ACAA - now at the top of the Ukraine-EU Agenda

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EXECUTIVE SUMMARY

Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) is high on the agenda of Ukrainian relations with the European Union. The Agreement aims to reduce technical barriers to mutual trade. Different health and safety standards for industrial goods are one of the main obstacles to trade. There is also a question about trust in the quality of the work of other countries relevant institutions.

The conclusion of an ACAA is foreseen in the Ukraine–EU Association Agreement. Together with other trade measures, it will deepen the integration of Ukraine with the Internal Market of the EU.

An ACAA is a version of the Mutual Recognition Agreement (MRA), where sides recognise the other side's institutions' decisions on the technical quality of industrial products. In an ACAA, the partner also takes over EU standards and norms of conformity assessment and market surveillance bodies in particular areas. The Union has at the moment only one ACAA – with Israel.

Annex III to the Ukraine–EU Association Agreement lists 27 possible sectors for an ACAA, covering up to 20 per cent of Ukrainian industrial goods exported to the EU. In the beginning, Ukraine aims to have an initial ACAA, which covers only three sectors. Later, the EU and Ukraine may move on and add other sectors when they are ready.

Ukraine has been making intensive preparations for an ACAA for several years. It has radically overhauled its standards and abolished an absolute majority of the Soviet-era standards (GOSTs). Ukrainian conformity assessment and market surveillance bodies are built following the EU models and are active participants in international cooperation.

At the end of 2019, the EU stated readiness to start the process leading to negotiating and signing an ACAA with Ukraine. From October 2020 until the end of March 2021, an EU assessment mission works with Ukrainian authorities to prepare a report. A positive

assessment will pave the way for official negotiations.

The President of Ukraine has set a target of two years for the Agreement. Prime Minister Denys Shmyhal expressed hope after the EU–Ukraine Association Council of 11 February 2021 that the sides may sign an ACAA already during this year.

Ukrainian politicians and experts call the ACAA an "industrial visa-free regime", showing its importance and making a rather technical issue more understandable to the people.

Ukrainian experience is essential also for Georgia and Moldova, as their Association Agreements similarly foresee the signing of an ACAA. When concluded, the Ukraine–EU ACAA will be an excellent achievement for the Eastern Partnership, which needs real success stories at the beginning of its second decade.

Introduction

One of Ukraine's primary goals in relations with the EU is trade liberalisation and integration with the Single Market of the EU. The average level of tariff protection on the EU industrial goods market for Ukraine ranges (only) from 4.4% to 5%. The main obstacle to trade in industrial goods with the EU nowadays is technical barriers.[1] In this area, the most relevant goal today is concluding an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA). The sides also discuss other trade liberalisation measures such as increasing quotas for Ukrainian tariff-free exports of some goods to the Union.

The EU and Ukraine have worked towards the conclusion of an ACAA for a long period. In December 2005, Ukraine and the EU signed an Action Plan to prepare for ACAA. So the process started before the negotiations on the Association Agreement even began.

In 2014, the European Union and Ukraine signed an Association Agreement. Many political and sectoral parts of the agreement were provisionally applied after 1 September 2014. Its trade part, the deep and comprehensive free trade area (DCFTA), was provisionally used after 1 January 2016. After the ratification, the full implementation of the agreement started on 1 September 2017.

The conclusion of an ACAA is an essential element of the Association Agreement and, in particular, its DCFTA part. In Ukraine, the ACAA is often called "the Industrial Visa-Free regime" or "Industrial Visa-Free Travel", making the rather technical matter more clear and impressive in communication to the broad public.

The conclusion of an ACAA is now one of the main targets in integrating Ukraine with the European Union. President of Ukraine Volodymyr Zelensky, in his speech on 17 December

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1 – https://ukraine-eu.mfa.gov.ua/en/tehnichne-regulyuvannya-v-yes

2020 to the Ambassadors, stated that the 22nd Ukraine–EU Summit on 6 October 2020 was "extremely successful".[2] The President said: "As a result of the summit, we managed to define new ambitious goals in our relations, which we will work on together with the current composition of the European Union institutions. It is primarily a matter of updating the Association Agreement. In 2021, we will begin a joint assessment of the achievement of the objectives of the Association Agreement, which should be the driving force behind the process of renewing the Agreement. Our goal is to use the process of renewing the Agreement for the maximum integration of Ukraine into the internal market of the European Union. The key task in the field of trade for the next two years is to conclude an agreement with the EU on industrial visa-free travel."[3]

The EU Single Market

An ACAA is one of the essential elements in the integration of Ukraine with the European Union's internal market, which has around 450 million customers. Legislation on the European Union Single Market aims to ensure that products placed on the EU market meet high health, safety, and environmental requirements. The Single Market is a complex system of rules and bodies for implementing the respective regulations.

Standards define technical or quality requirements for products, production processes, services, or test-methods. **Legal metrology** is the application of legal requirements to measurements and measuring instruments.

Before a new product can be placed on the EU market, the **conformity assessment procedure** is carried out. A manufacturer can only place a product on the EU market if it meets all the applicable requirements. **CE marking** signifies that products sold in the EU have been assessed to meet all the relevant safety, health, and environmental protection requirements.

An EU country designates (accredits) **notified bodies** to assess certain products' conformity before entering the market. Countries created **accreditation systems** of notified bodies to assure public control that conformity assessment bodies have the technical capacity to perform their duties. **Market surveillance** checks that all non-food products on the EU market do not endanger European consumers and workers and whether other public interests, such as the environment, security and fairness in trade, are protected. In that work, the system of **consumer protection** plays a significant role.

EU countries check products that come from outside the **external borders** of the Union for

2 – https://www.unn.com.ua/uk/news/1908316-zelenskiy-dav-dva-roki-na-ukladennya-ugodi-pro-promisloviy-bezviz-z-yes

3 – https://www.unn.com.ua/uk/news/1908316-zelenskiy-dav-dva-roki-na-ukladennya-ugodi-pro-promisloviy-bezviz-z-yes

conformity with the EU norms. After permitted to be sold in the EU, the goods can circulate without trade barriers and with a minimum administrative burden.[4]

Conformity assessment is a crucial element of the system. Before an enterprise puts a product on the market, it arranges an evaluation of the product, and this includes testing, inspection, and certification. The procedure for each product is specified in the applicable product legislation. The European system of standards, together with international standards, has a crucial role in conformity assessment. For example, for the goods sector of "machinery," the directive that defines the health and safety requirements is supported by several hundred harmonised standards for specific products or components.

Manufacturers may choose between different conformity assessment procedures, if applicable. If the legislation requires it, a conformity assessment body (notified body) is involved in the conformity assessment process.

When placing a product covered by the EU's harmonised legislation on the EU market, the manufacturer has to draw up and sign an "EU Declaration of Conformity". The enterprise declares and ensures that the products concerned satisfy the "essential requirements" of the relevant EU product directive and that the required conformity assessment procedures have been fulfilled. By signing the EU Declaration of Conformity, manufacturers assume responsibility for the compliance of the product.

Only then can a manufacturer affix the CE mark to the product. Products bearing the CE marking are presumed to comply with the applicable EU legislation and benefit from free circulation in the large European Single Market.

The so-called Blue Guide (last version from 2016) contains guidance on all aspects of implementing EU product rules, including conformity assessments.[5]

Another crucial element of the internal market is market surveillance. If conformity assessment deals with the introduction of **new** products, then market surveillance covers **all** goods on the Market.

Regulation (EC) 765/2008 sets out the requirements for accreditation and market surveillance. It sets out clear obligations for EU countries to carry out market surveillance and to prohibit or restrict the marketing of dangerous or non-compliant products. The Regulation provides market surveillance authorities with the powers to obtain all necessary documentation from manufacturers to evaluate product conformity, to enter manufacturers' premises and take

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4 – https://ec.europa.eu/growth/single-market/goods/building-blocks_en

5 – https://ec.europa.eu/growth/content/%E2%80%98blue-guide%E2%80%99-implementation-eu-product-rules-0_en

samples for testing, and in extreme cases, to destroy products. It also includes clear obligations for EU countries to ensure cooperation at the national and international level.[6]

Market surveillance ensures that non-food products on the EU market do not endanger European consumers and workers. It also protects other public interests, such as the environment, security, and trade fairness. It includes actions such as product withdrawals, recalls and the imposition of sanctions to stop the circulation of non-compliant products and/or bring them into compliance. There are many challenges, as supply chains may be very complex and encompass several countries. Economic operators may be located in a country different from those in which products are made available, often outside the EU. E-commerce develops rapidly, and consumers may purchase products through the Internet.

To respond to the new challenges on the markets, the EU is stepping up market surveillance of products.[7] On 14 June 2019, the EU Council adopted Regulation (EU) 2019/1020 on market surveillance and conformity of products, which amended Directive 2004/42/EC and Regulations (EC) 765/2008 and (EU) 305/2011[8]. The Regulation provisions will enter into force on 16 July 2021, except those which entered into force on 1 January 2021.

Market surveillance activities of the EU have good integration with the consumer protection activities of the Union. For example, the quality of the goods area is also regulated by the 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.[9]

EU Information and Communication System for Market Surveillance (ICSMS) is the comprehensive cooperation and communication platform for market surveillance on non-food products and mutual recognition for goods.[10]

ICSMS has a closed internal area for market surveillance authorities, customs authorities of the EU and EFTA member states, and the EU's structures relevant to their everyday interactions. There is also a public area for consumers, users, and manufacturers. The open area's information includes only a description of the product and a summary of its non-compliance. The public part of the ICSMS also contains information about market surveillance authorities of the EU and EFTA countries.[11]

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6 – https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32008R0765

7 – https://ec.europa.eu/growth/single-market/goods/building-blocks/market-surveillance_en

8 – https://data.consilium.europa.eu/doc/document/PE-45-2019-INIT/en/pdf

9 – https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31985L0374:en:HTML

10 – https://webgate.ec.europa.eu/icsms/

11 – https://webgate.ec.europa.eu/icsms/public/consumer.jsp?locale=en

The closed system allows authorities to quickly share information on non-compliant products – test results, product identification data, economic operator information, accident information, information on surveillance authorities' measures, etc. Each national body can add information (e.g. additional tests results, actions taken) to an already existing product file. ICSMS helps authorities coordinate their activities and inspections and carry out wide-scale market interventions wherever products of a dubious nature are concerned.[12] The system is connected with the DG Internal Market, Industry, Entrepreneurship and SMEs of the European Commission.

Another cooperation tool – GRAS/RAPEX – is the EU rapid alert system for **dangerous** consumer and professional products, except food, pharmaceuticals, and medical devices. Member States have their GRAS/RAPEX Contact Points. The system allows quick exchange of information of measures taken to prevent or restrict the marketing or use of products posing a serious risk. GRAS/RAPEX also includes EFTA/EEA countries Iceland, Lichtenstein, and Norway.[13] GRAS/RAPEX is connected with the Directorate-General Justice and Consumers of the European Commission.

International and European Standards Systems

A **standard** provides a technical description of how a product is manufactured, a process managed, and a service delivered. In this analysis, we deal primarily with technical standards, but there are also food safety standards, ISO 9000 family of quality management standards, etc. Standards are an essential element in the conformity assessment of products.

European Committee on Standardisation (CEN) uses the following definition for (technical) standards on its website: "A standard (French: *Norme*, German: *Norm*) is a technical document designed to be used as a rule, guideline, or definition. It is a consensus-built, repeatable way of doing something. Standards are created by bringing together all interested parties such as manufacturers, consumers, and regulators of a particular material, product, process, or service. All parties benefit from standardisation through increased product safety and quality as well as lower transaction costs and prices."[14] The standards facilitate the diffusion of knowledge by codifying best practices and innovative technologies. There are national standards, standards of the EU and other regional cooperation formats and international (global) standards prepared by international standard-setting bodies.

Often, new standards are initiated by manufacturers, as they know if a specific standard

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12 – https://webgate.ec.europa.eu/icsms/

13 – http://ec.europa.eu/rapex

14 – https://www.cen.eu/work/endev/whatisen/pages/default.aspx

is needed. Typically, the development of new products or technologies will lead to a new generation of technical standards. Consumer organisations or regulators also initiate new standards in the public interest – to promote sustainability, ensure a high level of consumer protection, etc.

Standardisation organisations convene a group of experts and stakeholders to facilitate discussions among manufacturers, consumers, and regulators. They agree on a new standard by consensus.

In recent years, standardisation is at the centre of global technological and industrial competition between the EU, US, and China. They develop and promote their respective standards, such as 5G, Artificial Intelligence, the Internet of things, or advanced manufacturing. Companies and countries try to get their product specifications accepted as global standards. Others have then a challenge to accommodate their products and production facilities. It costs and takes time, which is critical in such fast-developing areas as ICT. The European Union is interested that other countries, including in the Eastern neighbourhood, accept EU standards, not other international market players.

The technical standards system in the EU is highly complex:

1. EU **"horizontal" regulations** or decisions cover the general methodology and institutional framework; these documents are part of the EU legislation. EU "horizontal" regulations or decisions cover: general product safety, requirements for accreditation and market surveillance relating to the marketing of products, common framework for the marketing of products, units of measurement, and liability for defective products.

2. Around 30 **broad sectoral product group directives** now outline the "essential" health, safety, and environmental protection requirements. These documents are part of the EU legislation. Manufacturers may voluntarily use standards or other technical specifications to demonstrate compliance with these requirements. Just some examples of the sectoral directives: Toy Safety – Directive 2009/48/EU; Restriction of Hazardous Substances in Electrical and Electronic Equipment – Directive 2011/65/EU; Measuring Instruments – Directive 2014/32/EU; Gas appliances – Regulation (EU) 2016/426; Medical devices – Regulation (EU) 2017/745.[15]

3. Around 5,000 **product-specific "harmonised standards"** provide the technical means to assure the presumption of compliance with the EU sectoral product directives. At the request of the European Commission, three technical organisations produce these standards. The organisations are the European

15 – The directives are listed at the European Commission website https://ec.europa.eu/growth/single-market/goods/new-legislative-framework_en

Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC) and the European Telecommunications Standards Institute (ETSI). There is a joint CEN-CENELEC Management Centre (CCMC) in Brussels.

