UKRAINE AND THE ASSOCIATION AGREEMENT

IMPLEMENTATION MONITORING 2014—2018

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ABBREVIATIONS

AIHA – American International Health Alliance
AMCU – Antimonopoly Committee of Ukraine
AKCC – accredited key certification centres
OJSC – open joint-stock company
RES – Renewable Energy Sources
VRU – Verkhovna Rada of Ukraine
GEC – good environmental condition
GDN – gas distribution network
GTS – gas transportation system
SLSU – State Labour Service of Ukraine
SFMSU – State Financial Monitoring Service of Ukraine
SNRSU – State Nuclear Regulatory Inspectorate of Ukraine
ADR – European Agreement concerning the International Carriage of Dangerous Goods by Road
SEE – state-owned enterprise
SRSU – State Regulatory Service of Ukraine
MVA – motor vehicle accident
PI – public institution
SFS – State Fiscal Service
EEA – European Economic Area
EC – European Commission
ECMT – European Conference of Ministers of Transport
ETUC – European Trade Union Confederation
CEEP – European Centre of Employers and Enterprises
LC – Labour Code
CC of Ukraine – Criminal Code of Ukraine
CMU – Cabinet of Ministers of Ukraine
AFS Convention – International Convention on the Control of Harmful Anti-Fouling Systems in Ships
NCTS Convention – convention of 20 May 1987 on a common transit procedure
SAD Convention – convention of 20 May 1987 on the simplification of formalities in trade in goods
STCW Convention – International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
WV – wheeled vehicle
MIA – Ministry of Internal Affairs of Ukraine
MW – megawatt
MEDT – Ministry of Economic Development and Trade
MOR – model for the formation and financing of minimum oil reserves
MENR – Ministry of Ecology and Natural Resources of Ukraine
MSPU – Ministry of Social Policy of Ukraine
MTC – Ministry of Transportation and Communication of Ukraine

MHU – Ministry of Health of Ukraine

NJSC – national joint stock company

NBU – National Bank of Ukraine

NEC – National Energy Company

NEURC – National Energy and Utilities Regulatory Commission

NCCIR – National Commission for the State Regulation of Communications and Informatisation

NSSMC – National Securities and Stock Market Commission

RLA – regulatory legal act

NRAs – National Regulatory Authorities

UESU – United Energy System of Ukraine

PJSC – private joint-stock company

DCFTA – Deep and Comprehensive Free Trade Area

RSDA – Regulation on Special Duty Assignment

CoE – Council of Europe

UNICE – Union of Industrial and Employers' Confederations of Europe

CPC – Certificate of Professional Competence

EPFM – entities of primary financial monitoring

TR – technical regulations

The Association Agreement – the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part

ACAA Agreements – Agreements on Conformity Assessment and Acceptance of Industrial Products

CEB – central executive body

CPC of Ukraine – Civil Procedure Code of Ukraine

EuBIS – European Blood Inspection System

FATF – Financial Action Task Force

ISO – Independent System Operator

ITO – Independent Transmission Operator

TSO – Transmission System Operator

METHODOLOGY

To achieve the purpose of this report we used the following methodology.

The report covers the status of fulfilment of Ukraine's commitments selected based in the following principles:

1. For assessment the purposes, the list of commitments and the extent of their approximation has been selected on the basis of the provisions of the Articles of and the Annexes to the Association Agreement, where it is possible to establish a clear and unambiguous link between the commitments specified therein and the specific acquis (or parts thereof), and clearly set deadlines for their approximation.
2. In some cases, when the Association Agreement contains references to other international commitments of Ukraine and which, according to the Association Agreement, have the same or preferential status, these are also analysed in this report.
3. In the event of a conflict between the provisions of the Association Agreement and the provisions of other international commitments of Ukraine as to which version of the acquis (old or new) should the national legislation of Ukraine be approximated with and in case of conflicts regarding the deadlines for fulfilment of such commitments, we were guided by the following rules:
    - in the Energy sector, higher priority is given to the commitments of Ukraine in the framework of the Protocol of Accession to the Treaty establishing the Energy Community in view of their fulfilment deadlines;
    - whenever the Association Agreement requires approximation of the national legislation of Ukraine with the acquis that have become invalid in the EU and have been replaced with new acquis, the analysis focuses on the acquis specified in the Association Agreement Implementation Action Plan (hereinafter – the Action Plan), approved by Resolution No. 1106 of the Cabinet of Ministers of Ukraine dated October 25, 2017;
    - there are some general commitments or cases when the Association Agreement does not specify the timetable for approximation leaving it to the discretion of the Parties to the Agreement. In this case, we proceed from the implementation timetable as set forth by the Action Plan.
4. With regard to the commitments directly stipulated in the Association Agreement, the specific deadlines for their fulfilment are determined depending on the date of entry into force of the specific provisions of the Agreement, namely:
    - Provisions that have been applied temporarily since November 1, 2014 (provisions of the Sectoral Part of the Agreement);
    - Provisions that have been applied temporarily since January 1, 2016 (Free Trade Area with the EU);
    - Provisions not covered by the provisional application regime and in force after the full ratification of the Agreement (after September 1, 2017).

Given the above, this report elaborates on the implementation of Titles IV and V of the Association Agreement (with deadlines falling within the period from November 1, 2017, to November 1, 2018, and updating information on the alignment of the provisions that were to be implemented before November 1, 2017). However, the report does not include analysis of the fulfilment / non-fulfilment of tasks in the field of agriculture as well as sanitary and phytosanitary measures, as the Association Agreement does not specify the timetable for their implementation.

Title IV of the Association Agreement was analysed in the context of the

following sectors: technical barriers to trade and establishment, trade in services and electronic commerce.

Title V of the Association Agreement was analysed in the context of the following sectors: company law, corporate governance, accounting and auditing, environment, social policy and transport, public procurement, customs and trade facilitation, energy, taxation, consumer protection and public health.

Criteria for fulfilment/non-fulfilment of commitments under the Agreement

In accordance with the Preamble of the Association Agreement, the Parties to the Agreement undertake, inter alia, to gradually approximate Ukraine's legislation with that of the Union along the lines set out in the Agreement and to ensure its effective implementation.

- A commitment is considered to be fulfilled when the national legislation of Ukraine is approximated with the acquis; the provisions of the relevant acquis serve as the frames of reference.
- The criterion for fulfilling a commitment is adoption of Laws of Ukraine and / or other laws and regulations in a certain area that bring the national legislation of Ukraine fully in line with the acquis as set by the Association Agreement.
- A commitment is considered to be unfulfilled when the national legislation of Ukraine in a certain area is not approximated with the provisions of the relevant acquis; the provisions of the relevant acquis serve as the frames of reference.

The criterion for non-fulfilment of a commitment is non-adoption of Laws of Ukraine and / or other laws and regulations in a certain area that would bring the national legislation of Ukraine fully in line with the acquis as set by the Association Agreement, i.e. commitments are considered to be unfulfilled even if there are draft laws or regulations that can potentially approximate Ukraine's national legislation with acquis in a certain area.

What is the assessment unit?

The expert opinion serves as the basic assessment unit. These expert opinions provide analysis of the scope of the completed work on the approximation of the national legislation of Ukraine to the acquis in a particular field and qualitative assessment of this approximation. In the end, the expert opinion provides conclusions concerning fulfilment or non-fulfilment of the relevant commitment, which is presented in the report in both a descriptive and graphical form (as icons).

Description of the structure of the report:

The main body of the report consists of two parts:

1. Description of the commitments that were to be fulfilled in the period from November 1, 2014, to November 1, 2017;
2. Description of the commitments that were to be fulfilled in the period from November 1, 2017, to November 1, 2018.

The first part includes:

- sector / sub-sector-based review of commitments that were to be fulfilled in the period from November 2014 to November 2017.

It provides brief description of the commitments regarding approximation of the national legislation of Ukraine to the acquis that had to be implemented in the period from November 2014 to November 2017.

- sector / sub-sector-based assessment of the progress made in fulfilling these commitments.

It provides assessment of the approximation of Ukrainian national legislation to the acquis that had to be implemented in the period from November 2014 to November 2017. In addition, in case of amendments to the national legislation of Ukraine already approximated during the specified period.

The second part includes:

- sector / sub-sector-based review of commitments that had to be fulfilled in the period from November 2017 to November 2018.

Based on the results of the selection of commitments as regards approximation of the national legislation of Ukraine to the acquis that was conducted according to the above procedure, the report provides a description of the approximation of commitments and indicates their number (in particular, acquis), specifies their place in the Association Agreement and outlines the authorities responsible for their implementation.

- expert opinion answering the following questions:

Where do the relevant acquis get us?

Description of the essence of the EU acquis and their relevant regulatory mechanisms as well as answers to the question: "Why do we need these regulations and how do they work in the EU?"

What has been done to approximate Ukraine's national legislation with the EU acquis and, hence, to fulfil its commitments?

Description of the steps taken to bring Ukraine's national legislation in line with the acquis and provision of an opinion concerning fulfilment / non-fulfilment of the commitment.

SUMMARY

The **purpose of the report** is to highlight the status of implementation of the commitments set out in Title IV and V of the Association Agreement, in particular:

- to elaborate on the implementation by Ukraine of the EU regulations that, under the terms specified in the Articles of and Annexes to the Agreement, were to be implemented in the national legislation within the period from November 1, 2017, to November 1, 2018;
- to update information on the status of implementation of the provisions of the Titles of the Association Agreement that were to be fulfilled within the period from November 1, 2014, to November 1, 2017, and based on these data, to make a cumulative analysis of the entire four years of the implementation of the Association Agreement.

As we mentioned in the previous monitoring reports on the implementation of the Association Agreement, the Agreement provides for gradual approximation of national legislation to the provisions of the EU acquis.

According to Titles IV and V of the Association Agreement analysed in this year's monitoring, from November 1, 2017, to November 1, 2018, national legislation had to be aligned with the EU acquis in sectors such as:

1. Technical barriers to trade – 10 commitments;
2. Establishment, trade in services and electronic commerce – 10 commitments;
3. Environment – 6 commitments;
4. Transport – 11 commitments;
5. Company law – 1 commitment;
6. Social policy – 5 commitments.

Cumulative analysis of the implementation of the Association Agreement within the period from November 2014 to November 2018 covers the following sectors:

1. Public Procurement – 3 commitments stipulated by the Association Agreement directly, and 18 tasks specified by the Roadmap adopted by the Government in pursuance of Article 152 of the Agreement and approved by Decision No. 1/2018 of the of the EU-Ukraine Association Committee in Trade Configuration of 14 May 2018;
2. Technical barriers to trade – 15 commitments;
3. Customs and trade facilitation – 2 commitments;
4. Energy – 17 commitments;
5. Taxation – 3 commitments;
6. Environment – 23 commitments;
7. Transport – 21 commitments;
8. Company law – 10 commitments;
9. Consumer protection – 13 commitments;
10. Social policy – 18 commitments;
11. Public health – 12 commitments;
12. Establishment, trade in services and electronic commerce – 12 commitments.

For the period from November 1, 2017, to November 1, 2018, progress in fulfilling the commitments amounted to 21%, which is almost twice as much as in the previous period (11%).

The most successful sector in terms of the approximation of national legislation

with the provisions of European legislation is that of technical barriers to trade. During this period, Ukraine fulfilled almost all its commitments concerning vertical legislation, namely: machinery, electromagnetic compatibility, simple pressure vessels, lifts, safety of toys, electrical equipment, appliances burning gaseous fuels, and personal protective equipment.

There is some minor progress in the sector of environment, in particular regarding the assessment and management of flood risks.

In other sectors (i.e. transport, social policy, financial services, establishment, trade in services and electronic commerce, and company law) there is almost no progress as regards approximation of national legislation with EU acquis. This means that in these sectors either no laws and regulations have been developed, or there is only draft legislation, or Laws of Ukraine have been adopted but they require that some subsidiary legislation be developed and adopted.

Progress in the implementation of the Association Agreement from November 1, 2014, to November 1, 2018, has amounted to 24%.

The most successful sectors in terms of the approximation of national legislation to European laws and regulations continue to be: public procurement, technical barriers to trade, taxation, company law, and consumer protection, attesting to systematic effective work in these sectors over the 4 years of the implementation of the Association Agreement.

In the sector of public procurement, two government agencies were appointed in charge of policymaking with regard to public procurement and reviewing customer decisions; key standards governing the contracting process were introduced; as well as most of the Articles of Directive 2014/24/EU on public procurement and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors.

In the area of technical barriers to trade, all horizontal legislation and almost all vertical legislation has been adopted.

In the taxation sector, national legislation has been approximated with the EU regulations on the general arrangements for excise duty and on the structure and rates of excise duty applied to manufactured tobacco.

In the area of company law, national legislation has been aligned with the EU regulations concerning annual accounts, consolidated accounts and related reports of certain types of companies, application of international accounting standards and single-member private limited-liability companies.

In the sphere of consumer protection, changes to national legislation have created conditions for consumer protection in the indication of the prices of products offered to consumers, alignment of legislation with regard to products which, appearing to be other than they are, endanger the health or safety of consumers, and ensuring that magnetic toys placed or made available on the market display a warning about the health and safety risks they pose.

There has been some progress in the sectors of energy, transport, social policy and the environment.

In the energy sector, the most effective areas of fulfilling Ukraine's commitments are markets of energy efficiency, gas and electricity, oil and petroleum products, where the reforms launched stand a good chance of being completed within next few years.

In the transport sector, approximation has been performed with regard to the legislation on the transport of dangerous goods by inland waterways (inland waterway transport), in addition a roadmap for international maritime transport has been adopted.

In the area of social policy, national legislation has been approximated with the

provisions of the EU legislation on the progressive implementation of the principle of equal treatment for men and women in matters of social security, the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling, and the minimum safety and health requirements for the use of work equipment by workers at work.

In the area of environment, national legislation has been approximated with the EU acquis in the field of water policy, assessment of effects of certain public and private projects on the environment, and the assessment and management of flood risks.

The most difficult situation as regards the approximation of national legislation has emerged in the areas of establishment, trade in services and electronic commerce, public health, customs and trade facilitation. This is not to say that no steps have been taken in all of these sectors, this only means that the process of approximation has not been completed.

At the same time, it is important to stress that in such sectors (sub-sectors) as public procurement, postal and courier services, and maritime transport, the Government approved strategies for implementation of the provisions of the EU Directives and Regulations in the relevant areas (so-called "roadmaps"). The roadmap in the field of public procurement was approved by Decision No. 1/2018 of the EU-Ukraine Association Committee in Trade Configuration of 14 May 2018, and other roadmaps have not approved by Europe so far. The roadmap in the subsector of telecommunication services has not been approved by the Government yet.

More detailed conclusions and suggestions based on the results of the analysis of the process of approximation of Ukraine's national legislation to EU acquis, that is, fulfilment of commitments under the Association Agreement, are set out in the concluding chapter of this report.

PART I

COMMITMENTS THAT HAD TO BE FULFILLED WITHIN THE PERIOD FROM 1 NOVEMBER 2014 TO 1 NOVEMBER 2017

PUBLIC
PROCUREMENT

PUBLIC PROCUREMENT

Expert

Serhiy Yaremenko

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

In accordance with the commitments undertaken by Ukraine within the framework of the Association Agreement, in the prior period (from November 1, 2014, to November 1, 2017) the national legislation in the field of public procurement had to be aligned with the following three provisions specified directly in Association Agreement:

1. Appointing two CEBs tasked with guaranteeing a coherent policy in the field of public procurement and with the review of decisions taken by contracting authorities or entities during the award of contracts (Part 2, Article 150 of the Association Agreement);
2. Implementation of a set of basic standards for the award of all public contracts (Article 151 of the Association Agreement);
3. Development of a Roadmap in the field of public procurement (Article 152 of the Association Agreement).

Assessment of progress in fulfilling the commitments:

Appointing two CEBs tasked with guaranteeing a coherent policy in the field of public procurement and with the review of decisions taken by contracting authorities or entities during the award of contracts (Part 2, Article 150 of the Association Agreement)

The Law of Ukraine "On Public Procurement" (hereinafter referred to as the Law) specifies the central executive body that implements public policy in the field of public procurement (Article 34, Paragraph 1). In accordance with the Regulation of the Ministry of Economic Development and Trade of Ukraine, approved by Resolution No. 459 of the CMU dated August 20, 2014, this CEB is the MEDT.

The Law also provides for the possibility of appealing against decisions taken by contracting authorities through an appeal body – i.e. the AMCU, which has the right to oblige the contracting authority to reverse its decisions in full or partially (Article 14, Paragraph 1, Article 18, Paragraph 9). Therefore, the task has been fulfilled.

Implementation of a set of basic standards for the award of all public contracts (Article 151 of the Association Agreement)

To this end, the Law of Ukraine "On Public Procurement" was adopted, which

establishes public procurement procedures, as well as the procedure for the award of and basic requirements for procurement contracts (Article 36 of the Law). Therefore, the task has been fulfilled.

Development of a Roadmap in the field of public procurement (Article 152 of the Association Agreement)

To this end, the Public Procurement Reform Strategy ("Roadmap") was approved by Resolution No. 175-p of the CMU dated February 24, 2016.

The Action Plan for the implementation of the Strategy specifies the stages of the reform with specific tasks and terms for their fulfilment. It is important to point out that the terms set in the Roadmap are more rigid than those specified in the Association Agreement. Thus, if Ukraine adheres to the Roadmap, the approximation of Ukrainian legislation to the EU legislation in the field of public procurement will take place faster than required by the Association Agreement. Consequently, the specified task of approximation of national legislation with Article 152 of the Association Agreement has been fulfilled.

Taking into account that the "Roadmap" was approved by Decree No. 175-p of the CMU of February 24, 2016, as well as by Decision No. 1/2018 of the EU-Ukraine Association Committee in Trade Configuration of 14 May 2018, we have analysed the status of implementation of the measures within the framework of the Roadmap that were to be completed as of November 1, 2018. The analysis of the results of the Roadmap measures is provided in the table below. The numbers of the measures correspond to those in the Roadmap.

Description of measures	*Responsible bodies*	*Timing*	*What has been done*	*Status*
The first stage (January 1 – December 31, 2016)				
Implementation of the provisions specified in Article 150 of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (hereinafter referred to as the Association Agreement)				
1. Ensuring availability of material, technical and labour resources required for the effective functioning of the authorized body and complaints review authority in the public procurement sector, as well as for the advanced training of these agencies' staff	*MEDT AMCU*	*February 2016*	In 2015, the VRU adopted the Law of Ukraine "On Public Procurement". In pursuance of the provisions of the said Law, the following regulations were approved: • resolutions of the CMU: - No. 291 of March 23, 2016 "On Setting Fee for Filing a Complaint"; - No. 166 of 24 February, 2016, "On Approval of the 'Procedure of Functioning of the Electronic Procurement System and Conducting Authorisation of Electronic Platforms'"; • 7 orders of the MEDT: - No. 557 of March 30, 2016, "On Approval of the Model Regulation on the	Fulfilled

			Tender Committee or the Authorised Person (s)"; - No. 490 of March 22, 2016 "On Approval of Forms of Documents in the Field of Public Procurement"; - No. 477 of March 18, 2016, "On approval of the Procedure for Publication of Information on Public Procurement"; - No. 454 of March 17, 2012, "On Approval of the Procedure for Determining the Object of Procurement"; - No. 680 of April 13, 2016, "On Approval of Sample Tender Documents"; - No. 440 of March 15, 2016, "On Establishment of a Commission to Ensure Authorisation of Electronic Platforms, Preparation of Decisions as Regards their Connection / Disconnection to / from the Electronic Procurement System, and Elimination of Malfunction in the Electronic Procurement System"; - No. 1372 of September 15, 2017, "On Approval of the Procedure for Awarding and Fulfilling Framework Contracts". • 2 orders of the State Audit Service: - No. 86 of April 23, 2018, "On Approval of the Form of the Expert Opinion on the Results of Procurement Monitoring and the Order of its Completion"; - No. 196, of September 11, 2018, "On Approval of the approach to determining automatic risk indicators, their list and procedure of application" As regards organizational and technical measures, the MEDT reformed the existing Law of Ukraine "On Public Procurement".	

2. Ratification by Ukraine of WTO Agreement on Government Procurement	*MEDT MFA*	*April 2016*	In pursuance of this paragraph of the VRU Plan of 16.03.2016 the Law of Ukraine "On Ukraine's Accession to the Agreement on Government Procurement" was adopted. On May 18, 2016, the official procedure for the accession of Ukraine to the Agreement on Government Procurement of the World Trade Organisation.	Fulfilled
3. Ukraine's participation in activities of the WTO Committee on Government Procurement as a country member, particularly, in negotiations on accession of new members	*MEDT MFA Ministry of Justice*	*2016*	This measure is not part of the commitments under the Association Agreement. However, this work is carried out on a regular basis – in accordance with the work plan of the WTO Committee.	Measure fulfilled
Development of electronic procurement				
4. Establishing a regulatory and legal framework for using electronic means in public procurement procedures in compliance with the EU standards, particularly, with the purpose to ensure: Legal equality of electronic and paper documents used for public procurement purposes	*MEDT MFA Ministry of Justice*	*December 2015 – 2016*	Adoption of the Law of Ukraine "On Public Procurement" (No. 922-VIII of 25.12.2015). The Law of Ukraine "On Public Procurement" stipulates the exchange of information between the contracting authority and the participant mainly in the electronic form (Article 14), except the negotiation procedure, which involves correspondence and negotiations between the contracting authority and the participant. In pursuance of this Law, CMU Resolution No. 166 of 24.02.2016 "On Approval of the 'Procedure of Functioning of the Electronic Procurement System and Authorisation of Electronic Platforms'" was adopted.	*Measure fulfilled* ——— *Task Fulfilled*
Minimum requirements to telecommunication and other computer equipment used to secure reliable and safe data			Requirements established in Article 12 of the Law of Ukraine "On Public Procurement" concern the functioning of the electronic procurement system.	*Task fulfilled*

transmission, exchange of notices between contracting authorities and stakeholders in the public procurement sector, for getting access to information and submission of e-tenders;			Additional specific requirements are also stipulated by CMU Resolution No. 166 of 24.02.2016 "On Approval of the 'Procedure of Functioning of the Electronic Procurement System and Authorisation of Electronic Platforms'", in particular as regards information protection. Whereas requirements for telecommunication and computer equipment used in the public sector, and in particular in public procurement, are regulated by the legislation on information protection in information and telecommunication systems.	
Establishing requirements to information technologies (software) used for the purposes of structuring, processing, storage of information (particularly, for opening and evaluation of tenders in e-auctions) related to public procurements in compliance with Article 35 of Directive 2014/24/EU);			Requirements sufficient for implementing this item of the Roadmap are specified in Article 12 of the Law of Ukraine "On Public Procurement" and CMU Resolution No. 166 of 24.02.2016 "On Approval of the 'Procedure of Functioning of the Electronic Procurement System and Authorisation of Electronic Platforms'"	*Task fulfilled*
Standardization of processes and interfaces between different databases used in procurement procedures, particularly, means of identification and proving of legal status, qualification and financial standing of candidates and tenderers			*This measure is not specified in the Association Agreement and was initiated by the CMU following recommendations of EU experts.* Adoption of joint order No. 37/11 of the MEDT and SFS dated January 17, 2018, "On approval of the procedure for interaction of the electronic procurement system with the information systems of the State Fiscal Service of Ukraine as regards exchange	*Task fulfilled*

			of information whether a participant in the procurement procedure has outstanding payments (tax debt) with regard to taxes, duties, and fees subject to control on the part of the bodies of the State Fiscal Service of Ukraine.	
5. Setting up an overall e-procurement system, improvement of existing facilities for e-noticing, e-communication and providing for possibility of e-evaluation.	*MEDT MFA Ministry of Justice State Agency for e-Governance, Ministry of Finance and other CEBs concerned*	*2016*	Article 18 of the Law of Ukraine "On Public Procurement" stipulates the need for electronic filing of complaints and making them public.	⊕ Measure fulfilled
6. Ensuring possibility of electronic submission and publication of complaints	*AMCU MEDT Ministry of Justice State Agency for e-Governance, Ministry of Finance and other CEBs concerned*	*2016*	Article 18 of the Law of Ukraine "On Public Procurement" stipulates the need for electronic submission and publication of complaints.	⊕ Measure fulfilled
Development of institutional structure and improvement and optimization of functions of controlling bodies				
7. Establishment (determination) of a centralised procurement organisation(s) to implement	*MEDT, Ministry of Finance and other CEBs concerned*	*December 2016*	By Resolution No. 928 of the CMU dated November 23, 2016, "On the implementation of a pilot project for organisation of work of the Centralised Procurement Organisation"	⊕ Measure fulfilled
a pilot project introducing the mechanism of centralised procurement and legal regulation of centralised procurements (Directive 2014/14/EU, Articles 37–38)			and the State Enterprise "Professional Procurement" established by Order No. 2015 of the Ministry of Finance of 30.11.2016 "On Establishment of a State Institution 'Professional Procurement'". Continued implementation of the pilot project is stipulated by Resolution No. 377 of the CMU dated May 16, 2018.	

8. Introduction of comprehensive monitoring of efficiency of the public procurement system, publishing annual reports on the operation of the public procurement system	*MEDT*	*December 2016*	The Law of Ukraine "On Public Procurement" envisages publication of annual reports on the functioning of the public procurement system by the MEDT. The MEDT shall publish the reports on its website. At the same time, the function of monitoring the effectiveness of the public procurement system has been transferred to the State Audit Service.	Measure fulfilled
9. Review of control functions in the public procurement sector to ensure clear distribution and eliminate overlapping of the functions of control over compliance with the public procurement legislation, financial discipline of contracting authorities and efficiency of the public procurement system	*MEDT* *Ministry of Justice* *MIA* *SBU (given its consent)* *Prosecutor General's Office of Ukraine (given its consent), the Accounting Chamber (given its consent), the State Audit Service, the National Agency for the Prevention of Corruption*	*December 2016*	Law of Ukraine No. 2265-VIII dated December 21, 2017 "On Amendments to the Law of Ukraine 'On Public Procurement' and certain other laws of Ukraine as regards monitoring of procurement", whereby the Law of Ukraine "On Public Procurement" was amended, sets forth the procedure for procurement monitoring. The specified procedure, inter alia, virtually eliminates overlapping of the functions between the State Audit Service and the AMCU. At the same time, Article 7 of the Law "On Public Procurement" establishes the main functions of the bodies in charge of the state regulation and control in the field of procurement. In addition, the powers and functions of the State Audit Service with regard to supervision of procurement are set forth in the Law of Ukraine "On the Basic Principles of Implementation of State Financial Control in Ukraine". At the same time, the relevant special Laws specify the functions of other supervision bodies and law enforcement agencies.	Measure fulfilled

Training and professionalisation in the public procurement sector				
10. Arranging of basic (on-line) training for contracting authorities (members of tender committees)	*MEDT*	*December 2016*	*This measure is not specified in the Association Agreement and was initiated by the CMU following recommendations of EU experts.* With the support of the MEDT and the EU-funded Project Harmonisation of Public Procurement System in Ukraine, an online training course in the field of public procurement was created and delivered via the open education platform Prometheus.	Measure fulfilled
The second stage (January 1, 2017 – December 31, 2018)				
Adaptation of Ukraine's legislation with the EU rules pursuant to Chapter 8 of the Association Agreement and Annexes XXI-B, XXI-C, XXI-D, XXI-E thereto				
12. Drafting a new version of the Law of Ukraine "On Public Procurement" incorporating Utilities law to include definitions of the key public procurement terms as defined in Directives 2014/24/EU and 2014/25/EU, in particular: Public contracts for works, supplies, services and rules of concluding thereof, and mixed contracts (brining the definitions in line with Directive 2014/24/EU, Article 1(1)–(2), Article 2, points (5)–(10) of part 1, Article 3)	*MEDT* *Ministry of Finance* *Ministry of Justice* *AMCU*	*January 2017*	Some of the requirements specified in this item of the Roadmap are already included in the current Law of Ukraine "On Public Procurement" (i.e. the concept of "public contract" in Article 1 of the Law, the principles of awarding contracts (principles of procurement) are set forth by Article 3 of the Law). Besides, with a view to transposing the key concepts enshrined in Directives 2014/24/EU and 2014/25/EU to the legislation of Ukraine, a new version of the Law of Ukraine "On Public Procurement" has been drafted, taking into account the measures envisaged by paragraph 12. At present, the project is being finalized by the MEDT.	*Measure fulfilled* *Task fulfilled*

Subjects to public procurement law in accordance with the EU principles and terms (Directive 2014/24/EU, Article 2(1)–(4), (14), as well as creating legal grounds for the participation of a group of economic operators (consortia) in procurement procedures			Legislated in the Law of Ukraine "On Public Procurement" as regards determining the subjects to public procurement law. As regards creating legal grounds for the participation of consortia in procurement procedures, it is envisaged in a new version of the Law.	*Task fulfilled*
Introduction of principles of public procurement institutional organization (in compliance with Directive 2014/24/EU, Article 1)			Legislated in the Law of Ukraine "On Public Procurement"	*Task fulfilled*
Specific regulation of public procurements made by contracting authorities enjoying exclusive or special rights (Directive 2014/24/EU, Articles 7, 9–11), as well as for defence and national security purposes			Legislated in the Laws of Ukraine - "On Public Procurement" (Article 2); - "On procurement of goods, works and services for guaranteed ensuring of the defence needs"; - Law "On Public Defence Procurement"	*Task fulfilled*
Procurement procedures brought in line with Directive 2014/24/EU (Articles 26–32) and Directive 2014/25/EU, principles and grounds for applying each particular procedure (Directive 2014/24/EU, Article 26), in particular, introduction of the Restricted procedure (Directive 2014/24/EU, Article 28): competitive procedure with negotiation with prior publication, and negotiated procedure without prior publication			Some of the requirements specified in this item of the Roadmap are already included in the current Law of Ukraine "On Public Procurement" (i.e. the restricted negotiated procedure without prior publication is specified in Article 35 of the Law). A new version of the Law of Ukraine "On Public Procurement" has been drafted, taking into account this measure. At present, the Draft Law is being reviewed by the MEDT.	*Task fulfilled*

(Directive 2014/24/EU, Articles 29 and 32);				
Principles and standards of informing of procurement contracts, in particular with respect to sending invitations to candidates and tenderers in restricted and negotiated procedures (Directive 2014/24/EU, Articles 20, 22, 28, 29 and 48-55);			Some of the requirements specified in this item of the Roadmap are already included in the current Law of Ukraine "On Public Procurement", except the principles of restricted procedure. A new version of the Law of Ukraine "On Public Procurement" has been drafted, taking into account this measure. At present, the Draft Law is being reviewed by the MEDT.	*Task fulfilled*
Standards and requirements to technical specifications, other documents related to a procurement procedure (Directive 2014/24/EU, Article 42);			A new version of the Law of Ukraine "On Public Procurement" has been drafted, taking into account this measure. At present, the Draft Law is being reviewed by the MEDT	*Task fulfilled*
Standards of proving qualification of candidates and tenderers, certification of goods and services, acceptable means of proving tenderers' qualification (Directive 2014/24/EU, Articles 43–44)			A new version of the Law of Ukraine "On Public Procurement" has been drafted, taking into account this measure. At present, the Draft Law is being reviewed by the MEDT	*Task fulfilled*
Pre-qualification (in restricted procedures, competitive negotiated procedures) and criteria for admitting candidates to participate in public procurement procedures (namely, individual requirements, criteria of professional and technical abilities,			A new version of the Law of Ukraine "On Public Procurement" has been drafted, taking into account this measure. At present, the Draft Law is being reviewed by the MEDT	*Task fulfilled*

financial and economic standing), as well as introduction of the requirement to submit a self-declaration with further presenting of relevant documents by the successful tenderer at the stage of concluding the contract instead of compulsory submission of supporting documents at the qualification stage (Directive 2014/24/EU, Articles 56-58, 60, 65);			A new version of the Law of Ukraine "On Public Procurement" has been drafted, taking into account this measure. At present, the Draft Law is being reviewed by the MEDT	*Task fulfilled*
Introduction of the provision on excluding an economic operator from a procurement procedure where such economic operator was involved in preparing the procurement procedure (Directive 2014/24/EU, Article 41);			A new version of the Law of Ukraine "On Public Procurement" has been drafted, taking into account this measure. At present, the Draft Law is being reviewed by the MEDT	*Task fulfilled*
Standards of proving quality of goods, works and services, business management practices, criteria of green production etc. (Directive 2014/24/EU, Articles 57–58, 62);			A new version of the Law of Ukraine "On Public Procurement" has been drafted, taking into account this measure. At present, the Draft Law is being reviewed by the MEDT	*Task fulfilled*
Tender evaluation criteria, particularly, criteria representing the most economically advantageous tender and requirements to applying tender evaluation criteria, evaluation criteria for abnormally low tenders (Directive 2014/24/EU, Articles 67-69);			Legislated in the Law of Ukraine "On Public Procurement" as regards setting tender evaluation criteria. While "abnormally low tenders", are specified in the new version of the Law that has not been approved yet	*Task fulfilled*

13. Harmonization of remedies with Directive 89/665/EEC (as supplemented by Directive 2007/66/EC), as amended by Directive 2014/23/EU, particularly with respect to: Full or partial invalidation of awarded contracts due to failure to hold a procurement procedure or violation of the procedure prescribed by law, failure to comply with the standstill period upon completion of the procurement procedure (Directive 89/665/EEC, Articles 1–3);	*MEDT AMCU Ministry of Justice Ministry of Finance Other central executive bodies concerned*	*January 2017*	A new version of the Law of Ukraine "On Public Procurement" has been drafted, taking into account the measures implied in item 13 of the Roadmap. At present, the Draft Law is being reviewed by the MEDT	Measure non-fulfilled *Task non-fulfilled*
Setting the time limits for submitting complains against procurement procedures and decisions of contracting authorities (in compliance with Directive 89/665/EEC, Article 2c);			Legislated in Article 18 of the Law of Ukraine "On Public Procurement"	*Task fulfilled*
Establishing a sole standstill period to apply to all types of procurement procedures (Directive 89/655/EEC, Articles 1–3);			Legislated in the Law of Ukraine "On Public Procurement" (Article 32, Part 2)	*Task fulfilled*
Specifying grounds for applying a shorter standstill period and derogation from the standstill period (Directive 89/665/EEC, Article 2b);			Legislated in the Law of Ukraine "On Public Procurement" (Article 35 on negotiation procedure)	*Task fulfilled*
Specifying grounds for compensating loss caused due to the non-compliance with the procurement			A new version of the Law of Ukraine "On Public Procurement" has been drafted, taking into account this measure	*Task fulfilled*

contract award procedure and public procurement procedures (Directive 89/665/EEC, Article 2)				
15. Reduction of time limits for publishing notices, simplifying procedural requirements to reviewing complaints against decisions of contracting authorities regarding procurement contracts below the thresholds applicable to procurement procedures harmonized with EU Directives, in compliance with the principles of equal treatment, transparency, non-discrimination and competition;	*MEDT AMCU Ministry of Justice Ministry of Finance*	*January 2017*	Legislated in Article 10 of the Law of Ukraine "On Public Procurement"	Measure non-fulfilled *Task fulfilled*
Reduction of the scope of information subject to compulsory publication with regard to public contracts below the threshold values applicable to procurement procedures established by EU Directives;			A new version of the Law of Ukraine "On Public Procurement" has been drafted, taking into account this measure	*Task non-fulfilled*
Establishing more flexible requirements to procurements made by contracting authorities at the local and regional levels (Directive 2014/24/EU, Articles 28 and 48)			The new version of the Law of Ukraine "On Public Procurement" establishes procedures for introducing a facilitated procurement procedure for all contracting authorities	*Task non-fulfilled*

Development of institutional structure and improvement and optimization of functions of controlling bodies				
Training and professionalization in the area of public procurement				
19. Setting standards for training and retraining programs of public procurement specialists, and establishing qualification requirements to public procurement specialists	*MEDT Ministry of Education National Agency of Ukraine on Civil Service*	*January 2017*	This measure is not specified in the Association Agreement and was initiated by the CMU following recommendations of EU experts. Order No. 557 of the MEDT dated March 30, 2016, "On approval of the model regulation on the Tender Committee or the authorised person(s)" establishes the basic requirements for the qualification of specialists in the field of procurement, and order No. 2017 of the MEDT dated December 2, 2016, sets the standards (programmes) for the programmes of training and retraining of public procurement specialists. In addition, following recommendations of EU experts, the MEDT by its order No. 1573 dated October 30, 2018, "On establishment of a working group to develop professional standards for the profession 'Public Procurement Specialist'", established a working group to develop professional standards for the profession "Public Procurement Specialist". As of November 1, 2018, the MEDT developed draft Professional Standards. Work is being reviewed by the members of the working group.	Measure fulfilled

20. Setting requirements to educational institutions that arrange training in the public procurement sector, training requirements	*MEDT* *Ministry of Education* *Ministry of Finance* *Ministry of Justice*	*January 2017*	This measure is not specified in the Association Agreement and was initiated by the CMU following recommendations of EU experts. Order No. 2017 of the MEDT dated December 2, 2016, sets the standards (programmes) for the programmes of training and retraining of public procurement specialists, as well as certain conditions for educational institutions.	Measure fulfilled
21. Arranging and permanent updating of basic (on-line) training for contracting authorities (members of tender committees)	*MEDT*	*2017*	This measure is not specified in the Association Agreement and was initiated by the CMU following recommendations of EU experts. With the support of the MEDT and the EU-funded Project Harmonisation of Public Procurement System in Ukraine, an online training course in the field of public procurement was created and delivered via the open education platform Prometheus.	Measure fulfilled
22. Changing the status of tender committees as collective bodies in charge of the whole process of organizing procurements and decision-making with regard to supplies, works and services to recognize them as advisory bodies (committees) whose key function would be setting criteria of evaluation and evaluation as such of submitted tenders based on the criteria approved by the contracting authority, and choosing the	*MEDT* *Other central executive bodies concerned*	*December 2017*	This measure is not specified in the Association Agreement and was initiated by the CMU following recommendations of EU experts. A new version of the Law of Ukraine “On Public Procurement” has been drafted, taking into account this measure	Measure non-fulfilled

successful tender based on the most economically advantageous tender for contract awarding.				

Therefore, as of now 15 of the 18 measures specified in the Roadmap which had to be performed prior to November 1, 2018, have been fulfilled (a measure is considered to be fulfilled if all its constituent parts have been fulfilled).

TECHNICAL BARRIERS TO TRADE

TECHNICAL BARRIERS TO TRADE

Expert

Dmytro Lutsenko

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

Horizontal (framework) legislation

In accordance with Article 56 and Annex III of the Association Agreement, Ukraine had to approximate its national legislation with the requirements of the following framework (or so-called "horizontal" EU legislation) covering the following issues:

1. Council Directive 80/181/EEC on the approximation of the laws of the Member States relating to units of measurement and on the repeal of Directive 71/354/EEC;
2. Regulation (EC) No. 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products;
3. Directive 2001/95/EC on general product safety;
4. Directive 85/374 / EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products;
5. Decision No 768/2008/EC on a common framework for the marketing of products.

Assessment of progress in fulfilling the commitments:

Directive 80/181 / EEC on the approximation of the laws of the Member States relating to units of measurement

The provisions of Directive 80/181/EEC were transposed to the national legislation of Ukraine back in 2015, after the adoption of Order No. 914 of the MEDT of 04.08.2015 "On Approval of the Definitions of the Basic SI Units, Names and Definitions of SI Derived Units, Decimal Multiples and Submultiples of SI Units, Permitted non-SI Units, as well as Their Symbols and the Rules of Application of Units Of Measurement and Writing of Names and Symbols of Units of Measure and Unit Symbols." At present, the national legislation in this area as a whole meets the requirements of the EU and is adequately applied in practice.

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

Approximation of the national legislation in the area of setting requirements for accreditation and market surveillance relating to the marketing of products was implemented in 2010-2011, when two important framework laws were adopted:

1. The Law of Ukraine "On Accreditation of Conformity Assessment Bodies", as amended on December 22, 2001 and January 15, 2015, whereby the national legislation was aligned with the EU requirements regarding the accreditation system;
2. The Law of Ukraine "On State Market Surveillance and Control of Non-Food Products", whereby the EU requirements for market surveillance and border control of industrial (non-food) products were implemented.

From the point of view of legislation, the Law of Ukraine "On Accreditation of Conformity Assessment Bodies" as a whole ensured full compliance of the national legal and regulatory framework with the EU requirements in the area of accreditation. Currently, in order to achieve full compliance with the relevant EU requirements, following the first results of the enforcement of this Law, a number of technical changes have been suggested as set forth in Draft Law No. 6325 "On Amendments to Certain Legislative Acts of Ukraine on Technical Regulations and Conformity Assessment" of 24.03.2017. The most important of these amendments is that regarding the power of the Head of the National Accreditation Agency of Ukraine (hereinafter – the NAAU) to perform accreditation, lest there is no conflict of interest.

The legal administration of the Law of Ukraine "On State Market Surveillance and Control of Non-Food Products" also attested to the fact that the domestic legal and regulatory framework made it possible to achieve alignment with the EU standards, but it also required amendments due to interference in its content at the stage of drafting, as well as changes identified following the results of its enforcement.

At the end of 2016, certain MPs of Ukraine introduced Draft Law No. 5450-1 dated 07.12.2016 "On amending certain legislative acts of Ukraine (concerning ensuring the observance of the rights of persons in conducting checks on the characteristics of non-food products)", which, however, does not meet the requirements of the relevant EU legislation, since it contains some rules whereby market surveillance will be virtually eliminated (it suggests deviating from the market surveillance procedure in force in the EU, acknowledging that inspection can be terminated upon presenting a certificate of compliance and involving competing conformity assessment bodies in independent examination, which creates a conflict of interest, etc.).

An alternative draft law was developed in October 2018 and submitted to the specialised committee of the Parliament, but at the time of writing the report it has not been registered yet. This draft law introduces into the national legislation some of the EU requirements that are currently absent in the Law of Ukraine "On State Market Surveillance and Control of Non-Food Products", eliminates overlapping of the powers of market surveillance authorities and consumer rights protection authorities, increases the responsibility of business entities, as well as pulls out market surveillance from within the scope covered by the Law "On the Principles of State Control (Surveillance)" and introduces the necessary systemic and procedural provisions.

As a result of the adoption of these two framework laws, a system of accreditation of conformity assessment bodies has been successfully implemented in Ukraine, in particular the NAAU has been established – this agency deals with such accreditation, is officially recognised by the EU, and is working on the implementation of European accreditation rules for bodies that apply for notification. New requirements for the market surveillance system have been generally implemented and applied too, however, the practice of their enforcement attests to the lack of capacity of the MEDT, supervisory authorities, and businesses to comply with these requirements, as well

as to the inhibition of their enforcement due to the extension of the moratorium on inspections of economic entities in 2018.

Directive 2001/95/EC on general product safety

All in all, the provisions of this Directive have been implemented into national legislation by the Law of Ukraine "On State Market Surveillance and Control of Non-Food Products"; however, the latter needs to be amended to clarify the list of products no covered by the Law and to strengthen the responsibility of business entities (mirroring the changes proposed by the alternative Draft Law on amending the Law of Ukraine "On State Market Surveillance and Control of Non-Food Products", see above Regulation (EC) No. 765/2008 setting out requirements for accreditation and market surveillance relating to the marketing of products).

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

The requirements of the national legislation of Ukraine were harmonised with the requirements of this Directive in 2011, after the adoption of the Law of Ukraine "On liability for damages caused by product defects". As of the end of October 2018, this Law as a whole complies with the provisions of Directive 85/374/EEC. Moreover, it is actively enforced.

Decision No 768/2008/EC on a common framework for the marketing of products

The provisions of this Decision were transposed into the national legislation of Ukraine after the adoption of the Law of Ukraine "On Technical Regulations and Conformity Assessment" and Resolution No. 95 of the CMU of January 13, 2016 "On approving the conformity assessment modules used to develop conformity assessment procedures and on approving the rules of use of the conformity assessment modules" adopted on the basis of this Law, as well as the Law of Ukraine "On State Market Surveillance and Control of Non-Food Products", on the basis of which Ukraine's new technical regulations are developed and approved (see the section "Vertical (sectoral) legislation").

However, after the application of the new requirements in practice, there emerged a need to introduce some changes to the aforementioned legislation. In particular, Draft Law No. 6235 "On amending certain legislative acts of Ukraine concerning technical regulations and conformity assessment" that aims to amend the Law of Ukraine "On Technical Regulations and Conformity Assessment" and the relevant Resolution of the CMU was registered with the VRU back in March 2017. In a year, on March 20, 2018, it was finally adopted in the first reading. After the final adoption of this Draft Law, it will also be necessary to amend the "module" Resolution of the CMU.

CUSTOMS AND TRADE FACILITATION

CUSTOMS AND TRADE FACILITATION

Expert

Oleksandra Bulana

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

1. Convention of 20 May 1987 on a common transit procedure (hereinafter referred to as the NCTS Convention);
2. Convention on the simplification of formalities in trade in goods of 20 May 1987 (hereinafter referred to as the SAD Convention).

Assessment of progress in fulfilling the commitments:

NCTS Convention

a. Implementing regulations

Draft Law of Ukraine No. 5627 of 29.12.2016 "On amending the Customs Code of Ukraine with respect to aligning transit procedures with the Convention on a common transit procedure and the Convention concerning the simplification of formalities in trade in goods" (rejected by the VRU).

The Law of Ukraine "On Amending the Customs Code of Ukraine and Some Other Laws of Ukraine as Regards Ensuring the Functioning of the Single Window Principle and Simplification of Control Procedures for the Movement of Goods through the Customs Border of Ukraine" (adopted by the Verkhovna Rada, entered into force).

Order No. 1193 of the Ministry of Finance of December 28, 2016 "On Approval of Amendments to Certain Departmental Classifiers of Customs-Related Information Used to Complete Customs Declarations".

Order No. 26 of the SFS "On Approval of the Classifier of SFS, Customs SFS and their structural subdivisions" of January 19, 2017.

b. Government action plans

Resolution No. 391-p of the CMU of April 22, 2015, "Plan of Implementation of the Convention on the Simplification of Formalities in Trade in Goods and the Convention on a Common Transit Procedure" (expired).

Resolution No. 1106 of the CMU "On the Implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part" of October 25, 2017 (the deadlines for implementation of paragraphs 453-474 related to the Convention expired on March 20, 2018).

Ukraine violated the deadlines for fulfilling its commitments as regards the implementation of the NCTS Convention in accordance with Annex XV to Chapter 5 of the Agreement (1 year from the date of entry into force of the Agreement – the

deadline expired on January 1, 2017). Similarly, the terms of the implementation of the Convention specified in the plans of the CMU have not been respected.

Changes in the legal and regulatory framework introduced over this period bring only some "pinpoint" matters under regulation:

- Harmonisation of some classifiers for filling customs declarations with the requirements of the NCTS Convention (Order No. 1193 of the Ministry of Finance of December 28, 2016, and Order No. 26 of the SFS of January 19, 2017);
- Possibility of temporary application of the forms, classifiers and control procedures of the Convention (before the Convention enters into force for Ukraine) in accordance with the requirements of the NCTS and SAD Conventions (Law "On Amendments to the Customs Code of Ukraine and Some Other Laws of Ukraine as Regards Ensuring the Functioning of the Single Window Principle and Simplification of Control Procedures for the Movement of Goods through the Customs Border of Ukraine").

However, there is no information on the enforcement of the aforementioned provisions of the Law.

To have a full-fledged legal framework for the implementation of the NCTS Convention, it is necessary to develop a comprehensive draft law amending the customs legislation (taking into account the NCTS requirements) with regard to the following issues:

- application of guarantees in transit movements of goods;
- the procedure of exchange of information and documents, establishing the status of documents and records;
- determining the procedure for carrying out customs procedures in transit;
- simplifications applied to common transit, etc.

Currently, there is no such Draft Law pending consideration in the VRU. There is no information on the beginning / status of development of such Draft Law. The Roadmap on Ukraine's Accession to the EU/EFTA Common Transit Procedure requires that such Draft Law be drawn up by 01.05.2019.

In addition to legislative changes, for the Convention to be effectively implemented it is necessary to develop IT solutions, including software, and ensuring compatibility of the information systems of customs authorities of Ukraine and the NCTS.

Before joining the Convention, the national transit system must work in accordance with the rules of the Convention in a test mode for a year. Currently, no legislation required to launch the test mode has been adopted and no IT solutions for the exchange of information between the Ukrainian SIAA and the NCTS have been introduced.

Thus, Ukrainian laws and regulations so far have not been approximated to the requirements of the Convention.

SAD Convention

Draft Law of Ukraine No. 5627 of 29.12.2016 "On amending the Customs Code of Ukraine with respect to aligning transit procedures with the Convention on a common transit procedure and the Convention concerning the simplification of formalities in trade in goods" (rejected by the VRU).

Resolution No. 1106 of the CMU of October 25, 2017 "On the Implementation of the Association Agreement between the European Union and the European Atomic

Energy Community and their Member States, of the one part, and Ukraine, of the other part" (the deadlines for implementation of paragraphs 453-474 related to the Convention expired on March 20, 2018).

The deadlines for implementation of the SAD Convention (1 year from the date of commencement of the Association Agreement, which expired on January 1, 2017) have been violated.

In general, Ukrainian legislation is approximated to the requirements of this Convention, however, its final implementation has not been performed yet. In order to fulfil the formal requirements of the SAD Convention, Ukraine still has to make some minor amendments to the legislation (including those related to bringing terminology in the Customs Code of Ukraine in line with the terminology used in this Convention).

However, the provisions of the SAD Convention are interlinked with those of the NCTS Convention.

Therefore, both Conventions should be implemented simultaneously. Consequently, progress with the SAD Convention depends on the implementation of the NCTS Convention.

ENERGY COOPERATION

ENERGY COOPERATION

Expert

Dmytro Naumenko

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

Under Articles 337 to 342 and Annex XXVII of the Association Agreement as well as in accordance with the commitments under the Energy Community Treaty, between November 2014 and November 2017, Ukraine had to approximate its national energy legislation with the requirements of the following EU legal acts (within the following sectors):

Electricity

1. Directive 2009/72/EC concerning common rules for the internal market in electricity;
2. Regulation (EC) 714/2009 on conditions for access to the network for cross-border exchanges in electricity;
3. Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment.

Gas

4. Directive 2009/73/EC concerning common rules for the internal market in natural gas;
5. Regulation (EC) No. 715/2009 on conditions for access to the natural gas transmission networks;
6. Directive 2004/67/EC concerning measures to safeguard security of natural gas supply.

Regulatory authorities

7. Requirements for the national regulatory authorities in energy markets are contained in Chapter VIII of Directive 2009/73/EC and Chapter IX of Directive 2009/72/EC.

Oil

8. Directive 2009/119/EC imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products;
9. Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (as regards promoting the use of renewable fuels for transport).

Prospection and exploration of hydrocarbons

10. Directive 94/22/EC on the conditions for granting and using authorisations

for the prospection, exploration and production of hydrocarbons.

Energy efficiency

11. Framework Directive 2012/27/EU on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC;
12. Directive 2010/31/EU on the energy performance of buildings: establishing energy efficiency requirements for buildings and repealing the previous Directive 2002/91 / EC on the energy performance of buildings;
13. Framework Directive 2009/125 / EC establishing a framework for the setting of ecodesign requirements for energy-related products and repealing the previous Directive 2005/32/EC establishing a framework for the setting of ecodesign requirements for energy-using products, supplemented by a number of Implementing Regulations (for a complete list, see the monitoring report of the UCEP for the period from 01.12.2016 to 01.11.2017);
14. Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (repealing Directive 92/75/EEC), which provides for the implementation of subsequent delegated ("subsidiary") regulations (for a complete list, see the monitoring report of the UCEP for the period from 01.07.2016 to 01.11.2016).

Nuclear energy

15. Directive 2014/87/Euratom establishing a Community framework for the nuclear safety of nuclear installations (repealing Directive 2009/71/Euratom);
16. Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation (repealing the following European Directives 89/618, 90/641, 96/29, 97/43, and 2003/122);
17. Directive 2006/117 / Euratom on the supervision and control of shipments of radioactive waste and spent fuel.

Assessment of progress in fulfilling the commitments:

Electricity

- ✕ **Directive 2009/72/EC concerning common rules for the internal market in electricity;**
- ✕ **Regulation (EC) 714/2009 on conditions for access to the network for cross-border exchanges in electricity;**
- ✕ **Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment.**

Approximation of Ukraine's legislation to the requirements of Directives 2009/72/EC and 714/2009 takes place within the framework of a larger-scale reform of the national electricity market, which involves gradual transition from the current "pool" model (when only one state-owned company (SE Energorynok)

is both a wholesale buyer of all electricity produced in Ukraine, and the wholesaler that sells it to energy supply companies (so called "Oblenergos")[1] to the new market model that exists today in the EU countries and involves competition for the consumer in the free market.

The current model involves heavy government regulation of the prices at which generating companies should sell electricity they produce to the single wholesale buyer (SE Energorynok), and SE Energorynok, in turn, should sell electricity at the average regulated prices to Oblenergos. At the same time, final consumers (companies, household customers, state-owned institutions, etc.) cannot freely choose a supplier and have to buy electricity from Oblenergos at the established rates, while these companies are de facto monopolists in their licenced territory.

The European model implies existence of common competitive "rules of the game" in all segments of the electricity market, a clear-cut specification of cases where the Government may provide universal services (or impose special obligations upon market players), unbundling of companies generating or engaging in the supply of electricity and companies that own electricity transmission systems, as well as standardised rules for cross-border trade in electricity.

This model, inter alia, implies the existence of an entire system of individual markets, divided over the periods of time during which electricity sale and purchase transactions occur:

- A market for bilateral contracts, where consumers or traders will be able to buy electricity directly from generating companies;
- A "day-ahead" market[2], where contracts will be concluded for delivery of electricity the following day;
- An intraday market for electricity sale and purchase transactions within one day;
- Balancing market, where market players can buy or sell all kinds of electricity to balance the generation schedule.

The main purpose of the aforementioned markets is to create conditions for the consumer to be able to use the services of any power supply company that will buy electricity in one of the segments of the market and sell it to the consumer at a contractual price, while the transmission operator will provide exclusively electricity transmission services to market players at regulated rates.

Whereas the new company PJSC Market Operator will ensure the operation of "day-ahead" and intraday markets, the state-owned company Guaranteed Buyer will buy the entire amount of electricity produced from alternative sources of energy at the "green tariff". Both companies will be unbundled from the structure of SE Energorynok. The state-owned company SE NPC Ukrenergo, which currently manages the United Energy System of Ukraine (UES), will become the transmission system operator (management of trunk power grids that supply electricity from generating companies to the networks of Oblenergos) as well as

1) The only exception to this mechanism are generating installations with installed capacity of up to 20 MW that have the right to sell electricity directly to final consumers. In addition, for thermal generation, there is a mechanism for price applications, whereby the lowest price applications are bid first, which is an element of competition in this segment of the market.
2) From a technical point of view, it is precisely based on this principle that the daily balance of electricity production and consumption is planned within the current market model.

will serve as the payment administrator and perform revenue metering.

The legislative process aimed at introducing the new model of the electricity market in Ukraine has been under way since 2013, but the most significant changes have been achieved only after April 2017, when the Law of Ukraine "On the Electricity Market" was adopted. The new Law has established the foundation for Ukraine's transition to the European electricity market model (the Law came into force on June 11, 2017), which should be completed within a two-year transitional period (by the end of July 2019)[3].

According to the plans set by the Coordination Centre for Introduction of the New Electricity Market (hereinafter referred to as the Coordination Centre), to launch the new electricity market in Ukraine it is necessary to fulfil 206 actions and adopt 119 subordinate legal acts. This process is taking place within the 10 segments of the new market, in particular, it is necessary to solve the issues of corporatisation and certification of new market players, regulation of the work of transmission system operators and distribution networks operators, their licencing procedures, and the methodology for the calculation of regulated rates, setting the rules of the operation of new markets, regulation of the operator market, guaranteed buyer and traders, etc. Currently, we are in the midway of the process. As of August 2018, of the total number of actions, 86 events were implemented, including adoption by the NEURC of most of the subsidiary legislation that regulates the operation of different segments of the new market.

One of the recent events in the reform of the electricity market was the corporatisation of the State Enterprise NPC Ukrenergo, accompanied by a conflict between the management of the company and the Commission for the Reorganisation of the State Enterprise NPC Ukrenergo (hereinafter referred to as the Commission) of the Ministry of Energy and Coal Mining. Despite a number of relevant decisions of the Cabinet of Ministers, as of October 2018, the deadlines for establishment of the Company's Supervisory Board and stocktaking of the company's assets were violated. Besides, it was decided to delegate the management of the current activities to the chairman of the Commission – Deputy Energy Minister Mykhailo Blyzniuk, which caused serious concerns on the part of the EU and international financial institutions that invest in the modernisation of the Ukrainian power grid.

The Coordination Centre's plans also include performing a number of measures aimed at meeting the requirements of Directives 714/2009/EC and 2005/89/EC, in particular granting free access to power transmission networks to third-party, which should be charged on a transparent, non-discriminatory basis; development of new mechanisms for the allocation of cross-border power transmission capacities, as well as connecting Ukraine's united energy system to ENTSO-E4, the energy system of continental Europe[4].

3) For the unbundling of distribution network operators, the deadline is one year later, i.e. on July 1, 2020. Currently, the NERC has adopted a new method of setting rates for electricity transmission and distribution services based on the new approach of stimulation rate-setting, but so far they have not been implemented at the level of Oblenergos. Also, in May 2017, the first electronic auction on the distribution of cross-border capacity (both for import and for export of electricity) was held, based on the mechanism that involves distribution of capacity at the Ukrainian border on an annual, monthly and daily basis, which, however, was criticised by the Energy Community Secretariat for a number of issues as regards compliance with EU requirements.

4) In addition to the plans of the Coordination Centre, a number of technical measures are also specified in the draft Plan for the United Energy Systems of Ukraine (UES of Ukraine) for 2017-2026, made public by the State Enterprise NPC Ukrenergo in April 2017.

Also, after signing the ENTSO-E Agreement on June 28, 2017, and the preliminary decision of the ENTSO-E Market Committee, Ukraine, upon completing a number of preparatory measures (from January 1 2019), will be able to become party to the mechanism of financial compensation of expenses of the internal electricity transmission system operator for the setting of cross-border electricity supply[5], which will greatly simplify the cross-border electricity trade with the EU member states.

