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A4U Analytical Studies N4 Current Status of Ukraine's TBT (Technical Barriers to Trade) Obligations under the AA/DCFTA

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Current Status of Ukraine's TBT Obligations under the AA/DCFTA

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1. Introduction	3
2. Analysis of Impact of Removal of Technical Barriers to Trade.....	4
3. Current Functioning of the Ukrainian Quality Infrastructure	10
3.1 Legal and Institutional Framework.....	10
Standardisation.....	10
Metrology	12
Accreditation	12
Market Surveillance	13
3.2 Alignment to EU Technical Regulations	13
Adoption of Technical Regulations	13
Implementation of Technical Regulations	17
3.3 Standardisation Process	20
3.4 Controls (market surveillance operations/consumer protection)	21
4. Assessment	22
5. Recommendations	24

1. 1. Introduction

Although Ukraine's policy since independence under the Partnership and Cooperation Agreements has been to align its quality infrastructure system with those of the European Union, implementation of this policy was inconsistent with progress only based on external influences such as WTO accession. This lack of consistency was due to the reforms being led by the State Committee for Technical Regulation and Consumer Policy (DSSU), a Government monopolistic institution with vested interests in maintaining existing systems and resulted in DSSU being the major constraint to reforms. DSSU was dissolved as part of the 2010-2011 institutional reforms and since then, the Ministry for Economic Development and Trade have become the lead actor reforming the quality infrastructure system in Ukraine and has made significant progress.

In 2014, the EU-Ukraine Association Agreement (AA) was signed and was provisionally applied from November 2014, and provisions to create of a Deep and Comprehensive Free Trade Area (DCFTA) (Title IV of AA on Trade) was applied from January 2016 (although EU granted autonomous trade preferences from March 2014, equivalent to first year tariff and TRQ access under the DCFTA).

Chapter 3 of Title IV relate specifically to Ukraine's commitments on Technical Barriers to Trade (with Annex III) and have since become the main guide in formulating Ukrainian regulatory policies, product safety, standards, environmental protection and protection from deceptive practices. A consolidated Strategy and the Action plan for development of the system of technical regulation for the period 2015-2020 was approved by Order of the Cabinet of Ministers of Ukraine № 844-p of 19.08.2015. These documents identify both legal reforms and needs for Institutional development of the Quality Infrastructure Institutions, with the overall aim to implement the relevant provisions of the AA and DCFTA.

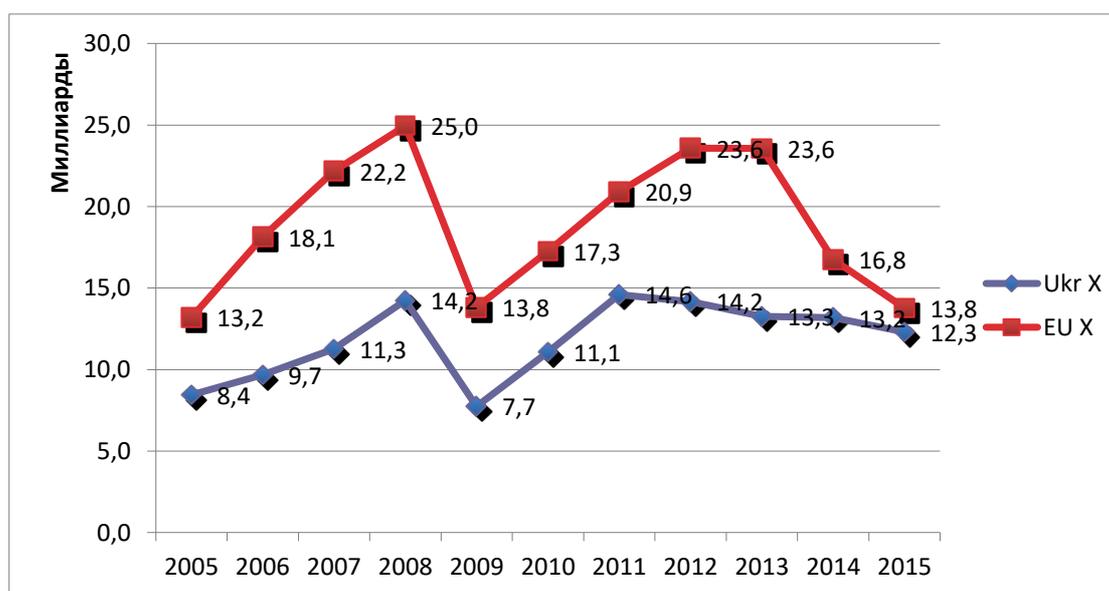
This paper summarises¹ the current situation and progress in Ukraine in aligning its quality infrastructure framework with that of the EU. When fully aligned, firms in Ukraine, particularly SMEs, will already comply with EU technical regulations and therefore, it will make no difference (especially when combined with improved market access) whether they sell locally or in the EU, not only integrating Ukraine into the EU Single Market, but increasing export potential for Ukraine. Moreover, given that technical regulations aim at consumer protection, Ukrainian citizens will also enjoy better product safety, environmental protection and protection of rights.

¹ The following report and analysis is largely based on the Report Evaluation of the Sector Policy Support Programme "Promoting mutual trade by removing technical barriers to trade between Ukraine and the European Union" dated August 2017 which was undertaken by Mark Hellyer (STE on A4U Project) with Han Zuyderwijk of cemarking .net

2. 2. Analysis of Impact of Removal of Technical Barriers to Trade

If Ukraine's quality infrastructure is aligned with that of the EU, the overall impact would be to increase mutual trade between the two parties since the alignment began (or afterwards if a lag between alignment and impact). However, it should be noted that a number of exogenous factors, not least the EuroMaidan crisis, EU underlying demand and global economic trends would also affect trade performance. Therefore, the following analysis is not meant to provide any definitive conclusions, but simply make observations that can be used as indicators for a further evaluation. The following chart shows trend of trade between EU and Ukraine over the period 2005 to 2015 (representing the period prior to the beginning of quality infrastructure reforms and the period during serious alignment towards the EU acquis).

Figure: Exports of Ukraine to EU and EU to Ukraine (€)



Source: EUROSTAT

The above chart shows that since the start of the government reform programme to align its technical regulations to those of the EU, in 2010 (supported by EU projects to remove technical barriers to trade and sector budget support), EU exports to Ukraine increased until 2014 and then dropped (this fall corresponds to the conflict in Eastern Ukraine, collapse of the currency and major decline in GDP). By contrast, Ukraine's exports to the EU rose initially (to levels equal to those pre financial crisis indicating this was simply recovery), but since then saw a steady decline in exports.

Therefore comparing average annual change in exports² between the two parties, prior to the start of the TBT alignment programme (2006-2010) and during implementation (2011-2015), EU exports to Ukraine, on average, grew by 10.53 per cent per annum pre reform, but declined by an average of 2.57 per cent per annum during implementation. Even looking at average growth at the end of the implementation (2014-15) to allow for lagged affects, EU exports to Ukraine declined by an average of 23.37 per cent per annum (although this may have been due to changing underlying demand as a result of the Ukrainian crisis).

