

Ukrainian-European Policy and Legal Advice Centre (UEPLAC)

Regulatory impact analysis of the introduction of the EC Low Voltage directive into Ukrainian legislation

Simplified Regulatory Impact Assessment

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Introduction

This document is a sample of a simplified Regulatory Impact Assessment (RIA). The document has been produced to assist the efforts of the *State Programme for Approximation of Ukrainian legislation to the legislation of the European Union*. These efforts are co-ordinated by the Ministry of Justice and under its authority, by the State Department for Legal Approximation (SDLA).¹

Regulatory Impact Assessment is an information-based analytical approach to assess probable costs, benefits, risks, consequences, and side effects of planned policy instruments such as laws and regulations. The results are used to improve the quality of policy instruments. In particular, RIAs should point out to what extent the planned regulation increases or decreases certain burdens of the affected companies, and should identify the “winners and losers” as a consequence of the investigated regulation.

Simplified (initial, preliminary, basic or light) RIA is an approach adopted by several administrative cultures that have successfully institutionalized impact assessment in the policy development process.² Initial RIAs are often made just to determine whether the forecasted impact of a regulatory instrument is likely to be serious for the economy and consequently a deeper investigation of the relevant issues would be justified. The difference between simplified and full RIA lies mainly in the depth and detail of the analysis undertaken: simplified RIAs aim at provision of the important information concerning the proposed regulation to the public administration (drafters and various stakeholders) as early as possible. The in-depth RIAs take more time and efforts since full RIAs rely on a wider spectrum of data collection, consultation and modeling. Therefore in-depth RIAs can justify their findings and quantify the magnitude of the expected impacts with more precision.

RIA in the context of legal approximation

In this context RIA methodology has some specific features:

- 1) When analyzing the impacts of legal approximation in Ukraine, one has to compare the norms of the existing national legislation with the particular provisions of the European law to be introduced.
- 2) The legal and institutional differences between the existing Ukrainian regulatory framework and harmonized regulation need to be identified.

¹ Resolution No. 1365 of the Cabinet of Ministers of Ukraine of 15 October 2004 *On Procedure of Development and Implementation of the Plan of Measures to Implement the State Programme for Approximation of Ukrainian legislation to the legislation of the European Union* and Resolution of the Cabinet of Ministers of Ukraine No. 1742 of 24 December 2004 *On Creation of State Department for Legal Approximation* (version of 15 September 2006).

² A methodology for simplified (preliminary) RIA is offered by the UK Government in the following document: “Better Policy Making: A Guide to Regulatory Impact Assessment”. Regulatory Impact Unit, Cabinet Office of the Government of Great Britain. Publication date: January 2003.

- 3) In the context of legal approximation, the option of “doing nothing” (i.e. abstaining from any new measures) in the regulatory sphere is often not open, due to Ukraine’s international commitments.
- 4) In many cases the impacts of individual European regulations to be introduced cannot be easily measured. Instead, the European regulations may be grouped into logically built-up families of inter-dependent regulations.
- 5) For certain policy areas there is a wide portfolio of available sources of information on legal harmonization practice in the accession countries.
- 6) When highlighting the regulatory impacts, special attention should be paid to all aspects of EU-Ukrainian relations, with special respect to trade, competition, tourism, investment and other economic issues.

Recommendations to adaptation of methodology

Public administrations institutionalizing simplified RIAs have consciously abstained from setting too rigid or too high standards, in order to facilitate the timely production of these documents. For the same reason, the structure of the RIA presented in this paper can be applied for other regulatory tasks, but the subtitles may have to be adapted to the specific nature of the regulation in question.

The structure of this sample simplified RIA is a combination of three methodological approaches, namely:

- (a) the existing Ukrainian methodology for regulatory impact assessment (adopted by the Resolution No. 308 of the Cabinet of Ministers of Ukraine of 11 March 2004,
- (b) the UK methodology for preliminary RIA as indicated in the footnote 2, and
- (c) the draft UEPLAC methodology for regulatory impact assessment in the context of legal approximation (December 2007).