When the Commission is satisfied with the standards it has requested from the CEN, CENELEC, or ETSI; it publishes them in the Official Journal of the European Union. They then have official status as "harmonised" and are presumed to meet the "essential requirements" of the relevant (sectoral) directive.[16] Businesses complying with a harmonised standard will benefit from a "presumption of conformity", allowing them to rapidly and easily sell products or services on the Single Market. The directives are binding laws, whereas the harmonised standards, while having official recognition, are formally voluntary for manufacturers who choose to use them or apply their own specifications. However, in the latter case, the manufacturer still has to prove "conformity" with the directive; there is no longer the presumption of compliance. The situation is changing, as in 2016 Court of Justice of the EU concluded that harmonised standards might "[form] part of EU law".[17] The "harmonised standards" are now increasingly taken as obligatory because the producers know that in the event of legal action against them, the courts look to this ECJ decision.

4. Around 25,000 **("voluntary") standards** which these three European organisations have also produced on their initiative; the latter are not part of national or European legislation.

CENELEC, ETSI, and CEN collaborate with the International Standards Organization (ISO), International Electrotechnical Commission (IEC), and the International Telecommunication Union (ITU).

CEN and ISO have since 1991 a cooperation agreement ("Vienna Agreement"), which defines the adoption by both organisations of identical standards in many cases.[18] They have a procedure for deciding which of the two should be the "lead" organisation for drafting the norm, and then later for deciding whether both agree to it or not. If there is an agreement, the standards become a "common standard" with identical texts published by both. Where the "lead" organisation is CEN, most non-European members of the ISO still have to agree to this.[19] For electrical equipment, CENELEC has a cooperation agreement with the International Electrotechnical Commission (IEC). About 80% of CENELEC standards are identical to or based

16 – http://ec.europa.eu/growth/single-market/europeanstandards/harmonized-standards_en

17 – http://curia.europa.eu/juris/document/document.jsf;jsessionid=B4640CC132403F2D19F4D27888C2C2D2?text=&docid=184891&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=21875600

18 – https://boss.cen.eu/ref/VA_Guidelines_implementation.pdf

19 – https://boss.cen.eu/ref/VA_Guidelines_implementation.pdf

on IEC publications. The portfolio of published standards by CEN and CENELEC was at the end of 2019 together 22,390, from which 10,051 were also (ISO and IEC) International Standards.[20] 10,094 European Standards were in the process of being adopted worldwide, and there were 99,329 cases of adoption of the European Standards by 38 National standardisation bodies outside CEN and CENELEC membership.[21] Similarly, the ETSI collaborates with the ITU. There are also some common standards set together with the UN Economic Commission for Europe (UNECE), most notably for the automobile sector.

However, EU standards-making is slowing down. The cause is the judgment, as mentioned earlier, of the 2016 European Court of Justice (ECJ) case (C-613/14). The ECJ ruled that harmonised standards developed based on an EU mandate may be viewed as a provision of EU law. Some industry experts and the standardisation organisation have criticised the judgment for changing the initially voluntary and non-binding nature of harmonised European standards.

ECJ also reiterated the Commission's responsibility for the integrity and inclusiveness of the standards-making process. It has to ensure the compatibility of a proposed standard with the relevant harmonising legislation. The European Commission reacted to the ECJ decision by applying its complex preparation mechanism similar to the regular EU legislation.

The industry representatives have pointed out that their investment in preparation may be failing if the intended EU standard is delayed or late changes are made to draft recommendations. They also propose that the Commission's demands for more detailed oversights must be reconciled with available resources. The stakeholders are worried that, in fast-developing new technologies, EU standards could be agreed upon too late to become adopted widely in the world.[22]

Critical comments about the current state of EU activities in the area of standards are now regular. Johan Bjerkem and Malcolm Harbour, in their EPC discussion paper, write: "Nevertheless, European standardisation is still confronted with a series of difficulties which must be addressed if Europe is to reach its new strategic objectives, especially the European Green Deal, the EU Digital Strategy, and the New Industrial Strategy. It must remain a global standard-setter that is on par with China and the US. If Europe could fix its standardisation system, it would have all it would need to retake global leadership in standard-setting."[23]

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20 – https://indd.adobe.com/view/eedc14d6-b305-4d4c-9c1e-31cb46249547

21 – https://indd.adobe.com/view/eedc14d6-b305-4d4c-9c1e-31cb46249547

22 – https://www.epc.eu/en/Publications/Next-Generation-EU-standards-will-boost-post-COVID-19-recovery~35e0f8

23 – Europe as a global standard-setter: The strategic importance of European standardization, Johan Bjerkem Malcolm Harbour, EPC, 15 October 2020 https://www.epc.eu/en/publications/The-strategic-importance-of-Europe~37f244

Mutual Recognition Agreements and ACAA

Mutual Recognition Agreements (MRAs) aim to support the industry by providing easier access to conformity assessment. MRAs lay down the conditions under which one party will accept conformity assessment results (e.g. testing or certification) performed by the other party's designated conformity assessment bodies to show compliance with the first party's requirements and vice versa. European Union's MRAs include relevant lists of designated laboratories, inspection bodies, and conformity assessment bodies in both the EU and the third country[24]. The standards may differ between the MRA parties. Still, accredited bodies in the exporting country may certify conformity with the importing country's standards without requiring further conformity assessment there. This mechanism requires mutual trust in the relevant agencies' professional competence and freedom from political influence in their decision-making.

MRAs have become more popular globally; by 2016, the participants notified 139 agreements to the WTO.[25] Many MRAs are part of the broader regional trade agreements. They are frequently limited to telecoms equipment, Good Manufacturing Practices (GMP) for medicines and electronic goods.

Inside the European Union, the recognition role belongs to the **European co-operation for Accreditation (EA)**. It is a not-for-profit association registered in the Netherlands. EA is formally appointed by the European Commission in Regulation (EC) No 765/2008 to develop and maintain a multilateral agreement of mutual recognition based on a harmonised accreditation infrastructure.[26] EA is the organisation enabling its Members to share knowledge to develop a sound and harmonised approach to accreditation required to ensure that Conformity Assessment Bodies have the technical capacity to perform their task.

EA currently has 50 Members, so it has much more involvement than only the EU Member States.[27] They are National Accreditation Bodies that their national governments officially recognise to assess and verify – against international standards – organisations that carry out conformity assessment activities such as certification, verification, inspection, testing and calibration. The 36 Full Members are from EU27 or EFTA countries or a country formally identified by the EU or EFTA as a candidate for EU or EFTA membership. There are 14 Associate Members of EA, including all six Eastern Partnership countries. Ukraine's representative is the National Accreditation Agency of Ukraine (NAAU).

24 – https://ec.europa.eu/growth/single-market/goods/international-aspects/mutual-recognition-agreements_en

25 – Correia de Brito, A., C. Kauffmann and J. Pelkmans (2016), "The contribution of mutual recognition to international regulatory co-operation", OECD Regulatory Policy Working Papers, No. 2, OECD Publishing, Paris. http://dx.doi.org/10.1787/5jm56fqsfxmx-en

26 – https://european-accreditation.org/about-ea/who-are-we/

27 – https://european-accreditation.org/ea-members/directory-of-ea-members-and-mla-signatories/

EA evaluates its National Accreditation Body Members regularly. If a Conformity Assessment Body is accredited by one of the Members in the EA network, its customers can have confidence in the competence, independence, and impartiality of its conformity assessment work.[28]

The EA Multilateral Agreement is an agreement between the EA Members whereby the signatories recognise and accept the equivalence of the accreditation systems operated by the signing members and the reliability of the conformity assessment results from Conformity Assessment Bodies accredited by the signing members. It makes the objective 'Accredited once, accepted everywhere' effective. A signatory or applicant to the agreement has to demonstrate compliance with a set of requirements. An EA Associate Member signs a Bilateral Agreement to ensure that it meets the same conditions as EA Full Members. The National Accreditation Agency of Ukraine (NAAU) is a Bilateral Agreement signatory.[29]

EU27 currently has seven bilateral MRAs. The wider MRAs are in force with Australia (initially concluded in 1998, covers eight sectors[30]), Canada (from 2017, covers eleven sectors[31]), New Zealand (from 1998, covers seven sectors[32]), and Switzerland (from 2002, covers twenty sectors[33]). More limited scope agreements are active with Japan (from 2001, covers four sectors [34]) and the US (from 1999, currently three sectors [35]). The agreement with Israel is the most limited one (one sector); we will look at it later. European Union has several documents which serve as guides during the preparation of MRAs.[36]

As an example, the agreement between the EU and Canada covers the following 11 sectors: 1. Electrical and electronic equipment, including electrical installations and appliances and related components; 2. Radio and telecommunications terminal equipment; 3. Electromagnetic compatibility (EMC); 4. Toys; 5. Construction products; 6. Machinery, including parts, components, including safety components, interchangeable equipment, and assemblies of machines; 7. Measuring instruments; 8. Hot-water boilers, including related appliances; 9. Equipment, machines, apparatus, devices, control components, protection systems, safety

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28 – https://european-accreditation.org/about-ea/who-are-we/

29 – https://european-accreditation.org/ea-members/directory-of-ea-members-and-mla-signatories/

30 – https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A21998A0817%2801%29

31 – https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1505922374039&uri=CELEX:22017A0114(01)

32 – https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01998A0817(02)-20130101

33 – https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22002A0430%2805%29

34 – https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22001A1029%2801%29

35 – https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:01999A0204(01)-20200205

36 – https://ec.europa.eu/growth/single-market/goods/international-aspects/mutual-recognition-agreements_en

devices, controlling devices and regulating devices, and related instrumentation and prevention and detection systems for use in potentially explosive atmospheres (ATEX equipment); 10. Equipment for use outdoors as it relates to the noise emission in the environment; 11. Recreational craft, including their components.[37]

Israel's first document (Agreement on mutual recognition of OECD principles of good laboratory practice (GLP) and compliance monitoring programmes between the European Community and the State of Israel) is from 1999.[38] The following agreement between the EU and Israel covered the Good Laboratory Practice (GLP) in the broader area of chemical products (cosmetics, industrial chemicals, medicinal products/pharmaceuticals, food additives, animal feed additives, pesticides). From 2013, there is the Protocol to the Euro-Mediterranean Agreement establishing an association between the European Communities and their Member States, of the one part, and the State of Israel, of the other part, on Conformity Assessment and Acceptance of Industrial Products (CAA)[39]. Its Annex covers only one (more narrow) area – Annex on mutual acceptance of industrial products, Pharmaceutical Good Manufacturing Practice (GMP).

The Israeli Document is the sole existing ACAA agreement of the EU. The European Commission gave in its Questions and Answers paper an explanation: "An Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) is a type of a Mutual Recognition Agreement (MRAs) based on the alignment of the legislative system and infrastructure of the country concerned with those of the European Union."[40]

MRAs work in the conditions of **different** sets of standards of partners; an ACAA works with the **same** EU standards and practices for both partners. An ACAA works based on adopting the other EU Single market infrastructure elements, which is not the case with MRAs. Article 3 of the EU–Israel ACAA states: "For the purpose of this Protocol, Israel agrees to take appropriate measures, in consultation with the European Commission, to align with and maintain relevant EU law as it applies to the placing on the market of products covered by this Protocol.

In sectors covered by this Protocol where relevant EU law is based upon the use of technical standards giving presumption of conformity with essential safety requirements (known as 'New Approach' sectors) Israel agrees to take appropriate measures, in consultation with the European Commission, to align with and maintain relevant EU practice in the fields of standardisation, metrology, accreditation, conformity assessment, market surveillance, general safety of products, and producers' liability".[41]

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37 – https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1505922374039&uri=CELEX:22017A0114(01)

38 – https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX::21999A1009%2801%29

39 – https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:001:0002:0012:EN:PDF

40 – https://ec.europa.eu/health/sites/health/files/files/international/2013_qa_israel-eu.pdf

41 – https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52009PC0559

Tunisia and Morocco also envisage the conclusion of an ACAA with the EU, but it is related to the negotiations about DCFTAs with them. Both processes have stalled. Their Euro-Mediterranean Agreements establishing an Association (EMAAs) now include a vague provision stating that they will align with relevant EU rules and practices in the area of standardisation, conformity assessment, and metrology. However, there is no explicit link with the conclusion of an ACAA in the EMAAs. Yet, Tunisia has already identified electronic and electrical products and construction materials as priority sectors of cooperation. Morocco also pursues a future ACAA covering low voltage equipment, construction materials, toys, and electronic products.[42]

The European Economic Area (EEA) unites the 27 EU Member States with Iceland, Liechtenstein, and Norway (the three EEA EFTA States) in the Internal Market governed by the same basic rules. Protocol 12 of the EEA Agreement guarantees that when the EU takes the initiative to negotiate Mutual Recognition Agreements (MRAs), it will deal on the basis that the third countries concerned will conclude parallel MRAs with the EEA EFTA States, equivalent to those to be completed by the EU.

The five MRAs established by the EEA EFTA countries are New Zealand, Australia, Canada, Switzerland, and the United States. The list of agreements is still not complete, as the EFTA has no MRA with Japan and Israel. There is also Protocol E of the EFTA–Turkey Free Trade Agreement on Mutual Recognition of Conformity Assessment of Products (in force from 2011).[43]

As we see, the EU has currently MRAs with highly developed countries with a high quality of public administration, which are well-financed and use modern equipment.