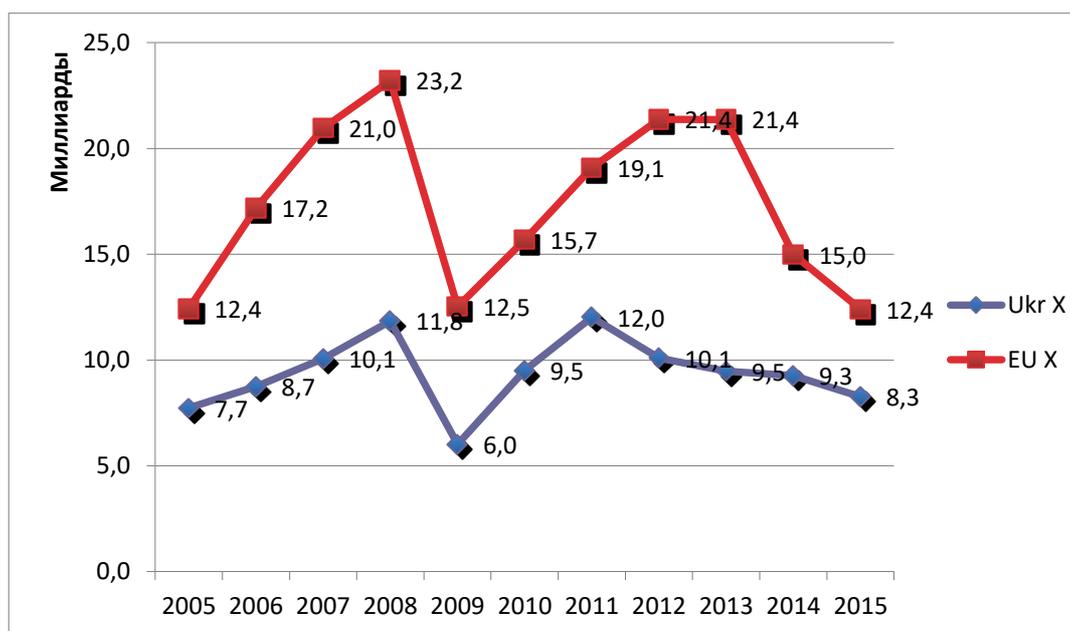
Similarly, Ukraine's exports to the EU grew by an average of 10.97 per cent per annum pre reform, and continued to grow (albeit at a reduced rate) by 3.05 per cent per annum during

² Calculated as an average of annual growth rates to estimate overall trend.

the alignment programme implementation. However, in the recent period, Ukraine's exports to the EU experienced a decline averaging 3.66 per cent per annum.

However, technical regulations only affect non-agricultural trade (Chapter 25-99 of the TARIC) and therefore agricultural exports may distort the observed trade. A better understanding of any removal of technical barriers to trade (through alignment to the *acquis*) on mutual trade would be observed in non-agricultural trade performance.

Figure: Non Agricultural Exports of Ukraine to EU and EU to Ukraine (€)



Source: EUROSTAT

Examining non-agricultural trade shows a similar pattern of mutual trade. Exports from EU to Ukraine of non-agricultural trade pre reform (2005-2010) increased on average by 10.04 per cent per annum (slightly lower rate than total exports at 10.53) but declined during the programme to align to the EU QI system (2011-15) by an average of 2.69 per cent per annum (greater decline than total exports of 2.53). In the last two years (2014-15), EU non-agricultural exports to Ukraine declined by an average of 25.57 per cent per annum (similar to total exports of 25.37 per cent).

Ukraine's non-agricultural exports to EU grew on average by 10.89 per cent per annum (compared with 10.97 of total exports) pre reforms but declined by an average of 1.70 per cent per annum (compared to a rise of total exports of 3.05) during the programme to align to the EU QI system. In the last two years, Ukraine's non-agricultural exports to the EU have declined by an average of 6.47 per cent per annum (compared with total exports of 3.66).

Therefore, we can observe that EU exports of non-agricultural products grew at similar rates pre financial crisis at 15.27 per cent per annum and pre Ukraine crisis (parallel lines) at 15.56 per cent per annum. Also, the average growth in trade of non-agricultural and total exports is very similar, leading to the conclusion that there have been no changes in patterns of trade (e.g. from removal of technical barriers to trade) and that the changes in exports are likely to result from changes in supply and demand rather than alignment of quality infrastructure.

However, although Ukraine's total and non-agricultural exports to the EU grew at similar pace pre TBT reforms, non-agricultural exports have performed worse than total exports during the programme to align to the EU QI system, with average rises in total, but declines in non-agricultural exports. This could indicate a better supply response from Ukrainian agriculture to falling exchange rate.

In both EU and Ukraine's non-agricultural trade, there is no observed increase in mutual trade during the programme to align to the EU QI system, suggesting that the alignment thus far has not led to increases in mutual trade (at an aggregate level). This does not necessarily mean that the alignment/reforms may not lead to increases in mutual trade in the future, but that none have been observed thus far. Again it should be noted that trade performance is affected by a broad range of exogenous factors that could mask any impact of alignment, not least the severe impact of the EuroMaidan/ Eastern crisis starting in 2014 that continues to affect economic development and trade in Ukraine. Moreover, the programme aims at systemic change in Ukraine which necessarily means it will take time to take effect and therefore, we could reasonably conclude that we would not expect to observe any significant trade impact at this stage.

However, even at a non-agricultural export level, there are a broad range of thousands of products whereas the actual alignment of EU acquis aims at very targeted technical regulations. As stated above, by aligning Ukrainian technical regulations with those of the EU, it would be expected that mutual trade would increase but in the short term, this would only be in products covered by the harmonisation process, that is:

4 directives in force in Ukraine by 2011: Low Voltage equipment, Electromagnetic Compatibility, Simple Pressure Vessels, Machinery.

9 directives in force in Ukraine by 2012: Transportable pressure equipment, Pressure Equipment, Lifts, Personal protection equipment, Energy Consumption of Refrigerators, Toys, Non-automatic weighing instruments, appliances burning gaseous fuels, Hot water boilers.

These directives apply mainly to products in four chapters of the EU TARIC (tariff) nomenclature:

84 [...] Boilers, Machinery And Mechanical Appliances; Parts Thereof

85 Electrical Machinery And Equipment And Parts Thereof [...]

90 [...] Measuring, Checking, Precision, Medical Or Surgical Instruments And Apparatus; Parts And Accessories Thereof

95 Toys, Games And Sports Requisites; Parts And Accessories Thereof.

Given the expected timeline, any effects would only be expected in 2014-15. In analysing mutual trade in these specific sectors, if technical barriers to trade had been removed we would expect any of a number of observed changes in trade to have occurred from either/both parties:

Increase in exports of these sectors relative to pre programme of alignment;

Increase in exports relative to total trade (that is exports in these products outperformed total exports);

Improvement in relative trade performance of these products relative to total exports.

Table: Changes in EU Exports to the Ukraine in Specific sectors

	Average Growth pre programme (2005-10)	Average Growth (2014-15)	Observed relative Performance
Total Exports	+10.53%	-23.37%	
84 [...] Boilers, machinery and mechanical appliances; parts thereof	+4.33%	-27.15%	<ul style="list-style-type: none"> ▪ No increased trade ▪ Worse performance than total exports ▪ Similar relative performance (lower growth in exports pre programme compared to total exports and greater decline recently)
85 Electrical machinery and equipment and parts thereof [...]	+8.00%	-18.46%	<ul style="list-style-type: none"> ▪ No increased trade ▪ Worse performance than total exports ▪ Slightly improved relative performance (lower growth in exports compared to total exports pre programme but less decline recently)
90 [...] Measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	+14.25%	-21.43%	<ul style="list-style-type: none"> ▪ No increased trade ▪ Worse performance than total exports ▪ Similar relative performance (higher growth in exports compared to total exports pre programme and less decline recently)
95 Toys, Games and sports requisites; parts and accessories thereof	+5.02%	-23.01%	<ul style="list-style-type: none"> ▪ No increased trade ▪ Worse performance than total exports ▪ Slightly improved relative performance (lower growth in exports compared to total exports pre programme but similar decline recently)

From observation, there has been no significant improvements in the relative exports of EU to Ukraine in products whose technical regulations had meant to be aligned with those of the EU.