Gas

- **Directive 2009/73/EC concerning common rules for the internal market in natural gas;**
- **Regulation (EC) No. 715/2009 on conditions for access to the natural gas transmission networks;**
- **Directive 2004/67/EC concerning measures to safeguard security of natural gas supply.**

The above-mentioned regulatory acts of the EU make up the basis for the functioning of the common EU gas market, and after Ukraine's accession of to the Treaty establishing the Energy Community, they were used as the basis for the reform of the gas market in Ukraine. Approximation of Ukraine's national legislation to the EU rules started with adoption of the framework law of Ukraine "On the Natural Gas Market", which came into force on October 1, 2015. Currently, relevant subsidiary legislation is being drafted and adopted, and European "rules of the game" are being introduces in separate segments of the gas market. Despite the significant progress made in this area, in 2018, Ukraine failed to fully adopt the European model of the gas market organisation due to a number of institutional conflicts between different authorities, which in effect blocked the progress of this reform in 2018.

Creating a competitive gas market. The most successful example of application of the European model for organising the gas market in Ukraine was the opening of a wholesale market segment for competition, which involves free sale of domestic gas extracted by private companies, as well as imported gas for sale to commercial consumers (or consumers not subject to the so-called "Provisions on Imposing Specific Duties"[6] and receive gas at government-established prices). The abolition of price regulation in this segment and regulation of the access of private traders to the GTS of Ukraine in accordance with European rules made it possible to organise a reverse scheme of gas supply to the EU in 2014-2015, based on which Ukraine now receives 100% of imported gas. The existence of adequate liquidity of gas supplies imported by trader companies from the EU and extracted by private companies within the country contributed to the emergence of the

5) This mechanism – the Inter-Transmission System Operator Compensation Mechanism (ITC) – is set by Commission Regulation (EU) No. 838/2010 of 23 September 2010. This Regulation, as well as a number of other, more recent EU Energy Community acts, will be analysed in the following monitoring reports.

6) The latest version of the "Regulation on Imposing Specific Duties on Natural Gas Market Participants to Meet General Public Interests in Course of Natural Gas Market Performance" was approved by Resolution No. 867 of the Cabinet of Ministers of Ukraine of October 19, 2018.

first electronic gas exchange-trading platforms (the largest being the Ukrainian Energy Exchange) and setting of indicative market prices.

At the same time, the area of natural gas supply for the needs of non-commercial consumers (or those subject to the ISD regime) is still regulated by the Government and closed to competition, as prices for these categories of consumers (household customers, municipal heat energy companies and religious organisations) are set by the Government and are below market rates (in 2017-2018, the difference between the prices in the ISD segment and the commercial market prices varied from 30 to almost 60%).

The main obstacles hindering implementation of market mechanisms in the non-commercial consumer segment involve the termination of the procedure for unbundling of retail gas suppliers (the so-called Oblgas companies, see below); delays in the introduction of daily gas market balancing, which is important for the compatibility of trade procedures with the gas markets of EU member states (the deadline for its launch has been postponed several times, the most recent deadline was set by December 1, 2018), as well as the clearing nature of the system of provision of the housing and utility subsidy to household customers. According to the Energy Community Secretariat, all these factors together hinder access to the market of gas supply to ISD customers of companies other than Naftogaz of Ukraine in the wholesale supply area and other than Oblgas companies in the area of retail gas supply to household customers.

Access to natural gas transportation networks. Despite the adoption of a package of regulatory legal acts that establish a transparent and non-discriminatory access for market participants to the gas transmission infrastructure in accordance with EU requirements, the relevant acquis require that the activities related to gas transmission through trunk and local pipelines be separated from other activities in the gas market. In the case of Ukraine, this implies unbundling from the structure of Naftogaz of a separate transmission system operator (TSO)[7] as a separate company that will manage the gas transmission system (GTS) of Ukraine. According to the Government's plans[8], such unbundling had to take place as far back as in the end of 2016, but due to the protracted arbitration proceedings between NJSC Naftogaz and Russian OJSC Gazprom, including revision of the current contract for the transit of Russian gas through the territory of Ukraine, as well as due to the conflict between the leadership of NJSC Naftogaz and the Cabinet of Ministers of Ukraine (as the main shareholder of the company) regarding the choice of a particular model of unbundling[9], it resulted in the "freezing" of this process in 2018. Delays in the unbundling procedure have triggered a systemic conflict between Naftogaz, the Government, international financial institutions and even the official EC, which considers delays in the establishment of an independent TSO in Ukraine as a threat that there might be no new contract for the supply of Russian gas through the Ukrainian GTS after January 1, 2020, when the current contract expires.

7) It is planned to separate two companies from the structure of NJSC Naftogaz of Ukraine, one of which should become the TSO (PJSC Trunk Gas Pipelines of Ukraine), and the other one shall manage underground gas storage facilities, that is, become the SSO (storage system operator) (PJSC Underground Gas Storage Facilities of Ukraine).

8) This refers to the plan for restructuring Naftogaz, approved by Resolution 496 of the CMU of July 1, 2016.

9) Directive 2009/73/EC provides for three possible variants of such unbundling, from ownership unbundling (OU) to two options whereby the new operator may remain in the ownership of the vertically integrated undertaking but with significant restrictions on the influence of the parent company on its activities (ISO and ITO variants).

Another similar problem (albeit on a smaller scale) is the unbundling of regional gas companies (Oblgas), which today, having the same owner, combine gas retail sales to end users and gas transmission operations through local gas distribution networks (GDNs). Despite the fact that de jure unbundling has been effected separating them into supply companies (so-called Oblgaszbut companies) and GDN operators (Oblgas companies), but de facto the unbundling has not been implemented because of legal conflicts at the level of subsidiary legislation and lack of political will to solve them[10].

Supply security. The only EU regulation that can be considered fully implemented in Ukraine, is Directive 2004/67/EC, which sets minimum standards for the security of gas supply for all market players, and requires that the competent public authorities draw up a plan of emergency measures at the national level in order to respond to emergencies in the gas market, as well as define the category of "vulnerable consumers" and provide them with an adequate level of protection.

All necessary changes to the national legislation were made at the end of 2015, after adoption of the framework law on the organisation of the natural gas market. Thus, the Ministry of Energy adopted two key regulations: the Order on Approval of the National Action Plan (in the event of a crisis situation) and the Order on Approval of the Rules for the Safety of Natural Gas Supply, which introduced most of the elements of Directive 2004/67/EC and more current Regulation (EC) No. 994/2010[11]. In particular, these acts introduced a mechanism for responding to crises in natural gas supply to Ukraine, a system of effort coordination with the EU, as well as a legal definition of the categories of "protected customers" (household consumers and municipal heat supply companies supplying heat to households) and mechanisms of their protection in the event of a crisis situation.

Besides, Ukraine conducts regular monitoring of the security of natural gas supply (the latest one was held in 2016) and plans to invest in the GTS facilities with the support of international donors, which will increase the level of supply security to meet the EU standards.

Regulatory authorities

Requirements for the national regulatory authorities in the energy markets, contained in Chapter VIII of Directive 2009/73/EC and Chapter IX of Directive 2009/72/EC.

Regulating the work of the national regulatory agency in the energy markets is an extremely important element of the functioning of energy markets in the EU, since it makes it possible to protect large and socially sensitive gas and electricity markets from political interference and to carry out balanced regulation of natural monopolies in the segment of transmission infrastructure, which arose due to the specifics of these markets' formation. That is why the provisions on the national regulatory authority in the energy markets are contained in the two framework energy directives of the EU and are set forth in a separate bloc of

10) Most of the Oblgas companies belong to the Regional Gas Company of the Ukrainian oligarch Dmytro Firtash, who has some influence in the current pro-government coalition.
11) Which, in its turn, was also repealed at the end of 2017 by an even more recent version – Regulation (EU) No 2017/1938 – due to the growing challenges for the security of natural gas supply in the EU.

Ukraine's commitments under the Association Agreement.

Ukraine has made significant progress in reforming its own energy regulatory authority – the National Commission for State Regulation in the Energy and Utilities (hereinafter referred to as the NEURC) – in 2016, when the framework Law of Ukraine "On the National Commission for State Regulation of Energy and Utilities" was adopted. The new Law establishes a clear procedure for competitive selection of new members of the NEURC, which, however, was hindered in every way by the authorities responsible for this. Finally, after passing all stages of selection, the new NEURC was formed as late as in May 2018 (albeit incompletely due to the lawsuits of former commissioners). However, as of the end of 2018, despite the formal enshrinement of EU requirements in legislation and the election of new NEURC commissioners, this commitment cannot be considered fulfilled due to the lack of financial independence of the newly created regulator and numerous cases of political interference in its work that led to rather controversial regulatory decisions (for example, the "Rotterdam +" formula for calculating regulated tariffs for heat generation, the method of setting tariffs for natural gas transportation services at entry points and exit points of the Ukrtransgas system, etc.).

Prospection and exploration of hydrocarbons

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

Directive 94/22/EC sets the conditions for competition in the prospection, exploration and production of hydrocarbons, and is mainly aimed at introducing equal and non-discriminatory conditions for obtaining permits ensuring that all entities that have the necessary resources have access to such permits based on objective, published criteria, and that these criteria are known to all entities taking part in the procedure.

During 2018, no significant progress was made in approximating national legislation to the requirements of Directive 94/22/EC. Specifically, no amendments were introduced to the Subsoil Code of Ukraine as regards transition from the current system for obtaining authorisations for subsoil use to conclusion of contracts for subsoil use. These amendments remain at the draft stage, while the deadline for development and introduction of amendments to the current Procedure for Granting Authorisations for the Use of Subsoil, approved by Resolution No. 615 of the Cabinet of Ministers of Ukraine dated May 30, 2011, was postponed to Q4 2018.

However, on July 26, 2018, the CMU approved the Roadmap for Holding International Oil and Gas Auctions, while the State Service for Geology and Mineral Resources of Ukraine (Derzhgeonadra) issued a number of Government draft resolutions aimed to regulate the issue of implementation of the pilot project for holding an auction, the procedure for disposal of geological information, as well as methods for determining the value of reserves and mineral resources, etc.

It is expected that changes to the current procedure for granting authorisations for the use of subsoil (for example, establishment of methods for determining the

initial auction price, introduction of an electronic document submission system using a digital signature, etc.) will finally contribute to establishing a transparent electronic trading system and create conditions for fair competition for obtaining authorisations.

Energy efficiency

- **Framework Directive 2012/27/EU on energy efficiency, repealing Directives 2004/8/EC on the promotion of cogeneration and 2006/32/EC on energy end-use efficiency and energy services;**
- **Directive 2010/31/EU on the energy performance of buildings: establishing energy efficiency requirements for buildings and repealing the previous Directive 2002/91/EC on the energy performance of buildings;**
- **Framework Directive 2009/125/EC establishing a framework for the setting of ecodesign requirements for energy-related products and repealing the previous Directive 2005/32/EC establishing a framework for the setting of ecodesign requirements for energy-using products, supplemented by a number of Implementing Regulations;**
- **Directive 2010/30/EU on the indication by labelling and standard product information of the consumption of energy and other resources by energy-related products (repealing Directive 92/75/EEC), which provides for the implementation of subsequent delegated ("subsidiary") regulations.**

The energy efficiency field is extremely complex and encompasses almost all industries where energy is used. Currently, the issue of improving energy efficiency in the EU is regulated by a series of framework acquis and specific implementation acts that regulate issues within each sub-sector. Upon the entry into force of the Association Agreement and accession to the Energy Community, Ukraine committed itself to introducing the EU requirements for the development of national energy efficiency policies (Directive 2012/27/EU), energy efficiency requirements for buildings (Directive 2010/31/EU), as well as two legislation packages (framework directives and subordinate implementing ones) in the area of the labelling of energy-related products (Directive 2010/30/EU) and requirements for their ecodesign (Directive 2009/125/EC).

Systemic approximation of the requirements of national legislation to the requirements of the above-mentioned Directives in Ukraine began at the end of 2015, when the National Energy Efficiency Action Plan through 2020 was approved, although its goals were not formalised at the legislative level. It took the State Agency on Energy Efficiency three years to develop a framework law that can ensure comprehensive implementation of the requirements of Directive 2002/27/EC, and in May 2018 it finally came up with the Draft Law "On Energy Efficiency", the final version of the Draft Law was submitted to the Ministry of Regional Development. Alongside this, Ukraine submitted its first report on the implementation of its National Energy Efficiency Action Plan to the Energy

Community Secretariat in March 2018; besides, it has to develop an updated plan and set its national energy efficiency goals by April 2019.

In the field of the energy efficiency of buildings, after a real breakthrough in 2017, when an entire package of necessary framework legislation was adopted, including laws on energy efficiency of buildings, revenue metering of heat and water supply, reform of the sectors of Apartment Building Co-Owners Associations (ABCA) and housing and utility services, as well as creation of the national Energy Efficiency Fund, work is ongoing on the development and adoption of a package of subordinate legal acts that will make it possible to take some consistent practical steps for the implementation of energy-efficient measures in the building sector[12]. As of mid-2018, the scope of legislative work was estimated at approximately 100-120 RLAs, of which about half were ready[13]. Also, after long negotiations with the EU, the German government, and international financial institutions, the procedure for forming the governing bodies of the Energy Efficiency Fund was launched; and as of November 29, 2018, four of the five members of the Fund's Supervisory Board have already been appointed[14].

In the field of energy labelling and requirements for ecodesign of energy-related products, most of the requirements of framework Directives 2010/30/EC and 2009/125/EC, as well as the accompanying implementing regulations for certain types of energy-related products, have been transposed into national legislation in the form of technical regulations as far back as in 2010-2013, and during 2017-2018 they were updated and some "gaps" were closed. According to the Energy Community Secretariat, as regards energy labelling in 2018 Ukraine approved a technical regulation on the energy labelling of domestic ovens and range hoods; another draft technical regulation for energy labelling of water heaters, hot water tanks, and water heater sets is pending interagency approval. Also, Ukraine has to develop and adopt another technical regulation on the energy labelling of space heaters[15], whereupon all Ukraine's energy labelling commitments will be considered fulfilled. As of Q4, 2018, to fully implement its obligations in the field of ecodesign, Ukraine still has 15 more technical regulations to develop and adopt.

Oil

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

Directive 2009/119/EC imposes an obligation on EU member states to create and maintain stocks of crude oil and / or petroleum products corresponding,

12) Currently, the only program in Ukraine is that of "Warm Loans", providing a mechanism of financial compensation for households that carry out energy-efficient measures, but its impact is rather limited due to persistent lack of public financing.
13) Thus, in order to complete the work on approximation of Ukrainian legislation to the requirements of the EU Energy Efficiency Directive, as of mid-2018, 5 of the 14 required subsidiary RLAs were to be adopted.
14) The Supervisory Board of the Energy Efficiency Fund is composed of two representatives of the Government, two independent members and one representative from international donors. Two government and two independent representatives have been selected already.
15) According to the Plan for Development of Technical Regulations for 2018-2019, approved by Order No. 196 of the Ministry of Economy dated February 15, 2018, its development was planned for 4Q, 2018.

at the very least, to 90 days of average daily net imports or 61 days of average daily inland consumption that could be used in the event of a crisis related to the supply of oil, petroleum products or natural gas used for energy production.

It took Ukraine more than 3 years to develop a framework draft law and approve a model for maintaining minimum oil / petroleum product stocks. Hence, in June 2018 the State Reserve (Derzhreserv)[16] finally officially presented the first version of the draft law, and in November 2018 the Energy Community Secretariat confirmed that it was in line with the requirements of Directive 2009/119/EC (according to unofficial information provided by the State Reserve).

In addition to the framework regulation, at the end of 2017, the State Reserve developed and presented a more specific Model for Maintaining and Financing of Minimum Oil Stocks (MMFMS), which was endorsed by the Ministry of Energy in May 2018, and is currently pending approval by the MEDT. Alongside this, the State Reserve started developing an Action Plan for the introduction of emergency stocks in the event of a significant disruption of oil supplies.

The MMFMS implies creating of minimum stocks of oil and petroleum products in the amount of over 2 million tons of crude oil equivalent, which are to be accumulated by the end of 2022. The structure of the MMFMS, based on the actual capacity of Ukrainian refineries, will consist of 30% of oil and 70% of petroleum products[17]. An independent Agency (Slovakia's model – 70% state-owned and 30% owned by market operators) will be set up to manage the MMFMS, while the stocks themselves will be kept partly at the State Reserve's enterprises and partly in the private sector.

According to the State Reserve's estimates, to finance such volumes of MMFMS it is necessary to spend over USD 2.5 billion, for which purpose the MMFMS involves generating 30% of the relevant financing from market players, and 70% from the newly created Agency. Whereas, Ukraine intends to resort to international financial lending options for up to 15 years with the corresponding repayment of both the principal amount of the loan and interest accrued at the expense of redistribution of the excise tax on fuel.

Directive 2009/28/EC on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (as regards promoting the use of renewable fuels for transport).

By becoming a member of the Energy Community, Ukraine has committed itself to achieving a 20% share of RES in the energy consumption of the country, as well as achieving a 10% share of RES in transport by creating incentives for the use of environmentally friendly transport fuels (biofuels).

Although the strategic goals of Ukraine as regards achieving a share of RES in the overall energy consumption have not changed, in November 2017 the Government submitted to the Verkhovna Rada Draft Law No. 7348, providing for amendments to the Law of Ukraine "On Alternative Energy Sources" as regards the establishment of mandatory quotas for producers and importers of transport

16) The Agency of the State Reserve of Ukraine is the main body in charge of the implementation of the reform regarding formation of strategic stocks of oil and petroleum products.
17) Which, in turn, will consist of D.O. (56%) and petrol.

fuel for the content of biocomponents in the total scope of their sale in the customs territory of Ukraine as well as penalties for failure to comply. As of the end of November 2018, the Draft Law was pending consideration by committees. If adopted together with the necessary subsidiary legislation, this Draft Law will ensure implementation of Articles 17 through 21 of Directive 2009/28/EC and will make it possible to increase the share of RES in transport from the current 1% to at least the EU average in 2015 (6.7%).

Nuclear energy

- **Directive 2014/87/Euratom establishing a Community framework for the nuclear safety of nuclear installations (repealing Directive 2009/71/Euratom);**
- **Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure (repealing the following European Directives 89/618, 90/641, 96/29, 97/43, and 2003/122);**
- **Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel.**

As of the end of 2018, the requirements of the EU Directives for safety of nuclear installations, protection against dangers from arising exposure, as well as supervision and control of shipments of radioactive waste and spent nuclear fuel have not been implemented.

As of the end of 2018, despite the adoption of a number of important implementation RLAs to Directive 2014/87/Euroatom, the Draft Law on the State Nuclear Safety Regulatory Authority, which is central to the establishment of an independent nuclear and radiation safety regulator (i.e. the National Commission for Nuclear and Radiation Safety Regulation) has not been adopted.

In order to comply with the requirements of the Directive 2013/59/Euroatom, the CMU, replaced withdrawn Draft Law 3858 with a new bill No. 5550 “On Amending Certain Laws of Ukraine in the Field of Nuclear Energy Use”, which, as of August 2018, was finalised in the committees but has not been put to the vote yet. Likewise, the final version of the draft resolution of the Cabinet of Ministers of Ukraine “On Approval of the Procedure and Plan for the Establishment of a Unified State System for Accountancy and Control of Individual Exposure Doses” was undergoing revision, involving harmonisation with the relevant EU legislation and the modern international system of radiation protection. The SNRSU also adopted several other RLAs, including those related to the safety of use of ionizing radiation sources in medicine, brachytherapy, as well as the administrative control of uranium sites in the framework of their limited exemption from regulatory control.

Neither has there been any significant progress as regards the approximation of Ukrainian legislation to the requirements of Directive 2006/117/Euroatom over the past two years. As of August 2018, the draft resolution of the CMU “On Amendments to the Procedure for Issuing Authorisations for the International

Shipments of Radioactive Materials" was still pending endorsement by the SNRSU, and stands little chance to be endorsed because of its non-compliance with the provisions of the Law on Administrative Services. New Draft Law No. 5550 should resolve this problem too (see above).

TAXATION

TAXATION

Expert

Vyacheslav Cherkashyn

Review of the commitments that were to be fulfilled in the period from November 2014 to November 2017:

In accordance with Article 353 and Annex XXVIII of the Association Agreement between November 2014 and November 2017, Ukraine had to approximate its national legislation to the requirements of the following EU legal acts:

1. Directive 2007/74/EC on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries;
2. Directive 2008/118/EC concerning the general arrangements for excise duty and repealing Directive 92/12/EEC;
3. Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco[1].

Assessment of progress in fulfilling the commitments:

Directive 2007/74/EC on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries

Approximation of national legislation to the requirements of Directive 2007/74/EC is still underway. Partly the provisions of Chapter 3 of Directive 2007/74/EC on cigarettes, cigars, smoking tobacco and alcohol were taken into account in the new Customs Code of Ukraine (Law of Ukraine No. 4495-VI dated March 13, 2012).

In addition, on May 6, 2016, the Government introduced to the Parliament Draft Law No. 4615, which provides for quantitative restrictions on the import of excisable goods exempt from VAT and excise duty as set forth by Directive 2007/74/EC, but the VRU has not considered it yet (undergoing elaboration at the VRU Committee on Taxation and Customs Policy).

As a result, as of the end of 2018, this commitment can be considered partly fulfilled. Ukraine has not managed to fully align national legislation with the requirements (regarding quantitative restrictions) of Directive 2007/74/EC. The Government's report "On Implementation of the Association Agreement between Ukraine and the European Union in 2017" also confirms that the status of implementation of Directive 2007/74/EC is "partially overdue" (page 44 of the Report): "Ukraine, thus, still must make the necessary amendments to the Customs

1) Except Articles 7 (2), 8, 9, 10, 11, 12, 14 (1), 14 (2), 14 (4), 18 and 19 of Directive 2011/64/EC, for which the implementation timetable will be established by the Association Council.

Code to take fully into account the quantitative restrictions on import of excisable goods, namely alcoholic beverages and manufactured tobacco, and on import of certain quantities of fuel exempt of VAT and excise tax, in accordance with EU requirements." The requirements that need to be implemented are taken into account in the Government's Draft Law No. 4615 of May 6, 2016, but it has been pending consideration by the Parliament for more than 29 months now (from May 2016).

To fully implement Directive 2007/74/EC, the following amendments to the Customs Code of Ukraine are necessary:

- adding cigarillos to the list of goods exempt from taxation and setting appropriate restrictions;
- including weight restriction requirements for individual cigars and cigarillos (with a maximum weight of three grams each);
- introduction of a tax exemption provision for a specific amount of imported fuel (in a tank / portable container not exceeding 10 litres) for each motor vehicle; and
- unification of quantitative restrictions on alcoholic beverages (especially beer and wine).

Directive 2008/118/EC concerning the general arrangements for excise duty and repealing Directive 92/12/EEC

Article 1 of Directive 2008/118/EC specifies the list of goods upon which the excise duty is to be levied, namely: energy products and electricity; alcohol and alcoholic beverages; manufactured tobacco. In view of the changes made to the Tax Code of Ukraine in 2014-2015, the lists are almost identical, except for the category of "energy products" with the Ukrainian analogue "fuel" (paragraphs 14.1.1411 p. 14 and 215.3.4 p. 215 of the Tax Code of Ukraine (hereinafter referred to as the TCU)), which is similar in essence, but its meaning is significantly narrower in terms of scope.

In the EU acquis, Article 2 of Directive 2003/96/EC regulates the list of "energy products". By comparing the two categories ("energy products" and "fuel") we can determine the list of goods that Ukraine has not yet made excisable in its legislation (as of October 22, 2018), namely goods that go under the following codes according to the UKT ZED (Ukrainian customs commodity code): 1507-1518, 2107-2706, 2708-2709, 2711-2715.

Alcoholic beverages, tobacco products and "traditional" types of energy products (petroleum products and natural gas) have historically been subject to excise taxes in national legislation (for example, according to Resolution No. 1997-XII of the VRU of December 18, 1991 "On the Procedure of Enactment of the Law of Ukraine 'On Excise Duty'") The current TCU sets the following list of excisable goods (Para. 215.1, Article 215, TCU):

- ethyl alcohol and other alcohol distillates, alcoholic beverages, beer (except live fermented kvass);
- tobacco products, tobacco and industrial tobacco alternatives;
- fuels;
- motor cars, car bodies, trailers and semitrailers, motorcycles, vehicles designed for the transport of 10 persons or more, vehicles for the transport of goods; and
- electrical energy.

The last item (electrical energy) was included in the list of excisable products by Law of Ukraine No. 71 dated December 28, 2014 "On Amendments to the Tax Code

of Ukraine and Certain Legislative Acts of Ukraine regarding Tax Reform".

Also, the VRU adopted Law of Ukraine No. 909-VIII dated December 24, 2015, "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine to Ensure Balance of Budget Revenues in 2016", which provides a definition of the term "fuel" (Para. 14.1.1411, Article 14, TCU) – "petroleum products, liquefied gas, alternative transport fuel, composite transport fuel, substances used as components of transport fuels, other goods specified in Article 215 (3.4) of the Code".

It should be taken into account that the implementation of Article 1 of Directive 2008/118/EC (its provisions are to be implemented "within 2 years from the date of entry into force of the Agreement") does not coincide with the implementation of the provisions of Directive 2003/96/EC (in accordance with Annex XXVIII (28) of the Association Agreement, the provisions "shall be implemented progressively, taking into account future needs of Ukraine").

In accordance with Paragraph 1533 of the Government Action Plan for the Implementation of the Association Agreement (CMU Resolution No. 1106 of October 25, 2017), a relevant draft law on aligning the national legislation as regards levying excise duties on energy products and electricity with the requirements of Directive 2003/96/EC is to be drawn up by December 31, 2021.

Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco

The Government approved the Action Plan for Implementation of the Association Agreement (CMU Resolution No. 1106 of October 25, 2017), which provides for the implementation of Directive 2011/64/EU on the structure and rates of excise duty on tobacco products (codification), namely Paragraphs 1464 through 1468 and 1476 of the aforementioned Action Plan specify that by March 20, 2018 the Ministry of Finance shall prepare a comparative table showing the conformity of national legislation with certain provisions of Directive 2011/64/EU, in particular:

- definitions of the terms "tobacco products", "cigarettes", "products that are wholly or partly composed of substances other than tobacco", "smoking tobacco";
- as regards excluding tobacco-free products used for medical purposes from the list of tobacco products;
- regarding non-standard sizes of cigarettes;
- exemption from excise duty of denaturized tobacco products processed by the manufacturer and products for scientific tests;
- definition of the object and the tax base for tobacco products.

The VRU adopted Law No. 909-VIII of December 24, 2015, "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine to Ensure Balance of Budget Revenues in 2016", which increased the specific rate of excise duty on tobacco products by 40%; clarified the concepts of "excise warehouse" and "warehousekeeper" (Article 14 (1.6 and 1.224) of the TCU); defines the notion of "production of excisable goods (products)" (Article 14 (14.1.28-1) of the TCU);

Order No. 401 of the SFS dated June 9, 2015, "On Approval of the Explanations to the Ukrainian Classification of Goods for Foreign Economic Activity" (hereinafter SFS Order No. 401 dated June 9, 2015) took into account some requirements of Directive 2011/64/EU regarding:

- taxation of products that are completely / partially composed of substances other than tobacco;
- exclusion from the list of tobacco products of the products that do not contain

tobacco and are used exclusively for medical purposes;

- compliance with the criteria defining products like cigarettes, cigars or cigarillos, smoking tobacco.

In September 2017, the Government of Ukraine approved and submitted to the VRU the Draft Law of Ukraine "On Amendments to the Tax Code of Ukraine as regards Approximation of Excise Duties on Tobacco Products to the Minimum Level Applicable in the EU" (No. 7110-1). Its provisions were further taken into account in adopted Law of Ukraine No. 2245-VIII "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine to Ensure Balance of Budget Revenues in 2018" of December 7, 2017.

ENVIRONMENT

ENVIRONMENT

Expert

Andriy Andrusevych

Air quality

Review of commitments that were to be fulfilled in the period from November 2014 to November 2017:

- Directive 2004/107/EC relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air;
- Directive 1999/32/EC relating to a reduction in the sulphur content of certain liquid fuels;
- Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations;
- Directive 98/70/EC relating to the quality of petrol and diesel fuels.

Assessment of progress in fulfilling the commitments:

Directive 2004/107/EC relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air

The process of approximation of national legislation to the provisions of Directive 2004/107/EC is slow, developing along with the adaptation of Directive 2008/50/EC. The Ministry of Ecology is elaborating an act to amend the Procedure for Organisation and Conducting of Monitoring as regards Ambient Air Protection.

At present, there are no publicly available draft regulatory acts.

Consequently, national legislation is not yet in line with Directive 2004/107/EC.

Directive 1999/32/EC on reduction of sulphur content of certain liquid fuels

Amendments to the Technical Regulations concerning the requirements for transport petrol, diesel, marine and boiler fuels (CMU Resolution No. 927 of August 1, 2013), which introduced a complete ban on the use of fuel (petrol, diesel, marine and boiler fuel) with a high level of sulphur. A market surveillance body has been

established – the State Inspection (CMU Resolution No. 1069 of December 28, 2016). Part of the standards required for fuel quality control have been adopted (about 36 more standards are needed).

As regards the use of fuels with high content of sulphur, the implementation has been fulfilled. However, no system of quality control (sampling, analysis) has been established. Full implementation is regularly delayed, which is attested to by the fact that new case ECS-05/13S has been opened by the Energy Community.

Directive 94/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations

The draft national standard "Metrology. Method of verification. Tankers calibrated for petroleum products" has been developed, four standards within DSTU EN 13012 "Filling stations" (TK 146) have been adopted.

The implementation is slow. According to the experts of the Energy Reforms coalition, mistakes made in the translation of the Directive, including its title, greatly hinder the implementation of the Directive.

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

The requirement to ban the sale of leaded petrol was implemented through the adoption of the Law of Ukraine "On the Prohibition of Import and Export of Leaded Petrol and Lead Additives to Petrol on the Territory of Ukraine", whereby from 1 January 2003 the sale of leaded petrol is prohibited.

Requirements for the quality of petrol and diesel fuel are set out in the Technical Regulation concerning requirements for road transport petrol, diesel, marine and boiler fuels, approved by CMU Resolution No. 927 of August 1, 2013. According to the Regulation, since January 1, 2018, in Ukraine allows only Euro-standard petrol meeting the quality requirements set forth in Directive 98/70/EC.

As regards prohibition of the sale of leaded gasoline, the Directive is fully implemented. As regards monitoring and verification of the quality of petrol and diesel, the provisions are not applied due to the low level of transposition of the requirements of Directive 98/70/EC.

Water quality and water resource management, including marine environment

Review of commitments that were to be fulfilled in the period from November 2014 to November 2017:

- Directive 2000/60/EC establishing a framework for Community action in the field of water policy, with amendments and supplements;
- Directive 91/271/EEC concerning urban waste-water treatment.

Assessment of progress in fulfilling the commitments:

Directive 2000/60/EC establishing a framework for Community action in the field of water policy, with amendments and supplements

For the purposes of implementation of Directive 2000/60/EC, Law of Ukraine No. 1641-VIII "On Amendments to Certain Legislative Acts of Ukraine on Implementation of Integrated Approaches in the Management of Water Resources by Basin Principle" of October 4, 2016, was adopted. In addition, a number of important regulations were passed to switch to the basin water management principle, and to monitor the condition of water resources in a new way.

Practical implementation has already begun, in particular, the boundaries of water basins have been set, and the first Basin Council (for the Siverskyi Donets and the Lower Don) has been established.

All in all, transposition has ensured transition to water management in accordance with the requirements of the Directive. At the same time, experts note that for certain important elements transposition is problematic (in particular, with regard to the key concept of "ecological status" and functions of basin councils).

Directive 91/271/EEC on urban waste water treatment

In order to implement Directive 91/271/EEC, Law of Ukraine 2047-VIII "On Amendments to the Law of Ukraine 'On Drinking Water and Drinking Water Supply'", dated May 18, 2017, was adopted, as well as Order No. 316 of the Ministry of Regional Development "On Approval of the Rules for the Acceptance of Wastewater to Centralised Wastewater Systems and the Procedure for Determining the Amount of Fee Charged for Excessive Discharge of Wastewater to Centralised Wastewater Systems" of December 1, 2017. Another two regulations are pending endorsement (orders of the Ministry of Regional Development of Ukraine "On Approval of the Procedure for Determining the Population Equivalent of a Settlement and Criteria for Determining Vulnerable and Less-Vulnerable Zones" and "On Approval of the Procedure for Recycling of Purified Sewage and Sludge, Subject to Observance of Maximum Permissible Concentrations of Pollutants")

Therefore, the approximation of national legislation to the provisions of Directive 91/271/EEC is still underway.

Environmental governance and integration of environment into other policy areas

Review of commitments that were to be fulfilled in the period from November 2014 to November 2017:

- Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment;
- Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment;
- Directive 2003/4/EC on public access to environmental information;
- Directive 2003/35/EC providing for public participation in respect of the

drawing up of certain plans and programmes relating to the environment.

Assessment of progress in fulfilling the commitments:

Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment

For the purposes of implementation of Directive 2011/92/EC, the Law of Ukraine "On Environmental Impact Assessment" and a number of regulations were adopted. The law was enacted on December 18, 2017.

Since December 2017, the law has been enforced; an online register on environmental impact assessment has been established. In general, the implemented EIA model is European but overly complicated. Its practical application after the introduction of private organisers of public hearings may run contrary to the requirements of the Directive.

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

For the purposes of implementation of Directive 2001/42/EC, the Law of Ukraine "On Strategic Environmental Assessment" was adopted. The law was enacted on October 12, 2018, and some of its provisions will come into force from January 1, 2020. It still requires adoption of additional subordinate legislation.

So far, it has not been enforced. The Law does not ensure full implementation of the Directive, in particular regarding public participation and application of SEA (strategic environmental assessment) to urban planning documentation (city general plans, detailed territorial plans, etc.).

Directive 2003/4/EC on public access to environmental information

The Ministry of Ecology has repeatedly reported on having drawn up a Draft Law of Ukraine "On Amendments to Certain Legislative Acts regarding Access to Environmental Information", aimed to implement the provisions of the Directive, but it is not available in the public domain.

Information is mainly accessed in accordance with the Law of Ukraine "On Access to Public Information" of January 13, 2011. The establishment of the proposed "Open Environment" system aims at:

(1) providing the public with free access to information on the condition of the environment and environmental risks in electronic form;

(2) modernisation of public administration;

(3) digitalisation of the process of providing administrative services;

(4) comprehensive implementation of e-governance mechanisms. The system should consist of the following components: management system, geo-portal of environmental data, administrative services portal and state ecological registries, analytical subsystem, information exchange bus.

Directive 2003/35/EC providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment

Directive 2003/35/EC was mainly implemented in the text of the Law of Ukraine "On Strategic Environmental Assessment". The law was enacted on October 12, 2018, and some of its provisions will come into force from January 1, 2020.

So far, it has not been enforced. As regards public participation, the law contains a systemic problem related to the definition of the term "public", which is grossly contrary to the requirements of the Directive. In addition, the public discussion procedure stipulated by the law does not apply to urban planning documentation projects and is specified in the final provisions as a special procedure (by amending the Law "On Regulation of Urban Development"), which runs contrary to the requirements of Directive 2003/35/EC.

Industrial pollution and industrial hazards

Review of commitments that were to be fulfilled in the period from November 2014 to November 2017:

- Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control)

Assessment of progress in fulfilling the commitments:

Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control)

The Government approved the National Emissions Reduction Plan for from large combustion plants, and in 2018 it adopted an Action Plan for its implementation in 2018. However, there is no information on the implementation of actions planned for 2018 in the public domain.

The National Plan for Reduction of Emissions from Large Combustion Plants is aimed at gradually reducing emissions of sulphur dioxide, nitrogen oxides and particulate matter from large combustion plants (of rated thermal capacity of 50 MW or more) by December 31, 2033. Currently, 223 such plants operate in Ukraine (135 of them are to be decommissioned by December 31, 2033).

The 2018 Action Plan involves, inter alia, conducting work with operators to identify major needs for reconstruction, modernisation and technical re-equipment of large combustion plants. In addition, the Action Plan for 2019-2033 is to be adopted, covering reconstruction, modernisation and technical re-equipment of the objects included in the National Plan for Reduction of Emissions from Large Combustion Plants.

The main tasks of the draft Concept for Implementation of Public Policy in the Field of Industrial Pollution:

- increasing the efficiency of state regulation in the field of industrial pollution;

- strengthening institutional capacity and ensuring effective interaction of the authorities responsible for issuing environment protection-related authorisations;
- improvement of the system of supervision (control) over compliance with the requirements of environmental legislation by economic operators.

Depending on the type of activity and capacities, the Concept envisages introduction of two types of authorisations: an integrated permit (Group 1 installations) and a unified permit (Group 2 installations). The concept will be implemented in three stages and should be completed by 2028.

In order to implement the provisions of Directive 2010/75/EU on industrial pollution and the integrated permit, the Ministry of Ecology published the draft Concept for Implementation of Public Policy in the Field of Industrial Pollution of November 16, 2018. The relevant draft law is to be drawn up after approval of the Concept and Action Plan for its implementation.

Climate change and protection of the ozone layer

Review of commitments that were to be fulfilled in the period from November 2014 to November 2017:

- Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community;
- Regulation (EC) No. 842/2006 on certain fluorinated greenhouse gases;
- Regulation (EC) No. 2037/2000 on substances that deplete the ozone layer.

Assessment of progress in fulfilling the commitments:

Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community

In order to adapt national legislation to the provisions of Directive 2003/87/EC, the Ministry of Ecology developed and published on June 21, 2018 the draft Law of Ukraine "On the Basics of Monitoring, Reporting and Verification of Greenhouse Gas Emissions", as well as held preliminary consultations with business representatives, NGOs and scientific establishments

The Draft Law defines the powers of CEBs in the field of monitoring, reporting and verification concerning greenhouse gases, the issue of registration of installations in the State Register of Installations, organisation and conducting of monitoring, reporting and verification. This Draft Law also establishes the main rights and obligations of the operator and verifier and contains provisions on access to information on greenhouse gas emissions and public participation in monitoring, reporting and verifying emissions of greenhouse gases.

For the same reason, the Ministry of Ecology has also developed the draft CMU resolution "On Approval of the Procedure for Monitoring and Reporting of Greenhouse Gas Emissions", the draft CMU resolution "On Approval of the Procedure for Verifying Operators' Reports on Greenhouse Gas Emissions", the draft CMU Resolution "On Approval of the List of Types of Activities Subject to Monitoring,

Reporting and Verification of Greenhouse Gas Emissions", the draft Act "On Certain Issues Related to the Accreditation of the Verifier of the Operator's Report on Greenhouse Gas Emissions".

Apart from that, during 2018, the Ministry of Ecology has developed 10 methodological guidelines for calculation of greenhouse gas emissions and monitoring of emissions, including annual monitoring plans (simplified and standard), the annual report on greenhouse gas emissions and the report on monitoring improvements, as well as relevant instructions for accreditation and verification.

However, all efforts currently aim only at creating a greenhouse gas accounting system, trade issues have not been addressed yet.

Regulation (EC) No. 842/2006 on certain fluorinated greenhouse gases

Regulation (EC) No 2037/2000 on substances that deplete the ozone layer

In order to align national legislation with the provisions of the two Regulations, the CMU drafted and approved the Draft Law of Ukraine "On Ozone-Depleting Substances and Fluorinated Greenhouse Gases", which was registered on September 14, 2018 in the Verkhovna Rada.

As a whole, the Draft Law takes into account the requirements of Regulation (EC) No. 842/2006 and Regulation (EC) No. 2037/2000. It defines the powers of CEBs, sets the basic requirements for economic operators, introduces monitoring of the ozone layer, establishes procedures for the phasing out of controlled substances and goods containing them, sets requirements for personnel certification and equipment labelling, determines the procedure for import and export of controlled substances and goods, as well as their accounting and reporting.

The Draft Law provides for the creation and operation of the Unified State Register of Ozone Depleting Substances and Fluorinated Gases Operators. Production of ozone-depleting substances and fluorinated greenhouse gases in Ukraine is prohibited, and placing on the market of primary ozone-depleting substances shall be prohibited from January 1, 2021.

Genetically modified organisms

Review of commitments that were to be fulfilled in the period from November 2014 to November 2017:

- Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms;
- Directive 2009/41/EC on the contained use of genetically modified micro-organisms;
- Regulation (EC) No. 1946/2003 on transboundary movements of genetically modified organisms.

Assessment of progress in fulfilling the commitments:

Directive 2001/18/EC on the deliberate release into the environment of genetically modified organisms

The Ministry of Ecology elaborated the Draft Law of Ukraine "On the State System of Biosafety in Creating, Testing, Transporting and Using Genetically Modified Organisms" (new version) back in 2017. Currently, the Draft Law is being finalised taking into account the comments received from CEBs and EU experts.

This Draft Law takes into account the main requirements of Directive 2001/18/EC on the release of GMOs into the environment. The new version proposes a new definition of the term GMOs, adds a definition of "environmental risk assessment", and complements the definition of "GMO circulation". In addition, the Draft Law proposes to supplement the methods of modifying genetic material, as well as methods that do not result in genetic modification.

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

In order to align national legislation with the provisions of Directive 2009/41/EC, the Ministry of Ecology developed the Draft Law of Ukraine "On the State System of Biosafety in Creating, Testing, Transporting and Using Genetically Modified Organisms" (new version) in 2017. Currently, the Draft Law is being finalised taking into account the comments received from CEBs and EU experts.

This draft law takes into account the main requirements of Directive 2009/41/EC on the contained use of genetically modified microorganisms.

Regulation (EC) No. 1946/2003 on transboundary movements of genetically modified organisms

In order to approximate national legislation to the provisions of Regulation (EC) No. 1946/2003, the Ministry of Ecology developed the Draft Law of Ukraine "On the State System of Biosafety in Creating, Testing, Transporting and Using Genetically Modified Organisms" (new version) in 2017. Currently, the Draft Law is being finalised taking into account the comments received from CEBs and EU experts.

This draft law takes into account the main requirements of Regulation (EC) No. 1946/2003 concerning the transboundary movements of GMOs. The main principles of the public policy on GMO management include creation of a common system of notification and information on transboundary movements of GMOs and ensuring an adequate level of protection in the area of safe transportation, processing and use of GMOs.

Waste and Resource Management

Review of commitments that were to be fulfilled in the period from November 2014 to November 2017:

- Directive 2008/98/EC on waste

Assessment of progress in fulfilling the commitments:

Directive 2008/98/EC on waste

In order to approximate national legislation to the provisions of Directive 2008/98/EC, the CMU approved the Ukrainian National Waste Management Strategy until 2030 (08.11.2017). The Ministry of Ecology developed and held a public discussion on the draft CMU Resolution "On Approval of the National Waste Management Plan till 2030". At the same time, on November 8, 2018, the Ministry of Ecology published the draft framework law "On Waste Management".

The adopted strategy sets the general framework for regulating waste management. Among the important principles underlying the strategy, special attention should be given to the principle of the hierarchy of waste management, transition to a closed loop economy, and the increased responsibility of the manufacturer.

The draft National Plan includes a number of tasks and measures for major types of waste (municipal, hazardous, industrial, construction, agricultural waste, packaging waste, electronic waste, etc.). In most cases, it is expected that special laws will be developed on the management of such types of waste. The draft specifies a number of general priority areas and activities, in particular, development of a framework law on waste and creation of a special central executive body on waste management and a single centre to ensure implementation of international conventions governing management of hazardous waste and substances. These common measures also include raising public awareness on waste management as a separate priority.

TRANSPORT

TRANSPORT

Experts

Olga Kulyk

Oleksandr Hlushchenko

Road transport

Review of commitments that had to be fulfilled within the period from November 2014 to November 2017:

1. Council Directive 92/6/EEC of 10 February 1992 on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community;
2. Council Directive 96/53/EC of 25 July 1996 laying down for certain road vehicles circulating within the Community the maximum authorized dimensions in national and international traffic and the maximum authorized weights in international traffic;
3. Directive 2009/40/EC of the European Parliament and of the Council of 6 May 2009 on roadworthiness tests for motor vehicles and their trailers;
4. Directive 2008/68/EC on the inland transport of dangerous goods;
5. Regulation (EC) No. 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator;
6. Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities;
7. Directive 2003/59/EC on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers;
8. Directive 91/439/EEC on driving licences.

Assessment of progress in fulfilling the commitments:

Last year, contrary to the requirements of the Association Agreement, none of these EU acquis was implemented.

In addition, for the reporting period (until November 1, 2018), Ukraine should have adapted Directive 92/6/EEC not only for all vehicles used for international transport of goods and passengers but also for all vehicles engaged in national transport registered for the first time after January 1, 2008. That is, Ukrainian legislation should have been fully aligned with the requirements of this Directive.

However Ukraine's "debt" with regard to European integration commitments has not diminished, despite some efforts on the part of agencies in charge (such as

the Ministry of Infrastructure, the Ministry of Internal Affairs, and the Government as a whole). The updated Action Plan on the Implementation of the Association Agreement approved by CMU Resolution No. 1106 of October 25, 2017, (made public in early 2018) has not helped much either.

Just like last year, most attempts in this area came to a standstill at the stage of adoption (or rather, rejection) of the relevant draft laws.

Notably, the three draft laws of Ukraine covering the provisions of six out of the eight above-mentioned EU acquis (to varying degrees) on which the Ministry of Infrastructure pinned its hopes (although they were submitted to the VRU on behalf of a group of MPs) have not been considered in the session hall of the VRU. Namely:

- Draft Law of Ukraine "On Amending Certain Legislative Acts of Ukraine Concerning Safety of Operation of Wheeled Vehicles in Accordance with the Requirements of the Association Agreement Between Ukraine, of the One Part, and the European Union, the European Atomic Energy Community and their Member States, of the Other Part", registered in the Verkhovna Rada on November 17, 2017, under No. 7317 (hereinafter – Draft Law No. 7317);
- Draft Law of Ukraine "On Amending Certain Legislative Acts of Ukraine in the Field of Road Transport in order to Align them with EU Acquis", registered in the Verkhovna Rada on December 8, 2017, No. 7386 (hereinafter – Draft Law No. 7386);
- Draft Law of Ukraine "On Amending Certain Laws of Ukraine as Regards Their Alignment with the Legislation of the European Union in the Area of Transport of Dangerous Goods", registered with the Verkhovna Rada on December 8, 2017, under No. 7387 (hereinafter – Draft Law No. 7387).

The first two draft laws have not yet been considered at a meeting of the specialised VRU Committee on Transport, primarily because they are not fully in line with the spirit and requirements of the acquis communautaire and received mixed (negative) responses from different stakeholders.

Perhaps it is for this reason that on October 4 and 8, 2018, the Ministry of Infrastructure posted two new relevant draft laws on its website for public discussion and at the same time submitted them for endorsement to the agencies concerned. These draft laws seem to be an attempt to improve Draft Laws No. 7317 and No. 7386 taking into account the critical remarks and the results of checking their compliance with EU legislation conducted by European experts in the framework of international technical assistance.

It should be noted that the text of Draft Law No. 7317 was used as the basis for the first one, and the key changes referred to the implementation of requirements for roadworthiness tests. Some of the drawbacks of the previous version have been eliminated, but some controversial norms still exist (more details below).

The second one – "On Amending Certain Legislative Acts of Ukraine Regarding the Regulation of the Market of Road Services in Ukraine in Order to Align Them with the Acts of the European Union" – got rid of the "burden" of Draft Law No. 7386 as regards implementation of requirements for public services of transport of passengers by road specified by Regulation (EC) No. 1370/2007 (according to the timetable, its provisions should be implemented within 8 years after the entry into force of the Association Agreement). The new Draft Law focuses solely on the implementation of Regulation (EC) No. 1071/2009 as regards admission of economic operators to the market for road transport services, which could be a positive factor in its adoption.

However, Draft Law No. 7387 (on the transport of dangerous goods) has already passed the procedure of consideration in the specialised VRU Committee on Transport, and despite the heated expert discussions and those involving the key stakeholders, they did reach consensus and recommended the Verkhovna Rada to adopt this Draft Law in first reading, taking into account proposals and amendments thereto. Starting in June, the Draft Law has been included in the agenda of the VRU's sessions for five times, but it has never been considered.

Moreover, attempts to bring under regulatory control some aspects of the transport of dangerous goods at the level of subordinate legislation have been fruitless so far. In particular, in January, 2018, the Ministry of Internal Affairs elaborated and published a draft order "On Approval of Certain Regulatory Acts on the Transport of Dangerous Goods by Road", which sets forth a new version of the Rules for the Transport of Dangerous Goods and stipulates the issue and execution of certain documents in this area (certificates, approvals). In August, the Ministry of Infrastructure, in its turn, developed and published a draft CMU resolution "On Approval of the Regulation on Authorised Persons (Consultants, Advisers) with regard to the Safety of Transport of Dangerous Goods", which in some regards supplements the Procedure for conducting special training for workers of dangerous goods transport entities approved by CMU Resolution No. 1285 of October 31, 2007. However, these draft acts have a number of shortcomings, first of all, with regard to the legal aspects of the regulation of these issues in the proposed manner, therefore, they have not been adopted yet.

Another legal act important in the fulfilment of Ukraine's commitments is Directive 91/439/EEC on driving licences (on May 20, 2018, it was replaced with Directive 2006/126/EC). In order to fulfil this task, in January 2018, the Ministry of Internal Affairs published a draft Law of Ukraine "On Amendments to Certain Laws of Ukraine (regarding implementation of legislation and definition of the list of administrative services provided by the territorial bodies of the Ministry of Internal Affairs of Ukraine)". The Draft Law, inter alia, aims at harmonising the provisions of the relevant articles of the Law of Ukraine "On Road Traffic" with the provisions of Directive No. 2006/126/EC, in particular harmonising the categories of vehicles, gradually introducing access to the categories of two-wheeled vehicles and categories of vehicles used for the transport of passengers and goods, setting the minimum and maximum age for the issue of driver's licences for certain categories of vehicles, establishing new terms of administrative validity of driver's licences, etc. Unfortunately, this Draft Law in certain regards is inconsistent with the EU acquis. So far, it has not been submitted to the VRU for consideration.

Therefore, there have been no tangible results in this area in the reporting year and the relevant progress is very slow.

Inland water transport

Review of commitments that had to be fulfilled within the period from November 2014 to November 2017:

In accordance with the commitments undertaken by Ukraine within the framework of the Association Agreement in the previous period (from November 1, 2014, to November 1, 2017), the national legislation in the field of inland water transport were to be aligned with the requirements of the following EU acquis:

1. Directive 2008/68/EC on the inland transport of dangerous goods;
2. Council Directive (EEC) No. 87/540 on access to the occupation of carrier of goods by waterway in national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation.

Assessment of progress in fulfilling the commitments:

Directive 2008/68/EC on the inland transport of dangerous goods

The following RLAs have been developed and approved to establish the rules for the inland transport of dangerous goods in Ukraine: Order No. 126 of the Ministry of Infrastructure of April 4, 2017 "On Approval of the Rules for the Transport of Dangerous Goods by Inland Waterways of Ukraine", registered in the Ministry of Justice on April 28, 2017 under No. 556/30424.

Amendments to the Rules for the Transport of Bulk Cargoes, approved by Order No. 156 of the Ministry of Infrastructure of April 25, 2017, registered in the Ministry of Justice on July 17, 2017 under No. 865/30733. This Order establishes procedures for checking tanks for the transport of dangerous goods by inland waterways.

These acts determine the conditions for the transport of dangerous goods by inland waterways of Ukraine, determine the conformity of vehicles and personnel of shipping companies carrying out the transport of dangerous goods in accordance with the requirements of the national and European legislation in the field of the transport of dangerous goods. The Rules for the Transport of Dangerous Goods by Inland Waterways of Ukraine (hereinafter referred to as the Rules) drawn up in accordance with the requirements of the ADR rules (Rules attached to the European Agreement on the International Carriage of Dangerous Goods by Inland Waterways) establish requirements for the labelling of goods, as well as requirements for cargo operations.

Also, these Rules define the following terms: cargo unit; cargo transport unit; port operator (stevedoring company); river port (terminal).

However, in spite of some positive developments in the regulatory area due to the adoption of the above regulatory legal acts, it should be noted that there are a number of common obstacles and inconsistencies related to their enforcement (application). For instance, the auditor report of the Accounting Chamber established that in 2016–2017 UkrTransSecurity failed to fulfil certain functions of control and supervision over compliance with the Rules as regards compliance with the requirements for cargo operations and short-term storage of dangerous goods accepted for carriage by inland waterways of Ukraine, as set forth by the Rules for the Carriage of Dangerous Goods by Inland Waterways of Ukraine (Order No. 126 of the Ministry of Infrastructure of April 4, 2017), which entered into force on 06.06.2017.

Council Directive (EEC) No. 87/540 on access to the occupation of carrier of goods by waterway in national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation

VRU Draft Resolution No. 2475а-д/П of July 9, 2018, proposes to adopt in the first reading as the basis the Draft Law of Ukraine "On Inland Water Transport", which partly reflects the requirements of Directive 87/540/EEC.

However, as of 06.10.2018, this Draft Law was pending consideration by the VRU.

Implementation of Directive 87/540/EEC implies amending the legislation of Ukraine in order to ensure access to the occupation of carrier of goods by waterway in national and international transport and on the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation.

In addition, the above-mentioned EU act requires drafting of a law on the professional competence of the carrier for operation in inland waterway transport and the mutual recognition of diplomas, certificates and other evidence of formal qualifications for this occupation, as well as taking measures for issuance of relevant certificates.

However, it should be noted that the adoption of the Law of Ukraine "On Inland Water Transport" is not enough to comply with the provisions of Directive 87/540 / EEC, since it is necessary to develop and adopt training programmes that meet the requirements of the disciplines taken into account for the recognition of professional competence. The disciplines should be described in detail and identified or approved by the competent authorities, also we need a mechanism for the mutual recognition of diplomas and certificates.

At the time of writing, the standard of higher education in the field of inland water transport has not been developed to take into account the requirements of Directive 87/540/EEC, neither have standard programmes for the training of crew members of sea-going vessels to be approved by the central executive authority in the field of education and science in agreement with the central executive body responsible for the public policymaking in the area of sea and inland water transport.

Consequently, the above analysis attests to both lack of progress towards the full implementation of the requirements of Directive 87/540/EEC and lack of a basic approach to the full approval, elaboration, and interaction with the relevant authorities regarding the specified regulatory act.

Maritime transport

Review of the commitments that were to be fulfilled in the period from November 2014 to November 2017:

1. Regulation (EC) No. 336/2006 on the implementation of the International Safety Management Code within the Community;
2. Regulation (EC) No. 392/2009 on the liability of carriers of passengers by sea in the event of accidents;
3. Regulation (EC) No. 782/2003 on the prohibition of organotin compounds on ships;
4. Directive 2008/106/EC on the minimum level of training of seafarers;
5. Regulation (EC) No. 417/2002 on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No 2978/94;
6. Directive 2005/65/EC on enhancing port security;

7. Regulation (EC) No. 725/2004 on enhancing ship and port facility security.

Assessment of progress in fulfilling the commitments:

Regulation (EC) No. 336/2006 on the implementation of the International Safety Management Code within the Community

The Draft Law of Ukraine "On Inland Water Transport" – which draft VRU resolution No. 2475а-д/П of July 9, 2018, – proposes to adopt as a basis, implements the requirements of Regulation (EC) No. 336/2006.

The purpose of Regulation (EC) No. 336/2006 is to enhance the safety management and safe operation of ships, as well as to prevent pollution from ships.

It is planned to introduce the relevant amendments to the legislation of Ukraine regarding the obligations of the ship-owner to maintain a safety management system of the shipping company and vessels, as well as liability for administrative offences in this area and training personnel in charge for state supervision of shipping companies.

Regulation (EC) No. 336/2006 applies to the following types of vessels and companies operating these vessels:

- cargo ships and passenger ships, flying the flag of a Member State, engaged on international voyages;
- cargo ships and passenger ships engaged exclusively on domestic voyages, regardless of their flag;
- cargo ships and passenger ships operating to or from ports of the Member States, on a regular shipping service, regardless of their flag;
- mobile offshore drilling units operating under the authority of a Member State.

To comply with Regulation (EC) No. 336/2006, owners of inland commercial vessels (covered by the Regulation) have to introduce a safety management system for inland maritime traffic on the basis of the ISM Code.

The Ministry of Infrastructure has neither drafted nor adopted any relevant regulatory legal acts, specifically, amendments to the Regulation on the System of Safety Management of Maritime and Inland Shipping, approved by Order No. 904 of the Ministry of Transport dated November 20, 2003.

It is also envisaged to conduct training and advanced training of inspectors responsible for the supervision of shipping companies flying the state flag (within the State Service of Maritime and River Transport and Services of Seaport Captains), including in educational institutions of EU Member States.

The Ministry of Infrastructure and the Ministry of Foreign Affairs failed to submit to the Verkhovna Rada a separate Draft Law "On Amendments to the Merchant Shipping Code of Ukraine and the Code of Ukraine on Administrative Offences regarding the obligations of the ship-owner to maintain a system for managing the safety of the shipping company and vessels, as well as liability for administrative offences in this area".

Regulation (EC) No. 336/2006 requires the following amendments:

- to Article 57 of the Merchant Shipping Code of Ukraine as regards supplementing it with a provision aimed at introduction and maintenance of

a shipping safety management system;

- to Article 40 of the Merchant Shipping Code of Ukraine as regards supplementing it with a provision on recognition by Ukraine of safety management certificates issued by the administration of any other Member State or a recognised organisation on behalf of this administration;
- to the Code of Ukraine on Administrative Offences as regards supplementing Chapter 10, Part II, Section II with a provision concerning liability for violating the requirements of the legislation of Ukraine on the introduction and maintenance of safety management systems on maritime and river transport;
- to Order No. 904 of the Ministry of Transport of Ukraine dated November 20, 2003 "On Approval of the Regulation on the Shipping Safety Management System for Maritime and River Transport" to fully align it with the provisions of Regulation No. 336/2006;
- Authorisation of recognised organisations (in accordance with Regulation (EC) No. 391/2009 and Directive 2009/15/EC) to issue Safety Management Certificates for Vessels and Documents on Conformity of Companies in accordance with the provisions of Regulation No. 336/2006.

Adoption of the Draft Law "On Inland Water Transport" (reg. No. 2475а-д/П dated 07.09.2018) is not sufficient to implement Regulation No. 336/2006, since this Law regulates the relations exclusively in the field of inland water transport, the use of vessels, river waterways and their coast lines for shipping, defines the legal status of river ports and does not apply to sea routes and seaports.

The authors of the aforementioned Draft Law specify amendments to the Merchant Shipping Code and the Code of Ukraine on Administrative Offences in the areas of shipping and safety in maritime and inland water transport. However, this runs contrary to the very nature of the Draft Law, since it applies to inland waterways only.

Regulation (EC) No. 392/2009 on the liability of carriers of passengers by sea in the event of accidents

Legislators drafted the bill "On Amendments to Certain Laws of Ukraine as regards Compulsory Insurance of the Carrier's Liability for Damage Caused to the Safety and Health of Passengers and Third Parties" (Reg. No. 4642, re-submitted for first reading on April 4, 2017). It was registered on the VRU Agenda 2543-VIII of September 18, 2018. However, the VRU failed to consider it.

