic Energy Community and their Member States, of the Other Part" (it was substantially modified, and, according to our expert assessment, it does not correspond to the commitments undertaken by Ukraine under the Association Agreement) was registered in the Verkhovna Rada of Ukraine on November 17, 2017 under No. 7317 (hereinafter referred to as draft law No. 7317).

However, it is not clear why make things more complicated and draft new laws if the task was much easier – i.e. to take into account the comments provided in order to finalise draft law No. 4683 and re-submit it to the Parliament for consideration. This resulted in the loss of time and additional efforts of civil servants, and there are no results yet.

Almost a year has passed since the Committee on Transport adopted the decision to return draft law No. 4683 to its initiator for revision, and during this period neither the specialised ministry nor the Government managed to re-submit it for consideration to the Verkhovna Rada of Ukraine (draft law No. 7317 was introduced by a group of MPs), and therefore we cannot unequivocally argue that the adoption of European integration laws is being slowed down by Parliament alone.

Therefore, the issue of postponing the implementation of these EU Directives in Ukraine is raised, which does not reduce the risk that Ukrainian carriers can be denied the multiple-journey road haulage permits for next year due to the possible reduction of the ECMT (European Conference of Ministers of Transport) quota for Ukraine, and face problems when carrying out international road haulage in EU Member States. At the same time, we should note that, despite the situation with domestic legislation, Ukrainian transport operators actually carry out international haulage in compliance with international requirements (UNECE) and the requirements of the countries they cross.

As of November 1, 2017, the provisions of Directive 2008/68 / EC (third on the list) defining uniform approaches and requirements for the transport of dangerous goods, in particular by road vehicles in the EU, should have been fully implemented in the national legislation, but this issue has been losing momentum too.

The Ministry of Internal Affairs of Ukraine began to catch up with the schedule, ensuring Ukraine's accession in 2017 to the Protocol Amending the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) and introduction of necessary changes to Paragraph 30.3 of the Road Traffic Rules, however, the draft law registered in the Verkhovna Rada of Ukraine on August 9, 2016, under No. 5017 (regarding the frequency of the mandatory technical inspection of specialised vehicles engaged in the transport of dangerous goods in accordance with the ADR provisions) was withdrawn in October 2017 and the national Rules of Road Transport of Dangerous Goods have not been updated and brought into line with international treaties of

Ukraine in this area.

On March 21, 2017, the draft law on bringing laws in line with the EU legislation in this area (registration No. 4644 of May 11, 2016) that takes into account the provisions of Directive 2008/68 / EC did not pass the second reading, whereupon the Ministry of Infrastructure had to re-launch the process of harmonisation of the draft law with the same provisions and title (published on August 4, 2017).

Inland water transport

Just like in case of road transport, the national legislation on inland water transport should have been aligned with the provisions of Directive 2008/68 / EC. In addition to the above-mentioned Eurointegration draft law on the transport of dangerous goods, in early 2016 the Ministry of Infrastructure developed the Rules for the Carriage of Dangerous Goods by Inland Waterways of Ukraine, adopted in April 2017 by Order No. 126 of the Ministry of Infrastructure and registered with the Ministry of Justice. These Rules implement the requirements of the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN) at the national level and thus ensure partial approximation to the provisions of the said Directive. It is still necessary to adopt the above draft law, implement and improve the requirements concerning sanctions for violations in the transport of dangerous goods, as well as to introduce special training of personnel and authorised persons (consultants) on the safety of transport of dangerous goods of the entities involved in transport of such goods. This draft law was registered in the Verkhovna Rada of Ukraine on December 8, 2017, under No. 7387, and once again it was registered by MPs.

II. EU legislation in the field of transport that Ukraine had to fulfil from November 1, 2016 to November 1, 2017

Main responsible party: Ministry of Infrastructure of Ukraine. With regard to some directives, another responsible institution is the Ministry of Internal Affairs of Ukraine (MIA).

Position in the Association Agreement: Ukraine is expected to fulfil its commitments aimed at developing the transport infrastructure and its integration into the EU transport system. The commitments in the field of transport are set out in Appendix XXXII (32) to Chapter VII Transport and in Annex XVII (17-5) to Chapter VI Establishment, Trade in Services and Electronic Commerce of the Association Agreement.

In the period from November 1, 2016 to November 1, 2017, Ukraine had to approximate its legislation to 18 EU acts in the field of road, inland waterway and maritime transport.

Road transport

1) **Council Directive 92/6/EEC** on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community;

2) **Council Directive 96/53/EC** laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic;

3) **Directive 2009/40/EC** of the European Parliament and of the Council on roadworthiness tests for motor vehicles and their trailers;

4) **Directive 2008/68/EC** of the European Parliament and of the Council on the inland transport of dangerous goods[1];

5) **Regulation (EC) No 1071/2009** of the European Parliament and of the Council establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator;

6) **Directive 2002/15/EC** of the European Parliament and of the Council on the organisation of the working time of persons performing mobile road transport activities;

7) **Directive 2003/59/EC** of the European Parliament and of the Council on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers;

8) **Council Directive 91/439/EEC** on driving licences (Directive 2006/126/EC of the European Parliament and of the Council).

Inland waterway transport

1) **Directive 2008/68/EC** of the European Parliament and of the Council on the inland transport of dangerous goods[2];

2) **Council Directive (EEC) 87/540** on access to the occupation of carrier of goods by waterway in national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation.

Maritime transport

1) **Regulation (EC) No 336/2006** of the European Parliament and of the Council on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95;

2) **Regulation (EC) No 392/2009** of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents;

3) **Regulation (EC) 782/2003** of the European Parliament and of the Council on the prohibition of organotin compounds on ships;

4) **Directive 2005/65/EC** of the European Parliament and of the Council on enhancing port security;

5) **Regulation (EC) 725/2004** of the European Parliament and of the

1) This Directive also contains provisions relating to inland waterway transport.

2) This Directive also contains provisions relating to road transport.

Council on enhancing ship and port facility security;

6) **Directive 2008/106** of the European Parliament and of the Council on the minimum level of training of seafarers;

7) **Directive 2003/25/EC** of the European Parliament and of the Council on specific stability requirements for ro-ro passenger ships;

8) **Council Directive 1999/35/EC** on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services;

9) **Regulation (EC) 417/2002** of the European Parliament and of the Council on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) 2978/94[3].

Road Transport

Council Directive 92/6/EEC on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community

What are the benefit of the relevant standards?

The Directive establishes requirements for the compulsory equipment of vehicles of categories M2, M3, N2, N3 (buses and heavy goods vehicles), new or in use, with speed limitation devices (mechanical or electronic), requirements for their design, installation and adjustment of speed limits (for heavy goods vehicles – 90 km/h, for buses – 100 km/h); identification of organisations that can install, adjust, maintain and repair speed limitation devices to improve traffic and transportation safety.

As of 1 November 2017, the provisions of the Directive should have been implemented for all vehicles used for international cargo and passenger transportation.

What has been done to implement the commitments?

Instead of draft law No. 4683, in May 2017 the Ministry of Infrastructure drafted and published the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine in the Field of Roadworthiness of Wheeled Vehicles in Accordance with the Requirements of the Association Agreement between Ukraine, of the one Part, and the European Union, the European Atomic Energy Community and their Member States, of the Other Part", which includes the provisions of the Directive. However, on November 17, 2017, a group of MPs

3) This Regulation applies to Appendix XXXII (32) to Chapter VII Transport and Annex XVII (17-5) to Chapter VI, Establishment, Trade in Services and Electronic Commerce of the Association Agreement.

submitted to the Verkhovna Rada of Ukraine a similar draft law under the same title registered under No. 7317.

This draft law envisages amendments to the Administrative Offences Code of Ukraine in order to impose responsibility for admitting to work and driving a vehicle with a disable and/or defective speed limitation device or without such a device, as well as for manipulating it or forging protocols relating to its settings; and also to the laws of Ukraine "On Road Traffic" (as regards the driver's duties) and "On Road Transport", setting the basic requirements for the installation and use of speed limitation devices for certain categories of vehicles.

It is worth noting that draft law No. 7317 is a less successful attempt to implement the provisions of the Directive compared to the previous "May" draft law of the Ministry of Infrastructure, which provides a more clear definition of the vehicles to be equipped with speed limitation devices (with reference to their categories – M2, M3, N2, N3, rather than a definition of the term "commercial vehicle", and taking into account the date of the first registration in Ukraine – i.e. after January 1, 2008, as stipulated by the Association Agreement) and those where such devices do not have to be installed, as well as the speed limit to be set in these devices.

The draft law provides for introduction of requirements for installing speed limitation devices both for vehicles involved in international traffic (proposed date: from July 1, 2018) and those involved in domestic traffic (proposed date: from January 1, 2019, however, the draft law does not mention that the requirement is mandatory only for the vehicles first registered after January 1, 2008, which is important, since it is technically impossible to install such devices in vehicles of older design, and, therefore, it is impossible to comply with these requirements).

At the same time, the requirements for the design of speed limitation devices and conditions of their installation by manufacturers on new vehicles are set out in UN Regulation No. 89, annexed to the Agreement Concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or Be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these Prescriptions issued on the basis of these Regulations of 1958, as amended in 1995 (hereinafter referred to as the 1958 Geneva Agreement), with the contracting parties including EU Member States and Ukraine.

In the EU, the 1958 Geneva Agreement was implemented in Directive 2007/46 / EC establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, containing references to UN Regulation No. 89. In Ukraine, the relevant requirements are established in the Procedure for Approving the Design of Vehicles and their Parts and Equipment approved by Order No. 521 of the Ministry of Infrastructure of August 17, 2012. Therefore, today buses and heavy goods vehicles of the corresponding categories manufactured in Ukraine

or imported to its customs territory must be equipped with such devices.

National legislation also regulates the issues of mandatory installation and adjustment of speed limitation devices on vehicles involved in international road haulage and obligatory technical control of vehicles as regards speed limitation devices if the installation of these devices is provided for by law. Consequently, the process of approximation to the provisions of the Directive is gradual, but in international traffic (primarily that with EU Member States as the destination), Ukrainian carriers already use motor vehicles that meet the requirements of this Directive, while in domestic road haulage these requirements are met partly, on condition of availability of modern commercial motor vehicles.

The Directive provisions are also implemented within the framework of fulfilment of the 1958 Geneva Agreement and Order No. 521 of the Ministry of Infrastructure through certification of motor vehicles, as well as via compulsory technical inspection of commercial vehicles.

This situation is unique because the requirement per se is not stipulated in national legislation, but in practice it is implemented. This is due to the fact that Ukrainian businesses will have a problem carrying out international road haulage to the EU if they do not comply with the requirements of this Directive.

Council Directive 96/53/EC laying down for certain road vehicles circulating within the Community the maximum authorised dimensions in national and international traffic and the maximum authorised weights in international traffic

What are the benefit of the relevant standards?

The Directive establishes common requirements for the authorised dimensions in national and international traffic and the maximum authorised weights in international traffic, as well as the maximum axle loads of vehicles and their groups in order to preserve the motor transport infrastructure and ensure the proper level of traffic safety.

As of November 1, 2017, the provisions of the Directive should have been introduced for vehicles registered in the EU when they move within the international E-road network.

What has been done to implement the commitments?

On June 23, 2017, draft law of Ukraine No. 6644 "On Amendments to the Law of Ukraine 'On Road Transport' (as regards compliance by road haulage market participants with transport legislation in respect of the weight and dimensions of vehicles) was registered in the Verkhovna Rada of Ukraine. The draft law envisages introduction of rules as regards the obligation of the

consignor to monitor compliance with the norms established by law when loading a motor vehicle and establishes liability for violation of such norms. On October 4, 2017, the Committee on Transport decided to recommend that the Parliament, following the results of its consideration, should adopt it as a basis and in general. This draft law is indirectly related to the Directive, since it does not establish any specific technical requirements / restrictions on the maximum dimensions and weight of vehicles but it is important in terms of meeting the specified requirements for these parametres of vehicles, in particular those specified in the Road Traffic Rules, and ensuring proper weight and dimension control.

In addition, the Ministry of Infrastructure in cooperation with the State Agency of Mototr Roads (Ukravtodor) drafted a resolution of the Cabinet of Ministers of Ukraine on amendments to paragraph 22.5 of the Road Traffic Rules in order to bring it into conformity with certain provisions of the Directive. The current paragraph 22.5 of the Road Traffic Rules specifies the maximum weight and axle loads of vehicles that are largely in accordance with the provisions of the Directive. The draft act provides for an increase of the permissible load on the triple axle of vehicles for certain sections of public roads of national significance (first of all those that have been completely repaired during last five years), the increase should amount to 24 (compared to the previous 22) tons provided that the distance between the axles is 1.4 m. A list of public roads will be approved by the Ministry of Infrastructure. The specified draft act was posted on the website of the Ministry of Infrastructure on January 6, 2017, but so far it has not been approved.

As a whole, the degree of approximation to this Directive is rather high, it is still necessary to align legislation with some of its provisions (regarding the gradation of permissible axle loads), which is expected to be partially implemented via amendments to the Road Traffic Rules. However, it should be taken into account that the maximum permissible values of the weight of vehicles are directly related to the technical characteristics of roads (design of their road surface and materials applied), as well as the condition of roads. It is impossible to restore or replace roadways within a short term (this requires significant financial and labour resources), and therefore these characteristics are established based on the least devastating impact on the road surface of motor vehicles during their movement on public roads. In addition, the Directive provides more detailed indicators than those in the Road Traffic Rules, in particular with regard to the maximum permitted dimensions of different types of vehicles, as well as the gradation of allowable axle loads mentioned above, but this issue does not seem to be critical.

In addition, there is certain progress in the implementation of the relevant norms, including those related to the production and certification of vehicles as well as dimension and weight control of vehicles on public roads by inspectors of the State Service of Ukraine for Transport Safety (Ukrtransbezpeka). It is also important to mention the mobile devices for control, including size and weight control (all in all, by the end of this year it was planned to purchase 78

devices), purchased for the Ukrtransbezpeka using the European Commission's funds (provided to the Ministry of Infrastructure in the framework of fulfilment of the Agreement on financing the program "Support for Implementation of the Transport Strategy of Ukraine").

Directive 2009/40/EC4 of the European Parliament and of the Council on roadworthiness tests for motor vehicles and their trailers

What are the benefit of the relevant standards?

The Directive establishes minimum requirements for the system of periodic roadworthiness tests of registered vehicles, defines the scope and methods of roadworthiness tests, criteria for their evaluation, requirements for the authorisation of vehicle testing centres and qualifications of their personnel in order to guarantee the safe road traffic.

As of November 1, 2017, the provisions of the Directive should have been implemented for all vehicles used in international cargo and passenger transportation.

What has been done to implement the commitments?

First of all, it should be noted that in the EU Member States, testing the roadworthiness of vehicles is mandatory in accordance with the requirements of Directive 2009/40/EC and recognized as an important prerequisite for traffic safety. Taking into account the fact that Directive 2009/40/EC of 20 May 2018 is no longer in force, Ukraine intends to implement the provisions of new Directive 2014/45/EC that takes into account the positive experience of the EU member states that successfully implemented the previous Directive and solved the problem of potential corruption risks associated with verification (which is very important given the reason for vehicle inspection cancellation in Ukraine in 2011).

This Directive is part of the so-called "roadworthiness package" consisting of three basic EU directives: Directive 2014/45/EC on periodic roadworthiness tests for motor vehicles and their trailers, Directive 2014/47/EC on the technical roadside inspection of the roadworthiness of commercial vehicles and Council Directive 1999/37/EC on the registration documents for vehicles as amended by Directive 2014/46/EC.

It should be noted that the difference between the requirements of Directive 2009/40/EC and Directive 2014/45/EC in technical matters is negligible, but the essential provisions of the latter regarding the supervision of training centres, vehicle testing centres, competence and responsibility of experts, evidence and criteria for roadworthiness assessment are very important in terms of ensuring traffic safety and citizens' confidence in the

4) This Directive was repealed by Directive 2014/45/EC that Ukrainian legislation is being aligned with.

effectiveness of the system of vehicle roadworthiness testing.

Testing of the roadworthiness of vehicles and their trailers for international cargo and passenger transport is provided for in the laws of Ukraine "On Road Traffic" and "On Road Transport", the Procedure for and Scope of Mandatory Roadworthiness Tests for Vehicles, Specification and Form of the Vehicle Inspection Sheet (Resolution No. 137 of the Cabinet of Ministers of Ukraine dated January 30, 2012) and international agreements on the mutual recognition of technical inspections.

The provisions of the Directive are largely taken into account in national legislation. However, only commercial vehicles are subject to mandatory technical inspections in Ukraine, while personal vehicles are exempted from it. It is also necessary to specify a number of criteria for assessing roadworthiness flaws of motor vehicles and some methods of roadworthiness tests, as well as to eliminate a number of gaps in the training of personnel of inspection centres, their powers and supervision over their activity.

In this regard, draft law No. 7317 includes certain provisions of the Directive, however, the following should be pointed out:

• the proposed amendments to the Law of Ukraine "On Road Traffic" imply introduction of roadworthiness tests for both vehicles in service and new ones in order to allow them to be put into operation, which seems to be a "strange" decision, to put it mildly.

That is, it will be necessary to test new (or almost new) vehicles. For example, if someone wants to sell a six-month-old or a year-old car, under the draft law, he will have to undergo tests to re-register it, which is a waste of time and money (his or the buyer's). The same concerns almost new imported vehicles – they will need to undergo the same procedure when registering them in Ukraine. This is not the case in EU Member States – according to the Directive, vehicles shall be subject to their first roadworthiness test in 4 years after the first registration, and then every 2 years. This rule is enshrined in the draft law, but it is superseded by another rule requiring vehicle inspection for registration/re-registration or change of its owner. Contrary to the provisions of Article 5 of the Directive, roadworthiness test have to be carried out in case of registration/re-registration of the vehicle, every change of its owner and when the vehicle travels outside the customs control zone of Ukraine (although some European countries abolished certification of used vehicles, imported to Ukraine);

• according to the amendments to Articles 35 and 52-1 of the Law of Ukraine "On Road Traffic", vehicle roadworthiness tests[5] shall be carried out by

5) In accordance with the Association Agreement (namely, according to the timetable specified in Annex XXXII in relation to this Directive), on November 1, 2017, Ukraine had to introduce technical inspection requirements for vehicles used in international traffic. Regarding domestic ones, the dealine is November 1, 2019, but the draft law proposes to introduce obligatory technical inspection of private (non-commercial) vehicles from January 1, 2021, except for those that are registered / re-registered, change the owner, undergo re-equipment, travel abroad and are subject to the requirement to undergo such inspection before the specified date.

testing centres, authorised by the Ministry of Internal Affairs (upon submission of the Ministry of Infrastructure), and the powers of the Ministry of Internal Affairs include registration of roadworthiness testing entities and monitoring (supervision) of their activity. However, in EU Member States, authorisation of economic operators to carry out such tests and keep the relevant register, as well as monitoring of their activity does not fall within the scope of competence of bodies equivalent to the Ministry of Internal Affairs, especially given the fact that the Ministry of Infrastructure is the competent body for verification of the roadworthiness of vehicles under the Vienna agreement concerning periodical technical inspections of wheeled vehicles and the mutual recognition of such inspections of November 13, 1997 (in accordance with Resolution No. 1036 of the Cabinet of Ministers of Ukraine of August 9, 2007);

• amendments to the Law of Ukraine "On Road Transport" provide for procedures for the authorisation of economic operators to conduct vehicle roadworthiness tests that are fraught with corruption risks;

Apart from the above, there are a number of other inconsistencies with the provisions of the Directive (both in terms of terminology and in terms of the requirements for individual elements of the "technical inspection" system, including those relating to roadside technical inspections of commercial vehicles specified in Directive 2014/47 / EC). Therefore, it is clear that draft law 7317 still needs to be reviewed by MPs and specialists.

Ukrainian legislation is being approximated to this Directive. Special attention should be given to the fact that during the alignment of Ukrainian legislation with the Directive its provisions were incorrectly implemented as regards the body responsible for the technical inspection of vehicles – draft law No. 7317 gives this authority to the Ministry of Internal Affairs, which is contrary to the Directive.

Directive 2008/68/EC of the European Parliament and of the Council on the inland transport of dangerous goods

What are the benefit of the relevant standards?

The Directive establishes requirements for the transport of dangerous goods by road, rail and inland waterways in accordance with international agreements in this field (in respect of road transport – ADR) in order to increase the level of safety in the transport of such cargoes, to harmonise the conditions under which dangerous goods can be transported within the Community, and ensure the proper functioning of the common transport market.

As of November 1, 2017, the provisions of the Directive should have been implemented for all international and national road haulage of dangerous goods.

What has been done to implement the commitments?

In order to implement the provisions of the Directive and, in particular, the ADR (Ukraine is a Contracting Party to this Agreement), the Ministry of Infrastructure drafted Law of Ukraine No. 4644 "On Amendments to Certain Laws of Ukraine to Bring Them in Line with the Legislation of the European Union in the Field of Transport of Dangerous Goods" submitted by the Government and registered in the Verkhovna Rada of Ukraine on May 11, 2016. On January 17, 2017, the draft law was adopted by the Parliament in the first reading, but in the second reading (March 21, 2017) it did not receive the required MPs' support, and, therefore, the Ministry of Infrastructure had to start its work almost from scratch.

On August 4, 2017, the new-old draft law was published on the website of the Ministry of Infrastructure and sent for re-approval by ministries and other authorities. However, on December 8, 2017, this draft law was registered in the Parliament under number 7387 on behalf of a group of MPs of Ukraine.

The draft law provides for amendments to the laws of Ukraine "On the Transport of Dangerous Goods", "On Transport", and "On Road Transport", which specify the terminology, revise the competence of the bodies that carry out state administration in the field of transport of dangerous goods, introduce and clarify the rules regarding the rights and duties of authorised persons (consultants, advisers) as regards the safety of transport of dangerous goods and other participants of the transport process involved in transport of dangerous goods by road, rail and inland waterways.

It should be noted that the draft law complies with the provisions of the Directive but the system of penalties for violations in this area needs to be reviewed and supplemented, which also needs to be implemented at the legislative level. Besides, after the draft law is adopted, it will be necessary to bring the requirements for transport of dangerous goods to the European level by reviewing the national legislation in this area, in particular the Rules for Transport of Dangerous Goods.

If the Ministry of Infrastructure conducts work in this area as the competent authority of Ukraine in charge of issues related to transport of dangerous goods, the powers of the Ministry of Internal Affairs in accordance with the Law of Ukraine "On Transport of Dangerous Goods" include regulation of the issues of road transport of such goods. In order to implement the Directive, the Ministry of Internal Affairs has ensured adoption of:

- Law of Ukraine No. 1825-VIII "On Accession to the Protocol on Amendments to Para. a, Part 1, Article 1 and Part 1 and Para. b, Part 3, Article 14 of the European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR)" dated January 19, 2017 (although the Protocol itself has not yet entered into force, since not all of the Contracting Parties to the ADR have ratified or acceded to it);

- Resolution No. 641 of the Cabinet of Ministers of Ukraine of September

14, 2016, "On Amendments to Para. 30.3 of the Road Traffic Rules in order to bring national legislation into line with the ADR standards regarding the layout of dangerous cargo information table and danger signs. These requirements are implemented through the system of approval of vehicles for the transport of dangerous goods involving the issue of the corresponding ADR certificate by territorial service centres of the Ministry of Internal Affairs and supervision on the road.

Apart from that, the Ministry of Infrastructure and the Ministry of Internal Affairs adopted joint decree No. 166/550 of May 12, 2015 "On Approval of the Procedure for Inspection of Tanks for Transport of Dangerous Goods", registered with the Ministry of Justice, to prevent emergencies arising as a result of leakage of dangerous goods, non-compliance of the technical condition of tanks and their equipment with regulatory requirements. However, so far the Ministry of Internal Affairs has not appointed organisations responsible for inspections of motor transport tanks, and therefore, the Procedure has not been enforced in practice for this type of transport.

In addition, the Ministry of Internal Affairs has drafted a draft law registered in the Verkhovna Rada of Ukraine on August 9, 2016, under No. 5017 aiming to bring the requirements of Article 35 of the Law of Ukraine "On Road Traffic" with regard to the frequency of compulsory technical inspection for specialised vehicles carrying dangerous goods in compliance with the ADR provisions (the requirement to undergo inspection twice a year is replaced with an annual inspection requirement). However, in October 2017, it was withdrawn, although the Transport Committee had already taken a decision to recommend that Parliament, on the basis of the results of its consideration in the first reading, should adopt it as a basis.

A new version of the Rules for Transport of Dangerous Goods (far from complying with the provisions of the Directive and ADR) was prepared by the Ministry of Internal Affairs last year but has not been adopted.

Hence, the requirements of this Directive have already been partially implemented in national legislation and are practically implemented in international road transport but there are still a lot of work to do as regards inland transport.

The Directive requires compliance with ADR (to which Ukraine is a contracting party) rules for transport of dangerous goods by road. Its requirements and the requirements of national legislation are fulfilled primarily as regards admission of drivers (through the system of their training and examinations in territorial centres of the Ministry of Internal Affairs) and vehicles (carried out by the territorial centres of the Ministry of Internal Affairs based on their inspection) to transport of dangerous goods. To a large extent, these requirements are met by Ukrainian carriers in international traffic (again, the main stimulus is large fines imposed by European supervision authorities) and, to a lesser extent, in domestic traffic – due to outdated fleet that does not fully meet the technical requirements, failure to conduct technical inspections

of tanks (as mentioned above) and a limited number of trained inspection personnel of Ukrtransbezpeka and patrol police.

Regulation (EC) No 1071/2009 of the European Parliament and of the Council establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator

What are the benefit of the relevant standards?

The Regulation sets forth requirements concerning the conditions to be complied with to pursue the occupation of road transport operator based on fair competition. The requirements are common to all EU Member States in order to ensure fair competition in the market, improve road safety and quality of road transport.

As of November 1, 2017, the provisions of the Regulations stipulated by Articles 3-6, 7 (except for those relating to financial standing), 8, 10-15 and Annex I should have been implemented for all transport operators involved in international transport operations.

What has been done to implement the commitments?

To replace draft law 4683, the Ministry of Infrastructure drafted a Law of Ukraine with the same name (but without the standards concerning "technical" issues set forth in another draft law – i.e. No. 7317) that includes certain provisions of the Regulation. The draft law was published on the Ministry of Infrastructure's website back in May this year. But, just like draft law No. 7317, it was submitted to the Verkhovna Rada by a group of MPs and registered on December 8, 2017, under No. 7386, bypassing long-term approval procedures with ministries and other state bodies.

The draft law involves amendments, in particular to the Law of Ukraine "On Road Transport", which introduce the Regulation provisions concerning admission of transport operators to the market of transport services (subject to compliance with the principles of impeccable business reputation, professional competence and ensuring the proper financial standing, as well as availability of an office in the territory Ukraine where documents are kept regarding the organisation and terms of its activity) and establishment of the State Register of Road Transport Operators. In general, the draft law complies with the provisions of the Regulation.

It is important to note that the said Regulation is one of the three EU legislative acts adopted as a package that comprehensively regulate the conditions to be complied with to pursue the occupation of road transport operator and licencing of the activity of road transport operators. The other acts within this package are Regulation (EC) No. 1072/2009 and Regulation (EC) No. 1073/2009, without which it is not possible to fully approximate the

legislation of Ukraine to the EU legislation in this area.

In order to approximate national legislation on licencing of road transport to European norms, Ukrtransbezpeka prepared a draft resolution of the Cabinet of Ministers of Ukraine "On Amendments to the Licencing Conditions for Conducting Road Transport Operations Involving Transport of Passengers, Dangerous Goods and Hazardous Wastes, and International Road Transport of Passengers and Goods" (published in July this year). However, this draft act raised questions on the part of the State Regulatory Service, associations of carriers, public organisations and business entities. In this regard, amendments were made (due to the fact that the latest version of the draft act is not accessible for the public, it is difficult to assess it).

In addition, given the fact that the provisions of the Regulation provide for establishment of interconnected electronic national registers of transport operators and further integration of these register (i.e., in fact, creation of an "electronic" licence with elements of "electronic" governance), Ukrtransbezpeka established a working group responsible for creation of a single state electronic register of road transport operators in accordance with EUCARIS requirements. To this end, a Memorandum of Cooperation was signed between the Ministry of Infrastructure, the State Agency for E-Governance of Ukraine and the Eurasia Foundation (Transparency and Accountability in Public Administration and Services (TAPAS), an international technical assistance project) and a meeting was held on designing a portal for electronic filing of documents and creation of a register of transport operators complying with the requirements of the Regulation.

In September 2017, the Ministry of Infrastructure held a presentation of Technical Specification for the "Electronic Account of the Transport Operator" portal developed by the TAPAS project, as well as discussion of the portal features with its potential users. Should the project be successfully implemented, transport operators will be able to submit documents to the licencing body in the e-form in accordance with Resolution No. 363 of the Cabinet of Ministers of Ukraine dated May 24, 2017, and will have access to information stored in the Unified Information System of Ukrtransbezpeka. The Technical Specification is available on the website of Ukrtransbezpeka to be reviewed by stakeholders and to elicit suggestions.

It should be noted that, as regards functioning of the national electronic register and confirmation of an impeccable business reputation, it is important to take into account and implement the provisions of Commission Regulation (EC) No. 2016/403, which complements the Regulation and constitutes an integral part of the system of regulation of admission to the road haulage market in terms of the classification of serious violations of EU rules that could result in the loss of an impeccable business reputation by the road transport operator.

Regarding the criterion of professional competence, the document valid today is the Procedure for Qualification Improvement of Managers and

Specialists whose Activity is Related to Provision of Motor Transport Services approved by Order No. 551 of the Ministry of Infrastructure, dated July 26, 2013. Its rules are based on the provisions of the Regulation. However, in fact, it is not enforced, since during the four years since the Procedure came into force, no training centre for such managers and specialists has been authorised, and no standard curricula have been adopted and, consequently, no road transport specialist has been trained.

An important condition for ensuring the further full approximation to the provisions of this Regulation is adoption by the Verkhovna Rada of Ukraine of amendments to the Laws of Ukraine "On Road Transport" and "On Licencing of Types of Economic Activity", which is envisaged by draft law No. 7386.