Table: Changes in Ukraine's Exports to the EU in Specific sectors

	Average Growth pre programme (2005-10)	Average Growth (2014-15)	Observed relative Performance
Total Exports	+10.97%	-3.66%	
84 [...] Boilers, machinery and mechanical appliances; parts thereof	+8.74%	+0.52%	<ul style="list-style-type: none"> ▪ No increased trade ▪ Better performance than total exports ▪ Improved relative performance (lower growth in exports pre programme and growth recently whereas total exports declined)
85 Electrical machinery and equipment and parts thereof [...]	+32.94%	+6.80%	<ul style="list-style-type: none"> ▪ Increased trade ▪ Much better performance than total exports ▪ No improved relative performance (3 time growth in exports compared to total exports pre programme relatively similar difference in growth recently)
90 [...] Measuring, checking, precision, medical or surgical instruments and apparatus; parts and accessories thereof	+8.33%	+11.77%	<ul style="list-style-type: none"> ▪ Increased trade ▪ Much better performance than total exports ▪ Much improved relative performance (lower growth in exports pre programme but large growth recently whereas total exports declined)
95 Toys, Games and sports requisites; parts and accessories thereof	+8.54%	+1.34%	<ul style="list-style-type: none"> ▪ No significant increased trade ▪ Better performance than total exports ▪ Improved relative performance (lower growth in exports compared to total exports pre programme but slight growth recently whereas total exports declined)

From observation, there **have been** improved relative performance of machinery, measuring devices and toy exports relative to total exports from Ukraine to EU in very recent years. Given that these are relative to total export performance, this should mitigate global effects such as exchange rate devaluation as these sectors are outperforming total exports.

There are no significant differences in observed exports from EU to Ukraine in the last two years but there have been some observed improvements in relative exports of selected exports from Ukraine to EU. However, it should be stressed that these are observed,

rather than specifically attributed to removal of non-tariff barriers or alignment (and in the absence of an assessment of the degree of adoption and implementation nationally of these technical regulations in reality). Moreover, as noted previously at an aggregate level, other external factors could have influenced the trade performances and so whilst these observations are interesting, they do not, and are not expected to, assess the impact of the programme. Moreover, it should be stressed again that systemic change, such as that which is being supported by the programme will in any case be expected to take a longer period to observe any real impact (taking account of exogenous variables). A more in depth statistical analysis may be warranted in 4-5 years time.

3.3. Current Functioning of the Ukrainian Quality Infrastructure

4.3.1 Legal and Institutional Framework

The legislative and institutional framework establishing and reforming Ukraine's Quality Infrastructure has been largely put in place.³

The legal framework consists of the following Laws:

“On Standardization”⁴

“On Metrology and Metrological Activity”⁵

“On Technical Regulations and Conformity Assessment”⁶

“On Accreditation of Conformity Assessment Bodies”⁷

The Decree Law of the Cabinet of Ministers of Ukraine as of 10 May, 1993 № 46-93

“On Standardization and Certification” is partly valid until 1 January 2018⁸

Law on state market supervision and control of non-food products⁹

5. STANDARDISATION

The standardisation infrastructure in Ukraine is established by Law № 1315-VII “On Standardization” of 05.06.2014. This Law, which entered into force on 3 January 2015, assigns the Ukrainian government to establishment of a single National Standardisation Body that is not a state power body, and to give it the following powers:

Cancellation of obligations on application of standards and other regulatory documents in the field of standardization;

Withdrawal of specifications registration;

Withdrawal of agency-level agreements of draft national standards and

Cancellation of normative regulation of relations connected with development of standards and specifications of enterprises, institutions and organizations.

The Law abolished the compulsory application of standards, including GOST standards.

In 2015 the State Enterprise "Ukrainian Research and Training Centre of Standardization, Certification and Quality" was established as the Ukrainian Agency for Standardisation.¹⁰ They were established as a new organisation, replacing the former DSSU. Starting with a completely new organisation poses its challenges. The Ukrainian Agency for Standardisation has focussed on modernising the standardisation process by digitalising the development, maintenance and translation of standards. The EU funded project has provided assistance in the development of software, translation of 31 standards and obtaining licences for the translation software and training in the use of the translation software. As a result, the Ukrainian Agency for Standardisation can adopt and translate European and international standards much faster than before. With the translation software, 251 standards have been translated, and in the planning 666 more standards are included. The Agency would appreciate on-going support with the automation of the standardisation process.

3 An overview of the current legislation in the field of technical regulation and the quality infrastructure is provided in a document published by the Ukrainian Ministry of Economic development on their website:

<http://www.me.gov.ua/Documents/List?lang=en-GB&id=09f49bd3-6a8b-4493-8eec-45bff8435471&tag=GeneralInformationOnTechnicalRegulation>

4 <http://zakon4.rada.gov.ua/laws/show/1315-18>

5 <http://zakon3.rada.gov.ua/laws/show/1314-18>

6 <http://zakon3.rada.gov.ua/laws/show/3164-15>

7 <http://zakon3.rada.gov.ua/laws/show/2407-14>

8 <http://zakon5.rada.gov.ua/laws/show/46-93>

9 <http://zakon5.rada.gov.ua/laws/show/2735-17>

10 Established by the Cabinet of Ministers of Ukraine decision dated August 21, 2003 № 1337

The Ukrainian Agency for Standardisation lists 184 active National Technical Committees.¹¹ In Ukraine, technical committees operate independently from the Ukrainian Agency for Standardisation. The technical committees are in charge of their own planning and finance, and the national standards body has no control over these issues. Technical committees are bound by the Law on standardisation. Typically, a technical committee is a group of organisations and experts that cooperate, without having a legal entity, although a legal entity may be established to act on behalf of the technical committee. The standardisation work of the technical committees are sponsored by interested organisations, or through public procurement tenders by the government. Representatives of the Ukrainian Agency for Standardisation are often members of the technical committees.

The development of harmonised standards are always assigned to the relevant technical committees, and thus that no other group or organisation could compete with a technical committee for developing the national standards. Nevertheless, the legislation regarding public procurement requires the work to be tendered. This seems like an inefficient and bureaucratic way of financing standardisation, and therefore it is recommended that the Ukrainian government, with help of the European Commission investigates how the EU Member States have arranged the financing of technical committees and provide further guidance to Ukraine in this regard.

The Ukrainian Agency for Standardisation is full member of the ISO and IEC, and Affiliate member of the European standards bodies CEN and CENELEC. CEN and CENELEC invited the Ukrainian Agency for Standardisation to make the transition from Affiliate Member to the recently introduced Companion Standardization Body. Both types of agreements allow for Ukrainian Technical Committees to participate in the meetings of the CEN/CENELEC technical committees, as well as to make comments on the drafts that are being worked on. Therefore, the Ukrainian technical committees are not only able to be fully informed about the future European standards that the European standards bodies will adopt, but at the same time have the voice of Ukrainian industry heard by presenting the Ukrainian specific comments to the drafts, and thus influence the draft texts of standards. Also, both types of agreements cover licence agreement to arrange for the sales of standards, which ensures Ukrainian industry has access to European standards.

Unfortunately, budget constraints have prevented the Ukrainian Agency for Standardisation to participate in the General Assembly meetings of ISO, IEC, CEN and CENELEC. However, in 2017 they will be present at the General Assembly of CEN/CENELEC.

The activities of the Ukrainian Agency for Standardisation are financed mainly from the State Budget. Other sources of income are the sales of standards, training services and conformity assessment and certification services.

Stakeholders have reported a problem with the transition period of standards in Ukraine. The transition period is often very short (sometimes only 3 days). This does not give the Ukrainian industry the chance to phase out products that comply with old standards and to prepare for compliance with the new version of the standard. It means there are disruptions in the supply to the customers, and also financial losses due to the fact that they are stuck with unsellable stock that does not comply with the latest regulations and standards. Also, it is noted that sometimes standards are cancelled before the new version of the standard is even adopted in the EU list of harmonised standards. The industry and

11 Source: <http://uas.org.ua/files/2017/tk.zip>

business community should be granted a sufficient transition period in order to adapt their design and manufacturing process to the new rules.

6. METROLOGY

Law № 1314-VII of 05.06.2014 “On Metrology and Metrological Activity” envisages the harmonization of legal acts with documents of the International Organization of Legal Metrology (OIML), EU legal acts on metrology and documents of the European Cooperation in Legal Metrology (WELMEC). The Law also provides for establishment of a separate central executive body, which implements a state policy in the field of metrological surveillance. This role is assumed by the Ministry of Economic Development and Trade. The Law entered into force on 1 January, 2016.