The responsible authorities analysed the need for Ukraine to accede to the Protocol of 2002 to the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (1974). It should be noted that Ukraine joined the 1974 Athens Convention as early as in 1994. However, the Protocol of 2002, which provides for enhanced compensation, introducing strict liability, establishing a simplified procedure for updating the limitation amounts, and ensuring compulsory insurance for benefit of passengers, has not been ratified by the VRU.

The objective of Regulation (EC) No. 392/2009 is to introduce a set of rules concerning liability and insurance related to the carriage of passengers by sea in order to increase compensation for damage caused to passengers and enhance the safety of maritime transport.

Regulation (EC) No. 392/2009 introduces a number of additional measures to the Protocol of 2002 in order to further enhance the provisions concerning compensation to passengers, including compensation for mobility equipment, and cases when the death or personal injury of a passenger is caused by a shipping incident – the carrier must make an advance payment of at least EUR 21,000 to cover any immediate economic needs.

Draft Law No. 2543-VIII "On Amendments to Certain Laws of Ukraine as regards Compulsory Insurance of the Carrier's Liability for Damage Caused to the Safety and Health of Passengers and Third Parties" of September 18, 2018, involves amending the Merchant Shipping Code of Ukraine to establish the amount of compensation for personal injury or death of passengers, loss of or damage to luggage caused by a shipping accident, as well as amendments to the Code of Administrative Offences regarding fines in the event of violation of the system of liability and insurance for carriage of passengers by sea.

Regulation (EC) No. 392/2009 requires development and adoption of a regulatory legal act establishing rules for the safe operation of passenger ships, including definition of categories (classes) of passenger ships in accordance with EU legislation and provision of appropriate information to passengers.

However, along with drafting the relevant law, so far no authority has been appointed in charge of issuing, the possession of, and cancellation of insurance certificates.

Moreover, there is no regulatory legal act on amendments to the Regulation on the structural subdivision of the Ministry of Infrastructure in terms of exercising powers and procedures for issuing, controlling the possession of, and cancellation of insurance certificates.

No insurance certificates and scenarios based on the current models of EU Member States have been developed.

No regulatory legal act to set forth categories (classes) of passenger ships as defined by the requirements of Directive 2009/45/EC on safety rules and standards for passenger ships has been drafted.

Regulation (EC) No. 782/2003 on the prohibition of organotin compounds on ships

No RLA has been drafted to align Ukrainian legislation with the Regulation.

The purpose of Regulation (EC) No 782/2003 is to ban organotin compounds on ships. These are compounds of chemicals used in anti-fouling paints applied to the hull of ships. This outer coating is intended to prevent the growth of algae, molluscs and other organisms that slow down the speed of vessels.

The Regulation directly lays down detailed requirements with which ship-owners throughout the EU must comply.

Starting from July 1, 2003, organotin compounds acting as biocides in anti-fouling systems can no longer be used on ships flying the flag of a Member State. Starting from January 1, 2008, ships arriving in a port of a Member State shall not bear organotin compounds that act as biocides on their hull unless they bear a coating that forms a barrier to such compounds to prevent them leaching.

For approximation of national legislation with the provisions of Regulation (EC)

No. 782/2003, it is necessary:

- to adopt a legal act on Ukraine's accession to the International Convention on the Control of Harmful Anti-Fouling Systems in Ships;
- to adopt RLAs on implementation of the Guidelines for Survey and Certification (Resolution MEPC.102 (48) of October 11, 2002), Guidelines for Brief Sampling of Anti-Fouling Systems on Ships (Resolution MEPC.104 (49) of July 18, 2003) , Guidelines for Inspection of Anti-Fouling Systems on Ships (Resolution MEPC.105 (49) of July 18, 2003);
- to implement the provisions of Regulation (EC) No. 782/2003 in Ukrainian legislation, including: the Merchant Shipping Code of Ukraine, taking into account the requirements for the inspection of ships under the rules of Port State Control (for ships flying a foreign flag) and the Flag State Inspection (for ships flying the flag of Ukraine) with regard to verifying that the ship has a valid AFS Certificate, AFS records and other relevant documentation; the Code of Ukraine on Administrative Offences regarding the liability of the ship-owner for compliance with the requirements of the AFS Convention and Regulation (EC) No 782/2003;
- to adopt a legal act on ensuring that from 2017 ships have the following documents: for ships of 400 gross tonnage or above a valid AFS Certificate (or another certificate specified in para. 2.1 of Annex I to Regulation (EC) No. 782/2003);
- for ships of 24 meters or more in length, but less than 400 gross tonnage, an AFS Declaration and relevant documentation (for example, bills and receipts for paint and contractor's invoices) or relevant marking;
- to authorise the Ukrainian Shipping Register to issue certificates and carry out inspections;
- to create or authorise a specialised laboratory to carry out brief sampling and testing of anti-fouling systems on ships (Resolution MEPC 104 (49)), taking into account the minimal expenses of the ship-owner and the time of delay for the ship to conduct the procedure;
- to upgrade the skills of the personnel of the Shipping Register as regards compliance with Regulation (EC) No. 782/2003 and the AFS Convention.
- No legislative act on Ukraine's accession to the International Convention on the Control of Harmful Anti-Fouling Systems in Ships, as well as other aforementioned regulations has been drafted.

No act on implementation of the provisions of Regulation (EC) No. 782/2003 concerning the prohibition of organotin compounds on ships in the national legislation of Ukraine has been drafted.

Directive 2005/65/EC on enhancing port security and Regulation (EC) No. 725/2004 on enhancing ship and port facility security

No RLA has been drafted to approximate Ukrainian legislation with the Directive and the Regulation.

The objective of Directive 2005/65/EC is to achieve the greatest possible maritime and port facility security. In accordance with this Directive, port security measures shall be introduced, covering each port within the boundaries defined by

the Member State concerned, and thereby ensuring that security measures taken pursuant to Regulation (EC) No. 725/2004 benefit from enhanced security in the areas of port activity. The aforementioned measures should apply to all ports where one or more port facilities are situated.

In accordance with Directive 2005/65/EC and Regulation (EC) No. 725/2004, it is necessary to approve port security plans containing findings of the port security assessment. The effectiveness of the security measures requires a clear division of tasks between all parties involved, as well as regular exercises. Such clear division of tasks and recording of exercise procedures in the format of a port security plan serves as a significant contribution to ensuring the effectiveness of both preventive and remedial port security measures.

In order to approximate national legislation to the requirements of Directive 2005/65/EC, it is necessary, inter alia:

- to introduce amendments to the legislation of Ukraine regarding the enhancement of the security of ships and port facilities, as well as the appropriate training of personnel;
- to draft laws regarding requirements for the security of ships and port facilities;
- to develop a procedure for inspecting compliance of the security status of ships and port facilities with the requirements of the legislation in the field of security;
- to establish liability for violation of the requirements of legislation on the security of ships and port facilities;
- to establish legislative regulation of the issues related to the functioning of the coordination centre in the field of maritime security;
- to hold training and advanced training of maritime security personnel, including in educational institutions of the EU Member States.

So far, no relevant draft laws have been submitted to the VRU.

Directive 2008/106/EC on the minimum level of training of seafarers

For the purpose of approximation of the Directive, no RLAs have been developed, however, the requirements of this Directive are fully in line with the requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (1995), to which Ukraine acceded on November 1, 1996, by Law of Ukraine No. 464 / 96-BP "On Ukraine's Accession to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers of 1978", and the regulatory documents of Ukraine on the certification and training of seafarers comply with the requirements of the Manila Amendments.

The requirements of this Directive are partly complied with in Ukraine as they are in line with the Convention on Standards of Training, Certification and Watchkeeping for Seafarers.

The objective of Directive 2008/106/EC is to establish international requirements for the training and certification, medical standards and rest periods of seafarers as provided for by the STCW Convention, as well as in EU legislation.

Directive 2008/106/EC applies to all seafarers (European and non-European)

operating on board ships flying the flag of a Member State of the EU.

This Directive establishes the rules of training and qualification standards for seafarers who apply for certification or re-certification of qualifications that enable them to perform the functions for which the relevant qualification certificates are issued.

For certain categories of vessels, such as tankers and ro-ro passenger ships, Directive 2008/106/EC establishes special training requirements. It sets mandatory minimum training and qualification requirements for seafarers working on board such special categories of ships. In all cases, seafarers working on board should be trained in accordance with the requirements of the STCW Convention.

There are currently no regulatory acts in Ukraine that contain references to this EU Directive. However, since the requirements of Directive 2008/106/EC are fully in line with the requirements of the STCW Convention, as amended in 1995, and Ukraine's regulatory documents meet the requirements of the Manila Amendments, it can be argued that the requirements of this Directive are partially complied with in Ukraine, since they are in accordance with the STCW Convention.

In order to approximate national legislation to the provisions of Directive 2008/106/EC, it is necessary:

- to adopt a law on amending Article 51 of the Merchant Shipping Code of Ukraine to bring it into compliance with the requirements of the STCW Convention as regards the professional qualifications of crew members;
- to adopt a law on the level of training of seafarers, standards of higher and vocational education, as well as public educational standards, responsibilities of state bodies and ship-owners for ensuring the minimum level of training of seafarers;
- for the Ministry of Infrastructure and the Ministry of Education and Science to adopt RLAs based on the provisions of Directive 2008/106/EC concerning the level of training of seafarers, standards of higher and vocational education, public educational standards, as well as the responsibilities of state authorities and ship-owners to ensure a minimum level of training for seafarers in accordance with Directive 2008/106/EC;
- for the Ministry of Infrastructure to adopt RLAs on amending the Regulation on Keeping the Unified State Register of Seafarers' Documents approved by Order No. 3 of the Ministry of Transport of January 8, 2003, as regards introduction of electronic record-keeping and the possibility of checking the validity of seafarers' documents online in real-time mode by filing a request based on no more than two parameters;
- for the Ministry of Infrastructure and the Ministry of Education and Science to adopt procedures for approving seafarer training programmes in educational institutions and for advanced training of seafarers in accordance with the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978.

Regulation (EC) No. 417/2002 on the accelerated phasing-in of double hull or equivalent design requirements for single hull oil tankers and repealing Council Regulation (EC) No. 2978/94

In 2018, the Ministry of Infrastructure drafted an order “On approval of requirements for a double-hull or equivalent design requirements for single-hull oil tankers”. The draft is pending endorsement by structural subdivisions of the Ministry of Infrastructure.

The purpose of this Regulation is to establish an accelerated phasing-in scheme for the application of double hull or equivalent design requirements of the MARPOL 73/78 Convention to single hull oil tankers and to bar single-hull oil tankers carrying heavy diesel oil from entering or leaving the ports of the Member States.

Regulation No. 417/2002 also introduces the requirement that category (1) and (2) oil tankers can continue to operate after the anniversary of the date of their delivery in 2005 and 2010 respectively, provided that they meet the requirements of the Condition Assessment Scheme (CAS), adopted on 27 April 2001 by IMO in Resolution MEPC 94(46). The CAS imposes an obligation that the flag State administration should issue a Statement of Compliance and be involved in the CAS survey procedures.

Ukraine already applies regulations for the prevention of pollution from ships based on MARPOL 73/78 to single-hull oil tankers, however, it is necessary to adopt a relevant order of the Ministry of Infrastructure.

COMPANY LAW

COMPANY LAW

Expert

Hanna Dobrynska

Review of commitments that had to be fulfilled within the period from November 2014 to November 2017:

In accordance with the commitments set out in Article 387 of Annexes XXXIV, XXXV, XXXVI to Chapter 13 of Title V of the Association Agreement, as regards commitments in the field of company law and corporate governance, accounting and auditing with the deadlines for fulfilment by November 1, 2017, Ukraine was supposed to align national legislation with the requirements of the following EU acts:

1. Directive 2009/101/EC on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent (repealed by "codification" Directive (EC) 2017/1132);
2. Directive 2012/30/EU on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent;
3. Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC;
4. Regulation (EC) No 1606/2002 on the application of international accounting standards (IFRS);
5. Third Council Directive 78/855/EEC based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies, as amended by Directive 2007/63/EC (repealed);
6. Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies, as amended by Directive 2007/63/EC (repealed);
7. Twelfth Council Company Law Directive 89/667/EEC on single-member private limited-liability companies (repealed);
8. Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies;
9. Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC.

Assessment of progress in fulfilling the commitments:

Directive 2009/101/EC on coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 48 of the Treaty, with a view to making such safeguards equivalent

The provisions of this Directive are partly taken into account in Law of Ukraine No. 835-VIII "On Amending the Law of Ukraine 'On State Registration of Legal Entities and Individual Entrepreneurs' and Certain Other Legislative Acts of Ukraine Regarding Decentralisation of Powers Related to the State Registration of Legal Entities, Individual Entrepreneurs and Public Organisations" (new version of the Law of Ukraine "On State Registration of Legal Entities and Individual Entrepreneurs") as regards disclosure of information about companies. Ukraine has not implemented the parts of the Directive that deal with the winding-up of the company and obligations to third parties.

The Government Action Plan for Implementation of the Association Agreement envisages drafting two bills for the further implementation of Directive 2009/101/EC, namely:

- a draft law on amending certain legislative acts of Ukraine regarding obligations of a legal entity (task No. 804 of the Action Plan);
- a draft law on amending certain legislative acts of Ukraine regarding the winding-up of legal entities (task No. 805 of the Action Plan).

As of October 25, 2018, there is no report on the fulfilment of these tasks by the authorities in charge (i.e. the Ministry of Justice, the MEDT, the SRSU, and the NSSMC). There are no data on the implementation of these tasks in the reports submitted by the MEDT and the NSSMC, as well as the Ministry of Justice and the SRSU for Q3 of 2018.

Directive 2012/30/EU on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent

As of the end of October 2018, the requirements of this Directive have been taken into account in the following RLAs:

1. Law of Ukraine No. 2210-VIII "On Amendments to Certain Legislative Acts of Ukraine as Regards Facilitation of Business and Investment Attraction by Issuers of Securities" dated November 16, 2017;
2. Decision No. 385 of the NSSMC, "On Approval of the Procedure for Increasing (Reducing) the Authorised Capital of a Joint-Stock Company" of June 12, 2018;
3. Decision No. 426 of the NSSMC "On Approval of the Procedure for Registration of Share Issue Involving an Increase (Reduction) of the Authorised Capital of a Joint-Stock Company" of June 21, 2018.

Significant progress has been made in the implementation of this Directive, but not all of its provisions have been transposed into national legislation. Specifically, the NSSMC is drafting legislative amendments regarding the necessity of convening a general meeting of shareholders in the event of significant losses in the authorised capital of the company[1].

The situation is further complicated by the fact that Directive 2012/30/EC was repealed by codification Directive 1132/2017. Currently, the NSSMC is analysing the compliance of national legislation with the new Directive.

Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings

As of the end of October 2018, the requirements of this Directive have been taken into account in the following regulatory acts:

1. Law of Ukraine No. 2164-VIII "On Amendments to the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine' Regarding Improvement of Certain Provisions" dated October 5, 2017;
2. Law of Ukraine No. 2258-VIII "On the Auditing of Financial Statements and Auditing Activities" dated December 21, 2017;
3. Law of Ukraine No. 2545-VIII "On Ensuring Transparency in Extractive Industries" dated September 18, 2018;
4. Order No. 564 of the Ministry of Finance "On Approval of Amendments to Certain Regulatory Acts of the Ministry of Finance of Ukraine on Accounting" dated June 20, 2018.

As of November 1, 2017, this Directive was the only acquis in the field of accounting and auditing that the monitoring report describes as fulfilled due to the adoption of Law No. 2164-VIII "On Amendments to the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine' Regarding Improvement of Certain Provisions" dated October 5, 2017. Currently, the Ministry of Finance is developing subordinate legislation for the implementation of the Law, in particular, a draft Order of the Ministry of Finance "On Approval of Methodological Guidelines on the Drawing by Companies of a Statement concerning Payments Made to Government" (undergoing further elaboration)[2].

Special attention should be given to the adoption of the Law of Ukraine "On Ensuring Transparency in the Extractive Industries", which implements the provisions of several EU acquis (not only those of Directive 2013/34/EC), aimed at fighting corruption risks related to payments made to Government by undertakings of extractive industries.

It should be noted that EU legislation obliges to adhere to the principle of transparency regarding payments made to Government not only by undertakings of extractive industries but also by those engaged in timber harvesting. At present, the Law of Ukraine "On Accounting and Financial Reporting in Ukraine" refers to the submission of reports on payments made to Government by logging operators. It is expected that the draft Methodological Guidelines on the Drawing by Companies of

1) Data of the NSSMC report on the implementation of the Association Agreement for Q3 of 2018.
2) Data of the report of the Ministry of Finance on the implementation of the Association Agreement for Q3 of 2018.

a Statement concerning Payments Made to Government, drawn up by the Ministry of Finance, will take into account, inter alia, the specifics of payments for logging operators.

Regulation (EC) No 1606/2002 on the application of international accounting standards (IFRS)

As of the end of October 2018, the requirements of this Regulation have been taken into account in national legislation due to the adoption of Law of Ukraine No. 2164-VIII "On Amendments to the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine'" dated October 5, 2017.

As of the end of 2016 (deadline for the implementation of this Regulation under the Association Agreement), we found that in Ukraine, IFRS are applied to a narrower range of companies than in the EU.

Instead, in 2017, the Law "On Amendments to the Law of Ukraine 'On Accounting and Financial Reporting in Ukraine'" extended the use of IFRS in Ukraine (in particular: to public interest entities, as well as enterprises engaged in the extraction of minerals of national significance). Public interest entities include companies whose securities are listed on stock exchanges, which implements the basic requirement of Regulation (EC) No. 1606/2002 as regards drawing of financial statements by such companies based on IFRS.

Third Council Directive 78/855/EEC based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies, as amended by Directive 2007/63/EC

As of the end of October 2018, there is legislation regulating mergers of companies in Ukraine, but it does not fully comply with the EU acquis (for example, on the draft terms of merger, examination by independent experts, etc.).

Directive 78/855/EEC itself has been repealed, just like Directive 2011/35/EC, which repealed the former one (this Directive is indicated in the Government Action Plan). Currently, the EU has Directive 2017/1132 and the NSSMC is examining the compliance of national legislation with this EU act, but there are no details concerning this process[3].

Sixth Council Directive 82/891/EEC of 17 December 1982 based on Article 54 (3) (g) of the Treaty, concerning the division of public limited liability companies, as amended by Directive 2007/63/EC

The situation is similar to that regarding the implementation of Third Directive: currently, the NSSMC is examining the compliance of national legislation with EU laws as Sixth Directive has been repealed and the issue of division in the EU is currently regulated by Codification Directive 2017/1132.

Just as the case is with mergers, Ukraine has legislation governing the division of public companies but it is not fully compliant with EU acquis.

3) Data of the NSSMC report on the implementation of the Association Agreement for Q3 of 2018.

Twelfth Council Company Law Directive 89/667/EEC on single-member private limited-liability companies

As of the end of October 2018, the requirements of this Directive have been taken into account in national legislation due to the adoption of Law of Ukraine No. 2275-VIII "On Limited Liability Companies" dated February 6, 2018.

The Government Action Plan provides for the implementation of Directive 2009/102/EC, which repealed Twelfth Directive. Issues related to single-member companies are integrated into the Law that comprehensively regulates the activity of the LLC and the ALC (see above). Specifically, this Law contains the requirement that decisions of the single member of a LLC or ALC shall be made in writing, which complies with the requirements of the Directive.

Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies

As of the end of October 2018, the requirements of this Directive have been taken into account in national legislation due to the adoption of Law of Ukraine No. 2210-VIII "On Amendments to Certain Legislative Acts of Ukraine as Regards Facilitation of Business and Investment Attraction by Issuers of Securities" dated November 16, 2017.

Despite the fact that significant progress has been made in aligning national legislation with the requirements of Directive 2007/36/EC, it has not been fully implemented. Since the Directive has been amended, the NSSMC is currently examining the compliance of the current national legislation with these recent amendments.

Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts

As of the end of October 2018, the requirements of this Directive have been taken into account in the following regulatory acts:

1. Law of Ukraine No. 2258-VIII "On Auditing of Financial Reporting and Auditing Activity" dated December 21, 2017;
2. Order of the Ministry of Finance No. 766 "On Approval of the Procedure for Maintaining the Register of Auditors and Auditing Entities" dated September 19, 2018;
3. Order of the Ministry of Finance No. 765 "On Establishment of the State Institution 'Agency for Public Oversight of Auditing'" dated September 18, 2018";
4. Regulation on the Certification Committee (to be adopted by October 31, 2018);
5. Procedure for Quality Control Audits (to be adopted by October 31, 2018).

From the point of view of legislative approximation, all provisions of Directive 2006/43/EC have been implemented in Ukraine. The Regulation on the Certification Committee that will certify auditors and the Procedure for Quality Control Audits are

pending endorsement by the Agency for Public Oversight of Auditing established as a government institution. It was registered at the end of September 2018. It is on this newly established institution that the further enforcement of the requirements of this Directive will depend.

Over 2017–2018, significant progress has been made as regards implementation of the Directives whose timetables were violated in previous periods. However, for the successful enforcement of the rules, it is necessary to adopt subordinate legislation (such as Methodological Guidelines on the Drawing by Companies of a Statement concerning Payments Made to Government) and to step up the activities of the newly created institutions (such as the Agency for Public Oversight of Auditing).

On the other hand, Third and Sixth Directives on mergers and divisions have not been implemented yet. We expect the NSSMC to promptly complete its examination of the compliance of national legislation in this area with EU acquis (incomplete compliance was established in the previous report) and to propose relevant draft amendments to legislation.

CONSUMER PROTECTION

CONSUMER PROTECTION

Expert

Anna Vasylenko

Product safety

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

1. Council Directive on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers (87/357/EEC);
2. Commission Decision requiring Member States to ensure that magnetic toys placed or made available on the market display a warning about the health and safety risks they pose (2008/329/EC);
3. Commission Decision requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters (2006/502/EC).

Assessment of progress in fulfilling the commitments:

Council Directive on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers (87/357/EEC)

In order to approximate national legislation to the provisions of Directive 87/357/EEC, CMU Resolution No. 136 of March 10, 2017 "On Amending the Procedure for the Conduct of Commercial Activity and the Rules of Rendering Trade Services in the Consumer Goods Market" was developed and adopted. The above Procedure together with Law of Ukraine No. 2735-VI "On State Market Surveillance and Control of Non-Food Products" dated December 2, 2010, fully approximates national legislation to the requirements of Directive 87/357/EEC.

Commission Decision requiring Member States to ensure that magnetic toys placed or made available on the market display a warning about the health and safety risks they pose (2008/329/EC)

Commission Decision 2008/329/EC was implemented in the Ukrainian legal

framework by way of adopting a new version of the Technical Regulations for the Safety of Toys by Government (approved by Resolution No. 151 of the CMU dated February 28, 2018). Besides, on October 1, 2018, the state standard DSTU EN 71-1: 2016 (EN 71-1: 2014, IDT) "Safety of toys. Part 1. Mechanical and Physical Properties" came into force.

Commission Decision requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters (2006/502/EC).

Commission Decision 2006/502/EC had been adopted as a temporary measure before it was fulfilled by Member States, and, after being annually renewed for ten times, on May 11, 2017, it ceased to be in force as it was deemed to have been fulfilled. As regards the implementation of Commission Decision 2006/502/EC, Ukraine has made significant progress.

Notably, the MEDT drafted and by Order No. 80 of January 23, 2018 approved "Amendments to the Rules of Retail Trade in Non-Food Products", in particular, the Rules now include Chapter 12 "Lighters", taking into account some of the concepts set forth in Article 1 and all of the requirements of Article 2 of Commission Decision 2006/502/EU. In addition, on January 22, 2018, Ukraine adopted DSTU EN 13869:2018 "Lighters. Child Safety Requirements for Lighters. Safety Requirements and Test Methods" (EN 13869: 2016, IDT) taking into account the provisions of Article 1, paragraph 3 (a) of Commission Decision No. 2006/502/EC[1]. According to Commission Decision 2006/502/EC, lighters meeting the requirements of EN 13869: 2016 are deemed to comply with the requirements of this Decision in relation to child safety.

However, the adopted amendments to the Rules of Retail Trade in Non-Food Products do not fully take into account the provisions of Articles 3 and 4 of Commission Decision 2006/502/EC as regards the obligations of producers and distributors to prove and confirm the safety of lighters for children (safety testing, provision of test reports, keeping sample models, ensuring traceability, etc.), as well as providing relevant information at the request of an authorised body. Partly these issues are regulated by Law of Ukraine No. 2736-VI "On the General Safety of Non-Food Products" of December 2, 2010 and Law of Ukraine No. 2735-VI "On State Market Surveillance and Control of Non-Food Products" of December 2, 2010. Taking into account the above, we consider that with regard to this issue Ukrainian legislation does not yet ensure consumer protection to the same extent as European legislation does.

1) Order No. 8 of the State Enterprise 'Ukrainian Research and Training Centre for Standardisation, Certification and Quality' "On Adoption of National Regulatory Documents Harmonised with European Regulatory Documents, Adoption of Changes and Amendments to National Regulatory Documents, Updating of National Regulatory Documents, Updating Changes and Amendments to National Regulatory Documents, and Cancellation of National Regulatory Document" dated January 22, 2018. It is worth mentioning that this DSTU was adopted by the method of confirmation exclusively in a foreign (English) language. There is no official translation, nor will there be any.

Marketing

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

1. Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers;
2. Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market

Assessment of progress in fulfilling the commitments:

Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers

Directive 98/6/EC can be considered to have been transposed to Ukrainian legislation, except one thing. The only difference is about the implementation of Para. 4, Article 3 of Directive 98/6/EC on the mandatory indication of the unit price in "any advertisement which mentions the selling price of products". Paragraph 3, Article 15 of the Law of Ukraine "On Protection of Consumer Rights" establishes the requirement to indicate the unit price of products in the price tag but does not specify any similar requirements for advertising. The proposed amendments to the law do not cover this issue. The Law of Ukraine "On Advertising" does not contain any similar specific requirement to indicate the price in advertising.

Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market

The provisions of Directive 2005/29/EC have been partially implemented in the current Law of Ukraine "On Protection of Consumer Rights" (specifically, in Article 19 "Prohibition of unfair business practices"). However, the key terms as well as some of the important concepts set in Directive 2005/29/EC ("misleading commercial practices", "misleading omission", "code of conduct"), use and abuse of influence, approach towards compiling a list of unfair commercial practices to improve protection of the most vulnerable groups of consumers have not been fully implemented yet. The amendments proposed by Draft Law No. 5548 to Paragraph 2, Article 19 of the Law of Ukraine "On Protection of Consumer Rights" do not take into account the relevant provisions of Directive 2005/29/EC. However, the Action Plan for Implementation of the Concept of Public Policy as regards Consumer Protection for the Period up to 2020 implies "elaborating and submitting to the Cabinet of Ministers of Ukraine a draft law on the introduction of relevant amendments to the Law of Ukraine 'On Protection of Consumer Rights', in particular regarding: prohibition of unfair commercial practices and the definition of such practices; and laying down penalties for unfair commercial practices." It should be noted that the MEDT established a Working Group to draft a law on amending certain legislative acts in the field of consumer protection, including with regard to issues of unfair commercial practices.

Contract law

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

1. Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees

Assessment of progress in fulfilling the commitments:

Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees

It has been partially implemented in the current Law of Ukraine "On Protection of Consumer Rights". Enhanced implementation can be achieved by adopting the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine (regarding Consumer Protection)" (Reg. No. 5548)[2]. Nevertheless, in our opinion, the said Draft Law fails to take into account some important provisions of Directive 1999/44/EC.

Unfair contract terms

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

1. Council Directive 93/13/EEC on unfair terms in consumer contracts;
2. Directive 97/7/EC on the protection of consumers in respect of distance contracts;
3. Council Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises;
4. Council Directive 90/314/EEC on package travel, package holidays and package tours;
5. Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts.

Assessment of progress in fulfilling the commitments:

Council Directive 93/13/EEC on unfair terms in consumer contracts

The provisions of Directive 93/13/EC in Ukrainian legislation are implemented in Article 18 of the Law of Ukraine "On Protection of Consumer Rights". The provisions of the Article are almost fully in line with Directive 93/13/EC. The key difference refers to the provision of Directive 93/13/EC that obliges Member States to ensure that unfair terms are not used in contracts concluded with consumers by a seller or supplier and that if, nevertheless, such terms are so used, they will not bind

2) At the meeting of the VRU Committee on Economic Policy on March 21, 2018, the said draft law was considered and it was decided to recommend the VRU to adopt it in the first reading as a basis. On April 3, 2018, the Committee made a submission concerning its consideration.

the consumer, and the contract will continue to bind the parties upon those terms if it is capable of continuing in existence without the unfair provisions. This provision balances the obligations of the consumer and the seller / supplier and compels them (first of all, consumers) to withhold from unfair practices, as it prevents abuse on the part of the consumer in relation to non-fulfilment of the contract. There is no equivalent provision concerning unfair contract terms in the Ukrainian legislation on consumer protection. Since this provision establishes an additional obligation rather than a right for the consumer, the fact that Ukrainian legislation lacks such a provision does not limit the rights of Ukrainian consumers (it is not a right that is lacking but a duty). Accordingly, in general, the consumer protection with regard to unfair contract terms in Ukraine is comparable to that in the EU.

Directive 97/7/EC on the protection of consumers in respect of distance contracts and related Council Directive 85/577/EEC to protect the consumer in respect of contracts negotiated away from business premises

The Association Agreement includes Directives 97/7/EC and 86/577/EEC as criteria; these Directives are related, they cover interconnected issues. Between the signing of the political and economic parts of the Agreement, both Directives were repealed by new Directive 2011/83/EC on consumer rights, which entered into force on June 13, 2014. After the signing of the Association Agreement, Ukraine has to take into account the changes taking place in the European legislation in relation to the criteria included in the Agreement and to adapt its legislation in line with such changes. Changes regarding new Directive 2011/83/EC, which repealed Directives 97/7/EC and 85/577/EEC as Association Agreement criteria, were included in the Action Plan for the Implementation of Title V Economic and Sector Cooperation of the Association Agreement[3]. The requirements of the EU legislation on consumer protection in respect of distance contracts are partly implemented in the current Law of Ukraine "On Protection of Consumer Rights", the Law of Ukraine "On E-Commerce", Order No. 103 of the Ministry of Economy of Ukraine "On Approval of the Rules for Sale of Goods on a By-Order Basis and away from Business or Office Premises" of April 19, 2007, registered in the Ministry of Justice on October 16, 2007 under No. 1181/14448. However, the said legal acts implement the requirements of the old and currently ineffective Directives 97/7/EC and 85/577/EEC, rather than those of new Directive 2011/83/EU that repealed them and established a number of additional requirements.

The Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine (with regard to Consumer Protection)" (Reg. No. 5548, dated December 16, 2016) was drawn up and adopted in the first reading, as well as the draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Protection of Consumer Rights' and Certain Legislative Acts of Ukraine with regard to Measures to Deregulate the Operation of E-Commerce Entities" (No. 6754 dated July 17, 2017). These legal acts take into account some of the new requirements established by Directive 2011/83/EC – not to the full extent, though.

3) Action Plan for the implementation of Title V Economic and Sector Cooperation of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the one part, for 2017-2019 (Approved by CMU Decree No. 503-p of June 21, 2017, "On Amendments to Order No. 847 of the Cabinet of Ministers of Ukraine of September 17, 2014).

Council Directive 90/314/EEC on package travel, package holidays and package tours

Directive 90/314/EEC had been in force until June 30, 2018. Thereupon, it was repealed by new Directive 2015/2302/EU on package travel and linked travel arrangements, amending Regulation (EC) No. 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC. The Action Plan for Implementation of the Concept of Public Policy as regards Consumer Protection for the Period up to 2020 involves developing and submitting to the CMU for consideration of a draft law on introducing relevant amendments to the Law of Ukraine "On Tourism", in particular, as regards:

1. Establishment of requirements for descriptive materials of packages of travel services;
2. Specifying the rights and obligations of the parties, as well as the conditions for the provision or replacement of a package of travel services in accordance with EU laws;
3. Introduction of mechanisms of liability for non-fulfilment or improper fulfilment of obligations under travel contracts.

The MEDT developed the Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine in the Field of Tourism", concerning which electronic consultations with the public were held and working meetings are conducted to address the criticism received. An explanatory note to the Draft Law of Ukraine mentions the need to ensure compliance with the objectives of Directive 90/314/EEC (currently repealed in the EU), and the proposed changes largely ensure implementation of Directive 90/314/EEC but do not take into account many provisions the new Directive 2015/2302/EU. Notably, it does not take into account the following: the expanded definition of the term "package of travel services": the information that the travel agent distributes and provides before concluding a travel service contract, a provision that certain specified information to be provided to the traveller prior to the conclusion of a contract is considered part of the contract and is binding for the travel agent, the travel agent's obligation to compensate for potential additional costs of which the traveller was not informed in advance, the mandatory terms of the contract, the possibility, conditions and procedure for the transfer of the contract to another person on the initiative of the traveller, mutual obligations of the parties, including in case of force majeure, etc. At the same time, some proposed changes to the Law of Ukraine "On Tourism" make the obligations of the tour operator (travel agent) even tougher than those established in the Directive, in particular: should the price of a travel product change by more than 5 percent, the traveller is entitled to refuse to fulfil the contract, and the tour operator (travel agent) is obliged to return the relevant advance payment. In the Directive, this limit is set at 8 percent.

Directive 2008/122/EC on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts.

Currently, no legal act in Ukraine regulates the legal relationships regarding timeshare. The relevant item on the implementation of Directive 2008/122/EC was

introduced into the Action Plan for Implementation of the Concept of Public Policy as regards Consumer Protection for the Period up to 2020 (with regard to drafting and submission to the CMU of the draft law on introducing appropriate amendments to the Law of Ukraine on Protection of Consumer Rights and some legislative acts on consumer protection). In accordance with paragraph 5 of the MEDT's Action Plan, the Working Group was formed by Order No. 884, dated June 25, 2018.

Financial services

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

1. Directive 2002/65/EC concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC.

Assessment of progress in fulfilling the commitments:

Directive 2002/65/EC concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC

In Ukraine, no separate legal document specifically regulates distance marketing of consumer financial services. Existing legal acts do not cover all the specific aspects and provisions of Directive 2002/65/EC. Financial services as a whole are regulated by Law of Ukraine No. 2664-III "On Financial Services and State Regulation of Financial Services Markets" of August 12, 2001, but its current version does not take into account aspects of distance marketing of consumer financial services. The Law of Ukraine "On Protection of Consumer Rights" in the Articles dealing with distance marketing and contracts negotiated away from business premises explicitly excludes from the scope of its regulation a number of financial services. The Law of Ukraine "On E-Commerce" regulates many aspects of electronic transactions and significantly approximates Ukrainian legislation with the requirements of European law, including implementation of a number of the provisions of Directive 2002/65/EC, however, specific aspects of the conclusion of distance contracts on financial services (for example, the amount of information provided before the conclusion of such a contract, obligatory information provided to the consumer in the event of an oral exchange of information (for example, by telephone), etc.) have not been aligned with the provisions of Directive 2002/65/EC.

Currently, two bills have been drafted proposing amendments to the Ukrainian legislation on markets of financial services: 1) the draft law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine with regard to Improving Protection of Consumers of Financial Services" (No. 2456-д, dated December 29, 2015, adopted in the first reading on March 31, 2016); and 2) Draft Law of Ukraine "On Amendments to Certain Laws of Ukraine on Public Regulation of Financial Services Markets (No. 8415, dated May 25, 2018). These draft laws have taken into account a significant part of the provisions of Directive 2002/65/EC but fail to specify

some aspects of the distance marketing of financial services. Therefore, some of the provisions of Directive 2002/65/EC that focus on the distance marketing of financial services have not been reflected in the draft laws (for example, some information to be provided to the consumer (client) before the conclusion of a distance contract, regulation of issues associated with imposing services and imposing information, etc.).

Consumer credit

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

1. Directive 2008/48/EC on credit agreements for consumers.

Assessment of progress in fulfilling the commitments:

Directive 2008/48/EC on credit agreements for consumers

In Ukraine, the issue of consumer credit is regulated by Law of Ukraine No. 1734-VIII "On Consumer Credit" of November 15, 2016 (entered into force on June 10, 2017), its provisions substantially improve the regulation of legal relations as regards provision, servicing and reimbursement of consumer credits, and ensures greater consumer protection. The law almost completely implements the requirements of Directive 2008/48/EC on credit agreements for consumers, but at the same time there are some divergences, for example, with regard to informing about the total cost of consumer credit, informing the consumer of the exact total rather than approximate cost of the credit, the obligation to provide information on the credit a clear, concise, and prominent way by means of a representative example.

Enforcement

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

1. Directive 98/27/EC on injunctions for the protection of consumers' interests.

Assessment of progress in fulfilling the commitments:

Directive 98/27/EC on injunctions for the protection of consumers' interests (repealed and replaced by Directive 2009/22/EC on injunctions for the protection of consumers' interests)

Annex XXXIX to Chapter 20 of the Association Agreement mentions Directive 98/27/EC as a criterion. But in view of the change of its status, the Action Plan for Implementation of Title V Economic and Sector Co-operation of the Association Agreement for 2017-2019 includes new Directive 2009/22/EC.

In Ukraine, collective consumer rights are regulated by the Law of Ukraine "On Protection of Consumer Rights" (Article 24 "Public consumer organisations

(consumer associations)" and 25 "Rights of public consumer organisations (consumer associations)"), as well as Law of Ukraine No. 4572-VI "On Public Associations" of March 22, 2012.

Draft Law of Ukraine No. 5548 "On Amendments to Certain Legislative Acts of Ukraine (with regard to consumer protection)" of December 16, 2016, proposes amendments to the Civil Procedural Code of Ukraine (Articles 3, 45, 46, and 96) and the Law of Ukraine "On Protection of Consumer Rights" (Articles 25, 26, and 28) to authorise bodies (for example, government bodies, local self-government bodies, public associations), legal entities and individuals entitled to protect the rights, freedoms and interests of other persons to represent collective interests of consumers, including an uncertain range of consumers, thus approximating Ukrainian legislation to the requirements of Directive 2009/22/EC.

However, the said Laws of Ukraine and the draft law have not been aligned with the provisions of Directive 2009/22/EC as regards qualification criteria for authorised consumer protection entities (including both state bodies and consumer associations) (Article 3, Directive 2009/22/EC), taking into account cases of cross-border violation (intra-Community infringements) of consumer rights (Article 4, Directive 2009/22/EC), as well as mandatory attempts at out-of-court settlement (Article 5, Directive 2009/22/EC). The MERT by Order No. 884 of June 25, 2018, created a Working Group to develop a draft law on amendments to certain legislative acts in the field of consumer protection.

Thus, the progress in the adaptation of the national legislation to the EU legislation in the field of consumer protection (Annex XXXIX (39) "Consumer Protection", Chapter 20 "Economic and Sector Cooperation", Association Agreement) is partial, along with significant achievements there are significant gaps. The main development attesting to the revival of the process is the approval by the CMU of the Action Plan for Implementation of the Concept of Public Policy as regards Consumer Protection for the Period up to 2020, which should accelerate the process of adaptation and make it more focused.

SOCIAL POLICY

SOCIAL POLICY

Expert

Zoriana Kozak

Labour law

Review of commitments that were to be fulfilled in the period from November 2014 to November 2017:

1. Council Directive 97/81/EC concerning the Framework Agreement on part-time work;
2. Council Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship;
3. Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses;
4. Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation.

Council Directive 97/81/EC concerning the Framework Agreement on part-time work

Assessment of progress in fulfilling the commitments:

No regulatory legal acts have been adopted to approximate national legislation to Directive 97/81/EC.

However, on December 27, 2014, MPs of Ukraine registered draft law No. 1658 "Draft Labour Code of Ukraine", which was adopted by the Verkhovna Rada on November 5, 2015 in the first reading and currently is pending second reading (hereinafter – the Draft Labour Code).

With regard to the approximation of national legislation to the provisions of Directive 97/81/EC, the Draft Labour Code contains certain special aspects.

Specifically, the Draft Labour Code takes into account the provisions of this Directive as regards:

- conditions and procedure for establishing part-time work (Article 135);
- specifics of employment in case of part-time work (Article 148);

- proportionality of wages to the time spend working on a part-time basis (Article 232);
- right to a professional (official) career (Article 315).

The Draft Labour Code fails to take into account the requirements of Directive 97/81/EC concerning:

- prohibition to dismiss a worker for his/her refusal to transfer from full-time to part-time work or vice-versa (Article 86 – dismissal for refusal to transfer to part-/full-time work);
- development of part-time employment on a voluntary basis (Article 89 – employer's right to collective transfer of workers to part-time work).

Consequently, national legislation has not been aligned with the provisions of Directive 97/81/EC.

Council Directive 91/383/EEC supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed-duration employment relationship or a temporary employment relationship

In order to approximate national legislation to the provisions of Directive 91/383/EEC, the following draft laws have been developed:

- "On Amendments to Article 31 of the Law of Ukraine 'On Employment of the Population' (with regard to the regulation of public works)", submitted by the CMU to the VRU, registered under No. 3566 on December 1, 2015 and revoked by the initiator on April 14, 2016;
- "On Amendments to Article 31 of the Law of Ukraine 'On Employment of the Population' (with regard to the regulation of public works)", submitted by the CMU to the VRU on May 4, 2016 under No. 4577, rejected and dismissed on March 22, 2017;
- "On Amendments to the Law of Ukraine 'On Employment of the Population' (new version) and Other Related Legislative Acts", registered in the VRU by MPs on March 18, 2016 under No. 4279, currently pending consideration in VRU committees;
- "On Employment and Mandatory State Social Unemployment Insurance", drafted by the Ministry of Social Policy and referred to stakeholders concerned in August 2018.

The first two of the above-mentioned Draft Laws (No. 3566 and No. 4577) submitted by the CMU take into account the provisions of Directive 91/383/EEC with regard to prohibiting workers with temporary or fixed-term employment relationship from being used for work that would be particularly dangerous to their safety or health, setting requirements concerning non-inclusion of particularly dangerous work in the list of public works.

At the same time, the same draft laws do not take into account the provisions of Directive 91/383/EEC concerning:

- the possibility of imposing a ban on the employment of workers with a fixed-term contract for work involving risks to safety and health;
- regulation of the special medical surveillance (upon termination of employment relations) of other workers with fixed- term or temporary employment concerning whom there is no prohibition on the use of their work in particularly dangerous jobs;

- establishing division of responsibility for ensuring compliance with the terms of the employment contract and working conditions between the temporary employment undertaking or establishment where the temporary worker actually performs work.

Conversely, Draft Law No. 4279, introduced by MPs of Ukraine, takes into account the provisions of Directive 91/383/EEC on the prohibition of the use of workers with a fixed-term or temporary employment relationship for work that would be particularly dangerous to their safety or health by forbidding economic operators that employ workers further assigning them to another employer in Ukraine to carry out work in harmful, dangerous and difficult working conditions.

However, this Draft Law fails to cover the same provisions of Directive 91/383/EEC as Draft Laws No. 3566 and 4577 submitted by the CMU.

Analysis of the Draft Law developed by the Ministry of Social Policy revealed that it takes into account the provisions of Directive 91/383/EEC as regards prohibiting workers with temporary or fixed-term employment relationship from being used for work that would be particularly dangerous to their safety or health, including prohibition for temporary employment undertakings to enter into a contract assigning workers to undertakings making use of their services in harmful, dangerous and difficult working conditions.

On the other hand, the Draft Law of Ministry of Social Policy fails to include the prohibition stipulated in Directive 91/383/EEC to conclude fixed-term contracts (other than public works) for works that are particularly dangerous to safety or health of workers, and as a result, it sets no requirement for fixed-term workers whose services can be used in dangerous work to undergo special medical surveillance after the end of the employment relationship.

Thus, so far national legislation has not been aligned with the provisions of Directive 91/383/EEC.

Council Directive 2001/23/EC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses

In order to approximate the provisions of national legislation to the provisions of Directive 2001/23/EC, two Draft Laws have been developed so far:

1. Draft Labour Code;
2. "On Collective Agreements and Contracts", prepared by the tripartite working group in 2017 (established by the decision of the Presidium of the National Tripartite Social and Economic Council of 31.03.2016). In August 2018, the Ministry of Social Policy referred this project for approval by the bodies concerned, and currently it is undergoing finalisation.

The Draft Labour Code takes into account the requirements of Directive 2001/23/EC concerning:

- succession in employment relations and extension of the latter in case of change of the owner of the enterprise or business or parts thereof;
- informing employees and their representatives of the relevant transfer.

However, with regard to the approximation of national legislation to the provisions of Directive 2001/23/EC, the Draft Labour Code requires clarification and

revision concerning:

- informing employees and their representatives about the succession before the transfer of the enterprise, business or parts thereof;
- the essence of the information to be provided (date of and reasons for the transfer, implications of the transfer, measures taken concerning the employees themselves, etc.);
- prohibition of dismissal in connection with the transfer of enterprises, businesses or parts thereof, except dismissals that may take place for economic, technical or organisational reasons entailing changes in the workforce (such as downsizing).

Regarding the Draft Law "On Collective Agreements and Contracts", it takes into account the requirement for a minimum period for observing the collective agreement (at least one year) in case of reorganisation, change of the owner of a legal entity (separate structural unit of a legal entity).

Hence, national legislation has not been aligned with the provisions of Directive 2001/23/EC.

Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation

In order to align national with the provisions of Directive 2002/14/EC, the Draft Labour Code has been developed.

However, the Draft Labour Code, as well as the current legislation of Ukraine, needs to be reviewed to take into account the requirements of Directive 2002/14/EC concerning:

- the procedure for informing and consulting employees prior to the adoption by the employer of decisions on matters covered by Directive 2002/14/EC;
- the procedure for informing and consulting with other representatives of employees (in absence of a primary trade union organisation);
- cases, conditions and procedures when employers are authorised not to reveal confidential information to representatives of employees and not to consult them;
- establishing sanctions for infringements as regards informing and consulting employees on the issues set forth in Directive 2002/14/EC (the Code of Administrative Offences of Ukraine establishes responsibility for failure to provide information and avoiding negotiations only with respect to concluding or amending a collective agreement).

Thus, national legislation has not been aligned with the provisions of Directive 2002/14/EC.

Anti-discrimination and gender equality

Review of commitments that were to be fulfilled in the period from November 2014 to November 2017:

1. Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and

services;

2. Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding;
3. Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security.

Apart from that, Annex 40 of the Association Agreement includes several EU Directives, which at the time of the signing of the Association Agreement by Ukraine were repealed by new directives. The CMU elaborated an Action Plan on Implementing the Association Agreement between Ukraine and the EU (Resolution No. 1106 dated October 25, 2017), which sets forth the measures for implementation of the new directives. In view of the above, this Monitoring Report covers the state of approximation of Ukraine's legislation to Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC.

Assessment of progress in fulfilling the commitments:

Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services

Currently, there is the Draft Law "On Amending Certain Legislative Acts of Ukraine (regarding harmonisation of the legislation in the field of prevention and counteraction of discrimination with the legislation of the European Union)", which was registered in the VRU by a group of MPs under No. 3501, on November 20, 2015. On February 16, 2016, the Draft Law was adopted in the first reading and is currently pending second reading. The Draft Law was included in the agenda of the ninth session of the VRU of the eighth convocation (2543-VIII dated September 18, 2018), but was not considered.

In addition, the Government approved a number of RLAs aimed at performing the commitments under the Association Agreement:

- CMU Decree No. 229-p, dated April 5, 2017, approved the Concept of the State Social Program for Ensuring Equal Rights and Opportunities for Women and Men for the Period up to 2021;
- CMU Resolution No. 273-p dated April 11, 2018, approved the State Social Program for Ensuring Equal Rights and Opportunities for Women and Men for the Period up to 2021;
- CMU Resolution No. 634-p, dated September 5, 2018, approved the National Action Plan for implementation of the recommendations set forth in the Concluding Observations of the UN Committee on the Elimination of Discrimination against Women to the eighth periodic report of Ukraine on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women until 2021.

The Draft Law "On Amending Certain Legislative Acts of Ukraine (regarding harmonisation of legislation in the field of prevention of and counteraction to discrimination with the legislation of the European Union)", takes into account the requirements of Directive 2004/113/EC concerning:

- prohibition of discrimination in general and its individual types ("discrimination by association" and "multiple discrimination");
- introduction of the concept of "victimisation" and its prohibition;
- expanding the range of cases that are not considered discrimination;
- changes in administrative and criminal liability for discrimination.

It would be a good idea to reinforce the Draft Law with provisions that not only establish legal liability but also facilitate access to judicial procedures to defend violated rights.

The Concept of the State Social Program for Ensuring Equal Rights and Opportunities for Women and Men for the Period up to 2021 takes into account the objective of Directive 2004/113 / EC, insofar as it:

- aims at improving the mechanism for ensuring equal rights and opportunities for women and men in all spheres of society and at implementing European standards of equality, in particular, as regards equal access to goods and services;
- establishes conceptual areas, ways and means of solving the problem of ensuring equal rights and opportunities for women and men.

The State Social Program for Ensuring Equal Rights and Opportunities for Women and Men for the Period up to 2021 takes into account the objective of Directive 2004/113/EC, insofar as it sets specific objectives and measures to increase access for women and men to goods and services in all spheres of society's life by way of drawing up legislation that takes into account the gender component and special needs of different categories of women and men (based on such basic features as age, place of residence, disability, socio-economic status, etc.).

The National Action Plan for implementation of the recommendations set forth in the Concluding Observations of the UN Committee on the Elimination of Discrimination against Women to the eighth periodic report of Ukraine on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women until 2021 takes into account the objective of Directive 2004/113/EC insofar as it sets forth measures to improve the access of girls and women to medical, educational, legal and social services.

Hence, national legislation has not been aligned with EU legislation yet.

Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding

So far, a number of bills have been drafted to align national legislation with the requirements of Directive 92/85/EEC, namely:

- Draft Labour Code of Ukraine;
- Draft Law "On Amendments to Certain Legislative Acts of Ukraine with regard to Additional Guarantees Concerning Combination of Family and Job Duties", submitted by the CMU to the VRU and registered on September 5, 2018 under No. 9045. The Committee on Social Policy, Employment and Pension Provision of the Verkhovna Rada considered the Draft Law at a meeting on October 17, 2018 and recommended that it be adopted as a basis;

and approved

- Order No. 1254 of the Ministry of Health of Ukraine dated October 13, 2017 "On Repealing Order No. 256 of the Ministry of Health of Ukraine dated December 29, 1993".

As regards approximation of national legislation to the provisions of Directive 92/85/EEC, the Draft Labour Code reproduces the provisions of the current Ukrainian legislation establishing higher employment standards for pregnant women, including those for safety and health (for example, transfer to easier work, leave from work if it is impossible to transfer to another job preserving the salary, right to maternity leave, etc.). Article 295 of the Draft Labour Code additionally establishes the right to time off, without loss of pay, in order to attend ante-natal examinations.

The CMU Draft Law is designed to eliminate gender-based discrimination; it establishes updated provisions regarding the work of women at night: abolishing the general prohibition for women to work at night, preserving the prohibition on night work for pregnant women and involvement of women with children in night work only with their consent.

The provisions of this Draft Law require clarification regarding involvement of workers who have recently given birth to work at night, since Directive 92/85/EEC establishes:

- persons that have such a right – i.e. pregnant women, women who have recently given birth or are breastfeeding;
- the period for which specific conditions of involvement in work at night are set – during pregnancy and period following childbirth which shall be determined by the national authority.

On the other hand, Order No. 1254 of the Ministry of Health of Ukraine dated October 13, 2017 "On Repealing Order No. 256 of the Ministry of Health of Ukraine dated December 29, 1993" abolishes the List of Heavy Work Activities and Work with Harmful and Dangerous Working Conditions, which prohibits employment of women (except Section 3, which will become invalid after denunciation by Ukraine of the ILO Convention No. 45 concerning the Employment of Women on Underground Work in Mines of all Kinds).

As a result, Ukraine does not have any list of work activities with harmful and dangerous working conditions where employment of pregnant and breastfeeding women is prohibited, as required by Directive 92/85/EEC.

Thus, so far the legislation of Ukraine has not been aligned with the provisions of Directive 92/85/EEC.

Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security

The Government's Resolution No. 227-p dated April 11, 2018 approved the State Social Program for Ensuring Equal Rights and Opportunities for Women and Men for the Period up to 2021, which takes into account the purpose of this Directive, as it envisages improvement of the legal and regulatory framework, mechanism for conducting gender and legal vetting, and introduction of statistical indicators in the field of equal rights and opportunities for women and men.

Thus, the national legislation has been approximated to the provisions of Directive 79/7/EEC.

Directive 2010/18/EU implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC

To date, a number of draft laws have been developed to approximate national legislation to the provisions of Directive 2010/18/EU, namely:

- Draft Labour Code;
- "On Amending Certain Legislative Acts of Ukraine (with regard to matters of maternity leave)" (No. 1430 dated December 11, 2014, initiated by MPs, pending consideration);
- "On Amending the Labour Code of Ukraine with Regarding to Creation of Equal Conditions for Exercise of the Rights of Workers who Raise Children or Care for a Sick Family Member" (No. 2235 dated February 25, 2015, initiated by an MP, pending consideration);
- "On Amending the Law of Ukraine 'On the State Service of Special Communication and Information Protection of Ukraine' with regard to Certain Matters Associated with Maternity Leave Provision" (No. 4848, dated June 17, 2016, initiated by MPs, withdrawn on February 21, 2017);
- "On Amendments to Certain Legislative Acts of Ukraine with regard to Additional Guarantees Concerning Combination of Family and Job Duties". Draft No. 9045 was registered on September 5, 2018, initiated by the CMU. The VRU Committee on Social Policy, Employment and Pension Provision considered the Draft Law at its meeting on October 17, 2018 and recommended that it be adopted as a basis.

The Draft Labour Code partially takes into account the provisions of Directive 2010/18/EU, it establishes the right of women (rather than of both parents) to maternity leave until the child reaches the age of three. It therefore does not take into account the requirements of this Directive to ensure adherence to the principle of gender equality in the upbringing of children.

If adopted, the draft laws developed by the MPs with a view to approximation of national legislation to the provisions of Directive 2010/18/EU will regulate some individual issues associated with the parental leave.

The draft law introduced by the CMU regulates the elimination of gender-based discrimination in relation to parental leave and the combination of professional and family life. The changes concern the rights of both mothers and fathers:

- the right to parental leave; setting of the procedure for granting parental leave;
- the right to establish reduced working hours and part-time work;
- equalisation of other labour rights between mothers and fathers (e.g., additional social leave);
- setting additional guarantees for the mother, father of a child with a disability.
- However, the draft law of the CMU needs to be further elaborated as regards definition of:
- non-transferable part of the leave (used by each parent and cannot be transferred to anyone);
- force majeure circumstances of absence of an employee in connection with family responsibilities (not limited to cases where the legislation of Ukraine provides for the unpaid leave).

That is, so far, our legislation has not been aligned with the provisions of Directive 2010/18/EU.

Health and safety

Review of commitments that were to be fulfilled in the period from November 2014 to November 2017:

1. Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work;
2. Directive 89/654 / EEC concerning the minimum safety and health requirements for the workplace (first individual Directive within the meaning of Article 16 (1) of Directive 89/391 / EEC);
3. Council Directive 92/104/EEC on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (twelfth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC);
4. Council Directive 92/91/EEC concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling.

Apart from that, Annex 40 of the Association Agreement includes several EU Directives, which, at the time of the signing of the Association Agreement by Ukraine, were repealed by new directives. The CMU elaborated an Action Plan on Implementing the Association Agreement between Ukraine and the EU (Resolution No. 1106 dated October 25, 2017), which sets forth the measures for implementation of the new directives. In view of the above, this Monitoring Report covers the state of approximation of Ukraine's legislation to:

5. Directive 2009/104/EEC of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC). This Directive repeals Directives 89/655/EEC and 2001/45/EC.

Assessment of progress in fulfilling the commitments:

Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work

There is a number of legal acts aimed at approximating national legislation to the provisions of the Directive 89/391/EEC, namely:

- Draft Labour Code of Ukraine;
- Draft Concept of Reform of the Occupational Safety Management System in Ukraine and the Draft Action Plan for Implementation of the Concept for Reform of the Occupational Safety Management System in Ukraine, developed by the State Labour Service of Ukraine and posted on its official website on May 23, 2018. According to the Report of the Ministry of Social Policy on the Implementation of the Association Agreement in the Third Quarter of 2018 (para. 1316), on September 17, 2018, these drafts, after endorsement by parties concerned, were referred to the Ministry of Social Policy for further consideration by the CMU.

The Draft Labour Code partially takes into account the provisions of Directive 89/391/EEC concerning the rights and obligations of the parties to the employment contract as regards ensuring healthy and safe working conditions, certain aspects of conducting medical examinations, training of workers and informing them about occupational health and safety, suspension of an employee, as well as implementation of state supervision and public control over the observance of labour legislation (in particular, Articles 2, 20, 24, 31, 56, 72, 73, 338–347 of the Draft Labour Code of Ukraine).

The Draft Labour Code does not take into account the principles of construction of the occupational safety management system and a set of measures set forth by Directive 89/391/EEC. This status rerum is laid down by the Draft itself, because according to its "Final and Transitional Provisions", adoption of the Labour Code of Ukraine does not repeal the Law of Ukraine "On Occupational Safety" (No. 1494-XII of 14.10.1992, as amended by Law No. 229-IV of 21.11.2002), which is a framework law that defines the system of occupational safety management in Ukraine and a range of measures that need to be taken to create and ensure healthy and safe working conditions. The Law of Ukraine "On Occupational Safety" does not take into account the requirements concerning a consistent hierarchy of the general principles for prevention of occupational risks as outlined by Directive 89/391/EEC, and needs to be reviewed and amended. Drafting of the relevant law is envisaged by the Draft Action Plan for Implementation of the Concept for Reform of the Occupational Safety Management System in Ukraine.

The Draft Concept for Reform of the Occupational Safety Management System in Ukraine is in line with the objective and principles of Directive 89/391/EEC. It envisages establishment of a national system for prevention of occupational risks to ensure effective enforcement of the right of workers to a safe and healthy working environment, which must be shaped in strict conformity with the consistent hierarchy of the general prevention principles laid down in Directive 89/391/EEC and aligned with the EU legal framework on occupational safety and health.

The Draft Action Plan for Implementation of the Concept for Reform of the Occupational Safety Management System in Ukraine provides for regulatory and legal measures aimed at introducing a risk-based approach in the field of occupational safety and health, including, inter alia, development of the relevant draft law and other regulatory legal acts.