The SDLA recently has elaborated methodological guidelines for regulatory impact assessment in the context of the currently established planning procedure for legal approximation. The structure (template) of the SDLA methodological guidelines is more general than in this simplified RIA, but the contents of this sample document are easily convertible into the format proposed by SDLA.

Importantly, the SDLA methodology introduces two novelties into the existing formal procedure: (a) the notion of the simplified RIA for recommendations on approximation is introduced and (b) as one of the regulatory alternatives evaluation of the full harmonization of the Ukrainian regulatory norms with the EU *acquis communautaire* is to be explored.

This paper represents a sample of simplified (preliminary) RIA and it can be used in two ways:

- To identify legal, institutional and economic impacts that are likely to be expected in Ukraine due to introduction of the EU Low Voltage Directive³ into Ukrainian law. The analysis took into consideration experiences of other countries, professional literature and

³ Directive 73/23/EEC or, equivalently, its amended form as Directive 2006/95/EC.

statistics about the affected companies, consumers and markets in Ukraine, interviews and consultation with the affected institutions and companies.

- To offer support for training needs of Ukrainian institutions to be involved in similar regulatory impact assessment projects. The proposed document may illustrate the method of preparing simplified RIAs to the personnel of those institutions involved in such activities.

The Low Voltage Directive has been chosen as a pilot case, because:

- a) it exemplifies the difficulties encountered when assessing the impacts of harmonizing regulations strongly interconnected with other horizontal regulations,
- b) its lessons could be used for similar RIAs, and
- c) it could benefit from the lessons learned elsewhere (in previous years impact assessments of the LVD have been prepared in countries acceding into the European Union, notably in Lithuania⁴ and Croatia⁵).

⁴ The Impacts of a "Free Movement of Goods" Directive. Pilot Study. Regulatory Impact Analysis. of the Introduction of the Low Voltage Directive into Lithuanian Law. Vilnius, May 2000 Prepared by Dr. Peter Futo, Consulting and Research for Industrial Economics, Budapest and Agne Seselgyte, Local Expert, SEIL, Vilnius. Supported by PHARE SEIL Project - Support to the European Integration of Lithuania.

⁵Regulatory Impact Analysis of the Introduction of the Low Voltage Directive (73/23/EEC) into the Croatian Law. A Case Study of the Harmonisation of EU Technical Legislation. Pilot Study. Prepared by Dr. Peter Futo, Consulting and Research for Industrial Economics, Budapest. Ivona Štritof and Toni Lukšić. Ministry for European Integration, Zagreb 2001. Supported by Department for International Development, United Kingdom.

1. Subject of the regulatory impact assessment

This RIA assesses the likely impacts of the **full** introduction into the Ukrainian legislative/regulatory framework of a system of instruments compatible with the Low Voltage Directive (LVD) implemented in the EU.

Such a system (hereinafter referred to as introduction of LVD) implies the adoption of the relevant horizontal product market legislation of the European Union in Ukraine. Therefore, for the purposes of impact assessment, it is assumed that Ukraine has established a market surveillance and product liability system compatible with the New Approach Directives of the European Union, including the LVD.

LVD refers to the Council Directive 73/23/EEC of 19 February 1973 on the harmonization of the laws of European Union Member States related to electrical equipment designed for use within certain voltage limits. The original Low Voltage Directive 73/23/EEC has been subsequently amended and came into force as Directive 2006/95/EC as from 16th January 2007.

An Order No. 284 of the State Committee on Technical Regulation and Consumer Policy (DSSU) of 31 December 2003 “On approval of Technical Regulation on assurance of safety conformity of low voltage equipment” covers the same regulatory area but the legally binding force of this act is questioned by line institutions. As a result, this act is not yet implemented.

2. Identification of the regulatory goals

The introduction of LVD into Ukrainian law is viewed as an important step towards the improvement of the quality of products on the relevant domestic market and to the removal of technical barriers to trade between Ukraine and the EU. The main results to be achieved are a higher level of product safety for consumers on the one hand and industrial innovation on the other hand.

It will be necessary to switch the Ukrainian regulatory regime from a system of mandatory certification of products to a system of voluntary application of standards by producers as far as those standards comply with essential requirements for the health and safety of consumers. The essential requirements are currently set out in the compulsory technical regulation subject to this RIA. The functioning of the technical regulation also implies that relevant standards are made available to manufacturers.