Currently, there are four Designated Metrology Institutes (DIs), located in Kharkiv, Ivano-Frankivsk, Lviv and Kyiv. These four institutes together constitute a virtual National Metrology Institute (NMI) as mentioned in the OIML D1 document. Presently, Ukraine’s DIs have registered 234 CMCs in the Appendix C of the Key Comparison Data Base of the International Bureau of Weights and Measures.

In general, the metrology infrastructure is equipped to support science and industry with its services. However, currently the budget is missing to invest in the modernisation of equipment and new equipment necessary to support the metrology of new technologies.

7. ACCREDITATION

National Accreditation Agency of Ukraine (hereinafter referred to as “the NAAU”) operates under the Law of Ukraine “On accreditation of conformity assessment bodies” and the Regulations on the National Accreditation Agency of Ukraine (hereinafter referred to as “the Regulations”) approved by the Order of the Ministry of Economic Development and Trade of Ukraine of 29.05.2012 № 646 (as revised by the Order of the Ministry of Economic Development and Trade of Ukraine of 05.11.2013 № 1305). NAAU is a State Organisation established by the Ministry of Economic Development and Trade as a not-for-profit organisation, but the Law ensures that ministry has no rights to interfere in NAAU’s decisions.

NAAU accreditation activities are based on international standards (ISO/IEC 17025, ISO/IEC 17021, ISO/IEC 17024, ISO/IEC 17020, ISO/IEC 17065), and their competence has been confirmed in international peer reviews and Mutual Recognition agreements.

NAAU is affiliated member of the European Cooperation for Accreditation (EA) (2011) and full member of the International Laboratory Accreditation Cooperation (ILAC) (24 September 2011) and of the International Accreditation Forum (IAF) (5 November 2015).

NAAU received a status of signatory of the Bilateral Agreement on Recognition with the European Cooperation for Accreditation (EA) in the area of “Accreditation of personnel certification bodies”, “Accreditation of personnel certification bodies”, “Accreditation of inspection bodies”, and signed an agreement on expansion of recognition of national accreditation system for new areas, namely: “Accreditation of calibration laboratories”, “Accreditation of testing laboratories”, “Accreditation of management systems certification bodies”. On 26 November, 2015 during the EA General Assembly an important event occurred – it was signed the expanding Bilateral Agreement between the EA and NAAU in the area of products certification (ISO/IEC 17065). This is a significant achievement not only for the national accreditation body but for economy of Ukraine in general, as well as for effectiveness of economic part of the EU – Ukraine Association Agreement, which entered into force on 1 January 2016.

The results of the international cooperation, in particular the signatory status in Bilateral Agreements and Mutual Recognition Agreements in such areas as testing and calibration laboratories, and inspection bodies is that accreditation provided by NAAU in the above-mentioned areas is equivalent to accreditation that is provided by national accreditation bodies that are signatories to EA and ILAC in more than 80 countries of the world.

8. MARKET Surveillance

Currently, an amendment to the existing law regulating market surveillance is being developed. This process is not completed. For full alignment of the Ukrainian system of Technical Regulation with the system in the EU, the amendment of the Law on state market supervision and control of non-food products, or the development of a separate Law on market surveillance is essential. European experts performing an assessment of the technical regulations have concluded that references in the technical regulation to market surveillance are insufficient to fully implement Regulation 765/2008 of the European Council and Parliament.

The market surveillance authorities interviewed in the evaluation, expressed the wish that in a new or amended law, the rules for sample taking are improved. According to current rules, samples have to be purchased, and due to budget constraints this leads to problems checking the compliance of high value products.

The effectiveness of market surveillance in Ukraine is also negatively affected by the moratorium on control of businesses that was initiated in 2014. The moratorium does allow for most government inspections including certain market surveillance activities, such as planned market surveillance campaigns and inspections on the basis of customer complaints. Therefore, the full competences that would be required for effective market surveillance are not available. For example, metrological surveillance cannot be performed and thus the enforcement of regulations for measuring instruments such as for petrol stations and electricity meters cannot be performed. Currently, many consumer complaints raised with the competent market surveillance authority in Ukraine concern inaccurate petrol meters. The moratorium on market surveillance activities is undermining the trust in the market which is essential for a fully functioning quality infrastructure system aligned with the EU.

9. 3.2 Alignment to EU Technical Regulations

10. ADOPTION OF TECHNICAL REGULATIONS

The legal basis for the adoption of Technical Regulations in Ukraine is provided by Law No 124 "On Technical Regulations and Conformity Assessment" adopted on 5 January 2015. The aim of this law is to create a single legal framework for the harmonization of "vertical (sectoral) legislation" as defined by Annex III: Part II of the EU-Ukraine Association Agreement. It establishes the legal basis for the development, adoption and application of technical regulations and conformity assessment procedures, for the purposes of compliance with the EU requirements and provisions of the WTO Agreement on Technical Barriers to Trade. Furthermore, the Law abolishes the centralized registration of conformity certificates. This law has entered into force in 2016. The adoption of the Law № 124 eliminated numerous overlapping and contradictory legal acts in the field of technical regulations.

Implementation of the Law provides for development of 31 secondary regulatory acts: 17 Decrees of the Cabinet of Ministers of Ukraine (among them – 15 acts developed by the Ministry of Economic Development and Trade of Ukraine and 2 developed by other central

executive bodies) and 14 Orders of the Ministry of Economic Development and Trade of Ukraine).

For the purpose of implementation, currently 11 Decrees of the Cabinet of Ministers of Ukraine and 7 orders of the Ministry of Economic Development and Trade of Ukraine with state registration in the Ministry of Justice of Ukraine have been adopted.¹²

Many Technical Regulations have been adopted prior to Law No 124. In the past, the Cabinet of Ministers of Ukraine adopted a Resolution No 708 providing for the “Rules for drafting Technical Regulations that are developed on the basis of the EU legal acts”. The purpose is to ensure alignment with the relevant directives. Article 8 of the Resolution clearly states that “Content, form and structure of the draft technical regulation should fully and accurately reflect the content, form and structure of the underlying instrument of the EU”.

Overview of current technical regulations developed on the basis of the European Union legislative acts:

1. Decree of the Cabinet of Ministers of Ukraine of 07.10.2003 № 1585 “On approving Technical regulations on conformity assessment modules”.
2. Order of the State Committee of Ukraine for Technical Regulation and Consumer Policy of 24.12.2004 № 289 “On approving Technical regulations on conformity assessment of packing (packing materials) and packing waste”.
3. Decree of the Cabinet of Ministers of Ukraine of 10.12.2006 № 1764 “On approving Technical regulations on building materials, buildings and structures”.
4. Decree of the Cabinet of Ministers of Ukraine of 05.09.2007 № 1103 “On approving Technical regulations on marine equipment”.
5. Decree of the Cabinet of Ministers of Ukraine of 05.12.2007 № 1382 “On approving Technical regulations on sealed sources of ionizing radiation”.
6. Decree of the Cabinet of Ministers of Ukraine of 20.08.2008 № 717 “On approving Technical regulations on detergents”.
7. Decree of the Cabinet of Ministers of Ukraine of 27.08.2008 № 748 “On approving Technical regulations on hot water boilers fired with liquid and gaseous fuels”.
8. Decree of the Cabinet of Ministers of Ukraine of 27.08.2008 № 761 “On approving Technical regulations on personal protective equipment”.
9. Decree of the Cabinet of Ministers of Ukraine of 03.09.2008 № 787 “On approving Technical regulations on maximum energy consumption for refrigeration equipment”.
10. Decree of the Cabinet of Ministers of Ukraine of 24.09.2008 № 856 “On approving Technical regulations on appliances burning gaseous fuels”.
11. Decree of the Cabinet of Ministers of Ukraine of 08.10.2008 № 898 “On approving Technical regulations on equipment and defence systems for use in potential explosive atmosphere”.
12. Decree of the Cabinet of Ministers of Ukraine of 05.11.2008 № 967 “On approving Technical regulations concerning transportable pressure equipment”.
13. Decree of the Cabinet of Ministers of Ukraine of 03.12.2008 № 1057 “On approving Technical regulations concerning restriction of use of some dangerous substance in electric and electronic equipment”.
14. Decree of the Cabinet of Ministers of Ukraine of 27.12.2008 № 1144 “On approving Technical regulations concerning labelling of energy efficiency of lamps for household purpose”.