Some steps are taken to implement certain provisions of this Regulation, in particular:

- as regards licencing road transport operators in accordance with legislation and the Licencing Conditions approved by CMU Order No. 1001 of December 2, 2015, containing requirements for the qualification of personnel similar to those provided for in the Regulation (the problems concerning the enforcement of order No. 551 of the Ministry of Infrastructure were mention above);

- as regards distribution of ECMT permits for international cargo transport provided for by amended Order No. 257 of the Ministry of Infrastructure of July 26, 2017, Procedure for Calling Tenders and Issue of Permits of the European Conference of Ministers of Transport (approved by Order No. 757 of the Ministry of Infrastructure, dated August 20, 2004) aimed to introduce the requirements for impeccable business reputation, the proper financial standing and professional competence of the transport operator's managers as a condition for obtaining ECMT permits (currently, consideration of the transport operator's documents and distribution of ECMT permits are underway as supervised by the commission composed of representatives of the Ministry of Infrastructure, Ukrtransbezpeka, AsMAP Ukraine and others).

Directive 2002/15/EC of the European Parliament and of the Council on the organisation of the working time of persons performing mobile road transport activities

What are the benefit of the relevant standards?

The Directive establishes minimum requirements concerning organisation of the working time of persons performing mobile road transport activities (i.e. drivers and crews of vehicles), defining periods of road transport activities (working time, break time, rest periods, periods of availability) and other concepts (night work, night time, week) in order to improve the health and safety of such workers, improve road safety and align conditions of

competition.

By November 1, 2017, the provisions of the Directive should have been implemented for international transport.

What has been done to implement the commitments?

In accordance with the current Article 20 of the Law of Ukraine "On Road Transport", in the territory of Ukraine, it is necessary to fulfil requirements for installation and use of control devices (tachographs) for registration of work and rest regimes of drivers, as stipulated by the legislation of the countries where the carriage is performed. Besides, Ukraine just like EU Member States, is a Contracting Party to the European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) of 31 March 1971 and the ILO's Convention concerning Hours of Work and Rest Periods in Road Transport No. 153 of June 27, 1979. Also, national legislation (order No. 340 of the Ministry of Transport and Communications of June 7, 2010) incorporated some provisions of the Directive as regards the established norms for breaks in work and rest periods.

At the same time, although the Ukrtransbezpeka is authorised to check adherence to the legislatively set regimes of work and rest periods and the availability of installed tachographs in vehicles (especially those engaged in international road transport), but today there are issues concerning the practical implementation of such checks due to non-availability of the necessary equipment, software and trained inspectors of the Ukrtransbezpeka. Despite this, Ukrainian operators involved in international traffic do comply with the requirements of European legislation as regards these issues because they understand that they may be stopped by inspectors of European supervisory bodies (and undergo checks of work and rest regimes for almost the entire previous month) and will have to pay huge fines in case of violations.

At the same time, it is necessary to implement other provisions of the Directive governing legal relationships regarding:

- harmonisation of the terms used in the Directive with the terms used in Ukrainian legislation;
- setting requirements for drivers in relation to the duration of the working week;
- establishment of record keeping requirements for drivers and road transport companies;
- regulation of night working time;
- establishment of penalties for violations and ensuring proper control over compliance.

Some of the provisions of this Directive are included in draft law No. 7317, however, the terminology proposed therein, supplementing the Law of Ukraine "On Road Transport", does not fully comply with the EU legislation in this area (including the Directive). For example, the term "night time" according

to the draft law, means the period between 22:00 hours and 06:00 hours of one day (24 hours), and according to the Directive, it stands for a period of at least four hours, as defined by national law, between 00.00 hours and 07.00 hours. There is also no requirement for transport operators to keep a record of the working time of mobile workers engaged in road transport activities and to keep such records for a certain period after the period they cover is over. In addition, the requirements for the work of mobile workers and control of drivers' work and rest periods set forth in Article 18 of the Law of Ukraine "On Road Transport" do not fully cover the provisions of the Directive and other EU legislation.

In addition to the above legislative changes, it is necessary to appropriately amend the Regulation on the Regime of Work and Rest of Drivers of Wheeled Vehicles, approved by Order No. 340 of the Ministry of Transport of 7 June 2010, and improve the Ukrtransbezpeka's supervision over compliance with legislation.

However, since Ukraine is a Contracting Party to the AETR[6] and the ILO's Convention No. 153[7], its national legislation provides rules on work and rest periods, the use of tachographs, control over compliance with these requirements and responsibility for their violation, but still it is necessary to amend legislation as regards certain provisions of the Directive (as indicated above).

In international traffic, vehicles are actually equipped or being equipped with tachographs; in Ukraine, digital tachograph cards are issued (for drivers, undertakings, workshops, controllers), there are certified workshops for tachograph repair and calibration, Ukrtransbezpeka's inspectors supervise compliance with the established requirements (but some problems still have not been tackled as outlined above).

Therefore, we believe that the provisions of this Directive cannot be considered fully implemented in Ukrainian legislation. Ukrainian transport operators comply with the requirements of the Directive due to international agreements and conventions rather than national legislation.

Directive 2003/59/EC of the European Parliament and of the Council on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers

What are the benefit of the relevant standards?

The Directive specifies the procedure for obtaining the initial qualification

6) The European Agreement Concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR).

7) ILO's Convention concerning Hours of Work and Rest Periods in Road Transport No. 153 of June 27, 1979.

and periodic training of drivers of certain road vehicles for the carriage of goods or passengers (categories C, CE, C1, C1E, D, DE, D1, D1E) in order to improve the standards of training of new drivers, maintaining and enhancing the level of professionalism of already operating truck and bus drivers, which is an important element in ensuring the safety of road traffic.

By November 1, 2017, the provisions of the Directive should have been implemented for drivers involved in international traffic.

What has been done to implement the commitments?

The provisions of the Directive are also included in draft law No. 7317 but it (as well as previous draft law No. 4683 rejected by Parliament and another version of this draft law published by the Ministry of Infrastructure in May 2017) does not implement all the provisions of the Directive.

It is important to highlight that the philosophy of the Directive implies that a professional driver must possess specialist knowledge and practical skills that exceed those which need to be confirmed by an applicant who receives the driving licence for the relevant categories (in particular, C or D). Today in Ukraine, most of the drivers carrying out passenger and cargo transport are engaged in their occupation only on the basis of the driving licence. This situation is fraught with risks for the transport safety.

The provisions of the Directive provide for initial qualification or accelerated initial qualification, as well as for periodic training (every 5 years) based on which they receive a certificate of professional competence (hereinafter – the CPC). The driver's CPC is confirmed by a code affixed by a competent authority (indicating the expiry date of the CPC) to the driving licence or driver's qualification card (Annex II of the Directive), or in the driver's national certificate provided for in Regulation (EC) No. 1072/2009. Draft law No. 7317 does not contain these requirements.

Moreover, draft law No. 7317 does not provide for the following:

• approximation to the European minimum age requirements for obtaining the driving licence of the relevant category and for commercial transport of passengers and goods, as the current requirements do not comply with the provisions of the Directive;

• requirements for organisation of the system for certification of the qualification of drivers of commercial vehicles (it is necessary to stipulate the procedure for issuing the CPC and its expiry period, the state authorities and procedures that will be used to certify centres for training drivers, requirements and criteria for them, etc.);

• establishment of the date/dates until which the requirements for initial training/qualification will not apply to drivers who already have the right to drive buses or heavy goods vehicles, combination of vehicles (e.g., until January 1, 2016 for road haulage, as stipulated by the Quality Charter);

• gradual introduction of initial and periodic training of drivers (starting,

for example, with international traffic) and the final date (period) of the first cycle of periodic training of drivers, that is, it is necessary to give some time for the introduction of a new system as provided for in the Directive;

• initial and periodic training of drivers who are non-residents, have a driving licence issued abroad and work for Ukrainian transport operators.

Given these unresolved issues, it is obvious that draft law No. 7317 needs to be revised to take into account all provisions of the Directive.

Given the fact that future drivers of commercial vehicles (categories C and D) undergo training (so-called "initial qualification") based on the current training programs covering part of the subjects listed in Annex I of the Directive and obtain national driving licences, technically, this can be considered as implementation of the provisions but this is far from what is envisaged by the provisions of the Directive, and most importantly, there is no basic legislation for professional drivers.

Council Directive 91/439/EEC on driving licences[8]

What are the benefit of the relevant standards?

The Directive introduces requirements for a model driving licence model in the Community, sets out the conditions and requirements for issue and reissue (renewal / replacement) of driving licences, procedures for the training and testing driving knowledge and skills and medical examinations. The purpose is to establish uniform rules for driver certification for EU Member States to ensure mutual recognition thereof, to ensure freedom of movement for drivers, to strengthen safety on European roads and to reduce the possibility of fraud in relation to driving licences.

As of November 1, 2017, Ukraine had to implement the provisions of the Directive regarding the introduction of driver authorisation categories (Article 3), conditions for issuing driving licences (Articles 4, 5, 6 and 7), and requirements for tests to obtain driving licences (Annexes II and III).

What has been done to implement the commitments?

Due to the fact that Council Directive 91/439 / EEC was repealed by Article 17 of Directive 2006/126 / EC of 19 January 2013, and taking into account that the provisions of this Council Directive as a whole are incorporated into the new Directive, the Ministry of Internal Affairs drafted a plan for implementation of Directive 2006/126 / EC approved by the Government in 2015.

According to this implementation plan, the priority task was to draft a Law of Ukraine on amendments to the Law of Ukraine "On Road Traffic". Taking into account the provisions of the Directive, these amendments should cover the following issues:

8) This Directive was repealed on January 19, 2013 by Article 17 of Directive 2006/126 / EC

• a list and definitions of the categories of vehicles;

• minimum age for obtaining a driving licence of the relevant category;

• requirements for taking examinations for obtaining a driving licence;

• period of validity of driving licences of the relevant category;

• training and testing the qualification of instructors / examiners who teach to drive vehicles;

• undergoing medical examination.

In July 2017, when the Ukrainian Centre for European Policy presented its studies into the European experience in the field of issuing driving licences the managers of the Main Service Centre of the Ministry of Internal Affairs announced that they were working on a relevant draft law and expected to present it to the public in early autumn, but so far it has not been presented or submitted for consideration to Parliament

In addition, the implementation plan involved amendments to the Government's Resolutions No. 47 of January 31, 1992 (with a view to issuing a single model driving licence that meets European requirements and to increasing its level of protection against counterfeit scams by using microchips) and No. 340 dated May 8, 1993 (as regards aligning national requirements for the issue, replacement, renewal or exchange of driving licences and the introduction of new terms of validity of driving licences for various categories of vehicles), as well as a number of orders from the Ministry of Internal Affairs and other ministries concerning harmonisation of the minimum requirements for training and examination of vehicle drivers, issue of driving licences, harmonisation of national healthcare standards with the minimum European standards of physical and mental fitness for driving vehicles.

In addition, it is necessary to make appropriate amendments to:

• Procedure for Training, Retraining and Advanced Training of Drivers of Vehicles (Resolution No. 487 of the Cabinet of Ministers of Ukraine dated May 20, 2009);

• Typical Program for Training and Retraining of Drivers of Vehicles (Resolution No. 229 of the Cabinet of Ministers of Ukraine dated March 2, 2010);

• Procedure for State Authorisation of Institutions Conducting Training, Retraining and Advanced Training of Drivers of Vehicles and Certification of their Staff (Resolution No. 490 of the Cabinet of Ministers of Ukraine dated May 20, 2009);

• Traffic Rules (Resolution No. 1306 of the Cabinet of Ministers of Ukraine of October 10, 2001).

Relevant acts are being drafted and some of them might be ready now, however, they have not been made public yet. The implementation is partial, staying within the framework of existing regulations on driver training and

driving licence issue that to some extent comply with the provisions of the Directive, however it has to be brought into line with Ukraine's commitments under the Association Agreement.

Inland Water Transport

Directive 2008/68/EC of the European Parliament and of the Council on the inland transport of dangerous goods

What are the benefit of the relevant standards?

The Directive lays down requirements for the transport of dangerous goods by road, rail and inland waterways in accordance with international agreements in this area (European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways – ADN), in order to increase the safety of such haulage, harmonise the conditions for transport of dangerous goods on the territory of the Community and ensure the proper functioning of the common transport market.

As of November 1, 2017, the provisions of the Directive should have been implemented for all international and national transport of dangerous goods by inland waterways.

What has been done to implement the commitments?

In order to implement the provisions of the Directive and, in particular, the ADN (whereto Ukraine is a Contracting Party), the Ministry of Infrastructure prepared the draft law of Ukraine "On Amendments to Certain Laws of Ukraine to Bring Them into Line with the EU Legislation in the Field of Transport of Dangerous Goods" (mentioned above in relation to road transport). On December 8, 2017, a group of MPs of Ukraine registered this draft law in the Parliament under No. 7387.

In addition, the Ministry of Infrastructure in early 2016 developed the Rules for Transport of Dangerous Goods by Inland Waterways of Ukraine, which were adopted by Order No. 126 of the Ministry of Infrastructure in April 2017 and registered with the Ministry of Justice. These Rules take into account the requirements of both the ADN and the Directive, in particular regarding the handling of dangerous goods during loading and unloading operations, proper training of vessel crews and personnel involved in operations related to the transport of dangerous goods by inland waterways, requirements for the relevant documentation, vessels and their equipment (at the same time, economic operators using vessels for the transport of such cargoes by inland waterways of Ukraine have been granted a five-year transition period in order to bring them into compliance with the ADN requirements).

In order to fully implement the provisions of the adopted Rules, it is

necessary to introduce special training programs for the personnel of shipping companies engaged in the transport of dangerous goods and authorised persons (consultants) on the safety of the transport of dangerous goods by carriers of such cargoes, bringing the vessels of national transport operators into compliance with national and European legislation in this area and ensuring proper oversight by the relevant navigation safety authority.

Currently, amendments are expected to the Law of Ukraine "On the Transport of Dangerous Goods" envisaged by draft law No. 7387, and further those to the Code of Ukraine on Administrative Offences as regards penalties for violations in this area.

At the same time, in international transport, the requirements of the ADN are complied with as required by the Directive.

Council Directive (EEC) 87/540 on access to the occupation of carrier of goods by waterway in national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation.

What are the benefit of the relevant standards?

Directive 87/540 / EEC is designed to create conditions for the carriage of goods by national and international waterways. It also establishes the condition of professional competence consisting in the possession of the standard of competence. The necessary competence can be obtained either by completing courses, by gaining practical experience of work in a waterway transport undertaking, or by combining these two possibilities. In addition, such competence must be certified by diplomas.

Directive 87/540 / EEC envisages making amendments to the legislation of Ukraine as regards the professional competence of carriers involved in inland waterway transport and mutual recognition of diplomas, certificates and evidence of formal qualifications for this occupation, as well as arranging measures for the issue of relevant certificates.

What has been done to implement the commitments?

As of November 1, 2017, Ukrainian legislation was not aligned with the provisions of Council Directive 87/540 / EEC

Maritime transport

Regulation (EC) No 336/2006 of the European Parliament and of the Council on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95

What are the benefit of the relevant standards?

Regulation (EC) No. 336/2006 was designed to improve the safety management and safe operation of vessels, as well as to protect the environment from pollution from ships. Regulation No. 336/2006 applies to ships involved in inland waterway transport and other ships that are not subject to the International Safety Management Code (ISM).

What has been done to implement the commitments?

Regulation (EC) No. 336/2006 requires that owners of domestic commercial vessels (covered by the Regulation) should introduce a safety management system for inland maritime traffic based on the ISM Code. Therefore, this regulation implies introduction of amendments to the legislation of Ukraine as regards the obligations of the ship-owner to maintain a system for managing the safety of ships and shipping companies, as well as liability for administrative offences in this area and training of the personnel implementing control of shipping companies on behalf of the flag state.

In the process of certification and inspection, it is necessary to comply with the provisions of Part B of the ISM Code and Section II of the Annex to Regulation (EC) 336/2006. Inspections may be made upon request from a company to the Administration or a recognised organisation acting on behalf of the Administration.

The Regulation provides for the possibility of introducing exemptions to the provisions if the State considers that, in practice, it will be difficult to comply with certain requirements of the ISM Code for some ships or categories of vessels engaged exclusively in domestic voyages within that State. In such cases, the state may partly abolish these provisions by introducing equivalent national measures. It is also possible to establish alternative certification and verification procedures.

As of November 1, 2017, Ukrainian legislation was not aligned with Regulation (EC) No. 336/2006. The adopted acts do not meet the requirements of the Regulation.

Regulation (EC) No 392/2009 of the European Parliament and of the Council on the liability of carriers of passengers by sea in the event of accidents

What are the benefit of the relevant standards?

The provisions of this EU Regulation establish the regime of liability and insurance requirements for carriers of passengers by sea in order to improve compensation for passengers involved in maritime accidents and increase the safety of maritime transport on the basis of:

- the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea of 1974 as amended by Protocol of 2002;

- Guidelines of the International Maritime Organisation (IMO) for the implementation of the Athens Convention of 1974, adopted in 2006.

Ukraine acceded to the 1974 Athens Convention and the 1976 Protocol, but did not accede to the 2002 Protocol.

What has been done to implement the commitments?

As of November 1, 2017, Ukrainian legislation was not aligned with the provisions of Regulation (EC) No 392/2009.

Regulation (EC) 782/2003 of the European Parliament and of the Council on the prohibition of organotin compounds on ships

What are the benefit of the relevant standards?

Regulation (EC) No. 782/2003 provides for the accession of Ukraine to the International Convention on the Control of Harmful Anti-Fouling Systems on Ships.

Regulation (EC) No. 782/2003 establishes requirements for conducting inspections and certification of vessels for the presence of organotin compounds, including recognition of certificates, declarations and AFS conformance documents.

What has been done to implement the commitments?

In April 2017, the President of Ukraine signed Decree No. 112/2007 "International Convention on the Control of Harmful Anti-Fouling Systems on Ships".

In order for Ukrainian legislation to be aligned with the requirements of this Regulation, it is necessary to draft and approve legal acts that would establish requirements for inspections and certification of vessels for the

presence of organotin compounds. Moreover, legislation should provide for the recognition of AFS compliance documents, certificates, and declarations.

Directive 2005/65/EC of the European Parliament and of the Council on enhancing port security

What are the benefit of the relevant standards?

Amendments to the legislation of Ukraine on enhancing the safety of ships and port facilities, as well as training of personnel in this area.

What has been done to implement the commitments?

The provisions of Directive 2005/65 / EC are partly included in the draft law of Ukraine "On Inland Water Transport" (Reg. No. 2475a).

On November 11, 2017, the draft law of Ukraine "On Inland Water Transport" (Reg. No. 2475a, as updated on 06/08/2017), submitted by MP Kozyr B.Yu. and other MPs of Ukraine, was recommended for approval in the first reading as a basis taking into account the proposals of the Committee on Transport. The draft law also contains provisions aimed at approximation to a number of other directives and regulations, in particular Regulation (EC) No. 725/2004. Other laws and regulations aimed at implementing the provisions of the Directive can be approved after adoption of the Law.

As of November 1, 2017, Ukrainian legislation was not aligned with the provisions of Directive 2005/65/EC.

Regulation (EC) 725/2004 of the European Parliament and of the Council on enhancing ship and port facility security

What are the benefit of the relevant standards?

Regulation (EC) No. 725/2004 provides for the introduction of European standards in the field of enhancing ship and port facility security in international and inland navigation, creating conditions for compliance with international standards for protection of ships and port facilities, introduction of new standards for protection of ships and port facilities; appointment of the single competent authority responsible for coordinating and monitoring the application of shipping security measures at the national level.

What has been done to implement the commitments?

As of November 1, 2017, Ukrainian legislation was not aligned with the provisions of Regulation (EC) 725/2004.

Directive 2008/106 of the European Parliament and of the Council on the minimum level of training of seafarers

What are the benefit of the relevant standards?

Amendments to the legislation of Ukraine on the minimum level of training of seafarers, as well as introduction of electronic record-keeping and the possibility of checking the validity of seafarers' documents online in the real time mode.

What has been done to implement the commitments?

The Ministry of Infrastructure prepared the draft order "On Approval of the Regulation on Keeping the Common State Register of Seafarers' Documents", which will provide for creation and provision of impersonal statistical data on seafarers' documents in electronic format.

The new software "Automated System of Ukraine for Registration and Checking Seafarers' Documents" was developed for the State Register of Ukraine of Seafarers' Documents of the Inspectorate for Training and Certification of Seafarers.

The Open Website for Validity Certification of Ukrainian Seafarers' Documents" has been launched and is working in a test mode at http://verification.itcs.org.ua.

However, as of November 1, 2017, Ukrainian legislation was not aligned with the provisions of Directive 2008/106/EC.

Directive 2003/25/EC of the European Parliament and of the Council on specific stability requirements for ro-ro passenger ships

What are the benefit of the relevant standards?

Directive 2003/25 / EC provides for the introduction of uniform specific stability requirements for ro-ro passenger ships, which will improve the stability of such vessels in case of damage and ensure a higher level of safety for passengers and crews. The Directive applies to all ro-ro passenger vessels, regardless of the flag, providing regular services to or from a port on international voyages. The States also undertake to ensure that ro-ro passenger vessels fully comply with the requirements of this Directive before they begin their voyage from or to ports.

What has been done to implement the commitments?

As of November 1, 2017, Ukrainian legislation was not aligned with the provisions of Directive 2003/25 /EC.

Council Directive 1999/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services

What are the benefit of the relevant standards?

The purpose of Directive 1999/35/EC is to establish uniform specific stability requirements for ro-ro passenger ships, which will improve the stability of such vessels in case of damage and ensure a higher level of safety for passengers and crews.

What has been done to implement the commitments?

Amendments to the legislation of Ukraine regarding the requirements for the stability of ro-ro passenger ships and a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services.

As of November 1, 2017, Ukrainian legislation was not aligned with the provisions of Directive 1999/35/EC.

Regulation (EC) 417/2002 of the European Parliament and of the Council on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) 2978/94

What are the benefit of the relevant standards?

Adoption of a regulation on requirements for double hull or equivalent design requirements for single hull oil tankers.

What has been done to implement the commitments?

The Ministry of Infrastructure has drafted the Order "On Approving Requirements for Double Hull or Equivalent Design Requirements for Single Hull Oil Tankers". At the moment, the draft order is undergoing internal harmonisation process.

As of November 1, 2017, Ukrainian legislation was not aligned with the provisions of Regulation (EC) 417/2002.

Company Law

Company Law

Authors

Hanna Dobrynska

Iryna Kovalenko

I. Review of commitments that had to be fulfilled from November 1, 2014 to November 1, 2016

In this area, the first deadline came on November 1, 2016. It concerned the implementation of the following three Directives and one Regulation:

- **First Council Directive 68/151/EEC** repealed by Directive 2009/101/EC. It deals with three blocks of questions: (i) disclosure of company documents, (ii) validity of obligations entered into by a company, and (iii) nullity of the company.

As of November 1, 2016, it was established that the compliance of Ukrainian legislation with Directive No. 2009/101/EC was incomplete, although the legislation on disclosure of company information has undergone significant changes, particularly regarding the public information contained in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations, which had been significantly expanded.

Also, the current law provides for access to documents contained in the company's registration file at the request of an individual or a legal entity.

- **Second Council Directive 77/91/EEC** repealed by new Directive No. 2012/30/EC covers various aspects of the operation of public limited liability companies, such as requirements for the amount of their authorized capital, information that should be given in the statute or the instrument of incorporation of the company, issues concerning conditions for the redemption of its shares by the company, publication of the report on consideration other than in cash, etc.

When preparing the preliminary report, we were informed by the main responsible party – the National Securities and Stock Market Commission (hereinafter – the SSMCS) – that new Directive 2012/30/EU was taken into account when drafting the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Aimed to Implement the EU Legislation in the Field of Corporate Governance". The fate of this draft law, which, according to the SSMCS, implemented a number of Directives, is reported below in the

description of the history of the implementation of Directive 2007/36/EC.

According to new information received from the SSMCS when compiling this report, Directive 2012/30/EC was implemented in the draft law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Aimed to Implement the EU Legislation in the Field of Corporate Governance". This draft law was adopted on November 16, 2017.

- **Eleventh Council Directive 89/666/EEC, repealed by new Directive (EC) 2017/1132**. The Eleventh Directive logically complements the First Directive on issues related to disclosure. The general rule established by the Eleventh Directive is: if a company falls within the scope of the First Directive (that is, a limited liability company or a joint stock company must disclose certain information in state registers), its branch established in another EU member state shall also disclose such information as established by the Eleventh Directive.

However, as of 1 November 2016, there was no information on the implementation of this Directive. This situation has not changed yet. Since the Eleventh Directive has already been replaced with "codification" Directive (EC) 2017/1132, it may be taken into account in the event of the implementation of this new Directive.

- **Regulation (EC) No. 1606/2002 on the application of international accounting standards** concerning the use of the International Financial Reporting Standards (IFRS) by companies in preparing their financial statements. As of November 1, 2016, Ukrainian legislation was found to be partially in compliance with the Regulation: in Ukraine, a narrower range companies used to be required to prepare financial statements using IFRS in comparison with the requirements of this EU regulation.

Instead, the Law of Ukraine "On Amendments to the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine'" was adopted in 2017. It expanded the application of IFRS in Ukraine (for information on the implementation of Directive 2013/34/EC, see below).

II. As of November 1, 2017, Ukraine had to fulfil the following commitments:

Main responsible party: Ministry of Economic Development and Trade of Ukraine (MEDT), Ministry of Justice of Ukraine (MoJ), Ministry of Finance of Ukraine (MoF) and the SSMCS[1].

Position in the Association Agreement: Ukraine must align its legislation with the EU legislation in the field of company law, corporate governance, accounting and auditing in accordance with Article 387, Title V (Economic and Sector Cooperation) of the Association Agreement. The alignment shall take place in accordance with the timeframe and the EU legislation listed in Annexes XXXIV (34) – XXXVI (36) to the Association Agreement, namely:

1) In the context of the legislation that had to be implemented by 2 November 2017.

- Annex XXXIV (34): legislation relating to protection of the rights of shareholders, creditors and other stakeholders;
- Annex XXXV (35): legislation relating to accounting and auditing;
- Annex XXXVI (36): legislation in the field of corporate policies.

All in all, there are 6 EU Directives (4 Directives in the area of protection of the rights of shareholders, creditors and other stakeholders, and 2 Directives on accounting and auditing) implementation of which was due on November 1, 2017.

Protection of the rights of shareholders, creditors and other stakeholders:

- Third Council Directive 78/855/EEC of 9 October 1978 based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies, as amended by Directive 2007/63/EC
- Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies, as amended by Directive 2007/63/EC
- Twelfth Council Law Directive 89/667/EEC of 21 December 1989 on single-member private limited-liability companies
- Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies

Accounting and Auditing:

- Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies
- Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC

Protection of the rights of shareholders, creditors and other stakeholders

Third Council Directive 78/855/EEC concerning mergers of public limited liability companies

Sixth Council Directive 82/891/EEC concerning the division of public limited liability companies

The Third and Sixth Directives were repealed by Directive (EC) No 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law. Directive (EC) 2017/1132 constitutes "codification" legislation that combines six Directives in the field of activities of limited liability companies[2]. This "codification" Directive regulates two main blocks of issues – (1) establishment and functioning of such companies, (2) their mergers and divisions.

What are the benefits of Third Directive 78/855/EEC?

Third Council Directive 78/855/EEC regulates mergers of public limited liability companies[3]. Among other things, it defines the terms "merger by acquisition" (i.e. operation whereby one or more companies are wound up without going into liquidation and transfer to another all their assets and liabilities) and "merger by the formation of a new company" when several companies are wound up without going into liquidation and transfer to a company that they set up all their assets and liabilities. Also, the Directive provides that a merger by the formation of a new company may be effected where one or more of the companies which are ceasing to exist is in liquidation, provided that this option is restricted to companies which have not yet begun to distribute their assets to their shareholders.

The Third Directive provides for the obligation of administrative or executive bodies of limited liability companies to prepare draft terms of merger specifying, in particular, any special benefits received by members of the administrative, executive and supervisory bodies of the merging companies. These terms shall be made public at least one month before the general meeting that will decide on the merger of the companies.

This Directive also provides for the rules for approval by general meetings of the issue of mergers, exceptions where such approval may be non-compulsory, as well as mandatory analysis of the draft terms of merger by independent experts.

2) In the context of Ukrainian law, it covers joint-stock companies and limited liability companies.

3) Based on the types of economic operators falling within the scope of this Directive in Member States (Art. 1 of Third Directive)

The Third Directive aims to protect the interests of shareholders – it provides a list of documents which they are entitled to get acquainted with before the general meeting to approve the terms of merger of the companies is held, as well as to receive copies of such documents. The Directive also establishes the right of minority shareholders to sell their shares before the merger at a price that corresponds to the value of their shares.

During a merger of companies, the interests of employees, creditors and holders of bonds and obligations of the merging public companies should be taken into account. The Third Directive lays down the consequences of the merger and the conditions for its invalidation. It is also important that EU Member States should ensure civil liability of independent experts for their written reports on the draft terms of the merger to stockholders.

What are the benefits of Sixth Directive 82/891/EEC?

Sixth Council Directive 82/891/EEC, on the contrary, regulates division of public limited liability companies, namely, division by acquisition (when the assets and liabilities of the public limited liability company are transferred to several other companies (existing ones), while this public limited liability company ceases to exist), and division by formation of new companies (one public limited liability company is divided into several other, new companies).

In general, the Sixth Directive repeats the scheme established by the Third Directive, taking into account the features inherent in division – for example, as regards the consequences of division and responsibility as regards the liabilities of the public limited liability company undergoing division.

What has been done to implement Third and Sixth Directives?

The Third Directive, as well as Directive 2011/35/EC, which replaced it before it was repealed by current Directive (EU) 2017/1132, is not mentioned in the implementation plan approved by Resolution No. 847-p of the CMU, neither are there any plans for its implementation.

At the same time, the Third Directive appears in paragraph 1 of Resolution No. 790-p of the CMU "On Approval of the Action Plan for Implementation in 2011 of the National Program for Aligning Ukrainian Legislation with the Legislation of the European Union" dated August 17, 2011. This Resolution appointed the State Commission on Securities and Stock Market (presently the SSMCS) as the main responsible party.

The key measure to implement the Third Directive involves introduction of amendments to Decision No. 221 of the State Commission on Securities and Stock Market "On Approval of the Regulation on the Procedure for Registration of Issue of Shares and Information on Their Issue in Reorganization of the Companies" dated December 30, 1998. As of today, this decision has become invalid on the basis of Decision No. 520 of the SSMCS "On Approval of the Procedure for Issue and Registration of Issue of Shares of Joint Stock Companies Created by Merger, Division, Separation or Transformation or Takeover" dated April 9, 2013.

