

NEWSLETTER

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Facilitating legal approximation process in Ukraine
and Ukraine's integration into European structures

UEPLAC

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TECHNICAL BARRIERS TO TRADE SPHERE IN UKRAINE AFTER WTO ACCESSION AND TOWARDS THE FTA WITH THE EU

In the WTO terminology the term "Technical Barriers to Trade" (TBT) is a part of the wider taxonomy of "Non-Tariff-Barriers" (NTBs). In the EC Treaty the corresponding generic concept applicable to the free movement of goods, beyond the completion of the Internal Market, between the EU Member States is addressed under the wording of measures "having equivalent effects" to quantitative restrictions.

The TBT Agreement is applied to all industrial and agricultural products (Article 1.3 TBT Agreement) except products covered by the SPS Agreement (measures on foodstuffs and feedstuffs of which the purpose relates to food safety or animal welfare).

Since its accession to the WTO on 16 May 2008, Ukraine is committed to comply with the rules laid down in the GATT and other multilateral WTO agreements such as the TBT and SPS Agreements. That was a prerequisite to start the negotiation of a Free Trade Agreement (FTA) with the European Union.

...(continued page 3)

COMMENTS TO THE DRAFT CONCEPTION ON PROTECTION OF RIGHTS OF CONSUMERS OF NON-BANKING FINANCIAL SERVICES IN UKRAINE

Consumers' interests as well as their protection are among the central tasks of the EU internal market policy. Protection of consumers is the "horizontal" EU policy for all the spheres and instruments of the internal market policy without any exceptions. In particular the EU Agreement requirement on the Member States' duty to secure high level of consumers' rights protection while introducing any regulatory mechanisms has conceptual value for consumers protection.

The Conception on Protection of Rights of Consumers of Non-banking Financial Services in Ukraine (hereinafter – the Conception) drafted by the Dergfinposlug can be provisionally compared to the "green documents" in the EU legal drafting practice. The primary purpose of such documents is involving maximal amount of parties to improvement of the internal market policy. The method of green documents allows providing above all a political consensus in relation to the acceptable methods of settlement of specific problems and implementation of internal market policy tasks.

...(continued page 2)



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Content

pages

TBT sphere in Ukraine after WTO accession and towards the FTA with the EU..... **1 and 3**

Comments to the Draft Conception on Protection of Rights of Consumers of Non-banking Financial Services in Ukraine..... **1 and 2**

Round Table "Power of Drug Policy or Drug Policy of Power!?"..... **4**

Round Table on "European Probation System. The Italian System of Alternatives to Imprisonment for Drug Dependent Offenders and for Juveniles"..... **4**

UEPLAC organised the second session of the workshop devoted to finalising the Ukraine's Environmental Strategy up to 2020..... **4**

UEPLAC held the fifth Steering Committee meeting..... **4**

COMMENTS TO THE DRAFT CONCEPTION ON PROTECTION OF RIGHTS OF CONSUMERS OF NON-BANKING FINANCIAL SERVICES IN UKRAINE

Valentin Dereviankin, UEPLAC Legal Advisor in Internal Market Issues and Economic and Trade related Reforms

On the whole a document sufficiently marks the main directions and principles of protection of consumers of financial services which are standard directions in practice of the EU Member States in particular concerning:

- Providing consumers with adequate information – toughening requirements to exposure of information (part 3, section on General Provisions and Key Problem No 2);
- Increasing the level of financial literacy of consumers (key problem No 6);
- Securing the free choice of services (key problem No 3);
- Introduction of mechanisms of legal protection (prejudicial or extra-judicial), renewal of violated rights (key problem No 4);
- Introduction of the system of indemnifications to consumers/investors (key problem No 5)

It is suggested to solve the problem of inadequate awareness of consumers in the EU via providing maximal possibilities and rights for consumers to receive necessary market information. Thus, the adequate level of knowledge of consumers depends on:

- providing of quality of information (veracity, timeliness, connection with concrete financial instruments, simplicity)
- providing of volume of information for concrete category of consumers (adequacy and proportion)
- providing of ability of consumers to understand financial information and to make competent decisions (education, access to information for all consumers without exception).
- Possibility to receive consultations of independent specialists (this aspect is related to recommendations for consumers, unlike disclosure of normative as a rule descriptive information). Expansion of the sphere of independent consultations should be supported by the rules consideration of interests of consumers of different categories as well as responsibility of consultants.

It is necessary to note that the orientation of Conception on improving of financial literacy of consumers fully corresponds to modern strategy of consumers protection of the European institutions. In part 3 of the Sections "Directions of Realization" the Conception offers the complex of measures for the decision of this problem, which de bene esse can be divided into two categories: a) education of population-consumers, b) professional preparation of specialists of regulatory bodies. It remains indefinite as regards the extend involvement of system of general education besides the regulatory bodies into realization of the strategy of increasing financial literacy.