Little is known about the actual implementation and functioning of MRAs because reporting on their use is rare. One of the studies on the subject is the OECD Working Paper by Correia de Brito, A., C. Kauffmann and J. Pelkmans (2016).[44]

The authors of the OECD paper write that MRAs were probably initially overrated in terms of benefits, without fully realising their costs and challenges. The US–EU MRA experience is instructive- only half of the agreed six sectorial MRAs are operational today, only one-fifth of the expected trade value is covered.[45]

42 – 2015 ENP Progress Reports of Tunisia and Morocco (SWD[2015] 73 and SWD[2015] 70); THE EU-TUNISIA PRIVILEGEDPARTNERSHIP – WHAT NEXT? E. Cohen-Hadria (Ed.), T. Abderrahim, Y. Cherif, S. Colombo, E. Ghanmi, K. Kausch, H. Meddeb, G. Van der Loo, F. Zardo IEMed. European Institute of the Mediterranean 2018 p71.
https://www.euromesco.net/wp-content/uploads/2018/04/EuroMeSCo-Joint-Policy-Study_EU-Tunisia-Partnership.pdf

43 –https://www.efta.int/eea/mras

44 – Correia de Brito, A., C. Kauffmann and J. Pelkmans (2016), "The contribution of mutual recognition to international regulatory co-operation", OECD Regulatory Policy Working Papers, No. 2, OECD Publishing, Paris.
http://dx.doi.org/10.1787/5jm56fqsfxmx-en

45 – Correia de Brito, A., C. Kauffmann and J. Pelkmans (2016), "The contribution of mutual recognition to international regulatory co-operation", OECD Regulatory Policy Working Papers, No. 2, OECD Publishing, Paris.
http://dx.doi.org/10.1787/5jm56fqsfxmx-en

MRAs are undoubtedly first driven by an expectation of economic gains, particularly through increased trade flows. Experts assume that MRAs lower costs of market access. The authors write that it was impossible to find available information about cost differentials of conformity assessment with and without an MRA or how frequently companies use these provisions. The weak impact of MRAs on trade can also be explained by the relatively small costs gains, as a share of the total costs of Technical Barriers to Trade (TBTs). Most of the expenses of TBTs are caused by the regulatory divergence between the partners and not touched by traditional MRAs.[46] The ACAA concept includes taking over EU respective legislation; there is a clear perspective that it might bring more substantial benefits as it opens a way to the Internal Market of the EU.

Benefits from knowledge flow and peer learning may well be substantial, especially in dynamic sectors like telecoms equipment.

There is a range of actual or perceived costs related to MRAs. In particular, some specialists consider MRAs as costly for administrations and regulators.[47] Their implementation often demands highly specialised experts, who are expensive and difficult to hire. There are also assumptions that MRAs are costly to negotiate, although perhaps less today in well-known sectors such as telecoms equipment, given worldwide experience and numerous similar existing texts.

MRAs require sustained trust in each other's regulatory systems, structures and procedures for accreditation and conformity assessment and quality of infrastructure of relevant bodies. In the case of partners with a significant level of corruption, there is also a reason to consider the related negative aspects. Ukraine and other Eastern Partnership countries need to convince the EU when negotiating an ACAA that their designated structures are free from outside unhealthy influence.

Ukraine–EU Association Agreement and ACAA: textual analysis

Chapter 3 of the Ukraine–EU Association Agreement applies to the preparation, adoption, and application of technical regulations, standards, and conformity assessment procedures as defined in the Agreement on Technical Barriers to Trade, contained in Annex 1A to the

46 – Correia de Brito, A., C. Kauffmann and J. Pelkmans (2016), "The contribution of mutual recognition to international regulatory co-operation", OECD Regulatory Policy Working Papers, No. 2, OECD Publishing, Paris. http://dx.doi.org/10.1787/5jm56fqsfxmx-en

47 – Correia de Brito, A., C. Kauffmann and J. Pelkmans (2016), "The contribution of mutual recognition to international regulatory co-operation", OECD Regulatory Policy Working Papers, No. 2, OECD Publishing, Paris. http://dx.doi.org/10.1787/5jm56fqsfxmx-en

WTO Agreement (TBT Agreement).[48] In Article 54 of the Ukraine–EU Association Agreement, the Parties affirm their existing rights and obligations to each other under the TBT Agreement, which is incorporated into and made part of the Association Agreement.[49]

In Article 55 of the Association Agreement, participants state that they "shall strengthen their cooperation in the field of technical regulations, standards, metrology, market surveillance, accreditation and conformity assessment procedures with a view to increasing mutual understanding of their respective systems and facilitating access to their respective markets. To this end, they may establish regulatory dialogues at both horizontal and sectoral levels".[50] The Article presents broad avenues for future cooperation in the area.

Article 56 of the Association Agreement presents practical cooperation. It also marks the preparation of the ACAA for a more limited set of trade sectors.

At first, this Article defines the goal. According to point 1, Ukraine "shall take the necessary measures in order to gradually achieve conformity with EU technical regulations and EU standardisation, metrology, accreditation, conformity assessment procedures and the market surveillance system, and undertakes to follow the principles and practices laid down in relevant EU Decisions and Regulations". The text of the Agreement covers not only standards but the comprehensive system of the EU Single Market.

Points 2–4 of Article 56 concern the timetable, and point 4 the reporting procedure.

Point 2 states that Ukraine "shall, in line with the timetable in Annex III to Association Agreement:

(i) incorporate the relevant EU acquis into its legislation;

(ii) make the administrative and institutional reforms that are necessary to implement this Agreement and the Agreement on Conformity Assessment and Acceptance of Industrial Products (hereinafter referred to as the 'ACAA') referred to in Article 57 of Association Agreement; and

(iii) provide the effective and transparent administrative system required for the implementation of this Chapter".[51]

Point 3 mentions that the timetable in Annex III shall be agreed upon and maintained by the Parties. ANNEX III to Chapter 3 contains the list of legislation for alignment and schedule for its implementation.

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48 – https://www.wto.org/english/docs_e/legal_e/tokyo_tbt_e.pdf

49 – https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29

50 – https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29

51 – https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29

1. **Horizontal (framework) legislation** includes EU acts about: General product safety, Requirements for accreditation and market surveillance relating to the marketing of products, Common framework for the marketing of products, Units of measurement, and Liability for defective products. The time frame for all of them is one year from the entry into force of the Agreement.

2. **Vertical (sectoral) legislation** covers 27 sectors. For 12 sectors (for example, Machinery), the time frame is two years from the entry into force of the Agreement; for nine sectors, it is a three year period; for two sectors, four years; for three sectors (for example Measuring equipment), five years; and for one sector, the end of 2020.[52] For comparison, the sectorial Annex to the Georgian Association Agreement covers 21 sectors and the Moldovan Agreement 20 sectors.

Point 4 states that after the Association Agreement enters into force, Ukraine shall provide the EU Party once a year with reports on the measures taken under this Article. Where actions listed in the timetable in Annex III to Association Agreement have not been implemented within the applicable time frame, Ukraine shall indicate a new schedule to complete such action. (Annex III reflects timetable changes and is quoted in this analysis, as it stood at the beginning of 2021.)

Point 5 says that Ukraine shall refrain from amending its horizontal and sectoral legislation in the areas listed in Annex III, "except in order to align such legislation progressively with the corresponding EU acquis, and to maintain such alignment".[53] This point ensures that the partner will not move back (the word "progressively") or towards other standard systems (for example, GOSTs). Point 6 includes an obligation for Ukraine to notify the EU of any changes in its national legislation in this area.

Point 8 goes even further and states that Ukraine shall progressively transpose the corpus of European standards as national standards, including the harmonised European standards, the voluntary use of which shall be presumed to conform with legislation listed in Annex III. Simultaneously with such transposition, Ukraine shall withdraw conflicting national standards, including its application of interstate standards (GOST), developed before 1992.

Point 7 of Article 56 states that Ukraine "shall ensure that its relevant national bodies participate fully in the European and international organisations for standardisation, legal and fundamental metrology, and conformity assessment including accreditation in accordance with its area of activity and the membership status available to it".[54] Also, Point 8 defines

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52 – https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29

53 – https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29

54 – https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29

that Ukraine shall progressively fulfil the other conditions for membership of the European Standardisation Organisations. The three ones are CEN, CENELEC and ETSI.

Article 57 is devoted to the Agreement on Conformity Assessment and Acceptance of Industrial Products in particular. The Parties agree in Point 1 to add an ACAA as a Protocol to Association Agreement, "once they have agreed that the relevant Ukrainian sectoral and horizontal legislation, institutions and standards have been fully aligned with those of the EU".[55]

Point 2 of Article 57 confirms that the ACAA will provide that trade between the Parties in goods in the sectors that it covers shall take place under the same conditions as trade in such goods between the Member States of the European Union. Point 2 (1) makes exact references to the legal acts.[56]

Point 3 of Article 57 first clarifies that an ACAA is concluded "following a check by the EU Party and agreement on the state of alignment of relevant Ukrainian technical legislation, standards and infrastructure". First, there is an EU mission to check the situation, and if its opinion is positive and convinces the Union, the sides may agree to conclude an ACAA.

Point 3 also defines the legal form of the Document: "the ACAA shall be added as a Protocol to this Agreement by agreement between the Parties according to the procedure for amending this Agreement." An ACAA would consist of a framework agreement, providing the recognition of equivalence of the conformity assessment, verification and accreditation procedures, market surveillance, and one or more annexes setting out the products sectors covered.

The same point also explains the scope of the ACAA. It will cover "such sectors from the list in Annex III to this Agreement as are considered to be aligned. It is intended that the ACAA will ultimately be extended to cover all the sectors listed in Annex III to this Agreement …"[57]

The ACAA may start with one or some sectors, and the ultimate goal is to cover all 27 sectors listed in Annex III. These 27 sectors still cover only part of the mutual foreign trade – the ACAA could potentially cover up to 20% of Ukrainian exports to the EU, predominantly machinery[58]. Point 4 states that "once the sectors on the list have been covered by the ACAA, the Parties … undertake to consider extending its scope to cover other industrial sectors".[59] However, it is essential to mention that now even the widest existing EU MRAs cover fewer sectors than 27.

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55 – https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29

56 – https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29

57 – https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29

58 – The benefits of the ACAA, Dmytro Lutsenko, in Integration Within Association: Dynamics of the EU–Ukraine Agreement implementation. Policy paper, 2019, p 14 https://www.civic-synergy.org.ua/wp-content/uploads/2018/04/Integration-within-Association-Dynamics-of-the-EU_Ukraine-Agreement-Implementation.pdf

59 – https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29

In point 5, the parties confirm that until a product is covered under the ACAA, the Parties' relevant existing legislation shall apply thereto, taking into account the TBT Agreement's provisions.[60]

The formulated goal means that Ukrainian producers follow European standards more and more. Today, the absolute majority of Ukrainian goods produced for the home market conform to harmonised EU regulations. Since European technical standards are voluntary, enterprises are also free to produce goods for export only following the standards demanded by third countries, such as Russia and other Eurasian Economic Union states (GOSTs). Such goods cannot be exported to the EU Single Market and labelled with a "CE" sign if they are not certified for it. They also cannot be sold in Ukraine if they do not conform to the Ukrainian norms. Until the new Ukrainian standards for particular goods that replicate the harmonised EU standards are not yet approved, it is possible to import products that conform with existing Ukrainian standards but not with the European ones. As the process of Ukraine adopting EU standards progresses, such imports may happen less and less often. It is essential to mention that the Eurasian Economic Union is introducing its lists of harmonised international/European standards as "International and regional standards adopted as interstate GOST standards". In practice, these are ISO and IEC standards, which are in large part identical to European standards of CEN and CENELEC.

Article 58 covers the marking and labelling of goods.

Ukrainian debate about the priorities of the economic cooperation with the EU and ACAA

As an issue with many technical details, challenging to understand specialist language, and visibly no immediate connection with the peoples' daily lives, the conclusion of ACAA has not been a matter for broad public debate in Ukraine. The main message was always clear – similarly to the visa-free movement, one of the most famous Ukrainian achievements in European integration processes, having an ACAA is good and another step closer to the EU. It was also apparent at the Estonian Center of Eastern Partnership (ECEAP) supported panel debate in Kyiv in November 2019 with several leading Ukrainian specialists and officials' participation."This agreement will reduce the cost of exports and imports: no additional resources will be needed to go through the procedure of conformity, put markings, a lot of difficult moments in communication with our inspection bodies will be removed. With these quality certificates for the Ukrainian manufacturer will open not only European but also many

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60 – https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29

other markets because the EU is known for high quality and safety standards."[61]

Similarly positive was Veronika Movchan (Academic Director, Institute for Economic Research and Policy Consulting (IER)): "We now have two protected markets, and each laboratory evaluates compliance, issues certificates to its market. After that, it will be the manufacturer's choice – where it is more profitable, whom he trusts, where is the best price. Accordingly, we will most likely see the intensification of competition between different conformity assessment bodies authorised to issue these certificates. But for exporters/importers, it will be cheaper – one certificate for two markets."[62] Participants also mentioned that this should make life easier for Ukrainian importers and contribute to reducing customs fraud.