¹² <http://www.me.gov.ua/Documents/List?lang=en-GB&id=09f49bd3-6a8b-4493-8eec-45bff8435471&tag=GeneralInformationOnTechnicalRegulation>

15. Decree of the Cabinet of Ministers of Ukraine of 14.01.2009 № 13 “On approving Technical regulations concerning names of textile fabrics and textile products marking”.
16. Decree of the Cabinet of Ministers of Ukraine of 11.03.2009 № 190 “On approving Technical regulations on no automatic weighing instruments”.
17. Decree of the Cabinet of Ministers of Ukraine of 25.03.2009 № 268 “On approving Technical regulations on safety of simple pressure vessels”.
18. Decree of the Cabinet of Ministers of Ukraine of 08.04.2009 № 332 “On approving Technical regulations on essential requirements for measuring instruments”.
19. Decree of the Cabinet of Ministers of Ukraine of 22.04.2009 № 465 “On approving Technical regulations on lifts”.
20. Decree of the Cabinet of Ministers of Ukraine of 24.06.09 № 679 “On approving Technical regulations on radio and telecommunications terminal equipment”.
21. Decree of the Cabinet of Ministers of Ukraine of 29.07.2009 № 785 “On approving Technical regulations on electromagnetic compatibility”.
22. Decree of the Cabinet of Ministers of Ukraine of 14.10.2010 № 1076 “On approving Technical regulations on cableway installations for carriage of passengers”.
23. Decree of the Cabinet of Ministers of Ukraine of 29.10.2009 № 1149 “On approving Technical regulations on low-voltage electrical equipment”.
24. Decree of the Cabinet of Ministers of Ukraine of 25.11.2009 № 1262 “On approving Technical regulations on safety marks and protection of workers’ health”.
25. Decree of the Cabinet of Ministers of Ukraine of 01.03.2010 № 193 “On approving Technical regulations of delivery of services related to passenger and loads transportation by railway”.
26. Order of the State Committee of Ukraine for Technical Regulation and Consumer Policy of 28.10.2010 № 487 “On approving Technical regulations on rules for food products labelling”.
27. Decree of the Cabinet of Ministers of Ukraine of 19.01.2011 № 35 “On approving Technical regulations on safety of pressure equipment”.
28. Decree of the Cabinet of Ministers of Ukraine of 18.05.2011 № 529 “On approving Technical regulations on ecological labelling”.
29. Decree of the Cabinet of Ministers of Ukraine of 09.06.2011 № 632 “On approving Technical regulations on energy labelling of material that are used for production of basic components of shoes promoted for sail”.
30. Decree of the Cabinet of Ministers of Ukraine of 03.08.2011 № 839 “On approving Technical regulations on pyrotechnic articles”.
31. Decree of the Cabinet of Ministers of Ukraine of 09.11.2011 № 1147 “On approving Technical regulations on recreational crafts”.
32. Decree of the Cabinet of Ministers of Ukraine of 28.12.2011 № 1367 “On approving Technical regulations on type approval of agricultural and forest tractors, trailers and changeable trailer machines, systems, components and separate technical units”.
33. Decree of the Cabinet of Ministers of Ukraine of 28.12.2011 № 1368 “On approving Technical regulations relating to components and characteristics of wheeled agricultural tractors”.
34. Decree of the Cabinet of Ministers of Ukraine of 30.01.2013 № 62 “On approving Technical regulations on machinery safety”.
35. Decree of the Cabinet of Ministers of Ukraine of 11.07.2013 № 494 “On approving Technical regulations on the safety of railway transport infrastructure”.
36. Decree of the Cabinet of Ministers of Ukraine of 11.07.2013 № 515 “On approving Technical regulations on safety of toys”.
37. Decree of the Cabinet of Ministers of Ukraine of 01.08.2013 № 927 “On approving Technical regulations on requirements to motor petrol, diesel, marine and boiler fuel”.

38. Decree of the Cabinet of Ministers of Ukraine of 07.08.2013 № 702 “On approving Technical regulations on energy labelling” (Technical regulation on energy labelling of energy consuming products).
39. Decree of the Cabinet of Ministers of Ukraine of 07.08.2013 № 702 “On approving Technical regulations on energy labelling” (Technical regulation on energetic marking of household electrical refrigerators).
40. Decree of the Cabinet of Ministers of Ukraine of 07.08.2013 № 702 “On approving Technical regulations on energy labelling” (Technical regulation on energetic marking of household washing machines).
41. Decree of the Cabinet of Ministers of Ukraine of 02.10.2013 № 753 “On approving Technical regulations on medical devices”.
42. Decree of the Cabinet of Ministers of Ukraine of 02.10.2013 № 754 “On approving Technical regulations on medical devices for laboratory in vitro diagnostic”.
43. Decree of the Cabinet of Ministers of Ukraine of 02.10.2013 № 755 “On approving Technical regulations on active implantable medical devices”.
44. Decree of the Cabinet of Ministers of Ukraine of 17.07.2015 № 514 “On approving Technical regulations on energy labelling of household dishwashing machines”.
45. Decree of the Cabinet of Ministers of Ukraine of 19.08.2015 № 607 “On approving Technical regulations on bottles used as measuring tanks”.
46. Decree of the Cabinet of Ministers of Ukraine of 16.12.2015 № 1193 “On approving the Technical Regulations on certain goods packed in finished package by weight and volume”;
47. Decree of the Cabinet of Ministers of Ukraine of 30.12.2015 № 1194 “On approving the Technical Regulations on safety of railway rolling stock”.

The quality of the texts of the technical regulations and their alignment with the EU directives are checked in multiple stages:

1. Before adoption of technical regulations, the Ministry of Justice verifies the legal correspondence of the texts with Ukrainian legislative rules.
2. In the last instance, the department for European Integration of the Cabinet of Ministers checks the overall quality of the texts.

The level of correspondence with the relevant EU directives and regulations are checked with help of “Tables of Concordance.”

The first version of the Table is made by the developer of the technical regulation. The table is sent to the Ministry of Justice, which forwards it to the Cabinet of Ministers. The final version of the “Tables of Concordance” is prepared, as well as a translation of the technical regulation.

The Tables and translations are sent to the European Commission for evaluation.

Until now, this procedure has been completed for the Technical Regulations on EMC, machinery safety and on safety of low voltage equipment.

Of course, in order to judge the quality of the actual alignment of the legislation, tables of concordance for all Technical Regulations should be made. Indicative assessments by European experts of technical assistance projects suggest that discrepancies between the European directive or regulation and the Ukrainian Technical Regulations still exist in many other EU Directives adopted in Ukraine.

It should be noted that some of the EU legislative has been amended since the technical regulation that was adopted in Ukraine. Among these are European Directives that are on the priority list for the proposed EU-Ukraine Agreement on Conformity Assessment and

Acceptance (ACAA) of industrial products (low voltage equipment, EMC and machinery). These technical regulations therefore will need to be amended accordingly.

As noted above, one of our most significant concerns relates to market surveillance. This topic is not within the responsibility of the developers of the technical regulations. There is a need for an amendment of the existing law, or for a separate Law on Market Surveillance to provide effective controls on the market. Without the provisions for market surveillance being worked out, the alignment cannot be considered as completed.

Stakeholders have reported that currently in Ukraine there are still labour safety legislation and regulations related to the use of equipment to be investigated that are in conflict with the Technical regulations that set requirements for the placing on the market of equipment. This is due to the fact that two different Ministries are involved. The regulations of the Ministry of Labour requires certain equipment to be approved, before they can be used, irrespective if the equipment is proven to be compliant with the relevant Technical Regulations.

3. IMPLEMENTATION OF TECHNICAL REGULATIONS

Alignment of technical regulations does not end with their adoption. It is only the starting point. Regulations need to be implemented in practice, and also integrated in the activities of the quality infrastructure. There are a number of conditions that need to be fulfilled before successful implementation can be concluded:

4. Adoption and publication of lists of standards in support of the technical regulations; Accreditation and designation of conformity assessment bodies; Awareness of the industry of the regulatory requirements and conformity assessment procedures and the ability to apply them to their products.