In relation to forming the Conception taking into account the necessities of overcoming the crisis phenomena on the market in our view the Conception has to be a document directed on stable long-term or medium-term development of markets, and that is why its expedience in a crisis situation will be low as well. At crisis terms there should work special methods and approaches to development of urgent and unadjoined regulatory and compensative measures stimulating trust to market.



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TBT SPHERE IN UKRAINE AFTER WTO ACCESSION AND TOWARDS THE FTA WITH THE EU

by Jacques Tallineau, UEPLAC Legal Advisor in Internal Market Issues and Economic and Trade related Reforms

The FTA will cover a number of important areas, for example, Intellectual Property Rights, Competition and Public Procurement but the central discussion will focus on customs tariffs and TBT which impede trade facilitation between the EU and Ukraine.



The EU has recently (June 2008) adopted a New Package on Internal Market comprising key elements of the horizontal framework required to ensure the free movement of goods. The Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA) is envisaged in the Objective 30 of the EU-Ukraine ENP Action Plan, the roadmap for its conclusion has been agreed on 19 December 2005 and there are now clear indications that this ACAA will be further discussed to be annexed as a Protocol to the FTA.

Changes needed are not only related to the legal or institutional framework but also to measures of capacity building of the public and private actors involved in the regulatory chain of conformity assessment procedures. In particular, manufacturers have to be prepared to be switch from a system where mandatory certification of products or processes is predominant to a system relying mostly on the use of voluntary standards and less descriptive technical regulations which set out only essential requirements to which standards have to conform.

The FTA to be concluded between the EU and Ukraine is a regional economic

agreement authorized by the Article 24 of GATT under certain conditions. Regional agreements set out the rules that derogate to some extent to the principle of equal treatment (MFN) for all trading partners Members of the WTO. However, it has been observed by the WTO Secretariat (study carried out in 1995) that regional agreements encourage trade flow between groups of countries and that commitments undertaken by the parties to the agreements would not have been possible at that time on a multilateral basis.

The FTA EC-Ukraine will not threaten the rules of GATT but it will complement them. Thus, recitals or other provisions of the FTA or the ACAA will remind that both parties have obligations under the WTO and especially under the WTO Agreement on Technical Barriers to Trade.

The Council Resolution of 7 May 1985 on standardization and general guidelines for a new approach on technical harmonization, followed by the White Paper of the European Commission of June 1985 on the Completion of the Internal Market has generated a considerable legislative work on the EU level.

Priorities for legislative approximation included in the EU-Ukraine ENP Action Plan remain valid. In fact the objectives 30 and 31 of the ENP-AP have already anticipated the main measures for the removal of TBT between the EU and Ukraine.

Most of those measures relate to the adoption of the institutional, legal and administrative measures - both horizontal and sectoral - to permit the conclusion of an ACAA.

- Harmonisation of the horizontal framework and sectoral legislation in priority sectors for possible inclusion of the product sectors in the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA).

- Revision of existing Ukrainian standards, providing for harmonization with international and European standards and for voluntary application.

- Institutional arrangements and capacity building to avoid the concentration of functions within a single institution and related conflicts of interest with regard to standardisation, accreditation and conformity assessment,

- Harmonisation of the legislation on liability for defective products and general product safety.

- Simplification of conformity assessment procedures for industrial products, in accordance with EU rules and practice.

- Development of market surveillance capacities of the Ukrainian institutions based on best practice of EU Member States.

Other measures pave the way of an enhanced regulatory convergence to facilitate the movement of goods.

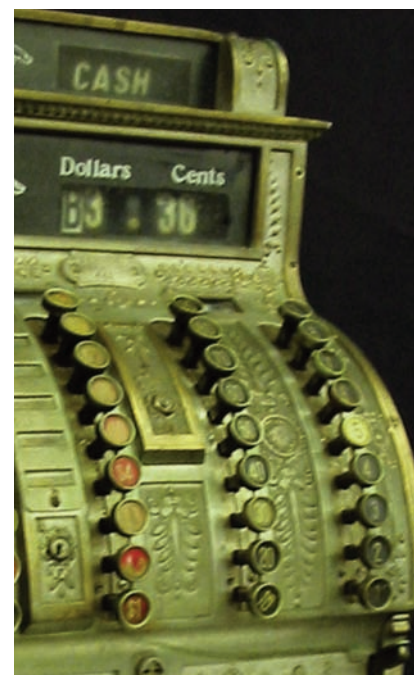
- Prevention of quantitative restrictions.

- Harmonisation of import licensing and registration requirements with those of the EU.