Therefore, national legislation has not been aligned with the provisions of Directive 89/391/EEC yet.

Directive 89/654/EEC on minimum requirements relating to the safety and health of workers in the work area (first individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC)

In order to approximate national legislation to the provisions of Directive 89/654/EEC, Paragraph 3.24 of Order No. 73 of the State Labour Service of Ukraine of July 10, 2018, amends Section 3 of the Activity Plan of the State Labour Service on Drafting of Regulatory Acts for 2018, approved by Order No. 143 of the State Labour Service of December 15, 2017 "On Regulatory Activity of the State Labour Service of Ukraine for 2018". The above amendments involved drafting by the State Labour Service of Ukraine of an order of the Ministry of Social Policy "On Approval of Minimum Requirements for Safety and Health at Work" for implementation of

the provisions of Directive 89/654/EEC with implementation deadlines in Q4, 2018.

According to the Ministry of Social Policy, with regard to the implementation of the Association Agreement in Q3, 2018 (paragraph 1318), the State Labour Service of Ukraine drew up a draft order of the Ministry of Social Policy "On Approving the Minimum Requirements for Health and Safety at Work". However, in August 2018 the Ministry of Social Policy decided to return the draft order to the State Labour Service for further elaboration.

As of October 20, 2018, the text of the draft Order of the Ministry of Social Policy "On Approving the Minimum Requirements for Health and Safety at Work" has not been published on the websites of the State Labour Service, Ministry of Social Policy, or State Regulatory Service of Ukraine, therefore it is impossible to assess its compliance with the requirements of the Directive.

Therefore, national legislation has not been aligned with the provisions of Directive 89/654/EEC.

Council Directive 92/104/EEC on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries

Requirements for safety and health protection of workers in surface and underground mineral-extracting industries were approved by Order No. 943 of the Ministry of Social Policy of July 2, 2018, registered in the Ministry of Justice on July 27, 2018 under No. 872/32324.

The document comprehensively takes into account the provisions of Directive 92/104/EEC:

- Section I. General Provisions takes into account the requirements regarding the scope and terms of the Directive
- Section II. General Duties of the Employer takes into account the requirements concerning: the employer's duty to take the necessary measures, in particular, in designing, equipping, and operating working areas, performing work under the supervision of a responsible person, conducting safety trainings, etc.; carrying out assessment of risks for the health and safety of workers; taking appropriate preventive measures and establishing proper oversight of the performance of the employer's obligations to create safe and healthy working conditions; providing communication and warning systems in the event of danger, means of evacuation and rescue, ensuring training and medical examinations of workers.

(Paragraphs 10-107 of Section II take into account the requirements of Part A of the Annex to the Directive, which establish common minimum requirements applicable to surface and underground mineral-extracting industries)

- Section III. Safety Requirements Applicable to Surface Mineral-Extracting Industries takes into account the requirements of Part B of the Annex to the Directive;
- Section IV. Safety Requirements Applicable to Underground Mineral-Extracting Industries takes into account the requirements of Part C of the Annex to the Directive.

Directive 92/104/EEC requires that the necessary measures be covered by a safety and health document drawn up by the employer, while the above regulatory act requires documentation of relevant information, which cannot be considered as

identical concepts.

Council Directive 92/91/EEC concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling

Paragraph 3.14 of Order No. 143 of the State Labour Service dated December 15, 2017 provides for drafting by the State Labour Service of the order of the Ministry of Social Policy "On Approval of Requirements for the Safety and Health Protection of Workers in the Mineral-Extracting Industries through Drilling" to transpose the provisions of Directive 92/91/EEC with the term of implementation in Q4, 2018.

According to the information provided by the Ministry of Social Policy on the implementation of the Association Agreement in Q3, 2018 (paragraph 1314), the State Labour Service has drawn up the draft Order of the Ministry of Social Policy "On Approval of Requirements for the Safety and Health Protection of Workers in the Mineral-Extracting Industries through Drilling". By Letter No. 5773/1/10.3-ДП-18 dated July 20, 2018, the Draft Order was sent for approval to the Ministry of Social Policy. By Letter No. 1551/0/101-18/283 of the Ministry of Economic Policy of Ukraine dated September 14, 2018, the Draft Order was sent to the State Labour Service for further elaboration.

As of October 20, 2018, the text of the Draft Order of the Ministry of Social Policy "On Approval of Requirements for the Safety and Health Protection of Workers in the Mineral-Extracting Industries through Drilling" has not been published on the websites of the State Labour Service, Ministry of Social Policy, or SRSU, therefore it is impossible to assess its compliance with the requirements of Directive 92/91/EEC.

Therefore, national legislation has not been aligned with the provisions of Directive 92/91/EEC.

Directive 2009/104/EEC of 16 September 2009 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC). This Directive repeals Directives 89/655/EEC and 2001/45/EC

In order to fulfil the commitments under the Association Agreement in this regard, so far the following legislation has been developed:

- Draft Law "On Amendments to the Law of Ukraine 'On Occupational Safety and Health' (with regard to the implementation of Directive 2009/104/EEC of the European Parliament and of the Council of 16 September 2009)". Initiated by MPs, registered in the Verkhovna Rada on 02.06.2017 under No. 6537, pending consideration;
- Order No. 2072 of the Ministry of Social Policy of Ukraine of December 28, 2017, registered with the Ministry of Justice on January 23, 2018 under No. 97/31549, approving the requirements for safety and health protection during the use of industrial equipment by workers.

Draft Law No. 6537 amends the Law of Ukraine "On Occupational Safety and Health", taking into account the requirements of Directive 2009/104/EEC concerning the employer's duty to ensure the assessment of the technical condition of the work

equipment through inspection and testing by competent persons, initial inspection of the work equipment after installation and before first being put into service, carrying out special inspections of work equipment, training of employees who conduct examination of occupational safety and health, inspection and examination by competent persons, and informing employees.

Draft Law No. 6537 does not take into account the requirements of Directive 2009/104/EEC concerning the employer's obligation to train workers who use industrial equipment with regard to the minimum requirements for work equipment, the minimum requirements for operation of such equipment, and the temporal peculiarities of the application of minimum requirements for equipment in use.

Order No. 2072 of the Ministry of Social Policy of Ukraine dated December 28, 2012, comprehensively takes into account the provisions of Directive 2009/104/EEC:

- Section I. General Provisions takes into account the requirements regarding the scope and terms of this Directive;
- Section II. General Duties of the Employer takes into account the requirements for the use by the employer of properly operating equipment that meets the established requirements, inspection of equipment (initial, periodic and special), examination of equipment by competent persons, preservation and availability of equipment inspection results, professional and special training of workers with regard to the operation of equipment, providing workers with the necessary information and written instructions that are clear and understandable to workers;
- Section III. Minimum Safety Requirements Applicable to Work Equipment takes into account the requirements of Annex I to the Directive;
- Section IV. Safety Requirements Applicable to the Use of Work Equipment takes into account the requirements of Annex II to the Directive.

Consequently, the provisions of Directive 2009/104/EEC have been adapted in the Safety and Health Requirements for the Use of Work Equipment by Workers at Work approved by Order No. 2072 of the Ministry of Social Policy of January 28, 2017, registered with the Ministry of Justice of Ukraine on January 23, 2018 under No. 97/31549.

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Blood safety

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

1. Directive 2002/98/EC setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components;
2. Commission Directive 2004/33/EC implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components;
3. Commission Directive 2005/62/EC implementing Directive 2002/98/EC of the European Parliament and of the Council as regards Community standards and specifications relating to a quality system for blood establishments;
4. Commission Directive 2005/61/EC implementing Directive 2002/98/EC of the European Parliament and of the Council as regards traceability requirements and notification of serious adverse reactions and events.

Assessment of progress in fulfilling the commitments:

Directive 2002/98/EC setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components, and amending and supplementing Directive 2001/83/EC

The draft RLA that ensures the full implementation of the Directive is under development by the Coordination Task Force of Blood Safety Experts of the Ministry of Health.

The requirements of Directive 2002/98/EC of 27 January 2003 have been partly and inconsistently implemented in national legislation in the orders of the Ministry of Health drafted and approved prior to the adoption of Law of Ukraine No. 1678-VII "On Ratification of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part," dated September 16, 2014, and require a systemic review in order to implement it:

- No. 385 "On the Safety of Donor Blood and its Components with regard to

Infectious Disease" dated August 1, 2005;

- No. 211 "On Approval of the Procedure for Monitoring the Observance of Safety and Quality Indicators of Donor Blood and its Components" dated March 9, 2010;
- No. 1112 "On Approval of the Regulation on Blood Transfusion Establishments (with regard to organisation of the management of the system of quality and safety of donor blood and its components)" dated December 14, 2010;
- No. 1093 "On Approval of Guide to the Preparation, Use and Quality Assurance of Blood Components" dated December 17, 2013.

In Ukraine, matters related to the development of the donation of blood and its components, ensuring a range of social, economic, legal and medical measures for the organisation of blood donation and satisfaction of healthcare needs in donor blood, blood components and blood products is regulated by Law of Ukraine No. 239/95-BP "On Donation of Blood and its Components" of June 23, 1995, which also needs to be reviewed and amended in order to ensure compliance of its key principles and provisions with the requirements of the EU legislation concerning blood safety established by Directive 2002/98/EC of January 27, 2003 and the Directives of the European Commission implementing it as specified in the EU Association Agreement.

In order to implement the provisions of the Association Agreement at the request of the Ministry of Health, from August 25, 2015 to August 27, 2015, a task force of the European Commission's Directorate General for Health and Food Safety (DG Santé) visited Ukraine to assess the condition of the system of blood establishments, including the relevant legislative and regulatory framework. The evaluation results helped reveal 3 groups of shortcomings that have to be promptly eliminated:

- lack of management (lack of a state strategy for creation of a nationwide blood system in Ukraine);
- lacks of safety (both in terms of infectious and immunological threats);
- unreliable provision of patients with blood components and plasma-derived medicinal products.

As a result of these shortcomings, Ukraine lacks a coherent system for performing an important public health function – i.e. ensuring equal and timely access of citizens to high-quality and safe blood components in the required amount.

Today, the structure of the national blood system requires comprehensive reform, and blood establishments themselves need re-equipment. Blood establishments are located in buildings commissioned in the 1920s–80s, most of which require major overhaul, complete reconstruction, and proper equipment to standardise technological processes. Due to their less than perfect facilities and resources, not all blood establishments, despite efforts made, are able to ensure proper quality and safety with regard to infectious diseases.

About 44% of donor blood and its components in the country are collected by specialised units that are part of healthcare facilities as separate structural divisions (blood transfusion units, transfusion departments) that collect blood independently without proper conditions. In addition, the said units also fail to perform the basic functions of hospital blood banks as defined by EU Directives.

At the hospital level, management of the clinical transfusion process is not ensured, clinical efficacy is not measured, transfusion complications are not monitored, and no hemovigilance system has been introduced.

To sum up, it can be concluded that the implementation of Directive 2002/98/

EC of 27 January 2003 setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components, and amending Directive 2001/83/EC, is necessary for full-fledged implementation in national legislation.

Following the received recommendations, the Ministry of Health established Coordination Task Force on Blood Service Development, with members specified by Order No. 610 of September 21, 2015. The Coordination Task Force developed a draft Strategy for the Development of the National Blood System for 2015-2016 that envisaged creation of a national blood system and prompt elimination of the key shortcomings discovered by the European Commission's task force.

In June 2016, at the request of the MOH, the draft CMU Resolution "On Approval of the Strategy for Development of the National Blood System" was considered, reviewed and finalised involving experts of the European Commission within the Technical Assistance and Information Exchange of the European Commission (TAIEX).

The draft CMU Resolution "On Approval of the Strategy for Development of the National Blood System" set forth the basic principles for establishment of the national blood system in accordance with the requirements of the EU Directives. The draft Strategy involves establishment of an Independent Competent Inspection Authority as a special unit within the MOH, as well as a national transfusion centre that would serve as a management body.

This draft Strategy underwent public discussion and was sent out to the Central Executive Authorities for approval, however, it has not been approved due to the requirement of the Ministry of Finance of Ukraine to carry out the necessary calculations to show ways of attracting finance necessary to implement the key provisions of the Strategy.

Order No. 510 of the Ministry of Health of Ukraine dated March 20, 2018, established the Coordination Task Force on Blood Safety and the Coordination Task Force on Development of the Blood Service was abolished. The Task Force drafted an updated CMU Decree "On Approval of the Strategy for Development of the National Blood System" and the "Action Plan to Implement the Strategy for Development of the National Blood System", which, in May 2018, were publicly discussed and are currently pending endorsement by the Central Executive Bodies.

The updated Draft Strategy stipulates that the State Institution Public Health Centre of the Ministry of Health of Ukraine will ensure the work of the State Transfusion Centre as the coordinator of the national blood system, while one of the structural subdivisions of the Ministry of Health will be in charge of the work of the Independent Competent Inspection and Licencing Authority.

State Institution Public Health Centre of the Ministry of Health of Ukraine will coordinate, manage and monitor the programs of the national blood system at the state level, follow up management decisions concerning the national blood system, in particular, establishment and support of a unified system of information exchange in real time, and methodological guidance of the operation of the national blood system. The strategy involves creation, on the basis of the existing departments of transfusion, of a network of hospital blood banks with units of transfusion immunology, as well as hospital transfusion committees, in order to ensure adequate transfusion care in health facilities.

When conducting an expert assessment of the national blood service, it was

found that some of the requirements of Directive 2002/98/EC are included in the national legislation, therefore, it is necessary to fully align the regulatory legal field with European requirements. In particular, concepts such as "serious adverse reaction", "deferral", "distribution of blood and its components", etc. have not been fully implemented, no requirements have been introduced for reports of serious events and reactions, there is no mechanism for ensuring the introduction by transfusion institutions of a system for identification of each donation of blood and its components, enabling the tracking of blood components all the way from the donor to the recipient.

The tasks concerning revision of the current regulations of the Ministry of Health of Ukraine with a view to implementation of Directive 2002/98/EC are specified in clauses 1409-1417 of the Action Plan on Implementing the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their member states, of the other part, approved by Resolution No. 1106 of the CMU dated October 25, 2017.

Commission Directive 2004/33/EC implementing Directive 2002/98/EC of the European Parliament and of the Council as regards certain technical requirements for blood and blood components

The draft regulatory act that ensures full implementation of the Directive is under development by the Coordination Task Force of Blood Safety Experts of the Ministry of Health.

The requirements of Directive 2004/33/EC have been incompletely and inconsistently implemented in national legislation in the following orders of the Ministry of Health of Ukraine:

- No. 385 "On the Safety of Donor Blood and its Components with regard to Infectious Disease" dated August 1, 2005;
- No. 211 "On Approval of the Procedure for Monitoring the Observance of Safety and Quality Indicators of Donor Blood and its Components" dated March 9, 2010;
- No. 415 "On Improving Voluntary Counselling and Testing for HIV" dated August 19, 2005.

However, the existing orders fail to fully transpose the provisions of Directive 2004/33/EC and should be comprehensively reviewed in order to implement it. In particular, for its full implementation, it is necessary to revise and align the blood and blood components donor admission criteria, as well as the information provided to the donor and the information that the establishment must receive from the donor.

The tasks concerning revision of the current regulations of the Ministry of Health of Ukraine with a view to implementation of Directive 2004/33/EC are specified in clause 1412 of the Action Plan on Implementing the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their member states, of the other part, approved by Resolution No. 1106 of the CMU dated October 25, 2017.

Commission Directive 2005/61/EC implementing Directive 2002/98/EC of the European Parliament and of the Council as regards traceability requirements and notification of serious adverse reactions and events

The draft regulatory act that ensures full implementation of the Directive is under development by the Coordination Task Force of Blood Safety Experts of the Ministry of Health.

Currently, the requirements of Directive 2005/61/EC are not implemented in Ukrainian legislation, there is no system of hemovigilance whatsoever. There are no established procedures for the recording and monitoring of adverse reactions and events.

There are cases of transmission of HIV and hepatitis in transfusions from patient to patient. The country has no traceability algorithm for recipients of potentially infected blood. There have been cases of transfusion of whole blood without retrospective examination of donors. There are no approved guidelines for the proper use of blood components. The reporting system of healthcare establishments needs improvement.

The tasks concerning revision of the current regulations of the Ministry of Health of Ukraine with a view to implementation of Directive 2005/61/EC are specified in clauses 1412-1414 of the Action Plan on Implementing the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their member states, of the other part, approved by Resolution No. 1106 of the CMU dated October 25, 2017.

Commission Directive 2005/62/EC implementing Directive 2002/98/EC of the European Parliament and of the Council as regards Community standards and specifications relating to a quality system for blood establishments

The draft regulatory act that ensures full implementation of the Directive is under development by the Coordination Task Force of Blood Safety Experts of the Ministry of Health.

The requirements of Directive 2005/62/EC have been incompletely and inconsistently implemented in national legislation in the following orders of the Ministry of Health of Ukraine:

- No. 1112 "On Approval of the Regulation on Blood Transfusion Establishments (with regard to organisation of the management of the system of quality and safety of donor blood and its components)" dated December 14, 2010;
- No. 1093 "On Approval of the Guide to the Preparation, Use and Quality Assurance of Blood Components" dated December 17, 2013.

However, the existing orders fail to fully transpose the provisions of Directive 2005/62/EC and should be comprehensively reviewed in order to implement it.

The tasks concerning revision of the current regulations of the Ministry of Health of Ukraine with a view to implementation of Directive 2005/62/EC are specified in clause 1412 of the Action Plan on Implementing the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their member states, of the other part, approved by Resolution No. 1106 of the CMU dated October 25, 2017.

In June-July 2018, at the request of the Ministry of Health, with a view to providing technical assistance to the Public Health Centre of the MoH, the AIHA engaged a group of local blood safety and blood quality management experts trained

by the AIHA at its own expense to assess the status of readiness of regional specialised institutions and blood transfusion facilities for accreditation in accordance with the requirements of the EU Directives and CE standards on blood quality and safety, using an adapted assessment tool of the European Blood Inspection System (EuBIS). The technical assistance was rendered to the MoH of Ukraine under the Memorandum of Cooperation of April 19, 2018.

The purpose of the assessment was to help the management of specialised institutions and blood transfusion establishment of Ukraine assess their readiness for national and international certification or accreditation in accordance with EU Directive 2002/98/EC setting standards of quality and safety for the collection, testing, processing, storage and distribution of human blood and blood components and Directive 2005/62/EC as regards Community standards and specifications relating to a quality system for blood establishments, as well as EU-GMP and PIC/S GMP standards for blood transfusion establishments and institutions, CE Guide to the Preparation, Use and Quality Assurance of Blood Components, and ISO 9000.

The results of the assessment provide rationale for the development of a step-by-step plan of work (roadmap) to address the existing shortcomings in order to ensure compliance with the requirements of the EU Directives and the CE standards.

Transplantation of tissues and cells

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

1. Directive 2004/23/EC on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells;
2. Commission Directive 2006/17/EC implementing Directive 2004/23/EC of the European Parliament and of the Council as regards certain technical requirements for the donation, procurement and testing of human tissues and cells;
3. Commission Directive 2006/86/EC implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells

Assessment of progress in fulfilling the commitments:

✕ **Directive 2004/23/EC on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells (hereinafter – Directive 2004/23/EC)**

✕ **Commission Directive 2006/17/EC as regards certain technical requirements for the donation, procurement and testing of human tissues and cells (hereinafter – Directive 2006/17/EC)**

In order to approximate the provisions of these EU acquis to national legislation,

the following regulatory documents have been developed:

1. Law of Ukraine No. 2427-VIII "On Application of Transplantation of Anatomical Materials to Humans", adopted by the Parliament on May 17, 2018, (enters into force on January 1, 2019, except paragraph 4 of the Final Provisions, which entered into force on June 24, 2018, and whereby Government was tasked with elaboration of subordinate legislation for the implementation of this Law).

This Law aims at developing transplantation as a method of treatment in Ukraine.

The Law implements the provisions of Directive 2010/45/EU on standards of quality and safety of human organs intended for transplantation, as well as Directive 2004/23/EC as regards donation of hematopoietic stem cells and foetal tissues in Ukrainian legislation. In particular, it will ensure the efficient use and development of the existing medical and clinical facilities for organ transplantation and transplantation of hematopoietic stem cells (bone marrow) to all Ukrainian citizens who need them, and obliges the Government to develop the procedure for import into and export from Ukraine of transplants of hematopoietic stem cells (bone marrow). It also contains standards for the quality assurance of bio- and xenografts, as well as foetal tissues.

2. Resolution No. 286 of the CMU "On Approval of the Licencing Terms for the Economic Activity of Banks of Cord Blood, Other Human Tissues and Cells in accordance with the List Approved by the Ministry of Health" dated March 2, 2016 (in effect).

The Licencing Terms set forth the exhaustive list of requirements that are mandatory for the licensee, as well as the exhaustive list of documents to be attached to the application for obtaining a licence for the conduct of economic activities related to banks of umbilical cord blood, other tissues and human cells (hereinafter referred to as the licence) according to the list approved by the MoH (hereinafter – operation of umbilical cord blood banks).

The licensee is required to observe these Licencing Terms, and the licence applicant must measure up to them.

The scope of these Licencing Terms extends to economic entities, regardless of their organizational and legal form and the form of ownership, registered in accordance with the procedure established by law to operate as umbilical cord blood banks, and to individual entrepreneurs who carry out such activities.

It partly takes into account the requirements of Directive 2004/23/EC, in particular, concerning the conclusion of written agreements on cooperation with third parties with regard to laboratory tests of donors' venous blood, biological material and products and / or preparations made of it, as well as supplies of goods and services by third parties that affect the quality and safety of tissues or cells, namely, it:

- takes into account the requirements for preserving information in the event of termination of the establishment's activity;
- takes into account the requirements for a system of documentation that enables identification of each unit of tissue and cells at any stage of activity;
- takes into account the requirements for proper staffing that meets educational and qualification requirements;
- takes into account the requirements for documenting the list of necessary equipment, its verification and testing;
- takes into account the requirements for air purity, but does not take into

account the requirements for its quality;

- takes into account the possibility of separating tissues and cells that are quarantined from rejected cells;
- partially takes into account the requirements for the availability of documentation for materials, equipment, and personnel for each activity;
- does not take into account financial responsibility and the procedure for exchanging information.

3. Resolution No. 695 of the Cabinet of Ministers of Ukraine of April 24, 2000, "On Certain Matters of the Enforcement of the Law of Ukraine 'On the Transplantation of Organs and Other Anatomical Materials to Humans' (No. 538 (538-2018-п) as amended on June 20, 2018)" approved the list of state and municipal health care institutions and state scientific institutions that have the right to carry out activities related to transplantation of organs and other anatomical materials to humans.

It sets forth the right of the MoH to approve:

- the procedure for transportation of human anatomical materials within Ukraine and their export abroad upon endorsement of the Academy of Medical Sciences, the State Customs Service, and the Ministry of Infrastructure;
- the procedure for the collection, storage and use of bone marrow upon endorsement of the Academy of Medical Sciences;
- medical and biological requirements for animals, conditions for their maintenance, and the procedure for collecting xenografts from them upon endorsement of the Academy of Medical Sciences and the Ministry of Agrarian Policy.

The MoH has been tasked with conducting constant monitoring of the compliance of the state and municipal health care establishments and scientific institutions specified in the list approved by this resolution with the requirements for their assets and facilities, equipment, training and qualifications of employees necessary to carry out activities related to transplantation of organs and other anatomical materials to humans.

4. Resolution No. 1100 of the CMU dated September 5, 2007, "On Measures for the Organisation of the Work of Health Care Establishments and Research Institutions as regards Transplantation of Organs, Tissues and Cells" tasks the MoH with:

- ensuring application of tissue and cell transplantation as a method of treatment by health care establishments and scientific institutions, regardless of their subordination based solely on the permission issued following clinical trials;
- developing and approving requirements and procedures for carrying out clinical trials of tissue grafts and cell transplants and examination of materials for clinical trials.

5. Order No. 276 of the MoH of Ukraine dated April 20, 2012, "On Approval of the List of Human Tissues and Cells with regard to which Umbilical Cord Blood Banking is Authorised, Other Human Tissues and Cells" (including amendments No. 927, dated November 20, 2012)

The terms and their definitions that influence the essence of regulation must be clear to specialists regardless of the institution, the state, etc. Therefore, the said terms and definitions should be harmonised with the terms and definitions accepted in the EU. Moreover, Ukraine should use all the applicable terms. The said order mentions only 9 terms in a satisfactory form, while Directive 2004/23/EC defines 17

terms. Therefore, in order to ensure the same understanding by all interested parties, it is necessary to supplement the order with the other 8 terms present in Directive 2004/23/EC.

6. Order No. 251 of the MoH dated April 10, 2012, "On Approval of the Licencing Terms for the Economic Activity of Banks of Cord Blood, Other Human Tissues and Cells"

The terms used in this Order need to be brought into line with the provisions of Directive 2004/23/EC in order to ensure understanding of the provisions of the Order by any specialist in any state. This principle is now being implemented in the EU, for example, in the field of pharmacology and pharmacovigilance.

However, the order takes into account the requirements of Article 7, Chapter II of Directive 2004/23/EC.

7. Order No. 244 of the MoH, dated March 28, 2013, "On Approval of the Procedure for Monitoring Compliance with Licencing Terms for Certain Types of Economic Activities and Unified Forms of Acts Compiled Based on the Results of Scheduled Checks of the Economic Operator's Compliance with the Licencing Terms for Certain Types of Economic Activities in the Field of Health Care Subject to Licencing" takes into account the requirements of Article 7, Chapter II of Directive 2004/23/EC.
8. Order No. 560 of the MoH, dated June 13, 2016, "On the Establishment of a Working Group for Improvement of Licencing Terms for the Economic Activity related to Banks of Cord Blood, Other Human Tissues and Cells in Accordance with the List Approved by the Ministry of Health of Ukraine, Approved by CMU Resolution No. 286 of March 2, 2016 (effective, the Working Group is operating).

Members have been appointed to the MoH Working Group for improvement of Licencing Terms for the Economic Activity related to Banks of Cord Blood, Other Human Tissues and Cells (hereinafter – the Licencing Terms) approved by CMU Resolution No. 286 of March 2, 2016, and aligning them with Directives 2004/23/EC and 2006/17/EC.

9. Order No. 250 of the MoH of Ukraine, dated April 10, 2012, "On the Provision of a Homograft for Transplantation by a Living Family Donor" takes into account the provisions on confidentiality of paragraphs 2, 13, 23 of Directive 2004/23/EC. In needs to be aligned with paragraph 16 of Directive 2004/23/EC on the mandatory prior medical examination of living donors and Article 28 of this Directive as regards supplementing the criteria for selecting donors of tissues and cells and carrying out the necessary laboratory identification procedures.
10. Order No. 226 of the MoH of Ukraine dated September 25, 2000, "On Approval of Regulatory Documents on Transplantation Matters" (as amended by Order No. 821 of the MoH dated September 23, 2013, "On Establishment of Diagnostic Criteria for Brain Death and Procedures for Determining the Time of Death of a Person") adopted:

- guidelines for removal of human organs from deceased donors;
- guidelines for removal of anatomical structures, tissues, their components and fragments from deceased donors;
- list of anatomical structures, tissues, their components and fragments and foetal materials permitted for removal from deceased donors and dead human foetus;
- guidelines for manufacturing of bioimplants;

- conditions for ensuring the preservation of anatomical materials during transportation.

11. Order No. 626 of the MoH of Ukraine, dated June 9, 2017, "On Amendments to Order No. 226 of the Ministry of Health of Ukraine of September 25, 2000" takes into account the provisions of paragraphs 2, 16, and 20 of Directive 2004/23/EC and Article 28, Chapter VI of this Directive concerning the quality system, including training. However, the matters related to regulation of the requirements for and procedures of the collection of tissues and cells and their acceptance into umbilical cord blood banks still need to be resolved.

In addition, the Order partly took into account the provisions of Article 3, Chapter 1, of Directive 2004/23/EC on preservation, but it needs to be further elaborated with regard to the requirements for the preparation, processing, and the direct distribution to the recipient of specific tissues and cells in accordance with Article 28, Chapter VI of this Directive.

It is necessary to appoint a responsible person with the qualifications and duties specified in Article 17 of Directive 2004/23/EC – this is settled only with respect to deceased donors.

12. Order No. 630 of the MoH of Ukraine, dated October 10, 2007, "On Approval of the Procedure for Conducting Clinical Trials of Tissue Grafts and Cell Transplants and the Examination of Materials for Clinical Trials and Amending the 'Procedure for Conducting Clinical Trials of Medicinal Products and Examination of Materials of Clinical Trials' approved by Order No. 66 of the Ministry of Health of Ukraine, dated February 13, 2006, registered in the Ministry of Justice of Ukraine on March 10, 2006 under No. 252/12126" approved the "Procedure for Conducting Clinical Trials of Tissue Grafts and Cell Transplants and Examination of Clinical Trial Materials".
13. Order No. 96 of the MoH of Ukraine, dated May 4, 2000 "On Approval of Regulatory Acts on Transplantation of Organs and Other Anatomical Materials to Humans", adopted:

- the procedure of transportation of human anatomical materials within Ukraine and abroad;
- the procedure for collection, storage and use of bone marrow;
- medical and biological requirements for animals, conditions for their maintenance, the procedure of collecting xenografts from them,

and took into account the provisions of Article 31, Chapter VII of Directive 2004/23/EC.

14. Order No. 812 of the MoH of Ukraine, dated December 11, 2006, "On Approval of the Regulation on the Coordination Centre for Transplantation of Organs, Tissues and Cells" needs to be aligned with Article 4, Chapter I of Directive 2004/23/EC.

Commission Directive 2006/86/EC as regards traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells

1. CMU Resolution No. 285, dated March 2, 2016, "On Approval of Licencing Terms for the Conduct of Economic Activities Related to Medical Practice" sets forth the requirements for the establishment of the structure of the licensee intending to provide the relevant medical services, but it fails to

stipulate financial liability and the information exchange procedure. It takes into account the requirements regarding the number and qualification of the personnel, the list and the proper maintenance of equipment.

2. Order No. 142 of the MoH, dated April 20, 2012, "Standards of Accreditation of Health Care Establishments" contains the requirements for the establishment of the structure of the licensee intending to provide the relevant medical services, but it fails to stipulate financial liability and the information exchange procedure. It partly stipulates the requirements for documenting the quality management system; takes into account the requirements for compliance by nursing staff with standards for care and compliance quality assessment systems, as well as doctor staffing of the establishment; takes into account the requirements for the staffing of Transplantation Centres with specialists for outpatient observation and other healthcare professionals; provides a list of their responsibilities and requirements for their training and / or advanced training courses; and partially takes into account the requirements for the existence and maintenance of the documentation system (SOP).
3. Order No. 481 of the MoH of Ukraine, dated July 10, 2014, "On Approval of the Procedure for Collection and Temporary Storage of Umbilical Cord Blood (Placental) Blood and / or Placenta" adopted:

- the procedure for collection and temporarily storage of umbilical cord (placental) blood and / or placenta;
- the form of an act recording the patient's refusal of collection and temporary storage of umbilical-cord (placental) blood and / or placenta in the maternity hospital;
- primary record form No. 096-1 / o "Informed Consent for Collection of Umbilical-Cord (Placental) Blood and / or Placenta" and the Guidelines for filling it out;
- primary record form No. 096-2 / o "Documents Accompanying Collected Umbilical-Cord (Placental) Blood and / or Placenta" and the Guidelines for filling it out;
- primary record form No. 010-1 / o "Register for Collected Umbilical-Cord (Placental) Blood and / or Placenta" and the Guidelines for filling it out;

It takes into account the provisions of Directive 2006/86/EC.

4. Order No. 184 of the MoH, dated July 26, 1999 "On Adoption of Statistical Record Forms Used in In-Patient Departments of Medical and Preventive Establishments" (as amended by Order No. 29 of the MoH dated January 21, 2016).

It takes into account the requirements for the system of documentation as regards confirming the conformity of tissues and / or cells with safety and quality requirements as formalised in a tissue collection card. It partially takes into account the requirements for the existence and maintenance of the Documentation System (SOP).

Thus, despite the adoption of the Law of Ukraine "On Application of Transplantation of Anatomical Materials to Humans", the CMU Resolution "On Certain Matters of the Enforcement of the Law of Ukraine 'On the Transplantation of Organs and Other Anatomical Materials to Humans'", approval and amendment of a number of orders and other documents of the MoH and general acceleration and progress made in 2018, Ukrainian legislation has not been aligned with the provisions of Directives 2004/23/EC, 2006/17/EC, and 2006/86/EC.

Based of analysis of 18 regulatory legal acts governing the area of transplantation

of tissues and cells in Ukraine, it has been established that in order to achieve positive results, it is necessary to develop and introduce a number of documents and / or to amend those that are in place now. Specifically, in order to complete the process of approximation of national legislation with the European one in accordance with the requirements of Directive 2004/23/EC, it is necessary to:

- regulate the financial component – allocation of funds, rules for their use, reporting, appointment of responsible persons;
- regulate the information component – rules for obtaining data, storing information and exchanging it;
- regulate all production process cycles. So far this component has not been fully implemented;
- establish clear and transparent mechanisms for monitoring the compliance of state and municipal health care establishments and scientific institutions with approved requirements for their assets and facilities, equipment, training and qualifications of workers necessary to carry out activities related to transplantation of organs and other anatomical materials to humans;
- resolve issues regarding the requirements and procedure for the procurement of tissues and cells and their acceptance to umbilical-cord blood banks. The list of human tissues and cells with regard to which the activity of umbilical-cord blood banks is permitted, other tissues and human cells needs to be harmonised with the provisions of the Directive. Further elaboration is necessary with regard to the requirements of Article 28 of the Directive on preparation of tissues, their processing, and the direct distribution to the recipient of specific tissues and cells;
- regularise documentation of the detailed characteristics of all clinical materials and reagents;
- provide regulation as regards determining the characteristics necessary for the storage of tissues and cells, as well as control, monitoring and registration of critical parameters (e.g. temperature, humidity, air quality);
- align the Regulation on the Coordination Centre for Transplantation of Organs, Tissues and Cells with Article 4, Chapter I of the Directive;
- harmonise the Procedure for the Use of Xenografts with the provisions of the Directive;
- unify and harmonise the terms used in different RLAs with the provisions of the Directive.

In accordance with the requirements of Directive 2006/17/EC:

- prepare and adopt amendments to the Licencing Terms. The MoH has established a Working Group that has to develop the Licencing Terms by November 15, 2018;
- develop and approve qualification requirements for all officials who work in relevant establishments;
- finalise the requirements concerning the availability of the entire set of documentation for materials, equipment, and personnel for each type of activity as performed by the relevant establishments;
- regulate regular holding of, record keeping concerning and registration of the procedures for maintenance, care, cleaning, disinfection and sanitary treatment of important equipment;
- properly arrange the procedure for work with each type of equipment;
- develop air quality requirements at different stages of the processing of tissues and cells;

- introduce a system ensuring legibility, prohibition to destroy, preservation of registration records, as well as confidentiality and limited access to them;
- introduce a system of checking the reliability of information;
- develop procedures for monitoring the use of the current version of the documentation;
- ensure review of changes in the documentation, their registration, dating, adoption and execution in order to continuously improve them;
- ensure documentation of measures aimed at correction and assessment of their effectiveness;
- introduce a regular audit system;
- regulalate procedures for systematic review of the quality and safety management system in order to improve them.

In accordance with Directive 2006/86/EC:

- regulate financial and information components;
- take into account all requirements for the availability and documentation of the Documentation System (SOP);
- regulate access to health care professionals who should provide advice and monitor health care establishments with regard to donor selection, examination of tissue and cell application, proper interaction with recipients;
- develop documents for detecting and minimising potential risks related to the use and processing of biological materials, ensuring adequate quality and safety for the purposes for which the tissues and cells are intended (in particular, the risks include those that arise during procedures, relate to the environment or health of the staff);
- ensure documented (written) policy of work arrangements for controlled access, cleaning and maintenance, waste disposal and regular service delivery in case of emergency;
- introduce a system of documentary investigations and reports for each case of deviation from quality and safety standards, in accordance with the written policies on the part of the person in charge.

Tobacco

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

1. Directive 2001/37/EC on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products;
2. Directive 2003/33/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.

Assessment of progress in fulfilling the commitments:

Directive 2001/37/EC on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products

In April 2014, the European Parliament and the Council adopted a new Directive 2014/40/EU on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC. Article 31 of Directive 2014/40 / EC states that: "Directive 2001/37/EC is repealed with effect from 20 May 2016, without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law of that Directive."

With a view to implementing Directive 2001/37/EC, which has been repealed, on April 3, 2015 Draft Law No. 2430-1 was registered with the VRU (the Main Committee of the Verkhovna Rada – Committee on Taxation and Customs Policy). This Draft Law, inter alia, involves establishing maximum permissible levels for tar, nicotine and carbon monoxide yields of cigarettes and prohibition of the sale of tobacco for oral use.

Directive 2003/33/EC on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products

Directive 2014/40/EU on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC

In order to implement Directive 2014/40/EU and Directive 2003/33/EC, on May 15, 2015, Draft Law No. 2820 was registered with the VRU (the Main Committee of the VRU – Committee on Health Care). The Draft Law involves adaptation of most Articles of Directive 2014/40/EU, namely with regard to: prohibition of the use of flavouring additives in cigarettes, regulation of production, sales and advertising of electronic cigarettes and refill containers for them, introduction of new rules for the labelling of tobacco products and electronic cigarettes, regulation of production, sales and labelling of herbal products for smoking, introduction of new rules and requirements for information on the ingredients of tobacco products to be provided by manufacturers and importers of tobacco products. However, the Draft Law fails to implement Article 15 of Directive 2014/40/EU focusing on tobacco smuggling prevention as regards introduction of a traceability system for tobacco products. Moreover, the Draft Law came under criticism as regards a number of technical issues specified in the Expert Opinion Report of the Main Scientific and Expert Department of the VRU. Apart from that, the Draft Law contains provisions implementing Directive 2003/33/EC, namely: introduces a complete ban on tobacco advertising on the Internet. The document was included in the agenda of the 7th, 8th and 9th sessions of the VRU of the VIII convocation, but in 2017-2018 it failed to presented to Parliament for consideration in the first reading. Draft Law No. 2820 was supported by the Government of Ukraine and listed among the draft laws for urgent consideration by the VRU, included in the joint parliamentary and governmental "roadmap" of the high-priority European integration bills, and supported by the Ministry of Health and the World Health Organization.

Draft Law No. 2430-д, dated May 18, 2017 (the main VRU committee – Committee on Taxation and Customs Policy) has been registered as a "revised" bill based on Draft

Laws No. 2820 and No. 2430-1. It also aims at implementing Directive 2014/40/EU. Specifically, Draft Law No. 2430-д sets forth requirements for the regulation of electronic cigarettes and refill containers, prohibition of the production and sale of cigarettes with characterising flavours, etc. Nonetheless, the main shortcomings of Draft Law No. 2430-д include the lack of standards for introduction of new rules for the labelling of tobacco products, even though these are key provisions; its failure to specify the information requirements that manufacturers and importers of electronic cigarettes and refill containers should submit to the central executive authority, as well as the proposal to introduce a system of "unique identification marks for tobacco products" that should be financed and administrated by the tobacco industry, which runs contrary to paragraph 8, Article 15 of Directive 2014/40/EC. The Draft Law was considered by the Committee on Taxation and Customs Policy and included in the agenda of the 9th session of the VIII convocation.

The purpose of Draft Law No. 4507 of April 22, 2016 (the main VRU committee – the Committee on Taxation and Customs Policy) is to establish standards for the regulation of electronic cigarettes and refill containers, as well as for prohibition of tobacco products with characterising flavours. These standards partly meet the requirements of Directive 2014/40/EC. For example, the terminology proposed in the Draft Law does not comply with that of the Directive, and the prohibition on the use of flavour additives is not backed by any penalties. The document also includes provisions overlapping with those contained in other laws. The Draft Law is included in the agenda of the VRU of the 9th session of the VIII convocation.

The purpose of Draft Law No. 9058 (and alternatives No. 9058-1 and No. 9058-2) of September 6, 2018 (the main VRU committee – the Committee on Taxation and Customs Policy) is to introduce regulation of electronic cigarettes, refill containers and novel tobacco products (for heating), including in accordance with Directive 2014/40/EU. In fact, this Draft Law implements the provisions of the Directive as regards the regulation of electronic cigarettes, but contains significant technical inconsistencies specified in the Expert Opinion Report of the specialised committee. Alternative bills can remedy these inaccuracies at the stage of preparation of the document between the first and second readings. The document is undergoing consideration by VRU committees.

Draft Law No. 9073 of September 7, 2018 (the main VRU committee – the Committee on Health Care) introduces a ban on the use of flavouring additives and prohibits the sale of cigarettes with characterising flavours with reference to the requirements of Directive 2014/40/EU. At the same time, the Draft Law diverges from the requirements of the Directive in a number of ways, namely: it does not specify extensive reporting obligations of manufacturers and importers concerning the ingredients of tobacco products, neither does it provide a complete list of prohibited additives to tobacco products, and fails to set requirements for regulation of flavouring additives in herbal products for smoking. The document is undergoing consideration by VRU committees.

Despite a significant number of draft laws aimed at approximating the EU Directives as regards the production, sale, presentation and advertising of tobacco products and electronic cigarettes, there is no progress in approximation of national legislation to the provisions of these Directives. The standoff between the VRU Committee on Taxation and Customs Policy and the VRU Committee on Health Care regarding conceptual differences in the approaches to adaptation of tobacco legislation has obstructed consideration of the draft laws in the VRU. Today, Draft

Law No. 2820, despite some technical remarks, is the most comprehensive document for implementation of Directives 2014/40/EU and 2003/33/EC; besides, it is ready for consideration by the VRU. Draft Law No. 2430-д also offers a comprehensive approach, but it ignores several important articles of the Directives, for example, requirements for picture warnings and labelling of packaging, requirements for the manufacturer's reporting, etc. The other draft laws imply but fragmented implementation of Directive 2014/40/EC, while ignoring Directive 2003/33/EC altogether. The problem may be resolved by way of adopting Draft Law No. 2820 in the first reading and further elaborating it for the second reading within the Parliamentary Committee on Health Care, taking into account all existing draft laws and, first of all, the requirements of Directive 2014/40/EU. At the same time, given the absence of progress in this regard, it may be recommended that the MoH develop a Government draft law implementing Directive 2014/40/EU (with regard to the provisions of the repealed Directive 2001/37/EC) and Directive 2003/33/EC, taking into account all technical comments and the approaches of the stakeholders.

Communicable diseases

Review of commitments that had to be fulfilled in the period from November 2014 to November 2017:

1. Decision 2119/98/EC setting up a network for the epidemiological surveillance and control of communicable diseases in the Community;
2. Commission Decision 2000/96/EC on the communicable diseases to be progressively covered by the Community network under Decision No 2119/98/EC.

Assessment of progress in fulfilling the commitments:

Decision 2119/98/EC setting up a network for the epidemiological surveillance and control of communicable diseases in the Community

No regulatory documents have been developed to approximate legislation.

The EU considers prevention and control of communicable diseases a matter of public security. The above Decision of the European Commission initiated cooperation between EU Member States to exchange information on cases of communicable diseases and rapid response to outbreaks that may pose a threat to the population of the EU. The Decision gave rise to a network of competent authorities for epidemiological surveillance in EU Member States and basic procedures for the exchange of information and taking decisions concerning rapid response to outbreaks of communicable diseases. The network has developed quickly. In 2005, the European Centre for Disease Prevention and Control was established, and the Decision itself was completely revised in 2013 and replaced with Decision 1082/2013/EC of 22 October 2013.

Currently, there is no decision on Ukraine's joining the specified network. The exchange of information is unsystematic: Ukraine provides information only about some nosology branches, the definitions of cases do not always coincide in accordance with the laws and practices of Ukraine and the EU, and registration of cases of communicable diseases in Ukraine is unsystematic too.

However, Ukraine is regularly mentioned in reports the European Centre for Disease Prevention and Control in connection with possible threats of the spread of infectious diseases in Ukraine (such as the report on the "Risk of Measles Transmission in the EU/EEA" of March 23, 2018).

In this context, the key recommendations of the European Commission provided based on the assessment of the Ukrainian epidemiological surveillance system in 2015 include creation of a strategic framework for the development of a control system for communicable diseases, updating legislation and aligning it with the EU legislation, and creation of a single national institution responsible for public health issues.

These recommendations have been partly implemented. The MoH has established the Public Health Centre, which is gradually taking over public health functions. At the same time, a number of problems remain unaddressed:

- existence of other national agencies that continue to be responsible for certain public health issues;
- disorderly situation with regard to the regional system of the epidemiological surveillance of communicable diseases.

Also, in 2018, certain steps were taken to create a strategic framework for countering communicable diseases, in particular, the following strategic documents were developed and revised: drafts of the Strategy for Development of the National Program of Immunization and Protection of Population against Vaccine-Preventable Infections, Strategy for Ensuring Biosecurity and Biological Protection, Strategy for Prevention, Diagnosis and Treatment of Viral Hepatitis B and C, National Programme for Tuberculosis Control, State Strategy for the Implementation of the State Policy Aimed at Containment of Antimicrobial Resistance. At the same time, no uniform vision / strategy for the system of countering communicable diseases has been shaped.

Commission Decision 2000/96/EC on the communicable diseases to be progressively covered by the Community network under Decision No 2119/98/EC.

The MoH approved a "List of communicable diseases to be placed progressively under Community surveillance in accordance with decisions of the European Parliament and the Council" (MoH Order No. 362, dated April 13, 2016).

The aforementioned Decision specifies the list of communicable diseases to be covered by a system of epidemiological surveillance at the national level. This Decision in the version of 1999 was fully taken into account in the above MoH Order.

However, the said MoH Order is not in line with CMU Resolution No. 157, of February 21, 2001 "On Certain Matters of Registration, Record-Keeping and Reporting of Infectious Diseases", since this Resolution fails to include certain communicable diseases, as defined in the EU Decision and the relevant MoH Order, that is, they are not subject to registration and record-keeping, which is an integral part of epidemiological surveillance. Paragraph 2.4 of the Action Plan for Implementation of the Concept of Development of the Public Health System, approved by CMU Resolution No. 560 of August 18, 2017, envisages amending Resolution No. 157, but no amendments have been made.

Secondly, the said Commission Decision has been amended several times (the

latest version is Commission Implementing Decision (EU) 2018/945 of 22 June 2018), and the list of diseases subject to epidemiological surveillance has been updated and expanded in accordance with an actual epidemic situation (for example, Zika virus disease has been included). In view of the above, it is necessary to review the relevant legislation of Ukraine.

Commission Decision 2002/253/EC laying down case definitions for reporting communicable diseases to the Community network under Decision No. 2119/98/EC

The MoH approved Criteria for determining cases of communicable and parasitic diseases that are subject to registration (Order No. 905 of the Ministry of Health of December 28, 2015).

The Commission Decision lays down the clinical, laboratory and epidemiological criteria for the identification of cases of communicable diseases. The specified MoH Order overlaps with the corresponding Commission Decision in the version of 2002.

However, no amendments have been introduced to other MoH orders that also specify the criteria for the identification of cases of communicable diseases. Often, the definitions of cases in different documents of the MoH differ (for example, the definition of the case of measles in the Instruction on Organisation of Epidemiological Surveillance for Measles, approved by MoH Order No. 188 of May 17, 2005, and that in MoH Order No. 905 of December 28, 2015 do not coincide). In this regard, there is a need to revise the regulatory framework in the field of communicable diseases in order to bring it in line with the Commission Decision.

Secondly, the indicated Commission Decision has been amended several times (the latest version is Commission Implementing Decision (EU) 2018/945 of 22 June 2018) – some criteria have been revised, and new cases have been added. In view of the above, it is necessary to review the relevant legislation of Ukraine.

PART II

COMMITMENTS THAT HAD TO BE FULFILLED WITHIN THE PERIOD FROM 1 NOVEMBER 2017 TO 1 NOVEMBER 2018

TECHNICAL BARRIERS TO TRADE

TECHNICAL BARRIERS TO TRADE

Expert

Dmytro Lutsenko

Vertical (sectoral) legislation

Analysis of the progress as regards the approximation of national legislation to the requirements of EU acquis made from November 1, 2017 to November 1, 2018:

According to Art. 56 and the Timetable of Annex III to the Association Agreement, during the period from November 2017 to November 2018, Ukraine had to fulfil a number of commitments as regards approximation of national legislation to the requirements of the following EU acquis concerning vertical (sectoral) legislation, in particular the following EU technical regulations (TR):

1. Directive 2006/42/EC on machinery;
2. Directive 2014/30/EU on the harmonisation of the laws of the Member States relating to electromagnetic compatibility;
3. Directive 2014/29/EU on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels;
4. Directive 2010/35/EU on transportable pressure equipment;
5. Directive 2014/33/EU on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts;
6. Directive 2009/48/EC on the safety of toys;
7. Directive 2014/35/EU on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits;
8. Directive 2009/142/EC relating to appliances burning gaseous fuels;
9. Regulation (EU) 2016/425 on personal protective equipment;
10. Directive 2014/90/EU on marine equipment.

Directive 2006/42/EC on machinery

What are the benefits of the relevant EU standards?

Directive 2006/42/EC covers a wide range of products (from drills and sawing machinery to lifting machinery, complex production lines and turbines) and sets requirements for the placing on the market and putting into service of such machinery, in particular, essential requirements for its safety, conformity assessment procedures, requirements for notified bodies that carry out conformity assessment,

conditions and rules for the affixing of the conformity marking, requirements for drawing up the declaration of conformity, general provisions on the use of standards and on market surveillance, etc.

What has been done to fulfil the commitments?

The corresponding technical regulations based on Directive 2006/42/EC were approved by CMU Resolution No. 62 "On Approval of the Technical Regulations for the Safety of Machinery" of January 30, 2013, which entered into force on August 12, 2013. Since machinery is a priority area for the conclusion of the ACAA, European experts have offered suggestions for amending this TR in order to ensure that it is fully compliant with Directive 2006/42/EC. The relevant amendments were introduced to the TR by CMU Resolution No. 533 dated July 4, 2018.

Directive 2014/30/EU on the harmonisation of the laws of the Member States relating to electromagnetic compatibility

What are the benefits of the relevant EU standards?

Directive 2014/30/EU covers virtually all appliances, including household appliances that may create electromagnetic disturbance other than telecommunications equipment and establishes requirements for the placing on the market and putting into service of equipment that may cause electromagnetic disturbance, i.e., the essential requirements for the electromagnetic compatibility of the equipment, conformity assessment procedure, requirements for notified bodies that carry out conformity assessment, conditions and rules for the affixing of the conformity marking, requirements for drawing up the declaration of conformity, obligations of economic operators, general provisions on the use of standards and on market surveillance, etc.

What has been done to fulfil the commitments?

The corresponding technical regulations based on Directive 2014/30/EU were approved by CMU Resolution No. 1077 of December 16, 2015, which entered into force on June 30, 2016. Since electromagnetic compatibility is a priority area for the conclusion of the ACAA, European experts have offered suggestions for amending this TR in order to ensure that it is fully compliant with Directive 2014/30/EU. The relevant amendments were introduced to the TR by CMU Resolution No. 533 dated July 4, 2018.

Directive 2014/29/EU on the harmonisation of the laws of the Member States relating to the making available on the market of simple pressure vessels

What are the benefits of the relevant EU standards?

Directive 2014/29/EU applies to a variety of simple pressure vessels, their parts and assemblies that contain air or nitrogen and are not intended to be fired. It and sets requirements for the putting into circulation and the provision on the market of simple pressure vessels, in particular, essential requirements for the placing on the market and putting into service of simple pressure vessels, i.e., the essential requirements for the safety of simple pressure vessels, conformity assessment procedure, requirements for notified bodies that carry out conformity assessment, conditions and rules for the affixing of the conformity marking, requirements for drawing up the declaration of conformity, obligations of economic operators, general provisions on the use of standards and on market surveillance, etc.

What has been done to fulfil the commitments?

The corresponding technical regulation based on Directive 2014/29/EU was approved by CMU Resolution No. 1025 of December 18, 2016, which entered into force on July 13, 2017. Initially, this type of products was among the priority areas for the conclusion of the ACAA along with machinery, low-voltage equipment and electromagnetic compatibility. However, the fact that the regulatory authority in this area is not the Ministry of Economic Development resulted in delays in the development and adoption of the relevant TR, hence currently this type of products is not included in the negotiations with the EU with regard to the ACAA. The adopted TR can be submitted for examination by European experts to assess its compliance with Directive 2014/29/EU in order to include this category of products in the scope of the ACAA in the future.

Directive 2010/35/EU on transportable pressure equipment

What are the benefits of the relevant EU standards?

Directive 2014/35/EU covers a wide range of products related to the transport of dangerous goods by road, rail and inland waterways (including carriage in tanks). This Directive is closely connected with Directive 2008/68/EC, as well as with three European agreements: 1) Agreement concerning the International Carriage of Dangerous Goods by Road (ADR); 2) the Convention concerning the International Carriage of Dangerous Goods by Rail (COTIF/RID); and 3) Agreement concerning the International Carriage of Dangerous Goods by Inland Waterways (ADN). Directive No 2014/35/EU sets out reference standards for conformity assessment and reassessment procedures (this Directive refers to Directive 2008/68/EC, which in turn refers to the procedures contained in the above-mentioned European agreements), requirements for the notified bodies that carry out conformity assessment, the terms and conditions for Pi marking, obligations of economic operators, provisions concerning market surveillance, etc.

What has been done to fulfil the commitments?

The new Technical Regulation on transportable pressure equipment was approved by the CMU Resolution No. 536 dated July 7, 2018 and will come into force on July 14, 2019. The Regulation is in conformity with EU Directive 2014/35/EU, and due to this contains no references to Directive 2008/68/EC, directly referring to the requirements of the said European agreements on the transport of dangerous goods. Ukraine acceded to the ADR on March 2, 2000, to the ADN on November 17, 2009, and to the COTIF / RID Convention on June 5, 2003, but it has done little to implement the requirements of these international instruments in its national legislation. The situation is further complicated due to the fact that the volume of the texts mentioned in the Agreements is about 3 thousand pages and they are updated approximately every two years, which imposes a significant burden on the translation services of the Ministry of Justice and on the pace of preparation and implementation of the requirements of the relevant Agreements. Due to these factors, the proper implementation of the Agreement currently seems problematic.

At the same time, it should be noted that the Association Agreement also contains inconsistencies in its requirements to Ukraine to implement all these Directives and international agreements. Thus, according to Annex XXXII to the Association Agreement, Directive 2008/68/EC should have been implemented for all transport of dangerous goods in international road traffic within 1 year of the entry into force of this Agreement, and in national road traffic within 3 years of the entry into force of the Agreement. At the same time, according to Annex III, Directive 2010/35/EU should have been implemented within 2 years.

Because of the above factors, currently the implementation of Directive

2010/35/EU in Ukraine is only partial.

Directive 2014/33/EU on the harmonisation of the laws of the Member States relating to lifts and safety components for lifts

What are the benefits of the relevant EU standards?

Directive 2014/33/EU covers all passenger lifts and sets requirements for the placing on the market and putting into service of lifts, in particular, essential safety requirements for lifts, conformity assessment procedures, requirements for notified bodies that carry out conformity assessment, conditions and rules for the affixing of the conformity marking, requirements for drawing up the declaration of conformity, obligations of economic operators, general provisions on the use of standards and on market surveillance, etc.

What has been done to fulfil the commitments?

The corresponding technical regulation based on Directive 2014/33/EU was approved by CMU Resolution No. 438 of June 21, 2017, which entered into force on January 5, 2018. All in all, it meets the EU requirements and can be submitted for examination by European experts to assess its compliance with Directive 2014/33/EU in order to include this category of products in the scope of the ACAA in the future.

Directive 2009/48/EC on the safety of toys

What are the benefits of the relevant EU standards?

Directive 2009/48/EC covers practically all toys and sets requirements for the placing on the market and putting into service of toys, in particular, essential safety requirements for toys, conformity assessment procedures, requirements for notified bodies that carry out conformity assessment, conditions and rules for the affixing of the conformity marking, requirements for drawing up the declaration of conformity, obligations of economic operators, general provisions on the use of standards and on market surveillance, etc.

What has been done to fulfil the commitments?

The corresponding technical regulation based on Directive 2009/48/EC was approved by CMU Resolution No. 151 of February 28, 2018, which entered into force on September 21, 2018. It can be submitted for examination by European experts to assess its compliance with Directive 2009/48/EC in order to include this category of products in the scope of the ACAA in the future.

Directive 2014/35/EU on the harmonisation of the laws of the Member States relating to the making available on the market of electrical equipment designed for use within certain voltage limits

What are the benefits of the relevant EU standards?

Directive 2014/35/EU applies to all electrical equipment, including almost all household appliances, and sets requirements for the placing on the market and putting into service of low-voltage equipment, in particular, essential safety requirements for low-voltage equipment, conformity assessment procedures, conditions and rules for the affixing of the conformity marking, requirements for drawing up the declaration of conformity, obligations of economic operators, general provisions on the use of standards and on market surveillance, etc.

What has been done to fulfil the commitments?

The corresponding technical regulation based on Directive 2014/35/EU was approved by CMU Resolution No. 1067 of December 16, 2015, which entered into force on June 30, 2016. Since low-voltage equipment is a priority area for the conclusion of the ACAA, European experts have offered suggestions for amending this TR in order to ensure that it is fully compliant with Directive 2014/35/EU. The relevant amendments were introduced to the TR by CMU Resolution No. 533 dated July 4, 2018.

Directive 2009/142/EC relating to appliances burning gaseous fuels

What are the benefits of the relevant EU standards?

Directive 2009/142/EC has been repealed by Regulation (EC) No. 2016/426, which covers gas boilers and sets requirements for the placing on the market and putting into service of appliances burning gaseous fuels, in particular, essential safety requirements for appliances burning gaseous fuels, conformity assessment procedures, requirements for notified bodies that carry out conformity assessment, conditions and rules for the affixing of the conformity marking and the necessary inscriptions, requirements for drawing up the declaration of conformity, obligations of economic operators, general provisions on the use of standards and on market surveillance, etc.

What has been done to fulfil the commitments?

The corresponding technical regulation based on Regulation No. 2016/426 was approved by CMU Resolution No. 814 of July 4, 2018, which will enter into force on April 5, 2019. It can be submitted for examination by European experts to assess its compliance with Regulation No. 2016/426 in order to include this category of products in the scope of the ACAA in the future.

Regulation (EU) 2016/425 on personal protective equipment

What are the benefits of the relevant EU standards?