Olga Stefanishina (then expert, now Deputy Prime Minister on European and Euro-Atlantic integration) said during the November 2019 event: "Industrial visa-free travel is an absolutely winning story for everyone because business loses nothing. If you look at the areas of adaptation provided in the agreement – we, on the contrary, create opportunities for products with added value. The longer we delay signing the agreement, the longer we oblige our companies to move to European standards but undergo double certification. Today we hear complaints that the agreement is not yet concluded, not only from Ukrainian but also from European and American business, as many rich countries worldwide view the Ukrainian market very promising both for the export of products and the deployment of production."[63]

Victoria Kulikova added an SME-specific positive argument: "The agreement should not in any way negatively affect small and medium-sized businesses. Because if a big company can still afford to undergo procedures compliance abroad, it is difficult for small businesses. So in the future, they, on the contrary, will have access to these markets."[64]

Cautious comments are related to the different levels of the partners' development and agreements' influence on the weaker side. The head of the parliamentary faction "Servant of the People" David Arahamiya, during a speech at the Ukrainian House in Davos on 21 January 2020, stated: "Many neighbouring countries are putting pressure on us, pushing for so-called 'harmonisation of legislation'. However, I believe that this is wrong for Ukraine. If a weaker economy unites with a stronger one, it will always remain weaker, playing by the

61 – https://medium.com/@reforms/made-in-ukraine-na-svitovyh-rynkah-koly-ukraina-otrymaet-promyslovyi-bezviz-a4a2764b7f1a 3/11 (in Ukrainian)

62 – https://medium.com/@reforms/made-in-ukraine-na-svitovyh-rynkah-koly-ukraina-otrymaet-promyslovyi-bezviz-a4a2764b7f1a 3/11 (in Ukrainian)

63 – https://medium.com/@reforms/made-in-ukraine-na-svitovyh-rynkah-koly-ukraina-otrymaet-promyslovyi-bezviz-a4a2764b7f1a 3/11

64 – https://medium.com/@reforms/made-in-ukraine-na-svitovyh-rynkah-koly-ukraina-otrymaet-promyslovyi-bezviz-a4a2764b7f1a 3/11

same rules."[65] He also stressed the importance of Ukraine using its "competitive advantage" instead – create unique rules, and then "investors will come to use our differences".[66] David Arahamiya talked about the wider context of harmonisation, but his arguments may also relate to the ACAA area. Using country-specific norms lead to a situation where it is more difficult to export or import. It is not realistic for a Ukrainian size and location country to follow some Asian countries' model, especially when there is an ambition to produce and export more sophisticated products like machinery or electronic equipment, be part of the global production chains.

Taras Kachka (Deputy Minister of Economic Development, Trade and Agriculture – Trade representative of Ukraine) stated during the November 2019 event: "The political difficulties are that the ACAA agreement is … concluded on today only with Israel. Such agreements exist only between countries that call themselves industrially developed. And here is the great prejudice against Ukraine that we need to overcome: convince that Ukraine, though perhaps not a rich enough country, is technologically advanced enough to conclude such an agreement."[67]

The Ukraine–EU Association Agreement's ratification process in the EU Member States was complicated, involving even a referendum in the Netherlands. So, the Ukrainian side knows that the conclusion of the agreements with the Union is not always going to be smooth sailing, and they have to be ready for unexpected issues.

Before concluding the EU Association Agreements with Ukraine and other EaP countries, experts from a couple of EU countries published some critical statements. Iana Dreyer from the Notre Europe think tank wrote in 2012: "Imposing EU technical and sanitary standards on the entire economies of these countries would lead to massive trade diversion, with a significant reduction of their trade with the rest of the world. Nothing guarantees that trade with the EU will increase symmetrically."[68] She also stated: "What is more, this trade could well involve higher prices. Hence these country's agricultural sectors and industrial enterprises would be choked off." So her conclusion was: "A better approach would be to find means to increase bilateral trade first, and seek legal approximation at a later stage."[69] She called to

65 – https://www.ukrinform.ua/rubric-polytics/2861110-ukraini-slid-timcasovo-vidmovitisa-vid-garmonizacii-zakonodavstva-iz-es-arahamia.html (in Ukrainian)

66 – https://www.ukrinform.ua/rubric-polytics/2861110-ukraini-slid-timcasovo-vidmovitisa-vid-garmonizacii-zakonodavstva-iz-es-arahamia.html (in Ukrainian)

67 – https://medium.com/@reforms/made-in-ukraine-na-svitovyh-rynkah-koly-ukraina-otrymaet-promyslovyi-bezviz-a4a2764b7f1a 3/11 (in Ukrainian)

68 – Trade Policy in the EU's Neighbourhood Ways Forward for the Deep and Comprehensive Free Trade Agreements,

By Iana Dreyer, P 38, Notre Europe, May 2012 https://institutdelors.eu/wp-content/uploads/2020/08/i.dreyer_tradepolicyineuneighbourhood_ne_may2012-1.pdf

69 – Trade Policy in the EU's Neighbourhood Ways Forward for the Deep and Comprehensive Free Trade Agreements, By Iana Dreyer, Notre Europe, P 38, May 2012 https://institutdelors.eu/wp-content/uploads/2020/08/i.dreyer_tradepolicyineuneighbourhood_ne_may2012-1.pdf

limit cooperation: "However, given that the EU is not offering a clear prospect to its DCFTA partners that they will be part of the Single Market, the EU should not go much beyond these rules, and should abandon pretences to 'regulate' its neighbours and to foster 'regulatory approximation'."[70] She urged to find such proportionality that would not overburden their economies before the EU is ready to answer their efforts and allow them entirely to the market: "Individual firms based in the partner country, whether connected with inward FDI or not, that wish to export to the EU market should be allowed to use the facilities of designated EU-based certification agencies to obtain accreditation to sell their products on EU markets. Contrary to what the EU currently imposes on its prospective DCFTA partners, the latter should not be forced to open up new agencies to certify products for export to the EU. This would reduce costs of government and administration in poor countries with endemic problems of scarce human capital and maladministration. This would also avoid the problem of having to negotiate a necessarily complicated Agreement on Conformity Assessment and Acceptance (ACAA) of industrial products as the EU is currently proposing to DCFTA candidates. Such an ACAA can be negotiated at a later stage."[71]

She even proposed EU financial support in the Single Market regulations area: "The costs of EU-based certification should be borne by the EU itself: certification bodies should invoice the relevant EU authority, which in turn should budget this appropriately. The firms should have the right to contest the decisions taken by the certification bodies in the European Court of Justice. When the partner country is close to reaching an agreed per capita income threshold, these countries should be obliged to set up appropriate certification bodies at home with EU financial assistance."[72]

The article was published in 2012, and the situation was then different. During the subsequent years, Ukraine has built up European rules based market surveillance and certification institutions and moved to the European standards, turning itself into a separate case on its own.

The practical conclusion from the debate is that for Ukraine, the best way forwards is to move sector-by-sector, based on partners' readiness and analysis of the situation in a particular industry area. Current plans to start ACAA only with three sectors looks rational as a limited start-up package.

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70 – Trade Policy in the EU's Neighbourhood Ways Forward for the Deep and Comprehensive Free Trade Agreements, By Iana Dreyer, Notre Europe, P 49, May 2012 https://institutdelors.eu/wp-content/uploads/2020/08/i.dreyer_tradepolicyineuneighbourhood_ne_may2012-1.pdf

71 – Trade Policy in the EU's Neighbourhood Ways Forward for the Deep and Comprehensive Free Trade Agreements, By Iana Dreyer, Notre Europe, P 49, May 2012 https://institutdelors.eu/wp-content/uploads/2020/08/i.dreyer_tradepolicyineuneighbourhood_ne_may2012-1.pdf

72 – Trade Policy in the EU's Neighbourhood Ways Forward for the Deep and Comprehensive Free Trade Agreements, By Iana Dreyer, Notre Europe, P 50, May 2012 https://institutdelors.eu/wp-content/uploads/2020/08/i.dreyer_tradepolicyineuneighbourhood_ne_may2012-1.pdf

UKRAINIAN PRACTICAL PREPARATIONS FOR ACAA

A. General organisation of the preparations

The Association Agreement requires Ukraine to complete four key steps to sign the ACAA:

1. bring its relevant legislation in line with EU law;

2. bring its national quality infrastructure – national standards body, national accreditation body, metrology institutes, conformity assessment bodies and market surveillance infrastructure in line with EU requirements;

3. adopt European harmonised standards for related ACAA product categories as national standards of Ukraine;

4. eliminate all regulatory regimes that contradict, duplicate, or overlap with European requirements for the given ACAA product categories. Dmytro Lutsenko, in the 2019 Policy paper "Integration within Association: Dynamics of the EU–Ukraine Agreement implementation", points out in particular old sanitary norms and rules, workplace safety documents that include product design, manufacture, and pre-market control requirements.[73]

The Ukrainian institutional centre for preparing for an ACAA is the **Ministry for Development of Economy, Trade and Agriculture of Ukraine**. It is responsible for public policy in this area and regulatory and coordination functions in horizontal (framework) legislation – technical regulations, conformity assessments, standardisation, metrology, and market surveillance. It is also one of the regulators itself and is responsible for developing technical regulations in individual sectors. Other Ukrainian central executive bodies regulate, inspect and oversee respective sectors.[74] The essential documents that laid down public policy in technical regulation were listed in the Strategy and Action Plan for Reforming the System of Technical Regulation till 2020, approved by the Cabinet Executive Order #844-R dated 19 August 2015. These documents required Ukrainian technical regulations and other legal acts to be drafted in full compliance with related EU directives and regulations.

The Ukrainian Scientific, Research and Training Centre for Standardisation, Certification and Quality (UkrNDNC), a state-owned enterprise, is Ukraine's national standards body. It is a companion body to European standardisation organisations like CEN and CENELEC and a member of the International Organisation for Standardisation (ISO) and the International

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73 – The benefits of the ACAA, Dmytro Lutsenko, in Integration Within Association: Dynamics of the EU–Ukraine Agreement implementation. Policy paper, 2019, p 16 https://www.civic-synergy.org.ua/wp-content/uploads/2018/04/Integration-within-Association-Dynamics-of-the-EU_Ukraine-Agreement-Implementation.pdf

74 – https://www.me.gov.ua/Documents/Detail?lang=en-GB&id=ab43d8de-5443-43ac-a1ac-87e0cb2ccf4a&title=Referen ceConcerningTheAgreementOnConformityAssessmentAndAcceptanceOfIndustrialProducts-asaa-industrialVisafreeRegime-

Electrotechnical Commission (IEC).[75]

The **National Accreditation Agency of Ukraine (NAAU)** is a principal institution in accreditation. The NAAU accredits all Ukrainian bodies that assess conformity to technical regulation requirements. Accreditation is a procedure by which the NAAU confirms the competence of the legal entity or the relevant conformity assessment body (CAB) to conduct certain types of works (testing, calibration, certification, and inspection). Accreditation provides a uniform technical policy in the sphere of conformity assessment; confidence of consumers in conformity assessment activities; conditions for mutual recognition of accredited CABs' performance at the international level; removal of technical barriers for business.

Some Ukrainian bodies have cooperation or recognition agreements with conformity assessment bodies from other countries, including the EU.

Dmytro Lutsenko points out that the situation with Ukrainian conformity assessment bodies varies, and there are still some problems with issuing certificates by particular bodies.[76] Over 2014–2017, state market surveillance faced a moratorium on inspections. However, starting in 2018, checks have been actively carried out. Dmytro Lutsenko stressed at the beginning of 2019 that "despite the need to introduce certain corrections to legislation and practices, it is possible to assert that, on the whole, the state of national quality infrastructure and market surveillance is acceptable to conclude the ACAA".[77]

In the area of market surveillance, an important role belongs to the consumer protection system. According to Chapter 20, "Consumer Rights Protection" of the Association Agreement, Ukraine and the EU cooperate to ensure a high consumer protection level. They aim to achieve consistency between their consumer rights protection systems. Article 417 says: "Ukraine shall gradually approximate its legislation to the EU acquis, as set out in Annex XXXIX to this Agreement, while avoiding barriers to trade."[78]

In 2015, Ukraine reorganised its consumer protection system. The government created the State Service of Ukraine on Food Safety and Consumer Protection by combining existing State Veterinary and Phytosanitary Service with the State Inspection of Ukraine on Consumer Rights Protection and the State Sanitary and Epidemiological Service of Ukraine. It has extensive

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75 – http://uas.org.ua/en/zagalni-vidomosti-pro-dp-ukrndnts/

76 – The benefits of the ACAA, Dmytro Lutsenko, in Integration Within Association: Dynamics of the EU–Ukraine Agreement implementation. Policy paper, 2019, p 16 https://www.civic-synergy.org.ua/wp-content/uploads/2018/04/Integration-within-Association-Dynamics-of-the-EU_Ukraine-Agreement-Implementation.pdf

77 – The benefits of the ACAA, Dmytro Lutsenko, in Integration Within Association: Dynamics of the EU–Ukraine Agreement implementation. Policy paper, 2019, p 16 https://www.civic-synergy.org.ua/wp-content/uploads/2018/04/Integration-within-Association-Dynamics-of-the-EU_Ukraine-Agreement-Implementation.pdf

78 – https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A22014A0529%2801%29

powers.[79] For example, the Service has to get unhindered access to production facilities and other state supervision objects (control). It may obtain information, documents, and materials required to perform its tasks from state bodies, enterprises, etc. The Service also can restrict, prohibit, suspend activities, take other response measures in compliance with the law, including restriction or ban on import (transfer) into the customs territory of Ukraine or movement (transit) through it.

From March 2020, the Law On Amendments to Certain Legislative Acts of Ukraine Regarding Reduction of Pressure on Business by Market Surveillance Bodies amended several regulatory instruments to reduce pressure on businesses from the Ukrainian enforcement and supervisory authorities, such as Market Surveillance Authorities. In particular, the amendments remove the possibility of dual supervision over certain types of products and unify the types of inspections of non-food products. The amendments also set out clear and transparent requirements for market surveillance inspectors and inspectors of economic entities regarding the list and terms of submission of documents during each inspection. The authorities can only check-up manufacturers to verify a particular product's properties if there are documented grounds for believing that this product is dangerous, presents a risk and/or does not meet specific requirements due to the manufacturer's actions or omissions.[80] European Union considered this legislative act as a vital element of preparations for the ACAA.