- Review of national measures covering the weight, composition, labeling manufacture and description of products to remove discrimination against imported products.

- Nomination of a contact point to facilitate co-operation and improved information flow between the EU and Ukraine on national measures and obstacles that could hinder the movement of goods.

The objective of the entry into force of an ACAA (presumably by the end of 2011) is central to facilitate the trade of industrial products in priority sectors. That is already an ambitious programme where it will be required from Ukraine the same efforts as those made by Candidate Countries at a late stage of the EU accession process.



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Round Table “Power of Drug Policy or Drug Policy of Power!?”

On 18 February 2009 UEPLAC Legal Adviser in Justice, Freedom and Security Mr Edoardo Spacca participated in the Round Table “Power of Drug Policy or Drug Policy of Power!?”, organised by the International HIV/AIDS Alliance in Ukraine under support of the Central and East-European Harm Reduction Network on the occasion of the 14 anniversary of adoption by the Verkhovna Rada of Ukraine for the first time on the ex-Soviet area of the three main “antidrug” laws which laid the basis of the state drug policy. Organisers of the event invited the recently appointed representative of Ukraine in the UN Commission for drugs – First Deputy Head of the Security Service of Ukraine Mr V.I. Horoshkovsky, people’s deputies Ms T.D. Bahteeva and Mr S.V. Shevchuck as well as the heads of the Ministry of Interior Affairs, the Ministry of Foreign Affairs, the Ministry of Health Protection and the Ministry for Family, Youth and Sport. In general the round table which took place in one of Kyiv information agencies has managed to bring together two dozen professionals and experts in the field including politicians, government high officials, representatives of international and domestic organizations, drug policy activists, drug dependent persons and their close relations. As a result of discussion the round table participants issued a resolution which lists pressing issues, recommendations to their solution and suggestions to the Ukrainian delegation to be raised at the 52nd Session of the United Nations Commission on Narcotic Drugs expected to take place in Vienna (Austria) in March 11-20, 2009.

Round Table on “European Probation System. The Italian System of Alternatives to Imprisonment for Drug Dependent Offenders and for Juveniles”

UEPLAC, jointly with the Institute of Legislation of Verkhovna Rada, organised a one day Round Table on “European Probation System. The Italian System of Alternatives to Imprisonment for Drug Dependent Offenders and for Juveniles” aimed to provide EU experts’ opinion to the Ukrainian authorities on the specifics of the system of alternatives to imprisonment for drug dependent offenders applied in Italy and on what elements of that system could be replicated in Ukraine.

Currently the debate on the future system of probation in Ukraine is focused on drafting legislation inspired to the experiences of countries that already implement alternatives to imprisonment. UEPLAC is assisting in this task the Consultative Council on Probation and Juvenile Justice since one year ago and this Round Table was aimed of offer better insights of the practical aspects of the

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system implemented in Milano, Italy, to those engaged in the drafting. The Local Health Authority of Milano has been at the forefront of innovative initiatives in the implementation of Italian legislation and policy on the matter, being the source of a number of pilot projects that have already become national programmes, in particular on the work done by the institutions with delinquent drug users. For this reason UEPLAC invited two professionals that, in different roles, had contributed to the shaping of the current Italian system of probation. The invited speakers were Dr Marco Ferrario, a criminologist who had several years of cooperation with Italian Institutions within the application of alternative measures to imprisonment, and Dr Francesco Scopelliti, deputy-director of the criminal justice department at the local health authority in Milan, Italy.

The representatives from the Institute of Legislation of the Verkhovna Rada of Ukraine, Consultative Council on Probation and Juvenile Justice, Ministry of Interior, Ministry of Justice as well as State Department for the Execution of Punishment took part in the proceedings of the Round Table.

UEPLAC organised the second session of the workshop devoted to finalising the Ukraine’s Environmental Strategy up to 2020

On 10 December 2008, UEPLAC organised a second session of the workshop devoted to finalising the Ukraine’s Environmental Strategy up to 2020. Meeting was aiming to find common features in the Action Plan with principles of the EU Environmental Policies and more specifically principles and requirements of the EU environment related Directives and regulations. Meeting managed to cover the basic principles of the Action Plan not analyzing in depth presented by the Ministry numbers and indicators: content of the Preamble and priority setting; interconnection with other sector policies, trust building; economy and environment, financing environment protection actions; climate change and low carbon economy aspects in integrated environment policy.

UEPLAC held the fifth Steering Committee meeting

On 9 February 2009, UEPLAC held the fifth and the last Steering Committee meeting. During the meeting the UEPLAC leadership presented a brief summary of the Project’s progress and the Project planning for the next reporting period. The Steering Committee approved the UEPLAC Progress report 5 as well as the activity planning for the next reporting period.

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