Regulation (EC) No 2016/425 covers a wide range of products (from protective goggles, garden gloves and gauze bandage and protective suits, respirators, creams and helmets) and sets requirements for the placing on the market and putting into service of PPE, in particular, essential safety requirements for PPE, categories of risk against which the PPE is intended to protect users, conformity assessment procedures, requirements for notified bodies that carry out conformity assessment, conditions and rules for the affixing of the conformity marking, requirements for drawing up the declaration of conformity, obligations of economic operators, general provisions on the use of standards and on market surveillance, etc.

What has been done to fulfil the commitments?

The technical regulation concerning PPE was approved by CMU Resolution No. 761 of August 27, 2008 and entered into force on March 10, 2009. As it was approved in 2008, the TR focused on Directive 89/686/EC that was in force at the time, although deviating from the Directive in some substantial ways. The State Labour Service has drawn up a new draft TR based on Regulation (EU) No. 2016/425, which is currently undergoing endorsement procedures and discussions with CEBs concerned. Consequently, currently Ukraine has no new TR based on the new Regulation (EC) No. 2016/425 adopted in March 2016, therefore Ukraine's commitments with regard to this type of products have not been implemented.

Directive 2014/90/EU on marine equipment

What are the benefits of the relevant EU standards?

Directive 2014/90/EU covers the equipment carried on board ships and sets requirements for the placing on the market and putting into service of marine equipment, in particular, requirements for marine equipment, application of international standards in the assessment of marine equipment, conformity assessment procedures, requirements for notified bodies that carry out conformity assessment, conditions and rules for the affixing of the conformity marking (the wheel mark), requirements for drawing up the declaration of conformity, obligations of economic operators, general provisions on the use of standards and on market surveillance, etc.

What has been done to fulfil the commitments?

The Technical Regulation on marine equipment was approved by CMU Resolution No. 1103 of September 5, 2007 and entered into force on January 1, 2011. As it were approved in 2007, the TR covered the same scope that Directive 96/98/EC, which was in force at the time, but its content was completely different. Ukraine has not yet approved any new TR based on new Directive 2014/90/EU, therefore Ukraine's commitments in this regard have not been fulfilled.

ESTABLISHMENT, TRADE IN SERVICES AND ELECTRONIC COMMERCE

ESTABLISHMENT, TRADE IN SERVICES AND ELECTRONIC COMMERCE

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Financial services

Insurance

Analysis of the progress as regards the approximation of national legislation to the requirements of EU acquis made from November 1, 2017 to November 1, 2018:

The area of insurance is covered by Subsection 6 Financial Services, Section 6, Title IV of the Association Agreement.

Appendix XVII-2 to the Association Agreement contains a list of EU acquis in the field of insurance that have to be implemented, three of which Ukraine had to implement within 2 years from the date of entry into force of the Association Agreement. The reference point for calculating the deadlines should be taken as January 1, 2016, since it was then that Title IV of the Association Agreement was temporarily enacted in accordance with Article 486 of the Association Agreement.

Thus, in accordance with the timetable specified in the Association Agreement, by January 1, 2018, Ukraine had to implement the following EU Insurance Directives:

- Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (codified version) (except Article 9 of this Directive, which should be implemented within 8 years from the date entry into force of this Agreement);
- Directive 2002/92/EC on insurance mediation;
- Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision.

Some work towards the implementation of the abovementioned EU acquis was launched in 2015, when the National Commission for State Regulation of Financial Services Markets (hereinafter – the NCFS) by its Order No. 3[1] of February 18, 2015 adopted plans for implementation of EU Directives 2009/103/EC and 2002/92/EC, and the CMU by Order No. 34-p[2] of January 21, 2015, adopted a Plan of

1) NCFS Resolution No. 3 of February 18, 2015 "On Approval of Plans for the Implementation of EU Acquis"
2) Order No. 34-p of the Cabinet of Ministers of Ukraine dated January 21, 2015 "On Approval of Plans of Implementation of Certain EU Acquis Developed by the Ministry of Social Policy".

Implementation of Directive 2003/41/EC.

Thereunder, the main authorities in charge of the implementation of the Directives were the NCFS (regarding Directive 2009/103/EC and Directive 2002/92/EC) and the Ministry of Social Policy of Ukraine (regarding Directive 2003/41/EC). The implementation timetable corresponded to the one specified in the Association Agreement.

However, the situation changed due to the adoption of Resolution No. 1106 of the CMU "On the Implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part" of October 25, 2017 (hereinafter referred to as the Action Plan). The authority in charge of the implementation of all three Directives became the NCFS, and the implementation dates were postponed for 2 years until December 31, 2019.

The Association Agreement sets a separate time limit for Article 9 of Directive 2009/103/EC – 8 years from the date of entry into force of the Agreement, that is, until January 1, 2024. However, the aforementioned Resolution No. 1106 of the Cabinet of Ministers of Ukraine dated October 25, 2017, establishes a 9-year deadline for the implementation of Article 9 of Directive 2009/103/EC – i.e. until January 1, 2025.

In general, according to the Association Agreement, it is possible to postpone the deadlines for the implementation of the financial services Directives, but this requires a number of formal procedures. Thus, the Subcommittee on Trade and Sustainable Development (hereinafter referred to as the Subcommittee on Trade), if it deems necessary, has the power to take a decision to amend the provisions of Appendix XVII to the Association Agreement.

However, as of October 2018, the Governmental portal contained no decision of the Subcommittee on Trade concerning Directive 2009/103/EC, Directive 2002/92/EC and Directive 2003/41/EC. Similarly, no such decision is available in other official sources that publish all decisions adopted by the Subcommittee on Trade (official website of the MEDT; EU legislation website).

It should also be taken into account that the NCFS could need more time to implement the commitments due to the fact that in 2016 two new Directives were adopted by the EU in the field of insurance repealing the ones specified in the Association Agreement. In particular, a new Directive (EU) 2016/97[3] was adopted instead of Directive 2002/92/EC, which was repealed on September 30, 2018. Also, a new Directive (EU) 2016/2341[4] was adopted instead of Directive 2003/41/EC, which will be repealed on January 12, 2019.

However, in this case, too, the official procedures were not adhered to, because, in accordance with the mechanism stipulated in the Association Agreement, the Committee on Trade had to introduce a new or amended EU legal act to the relevant Annex to the Association Agreement within three months. So far, no relevant decision of the Committee on Trade has been published in official sources, and the latest consolidated version of the Association Agreement of May 14, 2018 does not contain any necessary amendments.

However, the Comprehensive Programme of Ukrainian Financial Sector Development until 2020, approved by Resolution No. 391 of the NBU Board dated

3) Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast).
4) Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast).

June 18, 2015, lists the new Directives (EU) 2016/97 and (EU) 2016/2341 among the EU acquis to be implemented. Thus, there are reasons to believe that work on the implementation of these Directives in the national legislation of Ukraine will be fulfilled by 2020.

In order to fully assess the work carried out by Ukraine with regard to the implementation of Directives 2009/103/EC, 2002/92/EC and 2003/41/EC, attention should be paid to the specific mechanism for monitoring compliance with the commitments related to financial services under the Association Agreement. The distinctive feature of the monitoring mechanism is, first of all, the need for a detailed roadmap for the implementation and application of EU acquis covering possible legislative and institutional changes, intermediate terms and administrative needs.

This Roadmap was laid down in the Comprehensive Programme of Ukrainian Financial Sector Development until 2020, approved by Resolution No. 391 of the NBU Board dated June 18, 2015, as well as by Order No. 1367 of the NCFS dated June 11, 2015, (hereinafter referred to as the Comprehensive Programme). The Comprehensive Programme outlines the current problems of the financial sector, sets the goals and provides a detailed action plan to achieve these goals, including aligning the Ukrainian legislation in this area with EU legislation. The Comprehensive Programme also contains a list of the legislative acts of Ukraine to be revised and a list of EU legislative acts in the area of financial services that need to be implemented under the Association Agreement.

Another distinctive feature of the monitoring mechanism regarding the status of fulfilment of the commitments in the area of financial services is the way in which the EU assesses the results of the implementation by Ukraine of EU legal acts. This assessment will be carried out on the basis of a comparative table ("transposition table"), which should detail the compliance of the national legislation of Ukraine with each article of EU acquis.

That is, as soon as Ukraine considers an EU legislative act to be properly implemented, it will have to provide the competent authority of the EC with a detailed transposition table to confirm the compliance of the provisions of the national legal acts with the relevant provisions of EU Directives.

Currently, such transposition tables are not publicly available, but this is not required at this stage of implementation. However, by keeping such transposition tables and posting them on the official website, the NCFS could make it possible for the public and other stakeholders to keep track of the current status of implementation of EU Directives, use it as a self-monitoring tool and facilitate its work on the preparation of such tables in the future.

What is the current status of implementation of Directives 2009/103/EC, 2002/92/EC and 2003/41/EC? Has anything been done in this regard, apart from the adoption of the Comprehensive Programme of Ukrainian Financial Sector Development until 2020 and postponement of the deadlines for implementation of the three Directives to December 31, 2019? Let us consider these questions by referring to specific Directives.

Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability (codified version)

What are the benefits of the relevant EU standards?

The main purpose of Directive 2009/103/EC is to guarantee compensation for damage to property and personal injuries of third parties suffered in an accident involving motor vehicles.

In order to achieve this purpose, Directive 2009/103/EC introduces compulsory insurance against civil liability for motor vehicle owners in all EU Member States.

In addition, Directive 2009/103/EC involves:

- elimination of border controls as regards the availability of insurance with a view to facilitating transfers between Member States;
- establishment of requirements for the minimum amounts of the cover of insurance against civil liability;
- introduction of a mechanism of compensation for the damage to victims of accidents caused in another Member State;
- introduction of a requirement for a speedy settlement of claims concerning accidents that took place outside the injured party's country of residence.

Also, as far as the rights of insurers are concerned, Directive 2009/103/EC establishes that the policyholder has the right to request at any time a statement relating to the third party liability claims involving the vehicle or vehicles covered by the insurance contract at least during the preceding five years of the contractual relationship, or to the absence of such claims. The insurance undertaking shall provide that statement to the policyholder within 15 days of the request. This requirement was set to facilitate the transfer from one insurer to another for owners of motor vehicles.

Another important element of Directive 2009/103/EC is the provision that the victim should receive some compensation even if the damage was caused by an uninsured or unidentified vehicle.

Consequently, it is safe to claim that the implementation of the rules and requirements set forth by Directive 2009/103/EC will have an impact on every citizen of Ukraine. This refers not only to the numerous owners of vehicles (according to the Ministry of Infrastructure in 2017 there are almost 6.9 million cars in Ukraine) but also to pedestrians, cyclists and any other non-motorised road users, especially in view of the fact that the rate of accidents and injuries caused by accidents in Ukraine remains rather high. At the same time, the insurance against civil liability of motor vehicle owners is the largest type of compulsory insurance based on the amount of insurance premiums and insurance compensation paid.

Another provision of Directive 2009/103/EC that will have a significant impact on Ukrainian citizens is that concerning the amount of the insurance cover, which is ten times higher in the EU than the one the insurance undertaking is obliged to compensate in accordance with the legislation of Ukraine. The implementation of this requirement of Directive 2009/103/EC, on the one hand, will significantly increase the amount of insurance compensation, but, on the other hand, it will also increase the cost of the insurance policy. However, the deadline for implementation of the commitment concerning the amount of the insurance compensation is January 1, 2024[5].

The 2017 EU public consultation on the effectiveness of the application of Directive 2009/103/EC showed that, on the whole, stakeholders are satisfied with the functioning of most of the provisions of this Directive.

5) The amount of the insurance compensation is established by Article 9 of Directive 2009/103/EC, for which the Association Agreement provides a separate implementation deadline, namely, within 8 years from the date of entry into force of the Association Agreement.

One of the indicators of the successful implementation of Directive 2009/103/EC in the EU is the fact that since its adoption in September 2009, no amendments have been made to it. It was only in 2018 that the EC website published a draft of amendments to the said Directive, aimed at addressing some of the shortcomings associated with the enforcement of Directive 2009/103/EC.

The proposed draft amendments to the Directive include setting a mandatory requirement concerning compensation to victims in the event of insolvency of the insurance undertaking, since currently no such a requirement is stipulated in Directive 2009/103/EC, which leaves it at the discretion of EU Member States.

Another amendment to the Directive concerns the right of the policyholder to request at any time a statement relating to the third party liability claims involving a vehicle or vehicles covered by the insurance contract at least during the preceding five years of the contractual relationship, or to the absence of such claims. It is proposed to establish the obligation to take into account the information received upon such request when calculating the insurance premium to be paid by the owner of the motor vehicle for the insurance policy. This is due to the fact that in practice such statements are provided but not always taken into account, which complicates transition from one insurance undertaking to another.

A third proposed amendment to Directive 2009/103/EC concerns motor vehicle owners who do not purchase insurance policies, which is a growing problem in the EU. The current version of Directive 2009/103/EC prohibits systematic (obligatory for all drivers) checks on motor insurance to vehicles normally based in the territory of another Member State as well as to vehicles normally based in the territory of a third country but entering from the territory of another Member State. The purpose of this prohibition is to facilitate the free movement of persons. Therefore, it is proposed to introduce a system of automated checking of the availability of insurance policies through the use of number plate recognition technologies without obstructing vehicles and interfering with their free movement.

Finally, a fourth key amendment to Directive 2009/103/EC concerns its scope. As a rule, agricultural, construction, industrial and some other categories of vehicles are not covered by the provisions regarding compensation under compulsory contracts of insurance against civil liability for owners of motor vehicles. However, in several judgments (Vnuk Judgment (C-162/13), Rodrigues de Andrade Judgment (C-514/16), Torreiro Judgment (C-334/16)), the Court of Justice of the European Union clarified that normal use of the vehicle as a means of transport should be covered by motor third party liability insurance (irrespective of whether it is stationary or in motion). Therefore, it should be clearly specified that the provisions of Directive 2009/103/EC are not applicable only where the vehicle was used for exclusively agricultural, construction, or industrial use.

Therefore, it is now possible to take into account the above comments regarding the practice of enforcement of this Directive in the EU when implementing it in Ukrainian legislation as well as trends of the development of the legislation on compulsory motor third party liability insurance.

What has been done to fulfil the commitments?

The basic legislative act of Ukraine regulating the legal relations covered by Directive 2009/103/EC is the Law of Ukraine "On the Compulsory Insurance Against Civil Liability for Owners of Land Vehicles" (hereinafter referred to as the Law of Ukraine on the Compulsory Insurance of Vehicle Owners).

Despite the fact that the provisions of the said Law are generally in line with the objectives and approach to regulation of Directive 2009/103/EC, they need to be

substantially amended to fully implement this Directive.

In order to fulfil this task, in February 2015, the NCFS approved the Plan of Implementation of Directive 2009/103/EC, whereupon work was launched with regard to drafting a bill on amendments to the Law of Ukraine on the Compulsory Insurance of Vehicle Owners. In October 2015, a working group was established at the NCFS to review the bill involving representatives of associations of insurance market players.

To eliminate discrepancies in the current Law of Ukraine on the Compulsory Insurance of Vehicle Owners with the requirements of Directive 2009/103/EC, the main aspects that need further elaboration include the following:

- Bringing the terms into line with the definitions laid down in Directive 2009/103/EC.

For example, the term "land vehicles" used in the Law of Ukraine on the Compulsory Insurance of Vehicle Owners implies reference to the state registration in the territorial bodies of the Ministry of Internal Affairs of Ukraine. As a result, specialised equipment (agricultural, construction, industrial) is excluded from the scope of this Law. At the same time, the term "motor vehicle", as defined in Directive 2009/103/EC, implies no reference to state registration in any particular body. At the same time, the practice of the Court of Justice of the European Union and the proposed amendments to Directive 2009/103/EC indicate that damage or injuries resulting from accidents caused by specialised vehicles (irrespective of whether it is stationary or in motion) during its normal use as a means of transport, should be covered by compulsory insurance against civil liability of motor vehicle owners.

Another example refers to the term "road accident" defined in the Law of Ukraine on the Compulsory Insurance of Vehicle Owners as an event occurring when a vehicle is in motion and resulting in death or injury of people or in damage to property. However, the practice of enforcement of Directive 2009/103/EC proves that the relevant compensation should cover even the damage caused by a stationary vehicle.

- Compensation for damage caused by an unidentified or uninsured vehicle.

In accordance with Article 41 of the current version of the Law of Ukraine on the Compulsory Insurance of Vehicle Owners, the Motor (Transport) Insurance Bureau of Ukraine (hereinafter – MTIBU) is obliged to compensate for damage or injuries caused by an unidentified vehicle, except for damage caused to property and the environment. However, in accordance with the general rule established in part 1, Article 10 of Directive 2009/103/EC, compensation should also be provided for damage to property caused by an unidentified vehicle. The Directive authorises Member States to limit or exclude legitimate compensation for victims on the grounds that the vehicle is unidentified but it should not apply where the relevant body has paid compensation for significant personal injuries to any victim of the accident in which damage to property was caused. Also, Member States may provide for an excess of not more than EUR 500 to be borne by the victim of such damage to property.

- Amount of coverage of insurance against civil liability.

At present, the sum insured as set by the Law of Ukraine on the Compulsory Insurance of Vehicle Owners amounts to UAH 50,000 per victim for damage to property, and UAH 100,000 for personal injuries. At the same time, under Directive 2009/103/EC, the minimum amount of cover for damage to property is EUR 1 million and for personal injuries EUR 1 million per person or EUR 5 million per accident, regardless of the number of victims. However, for this requirement, the

Association Agreement established a special implementation deadline, namely until December 31, 2023.

- Providing for immediate compensation to victims in the event of a dispute between the insurance undertaking and insurers' association (MTIBU) regarding damage or personal injuries caused by an unidentified vehicle as specified in Article 11 of Directive 2009/103/EC.
- Establishing the right of the vehicle owner to request a statement relating to the third party liability claims involving the vehicle or vehicles covered by the insurance contract at least during the preceding five years of the contractual relationship, or to the absence of such claims (Article 16, Directive 2009/103/EC)
- Implementation of the requirements of Article 23 of Directive 2009/103/EC on the operation of the information centre, in particular regarding the data to be included in the register of the information centre, and on the right of the injured person to address the information centre for information on an accident within seven years following the day of the road accident.

At the end of 2015, the VRU registered two Draft Laws related to the compulsory insurance of vehicle owners, aimed, inter alia, at aligning the Law of Ukraine on the Compulsory Insurance of Vehicle Owners with the provisions of Directive 2009/103/EC.

One of them is Draft Law of Ukraine No. 3551 dated November 27, 2015 "On Amending Certain Legislative Acts of Ukraine Regarding the Compulsory Insurance against Civil Liability for Owners of Land Vehicles". The other is Draft Law of Ukraine No. 3670 dated December 17, 2015, "On the Compulsory Insurance against Civil Liability for Owners of Land Vehicles", which proposed to lay down the Law of Ukraine on the Compulsory Insurance of Vehicle Owners in a new version.

It is worth noting that the changes stipulated by the above draft laws were similar in key features. Thus, both draft laws envisaged:

- a gradual increase in the amount of insurance cover;
- introduction of an electronic contract on the compulsory insurance against civil liability for owners of land vehicles;
- access to the centralised MTIBU data base for supervision authorities to verify the availability and validity of contracts of compulsory insurance against civil liability for owners of land vehicles;
- introduction of a system of "direct compensation" to the car owner who suffered damage or personal injuries;
- clarification of the list of persons entitled to the insurance compensation, and documents certifying this right, etc.

However, none of the draft laws was supported by the specialised VRU Committee on Finance and Banking. At its meeting on February 16, 2016 (Minutes No. 39), the Committee decided to establish a working group to prepare a single revised Draft Law involving the members of the Committee, the NCFS, representatives of the MTIBU, associations of insurance undertakings and public associations for consumer protection, using the draft law "On the Compulsory Insurance Against Civil Liability for Owners of Land Vehicles" as a basis for further elaboration (Reg. No. 3670).

As a result, in February 2018 the VRU registered revised Draft Law No. 3670-д of February 13, 2018, "On the Compulsory Insurance against Civil Liability for Owners of Land Vehicles". This Draft Law was supported by the VRU Committee on Finance and Banking and recommended for adoption as a basis by the VRU.

However, on September 6, 2018, the VRU failed to adopt any of the three draft laws. Neither did it uphold the decision to return Draft Law No. 3670-д to the Committee for further elaboration.

Currently, the NCFS, in response to a request for public information, reported that the NCFS together with the EU-funded project Strengthening the Regulation and Supervision of the Non-Bank Financial Market (EU-FINREG) is working on a new draft law "On Changes in the Field of the Compulsory Insurance of Motor Vehicles in Ukraine".

On the one hand, this makes it possible to take into account all provisions of Directive 2009/103/EC, since Draft Law No. 3670-д ensured only partial compliance with the requirements of the Directive and did not take into account its provisions in a comprehensive manner.

On the other hand, with regard to the achievements in the implementation of Directive 2009/103/EC, Ukraine to some extent returned to the baseline of 2015, when it had launched the work on the first draft law on amendments to the Law of Ukraine on the Compulsory Insurance of Vehicle Owners. We can but hope that the progress made over this time will help complete the implementation of the Directive by the end of 2019 and there will be no need to postpone the implementation deadline.

It should also be noted that apart from the Law of Ukraine "On the Compulsory Insurance against Civil Liability for Owners of Land Vehicles", Ukraine has more than 10 subordinate legal acts regulating various issues of insurance against civil liability for owners of land vehicles, including the following:

- CMU Resolution No. 1024, dated July 06, 1998, "On Control of the Availability of a Contract of Compulsory Insurance against Civil Liability for Owners of Land Vehicles when Crossing of the State Border of Ukraine";
- CMU Resolution No. 5, dated January 6, 2005 "On Approval of the Maximum Amounts of Insurance Payments under Contracts on International Compulsory Insurance against Civil Liability of Owners of Land Vehicles";
- CMU Resolution No. 671, dated July 23, 2008 "On Approval of the Procedure for Calculating Unearned Premium Reserves under Contracts On the Compulsory Insurance against Civil Liability for Owners of Land Vehicles";
- Order No. 5417 of the NCFS, dated February 23, 2006 "On Approval of the Procedure for Engagement by the Motor (Transport) Insurance Bureau of Ukraine of Average Commissioners, Experts or Legal Entities with Average Commissioners or Experts in Their Staff to Determine the Causes of Occurrence of Insured Events and the Amount of Damage";
- Order No. 7114 of the NCFS, dated April 5, 2007 "On Approval of the Procedure for Concluding Contracts of Compulsory Insurance against Civil Liability for Owners of Land Vehicles at Checkpoints across the State Border of Ukraine";
- Order No. 7495 of the NCFS, dated June 19, 2007 "On Approval of the Template and Specification of the Mark Issued to the Insured Person when Concluding a Contract of Compulsory Insurance against Civil Liability for Owners of Land Vehicles, and the Procedure of its Filling and Use";
- Order No. 451 of the Ministry of Internal Affairs of Ukraine, dated November 29, 2007 "On Approval of the Instruction on Organisation of the Activity of the Units of the State Motor Vehicle Inspectorate of the Ministry of Internal Affairs of Ukraine with regard to Control of the Availability of Policies of

Compulsory Insurance against Civil Liability for Owners of Land Vehicles and Green Card insurance certificates during Road Traffic Surveillance";

- NCFS Order No. 566 "On Certain Matters of Compulsory Insurance against Civil Liability for Owners of Land Vehicles" dated July 9, 2010, and "Regulations on a Unified Centralised Database On the Compulsory Insurance against Civil Liability for Owners of Land Vehicles" of July 9, 2010, approved by Order No. 566;
- NCFS Order No. 544, dated August 18, 2011 "On Approval of the Minimum Qualifications for Persons Carrying Out Activity Related to Establishing the Causes of an Insured Event and the Amount of Damage (Average Commissioners) with regard to Insurance of Land Vehicles (Except Railway Vehicles)";
- NCFS Order No. 673, dated October 27, 2011 "On Approval of the Regulations on the Specificity of Concluding Contracts On the Compulsory Insurance against Civil Liability for Owners of Land Vehicles";
- NCFS Order No. 698, dated November 17, 2011 "On Approval of the Maximum Amount of Insurance Payment for Damage Caused to the Victim's Property in Cases when Documents on a Road Accident are filled without the Participation of Authorised Officials of the State Motor Vehicle Inspectorate of the Ministry of Internal Affairs of Ukraine".

Therefore, after the adoption of the amendments to the Law of Ukraine Law of Ukraine on the Compulsory Insurance of Vehicle Owners, it may be necessary to align the specified subordinate legislation with the new Law, which will also require additional time.

Although most of the above subordinate legislative acts regulate issues outside the scope of Directive 2009/103/EC, some of them will need to be revised in order to implement this Directive comprehensively.

For example, the Regulations on a Unified Centralised Database On the Compulsory Insurance against Civil Liability for Owners of Land Vehicles (NCSF Regulation No. 566 of July 9, 2010) will have to be aligned with the requirements of Article 23 of Directive 2009/123/EC concerning the information to be included in the register of the information centre if the MTIBU should be assigned the rights and functions of such information centre as proposed in Draft Law No. 3670-д.

Directive 2002/92/EC on insurance mediation

What are the benefits of the relevant EU standards?

The activity of insurance intermediaries plays a key role in the distribution of insurance services. The main objective of EU regulations in this area is to protect the interests of consumers and ensure the freedom to provide insurance services.

Directive 2002/92/EC sets requirements for the sale of insurance products by insurance agents and brokers. This Directive covers general insurance services, such as insurance of motor vehicle owners, life insurance, etc.

The most important aspects of Directive 2002/92/EC include:

- the requirement that all insurance and reinsurance intermediaries should be registered with the competent authority of the country where they have their residence or their head office, provided that they meet strict professional requirements in relation to their competence, good repute, professional

indemnity cover and financial capacity;

- the possibility for Member States to impose stricter requirements, provided that these apply only to agents and brokers registered in their territory;
- the possibility for insurance intermediaries to operate in other EU Member States after registration in their country of origin;
- obligation of insurance intermediaries to provide clients with a clear explanation as to the reasons for providing them with recommendations for the purchase of a particular insurance certificate (policy) or choice of a particular service. That is, all intermediaries should explain the reasons underpinning their advice in a clear and comprehensible manner in writing;
- obligation of EU Member States to ensure appropriate publication through unified information centres of detailed information on registered insurance intermediaries, as well as on authorised bodies that carry out registration;
- encouraging EU Member States to establish effective alternative dispute resolution procedures for dissatisfied clients, including through the Fin-Net network6.

With regard to the practical aspects of the enforcement of Directive 2002/92/C in EU Member States, a few interesting facts should be mentioned[7].

Thus, in most EU Member States, insurance companies cooperate with the authorised bodies in matters relating to the registration of insurance intermediaries. For example, insurance companies can check the competency and skills of insurance intermediaries, as well as their reputation and other requirements. Insurance companies often send requests for registration of insurance intermediaries under their own responsibility. In particular, this applies to the insurance intermediaries associated with these insurance companies.

In some EU Member States, one has to pass a qualification examination to get registration as an insurance agent or broker, while others require training that can last from 50 to 500 hours.

In order to monitor insurance intermediaries' compliance with professional requirements, Member States carry out on-site inspections (often in response to complaints), as well as establish reporting obligations, including annual financial statements.

A penalty for breach of the legislation on the activities of insurance intermediaries in most Member States includes fines that tend to be imposed after futile warnings, recommendations or instructions; or the right of such intermediaries to engage in insurance mediation may be revoked.

In 2012, the EC prepared a proposal to revise Directive 2002/92/EC in order to improve protection of economic competition, ensure consumer protection, and enhance market integration for market players. In 2016, instead of Directive 2002/92/EC, the EU adopted a new Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (hereinafter referred to as Directive 2016/97/EU)

While Directive 2002/92/EC regulated only the activities of insurance intermediaries, the new Directive 2016/97/EU covers the entire chain of insurance

6) A network of national organisations responsible for out-of-court settlement of consumers' complaints in the area of financial services.

7) According to the Report on Implementation of Directive 2002/92/EC, issued in March 2007 by the Committee of European Insurance and Occupational Pensions Supervisors, as well as in the recommendations (issued in November 2010) of this Committee to the European Commission concerning revision of Directive 2002/92/EC.

distribution, that is, it also sets requirements for insurance companies that sell insurance services directly.

Compared to the old Directive 2002/92/EC, the new Directive 2016/97/EU:

- provides more transparency as regards the price and cost of insurance services so that the consumer clearly understands what he pays for;
- requires provision of a fuller scope of information so that the consumer could make a more informed decision, namely provision of information in the form of the key information document before concluding all insurance contracts, except for life insurance contracts;
- determines that when an insurance product is offered together with an ancillary product or service other than insurance, as part of a package or the same agreement (for example, when a new vehicle is sold at a reduced price together with an insurance policy for this car), it should be possible for the customer to buy the main product or service components separately without the insurance policy;
- establishes rules aimed at preventing consumers from buying services that do not meet their needs;
- provides enhanced guarantees for the sale of life insurance-based investment services8. Companies that offer such insurance services must make sure that the insurance service corresponds to the financial status of the client, his/her investment objectives and investment experience.

As for the Ukrainian market of insurance mediation, it is developing now. At present, the State Register of Insurance and Reinsurance Brokers includes 60 entities engaged in insurance brokerage. However, as of December 31, 2017, the total number of insurance companies amounted to 294. That is, the number of insurance intermediaries in Ukraine is several times smaller than the number of insurance companies, and so far we have not observed any alternative trends. According to the annual report on the work of the NCFS in the field of financial services markets, in 2007 4 brokers were included in the State Register of Insurance and Reinsurance Brokers, but at the same time 5 brokers were excluded from the Register. Whereas in many developed countries, on the contrary, the number of insurance intermediaries is several-fold greater that the number of insurance companies.

However, there are reasons to believe that the implementation of Ukraine's European integration commitments will be one of the factors contributing to the improvement of the situation on the insurance intermediaries market. One of the positive consequences of the implementation of Directive 2002/92/EC and Directive 2016/97/EU for Ukraine should be a significant increase in the public confidence in the work of insurance intermediaries, as the provisions of the Directives are largely aimed at ensuring a high professional level of insurance intermediaries and establishment of guarantee mechanisms, such as professional indemnity insurance, sufficient financial soundness of insurance intermediaries, the obligation to provide written clarification of their recommendations and take into account the customer's individual needs.

In addition, implementation of the requirements of Directives 2002/92/EC and 2016/97/EU, as well as the subsequent provision of a common Ukraine–EU internal market with regard to financial services will open the free access of EU insurance companies and insurance intermediaries to the market of insurance services in

8) Life insurance-based investment services allow owners of life insurance policies to combine their funds with funds of other policyholders in an investment fund. This allows them to invest in a broader range of assets (stocks and bonds) than that which they would be able to invest in each individually.

Ukraine, and, consequently, will contribute to the establishment of a competitive environment on the Ukrainian insurance market, which, in turn, will improve the quality of insurance services.

What has been done to fulfil the commitments?

One of the first steps towards implementation of Directive 2002/92/EC was the approval in February 2015 by the NCFS of the Plan of Implementation of this Directive. The main measures specified in this document were the adoption by the VRU of a new version of the Law of Ukraine "On Insurance" and introduction of amendments to the subordinate legal acts in the field of insurance mediation.

Also, in February 2015, the VRU registered Draft Law No. 1797-1 "On Insurance" dated February 6, 2015 (hereinafter referred to as Draft Law No. 1797-1). It aimed, among other things, at determining the procedure for regulating insurance mediation on the territory of Ukraine in accordance with the legislation of the EU. A year later, in March 2016, this draft law was adopted by the VRU in the first reading and sent for further elaboration by the specialised VRU committee on Finance and Banking.

Comparative legal analysis of Draft Law No. 1797-1 adopted in the first reading confirms that its text does not fully take into account the provisions of Directive 2002/92/EC.

According to the definition of the term "mediation activities" in Article 1 of Draft Law No. 1797-1, insurance mediation includes activities such as consulting for remuneration, offering, preparation, conclusion and follow-up of insurance (reinsurance) contracts. However, this definition does not take into account the provisions of Directive 2002/92/EC on the definition of "mediation", according to which activities carried out by the insurance company itself or its employees is not considered mediation. Whereas, Para. 2, Article 78 of Draft Law No. 1797-1 stipulates that consultations, other preparatory work for the conclusion of insurance and / or reinsurance contracts shall not be considered mediation activities, which contradicts the definition given in Article 1. That is, these two provisions of Draft Law No. 1797-1 contradict each other.

Moreover, Draft Law No. 1797-1 does not contain any definition of "a tied insurance intermediary" in accordance with Para. 7, Article 2 of Directive 2002/92/EC.

Article 80 of Draft Law No. 1797-1, which sets forth the requirements for an insurance broker and insurance agency, does not take into account the provisions of Article 2 and Article 4 of Directive 2002/92/EC, that a person who has previously been declared bankrupt cannot be an insurance intermediary unless they have been rehabilitated in accordance with national legislation.

As regards professional indemnity insurance (insurance for damage to consumers caused by professional negligence of the insurance intermediary), Directive 2002/92/EC stipulates that the sum insured should be EUR 1000000 applying to each claim and in aggregate EUR 1500000 per year for all claims. However, Article 85 of Draft Law No. 1797-1 specifies other sums insured – UAH 5 million per claim or UAH 10 million in aggregate. Besides, it does not indicate that UAH 10 million is the sum insured per year. Moreover, Draft Law No. 1797-1 does not set the requirement regarding professional indemnity insurance for insurance agents, while in accordance with Directive 2002/92/EC, all insurance intermediaries shall hold professional indemnity insurance.

In addition to the above, provisions of Draft Law No. 1797-1 also manifest other inconsistencies with the requirements of Directive 2002/92 / EC, for example, regarding information and the procedure for its provision by insurance intermediaries

to consumers.

However, it has been 2.5 years since the adoption of Draft Law No. 1797-1 in the first reading. According to the information received in May 2017 from the press service of the VRU Committee on Finance and Banking, Draft Law No. 1797-1 was substantially improved, in particular, in view of more than a thousand proposals that had a significant impact on the content of the Draft Law.

Consequently, we can but hope that over this time Draft Law No. 1797-1 has been aligned with the provisions of Directive 2002/92/EC and that it will be adopted in the near future.

At present, Draft Law No. 1797-1 is included in the Roadmap for Legislative Implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part in 2018–2019 (hereafter – Roadmap for Implementation of the Association Agreement). The said Roadmap on Implementation of the Association Agreement, presented in February 2018 and posted on the website of the CMU, contains 57 draft laws aimed at the implementation of Ukraine's European integration commitments. The Roadmap on Implementation of the Association Agreement is a kind of a memorandum between the Government and the Parliament that the draft laws specified therein have a priority status and should be considered by the Parliament in 2018–2019.

With regard to the provisions of the new Directive 2016/97/EU, their implementation is likely to take place at the next stage of implementation, since the NCFS in response to a request for public information informed that as of the end of the third quarter of 2018, the NCFS together with the EU-funded project Strengthening the Regulation and Supervision of the Non-Bank Financial Market (EU-FINREG) is analysing the provisions of Directive 2016/97/EU and developing ways of their implementation in national legislation.

It should also be borne in mind that in addition to the adoption of the new Law on Insurance, it will be necessary to review the subordinate legislation in the field of insurance mediation, including:

- CMU Resolution No. 1523, dated December 18, 1996 "On the Procedure for Carrying out Activities by Insurance Intermediaries" (last amended in 1999);
- NCFS Order No. 736, dated May 28, 2004 "On Approval of the Regulation on Registration of Insurance and Reinsurance Brokers and the Administration of the State Register of Insurance and Reinsurance Brokers";
- NCFS Order No. 4421, dated August 4, 2005 "On Approval of the Procedure for Drawing up and Submitting Reports of Insurance and / or Reinsurance Brokers";
- NCFS Order No. 8170, dated October 25, 2007 "On Approval of the Procedure of and Requirements for Carrying out Mediation Activities on the territory of Ukraine with regard to Conclusion of Insurance Contracts with non-Resident Insurance Undertakings";
- NCFS Order No. 1270, dated April 18, 2013 "On Approval of the Procedure for Registration of Insurance Agents Authorised to Carry Out Activities Related to Compulsory Insurance against Civil Liability for Owners of Land Vehicles in the Motor (Transport) Insurance Bureau of Ukraine";
- NCFS Order No. 2401, dated July 23, 2013 "On Approval of Qualification Requirements for Insurance Agents Necessary for Carrying out Mediation Activities Related to Compulsory Insurance against Civil Liability for Owners

of Land Vehicles".

Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision

What are the benefits of the relevant EU standards?

Occupational retirement provision is one of the types of non-state pension provision that may involve individuals who pay contributions to a non-state pension fund on the basis of an employment contract or a contract with a self-employed person. The fund attracts workers' contributions, invests funds in order to multiply them, and subsequently provides retirement benefits at the expense of accumulated assets.

The EU emphasises that non-state occupational retirement provision serves as an additional way of pension provision and should not call into question the importance of state retirement provision, which remains central to ensuring a decent standard of living for the elderly.

One of the objectives of EU occupational retirement provision regulation is to establish stringent standards for non-state occupational retirement providers to guarantee a high degree of security for future pensioners.

Thus, in order to protect members of non-state occupational retirement provision funds, as well as to ensure efficient investment activity of non-state occupational retirement provision institutions, Directive 2003/41/EC establishes:

- stringent requirements for financial supervision of non-state occupational retirement providers;
- provisions on protection of the members of non-state pension funds who must have access to information on the conditions and procedure for non-state occupational retirement provision, the financial status of institutions providing non-state occupational retirement services and information on their rights;
- investment rules for various types of non-state occupational retirement provision institutions and asset management rules;
- rules that allow cross-border activities, that is, the possibility of creating pan-European non-state pension funds.

In 2016, the EU adopted a new Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (recast) (hereinafter referred to as Directive 2016/2341/EU) instead of Directive 2003/41/EC, which will cease to be in force on January 12, 2019.

The key elements of the new Directive 2016/2341/EU include the obligation of the EU Member States to ensure that institutions for occupational retirement provision:

- engage only in non-state occupational retirement provision;
- safeguard the assets of their members in the event of bankruptcy of the sponsoring undertaking;
- be subject to registration by the authorised body;
- have sufficient funds to cover their financial obligations;
- invest their assets in a sensible manner to effectively ensure long-term

interests of their members;

- introduce an effective asset management system;
- be managed by persons with appropriate experience and qualifications;
- have a risk management and internal audit system;
- undergo risk assessment every three years and submit a written statement of investment-policy principles;
- draw up and publish annual financial accounts.

Directive 2016/2341/EU also requires that the competent authorities of the Member States shall:

- have the necessary resources for financial supervision;
- apply administrative and other sanctions for any violations;
- have the authority to review the strategies, procedures and methods of informing established by institutions for occupational retirement provision, as well as the right to access internal documents and carry out on-site inspections.

Implementation of the provisions of Directives 2003/41/EC and 2016/2341/EU should significantly improve the situation in Ukraine in the field of non-state occupational retirement provision. The main problems include a low level of protection of the interests of members, and, consequently, a low level of public trust in non-state occupational retirement provision, as well as the imperfect legislative regulation of this market of financial services.

For a better understanding of the potential for the development of this market in Ukraine, it is worth comparing some indicators in Ukraine and in the EU. Thus, as of March 31, 2018 the State Register of Financial Institutions included information about 62 non-state occupational retirement provision funds and 22 administrators of non-state occupational retirement provision funds. The total value of the assets of the system as of the first quarter of 2018 amounted to almost UAH 2.5 billion, which makes this market one of the smallest ones among other markets of non-bank financial services[9].

At the same time, the EU has 125 thousand non-state occupational retirement provision funds with assets amounting to EUR 2.5 trillion euros. About 75 million EU citizens are members of such funds, which accounts for 20% of the EU working age population.

What has been done to fulfil the commitments?

CMU Resolution No. 34-p, dated January 21, 2015 approved the Plan of Implementation of Directive 2003/41/EC, specifying that part of the provisions of Directive 2003/41/EC had been taken into account, in particular, in the Laws of Ukraine "On Non-State Retirement Provision", "On Financial Services and State Regulation of Financial Services Markets", and "On State Regulation of the Securities Market in Ukraine". In order to implement all other provisions of Directive 2003/41/EC, it was decided to develop a draft law of Ukraine "On Amendments to the Laws of Ukraine on Matters of Contributory Retirement Provision".

The work on the relevant Draft Law involved international and European experts, in particular experts from EU-funded projects Strengthening the Regulation and Supervision of the Non-Bank Financial Market (EU-FINREG) and Technical Assistance in the Financial Sector's Priority Areas, USAID retirement provision

9) According to the explanatory note to Draft Law No. 9224 dated October 19, 2018, "On Amendments to the Law of Ukraine 'On Non-State Pension Provision'"

experts, as well as representatives of various state bodies and civil society institutions.

On October 19, 2018, the VRU registered Draft Law of Ukraine No. 9224 "On Amendments to the Law of Ukraine 'On Non-State Pension Provision'" (hereinafter referred to as Draft Law No. 9224) proposing to recast the Law of Ukraine "On Non-State Pension Provision". An explanatory note to Draft Law No. 9224 indicates that it takes into account not only the provisions of Directive 2003/41/EC but also those of new Directive 2016/2341/EU.

Overall analysis of Draft Law No. 9224 indicates that in general its provisions are really aimed at implementing Directives 2003/41/EC and 2016/2341/EU. Some provisions of Draft Law No. 9224 impose even more stringent requirements than those specified in these Directives. For example, according to Article 30 of Directive 2016/2341/EU, every IORP shall prepare and, at least every three years, review a written statement of investment-policy principles, whereas Article 9 of Draft Law No. 9224 requires that such revision be held every year.

At the same time, Draft Law No. 9224 contains some pinpoint inconsistencies with the provisions of Directives 2003/41/EC and 2016/2341/EC. For example, Article 18 of Draft Law No. 9224, which defines the elements to be included in own-risk assessment by an IORP, does not take into account the provisions of Directive 2016/2341/EU requiring that own-risk assessment should include:

- an assessment of the risks to members and beneficiaries relating to the paying out of their retirement benefits and the effectiveness of any remedial action taking into account, where applicable: indexation mechanisms; benefit reduction mechanisms, including the extent to which accrued pension benefits can be reduced, under which conditions and by whom;
- a qualitative assessment of the mechanisms protecting retirement benefits, including, as applicable, guarantees, covenants or any other type of financial support by the sponsoring undertaking, insurance or reinsurance undertaking in favour of the IORP or the members and beneficiaries.

However, despite some inaccuracies, Draft Law No. 9224, if adopted by the VRU, will bring us significantly closer to the implementation of Directives 2003/41/EC and 2016/2341/EU. However, we should bear in mind that this is not the last step, as it will be necessary to recast or draft some subordinate legislation as envisaged by the Draft Law with regard to various aspects of regulation in the field of non-state occupational retirement provision pension funds.

Anti-money laundering

Analysis of the progress as regards the approximation of national legislation to the requirements of EU acquis made from November 1, 2017 to November 1, 2018:

In accordance with the commitments undertaken by Ukraine under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part (hereinafter referred to as the Association Agreement), and taking into account changes that have taken place in European legislation in the field of anti-money laundering, national legislation had to be adapted to the requirements of the following EU acquis:

1. Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation

(EU) No. 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC

2. Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No. 1781/2006.

In order to implement the above EU acquis in the national legislation, on October 25, 2017, the CMU adopted Resolution No. 1106 whereby it approved an updated Action Plan to implement the Association Agreement, envisaging:

- updating the legislation in the area of counteraction to legalisation (laundering) of the proceeds from crime, terrorist financing and financing of the proliferation of weapons of mass destruction to account for changes introduced to EU legal acts as of 20.03.2018 (paragraph 35);
- updating AML / CFT legislation with regard to changes in EU legal acts as of 20.03.2018 (paragraph 586);
- implementation of the Strategy for Development of a System of Counteraction to Legalisation (Laundering) of the Proceeds from Crime, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction for the period until December 31, 2020 (paragraph 63).

In pursuance of paragraphs 35 and 586, the Ministry of Finance developed the Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine in the Field of Prevention and Counteraction to the Legalisation (Laundering) of the Proceeds from Crime, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction", July 25, 2018, which was published on the website of the Ministry. However, it is still pending consideration by the CMU and has not been submitted to the Verkhovna Rada.

Another fact to be taken into account is the adoption of Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (5th Anti-Money Laundering Directive (5AMLD).

Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

What are the benefits of the relevant EU standards?

Directive 2015/849/EU sets forth the requirements and procedures for the prevention of money laundering, terrorist financing and proliferation of weapons of mass destruction, as well as increasing the transparency of corporate and financial information to prevent tax evasion. Among other things, it provides for implementation of the following requirements in national legislation:

- for banks, legal professionals and accountants as regards the analysis and assessment of risks involved in carrying out financial transactions, real estate transactions, other transactions and customer service operations;
- transparency of information on beneficial owners of companies stored in a central register in each EU Member State and accessible only to competent national authorities;
- compliance with the procedure for cooperation and exchange of information

between financial intelligence units of the EU Member States in identifying and monitoring suspicious transactions involving transfer of funds in order to prevent terrorist and other criminal activity;

- implementation of a common policy as regards non-EU countries with inadequate (imperfect) norms in the area of counteraction to money laundering and terrorist financing;
- clear definition of the competences of the competent authorities of the EU as regards application of appropriate sanctions;
- establishing procedures for preventing risks associated with the use of digital currencies to finance terrorism and limiting the use of prepaid cards;
- determining the access of financial intelligence units to information, including central bank account registers;
- ensuring the unity of the registers of national bank and payment records or creating a central data retrieval system in all Member States.

Approximation of Ukrainian legislation to these standards shall contribute to the improvement of the legal mechanism for combating legalisation (laundering) of proceeds from crime, terrorist financing and financing of the proliferation of weapons of mass destruction, as well as creation of a nationwide analytical database to enable law enforcement agencies of Ukraine and foreign countries to expose, check and investigate crimes related to money laundering and other illegal financial transactions.

These requirements cover a significant range of primary financial monitoring subjects, i.e. banks, insurance undertakings, pawnshops, financial institutions, payment organisations, members or beneficiaries of payment systems, commodity exchanges and other exchanges that conduct financial transactions with goods, professional participants in the stock market (securities market), postal operators, other institutions that carry out financial transactions involving transfer of funds, branches or representative offices of foreign business entities that provide financial services on the territory of Ukraine; specially designated subjects of primary financial monitoring (realtors, jewellers, lottery and casino organisers, notaries, legal professionals, law offices and associations, auditors and other legal entities that provide certain financial services), etc.

What has been done to fulfil the commitments?

It should be noted that, in order to disclose information about beneficiary owners, on May 18, 2017, the CMU adopted the relevant amendments to Resolution No. 593, which in fact made Ukraine the first country to join the Global Beneficial Ownership Register. Therefore, it can be argued that Ukraine has fully implemented Directive 2015/849/EU regarding the disclosure of information about beneficiary owners. However, the procedure for disclosure of information about beneficiary owners needs to be improved, namely as regards the appropriate procedures for establishing real, rather than nominal, owners of companies.

To approximate national legislation to the other provisions of Directive 2015/849/EU, the Ministry of Finance has drawn up the Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine in the Field of Prevention of and Counteraction to Legalisation (Laundering) of the Proceeds from Crime, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction".

This Draft Law provides for comprehensive improvement of the national legislation in the field of financial monitoring, in particular concerning:

- reduction of the number of the characteristics of financial transactions about

which primary financial monitoring subjects (hereinafter referred to as PFMS) (banks, insurance undertakings, credit unions, pawnshops, stock exchanges, payment organisations and other financial institutions) were obliged to notify the SFMS, namely: they will still have to report financial transactions in the amount of more than UAH 300 thousand (currently UAH 150 thousand) and transactions related to cash, transfer of funds abroad by politically exposed persons and clients from the states that do not comply with recommendations of international and inter-governmental organisations that carry out activities in the field of anti-money laundering;

- expansion of the range of PFMS obliged to inform the SFMS of suspicious financial transactions, persons providing information and consulting services on tax matters;
- gradual transition to a risk-oriented approach when submitting information about suspicious financial transactions by PFMS;
- introduction of adequate sanctions for the violation of anti-money laundering legislation: from a written warning and fine in the amount of no more than 10,000,000 non-taxable minimum incomes to licence revocation;
- improvement of the procedure for identifying beneficiary owners of companies and legislative aspects that affect the quality of investigation of crimes related to legalisation (laundering) of proceeds from crime;
- improvement of the legislation provisions that ensure the confidentiality of the receipt and fulfilment of the SFMS's requests, decisions and orders by PFMS, and, as a consequence, protection of PFMS from threats, discriminatory actions and other negative effects related to the implementation of primary financial monitoring measures;
- the need to ensure traceability of money transfers as an instrument for preventing, detecting and investigating money laundering and terrorist financing, and for implementing restrictive measures;
- obligation of payment systems to accompany money transfers with information about the payer and the recipient of the transfer;
- establishing the duty of payment systems to ensure the availability and completeness of information about the payer and the recipient of the payment;
- obligation to establish preventive measures aimed at counteracting manipulations with proceeds from crimes and collecting money or property for terrorist purposes.

Thus, it can be argued that, in spite of the considerable work carried out by the Ministry of Finance, currently Ukraine is behind the Action Plan approved by the Cabinet of Ministers of Ukraine as regards aligning Ukrainian legislation with the amended EU acquis regulating the prevention and combatting of legalisation (laundering) of proceeds from crime, and the financing of terrorism and proliferation.

Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds

What are the benefits of the relevant EU standards?

Regulation (EU) No. 2015/847 is designed to implement FATF Recommendation 16 on wire transfers (the 'FATF Recommendation 16').

The Regulation establishes the procedure for tracking money transfers in any currency received or sent by a payment service provider located in the EU and the EEA. Tracing is ensured by way of setting requirements for transaction information that applies to payment service providers involved in the wire transfer chain. The principle of tracing: the bigger the amount of the transfer and the higher the risk that this is a one-time (rather than regular) translation, the greater the need for verification of this transaction.

What has been done to fulfil the commitments?

Paragraph 4, Article 9 of the Law of Ukraine "On Prevention of and Counteraction to Legalisation (Laundering) of the Proceeds from Crime, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction" requires identification of not only the payer but also the payee, which allows for full-fledged financial monitoring of financial transactions by PFMS. The aforementioned Draft Law provides for an improvement of this process.

As a whole, it can be argued that national legislation has been fully aligned with the provisions of Regulation (EU) No. 2015/847.

Postal and courier services

Analysis of the progress as regards the approximation of national legislation to the requirements of EU acquis made from November 1, 2017 to November 1, 2018:

Ukraine's commitments in the field of postal and courier services, in particular regarding harmonisation of legislation with the requirements of EU acquis, are specified in paragraph 2 of Appendix XVII-6 Provisions on Monitoring, Annex XVII Regulatory Approximation, Title IV Trade and Trade-Related Matters of the Association Agreement and in pursuance of the provisions of the Agreement, namely: Subsection 4 Postal and Courier Services, Section 5 Regulatory Framework, Chapter 6 Establishment, Trade in Services and Electronic Commerce, Title IV Trade and Trade-Related Matters.

In accordance with Appendix XVII-4 Rules Applicable to Postal and Courier Services to the Association Agreement, within two years from the date of entry into force of the Agreement (for the DCFTA of Title IV Trade and Trade-Related Matters – from 1 January 2016), Ukraine had to implement the provisions of the following EU acts:

1. Directive 97/67/EC on common rules for the development of the internal market of Community postal services and the improvement of quality of service. The provisions of the Directive were to be implemented within two years from the date of entry into force of the Association Agreement;
2. Directive 2002/39/EC amending Directive 97/67/EC with regard to the further opening to competition of Community postal services. The provisions of the Directive were to be implemented within two years from the date of entry into force of the Association Agreement;
3. Directive 2008/6/EC amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services. The provisions of the Directive were to be implemented within two years from the date of entry into force of the Association Agreement.

What are the benefits of the relevant EU standards?

Consolidated Directive 97/67/EC on common rules for the development of the internal market of Community postal services and the improvement of quality of service. The provisions of the Directive were to be implemented within two years from the date of entry into force of the Association Agreement (Postal Services Directive)

It should be noted that the ultimate and comprehensive goal of European postal policy is to ensure the availability of reliable, high-quality and affordable postal services for at least five working days a week throughout the EU for all EU citizens and businesses. In accordance with the subsidiarity principle and taking into account the differences in the postal services markets of the Member States, First Postal Services Directive 97/67/EC is a general directive which gives Member States substantial flexibility by allowing them to adapt elements of their internal postal services (i.e. services provided on the territory of a particular state) in line with their own specific needs.

The First Postal Services Directive (Directive 97/67/EC) aims to continue the implementation of the general objectives set out in the Green Paper on the Development of the Single Market for Postal Services, published in June 1992, which, inter alia, specified that analysis held had revealed some structural problems of the relevant sector, significant divergences between the EU Member States and lack of a clear-cut common EU approach. Therefore, the First Postal Services Directive was aimed at improving postal services both within Member States and across the EU, paying particular attention to the low quality and productivity, lack of a client-oriented approach, choice of postal operators and innovations, limited cooperation between operators (both within Member States, and across the EU as a whole), as well as long-term state backing.

The key elements of the First Postal Services Directive include the introduction of a universal postal service of the minimum dimensions, requirements for the frequency and quality of services, a number of tariff setting principles, and establishment of independent national regulatory authorities (NRAs) in the field of postal services. The main component of the modernisation strategy was “the gradual and controlled liberalisation of the market”.

In 2002, as a further step towards the gradual and controlled liberalisation of the postal services market, the Second Postal Services Directive (Directive 2002/39/EC) was adopted. Along with other additions to the principles of tariff setting, financing of universal services and work with consumer complaints, it reduced the limits on the price and weight of reserved services, thereby narrowing the scope of the monopoly of national postal operators and setting the deadline for elimination of this monopoly at December 31, 2008.

In February 2008, the Council and the European Parliament adopted the Third Postal Services Directive, which introduced a legal framework for the accomplishment of the internal market for postal services, ensuring the last legislative step in the gradual opening of the market. It set agreed deadlines for full market opening: from 31 December 2010 for 16 Member States and from 31 December 2012 for the remaining (then) 11 Member States.

In addition to the timetable for full market opening, the Third Postal Services Directive amended the other provisions of the First Postal Services Directive as amended by the Second Postal Services Directive in order to make them more competitive with “full market opening”. The amendments focused on the tasks and competencies of NRAs, changes in the way of provision and financing of

universal services, requirements for the availability of certain elements of the postal infrastructure (including address database and mailboxes) for other operators, strengthening and extending legitimate requirements for information and obtaining NRA data, as well as extending the provisions on consumer protection. The Third Postal Services Directive also contains some provisions requiring the EC to assist EU Member States in its implementation, including recommendations for the calculation of the cost of universal services, which were laid down in Annex I "Guidance on calculating the net cost of universal service".

After the adoption of the Third Postal Services Directive, all references to the Postal Services Directive (PSD) in all working documents of the EC apply to the consolidated Postal Services Directive (unless otherwise indicated), in particular, this is indicated in the Commission Staff Working Document (Brussels, 17.11.2015 SWD (2015) 207 final) accompanying the Report from the Commission to the European Parliament and the Council on the application of the Postal Services Directive (Directive 97/67/EC as amended by Directive 2002/39/EC and Directive 2008/6/EC) {COM (2015) 568 final}.

What has been done to fulfil the commitments?

It should be mentioned that after the signing of the Association Agreement, measures for the implementation of its provisions in the field of postal and courier services were included in the respective plans approved by the Cabinet of Ministers of Ukraine, such as:

- Action Plan for the Implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, for 2014–2017, approved by Order No. 847-p of the CMU of September 17, 2014, namely:
  - development of a Roadmap for approximation of Ukrainian legislation to EU legislation in the field of postal and courier services (deadline: March 2015, bodies in charge: Ministry of Infrastructure, National Commission for the State Regulation of Communications and Informatization (upon consent), Central Bank of Ukraine, UkrPosta (upon consent);
  - modernisation of the postal network in order to improve the quality of postal services in accordance with the requirements of Directive 97/67/EC on common rules for the development of the internal market for postal services in the Community and improvement of service quality, as amended by Directive 2002/39/EC and Directive 2008/6/EU (deadline: July 2017, bodies in charge: the same as above);
- Plan of Implementation of Directive 97/67/EC on common rules for the development of the internal market of Community postal services and the improvement of quality of service, developed by the Ministry of Infrastructure and approved by CMU Order No. 222, dated March 18, 2015;
- Action Plan for Implementation of Title IV Trade and Trade-Related Matters of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, for 2016–2019, approved by CMU Order No. 217-p, dated February 18, 2016, namely:
  - appointment of a body that is independent in its decision-making from other bodies and financially independent, legally separated and not accountable to any supplier of postal and courier services (deadline: December 2016, bodies in charge: Ministry of Infrastructure, National Commission for the State Regulation of Communications and

Informatization (upon consent), other CEBs);

- drawing up of a roadmap for the implementation of the provisions of the EU Directives in the field of postal and courier services (deadline: February – May 2016, bodies in charge: (at different stages) – Ministry of Infrastructure, Ministry of Economic Development, other CEBs, UkrPosta (upon consent), National Commission for the State Regulation of Communications and Informatization (upon consent), Government Office for European Integration of the CMU Secretariat);
- improvement of the practice of universal service application (deadline: December 2016–March 2017; bodies in charge: Ministry of Infrastructure, National Commission for the State Regulation of Communications and Informatization (upon consent), UkrPoshta (upon consent);
- implementation of the provisions of Directive 97/67/EC on common rules for the development of the internal market of Community postal services and the improvement of quality of service (period 2016–2017); bodies in charge: Ministry of Infrastructure, National Commission for the State Regulation of Communications and Informatization (upon consent), UkrPoshta (upon consent), other CEBs).

Nevertheless, apart from the Plan of Implementation of Directive 97/67/EC, developed by the Ministry of Infrastructure and approved by CMU Order No. 222, dated March 18, 2015 (in pursuance of the provision requiring to develop a roadmap for the approximation of Ukrainian legislation to the EU legislation in the field of postal and courier services, as set forth in the Action Plan for Implementation of the Association for 2014–2017, approved by Order No. 847-p of the CMU dated September 17, 2014) none of these measures has been fulfilled, moreover they were cancelled due to the adoption of:

- Action Plan for Implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, approved by Order No. 1106 of the CMU of October 25, 2017 (repealing CMU Order No. 847-p, dated September 17, 2014, and CMU Order No. 217-p, dated February 18, 2016); and
- Strategy for Implementing the Provisions of the EU Postal Services and Courier Services Directives (Roadmap), approved by CMU Order No. 104-p dated February 14, 2018, (repealing CMU Order No. 222, dated 18 March 2015). It is the status of implementation of these documents that we have analysed.

Thus, the Action Plan for Implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, approved by Order No. 1106 of the CMU of October 25, 2017 (hereinafter referred to as the Action Plan), involves:

- ensuring progressive alignment of existing laws and future legislation with the EU acquis (paragraph 1792 of the Action Plan), including development of a draft strategy for implementation of the provisions of the EU Postal and Courier Services Directives (Roadmap).