Similarly, the only act that provides for the implementation of the Sixth Directive is the above paragraph 1 of the Action Plan for Implementation in 2011 of the National Program for Aligning Ukrainian Legislation with the Legislation of the European Union.

That is, we have found a single measure to be taken to implement the two Directives (Third and Sixth) – i.e. making amendments to Decision No. 221 of the State Commission for Securities and Stock Market dated December 30, 1998, which, as already noted above, has become invalid.

Matters related to merger and division of companies in Ukraine are regulated by the Civil Code of Ukraine and, in particular, by the special Law of Ukraine "On Joint Stock Companies", namely, by Section XVI of this Law.

Current Ukrainian legislation generally provides for drawing of a division/merger plan, possibility for shareholders to familiarize themselves with the documents before making a decision on division/merger, possibility for minority shareholders to exercise the right to sell their shares, etc. However, the division/merger plan does not contain all the mandatory provisions laid down in the Third and Sixth Directives (for example, as regards specifying in the division/merger plan of the special benefits of the members of executive, supervisory and/or administrative bodies in the division/merger). Besides, not all the documents provided for by the Directives are made available to shareholders. The Law of Ukraine "On Joint-Stock Companies" contains no special provisions on invalidation of divisions/mergers of joint-stock companies.

Particular attention should be paid to the fact that Ukrainian legislation does not provide for audits of company division/merger plans by independent experts.

At the same time, the above-mentioned Decision No. 520 of the SSMCS "On Approval of the Procedure for Issue and Registration of Issue of Shares of Joint Stock Companies Created by Merger, Division, Separation or Transformation or Takeover" dated April 9, 2013, specifies the procedural details of a division/merger within the legal framework established by the Law of Ukraine "On Joint Stock Companies", which are also provided for in the Directives (for example, the matter of conversion of shares); however, obviously, it does not extend the Law onto matters outside its scope.

Thus, it is still unclear whether the SSMCS will continue to implement the Third and Sixth Directives, which version (the one codified in 2017 or the previous ones) and in what way. In the meantime, it can be concluded that current Ukrainian legislation is not fully in line with the Third and Sixth Directives.

Twelfth Council Law Directive 89/667/EEC on single-member private limited-liability companies

Twelfth Directive was repealed by Directive 2009/102/EC on single-member private limited-liability companies

What are the benefits of relevant standards?

Directive 2009/102/EC adopted to replace the Twelfth Directive sets the framework for establishment of a single-member private limited-liability company. At their discretion, EU Member States may decide to extend the rules established by this Directive to include state-owned limited liability companies.

The Directive establishes several important rules regarding the activities of single-member companies:

- a private limited liability company may be a single-member company from the time of its formation, or may become one because its shares have come to be held by a single shareholder;

- Member States may lay down certain special provisions and penalties for cases where (1) a natural person is the sole member of several companies or (2) where a single-member company or any other legal person is the sole member of a company.

- the fact that all the shares have come to be held by a single shareholder and the identity of the sole member should be disclosed by an entry in a register accessible to the public.

- decisions taken by the sole member and any contracts between a sole member and his company (apart from current operations) should be recorded in writing.

What has been done to implement the commitments?

Current Ukrainian legislation provides for the possibility of establishing a single-member limited liability company or joint stock company (Article 3 of the Law of Ukraine "On Commercial Companies").

However, according to Article 141 of the Civil Code of Ukraine, the sole member of a limited liability company may not be another single-member commercial company. A person may be a member of only one single-member limited liability company. It should be noted that Ukrainian legislation does not provide for any penalties for violation of this rule, therefore in practice it is not always observed.

Article 4 of the Law of Ukraine "On Joint Stock Companies" stipulates that the sole member of a limited liability company may not be another single-member commercial company. The shareholders of a joint-stock company may not be only single-member legal entities whose sole member is the same person. Article 49 of this Law provides a mandatory written form of decisions adopted by the sole shareholder of a joint-stock company.

At the same time, the Law of Ukraine "On Commercial Companies" contains no rules regarding the written form of decisions of the single member of a company.

Besides, it does not set any clear requirements to joint-stock companies or limited liability companies concerning the mandatory written form of contracts concluded between such companies and their single member.

As regards the requirement to publish information on the single member (founder) in the company, at present, it is ensured by the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Associations: one of the categories available free of charge is information about the members (founders) and the scope of their share in the authorized capital.

As a conclusion, it can be argued that current Ukrainian legislation is not completely in line with Directive 2009/102/EC. Are any measures being taken to implement it?

The key measure that has to be taken to align Ukrainian legislation with Directive 2009/102/EC is adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Single-Member Companies"[4].

The MEDT made a draft of this Law public as far back as in 2015. It provides for amendments to the Law of Ukraine "On Commercial Companies" as regards concluding agreements between a limited liability company and its single member, and regulation of matters related to holding general meetings of members (in particular, as regards compliance with the mandatory written form). In addition, this draft envisages amendments to the Law of Ukraine "On Joint Stock Companies" as regards the mandatory written form of contracts between a joint-stock company and its single shareholder.

However, this draft law is partially outdated as it envisages amendments to the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs" in its previous version.

What became of the draft law subsequently is unknown: no draft law with such a title was submitted to the VRU. The MEDT's response[5] to our request for public information contains no information on the progress in implementation of Directive 2009/102/EC. Therefore, the status of implementation of this Directive is currently unknown.

Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies

What are the benefits of relevant standards?

Directive 2007/36/EC deals with matters of corporate management,

4) Subparagraph 4, Para. 47 of the Plan of Implementation of Title V "Economic and Sectoral Cooperation" of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, for 2017-2019, approved by Order No. 847-p of the Cabinet of Ministers of Ukraine (hereinafter – Action Plan for Implementation of Section V of the Association Agreement).

5) Letter of MEDT No. 4322-06/23248-07 dated 07.07.2017.

specifically, it establishes certain rights of shareholders in listed companies[6], such as:

- timely access to information on general meetings, in particular, it establishes the minimum time limits for informing shareholders about convocation of a general meeting. This notice should ensure prompt access to information for each shareholder on a non-discriminatory basis (in fact, it implies the use of electronic communications), it should contain the information set forth by the Directive (namely, the date, time and place of the general meeting and its agenda, as well as a detailed and precise description of the procedures for the exercise of the shareholder's voting rights). Also, no later than 21 days prior to the general meeting, the company's website should provide information relating to the general meeting, including forms for proxy voting if the shareholder cannot vote in person;

- Participation in general meetings via electronic means (for example, real-time transmission of the general meeting; real-time two-way communication enabling shareholders to address the general meeting from a remote location; a mechanism for casting votes without the need to appoint a proxy holder, which is especially convenient for non-resident shareholders). In this case, participation in the general meeting via electronic means should not be excessively complicated due to superfluous requirements and restrictions – they should be established solely for the purpose of providing the necessary level of shareholder identification and security of electronic communication;

- shareholders' right to ask questions about the agenda items and receive answers from the company;

- simplification of proxy vote: companies should not impose restrictions on proxy vote except in cases clearly stipulated by the Directive (in particular, in the event of a conflict of interest), plus removal of barriers for the effective exercise of the shareholder's voting rights through a financial intermediary;

- mandatory publication of voting results on the company's website.

What has been done to implement commitments?

The main task involves adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine to Implement the EU Legislation in the Field of Corporate Governance"[7] drafted by the SSMCS in 2015. No such draft laws have been traced in parliament, however, references to Directive 2007/36/EC have been found in the explanatory note to Law of Ukraine No. 289-VIII "On Amendments to Certain Legislative Acts of Ukraine on Protection of the Rights of Investors" dated April 7 2015.

This Law introduces amendments to the Law of Ukraine "On Joint Stock Companies", as regards expansion of the list of information to be indicated in the notice on holding the general meeting, as well as clarification concerning

6) I.e. the procedure for admission of securities issued by a company to trading on a stock exchange. In Ukraine, the listing procedure is mandatory for public joint stock companies.

7) Subparagraph 5, Para. 47 of the Plan of Implementation of Title V of the Association Agreement.

proxy vote.

However, these changes did not ensure compliance of the Ukrainian legislation with the Directive. For example, the current version of the Law does not envisage publication of all information required by the Directive on the website of the company. It can also be argued that the notice of a general meeting does not include all the information required by the Directive (for instance, as regards the procedures to be followed for proxy vote). There is also no opportunity to vote via electronic means. Matters relating to proxy vote do not comply with the Directive as regards conflicts of interest between the proxy holder and the shareholder.

According to the information received from the SSMCS[8], the provisions of Directive 2007/36/EC as well as a number of other EU acts will be implemented in the draft law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Facilitation of Doing Business and Investment Attraction by Securities Issuers" (registration No. 5592-д). This draft law was adopted by the Verkhovna Rada on November 16, but there is still no information on its submission for signature to the President of Ukraine (which is a prerequisite for its entry into force). Neither is the final text of the Law available.

Having analysed the draft of this Law prepared for the second reading, it can be concluded that the provisions of Directive 2007/36 / EC will be largely implemented. However, it will be possible to confirm this after analysing the final text of the adopted Law.

Accounting and Auditing

Fourth Council Directive 78/660/EEC on the annual accounts of certain types of companies

Fourth Council Directive was repealed by Directive 2013/34/EC on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings

What are the benefits of relevant standards?

The main purpose of Directive 2013/34/EC is to strike a proper balance between the interests of users of financial reporting and the need of undertakings to avoid excessive reporting burdens so that financial reports would be accurate without imposing excessive administrative burdens on small and medium businesses.

The general idea is that the responsibility to prepare financial statements can vary depending on the size of the company (more requirements for big business, less for small and medium enterprises (SMEs)). At the same time,

8) Response to public information request, NCSSM letter No. 08/03/13018, dated 04.07.2017.

SMEs (including micro-undertakings) have a lot of simplified procedures and exceptions. Each Member State shall decide on exemptions and the simplified procedure to be applied to SMEs.

The Directive distinguishes between micro, small, medium-sized and large undertakings on the basis of three criteria: balance sheet total, net turnover and the average number of employees during the financial year.

Company types are defined based on the following three criteria, two of which should not be exceeded:

- for micro-undertakings – balance sheet total: EUR 350 thousand, net turnover: EUR 700 thousand, 10 employees;

- for small businesses undertakings – balance sheet total: EUR 4 million, net turnover: EUR 8 million, 50 employees;

- for medium-sized undertakings – balance sheet total: EUR 20 million, net turnover: EUR 40 million, 250 employees;

For large enterprises, respectively, two of the three criteria must be exceeded: balance of EUR 20 million, net turnover of EUR 40 million, or 250 employees.

Besides, in order to ensure that companies do not exclude themselves from the scope of the Directive by creating a group structure, the Directive also distinguishes between the concept of small, medium-sized and large groups.

Annual financial statements shall:

- comprise, as a minimum, the balance sheet, the profit and loss account and the notes to the financial statements;

- give a true and fair view of the undertaking's assets, liabilities, financial position and profit or loss;

- be disclosed (except micro-undertakings that should submit their balance data to competent authorities).

The Directive also establishes the general principles of financial reporting, such as continuity, consistency of accounting policies and evaluation methods, prudence in recognizing and evaluating financial statements, and so on.

It also sets detailed rules for preparing balance sheets, as well as profit and loss accounts, including possible exceptions for SMEs. Similarly, the Directive contains requirements for notes to the financial statements, including additional information, which a Member State might require that SMEs disclose.

In addition, the Directive provides for:

- preparation of a management report, including inter alia review of the company's development prospects (small enterprises may be exempted from the obligation to prepare such reports provided there are certain guarantees; for medium-sized companies there are exceptions with regard to the information

they should include in such a report);

- preparation of a corporate governance statement for undertakings whose transferable securities are admitted to trading on a regulated market (i.e. listed companies), specifying the corporate governance code, where the undertaking departs from the code and explanation why it departs from the code, description of the main characteristics of internal control and risk management systems, etc.:

The Directive also establishes rules for the preparation of consolidated financial statements (i.e. for a group of companies) and consolidated reports.

Annual financial statements and consolidated financial statements should be audited (however, Member States may exempt small undertakings from the obligation to prepare such reports).

At the same time, the Directive establishes collective responsibility of the members of the administrative, executive and supervisory bodies within their competence for compliance with the rules for drawing up financial statements, management reports and corporate governance statements, and their members shall be held liable for violating these rules.

It is important to focus on one more rule laid down by the Directive. In order to increase the transparency of payments in favour of state bodies in the extractive industries, large undertakings and public-interest entities which are active in the extractive industry (oil, gas, etc.) or logging of primary forests should disclose material payments which in total exceed EUR 100 thousand a year made to governments every financial year.

What has been done to implement commitments?

The main task is adoption of the Law of Ukraine "On Amendments to the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine'"[9].

This law was adopted on October 5, 2017, but it will come into force on January 1, 2018.

This Law provides for categories of enterprises (micro-undertakings, small, medium and large enterprises) similar to those specified in the Directive and based on similar criteria (however, it does not contain the concept of groups).

The Law also contains the following provisions implementing the Directive:

- the notion of "enterprises of public interest", "a report on payments in favour of the state submitted by enterprises engaged in extraction of mineral resources of national value or logging that are of public interest"[10]. The law sets

9) Subparagraph 6, Para. 47 of the Plan of Implementation of Title V of the Association Agreement.

10) It should be noted that the Law is somewhat inconsistent with the Directive: according to the Law, any large enterprise is an enterprise of public interest. According to the Directive, this is not necessarily the case: an enterprise of public interest may be an enterprise a Member State defines to be important to society due to the nature of its activities, size or number of employees. That is, not every large enterprise is necessarily an enterprise of public interest (the approach is chosen at the discretion of

more stringent requirements for this report than the Directive (for example, there are no limits on the amount of payments). Interestingly, this requirement applies to all enterprises of public interest engaged in logging (in fact, in any forests, and not only in primary forests).

- the obligation to submit a management report for large and medium-sized enterprises, which small and micro-undertakings are exempted from. At the same time, unlike the Directive, the Law contains no requirement to draw up a corporate governance statement as a separate section, neither does it specify the information that should be contained in the report itself;

- an expanded list of companies that publish financial statements with an audit opinion. It is also makes it possible to obtain financial statements for individuals and legal entities upon request for access to public information, even if the company has no obligation to make it public;

- liability for the timely and complete submission and disclosure of financial statements to be borne by the authorised body (official) responsible for the management of the enterprise, or by the owner in accordance with the legislation and constituent documents.

It should be noted that, although the Law implements the key provisions of the Directive, this legal act should not be considered the final step in the implementation of the Directive.

Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts

What are the benefits of relevant standards?

Directive 2006/43/EC (with amendments) sets minimum requirements for the statutory audit of annual and consolidated accounts so that the company's accounts represent a true and coherent picture of the company's assets, its liabilities, profits and costs, and its financial position.

The main provisions of the Directive provide for:

- public registers of auditors, which must contain information about statutory auditors or audit firms that can carry out statutory audits;

- establishes the possibility for companies to carry out statutory audit by auditors from other EU Member States if they are properly trained and entered in a public register of auditors of this Member State;

- continuing education of statutory auditors, which they are responsible

the state). Therefore, the Directive specifies that each large enterprise and each public interest entity engaged in extractive activities shall submit a statement of payments in favour of the state (it can be assumed that states may also select some medium-sized enterprises engaged in extractive activities as entities of public interest, for example, enterprises that have more than 250 employees but fall within the category of medium-sized undertakings based on the other two criteria). Further law enforcement will reveal whether the definition of enterprises of public interest established by the law is sufficient.

for, while failure to respect the continuing education requirements is subject to appropriate penalties;

- independence and impartiality of auditors and audit firms with respect to the audited entity, i.e. they should not be involved in the decision-making of this entity;

- confidentiality and professional secrecy, which should be complied with even after carrying out a specific audit;

- audits should be carried out on the basis of international auditing standards (before their approval, national audit standards may be used if approved by the European Commission);

- statutory auditors or audit firms shall be appointed and dismissed by the general meeting of shareholders or members of the audited entity. Member States may allow alternative systems or modalities, provided that those systems or modalities are designed to ensure the independence of the statutory auditor or audit firm. Auditors or audit firms may be dismissed only on proper grounds. Divergence of opinions on accounting treatments or audit procedures shall not be proper grounds for dismissal;

- in auditing consolidated accounts (that is, accounts of parent companies and subsidiaries) the auditor of the group bears full responsibility for the audit report;

- an audit quality assurance system independent of the reviewed statutory auditors and subject to public oversight. This system should include assessment of compliance with the relevant audit standards and independence requirements, adequate quantity and quality of the resources, remuneration of the auditor and the internal oversight systems of auditing companies;

- funding for the quality assurance system shall be secure and free from any possible undue influence by statutory auditors or audit firms;

- selection of reviewers for specific quality assurance review assignments shall be effected in accordance with an objective procedure designed to ensure that there are no conflicts of interest between the reviewers and the statutory auditor or audit firm under review;

- investigations and penalties: Member States shall ensure that there are effective systems of investigations and penalties to detect, correct and prevent inadequate execution of the statutory audit. Measures taken and penalties imposed on statutory auditors and audit firms shall be appropriately disclosed to the public. Penalties shall include a possibility of licence withdrawal.

- the mandatory audit of small businesses remains at the discretion of Member States, but in this case, the audit should take into account the scale and type of activity that such companies carry out;

- more stringent rules on the mandatory audit of public interest entities due to the need to provide objective information to the public and investors. These rules include: a more detailed audit report, including information on the

conduct of the audit; obligatory rotation of auditors and audit firms; obligation of Member States to compile a list of non-audit services that cannot be provided by auditors or audit firms for companies subject to audit; restrictions on the auditor's fees for non-audit services; appointment of an audit committee that plays the key role in appointing the auditor and monitoring the audit.

What has been done to implement commitments?

The key task[11] aimed at aligning Ukrainian legislation with Directive 2006/43/EC established by the Government involves adoption in 2017 of the draft law of Ukraine "On Audit of Financial Reporting and Auditing" (registration number 6016). So far[12], this draft law has not been adopted: it has been undergoing finalization in the Committee on Taxation and Customs Policy since June. According to the passage status of the draft law, proposals thereto have been taken into account but no revised draft is available in the public domain.

11) Para. 47 of the Plan of Implementation of Title V "Economic and Sectoral Cooperation" of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, for 2017-2019, approved by Order No. 847-p of the Cabinet of Ministers of Ukraine.

12) As of 24.11.2017.

Consumer Protection

Consumer Protection

Author

Anna Vasylenko

Main responsible party: Ministry of Economic Development and Trade of Ukraine (MEDT).

Partner: State Service of Ukraine for Food Safety and Consumer Protection (SSFSCP).

Position in the Association Agreement. Ukraine has undertaken to fulfil a number of commitments aimed at aligning national legislation with the EU consumer protection legislation as specified in Title V (Economic and Sectoral Cooperation), Annex XXXIX (39) (Consumer Protection), Chapter 20 of the Association Agreements. The list covers 18 EU acts, subdivided into in ten areas of consumer protection – Product Safety, Marketing, Contract Law, Unfair Contract Terms, Doorstep Selling, Financial Services, Consumer Credit, Redress, Enforcement, and Consumer Protection Cooperation.

I. As of November 1, 2017, Ukraine had to fulfil the following commitments:

Product Safety:

1) Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety;

2) Council Directive 87/357/EEC of 25 June 1987 on the approximation of the laws of the Member States concerning products which, appearing to be other then they are, endanger the health or safety of consumers;

3) Commission Decision 2008/329/EC of 21 April 2008 requiring Member States to ensure that magnetic toys placed or made available on the market display a warning about the health and safety risks they pose;

4) Commission Decision 2006/502/EC of 11 May 2006 requiring Member States to take measures to ensure that only lighters which are child resistant are placed on the market and to prohibit the placing on the market of novelty lighters.

Marketing:

1) Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers;

2) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market;

Contract Law:

1) Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.

Unfair Contract Terms:

1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts;

2) Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts;

3) Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours;

4) Directive 2008/122/EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect to certain aspects of timeshare, long-term holiday products, resale and exchange contracts.

Doorstep Selling:

1) Council Directive 85/577/EEC of 20 December 1985 on the protection of consumers in respect of contracts negotiated away from business premises.

Financial Services:

1) Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 on distance marketing of consumer financial services and amending Council Directive 90/619 / EEC and Directives 97/7 / EC and 98/27 / EC.

Consumer Credit:

1) Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers.

Enforcement:

1) Directive 98/27/EC of the European Parliament and of the Council of 19 May 1998 on injunctions for the protection of consumers' interests.

Remark:

Before proceeding to consider the status of implementation of each individual EU act contained in Annex XXXIX (39), it is essential to point out

to the following. The format of the report implies two assessment options: the EU act is fully implemented and the EU act is not implemented / implemented in part. Annex XXIX (39) specifies that Ukraine has to fulfil its commitments in full within 3 years, that is, by the end of 2017. Partial implementation of an EU act or drafting of a bill without its adoption actually means that the commitment has not been fulfilled in full. However, we would like to note that the state has made some effort, sometimes quite significant, to achieve progress in approximating Ukrainian legislation to a number of the above EU acts, although they have not yet been fully implemented into Ukrainian legislation. Such achievements include adoption of the following laws:

- Adoption of Law of Ukraine No. 1734-VIII On Consumer Lending, dated November 15, 2016;
- Adoption of Law of Ukraine No. 675-VIII On E-Commerce, dated September 3, 2015;

as well as drafting of the following bills:

- Draft Law No. 7300 "On Amendments to the Law of Ukraine 'On Tourism' as regards the Definition of the Concept of 'alternative measures for provision of tourism products' and specification of the list of essential conditions and the form of the travel services agreement", of 16 November 2017
- Draft Law of Ukraine No. 2456 "On Amendments to Certain Legislative Acts of Ukraine as Regards Improvement of Consumer Protection in Financial Services", of March 23, 2015
- Draft Law of Ukraine No. 5548 of December 16, 2016 "On Amendments to Certain Legislative Acts of Ukraine (on Consumer Protection)"

Product Safety

Directive 2001/95/EC on general product safety

Since this Directive borders on technical regulation issues, the status of its implementation is described in the Section "Technical Barriers to Trade".

Directive 87/357/EEC on the approximation of the laws of the Member States concerning products which, appearing to be other then they are, endanger the health or safety of consumers

What are the benefits of relevant standards?

The Directive applies to products which, although not foodstuffs, possess a form, odour, colour, appearance, packaging, labelling, volume or size,

such that it is likely that consumers, especially children, will confuse them with foodstuffs and in consequence place them in their mouths, or suck or ingest them, which might be dangerous and cause, for example, suffocation, poisoning, or the perforation or obstruction of the digestive tract. According to this Directive, Member States shall take all necessary measures to prohibit the marketing, import and manufacturing of such products. Checks should be carried out to ensure that such products are not marketed in the EU market. If a Member State prohibits products falling within the scope of this Directive it must inform the European Commission thereof and provide all details necessary to inform other Member States.

What has been done to implement the commitments?

Council Directive 87/357/EEC on the approximation of the laws of the Member States concerning products which, appearing to be other then they are, endanger the health or safety of consumers has been fully implemented in Ukraine. Thus, legislators drafted and adopted Resolution No. 136 of the Cabinet of Ministers of Ukraine "On Amendments to the Procedure for Conducting Trade Activity and Rules of Trade Services in the Consumer Goods Market". Specifically, the Procedure is supplemented with paragraph 17-1 stipulating the following: "17-1. It is prohibited to market products imitating foodstuffs (possessing a similar form, odour, colour, appearance, packaging, labelling, volume or size) and endangering the safety or health of consumers, in particular children, who might confuse them with foodstuffs and in consequence place them in their mouths, or suck or ingest them, which might cause, for example, suffocation, poisoning, or the perforation or obstruction of the digestive tract". Article 3 of the Directive requires that Member States take steps to prevent marketing of products covered by the Directive, but does not detail the mechanism and procedures for such control. Therefore, Law of Ukraine No. 2735-VI "On State Market Inspection and Control of Non-Food Products", dated 02.12.2010, fully meets these requirements. Thus, for instance, the law provides for market surveillance measures such as checking of product characteristics, including sampling of products and their examination (tests), restrictive (corrective) measures that include restrictions on marketing of products, withdrawal/withholding of products from the market, etc. (Art. 26).

Commission Decision 2008/329/EC requiring Member States to ensure that magnetic toys placed or made available on the market display a warning about the health and safety risks they pose

What are the benefits of relevant standards?

This decision was devoted to a narrow but significant problem of injuries caused to children because of ingestion of magnetic toys and introduction of obligatory precautionary marking. However, as noted in the preamble to the

Decision (Para. 15), it was a temporary measure used prior to the adoption by the European Committee for Standardization (CEN) of the revised version of European Standard EN 71-1 "Safety of Toys – Part 1: Mechanical and Physical Properties" in order to supplement its provisions concerning the special risks associated with small magnets in toys. The new version of the standard (EN 71-1: 2009 "Toy Safety – Part 1: Mechanical and Physical Properties" was adopted in April 2009. After its adoption, Decision 2008/329/EC expired since the issue of special warnings is fully covered by the standard. It should be noted that all non-food products in the EU undergo conformity assessment certified by CE marking. Currently, an updated version of EN 71-1:2014 is in force in the EU.

What has been done to implement the commitments?

So far, Ukrainian legislation has not been aligned with the provisions of Decision 2008/329/EC. There are several documents establishing the safety requirements for toys. In particular, these include the Technical Regulations for Safety of Toys (approved by CMU Resolution No. 515 of July 11, 2013), and, on August 29, 2017, the Ministry of Economic Development and Trade posted on its website a new draft Resolution of the CMU "On Approval of the Technical Regulations for Safety of Toys" for public discussion. However, neither the current technical regulations nor the proposed draft regulations contain separate clauses on warnings regarding magnetic toys. Besides, there is the national standard of Ukraine DSTU EN 71-1:2006 "Safety of toys. Part 1. Mechanical and Physical Properties" (EN 71-1: 1998, IDT) representing a national version of the outdated and no longer valid standard EN 71-1: 2006 (i.e., the 2006 version of the standard). For the full implementation of this commitment, it is necessary to update the above DSTU EN 71-1:2006 in line with EN 71-1: 2014.

Commission Decision 2006/502/EC requiring Member States to take measures to ensure that only lighters which are child resistant are placed on the market and to prohibit the placing on the market of novelty lighters

What are the benefits of relevant standards?

This Decision expired on May 11, 2017, as EN 9994:2006 Lighters – Safety Specification was adopted by the Commission as a tool for ensuring compliance with legal requirements, and, most importantly, all Member States implemented its provisions through the application of national measures, which was duly reported to the Commission. Provisions of Decision 2006/502/EC stipulate that only child resistant lighters can be designed and manufactured in such a way that they cannot, under normal or reasonably foreseeable conditions of use, be operated by children younger than 51 months of age (4 years and 3 months) because of, for instance, the force needed to

operate it or because of its design or the protection of its ignition mechanism, or the complexity or sequence of operations needed for the ignition.

It allows to market refillable lighters if a continual expected safe use over a lifetime of at least five years is ensured, and which fulfil all of the following requirements:

- a written guarantee from the producer of at least two years for each lighter, in accordance with Directive 1999/44/EC;
- the practical possibility to be repaired and safely refilled over the entire lifetime, including in particular a repairable ignition mechanism;
- parts that are not consumable, but are likely to wear out or fail in continual use after the guarantee period, are accessible for replacement or repair by an authorised or specialised after-sales service centre based in the European Union.

Also, a lighter can be considered safe if it meets the requirements of EN 13869: 2002 or the requirements of third countries where safety requirements for child-resistant lighters are equivalent to the relevant requirements established by this Decision.

It is forbidden to sell non-standard lighters (souvenir lighters) the shape of which resembles cartoon characters, toys, guns, watches, telephones, musical instruments, vehicles, human body or parts of the human body, animals, food or beverages, or that play musical notes, or have flashing lights or moving objects or other entertaining features.

Article 3 of the Decision establishes detailed requirements for proving and confirming the safety of lighters for children. Specifically, Member States shall apply the following requirements to producers of lighters as a condition for their placing on the market:

- to keep and provide on request without delay to the competent authorities a report of a child-resistance test for each model of lighters with samples of the lighters of the tested model, certifying the child-resistance of the model of lighters;
- to attest on request to the competent authorities that all lighters in each of the batches placed on the market conform to the model tested;
- to continuously monitor conformity of the lighters produced with the technical solutions adopted to ensure child-resistance, using appropriate testing methods and to maintain at the disposal of the competent authorities the necessary production records;
- to keep and provide on request to the competent authorities a new report of a child-resistance test if any changes are made to a model of lighter that may adversely affect its safety.

Distributors shall keep and provide to the competent authorities on request the documentation necessary to identify any person from whom they

have been supplied with the lighters they place on the market, in order to ensure traceability of the producer of the lighters throughout the supply chain.

Lighters for which producers and distributors do not provide the above documentation shall be withdrawn from the market. The Decision also sets out the details that should be included in the reports on child-resistance tests of lighters.

What has been done to implement the commitments?

Decision 2006/502/EC is implemented by amending the Rules for Retail Trade in Non-Food Products (the relevant draft order was drawn up by the Ministry of Economic Development and made public on September 7, 2017).

In particular, paragraph 9 of the draft order proposes to supplement Section II "Specific Aspects of Sale of Certain Groups of Goods" with new Chapter 12 "Lighters" specifying details of marketing lighters. The proposed Chapter 12 fully implements the requirements of Articles 1 and 2 of Decision 2006/502/EC concerning the permission to market only child-resistant lighters, including those that can be refilled (under certain conditions) and prohibition of the sale of non-standard lighters (Para. 1 and 2 of Ch. 12 of Amendments of the Rules for Retail Trade). However, the provision on the actual conditions for permitting the sale of refillable lighters do not fully comply with the provisions of Decision 2006/502/EC. In particular, this concerns the third condition of the permit. The first two conditions (availability of guarantees of the economic entity indicating the warranty period (at least two years) and availability of an instruction manual on the possibility of repair) are properly implemented. The third condition is not fully implemented: availability of parts for replacement or repair at authorised or specialised warranty service centres (according to Article 1 of Decision 2006/502/EC) and availability of information on maintenance in authorised or specialised warranty service centres (Para. 1, Ch. 12 of the draft amendments to the "Rules of Retail Trade in Non-food Products"). Instruction with information on maintenance about the possibility of repair does not always mean that parts for repair are available. At the same time, taking into account Para. 4 of Art. 6 of the Law of Ukraine "On Consumer Protection", which stipulates that the manufacturer (provider) is obliged, inter alia, to provide maintenance and warranty repair of products, as well as supply of the necessary amount and assortment of spare parts, it can be said that, all in all, Ukrainian legislation ensures the full implementation of Art. 1 and 2 of Decision 2006/502/EC, but not the entire Decision as a whole.