1. Publication of Lists of Standards:

Currently, for 31 technical regulations, lists have been adopted and published of standards that may be used to prove compliance with the regulations and that lead to a presumption of conformity. All the priority technical regulations of the ACAA are included in these 31. Weekly, the Department for Technical Regulation of the Ministry of Economic Development monitors the Official Journal of the European Union to check if new lists of harmonised standards are adopted. When new lists are published by the European Commission, the Department analyses whether the standards on the list have already been approved in Ukraine and what follow up actions are required.

For the priority sectors the following lists of harmonised standards are adopted and published:

- a) The list of national standards that are identical to harmonized European standards and the conformity with which provides a presumption of conformity with the safety requirements of the Technical Regulation on machinery (Minister of decree number 1463 of 10.12.2013 revised under the Ministry of Economic Development of 10.11.2016 number 1885)

<https://goo.gl/FQbvFt>;

- b) The list of national standards that are identical to harmonized European standards and the conformity with which provides a presumption of conformity with the safety requirements of the Technical Regulation on electromagnetic compatibility (order of the Ministry of Economic Development of 17.12.2012 number 1430 as revised under the Ministry of Economic Development of 10.11.2016 number 1886)

<https://goo.gl/1NgFJy>;

c) The list of national standards that are identical to harmonized European standards and the conformity with which provides a presumption of conformity with the safety requirements of the Technical Regulation on low-voltage electrical equipment (the order of Minister of 11.07.2013 number 783 as revised under the Ministry of Economic Development of 10.11.2016 number 1887)

<https://goo.gl/qwsXPt>;

d) The list of national standards harmonized with relevant European standards and is proof of the safety of non-food products (Order of Minister of 14.03.2017 number 372)

<https://goo.gl/YcWwoD>;

e) The list of national standards that are identical to harmonized European standards and the conformity with which provides a presumption of conformity with the safety requirements of the Technical Regulation on safety of toys, approved by the Cabinet of Ministers of Ukraine of 11.07.2013 number 515 (Order of the Minister of 11.11.2013 number 1336)

<https://goo.gl/23kYvl>.

It is noted that currently, not for all technical regulations lists of standards have been published by the Ukrainian government.

We are unaware of an assessment of the correspondence between the lists of standards published in the Ukraine and the lists of harmonised standards published by the European Commission. Such an assessment of the correspondence would show the discrepancies and in which case manufacturers could really benefit from the presumption of conformity of aligned standards in both Ukraine and the European Union.

The last updates to the lists of harmonised standards published by the Ministry of Economic development were published in December 2016. In the mean time, the European Union has adopted new lists of harmonised standards. This means that for those lists for which the European Commission published harmonised standards after the date of publication of the lists published by the Ministry of Economic Development, there is a discrepancy. However, it should also be noted that this does not automatically mean that the standards that are published on the Ukrainian lists are obsolete.

2. Designation of conformity assessment bodies:

From the interviews conducted with the Department for Technical Regulation of the Ministry of Economic Development, it became clear that a designation procedure for conformity assessment bodies exists which is in line with the European Union rules and practices. Test laboratories or certification bodies that would like to become Designated Conformity Assessment Bodies have to submit an application to the Competent Authority in which they show they fulfil the criteria for competence and independence. In line with EU policy, accreditation is used to determine the competence and independence of a conformity assessment body.

The Competent Authority has 90 days to review and take a decision on the application. It may request additional documentation and also visit the body and prepare a motivation for the final decision. The Ministry of Economic Development prepares the decision that will be adopted by the Minister, provide the Designated Body with a number and register it in

the registry of Designated Conformity Assessment Bodies. The most current list of designated CABS is published on the website of the Ministry of Economic Development.¹³

At the time of writing this report, the list contains:

- 13 CABS under the Technical Regulation on Electromagnetic Compatibility;
- 4 CABS for the Technical Regulation on non-automatic weighing instruments;
- 3 CABS for the Technical Regulation on medical devices;
- 2 CABS for the Technical Regulation on in vitro diagnostics;
- 2 CABS for the Technical Regulation on active implantable medical devices;
- 2 CABS for the Technical Regulation on gas appliances;
- 2 CABS for the Technical Regulation on hot water boilers operating on liquid or gaseous fuels;
- 7 CABS for the Technical Regulation on machinery.

The law requires Designated CABS to participate in coordination groups. Currently, only 3 groups are active: for the TR on EMC, the TR on EMC and the TR on Measuring Instruments. A list of the coordination groups of CABS is provided on the website of the Ministry of Economic Development.¹⁴

The Department for Technical Regulation of the Ministry of Economic Development indicates that the assistance from the EU funded technical assistance projects to establish and designate CABS has been very useful. With their help 6 EMC labs, 4 CABS in the field of measuring instruments and 2 medical CABS were designated. All other CABS were designated in accordance with old regulations.¹⁵

3. Awareness About Technical Regulations and Ability to Apply them:

The results of the Business Survey conducted in the framework of the evaluation shows that there is a high awareness about the Association Agreement in the business community affected by the priority regulations. The majority of the respondents indicate that they have been informed timely about the regulatory changes. Also the awareness of Ukrainian Conformity Assessment Bodies is high, and the satisfaction rate for their services are high (78% of the respondents are very satisfied). However, at the same time the majority of respondents indicate that they do not know how to actually comply with the requirements. The survey results also show that there is a lack of true understanding benefits of the harmonised rules and standards, shown by the lack of ability to provide specific details and by clear obliviousness about the fact that Ukrainian standards and EU standards are already harmonised. The majority of respondents mention they would like to receive more information and advice on how to export to the European Union. They indicate that the preferred information channels are internet websites and seminars.

In the meetings held with representatives of the Department for Technical Regulation of the Ministry of Economic Development, they indicated that awareness raising and guidance and support of the Ukrainian industry is only recently become a priority. From the programs and reports of the Technical Assistance projects we find that no significant support was provided to raise awareness in the Ukrainian business community about the changing regulations and standards, or training on how to apply the new regulations and standards to their products. When training and awareness efforts start only now that the

¹³ <http://www.me.gov.ua/Documents/List?lang=uk-UA&id=f9897c30-1bcd-43ec-9190-d7dbf59904d9&tag=SferaPriznachennia>

¹⁴ <http://www.me.gov.ua/Documents/List?lang=uk-UA&id=fbd27bf-1ee9-4c0a-b472-528045521d5c&tag=RishenniaSchodoPriznachennia>

¹⁵ [UA&title=PerelikDerzhavnikhPidpriemstvUstanovOrganizatsiiSchoNalezhatDoSferiUpravlinniaMinisterstvaEkonomic
hnogoRozvitkulTorgivliUkraini](http://www.me.gov.ua/Documents/List?lang=uk-UA&id=fbd27bf-1ee9-4c0a-b472-528045521d5c&tag=RishenniaSchodoPriznachennia)

regulations have passed and are in force, and considering that it takes some time to implement the new requirements into the product design and business processes, the Ukrainian producers are in a disadvantageous position in their home market when compared to European and international producers that are already used to working with the harmonised European Union requirements. At the same time, the survey shows that Ukrainian companies do not see the increased opportunity of exporting to the EU market due to the harmonisation of their technical regulations and standards.

3.3 Standardisation Process

There exist 184 active National Technical Committees.¹⁶ In Ukraine, Technical Committees are not controlled by the national standards body. The National Technical Committees are themselves responsible for their establishment, planning, composition and finance. Basically, Technical Committees develop standards that are proposed to the national standards body for adoption as Ukraine national standards. Technical Committees are bound by the Law on Standardisation. This law also regulates that the national standards body coordinates the work of TCs. The standards body also may return standards to the TC for improvement. The national standards body has no right to approve or reject the TC's work plan, but it can make recommendations.

Rules for the composition of Technical Committees are laid not laid down in the Law on Standardisation, but Ukrainian standard #114. A Technical Committee can also have its own rules.