Body in charge – Ministry of Infrastructure. Deadline – March 20, 2018. Status of implementation – completed: the Strategy, together with the Action Plan for its implementation, was adopted and approved by CMU Resolution No. 104-p, dated February 14, 2018;

- harmonisation of national legislation with EU legislation on the provision of

postal services (paragraph 1793 of the Action Plan), including development and submission to the CMU of a draft law on amendments to the Law of Ukraine "On Postal Communications".

Body in charge – Ministry of Infrastructure. Deadline – March 20, 2018. Status of implementation – launched: the relevant draft law has been posted (on October 26, 2018) on the website of the Ministry of Infrastructure for public discussion (until November 26, 2018).

- a number of other measures (paragraphs 1821 to 1832 of the Action Plan) aimed at development and adoption of subsidiary legislation for the practical implementation of the provisions of the Postal Services Directive.

Body in charge – Ministry of Infrastructure, National Commission for the State Regulation of Communications and Informatization (upon consent). However, even though the Action Plan (CMU Resolution No. 1106) established the deadline for implementation of these measures (1821–1832) as December 31, 2018, most of them focus on development and approval of subordinate legal acts to be adopted in case and on the basis of adoption of the Law of Ukraine "On Amendments to the Law of Ukraine 'On Postal Communications'".

A relevant reference is contained, inter alia, in paragraph 1822 of the Action Plan, as well as in the paragraphs of the Action Plan focusing on the implementation of the Strategy (CMU Order No. 104-p). Currently, there are really no grounds or powers for adoption of such subordinate legislation (since, according to Article 19 of the Constitution of Ukraine: "Public authorities and bodies of local self-government and their officials shall be obliged to act only on the grounds, within the powers, and in the way determined by the Constitution and the laws of Ukraine."), and hence for implementation of the provisions of the EU Postal Services Directives.

Moreover, the Action Plan on implementation of the Strategy for implementation of the EU Directives in the Field of Postal and Courier Services ("Roadmap"), approved by CMU Resolution No. 104-p, dated February 14, 2018 provides for the same measures as those envisaged by the Action Plan approved by Order No. 1106 of the CMU of October 25, 2017, except for the measure involving the development and approval of the Strategy itself.

As mentioned above, on October 26 this year, the website of the Ministry of Infrastructure published for public discussion the Draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Postal Communications' (hereinafter referred to as the Draft Law of 2018). We have analysed the text of this Draft Law, as well as the accompanying documents (an explanatory note with an annex thereto, a regulatory impact analysis, and a small business test) and find it necessary to focus on the following conclusions.

It is expedient to mention that the quality of the current version of the Draft Law of 2018 and the accompanying documents thereto, both in terms of norm-setting and requirements of Ukrainian legislation and in terms of taking into account the provisions of the EU Postal Services Directives to be implemented, is significantly higher than the quality of the preceding document (the Draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Postal Communications'" (2016) (hereinafter referred to as the Draft Law of 2016), which was put up for public discussion in October 2016).

Thus, unlike the Draft Law of 2016, the Draft Law of 2018 takes into account, to a greater or lesser extent, the provisions of Directive 97/67/EC, as supplemented by Directive 2002/39/EC and Directive 2008/6/EC, with regard to the introduction of a number of rules regarding:

- conditions regulating the provision of postal services;
- provision of universal postal services;
- financing universal postal services on terms that guarantee the provision of services on an ongoing basis;
- tariff principles and transparency of accounts for the provision of universal postal services;
- establishing quality standards for the provision of universal postal services and the introduction of a system for ensuring compliance with these standards;
- harmonisation of technical standards;
- ensuring independence of the national regulatory authority.

It should be mentioned that the list of universal services specified in the Draft Law of 2018 (as stipulated by the provisions of the EU Postal Services Directive) includes services of:

1. the clearance, sorting, transport and distribution of postal items up to two kilograms;
2. the clearance, sorting, transport and distribution of postal packages up to 10 kilograms;
3. services for registered items and insured items.

In addition, (which is not forbidden) the Draft Law of 2018 proposes to include in the package of universal services for delivery of secogrammes up to 7 kg. The EU Postal Services Directive stipulates that: "Member States may maintain or introduce the provision of a free postal service for the use of blind and partially-sighted persons." Thus, the national regulatory authority when approving tariffs for universal services may limit the cost of this type of service to the minimum or socially acceptable level. Besides, Article 111 of the Association Agreement stipulates that: "Any Party has the right to define the kind of universal service obligation it wishes to maintain. Such obligations will not be regarded as anti-competitive per se, provided they are administered in a transparent, non-discriminatory and competitively neutral manner and are not more burdensome than necessary for the kind of universal service defined by the Party."

In accordance with the EU Postal Directive, the Draft Law 2018 envisages the possibility of identifying more than one designated operator for the provision of universal services (all or some) on the national or regional level, which is undoubtedly an advantage, since under the previous Draft Law of 2016 this could be only one operator, therefore, the choice was obviously in favour of PJSC UkrPoshta as the national operator, which other market players objected to.

At the same time, PJSC UkrPoshta retains the status of the national operator appointed to fulfil the obligations arising from the acts of the Universal Postal Union and granted exclusive rights in the field of provision of postal services, including:

1. publication, putting into circulation and organisation of the distribution of postage stamps, stamped envelopes and cards, as well as their withdrawal from circulation;
2. official publication of catalogues and pricelisti of collectible postage stamps and other philatelic products;
3. transport and distribution of regular letters up to 25 grams and regular postcards;
4. placement and use of mailboxes for collecting letters and postcards throughout

the territory of Ukraine in accordance with the standards established by the central executive body responsible for public policymaking policy in the field of postal services provision;

5. use of postage meters (franking machines) and conclusion of contracts on their use;
6. postal transfers;
7. use of the electronic indicia;
8. use of the State Emblem of Ukraine in its activity, including placing it on mailboxes and postal vehicles.

The scope of these exclusive rights seems to be rather controversial, especially as regards paragraphs 3, 6, and 7. The other market players are likely to take a firm stand against such a broad monopoly.

A positive element of the Draft Law of 2018 (compared with the Draft Law of 2016) is cancellation of the licencing of the postal services sector (which is in line with the EU Postal Services Directive) and adoption of the system of entering information into the register of postal operators based on reports, as well as the introduction of a regulatory regime in the field of postal services exclusively for the universal services. In is also important to add that according to paragraph 1, Article 112 of the Association Agreement: "Three years [2019] after the entry into force of this Agreement, a licence may only be required for services which are within the scope of the universal service."

As regards the independence of the national regulatory authority, despite the fact that paragraph 3, Article 8 of the Draft Law of 2018 declares that the national regulatory authority: "is legally separate and functionally independent of postal operators in order to balance the interests of the public, postal operators and users of postal services", there are reasonable doubts concerning this as revealed by the analysis of the relevant provisions of the Draft Law "On Electronic Communications", which is referred to by the National Commission for the State Regulation of Communications and Informatization in its response to the request of the UCEP. This issue will be further discussed in more detail.

At the same time, financing of universal postal services under conditions which guarantee the provision of services on an ongoing basis (which is an important provision of the Postal Services Directive) mentioned quite broadly in Para. 6, Article 10 of the Draft Law of 2018, namely: "The procedure for compensation for the cost of universal postal services provision if run at a loss (unprofitable) is determined by the CMU on the basis of the mechanism for calculating the actual losses of postal operators providing universal services, taking into account quality standards for the provision of universal postal services set by the national regulatory authority at the expense of the State Budget of Ukraine." Apart from the fact that this Para. 6, Article 10 of the Draft Law of 2018 refers to a CMU act instead of laying down the options for financing universal services as stipulated by Article 7 of Chapter 3 of the Postal Services Directive, it also gives unwarranted grounds for the drafters of the Draft Law of 2018 to set forth the following (para. 5 "Financial Feasibility" of the Explanatory note to the Draft Law of 2018): "The implementation of the Law, if adopted, will not require financing from the state and local budgets". In our opinion, it is obvious that there were no calculations of the profitability / unprofitability of universal service provision that could confirm this statement (not even anticipated ones from operators / potential operators providing universal postal services).

Last but not least, in our opinion, it is equally important that attention should be paid to the need to change the approach to terminology: transition to the terms

that are established both within the EU and worldwide (as defined by the EU Postal Services Directive and regulatory documents of the Universal Postal Union). First of all, this concerns the need to replace the term "postal communications" with "postal services", which is necessary for harmonisation of terminology, as well as to shift the focus of the outcome of activities in the postal sector to the provision of services to users. The latter is confirmed by:

9. the fact that the Association Agreement includes the provisions relating to the field of postal and courier services in Section 6 "Establishment, Trade in Services and Electronic Commerce", Title IV "Trade and Trade-Related Matters", separately from the area of communications;
10. the wording of the points of the Action Plan for the implementation of the Strategy (CMU Order No. 104-p);
11. the wording of the points of the consolidated Action Plan (CMU Resolution No. 1106) – not only of those under responsibility of the Ministry of Infrastructure and / or National Commission for the State Regulation of Communications and Informatization but also those under responsibility of other executive bodies, for example, the Ministry of Economic Development and Trade (para. 642 concerning the rules for the application of public procurement procedures).

Consequently, we consider it necessary and reasonable to extend to use of the term "postal services" onto the Draft Law of 2018, that is, we propose to replace the term "postal communications" with "postal services" both in its title and in the text of the Draft Law. Should this Law be adopted, the same principle should be followed in the drafting and adoption of relevant subordinate legislation developed for its implementation.

It seems to be necessary to dwell in more detail on certain provisions of the Postal Service Directive that were to be implemented by the Ukrainian party according to the Association Agreement.

a. Ensuring that the regulatory body be legally separate from and not accountable to any supplier of postal and courier services (Association Agreement – Article 113, Annex XVII, Postal Services Directive – Chapter 9, Article 22). We believe that in order to implement this provision, it is necessary to amend the Regulation on the National Commission for the State Regulation of Communications and Informatization, approved by Decree No. 1067 of the President of Ukraine of November 23, 2011.

In its reply No. 06-6763 / 155, dated October 12, 2018, to the request of the Public Organisation Ukrainian Centre for European Policy, the National Commission for the State Regulation of Communications and Informatization refers to the Draft Law of Ukraine "On Electronic Communications" (reg. No. 3549-1, dated December 11, 2015 (the status on the VRU website of May 15, 2018 – "consideration adjourned").

As regards the said Draft Law "On Electronic Communications", there are certain reservations, as postal services are not its focus, however one of its norms (part 3 of Article 22) proposes, inter alia, to fund the work of the national regulatory authority from revenues to the special fund of the State Budget of Ukraine based on a regulatory fee in the amount of 0.2 percent of the revenues, including from postal operators earned from provision of postal services.

This requirement seems to be fraught with certain risks: on the one hand, it calls into question the principle of independence of the regulatory authority

from market participants (operators with higher incomes will pay bigger fees and will probably have some influence on the regulatory authority); on the other hand, market players that have no influence may not be interested in paying fees to finance the regulatory authority, instead they will have an "incentive" to conceal or underreport their income. According to Article 113 of the Association Agreement: "The regulatory body shall be legally separate from and not accountable to any supplier of postal and courier services. The decisions of and the procedures used by the regulatory body shall be impartial with respect to all market participants."

b. Establishing common rules and conditions governing the provision of postal and courier services in accordance with the requirements of the relevant provisions of the Postal Services Directive. To date, the Rules for Postal Service Provision (approved by CMU Resolution No. 270 of March 5, 2009) have been in effect, and their provisions do not comply with the requirements of the Postal Directive. In 2017, there was an attempt to amend the said CMU resolution. Thus, on June 6, 2017, draft amendments were posted on the website of the Ministry of Infrastructure for public discussion, however, this draft did not comply with and sometimes contradicted the requirements of the Postal Services Directive, especially as regards the list of universal services, as well as their quality standards. Therefore, should the amendments to the Law of Ukraine "On Postal Communications" be adopted, it will be necessary to make the relevant changes to the said CMU resolution.

c. Approval of the procedure for selection and appointment of designated postal service providers in accordance with the provisions of Article 4, Chapter 2 of the Postal Services Directive. Currently, universal postal services are provided by the national operator, i.e. Ukrainian State Postal Communication Enterprise UkrPoshta as specified in CMU Order No. 10, dated January 10, 2002, "On the National Postal Communication Operator" (its successor is PJSC UkrPoshta with 100% of shares belonging to the state). Since the provisions of Article 4 of the Postal Services Directive provide for the possibility of appointing several operators to perform various components of universal services and / or to cover different parts of the state territory, we consider it necessary, after adoption of the amendments to the Law "On Postal Communications", to adopt a relevant legal act (preferably by the CMU) setting the procedure for selection of designated postal operators.

d. Introduction of a mechanism and a procedure for the financing of universal postal services under conditions guaranteeing the provision of services on an ongoing basis in accordance with the requirements of Chapter 3 of the Postal Services Directive. At present, there is no such mechanism, which makes it complicated for PJSC UkrPoshta as the national operator to provide them. In addition, due to the absence of such a mechanism, private operators are not interested in providing such services. Therefore, in our opinion, development and adoption of a regulatory act that will establish and lay down a transparent mechanism for the financing of universal postal services under conditions guaranteeing the provision of services on an ongoing basis is essential for implementation of the provisions of the Postal Services Directive. We believe that such an act should be adopted at the level of the Cabinet of Ministers after adoption of amendments to the Law of Ukraine "On Postal Communications", since universal service provision might be financed from the State Budget, if need be.

e. Establishment of quality standards for the provision of universal postal

services and introduction of a system for ensuring compliance with these standards in accordance with the requirements of Article 1, Chapter 1 of Chapter 2, Articles 16-18 of Chapter 6, Annex II of the Postal Services Directive. Currently, the standards and terms for mail delivery are regulated and approved by Order No. 958 of the Ministry of Infrastructure dated November 28, 2013, however, they should be aligned with the requirements of the quality standards set by the Postal Services Directive, and therefore relevant changes should be introduced to this Order.

f. Introduction of tariff principles and transparency rules for the provision of universal postal services, in accordance with the requirements of Article 1 of Chapter 1, Articles 13-14 of Chapter 5 of the Postal Services Directive. Today, tariffs for universal postal services are set by the national operator of PJSC UkrPoshta without requirements of observance of the tariff principles and transparency of accounts (transparent and separate accounting for universal services in order to determine their profitability / unprofitability and to apply a financing mechanism to compensate for losses should they be found to be provided at a loss) for the provision of universal postal services as set by the Postal Services Directive and approved by the National Commission for the State Regulation of Communications and Informatization. In our opinion, after adoption of the amendments to the Law of Ukraine "On Postal Communications", it is necessary to adopt a regulatory act that will set the rules concerning tariff principles and transparency of accounts for the provision of universal postal services (on the procedure for distribution (accounting) of expenses of the operators of universal postal services by type of postal services) and ensure that the same tariff rules be applied for all providers of universal services in the future.

g. Introduction of rules for the provision of postal services (licenced or authorised requirements for postal operators) in accordance with the requirements of Article 1 of Chapter 1, and Article 9 of Chapter 4 of the Postal Services Directive. That is, after adoption of the amendments to the Law of Ukraine "On Postal Communications", it is necessary to adopt a regulatory act in order to implement the rules for provision of postal services. At the same time, it should be noted that in accordance with Article 112 of the Association Agreement, in 3 years after the entry into force of the Agreement (that is, from 2019) licencing or authorisation should be limited to the provision of universal postal services only.

h. Harmonisation of technical standards in accordance with the requirements of Article 1 of Chapter 1, and Article 20 of Chapter 7 of the Postal Services Directive. According to the Directive, technical standards should be harmonised with those developed by the European Committee for Standardisation. Such standards should take into account the harmonisation laws adopted at the international level, in particular within the framework of the Universal Postal Union. At present, PJSC UkrPoshta is the designated operator for provision of postal services and fulfilment of obligations arising from acts of the Universal Postal Union based on Order No. 405 of the Ministry of Infrastructure, dated June 14, 2013. In order to universalise technical standards for postal service providers within Ukraine, as well as harmonise them with international standards, we consider it necessary – after amending the Law of Ukraine "On Postal Communications – to adopt a regulatory act that would establish postal technical standards harmonised with EU standards.

i. Introduction of rules for provision of information in accordance with the

requirements of Article 1 of Chapter 1 and Article 22a of Chapter 9a of the Postal Services Directive. After amending the Law of Ukraine "On Postal Communications", it is necessary to adopt a regulatory act that would establish the procedure for the national regulatory authority to obtain reports (information) from postal service providers, such as financial information or information on the provision of universal services.

j. Introduction of criteria for the quality of postal services in accordance with the requirements of Article 1 of Chapter 1, and Article 19 of Chapter 6 of the Postal Directive, in particular, regarding the introduction of transparent, simple and inexpensive procedures for dealing with users' complaints, in particular in cases involving loss, theft, damage or non-compliance with service quality standards (taking into account procedures for finding persons responsible for a violation in cases where several operators were involved). These provisions of the Postal Services Directive can be implemented by way of adopting a relevant regulatory act after amending the Law "On Postal Communications".

Telecommunication services

Analysis of the progress as regards the approximation of national legislation to the requirements of EU acquis made from November 1, 2017 to November 1, 2018:

The commitments to align national legislation with EU telecommunications legislation are stipulated in the Association Agreement, specifically in Subsection 5 Telecommunication Services of Title IV Trade and Trade-Related Matters (Articles 115–124); Chapter 14 Information Society of Title V Economic and Sector Cooperation (Articles 389–395) and Annex XVII Regulatory Approximation (Appendix XVII-3 Rules Applicable to Telecommunication Services and Appendix XVII-6 Provisions on Monitoring)

This analysis outlines Ukraine's progress in legal approximation to the EU acquis that were to be implemented within the first two to three years from the date of entry into force of the Association Agreement, including within six months from the date of entry into force of the Association Agreement[10].

EU acquis:

1. Commission Directive 2002/77/EC on competition in the markets for electronic communications networks and services;
2. Directive 98/84/EC on the legal protection of services based on, or consisting of, conditional access.

What are the benefits of the relevant EU standards?

Commission Directive 2002/77/EC:

1. by implementing this Directive since July 2003 the EU Member States have created conditions for the market where each enterprise has the right to provide electronic communication services or to establish, expand and operate electronic communications networks without restrictions, continuing the trend of liberalisation of the EU communications sector ;
2. the scope of the Directive covers all services and / or electronic communications

10) Within 6 months from the date of the entry into force of the Association Agreement, Ukraine had to submit a detailed roadmap for the implementation and application of EU acquis in the field of telecommunications

networks relating to the conveyance of signals by wire, radio, optical or other electromagnetic means, including broadcasting of radio and television programmes (other than editorial content policy);

3. the main innovation is the abolition of exclusive or special rights granted by Member States for the establishment and / or provision of electronic communications networks or for the provision of services that are publicly accessible electronic communications;
4. finally, ensuring that vertically integrated public undertakings which provide electronic communications networks and which are in a dominant position do not discriminate in favour of their own activities.

Directive 98/84/EC:

5. this Directive ensures protection from unauthorised access of electronic services that are accessed on a conditional basis upon prior individual authorisation (conditional access);
6. the document prohibits any commercial activity related to the production, distribution or sale of smart cards (plastic cards with built-in microprocessors or microchips) and other devices that allow one to bypass protected access to pay TV, radio and Internet services;
7. from May 2000, the "old" EU Member States, and subsequently the new ones, introduced effective, dissuasive and proportionate sanctions for illicit access to services based on or involving conditional access.

Expected effects of approximation to these EU acquis

8. The transposition of the EU acquis listed in the national legislation should ensure, in the medium term, the following effects for the stakeholders:
9. compliance with the rules of fair competition by operators and providers of telecommunication services and prevention of abuse of market power;
10. establishment of effective supervisory mechanisms and proportional sanctions for violations in the field of telecommunications, specifically for the use of devices for unauthorised access to electronic services;
11. introduction of modern "rules of the game" in the field of e-commerce and creation of conditions for the development of any fee-based, distance, electronic services provided based on the customer's individual demand as regards both business for business and business to consumer relations;
12. free circulation of electronic trust services in Ukraine, including cross-border services.

What has been done to fulfil the commitments?

Development of a roadmap for implementation of the provisions of the EU acquis in the field of telecommunications (electronic communications)

The Government has not yet adopted a comprehensive document including an analysis of the situation in the field of electronic communications, strategic goals and objectives of the approximation to EU legislation, expected outcomes and indicators of their fulfilment. Within 6 months from the date of entry into force of the Association Agreement, Ukraine had to submit a detailed roadmap for the implementation and application of EU acquis in the field of telecommunications and report to the European Commission on the implementation of this roadmap at least twice a year on an ongoing basis. In accordance with the Association Agreement, this document should describe the necessary legislative and institutional changes, interim deadlines and an assessment of administrative needs.

Such a long-term document, with a 7-year or longer planning horizon, would contribute to the legal certainty and predictability of the ways of regularising relations in the field of electronic communications for stakeholders. Designed to promote regulatory changes in the Parliament, the Roadmap of Legislative Support for the Implementation of the Association Agreement for 2018–2019 does not include any draft laws in the field of telecommunication services.

The MEDT started preparation of the Roadmap for the approximation of Ukrainian legislation to the EU legislation in the field of telecommunications (electronic communications) and the corresponding Action Plan. The draft Roadmap, which was developed during 2018, envisages consistent approximation of Ukrainian legislation to EU standards over 2017–2025. The central executive body (CEB) responsible for the report on the Action Plan should be the Administration of the State Special Communication Service. According to the response to a request by the Ministry of Economic Development and Trade, as of October 12, 2018, the draft Roadmap has not yet been approved by the Government. Therefore, when implementing legal approximation, the CEBs are guided by the Action Plan for the Implementation of the Association Agreement of October 25, 2017.

Approximation of legislation

Directive 2002/77/EC on competition in the markets for electronic communications networks and services

The national regulatory authorities, primarily the Antimonopoly Committee of Ukraine (AMCU), should ensure continuous monitoring of competition and prices in the telecommunications market. To this end, it is necessary to develop the procedure and methods for carrying out such monitoring, as set forth by the Action Plan for Implementation of the Association Agreement of October 25, 2017, (task 1923). As of October 11, 2018, the AMCU did not have any information on the development of such a document and points to the National Commission for the State Regulation of Communications and Informatization as the responsible body. According to the latter, the National Commission for the State Regulation of Communications and Informatization is not authorised to monitor prices in the telecommunications market. In its turn, the State Statistics Service keeps a record of the scope (but not the prices) of the services provided in the field of telecommunications, including mobile, satellite communications and Internet services, in monetary terms.

Thus, the issue of approximation of national legislation and its implementation practices to Commission Directive 2002/77/EC is still to be addressed.

Directive 98/84 / EC on the legal protection of services based on or involving conditional access

In order to implement the Directive, it is necessary to introduce effective control and sanctions for the production, sale or use of illicit access devices for conditional access services. According to the Action Plan for Implementation of the Association Agreement (task 1906), the Administration of the State Special Communications Service (the body in charge), together with the State Committee for Television and Radio Broadcasting and the Ministry of Economic Development, must develop and submit for consideration by the Cabinet of Ministers a draft law on prohibition of production, sale and use of unauthorised access devices to services based on or

involving conditional access. According to the response to the request of the Ministry of Economic Development and Trade, as of October 11, 2018, the said draft law has not been submitted to the other bodies involved. Referring to its own regulation and its lack of authority to draft a bill on this matter, the Administration of the State Special Communications Service sent a letter to the CMU Secretariat providing reasons why this task of the Action Plan should be assigned to another body.

Hence, in order to effectively approximate national legislation and the practice of its enforcement to Directive 98/84/EC, it is necessary to coordinate the actions of the relevant CEBs as soon as possible.

ENVIRONMENT

ENVIRONMENT

Expert

Andriy Andrusevych

Water quality and water resource management, including marine environment

Analysis of the progress as regards the approximation of national legislation to the requirements of EU acquis made from November 1, 2017 to November 1, 2018:

During this period, Ukraine was supposed to align national legislation with the following EU acquis in the field of water quality and water resource management, including marine environment:

1. Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources, as amended and updated by Regulation (EC) 1882/2003;
2. Directive 2007/60/EC on the assessment and management of flood risks (Art. 4 and 5);
3. Directive 2008/56/EC establishing a framework for Community action in the field of marine environmental policy (Marine Strategy Framework Directive).

Council Directive 91/676/EEC concerning the protection of waters against pollution caused by nitrates from agricultural sources, as amended and updated by Regulation (EC) 1882/2003

What are the benefits of the relevant EU standards?

Directive 91/676/EC aims at protecting water resources by preventing nitrate pollution from agricultural sources and promoting good agricultural practices. This Directive is closely linked to the Water Framework Directive 2000/60/EC.

Directive 91/676/EC aims to reduce the pollution of water caused or induced by nitrates from agricultural sources and prevent further contamination, which involves identification of waters polluted with nitrates (or those at risk of such pollution, in particular, those containing 50 mg/L nitrate or more), designation of vulnerable zones (vulnerable to nitrate pollution), adoption of a code of good agricultural practice (which should specify measures for periods of limitation of land application of fertilizers, conditions of their application, etc.), adoption of action programmes for vulnerable zones (such programmes, inter alia, make the measures set forth in the code of good agricultural practice binding on farmers within such zones), ensuring national monitoring and reporting.

Implementation of Directive 91/676/EC can significantly contribute to the prevention of the eutrophication of water bodies in Ukraine and their pollution with nitrates. Pollution of sources of drinking water with nitrates causes methemoglobinemia, a disease induced by drinking-water nitrate that affects mostly children under 3 years of age; the incidence of the disease has been more frequent in recent years.

What has been done to fulfil the commitments? Approximation of legislation.

Currently, the approximation of national legislation comes down to the development of regulatory legal acts (Methods for Designating Nitrate Vulnerable Zones and a Code of Good Agricultural Practice). These drafts are being developed involving EU technical assistance and have not yet been made public for formal (including public) discussion.

Certain provisions of the Directive have been implemented by way of adopting amendments to the Water Code of Ukraine (specifically, amendments to Article 81) and the new Procedure for the State Monitoring of Water, approved by CMU Decree No. 758 of September 19, 2018, which will come into force from 01.01.2019. The respective amendments to the Water Code of Ukraine introduced the concept of eutrophication, included prevention of eutrophication and nitrate pollution of water bodies in the set of measures to preserve the water content of rivers and protect them from pollution.

Overall, the implementation is taking place with considerable delay – it should have been completed in the reporting period, including the practical component.

Practical implementation (if any).

None.

Directive 2007/60/EC on the assessment and management of flood risks (Art. 4 and 5)

What are the benefits of the relevant EU standards?

The Directive aims to reduce the adverse consequences of flooding by establishing a framework for the assessment of flood risks in river basins and coastal areas, mapping areas with a significant risk of flooding, and developing flood risk management plans.

The flood risk assessment involves collecting information about the territory (data about past floods and maps, land use and topography) and determining the probability of major floods in the future and their consequences. Such assessments should be updated every 6 years.

An important element of Directive 2007/60/EC is the mapping of areas with a significant flood risk, which also includes the development of flood scenarios (based on high, medium and low probability).

Based on these maps, the Government should develop flood risk management plans coordinated at the level of the river basin district. Such plans should include the objectives of flood risk management (focusing on prevention, for example, prevention of construction in areas that may be flooded), a list of measures to prevent flooding and preparedness to floods. The implementation of these measures is in line with the measures specified in the Framework Water Directive 2000/60/EC, as they are closely linked.

What has been done to fulfil the commitments? Approximation of legislation

For the approximation of national legislation, a number of regulatory legal acts have been drafted and adopted:

- Law of Ukraine No. 1641-VIII "On Amendments to Certain Legislative Acts of Ukraine for Implementation of Integrated Approaches in the Management of Water Resources Based on the Basin Principle" of October 4, 2016, (Art. 107-1);
- CMU Resolution No. 247, dated April 4, 2018, "On Approval of the Procedure for Development of a Flood Risk Management Plan";
- MIA Order No. 30, dated January 17, 2018, "On Approval of the Methods of Preliminary Assessment of Flood Risks";
- MIA Order No. 153, dated February 28, 2018, "On Approval of the Methods of Mapping Flood Threats and Risks".

The specified acts are sufficiently detailed, their overall structure fully complies with the requirements of the Directive. Now, the approximation is complete.

Practical implementation (if any).

In accordance with the calendar commitments under the Association Agreement, by November 1, 2018, Ukraine had to complete the implementation of Articles 4 and 5 of the Directive, which involves conducting preliminary assessments of flood risks and identification of areas with potentially high flood risks. The Action Plan for Implementation of the Association Agreement provides details with regard to this commitment, indicating a number of practical measures (paragraph 1743):

- creation of a database of the available baseline information for the preliminary assessment of flood risks (development of a technical specification and requirements for hardware, software development, purchase and adjustment of hardware, testing and providing content);
- mapping of the hydrographic basin zone;
- description of past floods with significant adverse consequences that are likely to occur again;
- assessment of the potential adverse consequences of future floods on public health;
- assessment of the potential adverse consequences of future floods on the environment;
- assessment of the potential adverse consequences of future floods on cultural heritage;
- assessment of the potential adverse consequences of future floods on economic activities.

Currently, there is no public information on the implementation of such measures.

It should be noted that all relevant subordinate legal acts were adopted only during the reporting period (therefore, the above measures cannot be fulfilled until after 31.10.2018), which attests to a certain delay in the implementation process. In addition, in our opinion, there is a mismatch between the relevant orders of the Ministry of Internal Affairs, on the one hand, and the CMU Resolution and the Water Code, on the other hand, (as regards inconsistency of the terms "territories with potentially significant flood risks (TPSR)" and "territories with a high flood level" respectively), which may have a negative impact on their practical implementation in the future, in particular on the development of flood risk management plans.

Directive 2008/56/EC establishing a framework for Community action in the field of marine environmental policy (Marine Strategy Framework Directive) (partly: adoption of national legislation, appointment of the competent authority, Articles 5, 6, 8–10), body in charge – Ministry of Ecology and Natural Resources)

What are the benefits of the relevant EU standards?

Directive 2008/56/EC introduces new approaches to the Member States' environmental policy as regards the protection of the marine environment, i.e. gradual achievement of good environmental status (GES) of the marine environment. This status is determined based on 11 descriptors (short descriptions) that cover 60 indicators. For example, the first descriptor (concerning marine biodiversity) specifies: "Biological diversity is maintained. The quality and occurrence of habitats and the distribution and abundance of species are in line with prevailing physiographic, geographic and climatic conditions."

To this end, the Marine Strategy of Ukraine should be developed (in cooperation with the coastal Member States of the EU); a baseline assessment of the marine environment has been conducted; the GES has been determined, as well as the targets for its achievement; action plans and programmes for monitoring of the state of the marine environment (seas) of Ukraine have been developed.

What has been done to fulfil the commitments? Approximation of legislation

So far, the Ministry of Ecology has drafted and presented only the annotated structure of the Marine Strategy of Ukraine.

Practical implementation (if any)

Currently, there is no direct implementation. In 2017, two expeditions were organised to study the state of the Black Sea with the assistance of the EU EMBLAS II project. Their primary goal was to collect preliminary information about the marine environment.

Environmental protection

Analysis of the progress as regards the approximation of national legislation to the requirements of EU acquis made from November 1, 2017 to November 1, 2018:

During this period, Ukraine was supposed to align national legislation with the following EU acquis in the field of environmental protection:

1. Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora as amended by Directive 97/62/EC, 2006/105/EC and Regulation (EC) 1882/2003
2. Directive 2009/147/EC on the conservation of wild birds

Directive 92/43/EC on the conservation of natural habitats and of wild fauna and flora as amended by Directive 97/62/EC, 2006/105/EC and Regulation (EC) 1882/2003

Directive 2009/147/EC on the conservation of wild birds

What are the benefits of the relevant EU standards?

Directive 92/43/EEC on the conservation of habitats (the so-called Habitats Directive) establishes a mechanism for the conservation of flora and fauna species and habitats of Community importance by:

- Designating special areas for the protection of habitats, which together with bird areas make up the European ecological network of special areas of conservation Natura 2000 (set up by this Directive);
- Establishing restrictions and mechanisms for the conservation of habitats in such protected areas, for example, assessment of the impact of economic activity on habitats;
- Protection of vulnerable species of flora and fauna (not only their habitats) outside the Natura 2000 network itself.

The implementation of this Directive is closely linked to the implementation of the Birds Directive 2009/147/EC. The Birds and Habitats Directives are the main legal instruments for the conservation and sustainable use of nature in the EU, especially through the network of areas of conservation Natura 2000. These Directives are key elements of the EU Biodiversity Strategy.

The general objective of Directive 2009/147/EC on the conservation of wild birds (the so-called Birds Directive) is to preserve the populations of all species of wild birds habitually residing in the European territory of the Member States at a level that meets environmental, scientific and cultural requirements, taking into account the economic and recreational needs, or adapting the population of these species to that level. The wildlife protection mechanism provided for in the Directive includes measures for the protection, management and control of wild birds, as well as requirements for the use of birds. The main elements of this mechanism include:

- Creation of special protected areas for the conservation of vulnerable species of birds (habitat protection). Such areas are created based on exclusively ornithological criteria and automatically included in the Natura 2000 network;
- Prohibition of activities that directly harm birds (e.g. destruction of nests);
- Restrictions on commercial use and hunting of birds.

The Birds and Habitats Directives are the main legal instruments for the conservation and sustainable use of nature in the EU, especially through the Natura 2000 network. These Directives are key elements of the EU Biodiversity Strategy.

What has been done to fulfil the commitments? Approximation of legislation

The process of approximation is slow. On March 12, 2018, the Ministry of Ecology published the draft Law of Ukraine "On Areas of the Emerald Network" (there had been another version of this draft law before). The Draft Law is described as a common act for the Habitats and Birds Directives, which is in line with European practice. It was developed by the EU technical assistance project.

Experts of the Resource and Analysis Centre Society and Environment are rather critical about the Draft Law, which is essentially aimed at the implementation of the Berne Convention, rather that the Habitats Directive. It should be noted that experts also point out to some systemic difficulties with the implementation of Directives 92/43/EEC and 2009/147/EC mostly associated with the fact that Ukraine is not a member of the EU (for example, regarding performance of certain functions by the European Commission, granting exceptions as regards hunting, etc.).

The Emerald network created on the basis of the Berne Convention, even though

close in its content, can in no way replace the Natura 2000 network, while the legal basis is completely different – the Berne Convention itself. The Emerald Network was created to cover countries that are not EU members and for which implementation of the Directive is not relevant. Creation of the Emerald Network only helps countries aspiring to join the EU to perform in advance some of the preparatory work required to fulfil the tasks set out in the Birds Directive and the Habitats Directive. It is clear that the processes of creating the Emerald Network and Natura 2000 sites must be consistent, but by no means can they replace each other.

Practical implementation (if any)

The main practical steps were aimed at designating the Emerald Network sites within the framework of the Berne Convention. To this end, 271 sites of the Emerald Network of Europe in Ukraine have been designated for the conservation of rare and endangered natural habitats and species of flora and fauna to be preserved under the Bern Convention.

In addition, analysis has been conducted with regard to the bird species to be protected in accordance with Directives 92/43/EEC and 2009/147/EC and the Red Data Book of Ukraine.

Air quality

Analysis of the progress as regards the approximation of national legislation to the requirements of EU acquis made from November 1, 2017 to November 1, 2018:

During this period, Ukraine was supposed to align national legislation with the following EU acquis in the field of air quality:

1. Directive 2008/50/EC on ambient air quality and cleaner air for Europe

Directive 2008/50/EC on ambient air quality and cleaner air for Europe

What are the benefits of the relevant EU standards?

Directive 2008/50/EC sets objectives for ambient air quality in order to protect public health and the environment. To achieve the 2020 targets, the Directive combines a number of approaches: establishment of limit values (limit values, target values and alert threshold) for regulated substances (sulphur dioxide, nitrogen dioxide, particulate matter, lead, benzene and carbon monoxide, ozone), monitoring and assessment of pollution, development of pollution reduction plans (where necessary). Particulate matter (suspended particulates), depending on the size, is regulated as PM10 and PM2.5 (where 10 and 2.5 stand for the size of particulates in μm).

These provisions require a legislative framework to achieve the objectives of the Directive and consolidate its principles. In particular, this implies the introduction of appropriate alert thresholds, limit and target values for a particular pollutant (substance), zoning (definition of zones and agglomerations for further monitoring, evaluation and improvement measures).

What has been done to fulfil the commitments? Approximation of legislation

The process of approximation is slow, no draft regulations have been put up for public discussion. At present, the Ministry of Ecology is preparing amendments to the Procedure for Organisation and Conducting of the Monitoring of Ambient Air and Guidelines for the use of the lower and upper thresholds for air quality assessment, as well as drafting a document on the procedure for setting target and limit values and the objectives as regards reducing the impact of fine particulate matter (PM2.5). Work is ongoing on the designation of zones and agglomerations as stipulated by the requirements of Directive 2008/50/EC.

Practical implementation

There is currently no direct implementation.

TRANSPORT

TRANSPORT

Experts

Olha Kulyk

Oleksandr Hlushchenko

Road transport

Analysis of the progress as regards the approximation of national legislation to the requirements of EU acquis made from November 1, 2017 to November 1, 2018:

From November 2017 to November 2018, in accordance with the commitments in the field of road transport under Annex XXXII to Title V Transport of the Association Agreement as regards international movement and transportation of the Association Agreement, Ukraine was supposed to align national legislation with the following EU acquis:

1. Council Directive 92/6/EEC on the installation and use of speed limitation devices for certain categories of motor vehicles in the Community;
2. Council Directive 96/53/EC laying down for certain road vehicles circulating within the Community the maximum authorized dimensions in national and international traffic and the maximum authorized weights in international traffic;
3. Directive 2009/40/EC on roadworthiness tests for motor vehicles and their trailers;
4. Directive 2008/68/EC on the inland transport of dangerous goods;
5. Regulation (EC) No 1071/2009 establishing common rules concerning the conditions to be complied with to pursue the occupation of road transport operator;
6. Directive 2002/15/EC on the organisation of the working time of persons performing mobile road transport activities;
7. Directive 2003/59/EC on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers;
8. Council Directive 91/439/EEC on driving licences.

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

What are the benefits of the relevant EU standards?

Directive 92/6/EEC sets requirements for the mandatory equipment of vehicles

of M2, M3, N2, and N3 categories (buses and heavy goods vehicles), both new or those in operation, with speed limitation devices (mechanical or electronic). It specifies requirements for their design, installation and setting of the speed limits (for heavy goods vehicles – 90 km / h, for buses – 100 km / h) and identifies organisations that will install, set, service and repair speed limitation devices to enhance international transport and road safety.

As of 1 November 2018, the provisions of Directive 92/6/EEC were to be implemented for all vehicles engaged in international goods and passenger transport and for all vehicles engaged in national transport if registered for the first time after January 1, 2008.

What has been done to fulfil the commitments?

The Draft Law "On Amendments to Certain Legislative Acts of Ukraine in the Field of Operational Safety of Wheeled Vehicles in accordance with the Requirements of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part" registered in the VRU on November 17, 2017, under No. 7317 (hereinafter – Draft Law No. 7317), which provides for the approximation of national legislation with regard to the need for equipping certain vehicles with speed limitation devices according to European standards. Currently it is pending consideration by the VRU Committee on Transport.

However, due to a number of shortcomings of Draft Law No. 7317, the Ministry of Infrastructure decided to further elaborate it and on October 8, 2018, launched public discussion and coordination with the bodies concerned of the updated draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine in the Field of Operation Safety of Wheeled Vehicles in accordance with the Requirements of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part (hereinafter referred to as the Draft Law on the Operational Safety of WV).

As regards speed limitation devices in comparison with Draft Law No. 7317, which was discussed in more detail in the previous report, the corrections were rather technical. At the same time, the requirements are set in the reference to the term "commercial vehicle" rather than the categories of vehicles (M2, M3, N2, N3).

The Draft Law provides for one-year postponement of implementation of the requirements for the equipment of commercial vehicles by speed limitation devices (for those engaged in international transport, it proposes July 1, 2019, and for those engaged in national transport, it specifies January 1, 2020). However, the Draft Law does not clarify that the requirement is mandatory only for vehicles first registered after January 1, 2008 and engaged in national transport (as provided for in the Association Agreement), which is important, as it is technically impossible to install such devices on vehicles of old construction, and therefore these requirements cannot be met.

It should be noted that the provisions of Directive 92/6/EEC are already implemented in practice in Ukraine, first of all, as regards certification of motor vehicles (currently buses and heavy goods vehicles of the relevant categories that are manufactured in Ukraine or imported into its customs territory must be equipped with such devices) and mandatory technical inspection of commercial vehicles. The grounds for this include the need to comply with the Agreement concerning the Adoption of Harmonized Technical United Nations Regulations for Wheeled Vehicles, Equipment and Parts which can be Fitted and/or be Used on Wheeled Vehicles and

the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of these United Nations Regulations of 1958, as amended in 1995, with UNECE Regulation No. 89 as an addendum setting the technical requirements for the design of speed limitation devices and the conditions for their installation by manufacturers on new vehicles; as well as fulfilment of the requirements of the Procedure for Approving the Design of Vehicles, their Parts and Equipment, approved by the Ministry of Infrastructure Order No. 521 of August 17, 2012, which directly refers to the specified UNECE Regulation No. 89.

However, Ukraine has not fully implemented the provisions of Directive 92/6/EEC yet.

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

What are the benefits of the relevant EU standards?

Directive 96/53/EC sets common requirements for authorised weights and dimensions of vehicles, determining the maximum permitted weights of vehicles for international transport and their maximum permissible dimensions for national and international transport, as well as the maximum values of the axle load of vehicles and their groups in order to preserve the road infrastructure and ensure an adequate level of road safety.

As of November 1, 2017, the provisions of Directive 96/53/EC were supposed to be introduced for vehicles registered in the EU during their movement only within the international network of category "E" roads.

What has been done to fulfil the commitments?

In order to bring the Road Traffic Rules in line with certain provisions of Directive 96/53/EC, the Ministry of Infrastructure together with the State Agency of Automobile Roads of Ukraine (Ukravtodor) developed the relevant draft resolution of the Cabinet of Ministers of Ukraine, which was posted on the website of the Ministry of Infrastructure back in January 2017, however, it has not been adopted yet.

It bears mentioning that current paragraph 22.5 of the Road Traffic Rules specifies the overall dimensions, weight and axle loads of vehicles that are largely in line with the provisions of Directive 96/53/EC. The draft resolution provides for a more structured and harmonised with Directive 96/53/EC requirements for the maximum permissible dimensions, weight and axle loads of vehicles, as well as for certain sections of public roads of national significance (primarily those that have underwent resurfacing within the last five years), increase the permissible load on the triple axle of vehicles from 22 t to 24 t, provided that the distance between the axles is 1.4 m. The list of public roads will be approved by an order of the Ministry of Infrastructure.

After a series of consultation co-ordination meetings with representatives of business, the public, leading industry scientists and carriers, after conducting research and calculations of the damaging effects of heavy vehicles on the road structure and other measures, it has been found that given that most roads in Ukraine were built in the 1960-70s, subject to other requirements, they are not designed for heavy loads, in particular, there are practically no roads of local significance where

the axle load may exceed 6 tons.

In addition, the draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Road Transport'(regarding the observance by heavy goods road transport market participants of the legislation regarding the weight and dimensions of vehicles)" (reg. with the VRU on June 23, 2017, under No. 6644) has not been adopted, although it is important in terms of meeting the requirements for the specified parameters of vehicles, in particular those set forth in the Road Traffic Rules, and ensuring proper overall-weight control. This Draft Law was included on the VRU agenda for three times (twice in December 2017 and once in February 2018) but has never been actually considered.

Another aspect of ensuring control over compliance with requirements for vehicle dimensions and weights involves the application of the WiM technology (Weight-in-Motion) on Ukrainian roads in addition to mobile equipment for control including that of dimensions and weight, purchased for European funds for the needs of the State Service of Ukraine for Transport Safety (UkrTransSafety). The project on designing, supplying and installing a pilot weight-in-motion system has been developed jointly by the Ministry of Infrastructure, the World Bank, Ukravtodor, UkrTransSafety and international consultants. It envisages the purchase of 10 WiM systems that will be located around the city of Kyiv on M-01, M-03, M-05, M-06, and M-07, and will initially operate in the so-called pre-selection mode (i.e. detecting overloaded trucks and transmitting information about them to UkrTransSafety inspectors in mobile checkpoints for further control weighing and, if violation is confirmed, appropriate sanctions will be imposed), and later – in the automated mode of imposing sanctions. The international tender (at the platform of the World Bank portal) took place on July 27, 2018 (the project is expected to begin by the end of 2018).

However, to provide a legal framework for the operation of this system, appropriate legislative changes should be made. To this end, on November 17, 2017, two draft laws of Ukraine were registered with the VRU: No. 7318 "On Amendments to Certain Legislative Acts of Ukraine Concerning Certain Matters of Dimensions and Weight Control", and No. 7319 "On Amendments to the Budget Code of Ukraine as regards Proceeds from the Implementation of Dimensions and Weight Control". The main factor that can impede the adoption and implementation of these draft laws is that they fail to take into account and lay down rules by analogy with a similar system of automated recording of offences in the field of ensuring road safety (rules of the Code of Ukraine on Administrative Offences).

Consequently, national legislation has not been approximated to the provisions of Directive 96/53/EC.

Directive 2009/40/EC on roadworthiness tests for motor vehicles and their trailers

What are the benefits of the relevant EU standards?

Directive 2009/40/EC sets minimum requirements for the system of roadworthiness tests for registered motor vehicles, specifies the scope, methods of roadworthiness tests for motor vehicles and criteria for their assessment, requirements for the authorisation of technical control bodies and qualifications of their personnel in order to guarantee safe transport on public roads.

As of November 1, 2017, the provisions of Directive 2009/40/EC were to be

introduced for all vehicles engaged in international goods and passenger transport.

What has been done to fulfil the commitments?

As regards fulfilling the commitments to adapt national legislation to the EU legislation on vehicle roadworthiness tests (or technical inspection), the Ministry of Infrastructure has focused on the implementation of the provisions of the new Directive 2014/45/EC, which repealed Directive 2009/40/EC on May 20, 2018. This was reflected in Draft Law No. 7317, as indicated in the previous report.

In view of some minor critical remarks concerning Draft Law No. 7317 and its incomplete compliance with the acquis communautaire and Ukraine's commitments assumed under the Association Agreement, the Ministry of Infrastructure has prepared a new law on the operational safety of WV on the basis of this Draft Law No. 7317. The revision to a large extent focused on the rules on the roadworthiness of vehicles.

Apart from technical and legal corrections, such as the correct proper names of state bodies or internal harmonisation of the norms, this Draft Law:

- includes norms concerning the requirements for experts authorised to check the roadworthiness of vehicles and for their training;
- sets requirements for training centres from the initial training and retraining of experts;
- specifies the basic provisions to be included in the procedure for determining economic operators authorised to carry out roadworthiness tests to be approved by the CMU, as well as specifies other aspects of the authorisation of such operators (as regards the required documents to be submitted by the applicants, validity period of the decision on determining the operator, the grounds for cancelling the decision on determining the operator);
- sets basic provisions to be included in the procedure for carrying out roadworthiness tests to be approved by the CMU;
- changes the norms concerning liability for violations of the procedure for conducting roadworthiness tests – currently the responsibility rests upon experts in charge of such tests rather than on legal entities or individual entrepreneurs (as in the previous version).

At the same time, there were other ambiguous norms, for example:

- it is obligatory to carry out roadworthiness tests for vehicles leaving the customs territory of Ukraine (not provided for in Directive 2014/45/EC). However, the purpose of such tests is not clear if the vehicle's roadworthiness has been tested and at the time of leaving the customs territory of Ukraine the test results are still valid. Moreover, the terms for performing the tests (a day before departure, a week, etc.) are not specified;
- authorisation of economic operators to perform such activity involves several state bodies (Ministry of Internal Affairs, Ministry of Infrastructure). In particular, according to the proposed wording of Article 35 of the Law of Ukraine "On Road Traffic" economic operators authorised to carry out roadworthiness tests for vehicles shall be entered in the Register of the Ministry of Internal Affairs upon submission of the Ministry of Infrastructure. At the same time, the new Article 23-2 of the Law of Ukraine "On Road Transport" specifies that the Ministry of Infrastructure is the competent body determining economic operators and bodies authorised to conduct roadworthiness tests for vehicles. Is Ministry of Infrastructure unable to maintain such a register on its own? Notably, without registration in this register, the operator will not be able to carry out its activities;

- it provides for "inspections, examinations and surveys or other scientific and technical assessments" when granting authorisation to economic operators to carry out roadworthiness tests for vehicles (corruption risks);
- the Draft Law sets requirements for the absence of a conflict of interests in operators for carrying out roadworthiness tests for vehicles, which shall be established taking into account, inter alia, the fact whether this operator carries out activities related to maintenance and repair of vehicles. However, the similar European requirement is based on the premises that the operator cannot repair and service the same vehicle it tested for roadworthiness if any deficiencies were detected during such tests. In this regard, European legislation does not restrict operators in choosing the types of activities that they can engage in;
- the results of roadworthiness tests for vehicles will be recorded in the Unified State Register of Vehicles of the Ministry of Internal Affairs. However, reports on the results of roadside inspection of commercial vehicles will be registered in the database of UkrTransSafety and will be provided to drivers of vehicles. According to the relevant European legislation, the results of roadside checks of commercial vehicles and the results of periodic technical inspections should be consolidated in a single database;
- the definition of the term "vehicle roadworthiness certificate" includes the statement that it may contain an electronic medium (i.e. a microchip), while Directive 2014/45/EC does not mention any microchips but states that the certificate can be executed electronically (with the possibility of issuing a paper certificate), as well as that test results should be made available electronically so that the competent authority could create a relevant state database;
- another detail that is hard to understand is the decision to include requirements for the system of carrying out roadworthiness tests for vehicles in two Laws – "On Road Traffic" and "On Road Transport". That is, the requirements are artificially, arbitrarily divided, which can complicate their application and enforcement.

In addition, the Draft Law contains a number of uncertainties or vice versa – the same thing is designated by different words, which certainly will not contribute to the unambiguous interpretation of the provisions of the Law.

Therefore, the national legislation on roadworthiness tests for vehicles has not yet been approximated to Directives 2009/40/EC (as stipulated by the Association Agreement) and 2014/45/EC (to which national legislation is being approximated in fact).

Directive 2008/68/EC on the inland transport of dangerous goods

What are the benefits of the relevant EU standards?

Directive 2008/68/EC sets requirements for transport of dangerous goods by road, rail and inland waterways in accordance with international agreements in this field (in respect of road transport – the European Agreement concerning the International Carriage of Dangerous Goods by Road (hereinafter referred to as ADR)) in order to increase the level the safety of the transport of such goods, harmonise the conditions applicable to the transport of dangerous goods within the Community, and ensure the proper functioning of the common transport market.

As of November 1, 2017, the provisions of Directive 2008/68/EC were to be

introduced for all international and national road transport of dangerous goods.

What has been done to fulfil the commitments?

Of all the "European integration" bills in the area of road transport, the draft Law of Ukraine "On Amendments to Certain Laws of Ukraine as regards Aligning Them with the EU Legislation in the Field of Transport of Dangerous Goods" is the closest to adoption (reg. with the VRU on December 8, 2017, under No. 7387), submitted on behalf of a group of MPs, but its actual drafter is the Ministry of Infrastructure. This Draft Law proposes amendments to the Laws of Ukraine "On the Transport of Dangerous Goods", "On Transport" and "On Road Transport", taking into account the provisions of Directive 2008/68/EC.

In May 2018, the Draft Law was considered at a meeting of the VRU Committee on Transport. In view of some critical remarks and suggestions from ministries and major market players (carriers, specialised associations and public organisations) and in order to avoid delays in the process of adoption of the Draft Law, it was decided to amend it, which was documented in a protocol resolution of the Committee. This resolution made up the basis for draft resolution No. 7387 / П of the VRU, dated May 24, 2018, whereby the draft law is supposed to be adopted as the basis taking into account the proposals and amendments of the VRU Committee on Transport concerning:

- clarification of the following terms in paragraph 2, Section I of the Draft Law: "dangerous substances", "dangerous goods transport entity", "transport of dangerous goods", "authorised person (consultant/ adviser) on safety of transport of dangerous goods" (Article 1);
- clarification in paragraph 2, Section I of the Draft Law of the obligations of the sender, carrier, recipient and other participants (Articles 7, 8, 9 and 9-1);
- specification in paragraph 2, Section I of the Draft Law of the powers of the authorised person (consultant / adviser) on safety of transport of dangerous goods (Articles 9-2);
- supplementing paragraph 2, Section I of the Draft Law as regards the powers of central executive bodies concerning the transport of dangerous goods (Article 16).

Draft Law No. 7387, which can be described as harmonised with the provisions of Directive 2008/68/EC, has already been included on the agenda of VRU meetings for five times (in June, July, September and twice in October 2018) but has never been considered.

Notably, at the beginning of 2018 the Ministry of Internal Affairs presented its Draft Law "On Amendments to Certain Laws of Ukraine (with regard to the implementation of legislation and definition of the list of administrative services provided by the territorial bodies of the Ministry of Internal Affairs of Ukraine)" that included rules concerning matters related to road transport of dangerous goods, which to a certain extent (mainly in terms of ministries' powers in this area) contradicted the provisions of Draft Law No. 7387. However, after finding a middle ground concerning Draft Law No. 7387 at the May meeting of the VRU Committee on Transport Parliament, it can be expected that divergences of different stakeholders have been eliminated.

In addition, in January 2018, the MIA elaborated and made public its draft order "On Approval of Certain Regulatory Acts as regards Transport of Dangerous Goods by Road" (hereinafter referred to as the ADR), which proposes to draft a new version of the Rules of Road Transport of Dangerous Goods and to regularise the

procedure of issuance and registration of certificates of approval for vehicles carrying certain dangerous goods and approval of the route of the vehicle when transporting dangerous goods by road. This draft legal act can hardly be described as appropriate, so it has not been adopted.

The new version of the Rules makes the most of the norms referring to the relevant provisions of the ADR, which, on the one hand, should make its text less complicated and bring it closer to the international requirements, but, on the other hand, this prevents these Rules from becoming a practical tool for their users (first of all, carriers), as the national rules should regulate all aspects of the transport of dangerous goods that cannot be regulated by the ADR or display certain national characteristics (deviations). In addition, the draft Rules do not contain provisions regulating the organisational and technological matters of the road transport of dangerous goods (in terms of acceptance of dangerous goods for carriage, testing, packaging, labelling, documentation requirements, loading and unloading of dangerous goods, etc.).

The draft Rules should clearly outline the scope of their application, taking into account the provisions of the ADR and the legislation of Ukraine (including: whether their scope extends to the military transport of dangerous goods, transport of radioactive substances, etc.). Moreover, the definition of the powers of CEBs in this area proposed in the draft Rules seems contrary to legislation, as this area is essentially regulated by the rules of laws, specifically the Law of Ukraine "On the Transport of Dangerous Goods".

In its turn, the Ministry of Infrastructure developed and made public a draft CMU resolution, which is supposed to be approved. As stated in paragraph 1 of this Regulation, it defines the tasks, functions and procedure for the activity of authorised persons (consultants/advisers) on the safety of transport of dangerous goods, as well as the procedure for training of authorised persons (consultants/advisers), examinations for obtaining and extending the certificate of training of the authorised person (consultant/adviser) on the safety of transport of dangerous goods. However, the Regulation does not specify the relevant procedure or the government body responsible for designating / authorising special training centres, approving the specified designation / authorisation procedure, nor does it specify the procedure whereby the competent authority determines the bodies authorised to carry out knowledge assessment. In addition, it would be expedient to set precise and clear details of the procedure for conducting the examinations in the Regulation (the ADR contains only general rules concerning this issue) with a view to its unambiguous interpretation, implementation and control.

The legal grounds for approving the Regulation by a separate act of the Government seem rather dubious too, since in accordance with Article 11 of the Law of Ukraine "On the Transport of Dangerous Goods", the competence of the CMU in the area of transport of dangerous goods extends to the establishment of a special training procedure for workers of entities engaged in transport of dangerous goods, and this procedure is established by CMU Resolution No. 1285 of October 31, 2007. At the same time, today the matters associated with the procedure of inspection, registration of special education centres, requirements for their educational and methodological base, facilities and teachers, procedure of training of drivers of vehicles carrying dangerous goods and authorised persons (consultants/advisers) on the safety of transport of dangerous goods by road, examination for knowledge of the conditions of transport of dangerous goods, and requirements of the current

legislation and regulatory legal acts in the field of transport of dangerous goods are regulated in accordance with MIA Order No. 130 of March 21, 2008.

As a whole, the legislation of Ukraine has already been partially approximated to the requirements of Directive 2008/68/EC and is implemented in practice in international road transport. However, it is necessary to ensure proper regulation and full compliance with the relevant requirements for the national transport of such goods, as well as effective control on the part of UkrTransSafety and patrol police.

Consequently, in general, the commitment has not been fulfilled.

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

What are the benefits of the relevant EU standards?

Regulation (EC) No. 1071/2009 establishes requirements to be complied with to pursue the occupation of road transport operator that are based on fair conditions of competition and are common to all EU Member States. It aims to ensure fair competition in the market, improve road safety and the quality of road services.

As of November 1, 2017, the provisions of Regulations (EC) No. 1071/2009 stipulated in Articles 3-6, 7 (with the exception of financial standing criteria), 8, 10-15 and Annex I should be implemented for all transport undertakings engaged in international transport.

What has been done to fulfil the commitments?

Without waiting for consideration of Draft Law No. 7386, which was mentioned in the previous report and which has not yet passed the stage of consideration in the VRU committees, the Ministry of Infrastructure developed and on October 4, 2018, put up for public consultation the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine with regard to Regulation of the Market of Road Transport Services in Ukraine in order to Align Them with the EU Acquis". This Draft Law is somewhat different from its predecessor (Draft Law No. 7386) in that it entirely focuses on the approximation of national legislation to the provisions of Regulation (EC) No. 1071/2009, whereas Draft Law No. 7386 additionally contains a number of norms related to the approximation of provisions on the public services of transport of passengers by road specified in by Regulation (EC) No 1370/2007, which makes Draft Law No. 7386 more vulnerable given the urgency of the issue of regulating such services.

The new Draft Law, which was made public on October 4, 2018, introduces major amendments to the Law of Ukraine "On Road Transport" implementing the provisions of Regulation No. 1071/2009 concerning the conditions to be complied with to pursue the occupation of road transport operator (compliance with the principles of good repute, professional competence and adequate financial standing, as well as having premises on the territory of Ukraine in which it keeps its core business documents relating to the organisation and conditions of operation) and creation of a public register of road transport operators.