It is important to take into account the urgency and importance of introducing regulation of the sale of lighters. By analysing the offers of online stores selling lighters and by communicating with their sales managers, it was found out that almost all of the lighters on offer can be refilled – that is, they should fall within the scope of the ignored Articles of Decision 2006/502/EC. However, with the exception of some expensive brand names, these lighters come without warranties or information about the possibility of repair and authorised service centres, while child-resistance in such lighters is sometimes

presented as a special additional feature, not to mention the possibility of obtaining written evidence of such resistance.

Order No. 372 of the Ministry of Economic Development and Trade of Ukraine dated March 14, 2017, approved the List of National Standards Harmonised with the Relevant European Standards Certifying the Safety of Non-Food Products. This List includes DSTU EN ISO 9994:2015 (EN ISO 9994:2006, IDT; ISO 9994:2005, IDT) Lighters. Safety Requirements. This state standard is harmonised with the relevant European standard EN ISO 9994:2006 and covers the general safety of lighters, but does not set any special conditions and requirements for the child safety of lighters. In the EU, such requirements are set out in European Standard EN 13869:2016 Lighters. Child safety requirements. Safety requirements and test methods. This is the standard referred to in Decision 2006/502/EC. Adoption of the state standard of Ukraine harmonised with the European standard is necessary for the full-fledged implementation of Decision 2006/502/EC.

It should be mentioned that the proposed amendments to the Rules of Retail Trade in Non-Food Products do not take into account the provisions of Art. 3 of Decision 2006/502/EC on the certification and confirmation of the safety of lighters for children (conducting safety tests, reporting of tests, storage of model samples, traceability, etc.), as well as provision of the relevant information at the request of competent authorities.

Thus, noting with due regard the efforts and progress towards approximation of the requirements of Decision 2006/502/EC, we have to admit that this approximation is partial.

Marketing

Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers

What are the benefits of relevant standards?

The provisions of the Directive oblige Member States to indicate on products precise, transparent and unambiguous information on the prices of goods offered to consumers. The selling price and unit price must be indicated without any discrepancies, easy to identify and clearly legible. The Directive establishes such basic concepts as “selling price”, “unit price”, “products sold in bulk”, etc.

The selling price and unit price must be indicated for all goods, with some exceptions. The unit price does not have to be indicated if it is identical to the selling price. The unit price and the selling price need not be indicated only for products supplied in the course of the provision of a service, sales by auction and sales of works of art and antiques. Member States may waive

the obligation to indicate the unit price of products for which such indication would not be useful because of the products' nature or purpose or would be liable to create confusion and may, for such purposes, make lists of such products or categories of products, and establish a transitional period for the application of such requirements. For products sold in bulk, only the unit price must be indicated. The selling price and unit price must be unambiguous, easy to identify and clearly legible. Member States may waive the obligation to indicate the unit price of products for which such indication would not be useful because of the products' nature or purpose or would be liable to create confusion, and in the case of non-food products, establish a list of the products or product categories to which the obligation to indicate the unit price shall remain applicable. Directive 98/6/EC provides for penalties for infringements of national provisions adopted in application of this Directive. These penalties must be effective, proportionate and dissuasive.

What has been done to implement the commitments?

The provisions of Directive 98/6/EC are enshrined in the Law of Ukraine "On Consumer Protection" (Art. 15. Consumer Right to Information about Products). As regards the indication of the price of products, the provisions of Art. 15 have remained the same since the adoption of the Law. However, there is a slight terminological difference between the provisions of this Article and the provisions of Directive 98/6/EC. For example, the Directive provides clear definitions of the concepts of "selling price", "unit price", "products sold in bulk", while the Law of Ukraine "On Consumer Protection" defines only the concept of "price of products" (sometimes there are synonyms used in the text of the Law such as "selling price" and "price of goods"). The aspects of the procedure of indication of product prices, prices for unpackaged goods and prices per unit of measurement provide the same consumer protection as Directive 98/6/EC.

The only difference is the implementation of Para. 4 of Art. 3 of Directive 98/6/EC. The Directive stipulates that "Any advertisement which mentions the selling price of products shall also indicate the unit price". Neither the Law of Ukraine "On Consumer Protection" and the draft amendments thereto nor the Law of Ukraine "On Advertising" contains an equivalent separate requirement to indicate the price in advertisements.

In general, the provisions of the Ukrainian legislation as regards indication of prices are approximated to the requirements of the EU to a greater extent – but they had been like that before the Association Agreement was signed.

Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market

What are the benefits of relevant standards?

The purpose of this Directive is to contribute to the proper functioning of

the internal market and to achievement of a high level of consumer protection by approximating laws, regulations and administrative provisions of Member States concerning unfair business-to-consumer commercial practices that undermine the economic interests of consumers. The Directive concerns unfair business-to-consumer commercial practices before, during and after a commercial transaction in relation to a product. Its provisions establish a number of important terms and definitions, including "unfair commercial practices", "to materially distort the economic behaviour of consumers", "code of conduct", "undue influence", "professional diligence", etc. The Directive also lays down the criteria for establishing whether commercial practices are unfair and, consequently, can be prohibited. The Directive mentions the following types of unfair trading practices: misleading (including misleading omissions) and aggressive. An exhaustive list of examples of misleading and aggressive practices is provided in Annex 1 to the Directive. Directive 2005/29/EC details the concept and characteristics of misleading commercial practices, misleading omission, as well as aggressive commercial practices, including undue influence. The Final Provisions set out the specific features of the implementation of the provisions of the Directive in Member States. It is particularly emphasised that Member States should take appropriate measures to inform consumers about the amendments to this Directive and, if necessary, to encourage traders and code owners to inform consumers about their code of conduct.

What has been done to implement the commitments?

The issue of unfair commercial practices in national legislation falls within the scope of the Law of Ukraine "On Consumer Protection", in particular: Article 19 "Prohibition of Unfair Business Practices". To a large extent, the provisions of Article 19 are close to Directive 2005/29/EC, but there are significant differences.

In particular, the definitions of terms and concepts used in the Law "On Consumer Protection" are not fully aligned with the terms and concepts used in the Directive. In many cases, this is due to the fact that the scope of definitions of the Directive is much wider. For example, according to the Directive, "a commercial practice shall be unfair if it is contrary to the requirements of professional diligence, and it materially distorts or is likely to materially distort the economic behaviour with regard to the product of the average consumer whom it reaches or to whom it is addressed, or of the average member of the group when a commercial practice is directed to a particular group of consumers" (Para. 2, Art. 4, Directive 2005/29/EC). The Ukrainian legislation on consumer protection does not provide definitions of such concepts as "professional diligence", "average consumer" or "distortion of economic behaviour".

The concept of "misleading business practice" (defined in the Law "On Consumer Protection") is not fully approximated to the concept of "misleading commercial practice" (Directive 2005/29/EC). The biggest difference is that, according to the Law (Para. 2 Art. 19), misleading business practices imply the inducement or possible inducement of the consumer to agree to perform

a transaction that he otherwise would not agree to by providing him/her with certain misleading information (the types are detailed in the Subparagraphs of Para. 2, Article 9 of the Law). In the Directive, misleading practices are described as providing information that is partially or entirely factually correct, but their general presentation misleads or may mislead the consumer. Amendments to Article 19 of the Law "On Consumer Protection" (draft law on Amendments to Certain Legislative Acts of Ukraine on Consumer Protection, reg. number 5548, dated 16.12.2016) further approximate the concept of misleading business practices to the Directive, but do not cover this issue.

Directive 2005/29/EC also introduces the concept of "misleading omission" as a variety of misleading commercial practices – when the trader omits material information that the average consumer needs in accordance with the context in order to make an informed transactional decision or when the trader hides or provides in an unclear, unintelligible, ambiguous or untimely manner such material information or fails to identify the commercial intent of the commercial practice if not already apparent from the context, and where, in either case, this causes or is likely to cause the average consumer to take a transactional decision that he would not have taken otherwise. Article 9 of the Directive also details the provisions concerning undue influence as one of the forms of aggressive trade practices, while the concept is not detailed in the Law on Consumer Protection and its proposed amendments (see draft law No. 5548, dated 16.12.2016).

Annex 1 to Directive 2005/29/EC and Para. 3, Art. 19 of the Law "On Consumer Protection" list examples of unfair commercial practices. However, the list in the Directive is exhaustive (30 examples, highlighting the practices that are unfair in all conditions), while the list in the Law is not exhaustive (all in all, 12 misleading and aggressive practices). At first glance, these provisions of the Law meet the requirements of the Directive and are more flexible regarding the identified problems, if necessary, providing the possibility to expand the list of unfair commercial practices in the event of consumer complaints and appeal for protection. The Directive emphasises the importance of drawing up an exhaustive list of malpractices/unfair practices (e.g., see Para. 18 of the Preamble), since it makes it possible for the average consumer, and especially the more vulnerable groups of consumers (children, consumers with special needs, etc.), to better understand the nature of unfair commercial practices, recognise them and correctly lay down the ways in which their rights were violated.

For clarity, we provide the list of unfair (misleading and aggressive) commercial practices as laid down in the Directive, and the degree of their direct reflection in the Law of Ukraine "On Consumer Protection". It is important to note that whenever the Law enlists the examples of unfair practices, their phrasing is equivalent to the relevant provisions of the Directive, although without specifying the practices that are considered unfair in all circumstances. It should also be noted that the other two documents also contain provisions equivalent to the description of some unfair commercial practices in the

Directive – Law of Ukraine No. 270/96-BP "On Advertising" dated July 3, 1996, and the Technical Regulation on the Rules for Labelling Food Products approved by Order No. 487 of the State Committee Ukraine on Regulatory Policy and Business, dated 28.10.2010. The wording and numbering used in the Directive are preserved.

Examples of unfair (misleading or aggressive in all conditions) commercial practices (Directive 2005/29/EC, Annex 1, numbering as in the Directive) that DO NOT have equivalents in Ukrainian legislation:

1. Claiming to be a signatory to a code of conduct when the trader is not.

2. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation.

3. Claiming that a code of conduct has an endorsement from a public or other body which it does not have.

4. Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when he/it has not or making such a claim without complying with the terms of the approval, endorsement or authorisation.

8. Undertaking to provide after-sales service to consumers with whom the trader has communicated prior to a transaction in a language which is not an official language of the Member State where the trader is located and then making such service available only in another language without clearly disclosing this to the consumer before the consumer is committed to the transaction.

10. Presenting rights given to consumers in law as a distinctive feature of the trader's offer

16. Claiming that products are able to facilitate winning in games of chance.

18. Passing on materially inaccurate information on market conditions or on the possibility of finding the product with the intention of inducing the consumer to acquire the product at conditions less favourable than normal market conditions.

19. Claiming in a commercial practice to offer a competition or prise promotion without awarding the prises described or a reasonable equivalent.

20. Describing a product as 'gratis', 'free', 'without charge' or similar if the consumer has to pay anything other than the unavoidable cost of responding to the commercial practice and collecting or paying for delivery of the item.

21. Including in marketing material an invoice or similar document seeking payment which gives the consumer the impression that he has already ordered the marketed product when he has not.

22. Falsely claiming or creating the impression that the trader is not acting for purposes relating to his trade, business, craft or profession, or falsely representing oneself as a consumer.

23. Creating the false impression that after-sales service in relation to a product

is available in a Member State other than the one in which the product is sold.

27. Requiring a consumer who wishes to claim on an insurance policy to produce documents which could not reasonably be considered relevant as to whether the claim was valid, or failing systematically to respond to pertinent correspondence, in order to dissuade a consumer from exercising his contractual rights.

31. Creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prise or other equivalent benefit, when in fact either:

— there is no prise or other equivalent benefit, or

— taking any action in relation to claiming the prise or other equivalent benefit is subject to the consumer paying money or incurring a cost.

Examples of unfair (misleading or aggressive in all conditions) commercial practices (Directive 2005/29/EC, Annex 1, numbering as in the Directive) that have equivalents in the Law of Ukraine "On Consumer Protection":

5. Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).

6. Making an invitation to purchase products at a specified price and then:

(a) refusing to show the advertised item to consumers;

(b) refusing to take orders for it or deliver it within a reasonable time;

(c) demonstrating a defective sample of it, with the intention of promoting a different product (bait and switch)

7. Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.

9. Stating or otherwise creating the impression that a product can legally be sold when it cannot.

12. Making a materially inaccurate claim concerning the nature and extent of the risk to the personal security of the consumer or his family if the consumer does not purchase the product.

13. Promoting a product similar to a product made by a particular manufacturer in such a manner as deliberately to mislead the consumer into believing that the product is made by that same manufacturer when it is not.

14. Establishing, operating or promoting a pyramid promotional scheme where a consumer gives consideration for the opportunity to receive compensation that is derived primarily from the introduction of other consumers into the scheme

rather than from the sale or consumption of products.

24. Creating the impression that the consumer cannot leave the premises until a contract is formed.

25. Conducting personal visits to the consumer's home ignoring the consumer's request to leave or not to return except in circumstances and to the extent justified, under national law, to enforce a contractual obligation.

26. Making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under national law to enforce a contractual obligation. This is without prejudice to Article 10 of Directive 97/7/EC and Directives 95/46/EC (1) and 2002/58/EC.

29. Demanding immediate or deferred payment for or the return or safekeeping of products supplied by the trader, but not solicited by the consumer except where the product is a substitute supplied in conformity with Article 7(3) of Directive 97/7/EC (inertia selling).

Examples of unfair (misleading or aggressive in all conditions) commercial practices (Directive 2005/29/EC, Annex 1, numbering as in the Directive) that have equivalents in the Law of Ukraine "On Advertising"; Art. 9 and 20:

11. Using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (advertorial).

28. Including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them. This provision is without prejudice to Article 16 of Directive 89/552/EEC on television broadcasting.

Examples of unfair (misleading or aggressive in all conditions) commercial practices (Directive 2005/29/EC, Annex 1, numbering as in the Directive) that have equivalents in the Technical Regulation on Labelling Food Products, Art. 5:

17. Falsely claiming that a product is able to cure illnesses, dysfunction or malformations. (applies both to foodstuffs and non-food products).

Directive 2005/29/EC also lays down the concept of a "code of conduct" defined as an agreement or set of rules not imposed by law, regulation or administrative provision of a Member State which defines the behaviour of traders who undertake to be bound by the code in relation to one or more particular commercial practices or business sectors. This concept is important, because the undue reference to it is one of the types of misleading unfair commercial and business practices. Neither the Law "On Consumer Protection" nor Ukrainian legislation in general provide for a similar concept.

Thus, the provisions on consumer protection against misleading business practices do not meet the EU ones in many respects. In addition, the amendments to Para. 2 of Art. 19 of the Law of Ukraine "On Consumer

Protection" proposed by draft law No. 5548, dated 16.12.2016, do not take into account the relevant provisions of Directive 2005/29/EC.

Contract Law

Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees

What are the benefits of relevant standards?

The purpose of Directive 1999/44/EC is the approximation of the laws, regulations and administrative provisions of the Member States on certain aspects of the sale of consumer goods and associated guarantees in order to ensure a uniform minimum level of consumer protection in the context of the internal market. The Directive establishes the obligation of the seller to deliver to the consumer the goods in conformity with the contract of purchase and sale. Also, its provisions determine the conformity of consumer goods with the contract. The seller is liable to the consumer for any lack of conformity that exists at the time of delivery of the goods. In the event of a lack of conformity, the consumer shall be entitled to have the goods brought into conformity free of charge by repair or replacement, in accordance with Art. 3 of the Directive, or to have an appropriate reduction made in the price or the contract rescinded with regard to those goods. The Directive establishes specific terms of the seller's liability (two years) and the presumption of responsibility of the seller for lack of conformity within 6 months as from delivery of the goods. Directive 1999/44/EC sets out the requirements for guarantees provided to the consumer.

What has been done to implement the commitments?

The provisions of Ukrainian legislation on providing guarantees to consumers and meeting the requirements of consumers in case of discovering shortcomings in purchased products in many respects are close to the requirements of European legislation, in particular Directive 1999/44/EC. The key legal acts in this area include the Law of Ukraine "On Consumer Protection" (Art. 8), the Civil Code of Ukraine (Articles 707-711) and CMU Resolution No. 506 "On Approval of the Procedure for Guaranteed Repair (Maintenance) or Guaranteed Replacement of Technically Complex Household Goods", dated April 11, 2002. The draft amendments to some provisions of the Law of Ukraine "On Consumer Protection" contain a number of amendments and additions to Article 8 "Consumer rights in the event of the purchase of goods of inadequate quality". However, there are still quite a few gaps, even taking into account the proposed amendments.

The Directive establishes a number of important concepts, in particular, "conformity with the contract", "lack of conformity with the contract", etc. The Law of Ukraine "On Consumer Protection" relies on concepts such as "defect",

"material defect", "goods of inadequate quality". At the same time, the concept of "drawback" is not the same as the "lack of conformity with the contract", since the latter concept allows for a wider coverage of special individual needs of consumers – to the extent they were agreed with the seller at the time of purchasing.

Special attention should be given to the divergences between the provisions of the Law and the Directive as regards consequences and possible requirements of the consumer in the event of the purchase of defective goods. The draft amendments to the Law of Ukraine "On Consumer Protection" approximate these provisions to the requirements of the Directive but not to the full extent. In comparison with Directive 1999/44/EC, the current version of the Law on Consumer Protection restricts consumer rights in relation to the requirement to replace the product without additional payments and to reduce the price of the goods, while the proposed amendments to the Law restrict it only with regard to the latter. It is important to point out the rules of the Civil Code of Ukraine, which also regulates the consumer's rights in the event when he is sold a product of inadequate quality (Art.708), grant the right to demand elimination of defects of the goods or refund of the cost of their repair, the right to replacement of the goods, corresponding reduction in prices, or to withdraw from the contract in the event of discovering any defects, regardless of their significance. According to the Civil Code, the significance of the defect matters only in the case of informed acquisition of non-food products that were already in use and are sold through second-hand retail outlets. In this case, the consumer can demand that guarantees be exercised only if the defect is material. Anyhow, Article 8 of the Law of Ukraine "On Consumer Protection" should be brought in line with Art. 3 of Directive 1999/44/EC, and the divergences between Article 8 of the Law and Article 708 of the Civil Code of Ukraine should be eliminated.

Directive No. 1999/44/EC lays down important provisions as regards the moment when the seller assumes liability for lack of conformity – "The seller shall be liable to the consumer for any lack of conformity which exists at the time the goods were delivered" (Para. 1, Article 3). This is the presumption of the seller's responsibility and a reference point for calculating the terms of the seller's liability and claiming consumer rights. Also, the Directive contains provisions on lack of conformity due to incorrect installation and the distribution of rights and responsibilities between the seller and the consumer in cases where the use of the product requires installation (Para. 5, Article 2), however, the Law of Ukraine "On Consumer Protection" for comparable cases of products requiring installation regulates only the issues of the warranty period (Para. 4, Article 7).

In addition, the legislation of Ukraine only partially takes into account the provisions of Para. 1, Art. 5 of the Directive as regards the minimum warranty period during which the seller shall be liable for any lack of conformity: two years from the date of delivery. This term cannot be reduced by agreement of the parties. Instead, the Law establishes the guarantee period of 2 years,

during which the consumer can put forward relevant requirements to the seller (manufacturer, supplier) set for products with no warranty or expiration period established (Para. 5, Art. 7 of the LU). Otherwise, the warranty period is established by contractual provisions (Para. 1, Art. 7 of the LU) and can, in fact, be of any duration, including less than 2 years.

On the other hand, Directive 1999/44/EC allows Member States to impose an additional obligation on the consumer (so that he could use his rights) to notify the seller of the lack of conformity within a period of two months from the time when he discovered a lack of conformity (Para. 2, Art. 4 of the Directive). There is no such provision in Ukrainian legislation. This period does not affect the term of the guarantee and, on the one hand, stimulates the consumer, and at the same time is long enough to pursue remedies for non-conformity of goods purchased abroad and avoid disputes with the seller about timely application (Para. 19-20 of the Preamble of Directive 1999/44/EC).

The Directive establishes the presumption of the lack of conformity without the fault of the consumer during the first 6 months, "Unless proved otherwise, any lack of conformity which becomes apparent within six months of delivery of the goods shall be presumed to have existed at the time of delivery unless this presumption is incompatible with the nature of the goods or the nature of the lack of conformity" (Para. 3, Article 5). Paragraph 21 of the Preamble emphasises the importance of this provision since for certain categories of goods, it is current practice for sellers and producers to offer guarantees on goods against any defect which becomes apparent within a certain period, whereas this practice can stimulate competition. The provisions of the Law concerning evidence and consequences of the appearance of defects due to the fault of the consumer are formulated more rigidly and do not set any deadlines: "the requirements of the consumer provided for herein shall not be satisfied if the seller/the manufacturer (the company that satisfies the requirements of the consumer established in Part one of this article) can prove that the defects of the product arose as a result of the consumer's violation of the rules of use of the product or its storage. The consumer has the right to participate in checking the quality of the product personally or through his representative (Part 14, Article 8 of the Law).

It is important to bear in mind that the Directive is a minimum harmonization tool, so all the mandatory provisions should be taken into account. As stated in the Preamble, "the protection granted to consumers under this Directive should not be reduced on the grounds that the law of a non-member State has been chosen as being applicable to the contract". The level of approximation of Ukrainian legislation is partial, and the proposed amendments to the Law "On Consumer Protection" do not eliminate all inconsistencies.

Unfair Contract Terms

Directive 93/13/EEC on unfair terms in consumer contracts

What are the benefits of relevant standards?

The purpose of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to unfair terms in contracts concluded between a seller or supplier and a consumer. The Directive covers only contractual terms that have not been individually negotiated. The term must always be regarded as not individually negotiated if it was drafted in advance and, therefore, the consumer was not able to influence its substance, especially in the context of a pre-formulated standard contract. However, the fact that certain aspects of a term or one specific term have been individually negotiated shall not exclude the application of this Article to the rest of a contract. Another important provision of the Directive requires that where any seller or supplier claims that a standard term has been individually negotiated, the burden of proof in this respect shall be incumbent on him. Also, the Directive contains an non-exhaustive list of terms that may be considered unfair. The Directive establishes that the terms in written agreements must be written in plain and understandable language. If there is any doubt as to the meaning of a term, the interpretation most favourable to the consumer should prevail. Unfair terms used in a contract concluded by a seller or supplier with a consumer shall not be binding on the consumer, and the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms. In the interests of consumers and of competitors, adequate and effective means should exist to prevent the continued use of unfair terms in contracts concluded with consumers by sellers or suppliers. The means referred to above shall include provisions whereby persons or organizations may take action before the courts or before competent administrative bodies.

What has been done to implement the commitments?

The main provisions of consumer protection regarding unfair terms in contracts established in EU Directive 93/13/EC, in Ukrainian legislation are regulated by Art. 18 of the Law of Ukraine "On Consumer Protection" ("Rendering invalid terms of contracts that restrict consumer rights). The provisions of the article, as well as examples of unfair terms of contracts, are almost entirely in line with Directive 93/13/EC. Just like the European Directive, the Ukrainian law prohibits the use of unfair standard terms in contracts between the seller (supplier, manufacturer) and the consumer and makes it possible to declare such provisions invalid. Moreover, Ukrainian legislation in some respects establishes even more stringent consumer protection rules, since the Directive applies only to the terms of contracts that were not discussed individually with the consumer (standard terms), while Ukrainian legislation applies to any terms. The Directive allows such increased stringency in the

implementation in national legislation. However, there are two differences. Specifically, while Directive 93/13/EC (Annex 1) and Article 18 of the Law "On Consumer Protection" establish almost identical lists of examples of unfair terms of contracts, there is one example that is not mentioned in the Law: "terms excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should lie with another party to the contract." (Annex 1 (q), Directive 93/13 / EC). Although the list of examples of unfair terms of contracts contained in Article 18 of the Law of Ukraine is non-exhaustive, it is nevertheless recommended to supplement it in order to approximate national legislation to the EU standards.

Directive 93/13/EC also stipulates that Member States should establish that unfair terms used in consumer contracts shall not be binding on the consumer and that the contract shall continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair terms. This provision balances the liabilities of the consumer and the seller/supplier and makes them behave with due diligence. There is no equivalent provision concerning unfair terms in consumer contracts in the Ukrainian legislation on the consumer protection.

Directive 97/7/EC on the protection of consumers in respect of distance contracts

Council Directive 85/577/EEC on the protection of consumers in respect of contracts negotiated away from business premises

Both directives regulate similar issues. Directive 97/7/EC applies to distance contracts between a professional and a consumer on provision of services or goods. A distance contract can be concluded in any way (by telephone, e-mail, catalogue, etc.) not involving the simultaneous presence of the parties to the contract. Since these directives apply the principle of minimum harmonization, this has led to significant differences in the legal regulation of Member States.

Directive 85/577/EEC applies to contracts between a trader and a consumer in relation to the provision of goods or services concluded: during a tour organised by the trader away from his business premises; during the trader's visit to the consumer's home; at the consumer's place of work, where the visit does not occur at the customer's will.

Both directives are included in Annex XXXIX to the Association Agreement, as well as in the initial implementation plan for 2014 approved by the Cabinet of Ministers of Ukraine. However, on June 13, 2014, the EU put into force Directive 2011/83 on consumer rights, which repealed and replaced Directives 97/7/EC and 85/577/EEC. Hence, in the latest version of the Plan of Implementation of Title V "Economic and Sectoral Cooperation of the Association Agreement between Ukraine, of the one part, and the European Union, the

European Atomic Energy Community and their Member States, of the other part, for 2017-2019 (approved by CMU Order No. 503-p "On Amendments to Order No. 847 of the Cabinet of Ministers of Ukraine, dated September 17, 2014", dated June 21, 2017), the implementation measures concern Directive 2011/83 on consumer rights, rather that the repealed directives.

Directive 2011/83 on consumer rights

What are the benefits of relevant standards?

The main purpose of this Directive is to provide protection to buyers when making cross-border purchases and to strike the fair balance between the interests of seller and consumers. The scope of the Directive covers exclusively the contracts concluded between the seller and the consumer. The directive sets out the information requirements for the seller: before entering into a contract, sellers must provide consumers with clear and comprehensible information about their identity and contact details, key product characteristics, payment terms, delivery time, performance conditions and duration of the contract, and the terms of its termination. Shops should provide information that is not obvious. Information requirements, in particular regarding the right of withdrawal, are more detailed for postal, telephone or online contracts and contracts concluded outside business premises (where the seller visits the consumer's home). Consumers may withdraw from distance and off-premises contracts within 14 days from the moment of product delivery or entering into a contract on services, with certain exceptions, without any explanations or costs. The standard withdrawal form provided by the seller is sufficient. If the trader has not informed the consumer about his rights, the period of the right of withdrawal shall expand for a period of up to 12 months. Exceptions include perishable goods, sealed goods which are not suitable for return due to health protection or hygiene reasons and were unsealed after delivery, as well as hotel reservation or car rental if the contract provides for a specific date or period of performance.

What has been done to implement the commitments?

In Ukrainian legislation, the issue of protecting consumer rights in distance trade and contracts concluded away from business premises is regulated by the Law "On Consumer Protection" (Art. 12 and 13) and Law of Ukraine No. 675-VIII "On Electronic Commerce", dated September 3, 2015. There is also Order No. 103 of the Ministry of Economy "On Approval of Rules for Selling Goods by Order and Away from Business or Office Premises", dated April 19, 2007. Articles 12 and 13 of the Law on Consumer Protection are generally harmonised with the requirements of Directive 97/7/EC on the protection of consumers in respect of distance contracts and 85/577/EEC on the protection of consumers in respect of contracts negotiated away from business premises. Legislators prepared draft law of Ukraine No. 6754 "On Amendments to the Law of Ukraine 'On

Consumer Protection' and Certain Legislative Acts of Ukraine on Measures for Deshadowization of the Activities of E-Commerce Entities", dated July 17, 2017. However, as stated above, the Directives themselves have become invalid in the EU and have been completely replaced by Directive 2011/83/EC on consumer rights, which entered into force on 13 June 2014 and contains a number of new provisions other than those in Directives 97/7/EC and 85/577/EEC. First of all, there are certain differences in terminology (for example, such basic concepts as "contract negotiated away from business premises" and "distance contract"). In addition, Directive 2011/83/EC lays down a clear, exhaustive list of prior information that the seller must provide to the consumer when negotiating a contract both in the office (Art. 5) and a distance contract/off-premises contract (Art. 6). The Law of Ukraine "On Consumer Protection" does not provide any list of necessary preliminary information regarding consumer contracts (Para. 1, Art. 6 of the Law only stipulates that "the trader (manufacturer, supplier) is obliged to deliver to the consumer products of an adequate quality, as well as provide information on these products" and Art. 15 lists the information the consumer is entitled to). The list does not include the following points of Directive 2011/83 (Art. 5):

- the arrangements for payment, delivery, performance, the time by which the trader undertakes to deliver the goods or to perform the service, and the trader's complaint handling policy (Art. 5 (d);
- in addition to a reminder of the existence of a legal guarantee of conformity for goods, the existence and the conditions of after-sales services and commercial guarantees, where applicable (Art. 5 (e);
- the duration of the contract, where applicable, or, if the contract is of indeterminate duration or is to be extended automatically, the conditions for terminating the contract (Art. 5 (f);
- where applicable, the functionality, including applicable technical protection measures, of digital content (Art. 5 (g);
- where applicable, any relevant interoperability of digital content with hardware and software that the trader is aware of or can reasonably be expected to have been aware of (Art. 5 (h).