Typically, Technical Committees are not legal entities, although they may appoint a legal entity to perform activities on its behalf, for example to receive payment for standardisation work.

The standards development work of the Technical Committees is financed with financial contributions from interested parties, such as companies. Standards that are developed in support of technical regulations are paid through the contribution of the State Budget. The procurement of the standard development is tendered in public procurement procedures. When asked, the technical committees indicated that their involvement is ensured through setting of specific criteria in the tender procedure. This unusual solution is the result of the Technical Committees independence from the National Standards Body.

Ukraine Technical Committees (TCs) also adopt standard on the basis of consensus, but that they have a different definition of consensus. Ukraine consensus is regarded to be achieved when 2/3 of the members agree. In the European standards bodies, the consensus is defined as absence of substantial objections.

Under the current CEN/CENELEC regulations, the Ukrainian Technical Committees may participate in European standardisation work. The Ukrainian National Standards Body pays the required fees, and this gives the right to the TCs to participate in the discussions and provide comments. However, the TCs have limited resources, and this prevents their representatives to actually participate in the meetings. It is vital for the Ukrainian industry to have its voice heard in the European Union standardisation platforms, because many of the European standards that are adopted by CEN/CENELEC are in parallel introduced as Ukrainian national standards as a result of the ACAA. If the Ukrainian Technical Committees do not participate in EU standardisation, it could mean that standards that affect Ukrainian industry are adopted without any Ukrainian TC being involved in the development and adoption process.

¹⁶ Source: <http://uas.org.ua/files/2017/tk.zip>

5.3.4 Controls (market surveillance operations/consumer protection)

Ukraine has a law “state market supervision and control of non-food products”. This law has been prepared with help of the EU funded technical assistance projects. The interviewed Ukrainian market surveillance authorities highly appreciate the support of the EU. Experts from the project helped to explain EU market surveillance principles and to defend the draft law in parliamentary hearings. This has helped to get the law passed.

Currently amendments to improve the existing law are being prepared. The new version focuses on product compliance and does not include business practices and processes. Market surveillance authorities would like the new draft law to include specific and workable rules for sample taking. Now the authorities need to buy samples, and due to the economical crises and lack of budget the checking of more expensive products is avoided. Like some EU Member States have done, Ukraine should consider allowing authorities to take samples free of charge and to set specific conditions to protect businesses.

One of the main market surveillance authorities for products is the Ukrainian State Service for Food Safety and Consumer Protection. This Service was established in 2016 by merging 5 separate authorities in the field of food safety and product safety control. Originally, the intention was to establish the service under the Cabinet of Ministers. However, it now is placed under the Ministry of Agriculture. The Service has approximately 10 000 employees, of which 300 work in the central body in Kyiv. Most of the Service’s staff are sanitary, phyto-sanitary and veterinary specialists. The Service has inherited laboratories from its predecessors. None of the laboratories actually test products in the priority sectors of the ACAA (being agri and agri food based) but the Service has the authority to subcontract tests to commercial laboratories.

The Ukrainian State Service for Drugs and Drug Control was, established under the Ministry of Health and is also responsible for the market surveillance of three technical products: medical devices, active implantable medical devices and in vitro diagnostics. The representatives of the Service express the opinion that they believe that because the Ministry of Economic Development and Trade is in charge of policy development in the field of technical regulations and the National Quality Infrastructure, and they are under the Ministry of Health, their service gets less attention and they would like to be included in trainings and consultations and products also included in any future ACAA. They also want the Service to be involved in the process of designation of Conformity Assessment Bodies for medical devices, active implantable medical devices and in-vitro diagnostics, because in their opinion the criteria are not always applied correctly.

The market surveillance authorities have informed us that there used to be a website that allowed for consumers to submit their consumer complaints, but that this website is no longer operational, and it has not been replaced by another system.

Moratorium: Due to a moratorium, which aims to end corruption and establish new transparent procedures in inspection bodies, the Ukrainian market surveillance authorities are limited in the execution of their tasks. The business practices cannot be controlled, but product non-compliance issues can be. One of the clearest examples where the moratorium leads to problems is in the field of metrology. The accuracy of meters and measuring equipment, like petrol pumps are under the moratorium. Currently, there are many consumer complaints reported in the press about the correctness of the amount of petrol delivered at petrol stations. However, the responsible authority cannot take measures because this market surveillance activity is covered by the moratorium.

6.4. Assessment

In general, the quality infrastructure system within Ukraine has been largely aligned with that of the EU:

- Horizontal legislation in place to allow for a move from pre market controls by government to market based conformity assessment with appropriate accreditation of CABS and Labs and traceability of measurements (metrology);
- Alignment with priority areas of technical regulations matching those of the EU
- Adoption of the harmonised EU standards that convey conformity to aligned technical regulations and removal of GOST standards
- Legal framework to allow risk based market surveillance to ensure compliance to requirements

While the systems and institutions are in place and operational, the *system as a whole is not yet functioning* and needs improving in a number of areas:

1. Ensuring Alignment with EU technical regulations

Alignment of the Ukrainian quality infrastructure system with that of the EU to remove TBT necessarily requires full alignment with EU technical regulations. Although many EU technical regulations have been adopted, assessments by experts of technical assistance projects suggests that discrepancies still exist, among these are European Directives that are on the priority list for the ACAA (low voltage equipment, EMC, toys and machinery will follow in 2017). These technical regulations therefore will need to be amended to ensure full alignment as well as ensuring that any future changes in EU legislation are swiftly adopted in Ukraine. Ensuring alignment with EU technical regulations also means that conflicting (lift safety, installation safety and labour safety) regulations must be repealed. It was reported by several stakeholders that several Ukrainian national regulations still require pre-market approval for certain products that are placed on the market, including those covered by the priority technical regulations.

However, although alignment of technical regulations is a priority, the industry and business community should be granted a reasonable transition period in order to be able to change their product design and manufacturing processes accordingly, and that also takes into account general shipping times and time required to phase out products and sell stock. The Ukrainian business community report that often the regulations and standards come in effect in a matter of days and without a transition period in which both the old regulation/standard and the new regulation/standard may be applied.

In recent years, the Ukrainian government has put in place procedures for the quality control of the transpositions of European regulations in Ukrainian legislation. The procedures include making tables of concordance, which are also typically used by the European Union to evaluate the status of legislative alignment. However, the procedures that were introduced have not been applied to the earlier technical regulations that were adopted.

2. Implement Effective Market Surveillance

One of our most significant concerns relates to Market Surveillance. Moving from pre market control requires an effective market surveillance system to penalise non-compliance in the market and if serious, remove products from the market. Therefore, the Law on Market Surveillance needs to fully align that with the EU and market surveillance bodies in Ukraine need to be undertaking their task efficiently (including coordination

nationally and with EU to ensure rapid alert of product risks). Without market surveillance, industry has no “incentive” to ensure compliance. In fact, the responses in the Business Survey¹⁷ show that many companies consider compliance with new Ukrainian technical regulations and standards a lesser priority because of the lack of control including because of the moratorium.

3. Strengthen Standardisation Processes

There appears to be a rather passive standardisation process in Ukraine. The national standards body, UKRNDNC should take a more proactive role in the development and adoption of standards, coordinating and directing work of technical committees and interaction with international bodies (ensuring rapid removal of withdrawn EN and adoption of new ones that convey conformity so that Ukrainian standards always reflect EU lists).

4. Business Conformity Assessment Rates

As the Ukrainian quality infrastructure system moves from the pre market testing, manufacturers and importers in Ukraine must take responsibility themselves for proving compliance (verified either randomly or by risk through market surveillance). However, the business survey demonstrates that although the business sector in Ukraine is aware of the changes, they have limited know how of how to prove compliance. This is also backed by interviews with conformity assessment bodies that reported that the majority of requests for conformity assessment and testing were from international companies operating in Ukraine (verification of import compliance) and exporters (testing, proof of compliance required by EU importers and competent authorities. For the system to work, Ukrainian manufacturers should be testing and proving (Declaration of conformity) compliance to Ukrainian technical regulations (which in turn are aligned with EU).