B. Adoption of the new legislation

Ukraine has fulfilled the commitments regarding adopting **horizontal (framework) legislation**; it adopted a series of relevant laws and by-laws over 2010–2016. Ukraine approved the Laws: On the general safety of non-food products (2011);[81] On state market supervision and control of non-food products (2011);[82] On Technical Regulations and Conformity Assessment (2015);[83] On Metrology and Metrological Activity (2015);[84] On standardisation (2014);[85] On Accreditation of Conformity Assessment Bodies (2001);[86] On liability for damages caused by a defect in products (2011).[87]

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79 – https://dpss.gov.ua/en

80 – http://www.pravsky.com/ukraine-adopted-law-restricting-powers-market-surveillance-authorities

81 – https://zakon.rada.gov.ua/laws/show/2736-17?lang=en#Text (in Ukrainian)

82 – https://zakon.rada.gov.ua/laws/show/2735-17?lang=en#Text (in Ukrainian)

83 – https://zakon.rada.gov.ua/laws/show/124-19?lang=en#Text (in Ukrainian)

84 – https://zakon.rada.gov.ua/laws/show/124-19?lang=en#Text (in Ukrainian)

85 – https://zakon.rada.gov.ua/laws/show/1315-18?lang=en#Text (in Ukrainian)

86 – https://zakon.rada.gov.ua/laws/show/2407-14?lang=en#Text (in Ukrainian)

87 – https://zakon.rada.gov.ua/laws/show/3390-17?lang=en#Text (in Ukrainian)

Because all these legislative acts have been drafted based on related EU legislation, they generally comply with the EU acquis. Dmytro Lutsenko pointed at the beginning of 2019 that "in some places, Ukrainian lawyers have interfered with the contents during the drafting process, and there are deviations or discrepancies".[88] European experts have preliminarily analysed some horizontal legislation which Ukrainian authorities then amended. Some amendments of a technical nature also needed to be made because of the problems discovered during application.

The basis of the conformity assessment work is the Law of Ukraine on Technical Regulations and Conformity Assessment, adopted in 2019. This Law is based on the WTO TBT Agreement and EU Regulation (EC) No 765/2008 and Decision No 768/2008/EC. The Ukrainian Ministry for Development of the Economy, Trade and Agriculture is responsible for forming and carrying out the national policy on conformity assessment and market surveillance. Ukraine progressed well in harmonising sectoral legislation, particularly in industrial products included in Annex III of the Association Agreement. According to the Ministry of the Economy, Trade and Agriculture, in May 2020, in 16 sectors, Ukrainian technical regulations were conformant with EU acts (including three ACAA priority sectors). In nine sectors, there were technical regulations developed based on EU acts and are subject to revision. Technical regulations were not yet adopted in two sectors – packaging and packaging waste and the interoperability of railway systems.[89]

Ukrainian Ministry of the Economy, Trade and Agriculture, in its May 2020 overview, declares that the "Ukrainian party fulfilled its commitments under the ACAA Accession Roadmap".[90]

Ukraine is also aligning its legislation in other trade-related areas, such as competition, sanitary and phytosanitary (SPS), customs and trade facilitation, protection of intellectual property rights, consumer protection. It positively influenced trade volumes with the EU, which increased from 2016 to 2019 by nearly 50 per cent. Ukraine exports to the EU were 19.1 billion euros in 2019.[91]

EU supported the institutional build-up of the institutions and preparation of the new laws. However, Ukrainian representatives mentioned that, with the start of the Association

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88 – The benefits of the ACAA, Dmytro Lutsenko, in Integration Within Association: Dynamics of the EU–Ukraine Agreement implementation. Policy paper, 2019, p 16 https://www.civic-synergy.org.ua/wp-content/uploads/2018/04/Integration-within-Association-Dynamics-of-the-EU_Ukraine-Agreement-Implementation.pdf

89 – https://www.me.gov.ua/Documents/List?lang=en-GB&id=8da43dca-fe05-4e48-9db2-3ff78b95e047&tag=TechnicalRegulations

90 – https://www.me.gov.ua/Documents/List?lang=en-GB&id=8da43dca-fe05-4e48-9db2-3ff78b95e047&tag=TechnicalRegulations

91 – https://ec.europa.eu/trade/policy/countries-and-regions/countries/ukraine/

Agreement's application, EU technical assistance for developing legislation and preparing quality infrastructure and market surveillance authorities in Ukraine has decreased.[92]

Selection of the ACAA priority areas and adoption of the respective legislation

Ukrainian authorities identified initially four priority sectors of vertical (sectoral) legislation back in the 2005 Action Plan for future ACAA: low voltage electrical equipment, electromagnetic compatibility, machinery, and simple pressure vessels. The simple pressure vessels sector has later fallen out from the original list, and three sectors remained. The priority sectors' selection reflects the industry's interests and the institutions' readiness and norms, including standards. The selected three sectors are also widely present in EU other MRAs, so there is a good perspective for Ukrainian producers to progress after ACAA is in force on some MRA states' markets.

Ukrainian trade with machines, equipment and mechanisms, electric and technical equipment (sector XVI in trade statistics) with the EU is still below the potential, taking into account the long traditions of the Ukrainian industry, its size, and geographical proximity to the EU. According to the Ukrainian data, in 2019, exports of trade statistics sector XVI goods to EU28 countries were 2.83 billion USD, the total Ukrainian exports of these goods were 4.46 billion USD. Imports from the EU were much more significant – 5.44 billion USD; the entire Ukrainian imports were 13.31 billion USD. Tade statistics goods group 84 (nuclear reactors, boilers, machines) exports to the EU28 countries were in 2019 only 0.52 billion USD and imports 3.34 billion USD. Goods group 85 (electric machines) exports to the EU28 countries were in 2019 2.31 billion USD and imports from the Union 2.10 billion USD.[93] The current level of electric machines' exports is a good argument for selecting the related sectors to be priority sectors for the ACAA. According to the Estonian statistics, sector XVI exports to Ukraine were 59.5 million euros in 2020, but it mainly was the transit of goods. Estonian imports from Ukraine of sector XVI goods were only 13.5 million euros in 2020.[94]

The Machinery consists of an assembly of components, at least one of which moves, joined together for a specific application. The drive system of machinery is powered by energy other than human or animal effort.

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92 – The benefits of the ACAA, Dmytro Lutsenko, in Integration Within Association: Dynamics of the EU–Ukraine Agreement implementation. Policy paper, 2019, p 17 https://www.civic-synergy.org.ua/wp-content/uploads/2018/04/Integration-within-Association-Dynamics-of-the-EU_Ukraine-Agreement-Implementation.pdf

93 – https://ukrstat.org/en/druk/publicat/kat_u/2020/zb/06/zb_ES_19_ue.pdf; https://ukrstat.org/en/druk/publicat/kat_u/2020/zb/11/zb_yearbook_2019_e.pdf

94 – https://andmed.stat.ee/en/stat/majandus__valiskaubandus__valiskaubandus-alates-2004/VK2/table/tableViewLayout1

The main act governing the harmonisation of essential health and safety requirements for machinery at the EU level is the Machinery Directive 2006/42/EC. It promotes harmonisation through a combination of mandatory health and safety requirements and voluntary harmonised standards.

The machinery directive 2006/42/EC was published in 2006 and became applicable on 29 December 2009. It was amended in 2009 and 2013.[95]

Ukrainian Government approved Technical Regulation on Safety of Machinery by Resolution 62 in 2013, which conforms with EU Directive 2006/42/EC on machinery.

The EU **Low Voltage** Directive (LVD) (2014/35/EU) has been applicable since 20 April 2016.[96] The LVD covers health and safety risks on electrical equipment operating with input or output voltage of between 50 and 1,000 V for alternating current, 75 and 1,500 V for direct current. It applies to a wide range of electrical equipment for both consumer and professional usage, such as household appliances, cables, power supply units, laser equipment, specific components, e.g. fuses.

Another EU act, the general product safety directive (2001/95/EC), covers consumer goods with a voltage below 50 V for alternating current or below 75 V for direct current, which remained outside the LVD. This part of the goods is currently not among the priority areas for ACAA.

The Ukrainian Cabinet of Ministers approved in 2015 with the Resolution 1067 new Ukrainian Technical Regulation on Low-Voltage Electrical Equipment, which conforms with the new 2014 EU LVD Directive.

Electromagnetic compatibility needs at first some explanation. All electric devices or installations influence each other when interconnected or close to each other, e.g. interference between TV sets, mobile phones, radios and nearby washing machine or electrical power lines. The purpose of electromagnetic compatibility (EMC) measures is to keep all those side effects under reasonable control, reducing disturbance and enhancing immunity.

The EU electromagnetic compatibility Directive 2014/30/EU limits electromagnetic emissions from equipment to ensure that, when used as intended, such equipment does not disturb radio and telecommunication, as well as other equipment. The directive also governs such equipment's immunity to interference.[97]

In 2015, the Ukrainian Government approved the Technical Regulation on Electromagnetic

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95 – The consolidated text of the directive https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02006L0042-20160420

96 – https://ec.europa.eu/growth/sectors/electrical-engineering/lvd-directive_en

97 – https://ec.europa.eu/growth/sectors/electrical-engineering/emc-directive_en

Compatibility of Equipment based on new EU directives from 2014.[98]

In 2018 Ukraine amended these three priority sectoral technical regulations according to the recommendations from European experts.

Victoria Kulikova (manager, Committee of Household Electrical Engineering, European Business Association) mentioned at the ECEAP arranged panel in November 2019: "So far, there are three areas: low-voltage equipment, machinery and electromagnetic compatibility. But for the goods to which these technical regulations apply, there are also other regulations – on restrictions of use of hazardous substances, ecodesign, etc. They are not yet included in the list of priority areas. The difficulty is that EU legislation is also constantly changing. And to meet all the criteria for signing the agreement, Ukraine has to be very fast and qualitatively adapt to all these changes."[99]

C. Development of conformity assessment and metrology institutions

The National Accreditation Agency of Ukraina (NAAU) is responsible for accrediting conformity assessment bodies- test laboratories, product, management system and personnel certification bodies; inspection bodies. NAAU monitors the activities of the accredited conformity assessment bodies. It does not work with particular conformity assessment cases.

The NAAU conducts its work according to the Law of Ukraine "On Accreditation of Conformity Assessment Bodies", which conforms to international and European accreditation standards requirements. It follows relevant recommendations of the International Accreditation Forum (IAF) and the International Laboratory Accreditation Cooperation (ILAC). The National Accreditation Agency of Ukraine is an Associate Member and signatory of the Bilateral Agreement with the European Cooperation for Accreditation.[100]

There were 286 accredited conformity assessment bodies in Ukraine in May 2020 responsible for designated areas. There were also 760 accredited test laboratories to perform product tests for conformity assessment purposes.

In May 2020, there were 16 public bodies responsible for technical regulation of designed areas of activity. Ministry for Development of Economy, Trade and Agriculture of Ukraine

98 – https://www.me.gov.ua/Documents/List?lang=en-GB&id=8da43dca-fe05-4e48-9db2-3ff78b95e047&tag=TechnicalRegulations

99 – https://medium.com/@reforms/made-in-ukraine-na-svitovyh-rynkah-koly-ukraina-otrymaet-promyslovyi-bezviz-a4a2764b7f1a 3/11

100 – https://naau.org.ua/?lang=en

and these public bodies instruct and coordinate designated conformity assessment bodies accountable for assessing product conformity with technical regulations. There were 104 such bodies in Ukraine in May 2020.[101] They work in their respective product areas with the abovementioned accredited conformity assessment bodies and accredited test laboratories, who perform the practical work.

There were 13 private and 18 public designated bodies for the Technical Regulation on Electromagnetic Compatibility of Equipment in May 2020, and they cooperate in a Sectoral Group. In the Technical Regulation on Safety of Machinery area, there were in May 2020 four private and seven public designated bodies, which also cooperate in a Sectoral group of designated bodies for the Technical Regulation on Safety of Machinery.[102]

The basis for the work in the area of Metrology is the Law of Ukraine on Scientific and Applied Metrology (2016) which is according to OIML Document D1 "Considerations for a Law on Ministry for Metrology". Ministry of the Economy, Trade and Agriculture is also responsible for forming and carrying out the national policy on metrology. State Service of Ukraine for Food Safety and Consumer Protection is responsible for the national policy on metrological oversight. The Service works with the metrology departments of government agencies, other public bodies, enterprises and organisations. There are four Metrological research centres in the Ministry area and 24 state enterprises subordinated to the ministry. Ukrainian metrological research centres work with 12 conformity assessment bodies for measuring instruments and 59 calibration laboratories.[103]

D. The Industrial Dialogue

In 2016, Ukraine and the European Union agreed to launch the High-Level Dialogue Ukraine–EU on Horizontal Issues and Specific Industrial Sectors (the Industrial Dialogue). In many aspects, this dialogue also works for ACAA preparations. The parties consider the Industrial Dialogue as an instrument for enhanced cooperation, which, along with traditional mechanisms, also has strong business participation. The industrial Dialogue facilitates direct contacts between Ukraine and the EU's business associations and helps industrialists interact more easily with colleagues.

The Industrial Dialogue activities focus on horizontal issues (technical barriers to trade, public

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101 – https://www.me.gov.ua/Documents/List?lang=en-GB&id=8da43dca-fe05-4e48-9db2-3ff78b95e047&tag=TechnicalRegu lations

102 – https://www.me.gov.ua/Documents/List?lang=en-GB&id=8da43dca-fe05-4e48-9db2-3ff78b95e047&tag=TechnicalRegu lations

103 – https://www.me.gov.ua/Documents/List?lang=en-GB&id=8da43dca-fe05-4e48-9db2-3ff78b95e047&tag=TechnicalRegu lations

procurement, SMEs) and the industry cluster on a sectoral basis (automotive, textile industry, space industry, civil aviation, mining, energy engineering).