In addition, there are the following discrepancies between Directive 2011/83 and the current version of the Law of Ukraine "On Consumer Protection" and the proposed amendments to this Law:

- They do not fully reflect the obligation of the trader to provide information on the procedure of withdrawal from the contract. Consequently, there are no extended deadlines for the consumer's withdrawal from the contract if the trader did not provide him with proper information on the withdrawal procedure (up to 12 months in accordance with Article 10 of the Directive, in comparison with 90 days under the current Law of Ukraine on Consumer Protection (Para. 4, Art. 13 of the Law);
- Although the Law establishes that the cost of returning goods shall be

borne by the trader, however, it does not indicate that the costs to be returned to the consumer should also include prepaid delivery costs (para. 5, Art. 8 of the Directive);

- The issue of returning money to the consumer is regulated only in the case of returning goods of inadequate quality (Art. 8 of the Law);
- The Law ignores the issue of the inadmissibility of charging the consumer for additional fees when paying with plastic and credit cards, except for official bank rates (Art. 19 of the Directive);
- The Law does not prohibit to set telephone tariffs exceeding the basic rate when ordering a product (Art. 21 of the Directive).

Special attention should be given to the Law of Ukraine "On Electronic Commerce" that greatly improved consumer protection in online or telephone shopping. It takes into account a number of provisions laid down in Directive 2011/83/EC as regards distance trading; for example, it establishes a requirement for traders (suppliers) to identify themselves in more detail (Art. 7 of the Law). However, the fundamental difference between the Law and Directive 2011/83 is that their scope of application overlaps only partially: the Law On Elecronic Commerce applies to transactions performed exclusively by means of IT systems, while Directive 2011/83 also extends to such kinds of distance trade as for example, mail order or direct sales (trade near or at the buyer's premises).

Thus, the mechanisms of protection of the Ukrainian consumer in the context of distance trade are partially approximated to the requirements of the Directive. There is a rather large number of discrepancies due to the fact that the Directives referred to in the Association Agreement were repealed and replaced with new Directive 2011/83, which was not fully taken into account. The latter Directive should be used as the approximation criterion.

Council Directive 90/314/EEC on package travel, package holidays and package tours

What are the benefits of relevant standards?

This Directive will be in force by June 30, 2018, whereupon it will be repealed and replaced with new Directive 2015/2302 on package tours and related tourist services, amendments to Regulation (EC) 2006/2004 and Directive 2011/83/EC and repealing Directive 90/314/EEC. Thus, it makes sense to discuss the provisions of Directive 90/314/EEC and the amendments introduced by Directive 2015/2302. The purpose of Directive 90/314/EEC is to approximate the laws, regulations and administrative provisions of the Member States relating to packages sold or offered for sale in the territory of the Community. Any descriptive material of the package provided by the organiser or the retailer to the consumer, the package price and any other

terms applicable to the contract must not contain any misleading information. The directive details the aspects of package tours concerning which brochures provided to the consumer should indicate prices and adequate information, as well as the conditions under which the details contained in the brochure are binding on the organiser and/or the retailer, the information which the organiser and/or the retailer must provide to the consumer prior to the signing of the contract and before the journey. It also stipulates that Member States must ensure that a number of specified principles are applied to contracts. Prices established by the contract shall not be subject to revision except where the possibility of upward or downward revision is expressly provided for in the contract; whereas that possibility should nonetheless be subject to certain conditions. The price stated in the contract shall not be increased during the twenty days prior to the departure date stipulated. If the organiser decides that, prior to departure, he has to significantly change any of the important conditions, such as price, he must inform the consumer as soon as possible in order to enable him to make the appropriate decisions, in particular, to withdraw from the contract without penalty, to accept a rider to the contract specifying the alterations made and their impact on the price. The Directive regulates the rights and obligations, including financial ones, of the trader and the buyer, if the buyer withdraws from the contract pursuant to Para. 5, or for any reason other than the fault of the consumer, the organiser cancels the package. The Directive obliges Member States to take the necessary steps to ensure that the organiser and/or retailer shall be liable to the consumer for the proper performance of the obligations set out in the contract and for any damage sustained by the consumer due to non-performance or improper performance under the contract, unless the damage is not to any fault of the organiser and / or retailer. Member States have the right to limit compensation for damage. The consumer must inform the relevant service provider and the organiser and/or retailer in writing or in any other appropriate form of any failure in the performance of a contract at the earliest opportunity. In case of complaints, the organiser and/or retailer or his local representative, if any, should take immediate measures to settle the problem. Another important provision of the Directive implies that the organiser and/or retailer as a party to the contract should provide sufficient evidence of security to return the money paid or repatriate the consumer in the event of insolvency. In order to protect consumers, Member States are allowed to adopt or retain more stringent provisions in the area covered by this Directive.

New Directive 2015/2302 came into force on December 31, 2015. Member States shall transpose this Directive by 1 January 2018 and its application shall begin on 1 July 2018. The provisions of the Directive will continue to extend consumer protection in relation to traditional package travel purchased through tour operators/travel agents and will clearly set protection of consumers who order other types of combined travel through the Internet (for example, a combination of airfares plus hotel or car rental). Such combinations will fall within the scope of package travel protection, especially when travel services are sold as a package within one booking process. The new

directive applies to 3 different types of travel combinations:

1) Pre-arranged package means a combination of at least two different types of travel services for the purpose of the same trip (transportation, accommodation or other services such as car rental);

2) Individual package – a selection of components for one tourist trip and their purchase from one seller online or offline;

3) Linked travel arrangements – a weaker combination of travel services, when, for instance, a traveller books a travel service through one website and is invited in a targeted manner to procure another travel service from another trader, where a contract is concluded at the latest 24 hours after the confirmation of the booking of the first travel service. In such cases, the consumer should be informed that he is not offered a package, but under certain conditions his previous payments will be protected.

At the same time, business trips arranged by business travel companies are not covered by the Directive.

Directive 2015/2302/EC also contains the following provisions:

- New requirements for information for travellers: travellers should receive clear and comprehensible information about the package and the protection they enjoy in accordance with the rules of the package tour; and the printed travel brochure is no longer the only source of information, other information carriers are acceptable too;
- More predictable prices: setting a limit of 8% for a possible price increase by the trader, and in case of exceeding the limit, the consumer is entitled to cancel the trip;
- Detailed provisions on alternative measures taken by the organiser when after the departure a significant part of the services specified in the contract are not provided to the consumer;
- Consumer rights to cancellation are expanded: free cancellation is introduced before departure in the event of a natural disaster, war or another serious situation at the destination. Package travellers may also cancel their travel regardless of the above force majeure circumstances and pay a reasonable fee for cancellation (in addition to the right to transfer the package to another consumer);
- Clear identification of the responsible party: the package organiser should be responsible for settling possible problems during the travel in all EU member states. In addition, Member States may decide that the travel agent is also fully liable;
- Clear responsibility for booking errors: traders will be clearly responsible for booking errors concerning packages and linked travel arrangements;
- Explanation of basic consumer rights: the organiser should provide

assistance to travellers in difficult situations, for example, if medical care is needed;

- The terms of the guarantees of return of money and repatriation are described: if the package organiser is insolvent, the tourist has guarantees of return of money and repatriation;

- Equal conditions: the same rules will apply to companies that sell competing travel products in the EU, which will facilitate cross-border transactions;

- Mutual recognition of consumer protection in the event of insolvency of the organiser: protection schemes in the event of insolvency are mutually recognised by all EU Member States. To this end, a mechanism for structured cooperation between Member States will be introduced.

What has been done to implement the commitments?

In the national legislation, mechanisms of consumer protection in organization and performance of tourist travel are established by Law of Ukraine No. 324/95 "On Tourism", dated September 15, 1995. This Law largely takes into account the requirements of Directive 90/314/EEC on package travel, package holidays and package tours. draft law No. 7300 "On Amendments to the Law of Ukraine 'On Tourism' as Regards Definition of the Term 'Alternative Measures for the Provision of a Tourist Product' and Specification of the List of Essential Conditions and the Form of the Contract for Travel Services", dated 16 November 2017, also contributes to approximation to the requirements of the Directive. In particular, the draft law proposes to make the following amendments to the Law of Ukraine "On Tourism":

- to supplement article 1 with the definition of the term "alternative measures for provision of a tourist product";

- to exclude the provision of Para. 7, Section 1, Art. 24 implying that the approval of a model (public) contract for travel services is the right of the travel business entity and at the same time supplement Article 20 with the provision that the typical form of a travel service contract shall be approved by the Cabinet of Ministers of Ukraine and is to be published on the official website of the latter;

- to specify the list of essential terms of the travel contract in Article 20;

- to establish the criteria that will help to draw a line between the lawful conduct of the tour operator in the application of alternative measures and cases of abuse of this right.

On the initiative of the Ministry of Economic Development and on the proposal of the Technical Committee on Standardization TK-118, the National Standardization Body of the State Enterprise "Ukrainian Research and Training Centre for Standards, Certification and Quality" by its orders No. 236 "On Adoption of Regulatory Documents of Ukraine Harmonised with International and European Regulatory Documents, and Repealing Regulatory Documents of

Ukraine", dated 11.08.2016, and No. 243 "On Adoption of Regulatory Documents of Ukraine Harmonised With International and European Standards", dated 22.08.2016, approved 11 national travel standards of Ukraine harmonised with international and European normative documents.

Comprehensive amendments to the Law of Ukraine "On Tourism" are being prepared, which are to finally take into account the provisions of Council Directive 90/314/EEC as regards the establishment of sufficient evidence of security for the refund of money paid over and for the repatriation of the consumer in the event of insolvency, and also provides for compulsory civil liability insurance of tour operators regarding the refund of costs for repatriation of consumers.

However, taking into account the fact that Directive 90/314/EEC will lose force on 30 June 2018 and will be replaced with Directive No. 2015/2302/EC on package tours and related tourist services that significantly extends the rights consumers, it would be advisable to perform approximation to the provisions of the latter Directive.

Due credit should be given to the efforts and work undertaken by the government to bring the consumer protection legislation in the field of travel to an appropriate level, especially given the fact that from the very start a wrong way to develop technical regulations on travel services was chosen (although technical regulations cannot regulate the provision of services to the consumer). Legislators partially made up for the wasted time by drafting a number of amendments to the Law of Ukraine "On Tourism".

Directive 2008/122/EC on the protection of consumers in respect to certain aspects of timeshare, long-term holiday products, resale and exchange contracts

What are the benefits of relevant standards?

The purpose of this Directive is to contribute to the proper functioning of the internal market and to achieve a high level of consumer protection, by approximating the laws, regulations and administrative provisions of the Member States in respect of certain aspects of the marketing, sale and resale of timeshares and long-term holiday products as well as exchange contracts. The term "timeshare contract" means a contract of a duration of more than one year under which a consumer, for consideration, acquires the right to use one or more overnight accommodation for more than one period of occupation. In fact, the Timeshare Contract provides consumers with:

a) the right to obtain title to use immovable property, the owner's rights to which can be used in full (possession, use, disposal);

b) ownership in jointly-owned property.

It is important to observe certain regulatory provisions usually contained

in the contract. The owner cannot dispose of the property itself. As a matter of fact, timeshare is a property right that cannot be an object of civil-law transactions (cannot be transferred into ownership of third persons, subject to seizure, etc.). Thus, a person can pay a certain amount of money and get a title to a part of a hotel or another property object for any specified period within the specified term.

Also, Directive 2008/122/EC sets rules for advertising, pre-contractual and contractual information, the right to withdraw from a timeshare contract and a prohibition on advance payments during the withdrawal period. Before the consumer is bound by any timeshare contract, the seller must free of charge provide clear, accurate and sufficient information using the standard form in the official language of the consumer's EU country. The form should include information about the product (in case of a timeshare contract, a long-term holiday contract or an exchange contract) or services (in case of a resale contract), consumer rights and all costs. The form should specify that the consumer has the right to withdraw from the contract and the conditions under which it may be exercised. This information is an integral part of the contract.

Any timeshare advertisement must indicate where one can obtain written information. Any invitation to an event involving presentation or sale of timeshare products must clearly indicate the commercial purpose of the event; the information package must be available to the consumer at any time. Timeshare or long-term holiday products cannot be sold as an investment. Before signing the contract, the seller must clearly draw the consumer's attention to his right to withdraw from the contract, the terms for withdrawal and the prohibition on advance payments. These contract clauses shall be signed separately. The contract should contain a separate standard withdrawal form designed to facilitate withdrawal from the contract. The consumer has the right to withdraw without specifying the reason within 14 days after signing or obtaining the contract. The right to withdraw from the contract shall be extended for 3 months if no information package was provided to the consumer, and for 1 year if he was not provided with the standard withdrawal form. The Directive also clearly regulates the procedure of payment under the contract. The EU countries should inform consumers about the methods of refund under national legislation and encourage extrajudicial settlement.

What has been done to implement the commitments?

Regarding the regulation of timeshare as one of the current varieties of tourism, Ukrainian legislation contains no provisions. Therefore, the rights of the Ukrainian consumer regarding timeshare contracts remain unregulated. Neither are any relevant provisions contained in the draft laws amending the Law of Ukraine "On Tourism" registered in the Verkhovna Rada after the signing of the Association Agreement.

Financial Services

Directive 2002/65/EC on distance marketing of consumer financial services

What are the benefits of relevant standards?

The Directive regulates matters concerning:

- information to be provided to the consumer prior to the conclusion of a distance contract;
- notification of contractual terms and preliminary information;
- right of withdrawal;
- payment for services rendered before the withdrawal from the contract;
- specific features of payment by card;
- unsolicited services and communications;
- opportunities and procedures for out-of-court settlement of claims;
- judicial and administrative remedies for claims;
- proof burden sharing.

In addition, Directive 2002/65/EC is imperative: consumers cannot waive the rights granted to them by this Directive, and Member States shall take the measures needed to ensure that the consumer does not lose the protection granted by this Directive.

What has been done to implement the commitments?

Order No. 503-p of the Cabinet of Ministers of Ukraine "On Amendments to Order No. 847 of the Cabinet of Ministers of Ukraine dated September 17, 2014", dated June 21, 2017, confirms that Directive 2002/65/EC is one of the target criteria for the implementation of the plan of approximation of Ukrainian legislation to EU legislation. The Law of Ukraine "On Consumer Protection" in its articles dealing with distance and off-premises trade explicitly states that it does not cover the regulation of the marketing of financial services. Financial services in general are regulated by Law of Ukraine No. 2664-III "On Financial Services and State Regulation of Markets for Financial Services", dated August 12, 2001, but its current version does not take into account the provisions of Directive 2002/65 / EC. Therefore, in practical terms, the consumer protection in obtaining distance financial services is not regulated by any separate acts. For example, the well-known and widely used Privat-24 service is regulated by the following legal acts (according to Section 2.3.2 "Internet Banking System Privat-24" of the bank's Public Offer on Terms and Conditions of Granting Banking Services):

"2.3.2.1.2.1. The Bank's relations with the Client in providing the services in the System are subject to the following regulations:

1. Law of Ukraine No. 2121 -III "On Banks and Banking Activity", dated 07.12.00.

2. Law of Ukraine No. 2346 -III "On Payment Systems and Transfer of Money in Ukraine", dated 05.04.01.

3. Resolution of the National Bank of Ukraine No. 705 "On Conducting Transactions Using Electronic Payment Instruments", dated November 05, 2014.

4. Instruction on the Procedure for Opening, Use and Closing of Accounts in National and Foreign Currencies, approved by Resolution No. 492 of the Board of the National Bank of Ukraine, dated 12.11.03.

5. Regulation on the Procedure for Conducting Deposit Operations with Legal Entities and Individuals by Ukrainian Banks, approved by Resolution No. 516 of the Board of the National Bank of Ukraine, dated 03.12.03.

6. Instruction on Cashless Settlements in National Currency in Ukraine, approved by Resolution No. 22 of the Board of the National Bank of Ukraine, dated 21.01.04.

7. Rules for Individuals' Transfers outside Ukraine and in Ukraine under Current Non-Commercial Currency Transactions and Their Payment in Ukraine, approved by Resolution No. 496 of the Board of the National Bank of Ukraine, dated December 29, 2007.

8. NBU Resolution No. 281 "On Approval of the Regulatory and Legal Acts of the National Bank of Ukraine", dated 10.08.2005.

At the moment, draft law of Ukraine No. 2456 "On Amendments to Certain Legislative Acts of Ukraine as Regards Improvement of Protection of Consumers of Financial Services", dated March 23, 2015, has been referred for the second reading. It introduces significant and major changes to the provisions of the Law of Ukraine "On Financial Services and State Regulation of Markets of Financial Services" and a number of other acts. The draft law takes into account a significant part of the provisions of Directive 2002/65/EC, but it does not single out or regulate distance financial services in the same way as non-distance ones. As a result, some provisions of Directive 2002/65/EC that apply exclusively to distance financial services have not been reflected in the draft law (e.g., some information to be provided to the consumer (client) before the conclusion of a distance contract (Art. 6 of Directive 2002/65/EC compared to amendments to Art. 12 of the draft law). Neither does it take into account several other provisions of the Directive, such as specific aspects of payment by card (Art. 8), regulation of unsolicited services (Art. 9) and unsolicited communications (Art. 10), etc.

Consumer Credit

Directive 2008/48/EC on credit agreements for consumers

What are the benefits of relevant standards?

The purpose of Directive 2008/48/EC is to harmonise certain aspects of the laws, regulations and administrative provisions of the Member States concerning agreements covering credit for consumers. However, the Directive does not apply to credit agreements secured by a mortgage (regulated by Directive 2014/17 on credit agreements for consumers relating to residential immovable property); credit agreements the purpose of which is to acquire or retain property rights in land or in an existing or projected building; credit agreements involving a total amount of credit less than EUR 200 or more than EUR 75 000.

The Directive establishes that when a credit advertisement contains aspects related to the cost of the credit (e.g., interest rate), the advertising should provide standard information on the basis of a representative example containing, inter alia, the following information:

- the borrowing rate and any charges included in the total cost of the credit to the consumer;
- the total amount of credit;
- the annual percentage rate of charge.

Before entering into a credit agreement, the creditor must provide clear and comprehensible information about the key credit terms. The Directive details the information the creditor must provide. Consumers should receive information in the standard format. Also, the Directive establishes the kind of information that must be included in credit agreements. Creditors have to provide adequate explanations to the consumer enabling him to choose the agreement adapted to his needs and to his financial situation and to assess the creditworthiness of clients prior to signing an agreement, while respecting the right of consumers to be informed if their credit application is rejected. The consumer can withdraw from the agreement within 14 days without explaining the reason. The consumer shall have the right of early repayment, provided that the creditor receives fair and reasonable compensation.

What has been done to implement the commitments?

In Ukraine, the issue of consumer credit is regulated by new Law of Ukraine No. 1734-VIII "On Consumer Credit", dated November 15, 2016. Its provisions improve the regulation of legal relations associated with provision, maintenance and return of consumer credits, and ensure greater consumer protection. The law is to a large extent approximated to the requirements of Directive 2008/48/EC on credit agreements for consumers, and, based on

its model, introduces a number of innovations. Specifically, the Law clarifies the requirements for the promotion of consumer credits. Thus, in addition to the requirements of laws on advertising, consumer credit advertising should contain standard information on the maximum amount of the credit, the real annual interest rate (total consumer credit costs expressed as a percentage of the annual amount of the credit), the maximum period of the credit, and, in some cases, the amount of the first instalment. In addition, the Law explicitly prohibits to indicate in advertising that a consumer credit may be provided without documentary evidence of the borrower's creditworthiness or that the credit is interest-free or is provided with zero interest. It introduces a standardised form (the so-called consumer credit passport), approved as Annex 1 to the Law, and makes it obligatory for all creditors. This form contains all details of the credit that the creditor must provide in accordance with the requirements of the Law. The creditor is recognised as complying with the requirements for providing information to the consumer prior to entering into a contract if he provided the latter with the standardised form in writing. When the consumer signs this form to confirm that he has familiarised himself with the information and all the reservations laid down therein, the creditor gets a written guarantee of protection of his rights. The Law also regulates the activities of credit intermediaries, clearly enlisting the persons who may act as credit intermediaries under a consumer credit agreement. It is important to emphasise that the Law obliges creditors to assess the creditworthiness of consumers. It sets out clear requirements concerning consumer protection, for example, the consumer's right to demand that an agreement entered into on unfavourable conditions as a result of a failure to provide the information specified in the Law be brought in compliance with the specified information, and the consumer's right to withdraw from a consumer credit agreement within 14 calendar days from receipt of a copy of the concluded agreement under the conditions provided for in the Law. Another important innovation is change of the procedure of repayment under a consumer credit agreement: in case of arrears, fines/penalties shall be paid last of all, rather than as first priority. Another important provision of the Law for consumers is the upper limit of penalties that can be imposed on them.

Despite the high degree of approximation to the provisions of Directive 2008/48/EC, there are some differences:

1) Differences in the scope of application – the Law applies to mortgage lending, while the Directive excludes mortgage loans from the list of consumer credits;

2) the upper limit of the loan is not set;

3) the concept of overdraft is not established;

4) the Law does not include penalties for the consumer's failure to fulfil obligations in the total cost of the consumer credit, just like all taxes and duties payable on purchased goods, works or services, as well as the cost of additional and related services of third persons involved in obtaining the credit – this

artificially reduces the consumer's perception of the total cost of the credit;

5) informing the consumer of a reference rate rather than the exact total cost of the credit, although Directive 2008/48/EC, which was taken as a basis for drafting the Law, directly requires that the consumer be informed of the total value, rather than an approximate or reference total cost;

6) Directive 2008/48/EC contains a clear formula for calculating the annual interest rate, which is not included in the Law;

7) The EU Directive explicitly requires that the financial institution should provide credit information in a clear and prominent way by giving a representative example, while the Law only contains a standard typical-of-the-market phrase "information must be clear and precise".

Thus, a significant step has been taken to bring the consumer protection mechanism closer to the EU standards. The degree of approximation can be described as partial, because there are a number of inconsistencies.

Enforcement

Directive 98/27/EC on injunctions for the protection of consumers' interests.

This Directive was repealed and replaced by Directive 2009/22/EC on injunctions for the protection of consumers' interests. The Association Agreement (Appendix XXXIX to Chapter 20) stipulates Directive 98/27/EC on injunctions for the protection of consumers' interests as a criterion, and its provisions are to be introduced within 3 years from the date of entry into force of the Association Agreement. However, it should be noted that it was Directive 2009/22/EC that was introduced into the Plan of Implementation of Title V "Economic and Sectoral Cooperation" of the Association Agreement for 2017-2019 approved by Order No. 503-p of the Cabinet of Ministers of Ukraine 'On Amendments to Order No. 847 of the Cabinet of Ministers of Ukraine dated September 17, 2014' dated June 21, 2017.

Directive 2009/22/EC on injunctions for the protection of consumers' interests

What are the benefits of relevant standards?

The purpose of Directive 2009/22/EC is to approximate the laws, regulations and administrative provisions of the Member States relating to actions for an injunction (cessation or prohibition of any infringement) aimed at the protection of the collective interests of consumers in the area of consumer credit, distance agreements, package travel, etc. Collective interests

means interests which do not include the cumulation of interests of individuals who have been harmed by an infringement. Therefore, Member States should designate courts or administrative bodies authorised to take decisions in proceedings initiated by public authorities responsible for protecting collective interests of consumers as well as by relevant consumer organizations (EU Member States shall determine the relevant eligibility criteria). Relevant government agencies and consumer organizations (collectively referred to as "qualified entities") must comply with a set of established criteria. The Directive also establishes the obligations of Member States with regard to cases where an infringement of consumer interests and their protection territorially occurs in different States. It also establishes an obligation to attempt to cease the infringement through consultations either with the defendant, or both with the defendant and the qualified agency before bringing an action before the court.

What has been done to implement the commitments?

In Ukraine, collective consumer rights are regulated by the Law on Consumer Protection (Art. 24 (Public Consumer Organizations (Consumers Associations)) and Art. 25 (Rights of Public Consumer Organizations (Consumers Associations)), as well as by Law of Ukraine No. 4572-VI "On Public Associations", dated March 22, 2012.

Draft law of Ukraine No. 5548 "On Amendments to Certain Legislative Acts of Ukraine (as Regards Consumer Protection)", dated December 16, 2016, amends the provisions of the Civil Procedural Code of Ukraine (Art. 3, 45, 46, 96) and the Law of Ukraine "On Consumer Protection" (Art. 25, 26, 28) authorising state bodies and individuals to represent collective interests of consumers, including an uncertain range of consumers (Art. 3), which approximates the Law to the requirements of Directive 2009/22/EC.

However, the above laws remain unaligned with the provisions of Directive 2009/22/EC as regards the qualification criteria for qualified consumer protection entities (including both state bodies and consumer associations) (Art. 3), mandatory attempts for out-of-court settlement, as well as taking into account cases of cross-border infringements of consumer rights (Art. 4).

Social Policy

Social Policy

Authors

Zoriana Kozak

Anatolii Stovbun

I. Review of commitments that had to be fulfilled from November 1, 2014 to November 1, 2016

From 2014 to 2017, the implementation of the social policy requirements of the Association Agreement was focusing on alignment of Ukrainian legislation with EU laws. Ukraine adopted a number of plans for implementation of both the Agreement itself and specific directives, stipulating measures for implementation of the social policy matters envisaged by the Agreement. The status of implementation of these measures depends on the areas they are supposed to regulate. However, there are the following common trends regarding the implementation of Ukraine's social policy commitments:

— the situation regarding approximation of Ukrainian legislation to EU laws is relatively better concerning areas already covered by legislation that takes into account the minimum requirements of relevant EU acts. For example, the general framework for creating safe and healthy working conditions for all workers, ensuring safe and healthy working conditions and protection of pregnant workers, workers who have recently given birth or are breastfeeding, the principle of gender equality in the establishment of a common framework for social security. At the same time, the achievements with regard to implementing the minimum requirements of EU legislation that are not implemented in the current legislation of Ukraine are less significant;

— often relevant regulations or their drafts fail to fully incorporate the provisions of directives due to an insufficiently proficient approach to choosing measures for implementation of certain EU acts;

— breach of the deadlines for implementation of measures aimed at aligning existing legislation with most of the EU acts envisaged in Annex XL.

II. Commitments that Ukraine had to fulfil by November 1, 2017

Main responsible party: Ministry of Social Policy of Ukraine and State Labour Service of Ukraine.

Position in the Association Agreement. Ukraine's social policy commitments are mostly outlined in Chapter 21 Cooperation on Employment,

Social Policy and Equal Opportunities, Title V of the Association Agreement. Some of these commitments are set forth in other parts of the Association Agreement, in particular regarding protection of the labour rights of migrants, legal status of pension funds, etc. The EU legislative acts with which Ukraine undertook to align its legislation are listed in Appendix XL to Chapter 21 of the Association Agreement (hereinafter – Annex XL). The list includes 40 EU acts, falling into three social policy categories – i.e. labour law, anti-discrimination and gender equality, and health and safety at work.

As of November 1, 2017, Ukraine committed itself to align its national legislation with 12 EU acts in the field of social policy in the following areas:

— Labour law – 4 EU directives;

— Anti-discrimination and gender equality – 4 EU directives;

— Health and safety at work – 4 EU directives.

By our estimate, Ukraine's commitments as regards approximation of its legislation to the above-mentioned EU acts have been partly fulfilled.

Labour law:

• **Council Directive 97/81/EC** of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC – Annex: Framework agreement on part-time work (hereinafter – Directive 97/81/EC on part-time work);

• **Council Directive 91/383/EEC** of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship (hereinafter – Directive 91/383/EEC on fixed-duration or temporary employment relationship);

• **Council Directive 2001/23/EC** of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (hereinafter – Directive 2001/23/EC on safeguarding employees' rights in the event of transfers of undertakings);

• **Directive 2002/14/EC** of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community – Joint declaration of the European Parliament, the Council and the Commission on employee representation (hereinafter – Directive 2002/14/EC on informing and consulting).

Anti-discrimination and gender equality:

• **Council Directive 2004/113/EC** of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (hereinafter – Directive 2004/113/EC on equal treatment between men and women in the access to goods and services);

• **Council Directive 2010/18/EU** of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (hereinafter – Directive 2010/18/EU on parental leave);

• **Council Directive 92/85/EEC** of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (hereinafter – Directive 92/85/EEC on safety and health at work of pregnant workers);

• **Council Directive 79/7/EEC** of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (hereinafter – Directive 79/7/EEC on equal treatment in matters of social security).

Health and safety at work:

• **Directive 89/391/EEC** of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work;

• **Council Directive 89/654/EEC** of 30 November 1989 concerning the minimum safety and health requirements for the workplace (first individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC);

• **Council Directive 89/655/EEC** of 30 November 1989, concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC);

• **Directive 2001/45/EC** of the European Parliament and of the Council of 27 June 2001 amending Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

The Annex includes several EU directives that at the time of signing by Ukraine of the Association Agreement were repealed due to adoption of new directives. The Cabinet of Ministers of Ukraine (hereinafter – the CMU) designed measures and approved plans for the implementation of the new directives. Given the above, we assessed the status of approximation of Ukrainian legislation to:

— **Council Directive 2010/18/EU** of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC;

— **Directive 2009/104/EC** of the European Parliament and of the Council of 16 September 2009 concerning the minimum safety and health

requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

Labour law

Directive 97/81/EC on part-time work

What are the benefits of the relevant EU standards?

The provisions of this Directive implement the Framework Agreement on part-time employment concluded on 6 June 1997, which involves:

– Elimination of discrimination against part-time workers and prohibition to treat them in a less favourable manner compared to full-time employees;

– prohibition to terminate employment of workers on the grounds of their refusal to transfer from full-time to part-time work or vice versa;

– promoting development of part-time employment on a voluntary basis, flexible organisation of working time taking into account the interests of the employer and employee;

– improving the quality of part-time employment, informing about the availability of full or part-time positions, transfer of full-time workers to part-time employment at their request, access to vocational education and career development.

What has been done to implement the commitments?

All government documents related to plans of implementation of the Association Agreement involve measures to approximate Ukrainian legislation to Directive 97/81/EC – from drafting and adoption of regulations on the development of part-time work in terms of more flexible organisation of work to elimination of discrimination against part-time workers and prohibition of their dismissal on grounds related to part-time employment[1].

Ukraine's commitments regarding approximation of legislation to

1) Terms for the implementation of these measures vary: in Plan of Implementation of Council Directive 97/81/EC concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC — February 2016, in CMU Resolution No. 847-p of 17 September 2014 "On the implementation of the Association Agreement between Ukraine, on the one part, and the European Union, the European Atomic Energy Community and their Member States, on the other part" (hereinafter – CMU Action Plan) — August, 2017, in the Action Plan to Implement Title V "Economic and Sector Cooperation " of the Association Agreement between Ukraine, on the one part, and the European Union, the European Atomic Energy Community and their Member States, on the other part, for 2017-2019, approved by CMU Resolution 503-p dated June 21, 2017 (hereinafter – Title V Action Plan) — 2017, and in the new draft CMU Action Plan (as of 25.11.2017 it had not been officially published, therefore for the purposes of this study its draft version was used) — October 31, 2017. However, all of these deadlines have been missed with regard to adoption of legislation.