¹⁷ Undertaken as part of the Report Evaluation of the Sector Policy Support Programme "Promoting mutual trade by removing technical barriers to trade between Ukraine and the European Union") dated August 2017

7.5. Recommendations

The following recommendations are made to the Government of Ukraine, without prejudice, based on the evaluation of the current levels of alignment of the Ukrainian Quality infrastructure system with that of the EU. It should be re emphasised here that the aim of alignment with the EU is NOT alignment in itself, but the removal of technical barriers to trade to increase exports to the EU under the DCFTA, increase in protection of consumers (both product safety and prevention of deceptive practises) and environmental protection). Therefore, the following recommendations primarily aim to ensure that the system is operational in Ukraine, which will be a requirement of ACAA negotiations bfore EU accepts products assessed in Ukraine as if assessed in EU:

Recommendation 1: Government Priority given to Market Surveillance

As noted throughout this paper, market surveillance is the cornerstone of the EU Quality Infrastructure, ensuring compliance of business to technical regulations. However, for all stakeholders involved (competent authorities, MEDT policy makers, Ukrainian manufacturers, importers/distributers and retailers and consumers) there is little understanding and little/no experience of how to effectively develop efficient systems. Moreover, there appears to be little priority from Government of Ukraine and existing technical assistance projects in developing a fully functioning and effective market surveillance system. Therefore, as a minimum, the Government of Ukraine should ensure:

- Alignment of Ukrainian law on market surveillance with Regulation 765/2008 of the European Council and Parliament;
- Coordination and consistency of market surveillance and consumer protection in Ukraine across competent authorities (risk based methods and transparency of procedures) and Ministries;
- Making the rules regarding sample taking more practical and thus allowing the market surveillance authorities to perform a more effective market surveillance;
- Development of (standard operating) procedures for market surveillance in each competent authority and for existing technical regulation;
- Cooperation with EU bodies to ensure information sharing on identified risks.

Moreover, the moratorium on state control in the Ukraine is prohibiting effective market surveillance to the extent that the trust of consumers in the national quality infrastructure in general and the market surveillance system in particular, is at risk. ***Without effective market surveillance, the alignment to EU cannot be regarded to be complete.*** It is recommended that the Government lifts the moratorium for market surveillance activities in the field of metrology and in the field of the technical regulations, because otherwise Ukraine cannot accomplish fulfilment with the requirements set in article 16, article 18, article 19 and possible article 20 of Regulation 765/2008, which the Association Agreement requires Ukraine to implement as an essential foundation of its system of technical regulations.

Recommendation 2: Promotion of QI systems in Ukraine and EU

It is important to recognise that this is systemic change to the quality infrastructure system and method of control of product safety and consumer protection in Ukraine. Therefore, there is a need to promote the general concept to all stakeholders in Ukraine so they are aware of changes and their responsibilities (this is not about awareness of specific technical requirements eg technical regulation essential requirements but more on the system itself). This will ensure better implementation of the quality infrastructure system

and lead to removal of TBT as the Ukrainian market operates technical requirements in line with that of the EU, facilitating mutual trade. In addition, the risk of continued “market” demand by EU importers to have testing undertaken by EU CABs/labs sees the persistence of double testing and increased costs to Ukrainian exporters (maintaining TBT between countries) so the EU should also promote the alignment of the system with EU importers (especially in ACAA priority sectors).

Therefore, GoU and EU should undertake actions including communications, promotion and training in:

The use of technical regulations in Ukraine, together with know how and training on quality systems and control required for self certifying compliance and taking responsibility for compliance (which will comprise external certification/testing but should not defer total responsibility as in the past). Training and information has been thus far based on technical content, not how to prove compliance and manage continued quality assurance of products from design through to production and placing on the market.

Promotion of Ukrainian QI in EU so that private sector there begins to trust accreditation and certification – maybe by sector level, through the forum of High Level Industrial Dialogue between GoU and EU (formal mechanism under the AA) and other mechanisms (joint conferences and memberships of TC in CEN/CENELEC).

Recommendation 3: Ensuring Mechanisms for Ukraine to have up to date technical regulations and harmonised standards

Removing TBT relies on having the same Proof of compliance with technical regulations in both EU and Ukraine. This means having systems in place that ensure that as legislation and associated standards change in the EU, they change at the same time in Ukraine, with adequate advance notice to business so they can adjust. It is only if these dynamics are taken into consideration, will TBT be removed and Ukraine **becomes and remains** aligned with EU technical requirements. Therefore, the Government of Ukraine must:

Make sure all current technical regulations fully concord with latest versions of EU technical regulations and more importantly, establish mechanisms for timely changes to national regulations to reflect future changes in EU regulations;

Ensure all Ukrainian standards reflect latest EU standards that convey compliance with technical regulations (including withdrawal of certain standards) so that Published lists of harmonised standards are up to date and we recommend that standardisation experts conduct a comparative assessment of the lists of harmonised standards of the Ministry of Economic Development;

Establish systems for future monitoring and updating (adopting and cancelling) of harmonised standards corresponding to technical regulations that Ukraine has aligned to;

Investigate the structure, operations and financing of technical committees in Ukraine and the role/responsibility of the national standards body to ensure effective and efficient standards development mirroring that of EU (including study the solutions in other EU Member States to ensure payment of standardisation work can be done legally outside of the public procurement rules).

Recommendation 4: GoU should finance participation in EU standards making

In order that the GoU and business can monitor upcoming standards, especially in new technology areas that convey compliance, and equally important, have adequate knowledge of withdraw/amendment of existing standards that have failed in the EU to convey compliance, standardisations institutions should fully participate in EU standards making:

Ukrainian government should provide budget (this should not rely on donor funding that may stop but be entrenched in the national system) for TCs and/or the standards body, should participate in CEN/CENELEC technical committees in priority sectors, in order to ensure that the expertise of the Ukrainian industry is considered and its voice is heard;

Ukrainian government should provide budget for representatives of the Ukrainian Agency for Standardisation to participate in the General Assembly meetings of ISO, IEC, CEN/CENELEC, and thus have the opportunity to represent the position of Ukraine in international standardisation.

Currently, the Ukrainian government considers financial support to the development of standards by technical committees as a transaction ruled by public procurement rules. These rules may result in the prevention of the involvement of the appropriate technical committees in the standards. The Ukrainian government is recommended to consult the authorities of EU Member States, in order to analyse how they arrange financial support to standardisation in accordance with the European Union public procurement rules.

Recommendation 5: More Strategic Approach to ACAA Content

Removing TBT means recognition of equivalence of the whole system in Ukraine and competent authorities as equivalent to those of the EU. This is necessarily needs to be evaluated by directive/regulation. For ACAA negotiations, LVD, EMC and machinery have been prioritised (previously toys and SPV as well). However, for any “sector” EU requirements may go beyond any of these 3 directives and therefore, for many export products, an ACAA would only provide Mutual recognition of some of their compliance certification requirements, not all. Therefore GoU should consider a more strategic approach:

- Most importantly, GoU should define the scope of ACAA to ensure that it is meaningful and advantageous to Ukraine, not just another Agreement without much substance. If Ukrainian producers use harmonised standards in LVD, EMC and Machinery (priority ACAA so called sectors), they can self declare compliance and so there is no need to use designated CABs. Therefore, if mutual recognition of CABs is the main benefit of the ACAA then, an ACAA will do nothing to remove costs of double testing requirements through EU Notified Bodies (CABs). If however, the scope of the ACAA extends the Single European Market to Ukraine so that manufacturers in Ukraine become the legally responsible economic operator, then EU importers will have less legal recourse and they will be more inclined not to require double testing by EU bodies and the ACAA will have real meaning.
- Identifying sectors based on need (not just level of alignment with EU regulations of certain directives) but based on the actual need of the market (by volume of sales of risky product in the market), national production and export potential;

- For identified sectors that have export potential/facing TBTs, identify all the applicable technical regulations that should be included in a ACAA for proving compliance, not just the main 3 technical regulations;
- Widen ACAA negotiation to include other technical regulations required to be complied with for priority sectors with potential.