Industrial Dialogue became a platform for exchanging information and practical experience to modernise and restructure the Ukrainian industry and improve enterprises' framework conditions, including for SMEs.

The Industrial Dialogue's current priorities are technical regulation as preconditions for concluding the Agreement on Conformity Assessment and Acceptance of Industrial Goods (ACAA), public procurement, SMEs, raw materials (mining industry), civil aviation. In general, around 20 meetings of Working Groups in nine sectors had approximately 20 sessions.[104]

On 13 March 2019, the 3rd plenary session of the EU–Ukraine industrial and regulatory dialogue took place in Brussels.[105] The next meeting will be on 16–17 March 2021.[106]

E. Standardisation

The basis of the work in **standardisation** is the Law of Ukraine on Standardisation adopted in 2015. It conforms with the international rules and procedures and Regulation (EU) No 1025/2012 of the European Parliament and the Council.

The Ukrainian national standardisation system is in the area of responsibility of the Ministry for Development of the Economy, Trade and Agriculture; it is responsible for forming and carrying out the national policy on standardisation. Under the new law in 2015, standardisation moved from the public body to the state-owned enterprise Ukrainian Scientific Research and Training Centre for Standardisation, Certification and Quality (UkrNDNC).

UkrNDNC is responsible for the organisation and coordination of standardisation activities, including setting up technical committees for the standardisation, adopting and abolishing standards, and representing Ukraine in international bodies. Ministry, other government agencies, enterprises, institutions, and organisations order the development of standards from UkrNDNC. There are also regional research and production centres for standardisation, metrology and certification. In May 2020, there were 167 Technical standardisation committees which the UkrNDNC coordinates.[107] They prepare standards that UkrNDNC orders.

104 – https://www.me.gov.ua/Documents/Detail?lang=en-GB&isSpecial=True&id=872edb57-acd6-44e4-b35e-96163b8b0cc8&title=UkraineEuHighLevelIndustrialDialogue

105 – https://ec.europa.eu/growth/content/eu-ukraine-3rd-high-level-industrial-and-regulatory-dialogue_en

106 – https://www.ukrinform.ua/rubric-economy/3192982-promislovij-dialog-ukrainaes-vidbudetsa-u-berezni-taras-kacka.html

107 – https://www.me.gov.ua/Documents/List?lang=en-GB&id=8da43dca-fe05-4e48-9db2-3ff78b95e047&tag=TechnicalRegulations

After the 2014 Revolution, Ukraine intensified alignment with international and European standards. In 2014–16, it adopted all together 6,112 new standards.[108]

In 2017, Ukraine adopted 1,439 new standards, from which 94% were harmonised with European and international standards. At the end of 2017, there were 20,227 national standards in force, including 12,067 aligned with the global and European standards. The total number of Ukrainian standards declined during 2014–17 by about one third from 29,600 documents in 2014. The share of national standards harmonised with international ones reached 60%, it was just 30% in 2013. The changes in data were mostly due to the abolition of obsolete GOST standards from before 1992.[109]

Commenting on the situation at the end of 2017, the Association Agreement implementation report 2017 stated that the implementation of newly-adopted standards "remains a challenge".[110] After adopting so many new standards, it is clear that their actual application takes some time.

2019 was a very successful year for Ukrainian standardisation – the number of adopted new standards reached 3,363.[111]

According to the Ministry for Development of the Economy, Trade and Agriculture presentation from May 2020, the total number of Ukraine's standards in early 2020 was 26,227. It included 8,137 international standards adopted as national, 9,111 European standards adopted as national and 8,979 national standards. The rate of harmonisation of the Ukrainian standards with International and European Standards has risen to 65.8%.[112]

The Ministry for Development of the Economy, Trade and Agriculture presentation from May 2020 says, "all lists of national standards identical to harmonised European standards were approved for the purposes of the application of technical regulations necessary to accede

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108 – Deepening EU–Ukrainian Relations What, why and how? 2nd edition Edited by Michael Emerson and Veronika Movchan Centre for European Policy Studies (CEPS), Brussels Institute for Economic Research and Policy Consulting (IER), Kyiv Rowman & Littlefield International, London, 2018, p76 https://www.ceps.eu/ceps-publications/deepening-eu-ukrainian-relations-what-why-and-how-second-edition/

109 – Deepening EU–Ukrainian Relations What, why and how? 2nd edition Edited by Michael Emerson and Veronika Movchan Centre for European Policy Studies (CEPS), Brussels Institute for Economic Research and Policy Consulting (IER), Kyiv Rowman & Littlefield International, London, 2018, p76 https://www.ceps.eu/ceps-publications/deepening-eu-ukrainian-relations-what-why-and-how-second-edition/

110 – https://eeas.europa.eu/sites/eeas/files/association_implementation_report_on_ukraine.pdf

111 – https://www.me.gov.ua/Documents/List?lang=en-GB&id=8da43dca-fe05-4e48-9db2-3ff78b95e047&tag=TechnicalRegulations

112 – https://www.me.gov.ua/Documents/List?lang=en-GB&id=8da43dca-fe05-4e48-9db2-3ff78b95e047&tag=TechnicalRegulations

to ACAA for three priority sectors."[113] In the machinery sector (EU Directive 2006/42/EC), 778 Ukrainian standards were adopted. 136 Ukrainian standards were approved in the sector of electromagnetic compatibility of equipment. Ukraine adopted in the sector of low voltage electrical equipment, 598 standards.[114]

An essential part of the standardisation progress is the **cancellation of old Soviet-era standards (GOSTs) and old Ukrainian standards**, which are not in conformity with the European and International ones. In 2015, the Ministry of Economic Development and Trade annulled over 12 thousand GOSTs; it was a significant acceleration compared to 122 standards withdrawn in 2014 and 3,800 in 2006–13.[115]

Eurointegration website writes without specifying a time that "all (14,475) out-dated interstate standards (GOST) developed before 1992 were cancelled".[116] The remark concerns the principal decision.

On 22 January 2019, then Ministry of Economic Development and Trade issued a press statement that since 1 January 2019, the overwhelming majority of technical standards of the Soviet Union "GOST" developed before 1992 became null and void in Ukraine. The Ministry confirmed: "The necessity of repealing the Soviet GOSTs in the territory of Ukraine was determined by the Action Plan of the Cabinet of Ministers of Ukraine. According to the Action Plan, in 2015 UkrSRTC issued respective orders to repeal GOSTs which shall become null and void during 2016–2018 and be fully withdrawn starting from January 1, 2019. 12,090 Soviet GOSTs had to be repealed."[117]

Many Ukrainian enterprises still use some Soviet-era technology, and they have industrial cooperation with Russian and Belarus companies. It means that the process of change of the standards set up is a complicated process for Ukraine. The issue is not widely reflected in the media as the enterprises are not eager to publish information about their difficulties. There is also a powerful political context in relations with Russia. Ukrainian authorities and firms have to find compromises and practical solutions to preserve jobs and, at the same time,

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113 – https://www.me.gov.ua/Documents/List?lang=en-GB&id=8da43dca-fe05-4e48-9db2-3ff78b95e047&tag=TechnicalRegulations

114 – https://www.me.gov.ua/Documents/List?lang=en-GB&id=8da43dca-fe05-4e48-9db2-3ff78b95e047&tag=TechnicalRegulations

115 – Deepening EU–Ukrainian Relations: What, why and how? 2nd edition Edited by Michael Emerson and Veronika Movchan Centre for European Policy Studies (CEPS), Brussels Institute for Economic Research and Policy Consulting (IER), Kyiv Rowman & Littlefield International, London, 2018, p76 https://www.ceps.eu/ceps-publications/deepening-eu-ukrainian-relations-what-why-and-how-second-edition/

116 – https://eu-ua.org/en/technical-barriers-trade

117 – https://www.me.gov.ua/News/Detail?lang=en-GB&id=add7e769-93af-4611-b3f9-d64e647e0784&title=SinceJanuary1-2019-MoreThan90-OfSovietGostsBecameNullAndVoidInUkraine

to move on towards European standards. Ministry statement informs: "At the same time, to reduce risks to the business, the Ministry of Economic Development and Trade of Ukraine invited all stakeholders to submit their proposals as to repealing of GOSTs that have lost their relevance. In addition, the National Standardization Authority has continuously provided clarification and advice on the issues arising from repealing of GOSTs. During 2016–2018, the National Standardization Authority received proposals as to the extension of some GOSTs. As a result of consultations, the National Standardization Authority has issued a number of orders according to which 1,173 Soviet GOSTs remain in force as of 1 January 2019."[118]

The delay is three years. Ministry informs: "Such GOSTs will be valid until 1 January 2022. In particular, these are standards to replace which the relevant draft national standards are currently being or are expected to be developed; standards referred to in the regulatory acts; standards of the Unified System of Design Documentation; standards developed on the basis of international standards which are relevant at present.[119]" The list of Soviet standards currently in force is at the official website of UkrNDNC.[120] The absolute majority of listed GOSTs relate to agricultural products, food and metal products, so they are not associated with the Annex III sectors, including the three ACAA areas. In 2019, 4,003 Soviet-era GOSTs were abolished, according to the UkrNDNC annual report. The plan for 2020 was to cancel 166 until 1992 GOSTs, 2021 – 108, and 2022 –784.[121] UkrNDNC 2020 annual report is not yet published.

The authorities' decisions do not close the door before the possible extension of some GOSTs even further, after 1 January 2022. Ministry press statement text urges enterprises to found alternatives and order new standards, but it does not say that the extension is not possible. The statement says: "In view of a possible extension of the Soviet GOSTs after 2022, the Ministry of Economic Development and Trade of Ukraine and the National Standardization Authority strongly advise all stakeholders using GOSTs in their work to adhere to the guidelines posted at the websites … and find an alternative to the use of the Soviet Union standards, which in fact are regulatory acts of already non-existing state, and contradict the innovations introduced in the area of technical regulation of Ukraine and Ukraine's commitments as to reforming the area of technical standardization provided by the WTO Agreement and the Association Agreement with the EU. At the same time, if it is necessary to develop the national

118 – https://www.me.gov.ua/News/Detail?lang=en-GB&id=add7e769-93af-4611-b3f9-d64e647e0784&title=SinceJanuary1-2019-MoreThan90-OfSovietGostsBecameNullAndVoidInUkraine

119 – https://www.me.gov.ua/News/Detail?lang=en-GB&id=add7e769-93af-4611-b3f9-d64e647e0784&title=SinceJanuary1-2019-MoreThan90-OfSovietGostsBecameNullAndVoidInUkraine

120 – https://bit.ly/2RFyiMI (in Ukrainian)

121 – http://uas.org.ua/wp-content/uploads/2020/03/Zvit-pro-robotu-natsionalnogo-organu-standartizatsiyi-Ukrayini-za-2019-rik.pdf (in Ukrainian)

standard to replace relevant Soviet GOST, any stakeholder (public authorities, associations of manufacturers, enterprises, public organizations, etc.) may act as the customer of the development of such standard in accordance with the Law of Ukraine On Standardization."[122]

A remarkable role in the further development of the Ukrainian Standardisation has played EU Twinning Project "Strengthening the capacity of the Ukrainian National Standardisation Body". EU partners are from Germany (lead), Austria, Romania and Spain. Component 1 of the Project Legislative harmonisation with EU acquis directly points towards ACAA: "The activities in component 1 – The Identification of legal obstacles to modern standardisation activities and development of proposals for intervention; verification on the alignment of EU – Ukraine legislation for the purpose of signing an ACAA."[123] The project also supports 1. clarification of the scope of National Standardisation Body´s activities; 2. alignment of its structure and internal working procedures with the National Standardisation Bodies of EU Member States; 3. improving Technical committees working modalities; 4. rationalization of standardization processes to make them simpler, automated and harmonized with EU practices; 5. setting-up of the automatic standards translation system; 5. development of an outreach strategy towards businesses and other stakeholders and media.[124] The Twinning project's official opening was in Kyiv in February 2019, and it lasts two years.[125]

F. Accession to the International Organisations

There is an extensive network of international and European Union related organisations in trade, standardisation and metrology, which Ukraine has already joined or cooperates. Most universal international organisations include the World Trade Organization (WTO), International Organization for Standardization (ISO), International Electrotechnical Commission, and Bureau International des Poids et Mesures (BIPM).

Ukraine has been a member of the **WTO** since 16 May 2008. Its Technical Barriers to Trade (TBT) Agreement aims to ensure that technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary trade obstacles.[126]

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122 – https://www.me.gov.ua/News/Detail?lang=en-GB&id=add7e769-93af-4611-b3f9-d64e647e0784&title=SinceJanuary1-2019-MoreThan90-OfSovietGostsBecameNullAndVoidInUkraine

123 – http://uas-twinn-standard.eu/wp-content/uploads/2019/02/Broshure_all_edits-1.pdf

124 – https://www.bmwi.de/Redaktion/DE/Downloads/S-T/twinning-ukraine-projektsteckbrief-ua-17.pdf?__blob=publicationFile&v=4

125 – https://kndise.gov.ua/en/news/news-view/c-oficijne-vidkritta-proektu-twinning-posilenna-institucijnoi-spromoznosti-nacionalnogo-organu-standartizacii

126 – https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm

TBT Committee work involves two broad areas:

1. It discusses specific trade concerns (STCs) – particular trade relates laws, regulations or procedures of the member states. Usually, the Committee does it in response to notifications (complaints). Member states raise STCs to find out more about the scope and implementation of each other's regulations regarding the core TBT obligations. There were only 2 STCs concerning Ukraine – the US raised the issue of Amendment to Law on Advertising in 2013 and EU the issue of Draft Technical Regulation on the labelling of foodstuff in 2011;

2. Members exchange experiences on implementing the TBT Agreement to make it more effective, including transparency, standards, conformity assessment and good regulatory practice.[127]

Ukraine is an active participant in the **International Organization for Standardization** (ISO) and **International Electrotechnical Commission** (IEC). Ukraine´s official representative in ISO is State Enterprise Ukrainian Scientific Research and Training Center for Standardization, Certification and Quality Problems (UkrNDNC). 79 Ukrainian national technical committees work at 384 technical departments of ISO; it is around 45% of the total number of national Technical Committees. Ukraine is a member of the IEC since 1993; its representative there is also UkrNDNC. Ukrainian involvement on the level of national technical Committees is much lower in IEC – only 29 Committees work at 117 technical departments of IEC.[128] Ukraine is also a member of the International Telecommunication Union.