Directive 97/81/EC on part-time work were partially fulfilled, since the required regulations were not adopted. The provisions on part-time employment that take into account the requirements of the Directive are included in the draft Labour Code of Ukraine[2] (hereinafter referred to as the draft LCU). The draft LCU sets forth the conditions and procedure for establishing part-time work (Article 135), aspects of the part-time work regime (Article 148), correspondence of wages to the time spent on part-time work (Article 232), and the right to a professional (official) career (Article 315).

The draft LCU (as well as the current Labour Code of Ukraine[3]) stipulates that part-time work cannot entail any restrictions on workers' labour rights, however it requires a clear prohibition of discrimination against part-time employees. It is also advisable to settle the issue of annual additional holidays for work in conditions of irregular working hours for part-time workers, defining the concept of overtime for these workers.

Some requirements of Directive 97/81 / EC are not taken into account in the draft LCU, and some of its provisions are contrary to the Directive. Specifically, the draft does not prohibit termination of employment on the grounds the worker's refusal to transfer from full-time to part-time employment or vice versa. At the same time, Art. 86 of the draft LCU provides for the employer's right to terminate an employment contract in connection with layoff due to the employee's refusal to work because of changes in essential work conditions (the latter include introduction or cancellation of part-time work). The draft LCU does not take into account the provisions of the Directive regarding development of part-time employment on a voluntary basis, since Art. 89 provides for the employer's right to apply collective transfer of employees to part-time work in the event of a threat of large-scale layoffs. Although such measures are implemented taking into account the proposals of the elective body of the primary trade union, voluntary part-time employment involves the consent of each employee.

Directive 91/383/EEC on fixed-duration or temporary employment relationship

What are the benefits of the relevant EU standards?

The Directive contains provisions that lay down the requirements for ensuring healthy and safe work conditions for workers with fixed-duration (the end of the contract is established by objective conditions such as: reaching a specific date, completing a specific task or occurrence of a specific event) and temporary (relationships between a temporary employment undertaking which is the employer and the worker, where the latter is assigned to work for and under the control of an undertaking and /or establishment making use of

2) Draft Labour Code of Ukraine No. 1658 dated December 27, 2014.

3) Labour Code of Ukraine No. 322-VIII dated 10.12.1971.

his services) employment relationships:

— requirements relating to both fixed-duration and temporary employment:

– informing the worker of the risks he will be exposed to, in particular the necessary professional qualifications or skills, or special medical surveillance. The information shall be provided to the worker before he takes up any activity by the undertaking and/or establishment making use of his services;

– training of the worker with regard to labour, account being taken of the nature of his work, his qualifications and experience;

– provision of special medical surveillance, if the state does not prohibit the employment of fixed-duration or temporary workers in works that are dangerous to their safety or health;

– informing the employer's services and officials responsible for creating safe and healthy work conditions of fixed-duration or temporary workers so that they could properly perform their functions.

— requirements relating only to temporary workers:

– establishing the areas of responsibility in the labour relations between the employer (i.e. temporary employment undertaking) and the undertaking or establishment making use of the services of temporary workers;

– the undertaking or establishment making use of the services of temporary workers is responsible for creating safe and healthy working conditions.

What has been done to implement the commitments?

The commitment to approximate national legislation to the requirements of Directive 91/383/EEC has been partially fulfilled because the planned law has not been adopted. Documents on plans of implementation of Directive 91/383/EEC envisaged drawing up and adoption of a draft law amending Law of Ukraine No. 5067-VI of 05.07.2012 "On Employment of the Population" as regards prohibition of any public and other temporary works involving increased danger and risks to human health and life during their performance to meet the needs of the state. It should be noted that in 2013 this requirement was adopted at the level of a by-law – Para. 6 of the Procedure for Organisation of Public and Other Temporary Works approved by CMU Resolution No. 175, dated March 20, 2013.

Two draft laws were drafted and registered in the VRU[4] but subsequently withdrawn. The provisions of both draft laws were identical in terms of the list

4) Draft law No. 3566 of 01.12.2015 "On Amending Article 31 of the Law of Ukraine 'On Employment of the Population' (as regards regulation of public works)" and draft law No. 4577 of 04.05.2016 On Amending Article 31 of the Law of Ukraine 'On Employment of the Population' (as regards regulation of public works).

of works involving increased risks that cannot be characterised as public works. This approach does not fully take into account the requirements of the Directive, since the latter provides for the right of the state to prohibit employment of workers with fixed-duration or temporary employment relationships in hazardous jobs. Therefore, the draft law did not take into account the fact that such employment can be performed not only on the state's order but also on the initiative of any employer. The scope of draft laws No. 3566 and No. 4577 does not extend to workers with fixed-duration employment relationships since they do not fall within temporary employment relationships as established by the Directive.

Since Ukrainian legislation does not prohibit using workers with fixed-duration or temporary employment relationships in hazardous jobs, it is necessary to ensure that such workers undergo special medical examination. The fact that the labour relations of such workers are short-term makes it difficult (sometimes impossible) for them to undergo periodic medical examinations. There is no provision for mandatory medical examinations and for cases of termination of labour relations.

Neither legislation, nor draft legislation (specifically the draft LCU) provide for the duty of the undertaking or establishment making use of the worker's services to notify the work safety service at the undertaking or officials performing the relevant functions of the presence of employees with fixed-duration or temporary employment relationships and of the nature of the work that such employees will carry out. The legislation does not provide for distribution of responsibility for ensuring compliance with the terms of the employment contract and working conditions between the temporary employment undertaking and the undertaking or establishment making use of the worker's services. Moreover, Ukrainian legislation does not stipulate that it is the undertaking or establishment making use of the worker's services that has to create and maintain safe and healthy working conditions during the period of temporary employment.

Directive 2001/23/EC on safeguarding employees' rights in the event of transfers of undertakings

What are the benefits of the relevant EU standards?

The Directive establishes measures for safeguarding employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, and provides for:

– transfer of the employer's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer from the transferor to the transferee;

– prohibition of termination of employment contracts on the grounds

of a transfer of the undertaking, business or part of undertaking or business. Exceptions include economic, technical and organisational reasons for changing labour requirements. The state may set exceptions for certain categories of workers;

– extension of previously concluded collective agreements until the date of termination or expiry of the collective agreement or entry into force or application of another collective agreement. Member States may limit the extension of previously concluded collective agreements provided that it shall not be less than one year;

– Member States may apply the requirements of the Directive in cases of bankruptcy, but they should safeguard employees' rights and take measures to prevent abuse of insolvency procedures by the owner of the undertaking, business or parts thereof;

– preservation of the status and functions of the representatives of employees that existed before and during the transfer of the undertaking, business or parts thereof, representation of employees in the event of termination of the activity of their representatives until new ones are elected;

– informing and consulting employees' representatives about the date, the reasons for transferring the undertaking, business or parts thereof, as well as legal, economic and social implications for employees in the event of such a transfer. If there are no employee representatives, measures shall be taken to directly notify employees.

What has been done to implement the commitments?

All documents regarding plans to implement Directive 2001/23/EC envisage drawing up and adoption of draft laws that set the employer's duty to immediately inform employees about transfers of undertakings, businesses or parts of undertakings or businesses, the employer's obligation to comply with the terms of valid collective agreements concluded before reorganisation or transfer of the legal entity (a separate structural unit of a legal entity) during the term stipulated in the Directive, they also regulate the functioning of trade unions and representation of workers' interests in the event of liquidation, reorganisation or transfer.

The commitment to align national legislation with Directive 2001/23/EC on safeguarding employees' rights in the event of transfers of undertakings has been partially fulfilled. The current Ukrainian legislation already contains provisions that take into account the requirements of the Directive, specifically those regarding extension of labour contracts and prohibition to terminate employment due to this reason, extension of the collective agreement in case of transfer of the undertaking, as well as in case of its reorganisation (merger, takeover, division, spin-off, conversion).

The requirements of the Directive are taken into account in draft laws and regulations too. Thus, Art. 68 of the draft LCU focuses of succession in labour relations and sets forth continuation of employment in the event of transfer

of a legal entity, lease of integral property complexes of a legal entity or its structural subdivisions, reorganisation of the employer's legal entity (merger, takeover, division, conversion), as well as in the event of liquidation of a legal entity when property of another legal entity is created on its basis continuing the same activity that the liquidated legal entity was engaged in. It regulates the procedure and timelines of informing employees and their representatives about transfers. However, the draft LCU does not provide for the transfer of the employer's rights and obligations arising from a contract of employment or from an employment relationship existing on the date of a transfer from the transferor to the transferee, regardless of whether the transferee was aware of them.

The tripartite working group[5] drafted the law "On Collective Agreements and Contracts", which in August was submitted to the Ministry of Social Policy for approval by interested authorities and is currently undergoing discussion and harmonisation. The draft law takes into account the requirements of the Directive as regards validity of collective agreements in the event of transfers of undertakings, businesses or parts of undertakings or businesses. Specifically, it provides for the maintenance of their validity during the entire period of liquidation of the employer, and in the event of reorganisation or transfer of the legal entity (separate structural unit of the legal entity) – during the period of validity of the agreement established by the parties. The minimum term of collective agreements is not less than one year, which also complies with the Directive.

Directive 2002/14/EC on informing and consulting

What are the benefits of the relevant EU standards?

The Directive provisions establish:

— the state's duty to take practical measures to ensure the right to information and consultation;

— requirements for the procedure for providing information – the information shall be provided within specified terms and in the specified manner, and the representatives of employees are allowed to study its contents, to formulate questions and prepare for consultations;

— requirements for the procedure for conducting consultations:

— timing, methods and content of the consultations shall be appropriate;

— they shall take place at the relevant (duly authorised) level both on the part of the employer and employees' representatives;

— they shall be based on the information provided by the employer and

5) Established by the decision of the Presidium of the National Tripartite Social and Economic Council dated 31.03.2016.

the opinions of employees' representatives which they are authorised to voice;

— possibility for employees to meet with the employer and receive a reasoned response;

— with a view to reaching an agreement on decisions within the scope of the employer's powers;

— the need to legislatively regulate the conditions for disclosure or non-disclosure of confidential information (in particular, the obligation for employees' representatives not to communicate confidential information, cases, conditions and restrictions when the employer does not disclose confidential information);

— ensuring that employees' representatives, when carrying out their functions, enjoy adequate protection and guarantees to enable them to perform properly the duties which have been assigned to them.

— requirement that Member States shall provide for adequate administrative or judicial procedures to safeguard the violated rights and application of adequate effective, proportionate and dissuasive sanctions in the event of infringement of the rights of the employer or employees' representatives.

What has been done to implement the commitments?

All documents related to plans for implementation of Directive 2002/14/EC provide for drafting and adoption of regulatory and legal acts on the right of all categories of workers to receive information and consultations from the employer, identifying the procedure for provision of information and consultation, creation of a mechanism for protecting the confidentiality of restricted access information provided by the employer to employees' representatives, and introduction of penalties for violation of legislation in the field of social dialogue.

The commitment to align national legislation with Directive 2002/14/EC on informing and consulting is partially fulfilled only due to the existing legislation that already takes into account the requirements of the Directive regarding issues concerning which information is provided to employees' representatives (mainly trade unions) and consultations are held, guarantees of activity and protection of trade unions as representatives of employees, etc. However, regulations that establish requirements for provision of information and consultation before the employer's decisions, as well as conditions and procedure for disclosure or non-disclosure of confidential information, and penalties for violations in the field of information and consultation with employees have not been adopted. According to the Ministry of Social Policy, based on the results of consultations with social partners it concluded that drafting of laws on these issues was inexpedient.

The Directive requires that Member States should introduce adequate, effective, proportionate and dissuasive sanctions in case of infringement of the

requirements for informing and consulting employees. The current legislation of Ukraine does not establish such liability. The Code of Administrative Offenses of Ukraine provides for administrative liability for a failure to provide information (Article 41-3) and evasion of participation (Article 41-1), but these pertain to negotiations on conclusion or amending of a collective agreement/ contract rather than to decisions made by the employer.

Art. 355 of the draft LCU does not eliminate these gaps as it does not regulate the issues of informing and consulting as forms of social dialogue, expressly stating that the procedure for its implementation is established by the law. Art. 12 of the draft LCU focusing on the employer's regulations, does not specify the procedure for informing and consulting employees, and some of its provisions conflict with the requirements of the Directive. Thus, in the absence of a primary trade union organisation, the employer shall approve regulations on his own (while in cases provided for by the code, collective agreements and collective contracts, they shall be issued by the employer taking into account proposals either upon reaching agreement or after consultation). The Directive also specifies provision of information and consultation on decisions that may lead to significant changes in the organisation of work and contractual relations.

At the same time, the Ministry of Social Policy indicated that on June 8, 2017, during the second meeting of Cluster 6 (issues of employment, health, social policy and equal opportunities) of the Subcommittee on Economic and Other Sectoral Cooperation of the Association Committee between Ukraine and the EU, the Ukrainian delegation informed the European party that the Directive was implemented in national legislation[6].

Anti-discrimination and gender equality

Directive 2004/113/ EC on equal treatment between men and women in the access to goods and services

What are the benefits of the relevant EU standards?

The provisions of the Directive establish:

– prohibition of direct / indirect discrimination, harassment, including sexual harassment, victimisation;

– access to administrative or judicial procedures to protect persons who have been discriminated against;

6) Para. 7 Implementation of EU Directives by the Ministry of Social Policy, stipulated by Para. 66 of the Plan of Implementation of Title V Economic and Sector Cooperation of the Association Agreements between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part, for 2017-2019, approved by Order No. 503-p of the Cabinet of Ministers of Ukraine dated June 21, 2017 (On Amendments to Order No. 847 of the Cabinet of Ministers of Ukraine dated 17.09.2014).

– the burden of proof in administrative or judicial procedures shall rest upon the person suspected of discrimination;

– informing on issues of discrimination;

– dialogue with stakeholders;

– guarantees of compensation or reparation for the damage sustained;

– establishment of effective, proportionate and dissuasive penalties for violation of the national legislation on discrimination;

– definition of cases that do not constitute discrimination (differences justified by a legitimate aim, positive action, etc.).

What has been done to implement the commitments?

All documents related to plans for implementation of Directive 2004/113/EC provide for drafting and adoption of regulatory and legal acts with a view to harmonisation of legislation in the field of prevention and counteraction of discrimination with EU laws, protection against sex discrimination, including introduction of penalties for discrimination based on sex, drafting of the State Program for Ensuring Equal Rights and Opportunities for Women and Men by 2021.

In order to put into practice the requirements of the current legislation of Ukraine and develop effective mechanisms for ensuring equality of men and women, organisational and institutional measures are envisaged – i.e. ensuring the effective functioning of the Expert Council for Consideration of Appeals Concerning Incidents of Discrimination, appointment in executive bodies of authorised persons (coordinators) responsible for ensuring equal rights and opportunities of women and men, and establishment of a system for disseminating information on equal rights and opportunities for men and women.

Ukraine's commitments regarding alignment of its legislation with Directive 2004/113/EC on equal treatment between men and women in the access to goods and services have been partially fulfilled since the necessary regulatory and legal acts have not been adopted. The basic requirements of the Directive are taken into account in Law of Ukraine No. 5207-VI of 06.09.2012 "On the Principles of Prevention and Combatting Discrimination in Ukraine" (as amended on 30.05.2014) with regard to the definition of the concepts of discrimination in general, as well as direct and indirect discrimination in particular, positive action etc., the scope of social relations covered by the law (including access to goods and services), and a mechanism for prevention and combating of discrimination.

On November 20, 2015, the Verkhovna Rada registered draft law No. 3501 of November 20, 2015 On Amendments to Certain Legislative Acts of Ukraine (with Regard to Harmonisation of Legislation in the Field of Prevention and Combating Discrimination with EU Legislation. The draft law proposes amendments aimed to prevent and combat discrimination in general,

including those relating to equal treatment of men and women in access to goods and services. It introduces the concepts of "discrimination by association" and "multiple discrimination", as well as defines the concept of "victimisation", establishes its prohibition and provides for administrative liability for relevant violations. The draft law provides for administrative penalties for violating legislation in the field of prevention of and counteraction to discrimination (Art. 188-48). The Law also extends the powers of the VRU Commissioner for Human Rights vesting him/her with the power to issue mandatory requirements (instructions) to eliminate violations of legislation in the field of prevention of and counteraction to discrimination, as well as drawing up reports concerning the institution of administrative proceedings and filing them to court.

In addition, the government adopted the Concept of the State Social Program for Ensuring Equal Rights and Opportunities for Women and Men for the Period up to 2021 (CMU Decree No. 229-p of April 5, 2017). The expected results include expansion of women's and men's access to goods and services through application of the principle of gender equality in all spheres of society's life by incorporating gender components into legal acts and taking into account the specific needs of different categories of women and men associated with such basic features as age, place of residence, disability, and socio-economic status.

In pursuance of the Concept, the Ministry of Social Policy drafted the State Social Program for Ensuring Equal Rights and Opportunities for Women and Men for the Period up to 2021, which involves, inter alia, equal access to goods and services. The project envisages measures to ensure equal access to social, medical, educational, and psychological services as well as credit provision to socially vulnerable groups of women and girls (internally displaced, rural residents, disabled, elderly, etc.).

Directive 2010/18/ EU on parental leave

What are the benefits of the relevant EU standards?

The provisions of the Directive establish that:

– parental leave:

— shall be granted to men and women workers;

— shall be granted for at least a period of four months to both parents, while at least one of the four months shall be provided on a nontransferable basis;

— shall be granted until a given age up to eight years to be defined by Member States;

— shall be granted on the grounds of the birth or adoption of a child;

– the procedure for granting the leave is established by the state,

specifically:

— conditions for the non-transferable part of the leave;

— adjusting the procedure for granting the leave to parents with children with disabilities or chronic illnesses;

— notice periods to be given by the worker to the employer when exercising the right to parental leave, specifying the beginning and the end of the period of leave;

— prohibition of discrimination, including prohibition to dismiss workers or any other form of infringement on rights because of the parental leave;

— the worker's right to return to the same job, or equivalent or identical, to change the length and mode of working time after returning to work, and time off work due to family force majeure;

— Member States should establish effective, proportional and dissuasive penalties for a failure to comply with the requirements of the Directive.

What has been done to implement the commitments?

All documents related to plans for implementation of Directive 2010/18/EU provide for drafting and adoption of regulatory and legal acts on the duration of the leave in the event of adoption of a child over three years of age, the right to shorter work hours and part-time work on an equal footing both for men and for women, as well as elimination of sex discrimination with regard to parental leave, and settlement of employees' time off in the event of family force majeure.

Ukraine's commitments regarding alignment of its legislation with Directive 2010/18/EU on parental leave have been partially fulfilled. Some provisions of the Directive have been taken into account in the draft LCU. Apart from that, several draft laws were registered in the Verkhovna Rada aimed at regulating individual issues related to the right to parental leave:

- Draft law No. 1430 of 11.12.2014 "On Amendments to Certain Legislative Acts of Ukraine (Regarding Settlement of the Issue of Parental Leave) is pending consideration. The draft law contains provisions that take into account the requirements of the Directive, specifically: provision of a three-year leave before the child reaches the age of eight, and the procedure for granting it, including the notice period about returning to work after the leave. However, the draft law does not regulate the issue of the non-transferable part of the leave that should be used by both parents;

- Draft law No. 2235 of 25.02.2015 "On Amendments to the Labour Code of Ukraine Regarding Establishment of Equal Conditions for the Exercise of the Rights of Workers who Raise Children or Care for a Sick Family Member" is pending consideration. The draft law contains provisions that take into account the requirements of the Directive, specifically regarding the establishment of shorter work hours not only for women but also generally for parents, guardians

or caretakers who have children under the age of fourteen, provision of part-time work for workers caring for a sick member the family. However, the draft law does not regulate the procedure for granting parental leave;

- Draft law No. 4848 of 17.06.2016 "On Amendments to the Law of Ukraine 'On the State Service for Special Communication and Information Protection of Ukraine' as Regards Regulation of Certain Issues Related to Provision of Parental Leave" was withdrawn from consideration. The draft law envisaged the right to parental leave until the child reaches the age of three for both women and men employed in the managerial and non-managerial positions of the State Service for Special Communication and Information Protection of Ukraine. The draft law did not stipulate the procedure and conditions for granting such leave.

Ministry of Social Policy drafted the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine (as regards provision of additional guarantees related to combining family and employment responsibilities)", which, on August 19, 2017, was referred for harmonisation with the relevant central executive authorities and social partners. The said draft law takes into account the requirements of the Directive and proposes amendments to the Labour Code of Ukraine and the Law of Ukraine "On Leaves". Its provisions, inter alia, establish a number of rights in the field of work both for women and men, i.e. those related to fulfilling the family responsibilities of upbringing and care for children or sick family members (provision of part-time employment at the worker's request at the expense of the employer – reduced work hours, etc.). It also provides for the right of employees to time off during the work day (shift) in connection with the occurrence of family force majeure and prohibition for the employer to dismiss the worker due to such time off, obligations and terms for the worker to notify the employer as regards the beginning and preschedule end of the period of leave.

The draft law of the Ministry of Social Policy contains provisions that regulate parents' right to parental leave to care for the child until the age of three, which can used by parents as they agree and can be distributed between them in equal proportions. However, this provision does not take into account the requirements of the Directive as regards the non-transferable one month of the leave that must be used by both the mother and the father. This requirement should be established by the state in national legislation rather than presumed to be complied with based on the probable agreement of parents concerning distribution of their leave. Moreover, the draft law does not take into account the requirements regarding establishment of effective, proportionate and dissuasive penalties for violation of the legislation on parental leave.

Directive 92/85/EEC on safety and health at work of pregnant workers

What are the benefits of the relevant EU standards?

The Directive establishes requirements for ensuring safe and healthy working conditions and protection of pregnant workers, workers who have recently given birth or are breastfeeding, and provides for:

— prohibition to use the labour of pregnant women in workplaces where there is a risk of exposure, which would jeopardise safety or health, to the agents and working conditions listed in Annex II, Section A – and workers who have recently given birth in those listed in Section B of Annex II (in particular, works related to lead and its derivatives, underground mining work);

— assessment of the working conditions for the presence of physical, biological and chemical agents that pose risk to the health of pregnant women and the foetus, processes and working conditions (in particular underground mining work) listed in Annex I of the Directive, the nature, extent and duration of their effects on pregnant workers, workers who have recently given birth or are breastfeeding;

— introduction of necessary measures (temporary adaptation of working conditions and / or duration of working hours, prevention of risks) based on the assessment of working conditions, transfer to another job, granting of leave if such adjustments are not feasible;

— informing the worker and / or her representatives about the results of the assessment of the working conditions and the necessary measures;

— prohibition to dismiss the worker (except in exceptional cases if provided for by legislation, and upon consent of the competent state body); granting of maternity leave and time-off, without loss of pay, to attend ante-natal examinations, if such examinations have to take place during working hours.

— prevention of coercion to work at night, subject to submission of a medical certificate stating that this is necessary for the safety or health of the worker concerned. In this case, the employee shall be transferred to day-time work, released from work, or her leave shall be extended;

— the right to judicial administrative protection.

What has been done to implement the commitments?

All documents related to the implementation plans of Directive 92/85/EEC mainly involve organisational measures that include strengthening control over obliging pregnant workers and workers with children under three years of age to perform night work, to work overtime and on weekends, sending them on business trips, and their transfer to easier work. The draft Action Plan involves drafting and adoption of an order of the Ministry of Social Policy as regards measures to ensure control over the safety and health of pregnant workers, workers who have recently given birth or are breastfeeding.

The commitment to align national legislation with Directive 92/85/EEC can be considered fulfilled, as the current Ukrainian legislation provides for a

set of rules aimed at ensuring healthy and safe work conditions for pregnant workers, workers who have recently given birth or are breastfeeding. Part of the national legislation sets higher standards than those required by the Directive. At the same time, there are some issues that should be given more attention in further work on the improvement of national legislation, but they do not affect the general legal framework. For example, the Directive provides for the right of workers to time-off, without loss of pay, to attend medical examinations, if such examinations have to take place during working hours. The current Labour Code of Ukraine does not set forth such a guarantee, however it is stipulated in Art. 295 of the draft LCU.

The issue of the scope of guarantees for pregnant women in Ukraine regarding the absolute prohibition of obliging pregnant workers to perform night work remains rather debatable. Articles 55 and 176 of the Labour Code of Ukraine prohibit obliging pregnant workers and workers with children under the age of three to perform night work. Art. 142 of the draft LCU sets this prohibition only concerning pregnant workers. A similar provision is included in the draft law of the Ministry of Social Policy. The Directive does not prohibit to oblige any pregnant workers, workers who have recently given birth or are breastfeeding to perform night work, instead it stipulates that these workers must not be required to work at night during the period of pregnancy and the period after the child's birth if such work can be detrimental to their safety and health according to a medical report. Therefore, the said draft legislation needs to be revised to determine the length of the period after the child's birth when the employee cannot be obliged to perform night work on medical grounds. This period should be established by competent national authorities.

Directive 79/7/EEC on equal treatment in matters of social security

What are the benefits of the relevant EU standards?

The provisions of the Directive establish requirements regarding:

— introduction of statutory schemes which provide protection against the risks of sickness, invalidity, old age, accidents at work, occupational diseases and unemployment, and relevant social assistance;

— prohibition of direct / indirect sex-based discrimination in matters of social security, in particular with regard to the scope of and conditions of access to social security schemes, contributions, calculation of contributions, calculation of social benefits, and the conditions governing the duration and retention of entitlement to benefits;

— abolition of laws and regulations that do not comply with the principle of equal treatment of men and women in the field of social security;

— establishment of the right to pursue claims by judicial process,

possibly after recourse to other competent authorities.

What has been done to implement the commitments?

The documents related to plans to implement Directive 79/7/EEC provide for the abolition of laws, regulations and administrative provisions contrary to the principle of equality in social security, drafting of the State Program for Ensuring Equal Rights and Opportunities for Women and Men up to 2021. In order to develop effective mechanisms for ensuring equality of men and women, organisational measures are also envisaged, such as social research.

Ukraine's commitment to align its legislation with Directive 97/81/EC on equal treatment in matters of social security has been fulfilled, since in in terms of regulation of the foundations of equal rights and opportunities for women and men in the field of social security, the current legislation complies with the requirements of the Directive.

At the same time, there are problems related to practical implementation of the requirements of the current legislation, as well as the need for its revision regarding the mechanism for protection against discrimination, specifically discrimination based on gender. On April 5, 2017, the Cabinet of Ministers approved the Concept of the State Social Program to Ensure Equal Rights and Opportunities for Men and Women for the Period up to 2021 (CMU Order No. 229-p), which constitutes a program document that establishes ways to improve mechanisms for ensuring equal rights and opportunities for women and men in different spheres of life, including social security. The draft Concept of the State Social Program to Ensure Equal Rights and Opportunities for Men and Women for the Period up to 2021 drawn up by the Ministry of Social Policy specifies the measures, responsible persons and sources of financing for measures aimed at establishing a comprehensive system for responding to cases of discrimination based on sex and multiple discrimination and prevention of such discrimination. The measures include financing of expert councils on preventing and combating sex-based discrimination, provision of comprehensive counselling services to victims of sex-based discrimination and establishment of telephone hotlines for combatting sex-based violence and discrimination.

Health and safety at work

Directive 89/391/ EEC on the introduction of measures to encourage improvements in the safety and health of workers at work

What are the benefits of the relevant EU standards ?

The provisions of the Directive provide for:

– the employer's responsibilities in the field of occupational safety and health as regards the minimum measures necessary to ensure the safety and health of workers, although it would be appropriate to add " and occupational hygiene";

– measures to prevent occupational hazards, inform and train employees on occupational safety matters;

– introduction of appropriate organisational measures and necessary means to enforce the requirements of the laws and regulations in the field of occupational safety at work);

– prohibition of competition at the expense of the safety and health of workers.

What has been done to implement the commitments?

In pursuance of the provisions of this Directive, since 1991 the following laws and regulations should have been properly amended:

1) Code of Labour Laws of Ukraine (hereinafter – Code No. 322-VIII-1972);

2) Law of Ukraine On Labour Protection (hereinafter – Law No. 2694-XII-92);

3) Law of Ukraine On Ensuring the Sanitary and Epidemic Safety of the Population (hereinafter – Law No. 4004-XII-94);

4) Law of Ukraine On Trade Unions, Their Rights and Guarantees of Activity (hereinafter – Law No. 1045-XIV-99);

5) Law of Ukraine On Mandatory State Social Insurance against Accidents at Work and Occupational Diseases that Caused Disability (hereinafter – Law No. 1105-XIV-1999);

6) Economic Code of Ukraine (hereinafter – EC No. 436-V-2003);

7) CMU Resolution No. 994 of June 27, 2003 "On Approval of the List of Measures and Means of Occupational Safety Whose Cost Shall Be Included in Expenses (hereinafter – CMUR No. 994-2003);

8) Model Regulation on the Labour Protection Service, 2004;

9) Model Regulation on the Procedure of Training and Testing Knowledge on Occupational Safety, 2005;

10) Law of Ukraine On the Basic Principles of State Supervision (Control) in the Field of Economic Activity, (hereinafter – Law No. 877-V-2007);

11) Model Regulation on the Commission on Occupational Health and Safety, 2007;

12) Model Regulation on the Activity of Occupational Safety Specialists Authorised by Employees, 2007;

13) Procedure for Medical Examinations of Certain Categories of Workers,

2007;

14) Model Regulation on the Activity of Occupational Safety Specialists Authorised by Employees, 2007;

15) Procedure for Investigation and Record Keeping of Accidents, Occupational Diseases and Accidents at Work, 2011;

16) Recommendations on the Construction, Implementation and Improvement of the System for Management of Occupational Safety and Health, 2008;

17) General Requirements for Ensuring by Employers of Occupational Safety of Workers, 2012.