In comparison with Draft Law No. 7386 the new Draft Law:

- amends the Code of Ukraine on Administrative Offences, the Law of Ukraine "On the List of Authorisation Documents in the Field of Economic Activity" (with regard to defining a new authorisation document – i.e. a decision on

designating a centre for issuing certificates of professional competence of transport managers);

- eliminates most definitions of terms and only lists two of them in the new version (these are the terms "certificate of professional competence of the transport manager" and "transport manager", although the latter term is in fact defined in the text of the new article 34-1 of the Law of Ukraine "On Road Transport");
- shifts a significant number of requirements to the level of the Licencing Terms for Conducting Operations of Transport of Passengers and / or Goods by Road approved by the CMU (this applies to the requirements for the office and the list of documents regarding the organisation and conditions for carrying out operations of transport of passengers and (or) good, a list of documents to be submitted for confirmation or restoration of good repute and professional competence, and the order of restoration of these conditions, confirmation by the road transport operator of its financial standing);
- determines the information to be included in the state register of road transport operators, the procedure of keeping, use and provision of information from the state register of road transport operators not at the level of the Law but at the level of an order of the Ministry of Infrastructure.

The last two elements extend the range of possibilities for prompt correction of norms and for taking into account all the specificities of the transport of passengers and / or goods compared to situation when these norms would be included in the Law. However, at the same time, it is important to remember that according to Article 19 of the Constitution of Ukraine government bodies and their officials are obliged to act only on the basis, within the limits of authority and in the manner provided for by the Constitution and laws of Ukraine. That is, the basic rules should be enshrined in the Law.

Another important difference between the Draft Laws is the rules regarding the confirmation of professional competence. Thus, the new Draft Law, published on October 4, 2018, specifies that the same entities are tasked with the preparation for examinations and holding of examinations – i.e. centres for issuing a certificate of professional competence of transport managers; whereas according to Draft Law No. 7386 these functions are separated – the training (special training) of transport managers is carried out by training centres, while examinations are held by examination establishments. The latter variant ensures the independence of these entities from each other and hence a greater objectivity with regard to the assessment of the knowledge of applicants for a certificate of professional competence of the transport manager, because if the same entity will both train and conduct the examination, the assessment may turn into a formality, as negative exam results will attest to a poor quality of the training conducted by the same entity, which is unlikely to serve its interests. Therefore, the EU Member States either authorise training centres and examination bodies as separate elements of the system for confirmation of professional competence or they authorise only examination bodies while applicants can train independently (in this case the responsible authority publishes a list of topics, questions and current legislation in this area) or go to any training centre that conducts such training.

It is worth noting that the Ukrainian legislative area (within the system of issuing permits of the European Conference of Ministers of Transport (hereinafter – the ECMT)) to some extent already includes the requirements regarding the need for a transport manager of a road transport operator engaged in international transport of goods to have a certificate of professional competence. This is envisaged

in the 2017 amendments to the Procedure for Conducting Competitions and Issuance of Permits of the European Conference of Ministers of Transport. Besides, it included the definition of the term "certificate of professional competence (CPC)" – a document of the established standard certifying the qualification of transport managers whose activities are related to the provision of road transport services; its form is provided in Annex 11 to the Procedure for Advanced Training of Managers and Professionals whose Activities are Related to the Provision of Road Transport Services, approved by Order No. 551 of the Ministry of Infrastructure of July 26, 2013. Essentially, it concerns only the CPC form and its availability as one of the conditions for obtaining an ECMT permit. However, the said procedure based on the requirements of Regulation (EC) No. 1071/2009 and containing the procedure for obtaining the CPC, has not yet been implemented.

In addition, the said Regulation (EC) No. 1071/2009 is one of the three EU acquis adopted in a package and comprehensively regulating issues of admission to the occupation of road transport operator and licencing of road transport operators. The other acquis in this package are Regulation (EC) No. 1072/2009 and Regulation (EC) No. 1073/2009 that have to be implemented to complete the approximation of Ukrainian legislation to the EU legislation in this area. In particular, according to these Regulations, the validity period of the licence for transport of passengers and goods is limited (10 years), while according to the Draft Law the licence is issued for an unlimited period (as specified by the Law of Ukraine "On Licencing of Types of Economic Activities").

Attention should be given to the fact that at the same time the UkrTransSafety continues to work on aligning the national legislation on road transport licencing with European standards. Thus, the draft resolution of the CMU (reviewed after July 2017) "On Amendments to the Licencing Conditions for the Carrying-out of Economic Activities Involving Transport of Passengers, Dangerous Goods and Hazardous Wastes by Road Transport, International Transport of Passengers and Goods by Road and Repealing of Some Resolution of the Cabinet of Ministers of Ukraine" was re-published in April 2018 on the website of UkrTransSafety. On May 8, the SRSU held an expanded meeting where this draft law was considered; and on May 11, its public discussion took place. In this regard, corrections were made to the draft resolution of the CMU, and on October 2, the UkrTransSafety submitted it to the Ministry of Infrastructure for endorsement (since the latest version of the draft act is not available for the public, it is difficult to assess it).

As regards keeping the national electronic register of road transport operators, guided by the Law of Ukraine "On Licencing of Types Economic Activities" and the effective Licencing Terms approved by CMU Decree No. 1001, of December 2, 2015, the UkrTransSafety is responsible for keeping the Unified Information System (UIS) where information regarding licensees (transport operators) and their vehicles is recorded. At the same time, a Memorandum on Cooperation between the Ministry of Infrastructure, the State Agency for E-Governance of Ukraine and the Eurasia Foundation (Transparency and Accountability in Public Administration and Services (TAPAS)) was signed, as well as an agreement between the UkrTransSafety, the developer and the International Charitable Organisation Eastern Europe Foundation on the development of the Electronic Account of the Transport Operator system and its integration with the UIS system. From August 30, 2018, until the end of October the Electronic Account of the Transport Operator is operating in Ukraine in the test mode, whereupon it will be signed off to the UkrTransSafety.

Notwithstanding the above, national legislation has not yet been approximated to the provisions of Regulation (EC) No. 1071/2009.

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

What are the benefits of the relevant EU standards?

Directive 2002/15/EC establishes minimum requirements for the organisation of the working time of persons performing mobile road transport activities (i.e. drivers and vehicle crew members), specifies the periods devoted to road transport activities (working hours, breaks, rest periods, periods of availability) and other concepts (night work, night time, week) in order to improve the health and safety of such workers, improve road safety and ensure equal conditions for competition.

As of November 1, 2017, the provisions of Directive 2002/15/EC were to be introduced for international transport.

What has been done to fulfil the commitments?

Ukraine is a party to the European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) of March 31, 1971, and Convention No. 153 of the International Labor Organization Convention concerning Hours of Work and Rest Periods in Road Transport of June 27, 1979, which regulate the requirements for the organisation of the working time of drivers of road vehicles.

National legislation (in particular, Articles 20 and 60 of the Law of Ukraine "On Road Transport") establishes certain norms concerning the compliance in the territory of Ukraine with the requirements for installation and use of control devices (tachographs) on vehicles engaged in international transport to register hours of work and rest periods of drivers in accordance with the legislation of the countries where the transport is carried out, to monitor compliance with these requirements and ensure responsibility for their violation. Order No. 340 of the Ministry of Transport and Communications of June 7, 2010, approved the Regulation on Hours of Work and Rest Periods for Drivers of Wheeled Vehicles, and Order No. 385 of October 24, 2010, approved the Instruction on the Use of Control Devices (Tachographs) on Road Vehicles.

However, all these regulations and acts do not fully cover the EU legislation in this area, including Directive 2002/15/EC, and, therefore, need to be amended. In order to ensure alignment of national regulations with European standards and compliance by all transport operators (both Ukrainian and foreign ones), some of the provisions of this Directive were included in Draft Law No. 7317, as mentioned in the previous report.

The new Draft Law on the safety of operation of WVs, unlike Draft Law No. 7317:

- contains no regulations concerning liability for driving a commercial vehicle with a fake tachograph driver card or for tampering with the protocol on tachograph check and adaptation to the vehicle;
- increased responsibility for the driver's failure to provide the inspector of the UkrTransSafety with documented data on compliance with the work and rest regime (digital tachograph printouts, tachocard and / or operation confirmation forms);
- eliminated the definitions of the terms "mobile worker" and "night work" (at the same time, it preserved the definition of the term "night time" as the

period between 22:00 and 06:00 of one day, while according to Directive 2002/15/EC "night time" stands for a period of at least four hours, as defined by national law, between 00.00 hours and 07.00 hours;

- sets the requirement that road transport operators are obliged to organise the work of drivers of vehicles, crews of vehicles, regimes of their work and rest accordingly to the requirements of international agreements rather than in accordance with the legislation of Ukraine (as indicated in the current wording of Article 18 of the Law of Ukraine "On Road Transport"). These international agreements include the ILO Convention No. 153 (1979) concerning Hours of Work and Rest Periods in Road Transport and European Agreement concerning the Work of Crews of Vehicles engaged in International Road Transport (AETR) (although these agreements are also part of national legislation, which raises doubts concerning the fate and status of other legislative acts of Ukraine on these matters, such as the Regulation on Work Hours and Rest Periods for Drivers of Wheeled Vehicles, Instruction on the Use of Control Devices (Tachographs) in Road Transport, etc.);
- removed Article 18-1 (on the organisation of the work hours of vehicle crews), which was to supplement the Law of Ukraine "On Road Transport" (it contains the main Article 18 on the organisation of the work hours and control over the work of vehicle drivers), and introduced corrections to Article 20 as regards equipment of vehicles with tachographs.

According to new Section VI "Transitional Provisions" of the Law of Ukraine "On Road Transport", from July 1, 2019 commercial vehicles engaged in the international transport of passengers and goods must be equipped with digital tachographs, while those engaged in national should be equipped with tachographs from March 1, 2019 (analogue or digital devices for vehicles registered before June 16, 2010 and digital ones for vehicles registered after June 16, 2010).

It is worth mentioning that due to a number of high-profile accidents with grave consequences involving buses, the Ministry of Infrastructure initiated amendments to the Rules for Provision of the Services of Road Transport of Passengers, approved by CMU Resolution No. 176, of February 18, 1997, which prohibits the use of buses that are not equipped with tachographs from January 1, 2019 (except vehicles used for regular transport of passengers on routes not exceeding 50 km with a maximum permissible speed of 40 km per hour).

Therefore, the necessary amendments to national legislation implementing the provisions of the Directive have not been made yet.

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

What are the benefits of the relevant EU standards?

Directive 2003/59/EC sets out the procedure and aspects related to obtaining initial qualification and periodic training of drivers of vehicles providing commercial services for the carriage of passengers or goods (categories C, CE, C1, C1E, D, DE, D1, and D1E) in order to improve the standards of training for new drivers, preserve and improve the level of professionalism of already operating drivers of lorries and buses, which is an important element of road safety.

As of November 1, 2017, the provisions of Directive 2003/59/EC were to be introduced for drivers engaged in international traffic.

What has been done to fulfil the commitments?

Some provisions of Directive 2003/59/EC were incorporated in Draft Law No. 7317 with a view to improving the professional level of drivers of buses, lorries and their rolling stock (trailers / semitrailers) and ensure their admission to the carriage of passengers and goods in accordance with European standards. Given the shortcomings of this Draft Law and the critical remarks and proposals expressed, including those from European experts, the requirements for establishment of a system for confirmation of drivers' professional competence in the new Draft Law on the safety of use of WVs have undergone some changes, including positive ones. Namely:

- just like the Directive, it provides for both periodic training of drivers of commercial road vehicles and their initial qualification, as well as specifies the list of exceptions for drivers of certain vehicles that do not have to undergo such training;
- sets the validity period (5 years) of the certificate of professional competence of the driver (hereinafter referred to as the CPC) issued based on the results of the appropriate training;
- changed some terms – instead of "centres for advanced training of drivers" it uses "centres for initial and periodic training of drivers"
- envisages gradual introduction of this training of drivers (drivers of commercial vehicles must have a certificate of professional competence: for international transport of passengers and goods – from January 1, 2020, for national transport – from January 1, 2022);
- specifies that drivers who, as of January 1, 2019, are engaged in transport of passengers by bus or goods by lorry with a maximum permissible weight of more than 3.5 tons and have a driving licence of the corresponding category, shall be considered to have received initial training and will receive the CPC for the term of validity of their driving licence of the relevant category, but not more than for five years, without passing exams.
- At the same time, the Draft Law on the safety of operation of WVs (just like Draft Law No. 7317) contains no rules concerning:
- compliance with the European regulations concerning the minimum age requirements for obtaining a driving licence of the relevant category for commercial transport of passengers and goods, as the current requirements do not comply with the provisions of Directive 2003/59/EC;
- requirements for the organisation of the system of confirmation of the professional competence of drivers of commercial vehicles, in particular, there should be clear answers to questions such as – which legislative act determines the procedure of initial and periodic training and which government authority should approve it (perhaps the legislators have in mind the Procedure for Training, Retraining, Certification and Improvement of Qualification of Drivers of Vehicles approved by the CMU – at the moment it is uncertain), based on which procedure and who will hold examinations and issue the CPC after training (centres for initial and periodic training of drivers, or other organisations, public authorities), whether there should be a single register (database) of CPCs and who will be responsible for administering it;
- attaching the appropriate marking on the driving licence or special document, confirming that the driver has a CPC. Thus, according to Directive 2003/59/EC, it is mandatory for the competent authority to mark a code (indicating the period of validity of the CPC) either on the driving licence, on the driver's qualification card (Annex II of Directive 2003/59/EC), or in the national driver certificate provided for by Regulation (EC) No. 1072/2009. These

documents, rather than the CPC, are subject to verification by supervisory authorities. The same is required by the Quality Charter for International Road Haulage Operations under the ECMT Multilateral Quota System of May 28, 2015, under which Ukraine also has commitments to fulfil;

- Initial and periodic training of drivers who are non-residents, have a driving licence issued in other countries and are employed by Ukrainian transport operators.

Given the above unresolved issues, it is expedient to revise the Draft Law "On the Safety of Operation of WVs" and to take into account all provisions of Directive 2003/59/EC. In addition, a number of subordinate acts should be developed (as provided for in the Action Plan for Implementation of the Association Agreement, approved by CMU Resolution No. 1106 of October 25, 2017). The drafting of these subordinate acts entirely depends on the adoption of the above-mentioned amendments to laws.

Therefore, the legislation of Ukraine is not yet been aligned with the provisions of Directive 2003/59/EC.

Council Directive 91/439/EEC on driving licences

What are the benefits of the relevant EU standards?

Directive 91/439/EEC introduces requirements for a model driving licence in the EU, sets the conditions and requirements for issue and renewal of driving licences, procedures for the training and testing of knowledge and skills connected to driving, and undergoing medical check-ups. The aim is to establish common rules for driving licences for EU Member States, to provide for their mutual recognition, to ensure free movement for drivers, to improve road traffic safety, and to reduce the likelihood of fraud in connection to the driving licence.

As of November 1, 2017, the provisions of Directive 91/439/EEC concerning the introduction of driving licence categories (Article 3), conditions for issuing driving licences (Articles 4, 5, 6 and 7), and requirements for tests for obtaining a driving licence (Annexes II and III).

What has been done to fulfil the commitments?

Taking into account the fact that Directive 91/439/EEC was repealed, the updated Action Plan for Implementation of the Association Agreement approved by CMU Resolution No. 1106, dated October 25, 2017, includes measures to develop a regulatory framework that should meet the requirements of the effective Directive 2006/126/EC on driving licences.

After a long period spent by the MIA on the development of the key amendments to the legislation of Ukraine on these matters, in January 2018, it presented the Draft Law of Ukraine "On Amendments to Certain Laws of Ukraine (as regards the implementation of legislation and establishment of the list of administrative services provided by the territorial bodies of the Ministry of Internal Affairs of Ukraine), which is supposed to implement the provisions of Directive 2006/126/EC.

The Draft Law aims to harmonise national requirements with the relevant EU requirements, in particular regarding:

- categories of vehicles (it set the following categories of vehicles subject to special licencing: AM, A1, A2, A, B1, B, BE, C1, C1E, C, CE, D1, D1E, D, and DE based on the construction of vehicles, as required by Article 4 of

Directive 2006/126/EC, while taking into account the provisions of the 1968 Convention on Road Traffic in relation to definitions of vehicle categories);

- gradual access to the categories of two-wheeled vehicles and categories of vehicles used for the transport of passengers and goods (by setting the minimum and maximum age for admission of persons to driving certain categories of vehicles);
- the term of validity of the driving licence for different categories of vehicles (the right to drive two-wheeled motor vehicles and cars with / without trailers will be provided for a period of 15 years, and those for lorries without / with trailers / semitrailers and buses without / with trailers) will be provided for a period of 5 years with further possibility to extend the period of their administrative validity by confirming that the drivers meet the established medical requirements. At the same time, it stipulates that a driving licence issued before the entry into force of this Law shall be valid before the expiration of the term of its administrative validity and is not subject to obligatory replacement, except in cases stipulated by legislation. Thus, driving licences issued for a period of 30 or 50 years shall be valid until the expiration of their validity. The validity also applies for the driving licence issued for an indefinite period);
- maintenance of unified automated records, accumulation, processing and use of information about the issued and invalid driving licences (i.e. the Unified State Register of the MIA);
- Increasing the level of protection of the driving licence against counterfeiting (by introducing a microchip as its component).

Most amendments should be made to the Law of Ukraine "On Road Traffic".

A study on European driving licence experience conducted last year by the Ukrainian Centre for European Policy might have contributed to the correct understanding and implementation of EU legislation. Unfortunately, the proposed version of the Draft Law failed to fully comply with the provisions of Directive 2006/126/EC and the practice of its implementation in the EU Member States.

Thus, the amendments to Article 15 of the Law of Ukraine "On Road Traffic" do not include requirements for examiners, that is, the persons authorised to conduct a practical assessment of the applicant's (candidate seeking a driving licence) driving skills. However Annex IV of Directive 2006/126/EC provides for setting requirements for the qualification (competence, assessment skills, driving skills, technical and physical characteristics of the vehicle), education and initial training involving passing of relevant examinations, personal driving experience (the right to drive vehicles of the relevant categories), age and periodic training of examiners (enhancement of qualifications), as well as the requirements concerning the monitoring of the activities of these examiners on the part of the public competent authorities. This is an important component, without which it is impossible to introduce an efficient system of assessment of candidates seeking a driving licence.

Moreover, the amendments to Article 15 of the Law of Ukraine "On Road Traffic" do not take into account the provisions of Directive 2003/59/EC as regards the initial qualification (training) and the periodic training of drivers of commercial vehicles and the minimum age requirements when a person may be granted the right to drive vehicles of a certain category to provide commercial services related to the transport of passengers or goods. It is clear that the basic relevant requirements should be set in the relevant Law of Ukraine "On Road Transport", however the Law of Ukraine "On Road Traffic" should take into account the requirements for admission of

professional drivers to driving, the need for appropriate training, including periodic one (once every five years), for the transport of passengers and goods, in accordance with Directive 2003/59/EC.

Specifically, Article 4 of Directive 2006/126/EC relating to vehicle categories C1, C1E, C, CE, D1, D1E, D, DE and age restrictions includes a reservation: "without prejudice to the provisions for the driving of such vehicles in Directive 2003/59/EC". In accordance with the proposed changes, the right to drive vehicles (in particular, those of C and CE categories) may be granted to persons over the age of 21 years, whereas in accordance with Directive 2003/59/EC persons over the age of 18 may be admitted to driving C and CE vehicles if they have initial qualifications, and 21-year-olds may be granted this right after accelerated initial qualification. The same is true of the age of persons who may be granted the right to drive D1, D1E, D, and DE vehicles for the provision of passenger transport services.

Another controversial issue is the anti-fraud protection of the driving licence. Paragraph 1 of the Transitional Provisions of the Draft Law specifies that: "driving licences issued after the entry into force of this Law shall contain a contactless digital medium".

Article 1 of Directive 2006/126/EC provides for the possibility (without prejudice to data protection rules) for Member States to introduce a storage medium (microchip) as part of the driving licence, but does not oblige them to introduce it. In addition, these standards are new, that is, they were not envisaged by Directive 91/439/EEC of 29 July 1991 on driving licences (included in Appendix XXXII of the Association Agreement). The Association Agreement does not stipulate Ukraine's commitments to implement the provisions of Article 1 of Directive 91/439/EEC. In addition, in accordance with Article 7 (2) (d) of Directive 2006/126/EC, "The presence of a microchip pursuant to Article 1 shall not be a prerequisite for the validity of a driving licence."

In addition to that, in accordance with paragraph 7 of Annex 6 to the 1968 Convention on Road Traffic, to which Ukraine is a contracting party, Domestic legislation may also allocate a space on the permit for the inclusion of electronically stored information. That is, the electronic medium (microchip) in the driving licence is also optional under this document.

According to the explanatory note, the authors of the Draft Law believe that they can fully implement the requirements of Directive 2006/126/EC only if the microchip (electronic medium) is introduced as part of the driving licence to increase the level of anti-fraud protection. At the same time, there is no statistics on frauds connected to national driving licences and to what extent this issue is relevant for Ukraine, and there is no mentioning of how the introduction of microchips will increase the cost of issuing new driving licences and their final price for citizens.

We believe that, rather than introducing a microchip, for fulfilling tasks in the field of traffic and its safety it would be more appropriate and sufficient to create, fill and keep a relevant database (register) with up-to-date information on registered and invalid driving licences that can be used by patrol police officers, including in detecting and registering offences on the roads of Ukraine, or by other authorised persons in accordance with the law.

In addition to the said bill, according to the Action Plan for Implementation of the Association Agreement, approved by CMU Resolution No. 1106, dated October 25, 2017, it is necessary:

for the Ministry of Internal Affairs to ensure that:

- appropriate amendments be introduced to CMU resolution No. 47, of January 31, 1992 "On Approval of the Models of National and International Driving Licences and Documents Required for the Registration of Vehicles";
- appropriate amendments be introduced to the Regulation on the Procedure for Issuing Driving Licences and Admission to the Driving of Vehicles, approved by CMU Resolution No. 340, dated May 8, 1993;
- draft order of the MIA be developed on the approval of technical descriptions of forms of national and international driving licences and vehicle registration documents;
- new procedure be developed for taking examinations to obtain the right to drive vehicles and for issuing driving licences (instead of the Instruction approved by MIA Order No. 515, of December 7, 2009);
- appropriate amendments be introduces to the Requirements for Institutions Conducting Training, Retraining and Advanced Training of Drivers of Vehicles, and qualification requirements for professionals who carry out such training, approved by joint Order No. 255 / 369/132/344 of the Ministry of Internal Affairs, Ministry of Education and Science, Ministry of Infrastructure, and Ministry of Social Policy, of April 5, 2016;

for the Ministry of Health to ensure that:

- appropriate amendments be introduced to the Regulation on Medical Examination of Candidates Seeking a Driving Licence and Drivers of Vehicles, approved by joint Order No. 65/80 of the Ministry of Health and the Ministry of Internal Affairs of January 31, 2013, with a view to introducing European requirements for physical and mental fitness for driving a vehicle.

Since introduction of legislative amendments is a matter of priority, the MIA did not even publish the results of its work on the above subordinate acts in the context of European integration commitments, and therefore limited itself to two draft acts (draft resolution of the CMU "On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine" and the draft order MIA "On Approval of Amendments to Order No. 515 of the Ministry of Internal Affairs of Ukraine dated December 7, 2009"), which were presented to the public in early 2018 and aimed at solving current unregulated problematic aspects of training, retraining and advanced training of drivers of vehicles, examinations for the right to drive vehicles and issue of driving licences.

The results of the MoH's work with regard to preparing amendments to the Regulation on Medical Examination of Candidates Seeking a Driving Licence and Drivers of Vehicles are unknown yet. And the Ministry of Health launched a public discussion of its Draft Order "On List of Medical Contraindications for Candidates Seeking a Driving Licence and Drivers of Vehicles Taking into Account their Relation to Non-Commercial or Commercial Vehicles" (published February 26, 2018), with the simultaneous abolition of the List of Diseases and Disorders that Prevent Persons from Driving Certain Vehicles, approved by MoH Order No. 299, of December 24, 1999.

The draft order contained a reference to Annex III of Directive 2006/126/EC and envisaged approving a list of medical contraindications for candidates seeking a driving licence and drivers of vehicles specifying certain medical contraindications for driver and candidates:

- non-commercial transport (categories A1, A, B1, B, BE);

- commercial vehicles (categories B, BE, C1, C1E, C, CE, D1, D1E, D, DE, T);
- tractors, including self-made, self-propelled agricultural, land reclamation and road construction machinery of categories A1, A2, B1, B2, B3, C, D1, D2, E1, E2, F1, F2, G1, G2, H.

However, due to the considerable criticism of this document on the part of both experts and ordinary drivers, including that regarding non-compliance with the requirements of EU acquis, on March 12 the MoH issued a statement announcing that it tasked the State Enterprise Ukrainian Medical Centre for Traffic Safety and Information Technologies of the Ministry of Health of Ukraine with drawing up a simplified list of medical contraindications in accordance with Annex III of Directive 2006/126/EC, which should cover only the diseases that may directly affect road safety. The re-updated list of medical contraindications has not been made public yet.

Apart from that, over the recent years the MoH has repeatedly mentioned its work on the introduction of a unified state database of medical examinations of drivers, which is not operational yet.

Therefore, the MIA and the MoH have not completed their work on the approximation of national legislation to the requirements of Directive 2006/126/EC.

Maritime transport

Analysis of the progress as regards the approximation of national legislation to the requirements of EU acquis made from November 1, 2017 to November 1, 2018:

Accompanying documents to this Directive include:

- Directive 2003/25/EC on specific stability requirements for ro-ro passenger ships;
- Council Directive 1999/35/EC on a system of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services.

Directive 2009/45/EC on safety rules and standards for passenger ships

What are the benefits of the relevant EU standards?

Directive 2009/45/EC aims to lay down a uniform level of specific stability requirements for new and existing ro-ro passenger ships used for domestic voyages and to establish procedures for international negotiations with a view to harmonisation of rules for passenger ships engaged in international voyages. Directive 2009/45/EC regulates the safety of passenger ships and vessels engaged in domestic voyages, covering aspects such as vessel design, stability, fire safety, survivability, communication and navigation, as well as inspection and certification procedures. It also applies to new passenger ships, existing passenger ships of 24 meters in length or more and high-speed passenger craft.

The implementation of Directive 2009/45/EC in Ukraine, as well as Directives 2003/25/EC and 1999/35/EC will complete the accession to and implementation of the International High-Speed Craft Code (HSC Code). Under the Association Agreement, Directives2003/25/EC and 1999/35/EC were to be implemented in

2017.

According to Directive 2003/25/EC ro-ro passenger ships must meet specific stability requirements. This Directive establishes unified stability requirements for ro-ro passenger ships designed to improve the stability of the ships of this type in case of damage and to ensure a high level of safety for passengers and crews. In addition, the Directive establishes the significant wave heights (hS) used to determine the height of water on the car deck when applying specific stability requirements. The figures of significant wave heights are those which are not exceeded by a probability of more than 10 % on a yearly basis.

Directive 1999/35/EC establishes common rules and mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services from or to the ports of the Member States of the Community and provides for the right of Member States to conduct, participate in or cooperate with any investigation of maritime casualties or incidents on these services. This Directive applies to all ro-ro ferries and high-speed passenger craft, regardless of the flag they fly, providing regular services to or from a port in the Member States both on international voyages and on domestic voyages in sea areas.

What has been done to fulfil the commitments?

CMU Resolution No. 747-p, dated September 11, 2017, approved the Strategy for Implementation of the Provisions of EU Directives and Regulations in the Field of International Maritime and Inland Water Transport (Roadmap). This act establishes a deadline for the drafting of regulatory legal acts on approximation of the legislation of Ukraine to EU legislation – i.e. 2017. Authorities responsible for drafting legislation as regards Ukraine's accession to the International Code of Safety for High-Speed Craft and to the International Code on Intact Stability, as well as for drafting and introduction of amendments to legislation on sanctions for breach of legislation adapted to the requirements of Directive 2009/45/EC include the Ministry of Infrastructure of Ukraine and the Ministry of Justice with the participation of the State Service of Ukraine for Transport Security, the Ministry of Social Policy, as well as the Shipping Register of Ukraine.

Under the Association Agreement, the deadline for the implementation of Directive 2009/45/EC (Directive 2003/25/EC, Council Directive 1999/35/EC) is set within four years from the date of entry into force of the Association Agreement (i.e. until November 1, 2018)) Thus, as of October 31, Order No. 386 of the Ministry of Infrastructure, dated August 7, 2018 was adopted, amending the Regulation on Navigational and Hydrographic Support of Sailing in the Inland Sea Waters, Territorial Sea, and Exclusive (Maritime) Economic Zone of Ukraine, approved by Order No. 514 of the Ministry of Transport and Communication of Ukraine, dated May 29, 2006 as regards setting the procedure for calculating wave heights on sea routes and their respective classification.

In addition, with a view to ensuring the safety of navigation, the Ministry of Infrastructure has developed a draft regulatory act to amend the Rules for the Control of Vessels approved by Order No. 545 of the Ministry of Transport of July 17, 2003, concerning the control of ro-ro and high-speed passenger ships. Also in 2018, the Ministry of Infrastructure developed a draft regulatory framework for the approval of rules relating to the safe design, stability and operation of passenger ships, ro-ro passenger ships and high-speed craft operating on a regular basis. These documents have not yet been adopted. On August 7, 2018, the order of the Ministry of Infrastructure "On Amendments to the Regulation on Navigational and

Hydrographic Support of Sailing in the Inland Sea Waters, Territorial Sea, and Exclusive (Maritime) Economic Zone of Ukraine" was adopted. This Regulation is fully in line with the provisions of Directive 2009/45/EC and establishes a list of exclusive (maritime) economic zones within the jurisdiction of Ukraine whereby limitations for a specific year period are set and sheltered ports (places of refuge) are designated within the restricted zone for passenger ships of different classes as provided for in Directive 2009/45/EC.

However, with regard to putting into practice, we must note that these measures are not sufficient for the implementation of Directives 2009/45/EC (2003/25/EC, and 1999/35/EC), since it is necessary to amend the Code of Administrative Offences Ukraine and the Criminal Code of Ukraine concerning the imposition of fines for breach of national regulations in accordance with the requirements of Directive 2009/45/EC and establishment of the Uniform Procedure for the issue of relevant certificates and the Equipment List in line with the provisions of Directive 2009/45/EC (for passenger vessels) or a high-speed craft safety certificate and a permit for operation (for high-speed craft). It is also necessary to draw up and adopt a form of such certificates, as well as to appoint the bodies that are authorised to issue them. Apart from that, no draft legislation has been submitted to the VRU for consideration as regards Ukraine's accession to the International High-Speed Craft Code (HSC Code) in accordance with the requirements of Directive 2009/45/EC.

COMPANY
LAW

COMPANY LAW

Expert

Hanna Dobrynska

Analysis of the progress as regards the approximation of national legislation to the requirements of EU acquis made from November 1, 2017 to November 1, 2018:

Under the commitments specified in Annex XXXIII to Chapter 13 of Title V of the Association Agreement, from November 1, 2017 to November 1, 2018, Ukraine had to approximate its national legislation in the field of company law, corporate governance, accounting and auditing to:

1. Directive 2004/25/EC on takeover bids.

Directive 2004/25/EC on takeover bids

What are the benefits of the relevant EU standards?

Directive 2004/25/EC (known as the Thirteenth Company Law Directive or the Takeover Directive) regulates matters associated with the process of takeover – that is, when a person (or several persons acting in concert) acquires or intends to acquire the number of securities that allows them acquire control of a company.

In particular, any natural or legal person may acquire control of a company by acquiring securities of the company which, which, added to any existing holdings of those securities of his/hers, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her influence on the decisions taken by the general meeting of the shareholders of the company. Hence, by decisions of the general meeting, this person can influence the business conduct of the company. For example, a person who had no securities of the company buys more than 50% of the company's securities – and thereby acquires control over it, or a person already owns 49% of company's securities and an additional acquisition of even 1.1% of company's securities will put him/her in control of the company.

Similarly, persons acting in concert may acquire control of a company (in fact, they will always vote unanimously at the general meeting since they are governed by some common interest) if they add together the securities each of them holds. For example, a subsidiary company of a legal entity holding 49% of the company's securities buys 2% of securities in this company. Although none of these companies owns a controlling interest, together these two shareholders, a parent company and a subsidiary company, hold 51% of the votes at the general meeting, which in practice will allow them to decide on many issues of the company's activities, such as the

dismissal or appointment of members of the supervisory board or executive director.

This may adversely affect minority shareholders – they are dependent on decisions of major shareholders, that is, the shareholders who can manage the company. Similarly, this state of affairs may be contrary to the interests of majority shareholders, especially those holding close to 100 % of securities, while a small percentage belongs to a very large number of minority shareholders. In Ukraine, a well-known example is the enterprises privatised in the 1990s by their staff that today may have one majority shareholder holding 95 % of securities and the remaining 5 % are distributed among several hundred shareholders, workers of the enterprise at the time of privatisation, members of their families, etc. Although these minority shareholders may not be interested in the activities of the company, the law requires that the company should protect their rights, which can result in significant operating costs, even for such basic things as holding of general meetings (notifying, sending documents to each shareholder, etc.).

Therefore, the purpose of Directive 2004/25/EC is to protect shareholders, especially minority shareholders, by requiring that the shareholder (shareholders) who has received control of the company should make a bid at the equitable price. That is, the acquiring person (the offeror) must offer other shareholders to buy their securities.

The Thirteenth Directive establishes minimum standards for takeover bids in the Member States of the EU. This means that Member States may impose more stringent additional conditions and rules than those provided for by the Directive. By the way, it is precisely because of this approach that Directive 2004/25/EC has attracted criticism: because of a compromise that does not create equal regulatory conditions for the purchase of securities in takeovers within the EU[1].

The thirteenth Directive regulates the following groups of matters:

- general principles of takeover bids;
- appointment and powers of the authorities competent to supervise takeover bids;
- mandatory and voluntary takeover bid (offer);
- content of the offer document;
- determining the minimum price and payment method for securities;
- limiting the possibilities of protection of the company in relation to the takeover bid;
- squeeze-out and sell out of securities;
- requirements for imposed sanctions.

The Thirteenth Directive establishes the following general principles to be followed by the Member States[2]:

- equal treatment of all holders of the securities of the same class;
- if a person acquires control of a company, the other holders of securities must receive an offer to acquire their securities. It bears mentioning that the Directive leaves it to the discretion of Member States to determine the shareholding that gives control over a company and methods to calculate it[3];

1) Christian Cascante, Jochen Tyrolt. European Directive: Takeover Guide.
2) See Article 3 of Directive 2004/25/EC.
3) In some EU Member States (Spain, UK, Germany) the threshold "enabling" the obligation to offer a bid is 30% of the company's shares. In Poland, this threshold is 66%. See Christian Cascante, Jochen Tyrolt. European Directive. Takeover Guide.

- the holders of the securities of an offeree company must have sufficient time and information to enable them to reach a properly informed decision on the bid;
- the board of the offeree company must give its views on the effects of the implementation of the bid on employment, conditions of employment and the locations of the company's places of business, etc.;
- the board of an offeree company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;
- false markets must not be created in the securities of the offeree company, of the offeror company or of any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;
- an offeror must announce a bid only after ensuring that he/she can fulfil in full any cash consideration, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration;
- an offeree company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

The offeror must make an offer to all the holders of that company's securities for all of their holdings at an equitable price (i.e., the offeror cannot offer the shareholders to buy, for example, 5 % of their shares – he/she must offer to buy all remaining shares). However, the Directive allows Member States to make exceptions to the obligation to make a mandatory bid if the legislation of that Member State provides a sufficient level of protection for minority shareholders. All EU Member States have taken advantage of this opportunity to a certain extent[4].

The Thirteenth Directive also regulates the issue of voluntary public offer to acquire securities, for example, when a person wants to gain control of the company and offers all shareholders to buy all their securities. That is, this person can potentially acquire all 100% of the company's securities if all the shareholders decide to accept the bid. If, as a result of such an offer, the person acquires control of the company (if only part of the shareholders decide to sell their shares but these are enough to reach the established threshold), he/she is not obliged to make a mandatory bid. At the same time, Directive 2004/25/EC leaves it to the discretion of the Member States to regulate a limited voluntary offer – that is, an offer aimed at acquiring less than 100% of the company's shares and not from all shareholders.

All shareholders should have equal access to information about the offer, in particular, the Thirteenth Directive specifies the minimum of information to be included in the document. Apart from the price, payment method, and the time allowed for acceptance of the bid, this information should also include data on the sources from which the offeror intends finance the purchase of securities from the shareholders, as well as intentions regarding the further activities of the company, including working conditions and places of business[5].

The time allowed for acceptance of the bid shall start from the date of publication of the offer document and may not be less than two weeks and more than 10 weeks from the date of publication.

The rules for determining the fair price offered in the mandatory bid[6] are one

4) See Christian Cascante, Jochen Tyrolt. European Directive: Takeover Guide.
5) Part 3, Article 5, Directive 2004/25/EC
6) For a voluntary offer to gain control over the company, there are no rules for determining the price.

of the key issues of the Directive. The basic principle is the equality of shareholders' price, which means that all shareholders should receive the same price for each share of the same class. Payment can be made both in cash and in liquid securities, or in a combination of both. It should be noted that in some cases, the offeror is required to provide an alternative to paying for shares in cash[7].

The fair price for the purchase of shares is the highest price:

- paid for the same securities by the offeror, or by persons acting in concert with him/her, over a certain period before the bid is made public. This period is to be determined by Member States in their legislation, but it cannot be less than six months and not more than 12 before the bid is made public;
- paid for the same securities by the offeror, or by persons acting in concert with him/her, after the bid has been made public and before the offer closes for acceptance, and the price is higher than the offer price. In this case, the offeror shall increase his/her offer.

EU Member States may allow the competent authority to adjust the price offered by the offeror. For example, in cases where the price was manipulated[8].

The board of the company should make a document setting out its opinion of the bid. This document should include its views on the effects of implementation on all the company's interests, and specifically on employment, as well as the impact of the offeror's strategic plans on the company, including employment and place of business.

This document, as well as the offer, must be brought to the attention of the representatives of the company employees (if any) or directly to the employees themselves[9]. If the board in due time receives a separate opinion on the impact of the offer on employment prepared by the employees, this a document must be attached to the opinion of the board.

The Directive also defines the mechanism of squeeze-out and sell-out. Squeeze-out differs from the mandatory bid in that the shareholders offered a mandatory bid are not obliged to accept it. They may decide not to sell their shares and become minority shareholders in the company. Instead, squeeze-out means that minority shareholders should sell their shares.

Squeeze-out, unlike the mandatory bid, is a right of a majority shareholder. Nevertheless, this right arises under certain terms set by the Directive, namely:

- where the offeror holds securities representing not less than 90 % of the capital carrying voting rights and 90 % of the voting rights in the offeree company. Member States may set a higher threshold that may not, however, be higher than 95 %.
- where, following acceptance of the bid (voluntary or mandatory), he/she has acquired or has firmly contracted to acquire securities representing not less than 90 % of the offeree company's capital carrying voting rights and 90 % of the voting rights comprised in the bid[10].

The price at which a majority shareholder buys shares must be fair. The fair squeeze-out price is: for a voluntary offer – the price at which the offeror acquired not less than 90% of the capital carrying voting rights comprised in the bid. For a mandatory bid, the price offered in such an offer is considered fair. The method of

7) Part 5, Article 5, Directive 2004/25/EC
8) Part 4, Article 5, Directive 2004/25/EC
9) Part 5, Article 9, Directive 2004/25/EC
10) Part 2, Article 15, Directive 2004/25/EC

payment must be the same as offered in the bid, or in cash[11]. At the same time, in the EU, there is a debate as to whether a fair price, determined in accordance with the rules of the Directive, can be challenged[12].

The right of squeeze-out corresponds to minority shareholders' right of sell-out. Minority shareholders may demand that the majority shareholder purchase their shares at a fair price if, after the bid is made, the majority shareholder is entitled to squeeze-out[13]. That is, if the majority shareholder is entitled to squeeze-out but does not use the right, minority shareholders may exercise their right to require sell-out of their shares. In this case, the majority shareholder must purchase them.

In any case, the right of squeeze-out and sell-out may be exercised by shareholders within three months of the end of the time allowed for acceptance of the bid referred.

EU Member States shall determine the sanctions for infringement of the national legislation adopted pursuant to the Directive. The sanctions thus provided for shall be effective, proportionate and dissuasive[14].

In 2012, the EC issued a report on the application of the Directive, which identified several issues related to its implementation. First, it is the establishment of different national definitions of the concept of "persons acting in concert", which results in uncertainty for some foreign investors as to when the mandatory bid is to be made. Secondly, EU Member States have taken the opportunity to provide for exceptions to the rule of mandatory bid in their national legislation. Hence, each Member State has different exceptions to the mandatory bid rule, which make protection of the rights of minority shareholders rather dubious. Thirdly, there appeared a practice of "low balling" when the offeror buys a shares approaching the threshold when it is necessary to make a mandatory bid without crossing it. After that, the offeror makes a voluntary bid at a low price, since the Directive does not establish rules for determining the price of a voluntary bid. Employees are also dissatisfied with their involvement during the takeover process. Thus, Directive 2004/25/EC gives EU Member States considerable flexibility in how to regulate matters related to takeover bids[15].

What has been done to fulfil the commitments?

Comprehensive implementation of Directive 2004/25/EC in Ukrainian legislation took place due to the adoption of Law of Ukraine No. 1983-8 dated March 23, 2017 "On Amendments to Certain Legislative Acts of Ukraine on Increasing the Level of Corporate Governance in Joint Stock Companies" (hereinafter referred to as the Law on Corporate Governance), in particular as regards amendments to section XI of the Law of Ukraine "On Joint Stock Companies".

Apparently, due to the adoption of the Law on Corporate Governance, the Government Action Plan for Implementation of the Association Agreement (hereinafter – the Action Plan), which was adopted later, specifies only one task aimed at the implementation of Directive 2004/25/EC[16], i.e. task 843, which involves introducing sanctions for violation of the legislation on takeover. Again, Directive 2004/25/EC does not establish sanctions itself, it only contains the requirement that such sanctions should be introduced and that they should be effective, proportionate

11) Part 5, Article 15, Directive 2004/25/EC
12) Feliksas Miliutis. Fair price in squeeze-out transactions.
13) Article 16, Directive 2004/25/EC
14) Article 17, Directive 2004/25/EC
15) Christian Cascante, Jochen Tyrolt. European Directive. Takeover Guide
16) It is interesting that the previous government Action Plan for Implementation of the Association Agreement for 2014-2017 did not include this Directive.

and dissuasive. The main body in charge of this task is the National Securities and Stock Market Commission (hereinafter referred to as the NSSMC), and the deadline is set at October 31, 2018. The task was to draw up a draft law, review it with EU experts and follow it up in the VRU.

The relevant draft law was submitted to the VRU and later adopted – i.e. the effective Law of Ukraine No. 2210-VIII "On Amendments to Certain Legislative Acts of Ukraine Concerning Facilitation of Business and Investment Attraction by Securities Issuers" of November 16, 2017[17], which implements the provisions of Directive 2004/25/EC along with a number of other EU acts in the field of company law.

In this context, it is important to mention that before the adoption of the Law on Corporate Governance Ukrainian legislation had included the concept of a voluntary bid, as well as the obligation of the acquirer of a controlling holding to offer other shareholders to buy their shares (that is, a mandatory bid). However, the prior regulation of a mandatory and voluntary bid did not comply with Directive 2004/25/EC and did not include squeeze-out / sell-out.

Instead, the Law of Ukraine "On Joint Stock Companies" in its current version establishes:

- for private joint stock companies, a mandatory bid in case of acquisition of a controlling holding (i.e., a holding of more than 50 % of the company's ordinary shares)[18];
- for public joint stock companies, a mandatory bid for in case of acquisition of a controlling holding and a significant holding (i.e., a holding of 75 % or more of the ordinary shares of the public joint-stock company)[19];
- the right of mandatory squeeze-out for holders of a dominant holding (a holding of 95 % or more of the ordinary shares of a public joint stock company)[20]. As for private joint stock companies, they may avoid the application of mandatory bid rules through, inter alia, amendments to their Charter. As the Thirteenth Directive applies to companies whose securities are admitted to trading on regulated markets, this possibility of refusal for private joint stock companies is not in conflict with it;
- the right of sell-out for minority shareholders[21].

Special attention should be paid to the transitional period provided for by the Corporate Governance Law, although not covered by the scope of Directive 2004/25/EC. Since the squeeze-out and sell-out rules apply to the acquisition of a dominant holding after the entry into force of the Corporate Governance Law (i.e., from June 4, 2017), the situation for joint-stock companies with an already existing shareholder owning a dominant holding and a large number of minority shareholders needed additional clarification.

Thus, shareholders who, at the time of the entry into force of the Corporate Governance Law, owned a dominant holding, have a chance to take advantage of their right of squeeze-out within 2 years from the date of entry into force of the said Law, that is, by June 4, 2019[22]. Instead, minority shareholders have a perpetual right to initiate a sell-out if the owner of the dominant holding buys company shares at any

17) According to the NSSMC Report on the Implementation of the Association Agreement for Q3 2018
18) Part 4, Article 65 of the Law of Ukraine "On Joint Stock Companies"
19) Part 4, Article 651 of the Law of Ukraine "On Joint Stock Companies"
20) Article 652 of the Law of Ukraine "On Joint Stock Companies"
21) Part 2, Article 655 of the Law of Ukraine "On Joint Stock Companies".
22) Para. 2, Section II Final and Transitional Provisions of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine as regards Increasing the Level of Corporate Governance in Joint-Stock Companies".

time from the date of entry into force of the Law.

As of March 2018, 45 joint stock companies initiated a sell-out procedure. The NSSMC received three complaints regarding the determination of the price, and in two cases litigation followed. Practice shows that in Ukraine there is a problem with determining the fair price for squeeze-out because of share price manipulation in the stock market or unfair valuation of assets of private joint stock companies.

It should be mentioned that EU Member States also face the problem of determining the fair price for squeeze-out, especially outside the scope of Directive 2004/25/EC. In such cases a fair price is determined by independent experts (Germany), by independent experts as approved by the competent authority (France, Belgium), or by the competent authority (the Netherlands). A fair price can also be established by the court based on claims filed by minority shareholders (Great Britain, Italy)[23].

23) Feliksas Miliutis. Fair price in squeeze-out transactions.

SOCIAL POLICY

SOCIAL POLICY

Expert

Zoriana Kozak

Anti-discrimination and gender equality

Analysis of the progress as regards the approximation of national legislation to the requirements of EU acquis made from November 1, 2017 to November 1, 2018:

During the period from November 2017 to November 2018, under Chapter 21 "Cooperation on employment, social policy and equal opportunities", Title V "Economic and Sector Cooperation" of the Association Agreement, Ukraine had to approximate its legislation in the field of social policy to the following EU acquis:

1. Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
2. Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.

Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

What are the benefits of the relevant EU standards?

Directive 2000/43/EC aims to create a system of measures to combat discrimination based on racial and ethnic origin and to ensure equal rights and opportunities on:

- employment, vocational training, working conditions;
- membership in organisations of workers and employers;
- social protection, including healthcare and social security;
- education, access to goods and services, including housing.

The Directive sets a number of measures to be implemented by the State, including:

- ban on direct / indirect discrimination, persecution, incitement to discrimination;
- availability of administrative or legal protection of violated rights for persons subject to discrimination;
- imposing the burden of proof that no violation of rights took place on the person suspected of discrimination;
- dissemination of information on discrimination issues;

- conducting social dialogue and dialogue with non-governmental organisations on issues of countering discrimination;
- availability (creation, appointment) of a special body responsible for combating discrimination;
- establishment of effective, proportionate and dissuasive sanctions for violation of national legislation on discrimination.

What has been done to fulfil the commitments?

The basic requirements of Directive 2000/43/EC are taken into account by the Law of Ukraine "On the Principles of Prevention and Combating of Discrimination in Ukraine" (No. 5207-VI of September 6, 2012) as regards defining the concepts of discrimination in general, direct and indirect discrimination, positive action, the range of social relations covered by the Law, and the mechanism for the prevention and combating of discrimination.

On November 12, 2015, the Law of Ukraine "On Amendments to the Labour Code of Ukraine as regards Harmonisation of Legislation in the Area of Preventing and Counteracting to Discrimination with the legislation of the European Union" (No. 785-VIII) was adopted. Thereby Article 2-1 of the Labour Code was re-formulated and clarified, expanding the range of grounds on the basis of which discrimination is prohibited. Specifically, discrimination is prohibited on the basis of: "race, colour, political, religious or other beliefs, sex, gender identity, sexual orientation, ethnic, social and foreign origin, age, health status, disability, suspicion or presence of HIV / AIDS, family and property status, family responsibilities, place of residence, membership in a trade union or other public association, participation in a strike, filing or intending to file an appeal to court or other bodies for the protection of their rights or supporting other workers in defence of their rights, language or other characteristics not related to the nature of work or conditions of its performance."

It bears mentioning that a similar provision is enshrined in Draft Law No. 1658 "Draft Labour Code of Ukraine", developed by MPs, registered with the VRU on December 27, 2014, adopted by the VRU on November 5, 2015 in the first reading and currently pending a second reading (hereinafter – the Draft Labour Code).

According to the procedural law of Ukraine, in cases of discrimination, the burden of proof rests with the plaintiff as regards factual evidence that discrimination has taken place, while the respondent has to prove that no discrimination has taken place (Article 81.2 of the Civil Code of Ukraine).

In addition, similar provisions are contained in the Draft Labour Code of Ukraine (part 3 of Article 3).

On January 20, 2017, the VRU registered the draft Law of Ukraine "On Amendments to Article 2-1 of the Labour Code of Ukraine as regards Confirmation of the Presence of Certain Attributes under Non-Contentious Jurisdiction" (No. 5690), under which, in the absence of documentary evidence of attributes based on which discrimination is prohibited, confirmation of the presence of these attributes shall be carried out under non-contentious jurisdiction in accordance with Articles 256-259 of the Civil Procedure Code of Ukraine.

However, this proposal does not comply with the requirements for access to legal protection of Directive 2000/43/EC, which provides for the presence of parties to the disputed legal relationship. Draft Law No. 5630 is pending consideration.

The Law of Ukraine "On the Principles of Prevention and Combating of Discrimination in Ukraine" (No. 5207-VI of September 6, 2012) introduced amendments to Part 1, Article 5 of the Law of Ukraine "On Court Fees" (No. 3674-VI of July 8, 2011), according to which plaintiffs in disputes related to discrimination

were exempted from court fees during trials at all courts.

However, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine regarding the Payment of Court Fees" (No. 484-VIII dated May 22, 2015) provide a new wording of Article 5 "Exemption as regards Paying Court Fees" of the Law of Ukraine "On Court Fee" (July 8, 2011), which does not provide for exemptions from court fees for cases involving discrimination.

The issue of preventing and combating discrimination, including on grounds of racial or ethnic origin, are reflected in a number of policy documents:

- National Strategy for Human Rights, approved by Presidential Decree No. 501/2015 dated August 25, 2015. Among other things, the Strategy identifies areas for preventing and combating discrimination, ensuring the rights of indigenous peoples and national minorities;
- Action Plan for implementing the National Strategy for Human Rights for the period up to 2020, approved by CMU Decree No. 1393-p dated November 23, 2015. The document provides for:
  - measures aimed at ensuring effective investigation of crimes committed on the grounds of racial, national, religious and other intolerance and bringing perpetrators to justice,
  - establishment of an effective mechanism for ensuring and protection of the rights of indigenous peoples and national minorities, provision of social and other services; ensuring protection and integration into Ukrainian society of the Roma national minority;
- National Action Plan for the Fulfilling of the Recommendations Contained in the Concluding Observations of the UN Committee on the Elimination of Discrimination against Women in the eighth periodic report of Ukraine on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women until 2021, approved by CMU Order No. 634-p, dated September 5, 2018. This Plan includes measures aimed to improve the mechanism for protection of the rights of women and girls from vulnerable groups, including those representing national minorities;
- Action Plan of the Ministry of Education to implement the Strategy for Protection and Integration in the Ukrainian Society of the Roma National Minority for the period up to 2020, approved by Order No. 1327 of the Ministry of Education of December 21, 2015. The Plan includes measures as regards the access of Roma children to education.

On November 20, 2015, the VRU registered the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine (as regards harmonisation of legislation in the area of prevention of and counteraction to discrimination with the legislation of the European Union)" (No. 3501 dated November 20, 2015). The Draft Law proposes amendments as regards prevention and combating of discrimination in general, introduction of the notions of "discrimination by association" and "multiple discrimination", defines the concept of "victimisation" and establishes its prohibition, supplements the list of cases that are not considered to be discrimination, and provides for changes in the administrative and criminal liability for discrimination. The Draft Law provides for introduction of administrative liability for violating the legislation in the field of prevention and counteraction to discrimination (Article 188-48 of the Code of Administrative Offences) and introduces amendments to Article 161 of the Criminal Code of Ukraine for incitement to national, racial or religious intolerance. Also, the Draft Law extends the powers of the Human Rights Ombudsperson empowering him/her to issue binging requests (orders) to eliminate violations of

legislation in the field of prevention of and counteraction to discrimination, to draw up protocols on bringing to administrative responsibility and to take legal action.

Draft Law No. 3501 of February 16, 2016 was adopted in the first reading. The said Draft Law was included in the agenda of the ninth session of the VRU of the eighth convocation (2543-VIII dated September 18, 2018) for the second reading but failed to be considered.

On December 8, 2016, a draft law "On Amendments to Certain Legislative Acts of Ukraine (concerning labour rights)" was registered (No. 5511), which provides for changes in labour legislation in matters of preventing and combating discrimination in general, regardless of the grounds for discrimination. This Draft Law prohibits discrimination in the conclusion, modification and termination of an employment contract and in job advertisements, stipulates cases that are objective and not considered as discrimination, establishes the right to take legal action to restore violated rights, compensation for pecuniary and non-pecuniary damage in connection with discrimination, prohibition of any direct or indirect restrictions on the rights of employees during conclusion, modification and termination of an employment contract. The Draft Law is undergoing elaboration by the VRU Committee on Social Policy, Employment and Pensions and has not been considered by the VRU so far.

Thus, national legislation has not been approximated with the provisions of Directive 2000/43/EC yet.

Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation

What are the benefits of the relevant EU standards?

Directive 2000/78/EC aims at ensuring equal rights and opportunities and establishing a system of measures to combat discrimination based on religion or belief, disability, age or sexual orientation in matters of employment, vocational training, working conditions and membership in workers' and employers' organisations.

According to the requirements of the Directive, Member States should take measures to:

- prohibit direct / indirect discrimination, oppression, incitement to discrimination, and victimisation;
- ensure administrative or legal protection of violated rights for persons who have been discriminated against;
- impose the burden of proof on the respondent to prove that there has been no breach of the principle of equal treatment;
- disseminate information on discrimination matters;
- conduct social dialogue and dialogue with non-governmental organisations on issues of combatting discrimination;
- establish effective, proportionate and dissuasive sanctions for violation of national anti-discrimination legislation;
- establish cases that do not constitute discrimination (professional requirements for workers, reasonable accommodation for people with disabilities, justified differences of treatment on grounds of age, affirmative action).

What has been done to fulfil the commitments?

The current legislation of Ukraine (the Constitution of Ukraine, the Labour

Code, the Law of Ukraine "On the Principles of Prevention and Combating of Discrimination in Ukraine" No. 5207-VI of September 6, 2012, etc.) establishes a prohibition of discrimination, including in the field of employment, any direct or indirect restriction of rights or establishment of direct or indirect advantages in the conclusion, modification and termination of an employment contract irrespective of origin, social and property status, racial and ethnic origin, sex, language, political opinions, religious beliefs, membership in a trade union or other public association, type and nature of occupation, or place of residence. Nevertheless, there is a need for further elaboration with regard to supplementing the attributes based on which discrimination is prohibited, prohibition of certain types of discrimination (multiple discrimination, discrimination by association, victimisation, refusal of reasonable accommodation), introduction of measures to ensure equal rights and opportunities, and improvement of legal liability.

Over 2014-2018, some amendments has been made to the current legislation.

On November 12, 2015, the Law of Ukraine "On Amendments to the Labour Code of Ukraine as regards Harmonisation of Legislation in the Area of Preventing and Counteracting to Discrimination with the legislation of the European Union" (No. 785-VIII) was adopted. Thereby Article 2-1 of the Labour Code was re-formulated, expanding the range of grounds on the basis of which discrimination is prohibited. Specifically, discrimination in employment is prohibited on the basis of sex, gender identity, sexual orientation, health status, disability, suspicion or presence of HIV / AIDS, filing or intending to file an appeal to court or other bodies for the protection of their rights or supporting other workers in defence of their rights.

A similar approach is laid down in the Draft Labour Code. On the other hand, from time to time there are attempts to reduce the list of grounds for which discrimination is prohibited. Thus, on June 7, 2018, the Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Protection of Public Morality and Traditional Family Values" was registered (No. 8442), proposing to eliminate gender identity and sexual orientation from Article 2-1 of the Labour Code that specifies attributes based on which discrimination in the workplace is prohibited, as well as to establish administrative and criminal responsibility for the promotion of same-sex relationships, which can adversely affect physical and mental health, moral and mental health of children. On September 17, 2018, the draft law was withdrawn.

The Draft Labour Code includes a number of provisions that take into account the requirements of Directive 2000/78/EC. Specifically, it:

- establishes the framework for the legal regulation of employment relations based on the principles of prohibition of discrimination in the field of employment, equality of rights and opportunities of workers, including gender equality, creation of equal opportunities for professional growth of employees, training, retraining and advanced training, ensuring the right to equal pay for equal-value work (Article 2 (1) of the Draft Labour Code);
- establishes a prohibition of discrimination in the workplace and ensures that persons who have suffered such discrimination have the right to apply to the court so that the fact of discrimination would be recognised and eliminated, as well as sets compensation for the damage caused by discrimination, shifts the burden of proof of the absence of discrimination on the employer (Articles 2 and 3 of the Draft Labour Code);
- outlines cases that are not considered to be discrimination in the workplace due to the requirements of age, education, health status, sex, etc. (Article 3 of the Draft Labour Code);
- provides for the employee's rights at the level of opportunity and equal

treatment in dealing with issues related to employment, remuneration for work of equal value, professional growth or dismissal (Article 20 (1) of the Draft Labour Code);

- prohibits setting any discriminatory requirements in the selection of employees, including in advertising of vacancies (employment), as well as demanding that a person seeking employment should provide information about his / her marital status, his / her personal life and other information not related to professional activity (Article 25 (2) of the Draft Labour Code);
- declares invalid the terms of the employment contract that are discriminatory (Article 45 of the Draft Labour Code);
- prohibits any reduction in the amount of remuneration on discriminatory grounds (Article 223 (3) of the Draft Labour Code).