The **European Committee for Standardization** (CEN) is an association that brings together the National Standardization Bodies of 34 European countries. CEN is one of three European Standardization Organizations (together with **CENELEC** and **ETSI**) that has been officially recognized by the European Union and by the European Free Trade Association (EFTA) as responsible for developing and defining voluntary standards at the European level.

In the summer of 2017, Ukraine received the partner organisation's status in the CEN and CENELEC European Standardisation Committees. As an observer state in CEN and CENELEC, around 20 Ukrainian Technical committees aim to work as observers in their subdivisions. In January 2018, Ukraine signed a memorandum of understanding between the National Standardisation Authority and the European Telecommunications Standards Institute (ETSI).[129]In 2018, the Verkhovna Rada passed the law on Ukraine's accession to the Metre Convention. Ukraine became a full Member State of the **International Bureau of Weights**

127 – https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm

128 – https://www.me.gov.ua/Documents/List?lang=en-GB&id=8da43dca-fe05-4e48-9db2-3ff78b95e047&tag=TechnicalRegulations

129 – https://www.me.gov.ua/Documents/List?lang=en-GB&id=8da43dca-fe05-4e48-9db2-3ff78b95e047&tag=TechnicalRegulations

and Measures (BIPM), having been an Associate State of the General Conference on Weights and Measures since 2002. This opened the way for full membership in the **International Organisation of Legal Metrology** (OIML), where Ukraine is currently (beginning of 2021) still a corresponding member. These developments provide new opportunities for Ukraine to compare measurement standards and strengthen its national quality infrastructure, the foundation of which is metrology.[130]

Euramet is the Regional Metrology Organization (RMO) of Europe coordinating National Metrology Institutes' cooperation, The International Organization of Legal Metrology (OIML) and others. Its members are representative national authorities from the European Union Member States, European Free Trade Association (EFTA) Member States and several Western-Balkan countries, Turkey and Moldova.[131] There is also **European Cooperation in Legal Metrology** (WELMEC).[132] Ukraine is not its member; from Eastern Partnership countries, there is only Moldova.

Mutual recognition agreements work between the National Accreditation Agency of Ukraine (NAAU) and the **International Laboratory Accreditation Association** (ILAC), and **the International Accreditation Forum** (IAF).[133]

Formally Ukraine has joined now most of the international and many European organisations. It still has many opportunities to broaden the scale of its practical participation in different organisations' activities.

Accumulating progress until the end of 2019

ACAA issues were on the negotiations table between Ukraine and the EU from 2016 as one of the issues of implementing the Association Agreement. There were initial hopes in Kyiv that signing ACAA for the first three sectors will take place in 2017–2018, but it did not happen.[134]

Besides the evident progress in legislation and reforming the institutions, the EU wanted to see the renewed institutions and new legislation in action. As it was a large-scale radical change, it was clear that transition needs some time. War in the Eastern part of Ukraine and general political instability also have made reforms more difficult. Market surveillance system

130 – https://www.me.gov.ua/Documents/Detail?lang=en-GB&id=4d124447-546e-4fe8-bc1b-e1da490da1ee&title=TechnicalRegulationSystemOfUkraine-standardization-ConformityAssessmentAndAccreditation-MetrologyAndMetrologicalActivity-

131 – https://www.euramet.org/

132 – https://www.welmec.org/

133 – https://eu-ua.org/en/technical-barriers-trade

134 – https://medium.com/@reforms/made-in-ukraine-na-svitovyh-rynkah-koly-ukraina-otrymaet-promyslovyi-bezviz-a4a2764b7f1a 3/11

did not function properly as the inspections of the enterprises were stopped for some years. The business community paid attention to the issues of corruption in the Ukrainian public administration. In some areas, business groups with connections with the Russian industry's production chains tried to influence the decisions.

EU published different reports about the implementation of the Association Agreement and DCFTA. Some did not mention the ACAA; others listed it as an issue for the "future".

The first report on the EU–Ukraine Association Agreement's (AA) implementation (2016) made no mention of the ACAA.[135]

The first report on the implementation of the DCFTA for 2016 was published in autumn 2017. The document presented ACAA as a long-term objective ("future"): "Ukraine shall take the necessary measures in order to gradually achieve conformity with EU technical regulations and standardisation, metrology, accreditation, conformity assessment procedures and the market surveillance system. To this end it has started to incorporate the relevant EU acquis into its legislation and to make the administrative – and institutional reforms that are necessary to implement the AA and – in the future – an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA)."[136] Partners established the new Regulatory Dialogue on technical trade barriers as the appropriate forum for carrying out a detailed assessment: "Having in mind that due to the relevant reforms, the ACAA is a long-term objective, both Parties have launched in July 2016 the TBT Regulatory Dialogue (as provided by Article 55 of AA) as the appropriate technical cooperation forum for carrying out the detailed assessment of the Ukrainian system in order to verify its compliance (in terms of legislation, its enforcement, and institutional capacity) with the EU rules and standards. Only positive results of that assessment will allow for a start of negotiations on ACAA."[137] The report also notes: "As concerns approximation process leading to ACAA Ukraine has decided to focus on 3 priority sectors, i.e. machinery, low-voltage equipment, and electromagnetic compatibility."[138]

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135 –Association Implementation Report on Ukraine, SWD (2016) 446 final, Brussels, 9 December 2016
https://data.consilium.europa.eu/doc/document/ST-15578-2016-INIT/en/pdf

136 – Annual report on the implementation of the Deep and Comprehensive Free Trade Area (DCFTA) between the EU and Ukraine, 1 January 2016 – 31 December, 2016, SWD (2017) 364 final, Brussels, 9 November 2017
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017SC0364&from=MT

137 – Annual report on the implementation of the Deep and Comprehensive Free Trade Area (DCFTA) between the EU and Ukraine, 1 January 2016 – 31 December, 2016, SWD (2017) 364 final, Brussels, 9 November 2017
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017SC0364&from=MT

138 – Annual report on the implementation of the Deep and Comprehensive Free Trade Area (DCFTA) between the EU and Ukraine, 1 January 2016 – 31 December, 2016, SWD (2017) 364 final, Brussels, 9 November 2017
https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017SC0364&from=MT

In the second report on the implementation of the Association Agreement (2017)[139], the ACAA has been mentioned again as an issue of the future: "The implementation of the Strategy for the Development of the Technical Regulation System until 2020 and its related Action Plan (adopted in 2016) has started with the view to implement the AA and – in the future – an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA). The legal framework for a modern National Quality Infrastructure, in place since the end of 2016, requires efficient implementation. Both the National Standardisation Body and the National Accreditation Agency of Ukraine are operational. The law on Technical Regulations and Conformity Assessment, which entered into force in 2016, has not yet been amended in terms of criteria for the designation of conformity assessment bodies. The adoption of a Law on Market Surveillance is pending."[140]

In a third report on the Association Agreement's implementation (2018), the ACAA was mentioned again as an issue of the future. The report states: "In terms of technical barriers to trade, the implementation of the Strategy for the Development of the Technical Regulation System until 2020, and its related Action Plan, has started with the view to implement the AA and – in the future – an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA). The adoption of amendments to the Law on Market Surveillance is pending. Ukraine is very active within international standardisation bodies, whereas they have been less active within European Standardisation organisations. The implementation of newly-adopted standards remains a challenge."[141]

The same year (2018) EU–Ukraine Association Committee in Trade Configuration meetings Joint Report stressed: "Ukraine gave an overview of their efforts in approximating to EU standards and legislation with a view to starting negotiations on an Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA). While there is progress, EU signalled that further steps are needed on market surveillance and other horizontal and sectoral technical regulations where legislation still has to be adopted by the Ukrainian Parliament."[142]

In a fourth report on the Association Agreement´s implementation in 2019, the conclusion of the ACAA has mentioned again with a general remark "future": "Ukraine made some progress in removing technical barriers to trade in 2019. Ukraine shared new draft sectoral regulations on the safety of machines and electromagnetic compatibility with the European

139 – https://eeas.europa.eu/sites/eeas/files/association_implementation_report_on_ukraine.pdf

140 – https://eeas.europa.eu/sites/eeas/files/association_implementation_report_on_ukraine.pdf

141 – https://eeas.europa.eu/sites/eeas/files/2018_association_implementation_report_on_ukraine.pdf

142 – Third EU–Ukraine Association Committee in Trade Configuration meeting, 22–23 November, 2018 Kyiv, Ukraine

Joint Report https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158235.pdf

Commission. A twinning project with the National Standardisation Body has started to strengthen administrative capacity in this area. In June, the Parliament adopted a number of amendments to the Law on Technical Regulations and Conformity Assessment, including on accreditation of conformity assessment bodies and on metrology. The Parliament has registered a draft law on Market Surveillance and Consumer Protection, which is another outstanding requirement. These laws will help eliminate overlapping regulatory regimes, a necessary step for further alignment with EU legislation, in view of a possible future launch of negotiations on an Agreement on Conformity Assessment and Acceptance for industrial products (ACAA)."[143]

During 2019 Ukraine made significant progress towards the ACAA requirements. It adopted three legislative acts covering technical regulation, standardisation and measures to reduce pressure on businesses from market supervision authorities.[144]

The Cabinet of Ministers of Ukraine approved the Procedure of providing payment-free consulting support by government market supervision authorities to business entities concerning government market supervision. Three technical regulations were adopted in three ACAA priority sectors (low-voltage electrical equipment, electromagnetic compatibility of equipment, machinery). Authorities adopted lists of national standards identical to harmonized European standards for the ACAA application – 1017 national standards on low-voltage electrical equipment; 201 national standards on electromagnetic compatibility of equipment; 913 national standards on machinery. The designated conformity assessment infrastructure of 42 bodies was formed in the three priority sectors. The Ministry for Development of Economy, Trade and Agriculture of Ukraine compared the number of bodies with some EU Member States – in Germany, there are 23 bodies in machinery and 12 in EMC, in Poland respectively 16 and 14.[145]

Based on this progress, Ukraine informed the European Commission in 2019 about the readiness to receive a preliminary assessment mission for quality infrastructure institutions. Proposals looked for the expert mission as part of TAIEX external assistance regarding the preliminary assessment of Ukrainian quality infrastructure.

Olga Stefanishina declared during an ECEAP organised event in November 2019: "In fact, during the last two years, we have passed all the legislation that is binding our manufacturers to produce products based on European standards. The EU must send an assessment mission

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143 – https://eeas.europa.eu/sites/eeas/files/swd_2019_433_f1_joint_staff_working_paper_en_v4_p1_1056243.pdf

144 – https://www.me.gov.ua/Documents/Detail?lang=en-GB&id=ab43d8de-5443-43ac-a1ac-87e0cb2ccf4a&title=ReferenceConcerningTheAgreementOnConformityAssessmentAndAcceptanceOfIndustrialProducts-asaa-industrialVisafreeRegime

145 – https://www.me.gov.ua/Documents/Detail?lang=en-GB&id=ab43d8de-5443-43ac-a1ac-87e0cb2ccf4a&title=ReferenceConcerningTheAgreementOnConformityAssessmentAndAcceptanceOfIndustrialProducts-asaa-industrialVisafreeRegime-

to Ukraine to evaluate how are doing legislation and institutions, particularly the Ministry of Economic Development, in part of the market surveillance, the State Food and Consumer Service and other institutions with control functions. After receiving these recommendations, we will be able to move on, ensuring that we fulfil our obligations in the letter of the Agreement and its spirit. … True, when our 'homework' is done, we began to hear many interesting positions from the EU, in particular about that we misread the agreement."[146] The last sentence seems to express some degree of caution.

EU leaders and the new President of Ukraine, Volodymyr Zelensky, mentioned ACAA in the joint statement following the EU–Ukraine Summit 8 July 2019 in Kyiv. The Document states: "The EU welcomed and acknowledged the progress made by Ukraine to approximate its legislation in the area of technical regulations, standards, and conformity assessment as envisaged by the AA/DCFTA. Before the EU and Ukraine can start the negotiations on an Agreement on Conformity Assessment and Acceptance of Industrial Products, the EU recalls that the required legislation should be adopted, entered into force and effectively implemented by the relevant Ukrainian institutions."[147] The statement does not specify in detail the "required legislation", but it was clear progress from previous documents.

Joint Report of Ukraine – EU Association Committee in Trade Configuration in November 2019 finally reflected the needed progress in more detail: "Concerning technical barriers to trade, Ukraine provided an overview of progress and state of play on legislative and institutional reforms and on the prerequisites needed for an ACAA (Agreement on Conformity Assessment and Acceptance of Industrial Products). The Ukrainian side will ensure the implementation of the provisions of the horizontal and sectoral legislation, approximated to the European one. After the adoption of the amendments to market surveillance law, in line with EU acquis, the European side will carry out a preliminary assessment of the readiness of the Ukrainian quality infrastructure institutions to work according to the norms."[148] So, it was only one law to be adopted and the reforms' general implementation, the tasks were clear. The word "future" finally disappeared from the documents.