However, the above-mentioned laws and regulations did not take into account the provisions of the following Articles of Directive 89/391/EC:

Article 6, paragraph 2, which states that the employer must implement the measures referred to in the first subparagraph of paragraph 1 on the basis of the following general principles of prevention:

- avoiding risks;
- evaluating the risks which cannot be avoided:
- combating the risks at source;
- adapting the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods, with a view, in particular, to alleviating monotonous work and work at a predetermined work-rate and to reducing their effect on health.
- adapting to technical progress;
- replacing the dangerous by the non-dangerous or the less dangerous;
- developing a coherent overall prevention policy which covers technology, organisation of work, working conditions, social relationships and the influence of factors related to the working environment;
- giving collective protective measures priority over individual protective measures;
- giving appropriate instructions to the workers.

Paragraph 3

- where the employer entrusts tasks to a worker, take into consideration the worker's capabilities as regards health and safety;
- ensure that the planning and introduction of new technologies are the subject of consultation with the workers and/or their representatives, as regards the consequences of the choice of equipment, the working conditions and the working environment for the safety and health of workers;
- take appropriate steps to ensure that only workers who have received

adequate instructions may have access to areas where there is serious and specific danger.

Paragraph 5

- Measures related to safety, hygiene and health at work may in no circumstances involve the workers in financial cost.

Article 8, Paragraph 4, specifying: Workers who, in the event of serious, imminent and unavoidable danger, leave their workstation and/or a dangerous area may not be placed at any disadvantage because of their action and must be protected against any harmful and unjustified consequences, in accordance with national laws and/or practices..

Article 10, Paragraph 1, specifying: The employer shall take appropriate measures so that workers and/or their representatives in the undertaking and/or establishment receive, in accordance with national laws and/or practices which may take account, inter alia, of the size of the undertaking and/or establishment, all the necessary information concerning:

- the safety and health risks and protective and preventive measures and activities in respect of both the undertaking and/or establishment in general and each type of workstation and/or job;

- the measures taken pursuant to Para.2, Article 8.

Paragraph 3 whereby: The employer shall take appropriate measures so that workers with specific functions in protecting the safety and health of workers, or workers' representatives with specific responsibility for the safety and health of workers shall have access, to carry out their functions and in accordance with national laws and/or practices, to:

- the risk assessment and protective measures referred to in Article 9 (1) (a) and (b);

- the list and reports referred to in Article 9 (1) (c) and (d);

- the information yielded by protective and preventive measures, inspection agencies and bodies responsible for safety and health.

One of the drawbacks of the above legislation is that its authors often failed to indicate in explanatory notes that their provisions are designed to meet the requirements of a specific article of Directive No. 89/391/EC and refer to the compliance of these acts with the acquis communautaire.

During subsequent years, especially in the period from February 2010 to February 2017, most of the above laws and regulations, in particular the Code of Labour Laws of December 10, 1971, Law of Ukraine No. 877-V-2007 On the Basic Principles of State Supervision (Control) in the Field of Economic Activity and Law of Ukraine No. 1105-XIV-99 On Mandatory State Social Insurance, underwent around 200 amendments, which could also be considered part of the implementation of the provisions of Directive 89/391/EC into Ukraine's legislation on safety and health. However, it should be noted that some of these

amendments did not comply with the provisions of the laws on the ratification by Ukraine of Convention No. 155. Occupational Safety and Health Convention of the International Labour Organisation (hereinafter – ILO) of 1981 and the requirements of other Ukraine's laws and regulations on occupational safety and health. The insufficient enforcement of the final provisions of legislative and regulatory acts, as well as groundless and short-sighted amendments to these acts did not contribute to the full implementation of the provisions of Directive 89/391 / EC in Ukrainian legislation.

For example, Para. 2, Article 22, Law No. 877-V-2007 stipulates the following:

2. The Cabinet of Ministers of Ukraine shall:

1) within three months from the date of publication of this Law approve:

- the procedure for selecting product samples to determine their quality indicators;

- the procedure of compensation by the economic operator of the costs associated with conducting expert evaluation (testing);

- the form of the act of product sample selection;

2) within six months from the date of publication of this Law:

- submit to the Verkhovna Rada of Ukraine proposals for bringing the Laws of Ukraine in compliance with this Law;

- bring its laws and regulations in compliance with this Law;

- ensure that the ministries and other central executive bodies bring their laws and regulations in line with this Law;

- approve the criteria for distribution of economic entities according to the degree of risks their economic activity poses to the safety and health of the population and the environment (1324-2007-п) and determine the frequency of conducting state supervision (control) measures.

These measures have not been fully implemented.

CMU Decree No. 94-p of 20 January 2016 "On Invalidation and Declaring Inapplicable in the Territory of Ukraine the Acts of Sanitary Legislation" (hereinafter – CMU Decree No. 94-p had an extremely adverse effect on the implementation of Directive 89/391/EC. This Decree should be considered illegitimate, since it, as an act of lower legal force, cancels the provisions of VRU Resolution No. 1545-91 of September 12, 1991 "On the Procedure of Temporary Effect in the Territory of Ukraine of Certain Legislative Acts of the USSR" (hereinafter – Resolution No. 1545-91) as an act of supreme legal force. In addition, Decree No. 94 of the Cabinet of Ministers of Ukraine suspended the process of implementation of the provisions of Directive 89/391 and other EEC Directives into Ukraine's legislation.

Therefore, the main "culprits" to blame for the slow implementation

of Directive 89/391/EU in Ukraine's legislation on occupational health and safety include shortcomings in the work of the State Committee of Ukraine on Supervision over Labour Protection, the State Service of Mining Supervision and Industrial Safety of Ukraine and the Ministry of Healthcare of Ukraine, which paid insufficient attention to this issue. Their activity, in turn, was insufficiently supervised by the relevant central executive authorities and the Cabinet of Ministers of Ukraine, which according to the provisions of Law No. 2496-XII-92 (Article 31) is one of the bodies responsible for state management of labour protection and should ensure the enforcement of state policies in the field of occupational safety (Article 32).

Thus, we can argue that, as of November 1, 2017, the provisions of Directive 89/391/EC were not fully implemented.

Directive 89/654/ EEC concerning the minimum safety and health requirements for the workplace

What are the benefits of the relevant EU standards?

The provisions of the Directive establish:

– minimum health and safety requirements for the workplace;

– definition of the term "workplace";

– requirements for the technical maintenance of the workplace, equipment and devices, as well as their due checks in order to maintain them and eliminate any faults;

– regulation of the stability and solidity of buildings;

– requirements for electrical installations, evacuation routes and emergency exits, fire detection, rest rooms, first aid rooms, sanitary facilities, outdoor workplaces;

– need to take into account special conditions of work for handicapped workers, pregnant and breastfeeding workers.

What has been done to implement the commitments?

Most of the provisions of Directive 89/654/EC were partly taken into account in the above-mentioned laws, state standards of Ukraine (more than 20), State Building Codes (DBN) (more than 30), and numerous regulations which apply to enterprises of all (122) and separate (527) types of economic activity that have been drafted and adopted in Ukraine since 1990.

It should be noted that in 2016-2017, 153 laws and regulations in the field of occupational safety and health in Ukraine were declared invalid[7]. This has had a very negative effect on the work on and adoption of new legislation

7) See Index of Laws and Regulations on Labour Protection approved by Order № 88 of the State Labour Committee of 10.07.2017

in this area in accordance with the requirements of Directive 89/654 / EC.

An important role in establishing proper occupational health and safety conditions at the workplace is performed by the State Sanitary Rules (DSP) and the State Sanitary Standards and Rules (DSNiP) approved by the relevant orders of the Ministry of Healthcare (there are more than 20 acts in force in this area). Of particular importance for the implementation of the provisions of Directive 89/654/EC was the adoption of the DSNiP "Occupational Health Classification of Labour by Hazard and Risk Factors in the Workplace, and Heaviness and Intensity of the Labour Process", approved by Order No. 248 of the Ministry of Healthcare dated 08.04.2014.

In the course of drafting the DSPs and DSNiPs, legislators did not take into account the requirements of Directive 89/654 / EC as regards:

– ergonomic equipment of the workplace at the same time providing the necessary dimensions;

– automation and mechanisation of lifting operations, especially at workplaces where women, adolescents and handicapped people work;

– proper maintenance and ensuring the reliable functioning of collective protection devices;

– medical supervision of workers who work in hazardous conditions and in workplaces with increased levels of risk of injury and damage to health.

Insufficient implementation of the provisions of Directive 89/654/EC, weakening and ineffectiveness of the state supervision over labour protection with regard to occupational safety and health has resulted in a situation when a significant share of the employees of enterprises and establishments (hereinafter referred to as enterprises) in Ukraine work in harmful working conditions, which is the main reason for the occurrence of occupational diseases. Thus, according to the statistical bulletin of the State Statistics Service of Ukraine, "Work Conditions of Employees in 2015", compiled on the basis of enterprise reports following form No. 1-ПВ "Report on Work Conditions of Employees in 20___" submitted once per two years (in odd years), as of December 31, 2015, 1 million 40.5 thousand employees in Ukraine worked in hazardous conditions, which is 26.0% of the total number of employees (and this is despite the significant shortcomings in the certification of workplaces with regard to labour conditions). At enterprises of different types of economic activity, the share of such workers ranged from 9.5% (textile manufacture, clothing, leather, leather goods and other materials) to 82.0% (lignite and coal mining). It should be noted that 312,600 workers were employed in occupations with harmful work conditions. This negatively affects the reproductive function of women and is a factor in perinatal pathology of new-borns and the general demographic crisis in Ukraine. Since 1995, the nationwide program to reduce the number of women employed in workplaces with harmful working conditions has been neglected. This issue was given insufficient attention in the National Social Program for Improving Safety, Occupational Health and

Workplace Environment for 2014-2018.

A significant number of staff workers in Ukraine are exposed to major hazardous production factors exceeding the health safety limits (i.e. chemicals, noise, vibration, adverse microclimate in workshop workplaces, negative effects of the climate when working in outdoor workplaces, especially in summer heat and cold season, heaviness and intensity of work).

It is important to note that according to the materials of the above bulletin, in Ukraine there are major shortcomings in provision of benefits and compensation to employees for exposure to harmful work conditions, which violates the requirements of the current Ukrainian legislation in this area, specifically Art. 7 of the Law of Ukraine "On Labour Protection".

In addition, implementation of the provisions of Directive 89/654/EC was adversely affected by the following factors:

- inadequate implementation of the provisions of the National Social Program for Improving the Safety, Occupational Health and Workplace Environment for 2014-2018, approved by Law of Ukraine No. 178-VII of April 4, 2013, especially Paragraph 1 of Annex 2 to the Program as regards bringing Ukrainian legislation in line with the requirements of international and European legislation. This paragraph envisaged drafting in 2014-2017 of 71 laws and regulations that would comply with the requirements of EU legislation (this part of the Program has not been fulfilled at all);

- abolition in 2016-17 of 153 regulatory acts on the basis of orders of the Ministry of Social Policy and other CEBs.

Thus, we can argue that, as of November 1, 2017, the provisions of Directive 89/654 were not fully implemented.

Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work

What are the benefits of the relevant EU standards?

The provisions of the Directive establish:

– the minimum safety and health requirements for the use of work equipment by workers at work, in particular any mechanisms, equipment, tools or installations which must be properly adapted for that purpose and may be used by workers without impairment to their safety or health;

– the requirement that the employer shall pay attention to the specific working conditions and characteristics and to the hazards which exist at the workplace for the safety and health of the workers, and any additional hazards posed by the use of work equipment in question;

– requirements for equipment posing special risks;

– that the employer shall take the measures necessary to ensure that workers have at their disposal adequate information about conditions of use of work equipment, foreseeable abnormal situations and, where appropriate, written instructions on the work equipment used at work, as well as training of employees on these issues.

In addition, Annex 1 to Directive 89/655/EEC specifies general minimum requirements applicable to work equipment, its installation, start, devices for a complete and safe stop, including emergency stop, protection devices, stability, protections or devices to prevent access to dangerous areas, lighting, prevention of injuries due to electric current or high temperature;

Annex 1 also specifies the requirements for moving equipment, forklifts, self-propelled equipment, remote-control mechanisms, equipment for lifting loads and workers.

Appendix 2 contains requirements applicable to equipment involving risk during application, in particular when installing equipment, during grounding, as regards moving equipment, and lifting equipment for temporary work at height.

What has been done to implement the commitments?

Most of the provisions of Directive 89/655/EEC were partly taken into account in the above-mentioned laws, state standards of Ukraine (more than 20), State Building Codes (DBNs) (more than 30), and numerous regulations which apply to enterprises of all (122) and separate (527) types of economic activity that have been drafted and adopted in Ukraine since 1990. The provisions of Directive 89/655/EEC on work equipment were incorporated into the legislation as sections.

The main regulatory legal act in this area is the Occupational Safety and Health Rules when Working with Tools and Devices (NPAOP 0.00-1.71-13).

However, some provisions of Directive 89/655/EEC have not been taken into account by legislation:

- Art. 3 (1) as taking into account special conditions and risks at the workplace when selecting equipment;

- Art. 8 on consultation and participation of workers on the matters covered by Directive 89/655/EC;

- Para. 2, Article 8 of Annex concerning the installation of guards and devices to prevent access to danger zones;

- Para. 2.9 concerning the lighting of the areas and place where production equipment is operated;

- Para. 2.13 concerning maintenance and current repairs with stopped equipment.

The above shortcomings negatively affect the situation with occupational injuries, in particular with regard to equipment as a factor in occupational accidents.

This conclusion is confirmed by the materials of the statistical bulletin "Occupational Injuries at the Workplace in 2016" (similar materials for 2017 will be available in June 2018) in respect of equipment-related events that result in occupational accidents. Thus, production equipment and other moving and rotating devices alone accounted for injuries of 687 employees (15.5% of all injured) and death of 40 employees (11.2% of the total number of deaths). Equipment-related accidents at production facilities accounted for 14.1% of incidents. The growth of this indicator can be due to an increase in the share of obsolete production equipment that has exceeded its lifecycle and its depreciation.

Another factor that contributed to the worsening of the supervision over the technical condition of production equipment, including tools, is the abolition by the State Service of Mining Supervision and Industrial Safety of Ukraine in 2013 of the unified state system of labour conditions and safety indicators (Order No. 28 of 08.02.2013), which included yearly information on the technical condition of the means of production, including tools.

Thus, it can be argued that, as of November 1, 2017, the provisions of Directive 89/655/EC were not fully implemented.

Directive 2001/45, amending Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work

What are the benefits of the relevant EU standards?

The provisions of the Directive regulate the following issues:

- measures taken by the employer with regard to organisation of works at a height, in particular, the use of ladders and scaffolding;

- special provisions on the use of ropes and equipment for performing works at a height.

What has been done to implement the commitments?

The materials of the occupational safety and health laws adopted since 2002 reveal that the provisions of Directive 2001/45/EC have not been fully taken into account, although in Ukraine, apart from the Occupational Safety and Health Rules when Working with Tools and Devices (NPAOP 0.00-1.71-13) of December 19, 2013 (Order No. 966 of the Ministry of Energy and Coal Industry), they were only partially taken into account when drafting the Rules of Occupational Safety when Performing Works at a Height (NPAOP 0.00-1.15-07) approved by Order No. 62 of State Service of Mining Supervision and

Industrial Safety dated 27.03.2007, registered in the Ministry of Justice of Ukraine on June 4, 2007 under No. 573/13840, as well as in Para. 7.3 of the State Building Codes of Ukraine A.3.2-2009.

Thus, it can be argued that, as of November 1, 2017, the provisions of Directive 2001/45/EC were not fully implemented.

Directive 2009/104/EC concerning the minimum safety and health requirements for the use of work equipment by workers at work

What are the benefits of the relevant EU standards?

The Directive contains provisions repealing Directives 89/655/EC and 2001/45/EC, and establishes:

– updated minimum safety and health requirements for the use of work equipment by workers, in particular those concerning the responsibilities of the employer and employees, rules for work equipment, and inspection thereof;

– requirements for work equipment associated with individual risks;

– organisation of the workplace in accordance with the requirements of ergonomics and occupational hygiene;

– informing employees about the safe use of equipment, especially in emergency situations;

– training of employees with regard to the safe use of equipment;

– counselling and engagement of employees in the implementation of the provisions of Directive 2009/104/EC, as detailed in the annexes;

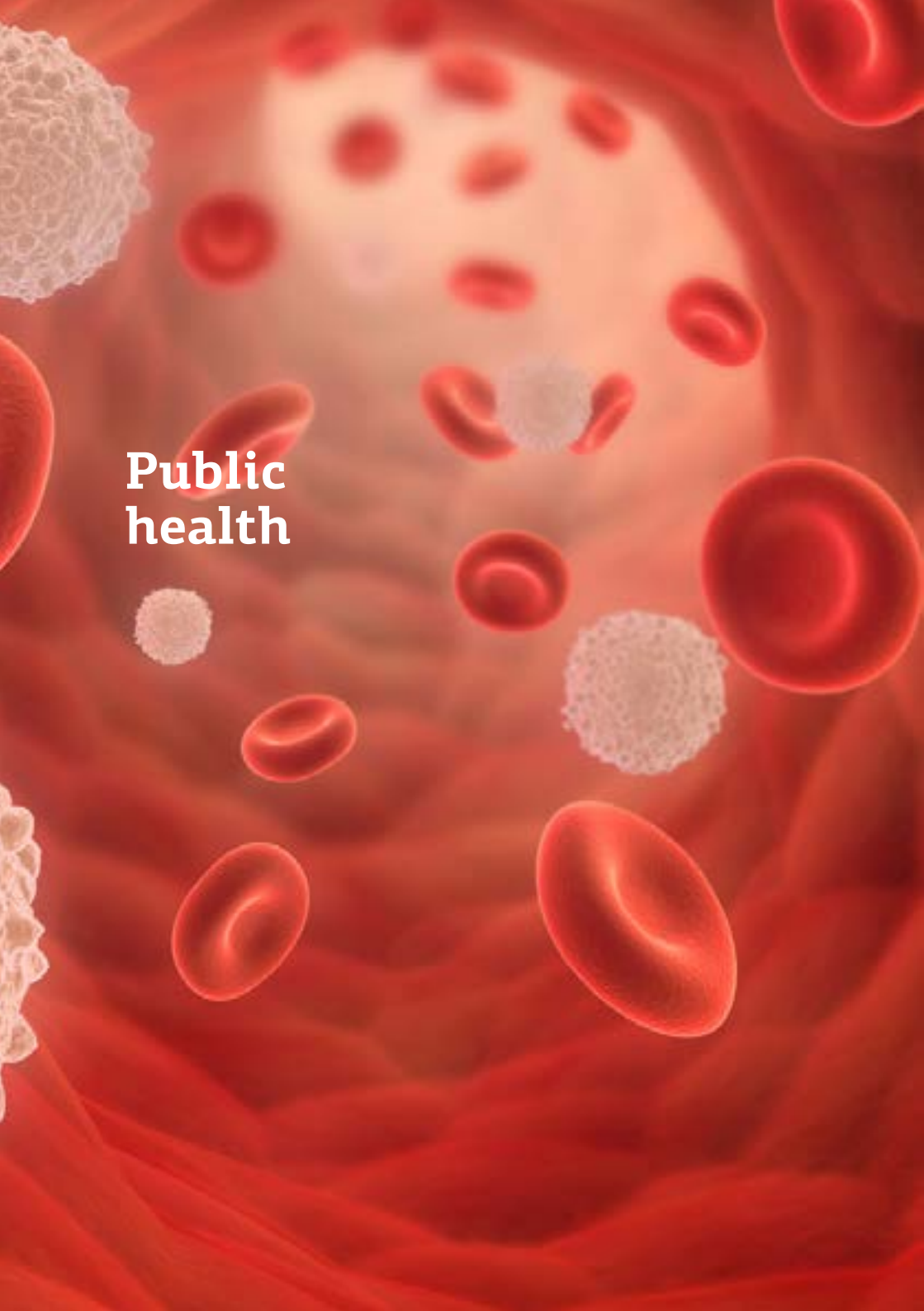
– requirements for certain types of work equipment (Annex I).

What has been done to implement the commitments?

By analysing the legislation in the field of occupational safety, we revealed that since 2010 there have been no relevant amendments taking into account the provisions of Directive 2009/104/EC.

On the other hand, on January 20, 2016, the Cabinet of Ministers of Ukraine issued Order No. 94-p, (mentioned above) which repealed the basic legislation on requirements for work equipment (the occupational safety standards of GOST (All-Union State Standards)), which had an extremely adverse effect on the technical condition and the use of equipment, as well as on conducting certification and inspections as set forth in GOSTs.

The provisions of Directive 2009/104/EC have not been implemented in Ukrainian legislation.



Public health

Public health

Author

Viktor Liashko

I. Review of commitments that should have been fulfilled from November 1, 2014 to November 1, 2016

According to the requirements of the Agreement, Ukraine should update the national health legislation in several areas, namely: combating tobacco use, infectious diseases, blood, as well as a separate area of "tissues, cells and organs". Public health sections such as mental health (including drug addiction), injury prevention and safety promotion, cancer, and alcohol control are recognized as priority issues, but no additional legal acts or regulations are needed to implement then.

Unfortunately, after a good start in November 2014, the main agent responsible for approximation of Ukrainian legislation to EU public health legislation – i.e. the Ministry of Health of Ukraine (hereinafter – the MH) – significantly slowed down in 2016 and 2017 years. In accordance with Annex XLI to Chapter 22 Public Health, Title V Economic and Sector Cooperation, the Ministry of Health had to adapt 8 EU acquis during this period, while, in fact, it managed to adapt only three.

In particular, Order No. 905 of the MH "On Approval of the Criteria for Case Definitions for Reporting Communicable and Parasitic Diseases" dated December 28, 2015, implemented Commission Decision No. 2002/253/EC, while Order No. 362 "On Approval of the List of Communicable Diseases" dated April 13, 2016 respectively implemented Commission Decision No. 2000/96/EC. These resolutions have made it possible to unify the procedures for determining the incidence of infectious diseases in Ukraine and the EU, which, in turn, will provide an opportunity to receive comparable information on incidence rates when reporting and sharing information at the European level.

However, as of the end of 2017, even these decisions, despite their implementation at the regulatory level, are not fully fulfilled, for the epidemiological surveillance system in Ukraine urgently needs regulation through legislation. In particular, the resolution of the Cabinet of Ministers of Ukraine to liquidate the State Sanitary and Epidemiological Service of

Ukraine produced a void in the field of control over ensuring sanitary and epidemiological well-being that is unsystematically filled by various state control bodies. Due to its inconsistency with the provisions of the legislation (laws) that establish the powers of executive authorities, the system of reporting cases of communicable diseases is inadequate, there are no clear mechanisms for responding to public health emergencies, in particular to outbreaks and epidemics of infectious diseases.

Appropriate work in this field is being carried out, but it is very slow. Back in September 2016, the Verkhovna Rada of Ukraine registered two draft laws (No. 5143 and No. 5134-1) aimed to amend certain legislative acts of Ukraine as regards optimization of the system of central executive authorities in the field of public sanitary and epidemiological well-being. However, after hearing them at the Committee on Healthcare of the Verkhovna Rada and supporting the initiative of the MH, it was decided to improve these draft laws by drafting a single, compromise version.

These decisions go unenforced partly due to the fact that the Center for Public Health created by the Ministry of Health in 2015 has never been launched. The establishment of the Center was positioned as part of the implementation of Regulation (EC) No. 851/2004 of the European Parliament and of the Council of 21 April 2004 establishing a European Center for Disease Prevention and Control. However, Order No. 604 of the Ministry of Health whereby the Center was established has not yet been enforced both due to the passive opposition of the staff of the institutions and establishments that are to be united under the umbrella of the Center and because of a number of existing bureaucratic obstacles. The latest evidence of this trend is Order № 1363 of the MH dated 3 November 2017 "On Certain Issues of Reorganization of State Enterprises and Institutions of the Ministry of Health of Ukraine", which changed the decision as regards the ways of establishing the Center for Public Health – it suggests association instead of reorganization of the existing institutions and enterprises. The enforcement of this order will again take time and delay full-fledged implementation of Regulation (EC) No. 851/2004.

In a way, the legislative branch of government has also contributed to the slow-down in the process of legislative approximation in the sphere of public health.

Tobacco: in May 2015, the draft law "On Amending Certain Laws of Ukraine as Regards Public Health Protection against Harmful Effects of Tobacco" was submitted to the VRU (reg. No. 2820). It was drafted in pursuance of Directive No. 2014/40 "On the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Concerning the Manufacture, Presentation and Sale of Tobacco and Related Products and Repealing Directive 2001/37". At the same time, draft law 2430-1 drafted in pursuance of already repealed Directive No. 2001/37 is pending consideration by the VRU. This spawns lawmakers' behind-the-scenes debates concerning which directive should be implemented. There are supporters of the approximation of legislation to Directive No. 2001/37, which establishes basic requirements

for the tobacco industry in the country. At the same time, there are those who consider it appropriate and logical to implement approximation to Directive No. 2014/40 as it sets much higher standards for public health and protection against tobacco.

Tissues, cells and organs: as early as on April 21, 2016, the VRU adopted the draft law "On Amendments to Certain Legislative Acts of Ukraine on Healthcare and Transplantation of Organs and Other Human Anatomical Materials" in the first reading as a basis, but the working group is still preparing it for a second reading. This draft law sets the foundation for implementation of Directive No. 2010/45 "On Standards of Quality and Safety of Human Organs Intended for Transplantation" in the national legal framework.

II. As of November 1, 2017 Ukraine had to fulfill the following commitments:

Main responsible party: Ministry of Health of Ukraine (hereinafter referred to as the MH).

Position in the Association Agreement: Title V (Economic and Sector Cooperation), Annex XLI (41), Article 428 of the Association Agreement. According to the Annex, Ukraine should gradually align its legislation with the EU acquis, in particular in the field of infectious diseases, blood services, tissue and cell transplantation, and tobacco.

As of November 1, 2017, Ukraine has to adapt four blood-related directives.

Blood

1) **Directive No. 2002/98** setting standards of quality and safety of collection, testing, processing, storage and distribution of human blood and blood components;

2) **Directive No. 2004/33** implementing Directive No. 2002/98 as regards certain technical requirements for blood and blood components;

3) **Directive 2005/62** implementing Directive 2002/98 as regards Community standards and specifications relating to a quality system for blood establishments;

4) **Directive No. 2005/61** implementing Directive No. 2002/98 as regards traceability requirements and notification of serious adverse reactions and events.

Blood

Directive No. 2002/98 setting standards of quality and safety of collection, testing, processing, storage and distribution of human blood and blood components

What are the benefits of relevant standards?

This Directive sets forth the standards of quality and safety of human blood and its components, which, if observed, help ensure a high level of protection of human health. It, inter alia, establishes the requirements for the mechanisms of accreditation or licensing of blood transfusion establishments, operation of hospital blood banks, as well as requirements for establishment (or designation) of one competent authority for state supervision (control) over compliance with quality and safety standards for collection, testing, processing, storage and distribution of human blood and its components.

What has been done to implement the commitments?

In the field regulated by Directive No. 2002/98, the following acts of Ukrainian legislation are in force:

- Law of Ukraine No. 239/95-VR "On Donation of Blood and Blood Components";
- Order No. 1112 of the MH of Ukraine "On Approval of the Regulation on Blood Transfusion Establishments (as regards organization of the management of a system of quality and safety of donor blood and blood components)" dated December 14, 2010,;
- Order No. 1093 of the MH of Ukraine "On Approval of Instructions for Preparation, Use and Quality Assurance of Blood Components" dated 17.12.2013;
- Order No. 211 of the MH of Ukraine "On Approval of the Procedure for Control over the Observance of Safety and Quality Indicators of Donor Blood and Blood Components" dated 09.03.2010;
- Order No. 385 of the MH of Ukraine "On Infectious Disease Safety of Donor Blood and Blood Components" dated 01.08.2005;
- Order No. 459 of the MH of Ukraine "On Amendments to the Industry-Specific Statistics Form" dated 06.08.2007.

On 25 to 27 August, 2015, upon the MH's request, the EU Delegation to Ukraine carried out the assessment of the Ukrainian system of Blood Service institutions, including its legislative and regulatory framework. Following the assessment, the Ministry issued Order No. 610 dated 21.09.2015 whereby it established a working group on development of blood services. In 2016, the said group involving national and international experts drafted a Strategy for

National Blood System Development, which was supposed to be approved by an order of the Cabinet of Ministers of Ukraine. This Strategy for National Blood System Development sets the basic principles for establishment of a national blood system, which should be developed taking into account the requirements of the EU directives. For instance, the draft Strategy envisages establishment of an Independent Competent Inspection Body as a special unit within the MH of Ukraine, independent of the National Transfusiology Center, which will serve as the competent authority responsible for supervision (over thee preparation and clinical areas of Transfusiology). Unfortunately, at the time of writing this report, the Strategy was not approved, and the Ministry did not endorse any other regulations that would ensure implementation of the relevant EU legislation. Furthermore, in June 2016, the expert commission of the European Union (TAIEX) visited Ukraine to assess the development of the national blood service and confirmed that donor blood components were used inefficiently and the level of their disposal was too high, even though other regions or hospitals had shortage of blood components, and some patients did not have full access to blood plasma products.

In order to expedite implementation of the Strategy for National Blood System Development upon its approval by the Government, the Ministry of Health of Ukraine put out to public consultation draft regulatory acts that take into account the key requirements of Directive No. 2002/98:

- Regulation on hospital blood banks that establishes the basic principles of hospital bank activity;
- Regulation on blood service establishments that sets forth the basic principles of operation of such establishments and their cooperation with hospital banks;
- National guidelines for the clinical use of donor blood components and products.

Although many requirements of Directive No. 2002/98 are already enshrined in domestic legislation (designation of responsible persons, personnel requirements, facilities, equipment, quality control requirements, procedures for withdrawal of blood components), the existing legal framework needs to be amended. In particular, the conceptual framework is not fully unified (terms such as "severe adverse reaction", "delay", "distribution of blood and blood components", etc. have not been adapted), the European requirements for reporting serious cases and reactions have not been implemented, there are problems with technical requirements and adaptation to scientific and technical progress, that is, in the light of the latest technologies or new research results, it is necessary to continuously improve technical solutions to ensure traceability (establishment of the donor's identity in case of undesirable results of donor blood tests), revision of blood and plasma donation eligibility requirements, donor blood screening, etc.

The level of integration of the provisions and standards of Directive No. 2002/98 in Ukrainian legislation can be considered sufficient. However,

even so, the level of implementation of the rules enshrined in legislation is unsatisfactory. 44% of donor blood and blood components in the country are prepared by specialized units of healthcare institutions (blood transfusion units, transfusion departments and hospitals that independently prepare such products) without proper conditions (located in buildings commissioned in 1922-1985, most of which require major overhaul and complete reconstruction, etc.), suitable equipment for standardizing technological processes, without due control of technological processes, as well as unable to ensure appropriate quality and infectious disease safety. Moreover, these units cannot perform the basic functions that hospital blood banks fulfill in the EU, in particular, they do not provide supervision over the clinical transfusion process, do not assess clinical efficacy, do not monitor post-transfusion complications, and do not ensure introduction of hemovigilance.