In order to align the employment legislation of Ukraine with the requirements of Directive 2000/78/EC, on December 8, 2016, the VRU registered Draft Law No. 5511 "On Amendments to Certain Legislative Acts of Ukraine (as regards employment rights)" (submitted by the CMU). The Draft Law takes into account the requirements of Directive 2000/78/EC concerning:

- legislative establishment of the cases that are objectively justified and do not constitute discrimination;
- separately establishes the right to take legal action as regards restoration of violated rights, compensation for pecuniary and non-pecuniary damage in connection with discrimination;
- prohibits any direct or indirect restrictions on the rights of employees during the conclusion, modification and termination of an employment contract.

In addition, Draft Law No. 5511 introduces amendments to the Law of Ukraine "On Employment of the Population" as regards the grounds on which discrimination is prohibited and the prohibition of such requirements in job advertisements, as well as to the Law of Ukraine "On Advertising" as regards prohibition of discriminatory advertising and the powers of the central executive body that implements the state policy on supervision and control over compliance with labour and employment legislation to impose fines for infringements connected to employment services advertising. Draft Law No. 5511 is being elaborated by the Committee on Social Policy, Employment and Pensions.

On July 5, 2018, the VRU registered the draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Advertising' as regards Combating Discrimination" (No. 8558), which proposes to supplement the Law with the term "discriminatory advertising on the basis of sex", prohibition of such advertising, and liability for placement and production of such advertising, as well as increases the fines, establishes the right of consumers to seek legal redress for damage inflicted by discriminatory advertising on the basis of sex, the right of associations of citizens to take legal action in the interests of the consumers of advertising. Draft Law No. 8558 is undergoing elaboration in the VRU. On October 17, 2018, the VRU Committee on Freedom of Speech and Information Policy recommended adopting the Draft Law as a basis.

The issue of prevention of and counteraction to discrimination is reflected in a number of policy documents that involve legislative measures such as adoption of regulatory legal acts in the field of prevention of discrimination, namely:

- Concepts of the State Social Programme for Ensuring Equal Rights and Opportunities for Women and Men for the Period up to 2021, approved by CMU Order No. 227-p of April 5, 2017. The document defines conceptual areas, ways and means of solving problems associated with ensuring equal

rights and opportunities for women and men;

- State Social Programme for Ensuring Equal Rights and Opportunities for Women and Men for the Period up to 2021, approved by CMU Resolution No. 227-p of April 11, 2018. The document, among other things, sets specific objectives, measures and expected outcomes of the programme as regards ensuring equal rights and opportunities for women and men;
- National Action Plan to implement UN Security Council Resolution 1325 "Women, Peace, and Security" for the period up to 2020, in the version approved by CMU Order No. 637-p of September 5, 2012. The Action Plan includes measures to improve the infrastructure and material and technical conditions for women in the area of employment, labour and service, organisation of professional training, strengthening of the information component, etc.;
- National Action Plan for the Fulfilling of the Recommendations Contained in the Concluding Observations of the UN Committee on the Elimination of Discrimination against Women in the eighth periodic report of Ukraine on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women until 2021, approved by CMU Order No. 634-p, dated September 5, 2018. This Plan includes measures aimed to improve the legal and regulatory framework in the area of combating and preventing discrimination against women and girls, strengthening the institutional mechanism for ensuring equal rights and opportunities for women and men, including the gender component in the educational standards for professional training, etc.;
- Action Plan to fulfil the recommendations contained in the final comments provided by the UN Committee on the Rights of Persons with Disabilities concerning the first report of Ukraine on the implementation of the UN Convention on the Rights of Persons with Disabilities for the period up to 2020, approved by CMU Order No. 1073-p dated December 28. 2016. The document identifies measures related to the accessibility of infrastructure objects for persons with disabilities, strengthening the incentives of private and public sector employers for the employment of persons with disabilities, as well as taking measures to ensure supportive employment for persons with disabilities, including those with intellectual and mental impairments, in the open employment market, etc.

Regarding institutional arrangements for ensuring equal rights and opportunities:

- On April 18, 2016, the CMU adopted Resolution No. 296 "On Determining Issues that fall within the Competence of the First Vice Prime Minister of Ukraine and Vice Prime Ministers of Ukraine", according to which the competence of the Vice Prime Minister for European and Euro-Atlantic integration of Ukraine includes issues of gender equality and coordination of interaction of central executive bodies on gender equality matters;
- On June 7, 2017, the CMU approved the Regulation on the Government Commissioner for Gender Policy (Resolution No. 390), and on February 14, 2018, Levchenko K. B. was appointed to this post (Order No. 90-p). The Commissioner is the official responsible for organising conditions for the CMU to exercise its powers in the field of ensuring equal rights and opportunities for women and men in all spheres of society's life;
- On February 21, 2017, the CMU approved the Regulation on the Government Commissioner for the Rights of Persons with Disabilities and amendments to CMU Resolution No. 5 dated January 3, 2013 (Resolution No. 125), and

on March 16, 2017 Panasiuk R.V. was appointed to this post (Order No. 184-p). The Commissioner is an official responsible for organising conditions for the CMU to exercise its powers in matters concerning the protection of the rights and legitimate interests of persons with disabilities and the fulfilment by Ukraine of its international commitments in the relevant field;

- the work of the Expert Council for Consideration of Complaints concerning Sex-Based Discrimination (Ministry of Social Policy) has been resumed;
- a working group has been formed to develop and amend the national legislation on media and advertising (Ministry of Social Policy).

On September 6, 2018, the VRU adopted the Law of Ukraine "On Amendments to Some Laws of Ukraine on Ensuring Equal Rights and Opportunities for Women and Men when Serving in the Armed Forces of Ukraine and Other Military Forces", which was aimed at ensuring that women could perform military service on equal terms with men (except in cases stipulated by the legislation on protection of motherhood and childhood, as well as prohibition of sex-based discrimination).

Apart from that, during 2014-2018, work was underway to adapt Ukraine's legislation as regards ensuring equal rights and opportunities for women and men in the workplace. On October 13, 2017, the MoH approved Order No. 1254 "On Repealing Order No. 256 of the Ministry of Health of Ukraine of December 29, 1993", invalidating the List of Hard Jobs and Jobs with Harmful and Dangerous Working Conditions where the Use of Women's Labour is Prohibited. The cancellation of the List meets the requirements of Directive 2000/78/EC, as it ensures women's equal rights and opportunities in the field of employment.

The list of mining works (specified in Chapter 3, Section I of the said List) shall cease to be in force from the date when Ukraine completes the procedure for the denunciation of the Convention concerning the Employment of Women on Underground Work in Mines of all Kinds (No. 45). On May 22, 2018, the VRU registered the Draft Law "On Denunciation of the Convention concerning the Employment of Women on Underground Work in Mines of all Kinds (No. 45)" (No. 0185). On May 23 and 24, 2018, the Draft Law was included in the agenda of the VRU but was not considered.

On May 24, 2018, the VRU registered the Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" (No. 8406), which proposes to eliminate from the Labour Code Article 174 on the prohibition of employment of women in hard jobs and in jobs with harmful or dangerous working conditions, as well as in underground work, and involvement of women in lifting and moving things with the weight exceeding the set limits. The Draft Law is undergoing elaboration in the VRU Committee on Social Policy, Employment and Pensions.

On October 5, 2018, the VRU registered the Draft Law "On Amendments to Certain Legislative Acts of Ukraine Concerning Additional Guarantees with regard to the Combination of Family and Employment Duties" (No. 9045). The Draft Law, inter alia, proposes to amend the Labour Code as regards the specificities of women's work at night – i.e. it abolishes the prohibition to engage women in work at night, preserves the prohibition to engage pregnant women in work at night and allows engaging women who have a child under the age of fourteen, a child with a disability, an adult son or a daughter with a disability of subgroup A of group I from childhood in night work upon the women's consent. The Draft Law is in line with the requirements of Directive 2000/78/EC on equal rights and opportunities. On October 17, 2018, the VRU Committee on Social Policy, Employment and Pensions proposed to adopt the Draft Law as a basis.

On March 21, 2017, the Draft Law of Ukraine "On Social Services" (No. 4607

dated May 6, 2016) was adopted as a basis, introducing a new article on the grounds for determining difficult circumstances that are taken into account in the provision of social services. Thus, individuals and families can be recognised as subject to difficult circumstances on the grounds of sex-based discrimination.

In terms of the adaptation of the legislation of Ukraine to Directive 2000/78/EC as regards ensuring equal rights and opportunities in the field of employment for persons with disabilities, the VRU has registered:

- Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine regarding the Employment of Persons with Disabilities" (No. 4578 dated May 4, 2016). The Draft Law envisages introduction of incentives for employers to ensure the right of persons with disabilities to work, including by applying alternative options as regards fulfilment of the requirements for workplaces intended for the employment of such persons, supplementing collective agreements and contracts with the obligation to fulfil the requirements for workplaces designed for the employment of disabled people, creation of conditions for their work (taking into account their individual rehabilitation programmes), ensuring accessibility and other guarantees;
- Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Promoting the Employment of Persons with Disabilities" (No. 4578-1 dated May 20, 2016). Among other things, the Draft Law proposes to introduce incentives for the employment of persons with disabilities (compensation to the employer of the actual wage costs for a disabled person for 1 year, provided that he/she is employed for a term of at least 2 years; granting a subsidy to the employer for the employment of disabled young people who are first recruited);
- Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine regarding the Employment of Disabled Persons" (No. 4578-2 dated May 24, 2016). Among other things, the Draft Law proposes to establish identical rules and conditions for fulfilment of the requirements concerning workplaces for the employment of disabled persons and liability for failure to fulfil them, for both private and public sector entities, and to create a Register of Persons with Disability in Need of Employment, etc.

The above Draft Laws were included in the agenda of the Verkhovna Rada on June 16, 2016, but failed to be considered and are currently pending consideration.

Despite the progress in ensuring equal rights and opportunities in matters of employment, vocational training, working conditions and membership in organisations of workers and employers, actual legislative approximation has not been accomplished as the required planned regulatory acts have not been adopted. The analysed regulatory acts need to be amended / clarified in line with the provisions of Directive 2000/78/EC as regards the prohibition of victimisation, availability of a judicial procedure for the protection of persons who have been discriminated against, in particular, regarding exemption from court fees, review of the terms when employees can take legal action with regard to violation of their rights in connection with discrimination in general and after termination of employment relations, strengthening of guarantees for public organisations or other legal entities interested in the enforcement of Directive No. 2000/78/EC, provision of protection in any judicial proceedings, and to oblige the employer at the request of the person seeking employment to provide a written justification for denial of employment in order to facilitate establishment of the fact of discrimination.

Hence, national legislation has not been approximated with the provisions of Directive 2000/78/EC.

Labour law

Analysis of the progress as regards the approximation of national legislation to the requirements of EU acquis made from November 1, 2017 to November 1, 2018:

During the period from November 2017 to November 2018, under Chapter 21 "Cooperation on employment, social policy and equal opportunities", Title V "Economic and Sector Cooperation" of the Association Agreement, Ukraine had to approximate its legislation in the field of social policy to the following EU acquis:

1. Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies;
2. Council Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP;
3. Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment.

Council Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies

What are the benefits of the relevant EU standards?

Directive 98/59/EC establishes a requirement that the employer has to hold consultation and inform employees' representatives in the event of collective redundancies and sets minimum requirements for the procedure for such redundancies.

The Directive defines collective redundancies are dismissals (a) effected by an employer (b) for one or more reasons not related to the individual workers, and (c) identifies options as regards the number of such redundancies over a certain period where the specific number is determined by the Member States.

The main provisions of the Directive make it mandatory:

- to hold consultation with employee representatives – an employer who is going to perform collective redundancies has to hold a consultation with representatives of employees to avoid or reduce the number of dismissed workers and to mitigate the consequences of such dismissal (for example, by transferring workers to another job or retraining them);
- to notify employees – in order to conduct effective and constructive consultation, the employer is required to provide the necessary information on collective redundancies in writing. This notification should contain information at least on: the reasons for the redundancies, the number and categories of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected, the criteria used to determine the employees who are to be dismissed; and methods of calculation of compensatory payments;
- compliance with the collective redundancy procedure – the employer must notify the competent public authorities in writing of projected collective redundancies, providing the necessary information on dismissal and consultations held; the employer must provide a copy of such notification to the employees' representatives so that they could provide their comments; observance of the terms for effecting the dismissal (not earlier than 30 days after notification of the competent public authorities).

What has been done to fulfil the commitments?

Collective redundancies are partly regulated in the employment legislation of Ukraine, which uses the term "collective dismissal" to describe this type of dismissal:

- The Law of Ukraine "On employment of the population" of July 5, 2012 establishes the concept of collective dismissal of employees on the initiative of the employer and certain matters associated with conducting such dismissal, in particular the establishment of special commissions (Article 48 of the Law) and the employer's obligations as regards prevention of collective dismissals (Art. 50 of the Law);
- Labour Code – the procedure for the collective dismissal of employees (Article 49-2 of the Labour Code), measures to mitigate the consequences of dismissal in connection with redundancies (Article 42 of the Labour Code);

However, the above legislation is either contrary to Directive 98/59/EC (regarding the concept of "collective dismissal") or does not take into account its requirements (terms for consultations, types of information to be provided, certain matters related to the notification to the competent authority).

The requirements of Directive 98/59/EC to some extent are implemented in a number of draft legal acts. In particular, the draft Labour Code provides for: the employer's duty to hold consultation concerning redundancies and provide the necessary information (Article 87 of the Draft Labour Code), measures to mitigate the consequences of dismissal in connection with redundancies (Article 86 the Draft Labour Code), minimum and maximum periods for such dismissal (Article 88 of the Draft Labour Code), the employer's obligations to prevent collective dismissals in connection with redundancy (Article 89 of the Draft Labour Code), etc.

Apart from that, the VRU has registered other draft laws concerning matters related to collective redundancies, namely:

- Draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Employment of the Population' (new edition) and Other Related Legislative Acts" (No. 4279 dated March 18, 2016), where Article 55 focuses on collective redundancies. However, this article of the Draft Law (which, in fact, has the same content as Article 48 of the current Law of Ukraine "On Employment of the Population") contradicts Directive 98/59/EC as regards the definition of collective dismissal (the quantitative indicators based on which the dismissal is considered to be collective do not correspond to those established by the Directive) and the scope of the Directive (the Directive does not exclude collective dismissals from its scope in the event of liquidation of the legal entity, the Draft Law, on the contrary, does);
- Draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine (concerning labour rights)" (No. 5511 dated December 8, 2016). The Draft Law to a large extent takes into account the requirements of Directive 98/59/EC – the concept of collective dismissal (sets one of the alternatives as to the number of dismissals that will be considered collective, clarifies and complements the quantitative characteristics of collective dismissal), the scope of application (excluding the limitation on the use of the collective dismissal procedure in the event of liquidation of a legal entity), mandatory consultation and provision of specific types of information in writing to the elective body of the primary trade union organisation (trade union representative), notification of public authorities about projected collective redundancies and forwarding a copy of the notification to workers' representatives. The Draft Law needs to be clarified as regards the terms for holding consultations with representatives of employees (before notifying

the competent public authority) and taking measures (based on the results of consultations).

Both draft laws are undergoing elaboration in the VRU Committee on Social Policy, Employment and Pensions and have not been considered yet.

The Ministry of Social Policy has developed a Draft Law "On Amendments to Certain Legislative Acts", which was sent to the social partners for review in August of 2018 and received feedback (in particular, from the Confederation of Employers of Ukraine). The Draft Law proposes to adopt a new version of the Law of Ukraine "On Employment of the Population and Mandatory State Social Unemployment Insurance", as well as to introduce amendments to the current legislation as regards collective redundancies. The Draft Law as a whole takes into account the minimum EU requirements for conducting consultations (compulsory consultation before effecting the collective dismissal of employees), informing (determining the range of information to be provided to employees, the timeframe within which the information is to be provided) and notification about collective redundancies (notification of the competent authority about the forthcoming dismissal, providing a copy of the notification to the employees' representatives) but is contrary to Directive 98/59/EC in terms of the quantitative characteristics of such dismissal. Therefore, its adoption will partially resolve the issue of aalignment with Directive 98/59/EC.

Hence, national legislation has not been approximated with the provisions of Directive 98/59/EC yet.

Council Directive 1999/70/EC concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP

What are the benefits of the relevant EU standards?

Directive 1999/70/EC puts into force a framework agreement on fixed-term work. The purpose of the latter is to improve the quality of work performed under fixed-term employment contracts / employment relations based on the principle of non-discrimination and to establish a mechanism for preventing abuse resulting from the use of successive fixed-term employment contracts / employment relations.

The main requirements of Directive 1999/70/EC are:

- ensuring the principle of non-discrimination of workers who work under the terms of a fixed-term employment contract / relationships, in comparison with permanent employees;
- introduction of measures to prevent abuse resulting from the conclusion of successive fixed-term employment contracts / relationships. For example, establishment of objective reasons for the possible repeat conclusion of fixed-term employment contracts, the maximum duration and number of times for re-conclusion of fixed-term employment contracts, determining the conditions under which a fixed-term employment contract is considered to be successive or concluded for an indefinite period;
- informing employees who work under the terms of a fixed-term employment contract / relationships about the availability of permanent vacancies by the employer; access of such workers to training in order to increase their professional qualifications and mobility;
- taking into account workers who work under a fixed-term employment contract / relationships when calculating the number of employees required to appoint authorized representatives of employees;

- providing employees' representatives with relevant information on fixed-term employment contracts / relationships by the employer.

What has been done to fulfil the commitments?

The Labour Code contains certain rules aimed at preventing abuse resulting from the use of successive fixed-term employment contracts. Namely:

- setting general conditions that make it possible to conclude a fixed-term employment contract (Article 23 (2) of the Labour Code);
- cases of transformation of a fixed-term employment contract into a permanent one (Article 39-1 of the Labour Code).

At the same time, these provisions require the specification of cases where successive conclusion of employment contracts is objective and clarification of the prohibition on the conclusion of successive fixed-term employment contracts. In addition, it lacks clear provisions on the prohibition / inadmissibility of discrimination in connection with work on the terms of a fixed-term employment contract, informing employees of the availability of vacancies with employment for an indefinite period.

The provisions of Directive 1999/70/EC are most fully taken into account in the Draft Labour Code, setting forth requirements for employment under a fixed-term contract in Chapter 2 "Fixed-Term Employment Relations" of Book 2, as well as in individual rules. In addition to the requirements of the current labour legislation, the Draft Labour Code contains provisions that fully take into account the content of Directive 1999/70/EC, in particular:

1) the principle of non-discrimination:

- equality of the employment rights and responsibilities of the workers who work under a fixed-term employment contract and those employed for an indefinite period of time (Article 59 (1) of the Draft Labour Code);
- application of the principle of proportionality to working time – the duration of the annual leave is determined based on the time spent on work by workers employed under a fixed-term employment contract (Article 170 (3) of the Draft Labour Code).

2) measures to prevent abuse as regards conclusion of fixed-term employment contracts:

- identification of specific cases where fixed-term employment contracts are permitted (Article 58 of the Draft Labour Code);
- indication in the employment contract of the term and reasons for its conclusion for a specified period (Article 32 (2.2) of the Draft Labour Code), clarification of the conditions for the transformation of successive labour contracts into a contract concluded for an indefinite period (Article 59 (3) of the Draft Labour Code), conclusion of an employment contract twice and more times for the same job when less than two weeks lapse between the conclusion of employment contracts;

3) information and other opportunities for employees with a fixed-term employment contract:

- establishing the employer's obligation to inform employees in writing of vacancies for work under an employment contract for an indefinite period (Article 24 of the Draft Labour Code);
- employer's obligation to create equal opportunities for employees' professional growth, training, retraining and advanced training (Article 2 (1.10) of the Draft Labour Code).

The Draft Labour Code of Ukraine, though adopted in the first reading on

November 5, 2015, is still pending the second reading.

Hence, national legislation has not yet been approximated to the provisions of Directive 1999/70/EC.

Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment

What are the benefits of the relevant EU standards?

Directive 91/533/EEC aims to ensure that employers fulfil the obligation to provide each employee with a document containing information on the essential conditions of their employment contract / relationship. It sets the minimum requirements for:

- the essential conditions of the employment contract / relationship about which the employee must be informed – i.e. about the parties to the contract, the place of work, position and a brief description of the work performed, the date of commencement of work, the term of the employment contract, pay, the duration of paid leave, the duration of the work day and week, terms of notification of the termination of an employment contract;
- the forms and terms of the employer's fulfilment of the obligation to inform the employee about the terms of the employment contract / relationship – the information is provided in writing (an employment contract, a letter of appointment, one or several other written documents containing relevant information, a written declaration of the employer) within two months from the date of the commencement of work;
- specificities of informing an employee who will work in a foreign country / countries – they are to be additionally informed about the length of their work abroad, the currency of their wages, repatriation conditions, etc.;
- the forms and terms of informing the employee about changes of the terms of their employment contract / relationship – the employer shall notify the employee in writing within one month from the date of the entry into force of the change;
- protection of the employee's right to be informed about the terms of an employment contract / relationship – the possibility of resorting to legal and administrative procedures for the protection of their rights.

What has been done to fulfil the commitments?

The Labour Code defines certain issues regarding the form of an employment contract (Article 24), the employer's obligation to instruct employees prior to the commencement of work (Article 29), and provision of information on individual working conditions (Article 49). Nevertheless, the existing employment legislation lacks a comprehensive mechanism that meets the requirements of Directive 91/533/EEC to provide each employee with a document containing information on essential terms of the employment contract / relationship.

The main elements of the mechanism for providing the employee with a document containing information on the essential terms of the employment contract taking into account the requirements of Directive 91/533/EEC are specified only at the level of a draft regulatory act. Thus, the Draft Labour Code (Articles 32 and 33) contains provisions that take into account the following requirements of the Directive:

- the employer's duty to comply with the written form of the employment contract in order to ensure its effectiveness and to accurately determine the obligations of the parties;
- conclusion of an employment contract in writing in two copies, one of which is to be provided to the employee;
- establishment of a clear list of mandatory terms of the employment contract and possibility of establishing additional terms of the employment contract;
- change of the obligatory and additional terms of the employment contract only upon the consent of the parties expressed in writing (in cases established by the Code or the law);
- registration of changes to an employment contract based on the same procedure as the conclusion of the contract (i.e., in writing and in two copies, one of which is to be provided to the employee).

Article 259 of the Draft Labour Code sets forth guarantees and compensations in case of repatriation of workers, however, in order to fully comply with the requirements of Directive 91/533/EEC, it is necessary to supplement the draft with provisions concerning other characteristics of informing employees who will work in a country other than Ukraine (duration of work abroad, currency of wages). The Draft Labour Code requires to conclude an employment contract in writing in two copies, one of which is to be provided to the employee, and no later than the next day from the date of the actual admission of the worker to work by the employer, hence this document should be provided immediately. Therefore, it can be considered that the requirements of Directive 91/533/EEC concerning the terms for provision of a written document with information on the terms of the employment contract / relationship are respected. In order to strengthen the guarantees of workers' rights, the Draft could be supplemented with provisions regarding the terms within which the employee is to be provided with the employment contract and a written document on changes to the employment contract. According to Directive 91/533/EEC, in case of a failure to provide the employee with a written document or provision of a document that does not cover all the necessary information on the terms of the employment contract / relationship, the employer must provide the worker with all necessary information within two months from the start of work in a written declaration signed by the employer. In view of the above requirement, the Draft Labour Code also needs to be revised.

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS AND RECOMMENDATIONS

COMMITMENTS THAT HAD TO BE FULFILLED WITHIN THE PERIOD FROM 1 NOVEMBER 2014 TO 1 NOVEMBER 2017

TECHNICAL BARRIERS TO TRADE

All tasks have been fulfilled. To date, all the necessary legislative and regulatory acts with deadlines scheduled for the period from November 1, 2014 to November 1, 2017 have been drafted and adopted.

CUSTOMS AND TRADE FACILITATION

No task has been completed in full. In order to approximate national legislation to the requirements of the NCTS Convention and the SAD Convention, amendments to the Customs Code of Ukraine are necessary.

It should be noted that in order to ensure the full implementation of the NCTS Convention, it is necessary to develop a comprehensive draft law amending the customs legislation (taking into account the NCTS requirements).

At the same time, in general, Ukrainian legislation has been approximated to the requirements of the SAD Convention, however, its final implementation has not been effected. In order to fulfil the formal requirements of the SAD Convention, Ukraine still has to make some minor amendments to its legislation (including alignment of the related terminology in the Customs Code of Ukraine with the terminology used in this Convention).

ENERGY COOPERATION

Electricity

The reform of the electricity market and the implementation of the relevant EU acquis in Ukraine is an extremely complex and multifaceted process, which is currently at the stage of development and approval of subsidiary legislation, as well as the development of practical steps to create a new electricity market architecture that will be fully compatible with the EU requirements for the organisation of the electricity market, intergovernmental trade and energy security requirements. It is expected that a new market, at least in its wholesale segment, will be launched in mid-2019, introduction of competitive mechanisms in the retail segment of the market and connection of Ukraine's UES to the ENTSO-E can only be expected after 2020.

Gas

As a result of the implementation of a number of conventions in Ukraine (the so called EU gas-market acquis), significant results have been achieved with regard to competition in the wholesale trade in natural gas for the needs of commercial consumers. Apart from that, Ukraine has achieved full compliance with the EU standards concerning the creation of mechanisms for ensuring security of supply. Despite the considerable amount of work done with regard to adoption of subsidiary legislation, the requirements of EU acquis have not yet been met in areas such as retail supply of gas to end users and organisation of the technical work of the new gas market. Moreover, because of almost three years of delay with the Naftogaz

unbundling reform there is no independent GTS operator yet. The existence of such an operator is particularly critical on the cusp of negotiations on a new transit contract before the start of 2020.

Energy regulatory authority

The reform of the national regulatory authority in the energy markets, as set forth in the two EU Directives governing the organisation of the gas and electricity market, has become one of the most significant events in the energy sector of Ukraine in 2017-2018. However, even despite the adoption of the relevant framework law and change of the members of the NEURC based on the new transparent rules, the current legal framework and the real balance of power between the various branches of government in Ukraine have led to cases of political interference in the work of newly elected members of the NEURC, which raises doubts as to its ability to make impartial regulatory decisions.

Oil

During 2018, a framework law on the minimum stock of oil and petroleum products was finally developed and submitted for approval to the Energy Community Secretariat. Within this law, a more applicable model for maintaining and financing of minimum oil stocks (MMFMS) was created. It is expected that due to the adoption of this draft law and approval of the MMFMS with all stakeholders will make it possible to fulfil all other implementing measures provided for in Directive 2009/119/EC.

The framework draft law on the promotion of alternative fuels in Ukraine is still pending consideration in the VRU.

Prospection and exploration of hydrocarbons

In spite of the intensive work conducted by the specialised agency of the State Service for Geology and Mineral Resources of Ukraine of the Ministry of Ecology to draft subsidiary legislation, the necessary amendments to national legislation aimed to align it with the requirements of Directive 94/22/EC have not been made. As a result, the procedure for issuing special permits for the use of subsoil does not fully comply with the EU's good practice standards, resulting in a complicated and non-transparent system of subsoil use that impedes the development of energy production in Ukraine.

Energy efficiency

As of the end of 2018, the approximation of the national energy efficiency legislation to the requirements of the relevant EU acquis has been accomplished to quite a significant extent, despite the complexity of this sector and the amount of policy-making work required. The pace of the relevant reforms in this sector gives grounds for cautious optimism that Ukraine's commitments can be fully implemented by the end of 2019 or in early 2020. Thereafter full implementation of the requirements of European acts in Ukraine should be expected in the form of relevant specific policies and measures.

Nuclear power engineering

In 2018, the progress made in approximation to the requirements of the EU Directives in the field of nuclear energy was insignificant and focused on minor technical issues. Key changes related to the establishment of an independent regulatory authority in the field of nuclear and radiation safety, as well as harmonisation of standards for protection against ionising radiation and shipments

of radioactive waste have not been adopted yet.

ENVIRONMENT

Air quality

No task has been fulfilled

Water quality and water resource management, including marine environment

The tasks related to transition to the basin water management principle have been fulfilled, including a new system for monitoring of the state of water resources through the adoption of the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Implementation of Integrated Approaches in the Management of Water Resources by Basin Principle" and a number of subordinate regulatory acts. At present, the provisions of the legislation are being implemented in practice.

Besides, to resolve the issue of sewage treatment the Law of Ukraine "On Drinking Water and Drinking Water Supply" has been amended, a number of subordinate regulatory legal acts have been adopted. However, in order to complete the process of approximation of national legislation to the provisions of European Directives, it is still necessary to adopt a number of subordinate regulatory legal acts.

Environmental management and integration of environment into other policy areas

In order to fulfil the tasks assigned to Ukraine in this sub-sector, the Law of Ukraine "On Environmental Impact Assessment" and a number of subordinate acts have been adopted. At present, the provisions of the legislation are being implemented in practice.

However, the European legislation that ensures public access to environmental information, public participation in the preparation of individual environmental plans and programmes, public participation and the application of SEA (strategic environmental assessment) to urban planning documentation (city general plans, detailed territorial plans, etc.) have not yet been fully implemented in the national legislation of Ukraine.

Industrial pollution and industrial hazards

At the moment, the National Plan for reducing emissions from large combustion plants has been adopted. However, in order to complete the process of approximation of national legislation to European regulations, a number of regulatory acts, in particular the Concept for Implementation of Public Policy in the Field of Industrial Pollution, are yet to be adopted.

Climate change and protection of the ozone layer

None of the tasks has been fully implemented. In order to carry out the tasks in this sub-sector, a number of draft laws have been developed, but none of them has yet been adopted.

Genetically modified organisms

In order to align national legislation with the provisions of European legislation, a number of draft laws have been developed in this sub-sector, however none has been adopted yet.

Waste and resource management

The Government has approved the National Waste Management Plan, but to

implement the Plan it is necessary to draw up and adopt a number of draft laws.

TRANSPORT

Road transport

The tasks have not been fulfilled. A number of draft laws have been developed, but they have not been adopted.

Inland waterway transport

In order to align national legislation with the provisions of the EU legislation concerning the inland transport of dangerous goods, a number of subordinate legal acts have been adopted.

To regulate the issue of access to the waterway transport of goods for national and foreign operators and mutual recognition of diplomas, certificates and other official qualifications for the conduct of such activities, the draft law "On Inland Waterway Transport" has been developed, which so far has not been adopted by the VRU. Meanwhile, additional regulatory solutions are needed to ensure admission of operators to the professional activity of transport of goods by national and international waterways, as well as mutual recognition of diplomas, certificates and other official qualifications for its implementation, professional competence of the operator for inland waterway shipping and mutual recognition of diplomas, certificates and other evidence of formal qualifications for the conduct of such activities, as well as the implementation of the organisational measures for the issue of relevant certificates.

Maritime transport

For the purpose of approximation of national legislation to the 3 European documents, so far two draft laws and one draft order of the Ministry of Infrastructure have been developed. However, no draft regulatory legal acts have been developed in relation to the other relevant European documents.

COMPANY LAW

So far, four commitments have been fulfilled:

- Accounting and auditing (3 commitments): on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, on the application of international accounting standards;
- Company law, corporate governance (1 commitment): on single-member private limited-liability companies.

However, the legislation with regard to mergers and divisions of economic operators has not yet been aligned with the provisions of European legislation.

SOCIAL POLICY

Labour law

None of the 4 commitments has been fully implemented. So far, a number of draft laws and regulations have been developed (in particular the Draft Labour Code of Ukraine) but have not been adopted yet.

Anti-discrimination and gender equality

Of the four commitments within this sub-sector, only one has been fulfilled: progressive implementation of the principle of equal treatment for men and women in matters of social security. However, additional work needs to be done on matters relating to the implementation of the principles of equal treatment for men and women in access to and supply of goods and services, improvements with regard to safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, and on the implementation of the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC.

Health and safety at work

The area includes a total of 5 directives, while national legislation has been approximated to two of them, namely: on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries and concerning the minimum safety and health requirements for the use of work equipment by workers at work.

In order to align national legislation with the other Directives, a number of draft regulatory acts have been developed, which have not been adopted yet.

CONSUMER PROTECTION

Product safety

So far, one task has not been fulfilled – i.e. concerning measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters.

Marketing

The implementation of the EU requirements concerning unfair business-to-consumer commercial practices in the internal market has not been completed. On the other hand, the provisions on consumer protection in the indication of the prices of products offered to consumers have been implemented.

Contract law

The implementation of the EU legislation on certain aspects of the sale of consumer goods and associated guarantees has not been completed.

Unfair contract terms

Only one directive on unfair contract terms has been fully implemented.

However, the process of approximation of national legislation to the European legislation concerning consumer protection in respect of distance contracts; in respect of contracts negotiated away from business premises; on package travel, package holidays and package tours; and in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts has not been completed yet.

Financial services

No document in Ukraine regulates distance marketing of financial services for consumers.

Consumer credit

Matters related to consumer credit are adequately regulated in Ukraine

Enforcement

At present, collective consumer rights are not regulated at an adequate level

PUBLIC HEALTH

Blood safety

No commitment has been fulfilled in full. Currently, Ukraine has legislation that regulates certain matters concerning blood safety but it does not fully implement the provisions of European legislation.

Transplantation of tissues and cells

At the moment, national legislation has not been fully aligned with any of the relevant Directives. However, it should be noted that Ukraine has made the first step towards the development of transplantation as a method of treatment, namely, adoption of the Law of Ukraine "On Application of Transplantation of Anatomical Materials to Humans". In order to enforce the provisions of this Law, a number of subordinate legal acts have been adopted, which, however, should be aligned with the provisions of the EU Directives.

Tobacco

In order to align national legislation with the relevant EU acquis, a number of draft laws have been developed but none of them has been adopted.

Communicable diseases

No regulatory legal act has been developed to set up a network for the epidemiological surveillance and control of communicable diseases. Moreover, no decision was taken on Ukraine's accession to the specified network.

In addition, national legislation has not been fully approximated to the provisions of the EU Directives regulating the progressive coverage of communicable diseases by the Community network.

COMMITMENTS THAT HAD TO BE FULFILLED WITHIN THE PERIOD FROM 1 NOVEMBER 2017 TO 1 NOVEMBER 2018

TECHNICAL BARRIERS TO TRADE

Conclusions

Ukraine has almost completed the establishment of a horizontal legislative framework to ensure the systematic functioning of various elements of the national product quality infrastructure.

As regards vertical (sectoral) legislation, in general, Ukraine keeps up a good pace of development and adoption of technical regulations based on the relevant EU Directives, although at times it violates the timetable and the expected sequence. The main problems of Ukraine in this area are related to capacity building (including the necessary equipment and staff qualifications) of:

- the drafters of technical regulations, especially in some ministries and departments;
- those who endorse draft technical regulations – in order to reduce the time of approval and negative interference in their content, as well as optimise the resources needed for capacity building, it was proposed to task one

agency (for instance, one operating under the Ministry of Justice) with the endorsement of draft laws and regulations aimed at implementing the Association Agreement instead of the current three to four agencies;

- manufacturers and importers who comply with the requirements of the technical regulations;
- conformity assessment bodies assessing compliance with technical regulations;
- market surveillance bodies that check compliance with the requirements of technical regulations when placing products on the market.

Recommendations

It can be stated that all the necessary framework horizontal legislation complies with EU requirements, however, some laws still require some technical changes and amendments. From this perspective, the VRU should:

- accelerate adoption of Draft Law No. 6235 in the second reading;
- prevent adoption of Draft Law No. 5450-1 and adopt a new draft law under the working title "On Amendments to Certain Legislative Acts of Ukraine on Increasing Business Competitiveness and Ensuring Effective Consumer Protection", which hopefully will soon be registered in the VRU by a group of MPs.

In the field of vertical (sectoral) legislation, the following steps need to be taken:

- adoption of Draft Law No. 7123 (which corrects errors in the sectoral legislation and brings it in line with the principles laid down in the new Law of Ukraine "On Standardisation");
- It is preferable for Ukraine and the EU to have a clear and public Pre-Accession Roadmap for the conclusion of the ACAA setting all the benchmarks that should be achieved to shift to a new level and, eventually, to sign the ACAA and put it into force. This would help "to see the light at the end of the tunnel" and accordingly plan the implementation of European requirements. At the moment, the decision on the conclusion of the ACAA resides in the unpredictable political realm, which leads to unexpected and reverse effects.

Thus, it turned out that Ukraine's implementation of requirements that fully meet the requirements of the EU results in the fact that some European manufacturers do not want to fulfil them again and show no interest in staying in the Ukrainian market. For those who do, this leads to additional costs and higher prices for their products. Accordingly, the market is shrinking, which reduces competition and increases prices. This generates pressure on regulatory authorities to simplify procedures or requirements or introduce unilateral recognition of EU conformity assessment. The introduction of simplified procedures or requirements is contrary to Ukraine's commitments under the Association Agreement, since such simplified procedures and requirements are not specified in relevant EU acts. The introduction of unilateral recognition with the EU will actually destroy the Ukrainian infrastructure and will negatively affect the competitiveness of Ukrainian producers operating on the two markets, which will have to pay twice (in Ukraine and in the EU), unlike European ones, which will pay only once (in the EU) and operate on the same two markets. Moreover, such unilateral recognition at the interstate level is not envisaged by Ukrainian legislation: it is possible only at the level of individual conformity assessment bodies, but in this respect European notified authorities are

not really willing to cooperate (and share revenues) with the designated authorities of Ukraine.

Thus, in the absence of a transparent and understandable Roadmap, a clear perspective for the conclusion of the ACAA Agreement and politicisation of this process, this tool for ensuring the creation of a single market is slowly turning into its paradoxical opposite – generating technical barriers to trade between Ukraine and the EU that have identical but mutually unrecognised rules. So far, this problem has only affected specific products (for example, some medical products or radio equipment), but its emergence is symptomatic and alarming.

ESTABLISHMENT, TRADE IN SERVICES AND ELECTRONIC COMMERCE

Financial services (insurance)

Conclusions

By the end of 2017, Ukraine failed to implement three EU Directives concerning insurance (Directives 2009/103/EC, 2002/92/EC and 2003/41/EC) as stipulated in the Association Agreement. Instead, the deadlines for implementation of these Directives have been postponed by Ukraine for 2 years – until December 31, 2019. However, it is expected that for the time being this will not have a significant negative impact, as for the Parties to grant each other the internal market regime in the financial services sector Ukraine needs to implement more than 50 EU acquis, which is not going to happen in the near future.

Additional resources and efforts to implement the European integration commitments in the area of insurance are needed to analyse and implement 2 new Directives that were adopted in 2016 by the EU instead of those specified in the Association Agreement.

Currently, progress in the implementation of Directives 2009/103/EC, 2002/92/EC and 2003/41/EC concerning insurance is observed only at the level of draft laws, since none of them has been adopted yet. Moreover, it is the delay in the consideration of the relevant draft laws by the VRU that constitutes one of the main problems of Ukraine in this area. Thus, Draft Law No. 3670, aimed at the implementation of Directive 2009/103/EC had been pending consideration by the VRU for almost 3 years, whereupon it was rejected. Another Draft Law No. 1797-1 aimed at the implementation of Directive 2002/92/EC was adopted in the first reading on March 31, 2016, but has not been put to final vote yet.

Recommendations

In order to properly implement EU Directives 2009/103/EC, 2002/92/EC and 2003/41/EC in the field of insurance, the following measures should be taken:

- complete the work on the drafting of a new law to amend the Law of Ukraine "On Compulsory Insurance Against Civil Liability for Owners of Land Vehicles" as soon as possible, as the previous draft law on this matter was not adopted by the VRU;
- accelerate the final adoption by the VRU of draft law 1797-1 adopted in the first reading, taking into account all the proposals necessary for the full implementation of Directive 2002/92/EC;
- accelerate the consideration and adoption of Draft Law No. 9224 aimed at the implementation of Directive No. 2003/41/EC, which has been recently submitted to the VRU.

In addition, it would be a good idea to carry out an assessment of the necessary institutional, organisational and coordination measures, since the adoption of these draft laws is but the first stage of implementation, after which enough time should be left to implement administrative and organisational changes, review subordinate legislation, etc.

It would also be useful to compile and publish in the public domain comparative tables indicating in detail the present and future positive dynamics of the compliance of the national legislation of Ukraine with each article of the relevant EU acquis. The drafting of such transposition tables is envisaged in the Association Agreement as a monitoring instrument for fulfilling commitments in the financial services sector. It is based on them that the EC will assess the compliance of national legislation with the relevant provisions of the EU Directives.

Financial Services (Anti-Money Laundering)

Conclusions

The Ukrainian authorities are undertaking significant work on the implementation of the international standards for countering legalisation (laundering) of the proceeds from crime or terrorist financing, but there is a lag in the implementation of EU legal acquis (Directives, Regulations) that have changed since the Association Agreement was signed. Despite the work done, the level of corruption in Ukraine remains high, as well as shadow economy, cash payments, terrorism threat, etc., which attests to the need for Ukrainian authorities to intensify their efforts in combating these phenomena.

Recommendations

It is recommended that the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine in the Field of Prevention of and Counteraction to the Legalisation (Laundering) of the Proceeds from Crime, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction" be adopted as soon as possible. The Ministry of Finance and the State Financial Monitoring Service have already started developing subordinate legislation for the implementation of the provisions of this law.

The State Financial Monitoring Service should strengthen the control over the implementation of legislation concerning prevention and counteraction to the legalisation (laundering) of proceeds from crime, terrorist financing, and financing of the proliferation of weapons of mass destruction by primary financial monitoring subjects.

Postal and courier services

Conclusions

As of November 1, 2018, Ukraine's obligations under the Association Agreement in the area of postal services have not been fulfilled.

Nevertheless, we are cautiously optimistic about the slight progress in adapting national legislation to the requirements of EU acts in the field of postal and courier services, i.e. the new version of the draft law that, if further elaborated to take into account all the important provisions of the EU Postal Directive and the Association Agreement, will create grounds and legislative basis for further steps (even though it will not ensure immediate and full implementation of Ukraine's commitments under the Association Agreement and the requirements of the Postal Directive), as envisaged by the consolidated Action Plan (CMU Resolution No. 1106) and

the Strategy (CMU Order No. 104-p) and adoption of the relevant subordinate legislation, which together will cover all measures necessary for alignment of Ukrainian legislation with the provisions of the EU acts as specified in Appendix XVII-4 of the Association Agreement and will also contribute to the development of postal services and Ukraine's accession to the global postal market.

Recommendations

Adaptation recommendations. In order to adapt the provisions of Directive 97/67/EC, supplemented by Directive 2002/39/EC and Directive 2008/6/EC it is necessary to adopt the draft Law "On Amendments to the Law of Ukraine 'On Postal Service'", on condition that it is revised to take into account all key provisions of the Postal Directive and the Association Agreement, in particular, regarding:

- conditions of regulation of postal services;
- provision of universal postal services;
- financing universal postal services on terms that guarantee the provision of services on an ongoing basis;
- tariff principles and transparency of accounts for the provision of universal postal services;
- establishing quality standards for the provision of universal postal services and introduction of a system to ensure compliance with these standards;
- harmonisation of technical standards;
- ensuring the independence of the national regulatory authority;
- finalisation of the analysis of regulatory influence including financial and economic calculations.

Adoption of the Law will create the prerequisites and legislative framework for the implementation of the further implementation steps.

Recommendations for implementation. For the effective implementation of the provisions of Directive 97/67/EC as supplemented by Directive 2002/39/EC and Directive 2008/6/EC, after the adoption of the above Law, as indicated in the analysis, it is necessary to adopt a number of subordinate acts at the level of the CMU and specialised institutions (i.e. the Ministry of Infrastructure and the NCCIR), which, if comprehensively implemented in practice, will make it possible:

- to approximate Ukrainian standards in the field of postal services to the European ones;
- to ensure, in accordance with the ultimate goal of the European postal policies, reliable and high-quality postal services at least five business days a week throughout the territory of the country for all citizens and businesses at affordable prices;
- to set a course for future integration into the European economic space on the basis of common rules, free competition and openness of the market.

Telecommunications services

Conclusions

Some steps were taken with regard to strategic planning and coordination of Ukraine's compliance with the Association Agreement as a whole and legal approximation in particular. A positive step was to identify the vision and strengthen coordination in the field of digitisation of Ukraine's economy and society in 2018 – approval of the Concept for Development of the Digital Economy and Society

of Ukraine for three years and the relevant Action Plan – can give an impetus to harmonisation with the requirements of the EU single digital space and admission to the EU programmes for interoperability and eServices, cross-border e-identification and integration of Ukraine's state open data web portal data.gov.ua into the Central European open data portal europeandataportal.eu and data.europa.eu. Thus, in May 2018, the Government adopted a resolution that simplifies access to a particular state register or database for officials and, accordingly, facilitates the provision of administrative services. While since October 2018, data sets from the Unified State Open Data Web-portal (data.gov.ua) have been published at the European Open Data Portal (europeandataportal.eu), which makes it possible to compare data quality with those of EU countries and publish them in ways that are more in line with European practices.

The coordination of actions of the stakeholders with regard to the digitisation of Ukrainian economy and society is ensured by the Coordinating Council for Development of Digital Economy and Society under the Ministry of Economic Development and Trade, which started its work in July 2018. The areas of coordination include: development of legislation, analytical research in the area of IT and telecommunications, digital infrastructure, public safety, education digitalisation, health care, science, FinTech and cashless payments, digitalisation of the social sphere, smart-city development, creative industries and export of IT-Services, Internet of Things, Industry 4.0, Digital Agriculture, and Paperless Trade.

Recommendations

The main challenges that slow down the process of approximation of Ukrainian legislation to EU acquis include the lack of a long-term vision of this process and of formal documentation of Ukraine's progress on the part of the EU, new significant EU acts in the area and legislative spam in the Ukrainian Parliament. The Roadmap for approximation of Ukraine's legislation to the EU acquis in the area of electronic communications has not yet been adopted, which undermines legal certainty and predictability of legal relations in this area. At the same time, "legislative spam" generated by MPs scatters the resources necessary for consideration of a number of alternative draft laws focused on the same issues. For example, in the last few months, five alternative draft laws on electronic communications have been registered in the Parliament, but none of them has undergone the 1st reading in the session hall yet. Legislative initiatives of the Government to implement the Association Agreement "sink" among the almost two thousand draft laws registered by MPs every year. The Ukrainian legislation on rules for fair competition in the markets of electronic communications for electronic services based on conditional access and electronic commerce has not been aligned with the EU legislation as regards the implementation of Directives 2002/77/EC and 98/84/EC.

Another issue to be solved is that related to the appropriateness of tasking CEBs without the relevant powers (due to formal adherence to the letter of the law in the Action Plan) with the implementation certain tasks in the telecom sector under the Association Agreement, in particular regarding the legal prohibition of devices for unauthorised access to services and monitoring of prices in the telecommunications market.

In order to improve the process of approximation of Ukrainian legislation to the EU legislation in the field of telecommunication services, it seems appropriate to give the Cabinet of Ministers prerogatives for submission of draft laws aimed to implement the international legal commitments of Ukraine in the field of European

integration, which were agreed upon by the relevant authorities and discussed with the public (involving all stakeholders).

Besides, there is a lack of official documentation of Ukraine's progress in the legal approximation on the part of the EU. According to the Agreement, the official assessment is based solely on the comparison of the final legislative act and a particular sectoral legislative act of the EU and is conducted by the competent authority of the European Commission within 12 weeks. According to the Government Office for the Coordination of European and Euro-Atlantic Integration, Ukraine has submitted its internal legal acts to the European Commission with comparative (transpositional) tables, which should testify to the proper implementation of the EU acquis, including in the telecoms sector.

At the same time, the EU's assessment requires improved capacity to provide official conclusions (as opposed to expert opinions). In turn, the Ukrainian Government should plan an assessment of the effectiveness of the enforcement of approximated legislation (ex-post evaluation) and reports on progress on an ongoing basis.

ENVIRONMENT

Conclusions

In the reporting period, the greatest progress has been made in the area of water resources management, in particular, the approximation to the Floods Directive 2007/60/EC has been completed. In general, this is consistent with the trends of past years, where the Government has shown significant progress in the implementation of the Association Agreement in the water sector. In addition, the adoption in 2018 of the Law of Ukraine "On Strategic Environmental Assessment" is an important stage in the implementation of commitments in the environmental management sector (its approximation is almost complete).

Unfortunately, most of the deadlines set out in the Association Agreement for the fourth (4th) year of its implementation were not respected by Ukraine. The situation in the sectors concerning the quality of ambient air and nature protection, where approximation has not even started, is especially disturbing. This, obviously, is a matter of the political priorities of the Government. In addition, the approximation of the Nitrate Directive (responsible authority – Ministry of Agrarian Policy) is rather slow.

Experts point out to the fact that the process of implementation of the Association Agreement is often accompanied by the "Ukrainianisation" of EU legislation, especially in the process of approximation. This consistently results in systematic mistakes and inconsistencies of the legislation with the EU acquis which this legislation was meant to implement. Examples of this problem include the Law of Ukraine "On Strategic Environmental Assessment", the Draft Law "On the Emerald Network", etc. This problem is caused by the reluctance to address the systemic challenges of implementing EU acts (which are mainly related to Ukraine's non-membership in the EU) and by the quality of the approximation process.

Recommendations

The Government needs to focus on taking practical measures for the enforcement of the EU acts that have already been approximated with. In particular, this concerns the Framework Water Directive, the Floods Directive, the strategic environmental assessment, and the environmental impact assessment. Establishment of good

practices for implementing the new rules and mechanisms is a key element in ensuring future sustainability of the reforms undertaken.

The Government, together with the EU, needs to solve systemic problems of the implementation of EU acts that are related to the Ukraine's non-membership in the EU (in particular, regarding the implementation of the provisions that imply the direct role of EU institutions in the implementation of EU acts, such as the Habitat Directive).

The Government should focus on the implementation of the tasks with long violated implementation deadlines: those in the field of nature protection, air quality, etc. This is especially true for commitments that are common for the Association Agreement and the Energy Community (Bird Directive, Sulphur Content of Certain Liquid Fuels Directive).

It should also be mentioned that the Concept of Implementation of Directive 2010/75/EC on industrial emissions presented by the Ministry of Ecology is an excellent (and the first) example of public policy in the field of implementation of the Association Agreement based on analysis and forecasting, systemic approach and publicity. The use of such an approach in the future should become a mandatory practice.

TRANSPORT

Road transport

Conclusions

In the field of road transport, just like last year, no approximation to the EU acquis specified in the Association Agreement has taken place as regards the commitments that were to be fulfilled between November 1, 2017 and November 1, 2018 (a total of 8 Directives and Regulations). Although legislative changes have been drafted by the authorities in charge (first of all, the Ministry of Infrastructure and the Ministry of Internal Affairs), not event basic draft laws have been adopted due to the incomplete compliance of the draft acts with European legislation and absence of consensus among stakeholders on how the new rules should be implemented.

Adaptation of legislation in this area is slowed down and negatively affected by the following factors:

- lack of a proactive attitude on the part of the drafters of legislative changes during the approval, consideration and adoption of legislative acts (due to lack of responsibility for "zero" results);
- long-term reform of ministries and changes in the staff of civil servants who draft these acts (additional time spent familiarising with European legislation and previous accomplishments, regular changes in the ways and approaches to the adaptation of this legislation, etc.);
- the drafted draft acts do not fully comply with European legislation and practice of their enforcement (in particular, due to the fact that certain state bodies interpret certain EU regulations at their own discretion, their selective application of these norms, unwillingness to lose authority, etc.);
- blocking or inhibiting the passage of acts by various stakeholders and interest groups who are afraid of changes entailed by the adaptation of the legislation;
- lack of priority of the European integration draft laws for MPs, who delay

their consideration in the VRU committees; on the Parliamentary agenda these draft laws come in end of the list and are impassable because of the time of their consideration.

However, with the involvement of various stakeholders and European experts, the responsible authorities have managed to improve the draft acts and approximate them somewhat closer to the acquis communautaire, though not fully. But, in order to effect a breakthrough in adaptation, much more effort should be made, both on the part of the authorities and the public.

Recommendations

The legislative approximation process may intensify due to:

- direct contacts and a dialogue of the drafters of legislative changes with the management and responsible persons of other ministries and state bodies during endorsement procedures and prompt removal of all disputed and problematic issues without prejudice to the necessity to fulfil commitments under the Association Agreement, as well as prioritising public interests rather than those of certain state bodies or officials;
- an active and constructive dialogue between persons in charge and MPs, representatives of business and other stakeholders on the basis of the specialised VRU Committee to explain the proposed legislative initiatives and benefits of their introduction for various market participants and to ensure the adoption of basic laws;
- constant contacts with representatives of EU bodies in order to obtain consultations and assistance in adapting and implementing the provisions of EU legislation, taking into account their comments and proposals in draft acts;
- focusing on the result rather than the process.

Maritime transport

Conclusions

As of October 2018, Ukraine has not achieved the desired progress towards the approximation in the field of water transport under the Association Agreement, since the VRU has not adopted the draft laws aimed at implementing the provisions of Directive 2009/45/EC (the deadline for its implementation comes this year); and a considerable number of legal acts drafted by the Ministry of Infrastructure with a view to approximation to the EU legislation in the area of transport display but formal signs of implementation of the relevant indicators. The adopted subordinate acts are not sufficient for the full implementation of Directive 2009/45/EC, as well as Directives 2003/25/EC and 1999/35/EC, as these Directives require amendments to the Code of Administrative Offences of Ukraine and the Criminal Code of Ukraine with regard to introduction of fines for breach of national provisions in accordance with the requirements of Directive 2009/45/EC.

Recommendations

In order to effectively implement the provisions of Directive 2009/45/EC, as well as Directives 2003/25/EC and 1999/35/EC, it is necessary to take the following steps as soon as possible:

- making appropriate amendments to the Code of Administrative Offences of Ukraine and the Criminal Code of Ukraine regarding the introduction of fines for violating national provisions in accordance with the requirements

specified in the Directives;

- using regulatory legal acts to approve the Procedure for the Issue of Relevant Certificates and the List of Equipment for compliance with the provisions of Directive 2009/45/EC (for passenger ships) or issue of safety certificates and a permits for operation (for high-speed craft). Designating responsible authorities authorised to issue the specified certificates;
- using relevant regulatory acts to amend the Technical Regulations on Marine Equipment, approved by CMU Decree No. 1103 of September 5, 2007.

COMPANY LAW

It is necessary to give credit for the complex implementation in the national legislation of Directive 2004/25/EC ahead of the relevant deadlines specified in the Association Agreement. However, this process has not been completed yet and requires further adoption of regulatory acts.

Since Directive 2004/25/EC is very flexible and offers wide discretion in adapting legislation, the key issue is to what extent the national rules will ensure the protection of minority shareholders in practice (i.e., fulfil the purpose of the Directive). This first of all refers to the fair price to be paid for shares.

Recommendations

The success of the implementation of the Directive in this context will depend on the actions of the regulatory authority, the NSSMC, the scrupulousness of shareholders (primarily, majority shareholders), as well as court practices aimed at protecting honest minority shareholders.

SOCIAL POLICY

Conclusions

Under the Association Agreement and its Annex XL, after the entry into force of the Agreement Ukraine had to fulfil its commitments concerning the adaptation of national legislation to a number of EU Directives – 7 Directives of employment legislation, 6 Directives on anti-discrimination and gender equality, and 5 Directives on health and safety at work. The degree of approximation varies: the provisions of three Directives have been implemented (namely Directives 79/7/EEC, 92/104/EEC, and 2009/104/EC), while those of the other Directives have not been implemented (e.g. 97/81/EC, 91/383/EEC, 91/533/EEC). It is important to mention that, even though for the most part the adaptation commitments have not been fulfilled, adaptation work has been underway for all Directives. However, drafting of the relevant legislation has not resulted in adoption of any laws or subsidiary acts aimed at harmonisation with the EU Directives in the area of social policy, instead remaining at the level of the drafting of regulatory legal acts. Therefore, Ukraine faces problems with regard to timely implementation of its commitments to adapt legislation in the area of social policy.

The work on the adaptation of legislation was accompanied by a number of challenges associated with preparing the necessary acts for adaptation, the degree of implementation of the provisions the Directives in these acts, and the comprehensiveness and consistency of the planned changes. Thus, by abolishing the List of Hard Jobs and Jobs with Harmful and Dangerous Working Conditions where the Use of Women's Labour is Prohibited in 2017 Ukraine approximated its

legislation in terms of ensuring equal access of women and men to work but at the same time failed to comply with the requirements of Directive 92/85/EEC which provides for the safety of pregnant women, women who have recently given birth and breastfeeding women.

Sometimes, draft amendments to laws are fragmented and overly narrow, which makes it impossible to fulfil the adaptation commitments in full. The practice of drafting bills is rather positive, focusing on the comprehensive transposition of the requirements of the Directives into national legislation (for example, with respect to parental leave).

The comprehensiveness of the adaptation of the legislation in the field of social policy is closely linked with the issues of codification of employment legislation in Ukraine. The Draft Labour Code, as a comprehensive draft regulatory act, covers a significant number of matters falling within the scope of regulation of the Directives. Therefore, its adoption would have a direct impact on the fulfilment of Ukraine's commitments to adapt legislation. However, the Draft Labour Code, although registered in the Parliament, has not been approved for a long time, which is also due to the fact that social partners find it difficult to reach a compromise. Attempts to take into account the views of social partners, negotiations with them and consultations on relevant issues is a factor that takes a toll the process of adaptation and underlies the specificity of the adoption of legal acts in the area of social policy, as well as the completeness and timeliness of fulfilment of the adaptation commitments.

Recommendations

- improving the quality of fulfilment of the commitment to adapt legislation in the area of social policy by avoiding development of pinpoint amendments to national legislation and by adopting system-building regulations that take into account the goals, objectives and the entire set of requirements of the Directives;
- reviewing the draft laws previously registered in the Parliament with regard to their compliance with the requirements of the Directives, especially concerning system-building regulations such as the future Labour Code of Ukraine;
- progress in the approval of the future Labour Code of Ukraine, the status quo with regard to the registered and long pending consideration Labour Code cannot continue as it is. In the event of further disregard of and failure to approve the Code, it is necessary to consider adopting individual laws aimed at adapting the legislation. The need for adoption of individual draft laws on the social dialogue and collective contract regulation is directly provided for in the registered Draft Labour Code;
- continuing and consolidating the existing established practice to make reference in all regulatory acts to the Directives which they are supposed to implement. This approach will take into account the requirements of the Directives, according to which the regulations adopted to implement specific Directives should contain a reference to this Directive or contain such references when they are officially published.

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