New phase from 2020, hopes are high

28 January 2020, the 6th meeting of the Association Council discussed the ACAA issue on the high level and confirmed the Association Committee in Trade Configuration position.

146 – https://medium.com/@reforms/made-in-ukraine-na-svitovyh-rynkah-koly-ukraina-otrymaet-promyslovyi-bezviz-a4a2764b7f1a 3/11

147 – https://www.consilium.europa.eu/en/press/press-releases/2019/07/08/advancing-mutual-commitment-joint-statement-following-the-21st-eu-ukraine-summit/

148 – https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158572.pdf

In Joint Press Statement, the sides note: "The Association Council welcomed the progress made by Ukraine to approximate its legislation in the area of technical regulations, standards, and conformity assessment as envisaged by the AA/DCFTA. Before the negotiations on an Agreement on Conformity Assessment and Acceptance of Industrial Products can start, the required legislation should be adopted, entered into force and effectively implemented by the relevant Ukrainian institutions. The Parties reaffirmed their commitment to conduct and facilitate a pre-assessment mission to assess the state of the Ukrainian quality infrastructure and adaptation of national legislation to the EU standards."[149]

Ukraine´s then Prime Minister Honcharuk mentioned after the Council meeting that ACAA is among top priorities. The Prime Minister said that the last task to start negotiations, the law to reduce pressure on business on the part of the market surveillance authorities, was adopted in December 2019 and was waiting to enter into force at the end of March. "We now expect the EU preliminary assessment mission to visit Ukraine and check the readiness of Ukraine's infrastructure and legislation before the talks start," the Prime Minister stressed.[150] EU Ambassador to Ukraine Matti Maasikas stated in January 2020 during the discussion "Agenda of European integration: Ukraine's ambitions for 2020": "As for the ACAA agreement, we need diplomacy with very great skills to convince that you need it and you are ready for it."[151]

After the Council meeting, the process of preparations of the ACAA gained speed. The Ukrainian side provided proposals to the EU concerning the main components of the terms of reference for the Expert Mission on 14 February. On 24 February 2020, Ukraine sent the European Commission a formal application for the Expert Mission as part of TAIEX external assistance regarding Ukraine´s quality infrastructure's preliminary assessment.[152] According to the media, an EU mission was supposed to arrive in Kyiv in the first quarter of 2020.[153]

Because of the COVID-19 crisis, it was impossible to start the Mission according to the initial timetable. Ukraine's Minister of Foreign Affairs Dmytro Kuleba and EU Commissioner for Neighborhood and Enlargement Oliver Varhelyi, during a video call on 14 May 2020, agreed to

149 – https://www.consilium.europa.eu/en/press/press-releases/2020/01/28/joint-press-statement-following-the-6th-association-council-meeting-between-the-eu-and-ukraine/#:~:text=21%3A25-,Joint%20press%20statement%20following%20the%206th%20Association,between%20the%20EU%20and%20Ukraine&text=The%20Association%20Council%20welcomed%20the,of%20law%20and%20structural%20reforms.

150 – https://www.ukrinform.net/rubric-economy/2865106-pm-honcharuk-ukraine-ready-to-sign-acaa-agreement-with-eu.html

151 – https://www.eurointegration.com.ua/news/2020/01/21/7105406/

152 – https://www.me.gov.ua/Documents/List?lang=en-GB&id=8da43dca-fe05-4e48-9db2-3ff78b95e047&tag=TechnicalRegulations

153 – https://www.obserwatorfinansowy.pl/in-english/the-asymmetrical-association-between-ukraine-and-the-eu/

speed up work on an "industrial visa-free regime". They give an additional impetus to updating the DCFTA even though the Covid-19 crisis caused a slowdown of the negotiations.[154]

The EU assessment mission on concluding the ACAA Agreement finally started 29 October 2020 with an online meeting of the Deputy Minister of Economic Development, Trade and Agriculture – Trade representative of Ukraine Taras Kachka with the representatives of the Delegation of the European Union to Ukraine, the Directorate General of the European Commission for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW). Press Service of the Ukrainian Ministry of Economy informed: "The parties noted the progress in the dialogue between Ukraine and the EU on preparations for the conclusion of the ACAA Agreement and agreed to intensify joint work during the preliminary assessment mission by EU experts on technical regulation, conformity assessment, accreditation, standardization and metrology of Ukraine. The parties reaffirmed their desire to speed up concluding the ACAA Agreement in the framework of fulfilling the obligations of the Association Agreement.[155]

Deputy Minister Taras Kachka, in his blog, described the work: "So in October, it was an honour for me to meet with experts from the EU who started their thorough work. On December 17, the 13th round of negotiations was held. The parties detailed the technical regulations on measuring instruments (MID) and technical regulations on non-automatic weighing (NAWI). By the end of the year, the mission will hold two more video conferences (December 29 and 30), and from January 15, will resume its work. The schedule of video conferencing for January-February is very tight. I am especially pleased that this is not just an expert mission of the EU. The experts work closely with the Directorate General of the European Commission for Internal Market, Industry, Entrepreneurship and SMEs (DG Grow), the Support Group of Ukraine and personally with the Deputy Director-General Neighbourhood and Enlargement Negotiations Kateryna Maternova. On the part of Ukraine, cooperation with the mission is conducted by the Ministry of Economic team headed by Mykola Kryzhanovsky."[156]

Taras Kachka points out: "… we have for the first time a consolidated and the most accurate assessment of how the technical regulation system works. Of course, it does not work perfectly. This year, I had to face the fact that it looks much better on paper than in reality. Consequently, the mission at the end of the first quarter of 2021 will issue a report in which there will obviously be many recommendations on addressing our system's shortcomings. The main thing is that it will be an exhaustive list of tasks that we will perform and will be able

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154 – https://www.kyivpost.com/ukraine-politics/ukraine-eu-agree-to-accelerate-work-on-industrial-visa-free-regime.html

155 – https://www.me.gov.ua/News/Print?lang=uk-UA&id=0c542bd2-9c10-453a-913b-bf13fa172311

156 – https://www.eurointegration.com.ua/experts/2020/12/21/7117833/

to reach the agreement's conclusion formally."[157] It is logical to assume that there will be some final tasks roadmap, but will it be an internal Ukrainian one or an agreed bilateral one, is not clear yet.

Despite the virus crisis, in 2020, Ukraine continued the development and review of technical regulations and market surveillance institutions. According to the Eurointegration website, at the end of 2020, technical regulations were approved in 24 from 27 sectors of Annex III. Due to changes in the European legislation, some approved technical regulations are under revision to align with the new EU Directives.[158]

In a fifth report on the Association Agreement's implementation in December 2020, the tone about ACAA is optimistic: "Ukraine continued progress in removing technical barriers to trade (TBT). A twinning project with the National Standardisation Body has continued to strengthen administrative capacity in this area, while a team for a new Twinning project on National Quality Infrastructures has been selected and is due to begin operations in early 2021. Legislative reforms in the area included new proposed amendments to the law on Market Surveillance and Consumer Protection. A team of legal experts has been contracted in October 2020 to carry out a pre-assessment on the preparedness of Ukrainian quality infrastructure and legislation in view of opening negotiations on the Agreement on Conformity Assessment and Acceptance of Industrial Products."[159]

Minister of Economic Development, Trade and Agriculture of Ukraine Igor Petrashko participated in the broadcast on the channel Direct on 13 January 2021. He said that the EU is currently Ukraine's leading trading partner with a trade share in 40.7% of Ukraine's total foreign trade[160]. He stressed the need to integrate Ukraine into global production chains. Minister Petrashko said: "We can become a platform for production. Why do we have a problem not using the site now? Because any product made in our country, if supplied as an integral part for a manufacturer in Germany or France, requires additional certification. With 'industrial visa-free', Ukrainian manufacturers and exporters will mark their products with the European mark of conformity (CE) and sell them freely on the EU market without additional certification. So far, 15 online meetings of the mission on 'industrial visa-free travel' have been held. … In April, we will have a report that will allow us to move forward in the direction of signing the Agreement."[161]

157 – https://www.eurointegration.com.ua/experts/2020/12/21/7117833/

158 – https://eu-ua.org/en/technical-barriers-trade

159 – https://eeas.europa.eu/sites/eeas/files/2020_ukraine_association_implementation_report_final.pdf

160 – https://www.me.gov.ua/News/Detail?lang=uk-UA&id=33044bb0-f581-4182-b177-26b4a80d1810&title=IgorPetrashko-ZavdiakipromislovomuBezvizuUkrainaStaneMaidanchikomDliaSvitovikhVirobnitstv

161 – https://www.me.gov.ua/News/Detail?lang=uk-UA&id=33044bb0-f581-4182-b177-26b4a80d1810&title=IgorPetrashko-ZavdiakipromislovomuBezvizuUkrainaStaneMaidanchikomDliaSvitovikhVirobnitstv

The Ministry of Economic Development, Trade and Agriculture of Ukraine held 1 February 2021 an interagency meeting to prepare for the conclusion of an ACAA. A working group was formed to participate in the negotiation process with European experts on the ACAA Agreement's conclusion.[162]

11 February 2021, the European Parliament adopted a report about the implementation of the Association Agreement with Ukraine. During previous years, such resolutions have not mentioned ACAA. This time, it is included in point 86: "Calls for Ukraine and the EU to enhance cooperation on the further liberalisation of bilateral trade, including the conclusion of the ACAA agreement, as well as cooperation on sanitary and phytosanitary measures, and customs".[163]

On 11 February 2021, the European Union and Ukraine held the 7th meeting of the Association Council in Brussels. Josep Borrell, High Representative of the European Union for Foreign Affairs and Security Policy and Denys Shmyhal, Prime Minister of Ukraine, co-chaired the meeting. The Joint press release notes: "The Association Council welcomed the launch of the pre-assessment mission on Ukraine's preparedness on an Agreement on Conformity Assessment and Acceptance of Industrial Products and looked forward to its recommendations as soon as possible."[164]

Ukraine and the EU continue to work also with other trade liberalisation issues. Prime Minister Denis Shmyhal, summing up the visit on Facebook, stated: "The revision of the Association Agreement has begun. In particular, during talks with European Commission Vice President Valdis Dombrovskis, they agreed on further liberalization of trade between Ukraine and the EU in terms of increasing quotas for Ukrainian products. We expect productive work with European partners to come up with concrete decisions at the next Ukraine–EU Summit this summer."[165]

Ukrainian representatives are optimistic about the prospective timetable for ACAA. Prime Minister Denis Shmyhal wrote on Facebook: "We hope that during 2021/22, we will reach an agreement on these provisions as well, and finally sign all the necessary annexes on full industrial visa-free travel."[166] At a government meeting on 17 February, the Prime Minister even optimistically stated that Ukraine hopes to sign an agreement with the European Union

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162 – https://www.ukrinform.ua/rubric-economy/3182296-v-uradi-sformuvali-robocu-grupu-dla-peregovoriv-sodo-promislovogo-bezvizu-z-es.html

163 – https://www.europarl.europa.eu/doceo/document/TA-9-2021-0050_EN.html

164 – https://www.consilium.europa.eu/en/press/press-releases/2021/02/11/joint-press-statement-following-the-7th-association-council-meeting-between-the-eu-and-ukraine/

165 – https://www.ukrinform.ua/rubric-polytics/3190386-ukraina-mae-potuznu-pidtrimku-es-smigal-pidbiv-pidsumki-zasidanna-radi-asociacii.html

166 – https://www.ukrinform.ua/rubric-polytics/3191458-smigal-zapevnae-so-ugoda-pro-asociaciu-ukraina-es-ne-peregladatimetsa.html

on "industrial visa-free travel" this year[167]. Ukrainian President set a goal last year for two years, so the head of government hopes clearly to fulfil this task by that time. Besides harmonising the legislation and functioning institutions, the Union expects a continuous fight against corruption and economic crime, strengthening the rule of law in Ukraine. It is a vital element for the EU to have trust in partners' activities.

Some final thoughts

When concluded, Ukraine–EU ACAA would be an excellent achievement for the Eastern Partnership, which needs real success stories at the beginning of its second decade. Ukrainian experience is essential also for Georgia and Moldova, as their Association Agreements foresee the conclusion of ACAA. Today the other two countries do not yet pursue the ACAA issue actively. They both also have to deal with an urgent internal crisis. So it will take some time for them to reach the point where Ukraine is now.

During the following months, we will see the EU expert mission's conclusions. There will be a moment to decide about the ACAA official negotiations at some moment later. Ukraine is a country with more than forty million people and with significant industrial potential. The EU Member States, of course, study all the aspects of the process carefully. As we now see with the Ukraine- EU air transport agreement, last-minute delays and challenges may happen. The level of enthusiasm among the member states about the Eastern Partnership countries integration with the EU internal market is not even. An essential challenge for the Member States more enthusiastic about the Eastern Partnership is to be active during the debates and convince everybody to move on with the first ACAA with the EaP country.

The agreement's real value appears during the implementation, so relevant Ukrainian industries must prepare for it. European industry seeks now differentiation of supply chains, and Ukraine hopes to gain from that.

The movement towards the conclusion of the ACAA has reflected difficulties of the Ukrainian euro integration process, but it has been one of the success stories. The Ministry of Economic Development, Trade and Agriculture has been responsible for most of the work, and such a concentration of efforts in one department was efficient. ACAA is very high on the political agenda, including the President of Ukraine. European Commission Directorate-General Internal Market, Industry, Entrepreneurship and SMEs has been a constructive partner to Ukrainian officials.

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167 – https://www.ukrinform.ua/rubric-economy/3192295-promislovij-bezviz-z-es-ukraina-moze-pidpisati-cogoric-smigal.html