To sum up, it can be concluded that Directive No. 2002/98 setting standards of quality and safety of collection, testing, processing, storage and distribution of human blood and blood components is ready for full-fledged implementation after the Government's approval of the Strategy for National Blood System Development.

Directive No. 2004/33 implementing Directive No. 2002/98 as regards certain technical requirements for blood and blood components

What are the benefits of relevant standards?

The Directive lays down the technical requirements which take into account Council Recommendation No. 98/463 of 29 June 1998 on the suitability of blood and plasma donors and the screening of donated blood in the European Community based on certain recommendations of the Council of Europe, the opinion of the Scientific Committee for Medicinal Products and Medical Devices, monographs of the European Pharmacopoeia, particularly in respect of blood and blood components as starting material for the manufacture of proprietary medicinal products and recommendations of the World Health Organization (WHO), as well as international experience in this field.

What has been done to implement the commitments?

In addition to the legislation specified in the previous paragraph describing the status of implementation of Directive No. 2002/98, the field of activity regulated by Directive No. 2004/33 in Ukrainian legislation is also covered by Order No. 415 of the Ministry of Health of Ukraine "On Improvement of HIV Voluntary Counseling and Testing" dated 19.08.2005.

All in all, Directive No. 2004/33 has been properly implemented in Ukrainian legislation. However, it is necessary to review and bring in compliance such aspects as blood and blood component donation eligibility criteria, as well

as the information provided to the donor and data to be received from the donor. So far, the Ministry of Health has not approved or put out to public consultation any draft regulatory acts that would bring Ukrainian legislation in compliance with the requirements of this Directive.

Due to inadequate funding of the branch and the lack of a well-established national blood system (clearly structured scheme specifying the duties, accountability and reporting levels), there is currently no fully safe and reliable infectious disease testing for donated blood and blood typing procedure. There is no hemovigilance system (detection or prevention of adverse events associated with blood transfusion in order to increase the safety, efficacy and effectiveness of blood transfusion covering the entire blood transfusion chain – from the donor to the recipient).

Directive 2005/62 implementing Directive 2002/98 as regards Community standards and specifications relating to a quality system for blood establishments

What are the benefits of relevant standards?

According to the Directive, quality shall be recognized as being the responsibility of all persons involved in the processes of the blood establishment with management ensuring a systematic approach towards quality assessment and its continuous improvement. The quality system encompasses personnel, premises and equipment, documentation, collection, testing and processing and storage of blood and blood components, contract management, self-inspection, external and internal auditing.

What has been done to implement the commitments?

Ukrainian legislation implemented the requirements of Directive No. 2005/62 in Order No. 1112 of the MH of Ukraine "On Approval of the Regulation on Blood Transfusion Establishments (as regards organization of the management of a system of quality and safety of donor blood and blood components)" dated 14.12.2010 and Order No. 1093 of the MH of Ukraine "On Approval of Instructions for Preparation, Use and Quality Assurance of Blood Components" dated 17.12.2013.

As regards quality, the above MH orders include only declarative provisions stating that a lot of work has to be done. In particular, as required by Directive No. 2005/62, it is necessary to develop:

- a quality management system for blood transfusion services;
- requirements for the quality assurance of the clinical use of donor blood components and products in healthcare establishments and the competence of management and personnel who provide transfusion services in accordance with ISO 9000;

- to introduce internal audits of personnel compliance with the SOP requirements for transfusion services.

Currently, the existing quality assurance system used in all blood establishments does not comply with the Community standards and specifications. The latter require additional implementation in Ukraine at the regulatory level.

Directive No. 2005/61 implementing Directive No. 2002/98 as regards traceability requirements and notification of serious adverse reactions and events

What are the benefits of relevant standards?

The Directive sets requirements for traceability of blood components (donor identification, donation of each individual component, identification of blood component transfusion and its recipient, documentation).

What has been done to implement the commitments?

The working group on blood service development established by the Ministry of Health of Ukraine is drafting a relevant Ministry order, but at the time of writing the report this draft order is not available for public consultations.

Currently, almost 90% (apart from definitions and partly traceability procedures) of the requirements of Directive 2005/61 are not implemented in Ukrainian legislation, in particular, verification procedures for preparation of blood and blood components have not been introduced, 30-year period for blood transfusion data preservation has not been set, procedures for reporting adverse reactions and events are unclear, there are no requirements for imported blood, etc.

The country does not have any traceability algorithm for recipients of potentially infected blood. This results in high rates of transfusion-associated HIV and HBV transmission. Almost all hemophiliac patients are co-infected with either HIV or HBV, or both.

Conclusions and Recommendations

Conclusions

As of November 1, 2017, exan of the implementation of the Association Agreement as regards alignment of legislation revealed the following trends. Ukraine's commitments under the Association Agreement have been most successfully fulfilled in areas such as technical barriers to trade (as regards framework legislation) and energy efficiency in buildings. In addition, there has been some progress in the areas of consumer protection, environment, social policy and company law.

The factors contributing to the results achieved in these areas include the active stance of the main responsible institutions, support of the process by the EU and international financial organizations, and the fact that the alignment process in these areas was launched two years ago.

The progress in other areas – such as customs matters, requirements for ecodesign, oil and petroleum products, prospection, exploration and production of hydrocarbons, taxation, transport, company law and public health – is slow. This process involves the following bottlenecks:

- insufficient staffing capacity of the responsible institutions to carry out approximation of legislation and an excessively bureaucratized procedure for drafting, approval and adoption of legislative acts;
- conflicts of interest between different state bodies regarding the division of powers, which causes delays in the process of consideration and approval (non-approval) of draft legislative acts;
- failure to take into account current statutory regulations in the process of approximation of legislation, which results in regulatory duplication;
- interference into the adoption of acts on the part of various stakeholders and interest groups who are afraid of changes that might be brought about after adoption of relevant legislation, which entails delays since participants in the process are not interested in a constructive dialogue and finding compromise solutions.

The most difficult situation has arisen concerning approximation of legislation in the field of maritime transport, where almost no legal acts have been drafted.

Currently, due to the failure to meet the obligations related to the approximation of Ukrainian legislation to the requirements of the EU in the field of road transport, in 2018 Ukrainian carriers engaged in international freight shipping in the territory of the EU may be refused multiple-entry permits within the framework of the European Conference of Ministers of Transport (ECMT). In order to obtain the above permits, Ukraine has to implement the legislation in the field of road transport by January 1, 2018. As of December 12, this commitment has not been fulfilled.

Apart from that, some distinctive tendencies of alignment of Ukrainian legislation with EU legislation were detected in each area.

Title IV of the Agreement

Technical Barriers to Trade

As of November 2017, Ukraine's commitments concerning implementation of EU legal acts in the field of technical regulation as regards horizontal (framework) legislation can be considered fulfilled. Currently, there remain a number of minor issues related to integration of the new regulations into business practices, work of government agencies and courts, but they should be gradually resolved during practical application of these regulations.

Customs and Trade Facilitation

The slow pace of consideration of draft law No. 5627 "On Amendments to the Customs Code of Ukraine as Regards Bringing Transit Procedures in Line with the Convention on a Common Transit Procedure and the Convention on the Simplification of Formalities in Trade in Goods" negatively affects the introduction of new standards for the work of national customs authorities in line with the EU standards. The practice of going through clearance procedures by economic operators involved in FTA testifies to the fact that customs officials fail to contribute to simplification of transit procedures. These complications of customs procedures indicate that state institutions are not prepared to change and implement new rules of the game. There may be several reasons for this, in particular, the framework procedures and lack of clear, step-by-step explanations make it possible for officials to create artificial barriers for businesses, which in turn may be a manifestation of selective and biased attitudes towards business representatives.

Ukraine's full implementation of its commitments in the customs area requires a large scope of work on the creation of policy-making and practical solutions that could address a number of legal, organizational, and IT tasks. For the EU will invite Ukraine to accede to the Convention on a Common Transit Procedure and the Convention on the Simplification of Formalities in Trade in Goods only if all the provisions of these conventions are fully complied with.

Title V of the Agreement

Energy Cooperation

Energy efficiency

2017 has become literally a breakthrough year in terms of adoption of basic energy efficiency laws, which should finally bring national legislation

into line with the latest EU requirements and launch sectoral policies in the area of improvement of energy efficiency in buildings. The next step is development of secondary legislation and elimination of all kinds of barriers to the development of a new market for energy efficiency in buildings, as well as creation of a nationwide energy audit system for large industrial enterprises.

Implementation of the relevant EU directives and regulations in the field of eco-design is at an early stage, the framework requirements of Directive 2009/125/EU are currently integrated only in the draft law "On Energy Efficiency" and the relevant technical regulation, and only 7 draft implementing technical regulations for certain types of energy-consuming products have been drafted and are currently undergoing conciliation procedures, while the remaining 16 are at different stages of drafting.

Oil and petroleum products

Tasks approved in 2015 aimed at implementing the provisions of Directive 2009/119/EC setting the requirements for maintaining minimum stocks of crude oil and/or petroleum products have not been fulfilled. Moreover, there have been changes in the implementation plans concerning Directive 2009/119/EC, which further complicated the structure of the tasks and responsible parties, as well as created confusion in terminology. As of November 2017, the implementation of the provisions of the aforementioned framework directive was still at the discussion stage.

The creation of a legislative framework in accordance with the requirements of Directive 2009/28/EC to stimulate biofuels production is still at the stage of framework law adoption.

Prospection, exploration and production of hydrocarbons

At present, all necessary amendments to legislation aimed at implementing the provisions of Directive 94/22/EC on the conditions for granting and using authorization for the prospection, exploration and production of hydrocarbons exist in the form of drafts and require adoption by the Verkhovna Rada and the Cabinet of Ministers of Ukraine. Their adoption is continually delayed due to the lack of political will, low quality of the draft legislation and numerous institutional conflicts at the CEB level.

Taxation

As of November 1, 2017, Ukraine failed to fully harmonize its legislation with EU legislation, specifically the provisions of Section 3 (concerning quantitative restrictions) of Council Directive 2007/74; some of its requirements were taken into account in Articles 374 and 376 of the Customs Code of Ukraine. Most of the standards that still need to be implemented are included in Government draft law No. 4615 dated 06.05.2016 "Draft law on Amendments to the Customs Code of Ukraine (as regards implementation of the Association Agreement between Ukraine and the EU)", which has been pending consideration in Parliament for more than 17 months (since May 2016).

Environment

- For most sectors requiring implementation under the Agreement, the responsible authority (Ministry of Ecology and Natural Resources) has chosen the following approach: first they develop and adopt a general strategy, while implementation of specific directives is postponed for an indefinite period;
- Most of the deadlines associated with the transposition of the acquis communautaire into Ukrainian legislation have been disregarded;
- The transposition process is sufficiently transparent: draft acts to be adopted are generally made public and submitted to public consultation;
- In most areas, the transposition takes place with the support of technical assistance projects;
- During the period under assessment, no directive or regulation was applied in practice. Sectors such as EIA and water resource management came closest to this stage of implementation.

Transport

The transport sector have not adapted a single act under the commitments stipulated in the Association Agreement with the deadline no later than November 1, 2017. The following factors slow down and impede the approximation of legislation in this area:

- overly bureaucratized procedure for the development, approval and adoption of legislative acts;
- low professional level of the civil servants who draft these acts;
- conflict of interests between different state bodies regarding the division of powers, which causes delays in the process of consideration and approval (non-approval) of draft legislative acts;
- hindering the passage of these acts on the part of various stakeholders and interest groups who are afraid of changes entailed by the approximation of legislation;
- prolonged consideration in the committees of the Verkhovna Rada of Ukraine and failure to adopt the necessary amendments to legislative acts of Ukraine, including due to lack of a constructive dialogue between those involved in the process and their failure to search for compromise solutions;
- The most difficult situation has arisen concerning the approximation of legislation in the field of maritime transport, where almost no legal acts have been drafted. This area is extremely important for boosting trade by developing maritime infrastructure.

One thing is certain, without prompt adoption of the relevant laws, the European integration processes in this area will never get traction.

Company Law

- It is worth noting that the Ministry of Finance, the National Securities and Commerce Commission and the Ministry of Ecology and Natural Resources do invest special efforts to implement EU acts, including those postponed from prior periods and the EU acts for with no clear-cut deadlines (acts provided for in Annex XXXVI (36)), as well as contribute to the alignment of Ukrainian legislation with the EU acts whose term of implementation has not yet come;

- However, it again required a "detective" investigation to track the adaptation of the EU acts due on 1 November 2017 (the closest deadline). First of all, the names of the measures envisaged by the government's implementation plan, and specifically the names of the acts to be adopted, differ from their actual counterparts, consequently, searching for the results of the implementation of the Directives without explanations by state authorities is tantamount to a wild goose chase. The tracking is further complicated due to the issues of interaction between the Parliament and the Government in matters concerning the implementation of the Association Agreement, when the draft laws to be prepared by the government (in fact, by the main responsible party) are registered by MPs.

- In cases where the same Directive is implemented by several Laws, the legislators usually fail to specify the provisions of the Directive that are implemented (with references to articles), limiting themselves to general phrases. This approach leads to a situation where, after adoption of one law bringing Ukrainian legislation into line with a specific Directive, another law is adopted that also approximates it with the same Directive, which gives an impression that the implementation is chaotic or the draft laws are of poor quality, even though these two laws may implement different aspects of the Directive.

- There still remains a problem of analysis of the final texts of adopted draft laws that are not posted on the website of the Verkhovna Rada before their publication.

- Ukrainian legislation is currently partly in line with the Third and Sixth Directives, but there are no explanations as to whether there will be any further work on these Directives.

- The current Ukrainian legislation is already partly in line with Directive 2009/102/EC, however, the requirements that decisions of the single member of a company should be done in the written form, as well as those regarding the written form of contracts, have not yet been implemented.

- The provisions of Directive 2007/36/EC are largely implemented in the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Facilitation of Doing Business and Attraction of Investments by Securities Issuers", but it will be possible to make some final conclusions as to how this was implemented when a finalized text of the adopted law is available.

- The main provisions of Directive 2013/34/EC are implemented in the

Law of Ukraine "On Amendments to the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine'". So far, it is unclear whether the Directive will be further implemented with regard to its more detailed requirements.

- Implementation of Directive 2006/43/EC remains an open question: the draft law drafted to implement it is undergoing finalization in the specialized committee of the Verkhovna Rada.

Consumer Protection

As of the end of 2017, and accordingly, the three-year term of approximation of Ukrainian legislation to the requirements of the European Union concerning consumer protection under the Association Agreement, we can argue that the commitments have been partially fulfilled. In our opinion, the following has been done:

- Directive 87/357/EEC on the approximation of the laws of the Member States concerning goods which, appearing to be other than they are, endanger the health and safety of consumers – without reservations and to the fullest extent;

- Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers – with a minor reservation.

The other ones have been implemented in part and with varying degrees of compliance, while two have not been fulfilled at all (concerning magnetic toys and timeshare).

As to the partially fulfilled commitments, special attention should be given to the ones where the greatest progress has been achieved. First of all, these include the adoption of:

- Law of Ukraine No. 1734-VIII of November 15, 2016 "On Consumer Lending", which substantially approximates domestic legislation to EU requirements;

- Law of Ukraine No. 675-VIII of September 3, 2015 "On E-Commerce", which, although not covering all the issues of distance trade, has significantly improved consumer protection when purchasing goods and services over the Internet.

Some important legislative amendments have been developed, but at the moment they are at the stage of draft laws. The most important ones include:

— Draft law of Ukraine No. 5548 of December 16, 2016 "On Amendments to Certain Legislative Acts of Ukraine (as regards consumer protection)";

— Draft law No. 2456 of March 23, 2015 "On Amendments to Certain Legislative Acts of Ukraine as Regards Improvement of Consumer Protection in the Field of Financial Services";

— Draft law No. 7300 of November 16, 2017 "On Amendments to the Law of Ukraine 'On Tourism' with Regard to Defining the Term 'Alternative Measures for Tourism Product Provision' and Specification of the List of

Essential Conditions and the Form of the Travel Services Agreement".

Special attention should be given to the fact that, with regard to tourism consumer protection, a lot of time was wasted in the initial stages due to the choice of an inadequate way of approximation to EU norms (through technical regulations).

Another important reservation is that, during the implementation of the Association Agreement, a significant number of EU acts listed in its Annexes have been abolished and replaced. This produced the need to adapt the already drafted national legislation to new, expanded and more detailed requirements. In addition, legislators feel that they need competent expert assistance.

Social Policies

Ukraine's commitments in the area of social policies as regards approximation of domestic legislation to the EU acts in Annex XL are at varying stages of implementation. At the time of signing the Association Agreement, the legislation of Ukraine already incorporated the requirements of the EU social policies legislation to a large extent (in particular, Directive 92/85/EEC, Directive 79/7/EEC) or partly (for example, Directive 2001/23/EU, Directive 2002/14 EC). The Government has adopted a number of plans for implementation of both the Association Agreement itself and specific EU acts, most of which provide for drafting and adoption of necessary regulations. However, the legislative activities did not result in adoption of laws or by-laws aimed at aligning legislation with the EU social policy Directives.

The work on the alignment of legislation involved drafting legal acts, accompanied by a number of challenges to drafting the relevant acts, the completeness of assimilation of the requirements of EU acts in these drafts and the observance of the relevant deadlines. Some draft laws and regulations related to social and labor policies aligned the national legal system with the requirements of European legislation disregarding the objectives of these EU acts, and, consequently, distorted the essence of the measures to be performed by the state.

Another factor affecting the process of adaptation includes the specific features of adoption of legal acts on social policies, in particular taking into account the opinions of social partners, holding negotiating and consultations with them on relevant issues.

Approximation of the legislation in the field of social policies is closely linked with the reform of the labor legislation of Ukraine, in particular with the processes of its codification. The future code, as a comprehensive legal act, shall cover a large number of issues subject to regulation by EU acts. Therefore, the difficulties in adopting the draft Labor Code submitted to the Parliament directly affect the status of fulfillment of Ukraine's commitments concerning legislation alignment.

The commitments related to the alignment of social policies legislation are of cross-cutting nature and their implementation is also affected by

problems associated with reforming administrative and judicial mechanisms of the protection of rights, institutional development, financial and personnel capacity for the actual implementation of the Association Agreement and specific EU acts.

As regards the integration of EU acts into the Ukrainian labor protection legislation, this commitment as a whole has not been fulfilled. The main reasons for this are as follows:

1. Labor protection legislators make no reference to the provisions of specific clauses of EU acts they took into account or to compliance with the text of these acts;

2. Introduction of amendments to these legislative acts under pressure from employers that either cancel the validity of the available acts or reduce their requirements for the proper organization of the occupational safety measures by the employer;

3. Insufficient Government control over the activities of CEBs as regards implementation of the state policies in the field of labor protection.

Public Health

The Ministry of Health of Ukraine took a rather balanced approach to the process of implementation of the requirements of European legislation concerning the activity of the blood service. First of all, the current state of affairs was analyzed with the involvement of international experts and a Strategy for National Blood System Development was drafted. Should the Strategy be adopted, it will make it possible to implement structural reforms in the existing blood service structure and ensure equal and timely access of patients to high-quality and safe donated blood components in the required amount.

At the same time, as of December 2017, the Strategy for National Blood System Development that was put up to public consultations in October 2016 was still pending approval by the Cabinet of Ministers of Ukraine. This had a negative impact on the implementation of the four EU directives specified by the Association Agreement.

Recommendations

In order to effectively fulfill the obligations stipulated by the Association Agreement, it is necessary to implement a number of the following top-priority horizontal measures:

- introduce the practice of establishing a constructive dialogue with MPs, representatives of business and other stakeholders on the basis of specialized committees of the Verkhovna Rada of Ukraine responsible for fulfilling commitments under the Association Agreement to explain the proposed legislative initiatives and benefits after their introduction for various market players. This step may accelerate the adoption of laws necessary to approximate Ukrainian legislation to EU legislation;

- relevant deputy ministers on European integration should introduce weekly meetings with persons in charge of approximating Ukrainian legislation in order to tighten control over the implementation of the Association Agreement;

- get approval of the EU for updating all Annexes to Titles IV and V as regards new versions of directives and regulations. The fact that the Association Agreement mentions the old directives, while the Action Plan on Implementation stipulates the new directives often becomes a fertile ground for misunderstandings and manipulations. For example, there are situations where different interest groups draft two draft laws for the old and the new directive, thereby blocking the process of approximation. There should be a single list of EU acts that Ukraine has to implement.

- Vice Prime Minister of Ukraine for European and Euro-Atlantic integration should take measures to intensify the process of approximation of Ukrainian legislation to the EU legislation in the field of maritime transport. For, currently, this is the only area where almost no regulation has been drafted to approximate legislation.

Besides, it is necessary to take a number of specific sectoral measures, including the following:

Title IV of the Agreement

Technical Barriers to Trade

Efforts need to be made to increase the level of competence of public officials (especially in the field of justice) as well as officials of private companies who deal with technical regulations in order to improve enforcement practices.

Customs and Trade Facilitation

In order to improve control over the movement of goods, accelerate

customs clearance, fulfil the transit potential of our country and ensure an effective risk analysis in order to counteract violations of customs legislation, it would be advisable to:

- Carry out a high-quality adaptation of the standards of the conventions (as well as related customs legislation that is inextricably linked with implementation of the conventions) at the level of framework national legislation.
- Settle the procedure of operation of customs authorities at the level of by-laws, which will be in line with the European customs practices.

Establish and maintain a full-fledged national NCTS subsystem, ensure the interoperability of these information systems between Ukraine and the EU/EFTA countries, and introduce a reliable and secure data exchange procedure between them.

Title V of the Agreement

Energy Cooperation

Energy efficiency

- Adopt the Framework Law of Ukraine "On Energy Efficiency", which is important for setting national energy efficiency goals, and a number of framework requirements for sectoral energy efficiency policies;
- Adopt a number of subsidiary acts necessary to fully implement the provisions of Directives 2012/27/EC and 2010/31/EC and to launch relevant sectoral energy efficiency policies;
- Adopt a package of regulations and methodological materials on the development of an energy management system, conducting of energy audits and monitoring of energy consumption;
- Creation of information databases regarding state-owned buildings, energy certification, etc. necessary to carry out and oversee projects for energy modernization in the housing sector;
- Training of staff in CEBs, local self-government bodies and companies in order to inform them about best practices in energy management and energy efficiency projects in the housing sector;
- Launch of the National Energy Efficiency Fund;
- Elimination of economic barriers to the development of the energy efficiency market (continuation of reforms in order to create real competition in the main energy markets, monetization of housing and utility subsidies, expansion of the scope of financing of household support programs and housing cooperatives, etc.);
- Establishment of a nationwide energy audit system for large industrial

enterprises and a system for encouraging SMEs to conduct energy audits and informing them about best practices in the field of energy management;

• Adopt 1 framework and 24 implementing technical regulations in the area of setting requirements for eco-design of certain groups of energy-consuming products.

Oil and petroleum products

• Draft and adopt the necessary framework legislation to establish the legislative framework needed to create minimum stocks of crude oil and/or petroleum products in Ukraine, in particular to draft a law "On Minimum Stocks of Crude Oil and Petroleum Products";

• To choose a basic pattern for maintaining Ukraine's oil stocks (including the calculation of the required volumes of the stocks and costs for their creation) whereby the management of oil stocks shall be carried out by a special agency established as a state body consisting of representatives of government bodies and economic operators obliged to maintain the stocks;

• In order to create incentives for development of production of various biofuels in Ukraine, it is necessary to adopt an appropriate framework law, harmonized with the requirements of Directive 2009/28/EC and related subsidiary legislation.

Prospection, exploration and production of hydrocarbons

In order to implement the provisions of Directive 94/22/EC on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons, Ukraine must bring the quality of existing draft legislative acts in compliance with the EU requirements and ensure their passage in the Verkhovna Rada, in particular the following key

• Draft laws:

– New version of the Code of Ukraine on Mineral Resources;

– "On Amendments to Certain Legislative Acts of Ukraine on Simplification of Some Aspects of Oil and Gas Industry" (No. 3096-d);

– "On Ensuring Transparency in Extractive Industries" (No. 6229).

• Draft CMU Resolutions:

– "On Amendments to the Classification of Mineral Reserves and Resources of the State Subsoil Fund", which will ensure that subsoil users conform to the provisions of the UN Framework Classification for Fossil Energy and Mineral Reserves 2009 (UNFC 2009);

– "On Amendments to the Methodology for Determining the Value of Mineral Reserves and Resources of a Deposit or Subsoil Site Provided for Use", aimed at bringing paragraphs 4 and 6 of the Methodology into line with UNFC 2009.

Taxation

It is necessary to adopt draft law No. 4615 "On Amendments to the Customs Code of Ukraine (as regards implementation of the Association Agreement between Ukraine and the EU)" dated 06.05.2016.

Environment

- It is advisable to conduct an analysis in order to identify the main challenges associated with the transposition of the environment-related acquis since there is sufficient relevant experience. In this context, the immediate recommendation is to prioritize the objectives of the relevant acts during their implementation;

- It is necessary to address the EU in order to agree upon the issue of updating Annexes XXX and XXIX to the Association Agreement, in particular, with regard to the new versions of directives and regulations;

- It is necessary to ensure the integrity of the environment-related implementation process, for the abolition of individual plans for the implementation of directives and regulations dissipate the implementation process and potentially can bring about serious challenges;

- It is necessary to ensure predictability and consistency of the implementation process under conditions of potential political instability (for example, government change), since the adopted concepts and strategies are unlikely to establish practical frameworks, priorities and approaches to the implementation of specific directives or regulations if there is no political will.

Transport

The process of legislation approximation may become more dynamic due to:

- strict control by the relevant Deputy Minister for European Integration (the Minister) over all draft acts at all stages (their drafting, passing and adoption) – at least weekly "consultation sessions" with the officials-in-charge and management of the structural subdivisions of the ministry;

- direct contact and dialogue with the management and responsible persons of other ministries and state bodies via conciliation procedures and prompt settlement of all disputed and problematic issues, which, however, should be performed without prejudice to the binding commitments under the Association Agreement and focusing on the state interests rather than those of individual authorities or officials;

- an active and constructive dialogue with MPs, business representatives and other stakeholders on the basis of the specialized Committee of the Verkhovna Rada of Ukraine in order to clarify the proposed legislative initiatives and their benefits for different market players and to ensure adoption of the basic laws;

- regular contact with representatives of EU structures to obtain advice

and assistance concerning adaptation and implementation of the provisions of EU legislation;

- speeding up the approximation of legislation in the field of road transport, since, according to the requirements of the European Conference of Ministers of Transport (ECMT), by January 1, 2018, Ukraine had to align its road transport legislation with the relevant EU legislation so that Ukrainian carriers could obtain multiple-entry permits for international transport operations on the territory of the EU. Should Ukraine fail to comply with this requirement, after January 1, 2018, Ukrainian carriers will be deprived of the opportunity to obtain multiple-entry permits for international transport operations on the territory of the EU within the framework of the ECMT.

Company Law

- Clarify the situation with the implementation of the Third and Sixth Directives;

- Finalize the draft law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Concerning Single-Member Companies" or report on progress in the implementation of Directive No. 2009/102/EC, if any;

- Make it clear whether Ukrainian legislation will be further elaborated in order to bring it closer to Directive No. 2007/36/EC and Directive No 2013/34/EC;

- Explain to the public the situation regarding the revision of Directive 2006/43/EC (how long this process will continue) and make the revised draft law publicly available.

Consumer Protection

- It is recommended that the Ukrainian legislation on consumer rights be brought in line with the requirements of the EU legal acts listed in Annex XXXX, taking into account all changes, additions and updates that have occurred with the relevant legal acts of the EU over the past 3 years.

- The Directives are a minimum harmonization tool and should be considered holistically and cohesively, without taking a selective or partial approach to individual articles. Besides, it is important to take into account the purpose of adoption of the Directives, as indicated in the preamble, rather than just their provisions – this could help to make the implementation process more cohesive, accurate and effective, as well as to find the best ways of transposing the EU requirements into Ukrainian legislation.

- Given the rather complex and multifaceted structure of the Ukrainian system of legislative and subordinate acts, in particular regarding consumer protection, it would be advisable to draw up transposition schedules specifying the legal acts amended to incorporate the standards to be implemented by Ukraine under the Association Agreement. This would make the process of legislation approximation more comprehensible and transparent to European partners.

Social Policies

- EU acts establish minimum requirements for certain social and labor issues, delegating the initiative to impose specific measures to the Member States, taking into account national interests, specific features and practices of legal regulation. In realizing its sovereign competence as regards adopting the necessary regulations and determining the measures, the state must take into account the goals and objectives of adoption of these EU acts.

- Both the current legislation and drawn-up draft legal acts should undergo audits for compliance with the Directives Ukraine has undertaken to implement in the field of social issues. The adoption of such draft legal acts disregarding the requirements of the Directives will prevent full alignment of the legislation; this is especially true in the case of framework regulations, such as the future Labor Code of Ukraine.

- Further implementation of EU acts which Ukraine's legislation is aligned or partly aligned with should focus on monitoring the practical aspects of the implementation of the Directives, including mechanisms for protecting the rights and functioning of institutions that promote enforcement of rights, introduction of specific institutional and organizational measures and criteria for their fulfilment.

- EU legislation contains requirements according to which the adopted Ukrainian legal acts aimed at implementing specific EU acts should contain references to these acts or come with references at their official publication (in particular, Directives 97/81/EC, 91/383/EEC, 92/85/EEC). Therefore, it is a good idea to establish a set practice of providing such references in all legal acts adopted to implement the EU acts which Ukraine has undertaken to align its legislation with.

Public Health

- The Ministry of Health of Ukraine should take comprehensive measures to ensure the earliest possible hearing of the draft Strategy for National Blood System Development at a meeting of the Cabinet of Ministers of Ukraine.

- After the Strategy is approved, it is necessary to urgently approve the relevant legal acts developed to implement the requirements of European legislation as they can contribute to ensuring equal and timely access of patients to high-quality and safe donated blood components in the required amount.

Notes

UKRAINIAN CENTRE
FOR EUROPEAN
POLICY