LVD’s introduction will offer to manufacturers (or to their authorized representatives) the possibility to apply Conformity Assessment Module A. As a result, manufacturers themselves will be able to assess the conformity of their low voltage products with the essential requirements of the Low Voltage Directive, without any involvement of third parties (i.e. certification bodies), provided that the producer:

- a) delivers technical documentation on the design, manufacturing and operation of the electrical equipment,

- b) issues an EC declaration of conformity wherein the manufacturer ensures and declares compliance of its products with the requirements to the technical documentation of the LVD Directive,
- c) affixes the CE marking to each product, and
- d) makes sure that a copy of the declaration of conformity and other technical documentation is at the disposal of the surveillance authorities at any time.

The LVD is one of the 24 so-called “New Approach Directives” that are implemented in the EU. The introduction of the New Approach Directives, together with the associated horizontal legislation will enable Ukraine to comply with the WTO requirements and will improve chances of Ukraine to have stakes into the Single European Market for the categories of products covered by the LVD.

The technical regulation subject to this RIA is also a measure for the implementation of the Partnership and Cooperation Agreement (PCA) of 1994 between the EU and Ukraine along with the EU-Ukraine Action Plan of 2005 and this measure is included in the “State Programme for Approximation of Ukrainian legislation to the legislation of the European Union”. In this context, the medium term objective is to conclude an agreement with the EU for the mutual recognition of the conformity assessment of products covered by the LVD (as a part of a more general agreement (ACAA), which would cover also other categories of products and conformity assessment bodies duly identified).

3. The relevant regulatory challenges

Ukraine’s product market regulations are evaluated by international organizations as technical barriers to trade discouraging foreign direct investment.⁶ At the same time, these regulations are considered to be impeding competition, market entry, innovation and growth of local companies⁷. These observers acknowledge that since 2003 serious attempts have been made to implement a regulatory reform, but this reform is not yet accomplished.

Ukraine’s system of conformity assessment is evaluated by international observers as lacking transparency and being over-centralized.⁸ For a wide group of products (in particular for low voltage equipment), despite certain legislative and regulatory provisions that allow voluntary application of standards, most of the products in Ukraine are still subject to mandatory compliance with national standards. This is a clear contradiction with the WTO definition of standards, where (a) compliance with standards is voluntary, and (b) if compliance with some document laying down product characteristics or production methods is made mandatory, that document is defined by the WTO as a technical regulation.⁹ In Ukraine manufacturers do not

⁶ “Ukraine economic assessment 2007”. OECD Economic Surveys. Organisation for Economic Co-Operation and Development, Paris.

⁷ “Too Little Destruction, Too Little Creation: A Schumpeterian Diagnosis of Barriers to Sustained Growth in Ukraine” Christian Ganella and William Thompson. OECD Economics Department Working Papers No. 574. Paris 3. September 2007.

⁸ “Industrial Standards and Conformity Assessment in Ukraine”. Source: Market Access Database, a service provided by DG Trade of the European Commission. Date of entry: 8 March 2006.

⁹ See the glossary at the end of this document.

have the opportunity to develop their own standards, and in addition, for the time being, the national standards have only a limited degree of harmonization with international ones.

In the EU low voltage products are subject mainly to post-market inspection (i.e. they are checked after they have been placed on the market). Where non-conformity is detected by market surveillance authorities, the product is removed from the market. The Ukrainian conformity assessment process takes place before the products are placed on the market. This pre-market certification is burdensome for manufacturers since it involves a third-party certification. In addition, product approvals are valid only for a limited period of time and for a limited quantity of products.

In Ukraine, the range of products under mandatory certification is much wider than in developed market economies. This mandatory certification also is required for a wide portfolio of low risk products. According to a survey made by the International Finance Corporation (IFC) in 2006 about a quarter of all products/services of Ukrainian enterprises are subject to mandatory certification.

Foreign observers of the existing Ukrainian institutional framework have repeatedly highlighted that there is a concentration of all regulatory functions (standardization, metrology, conformity assessment, market-surveillance, consumer rights protection) under the DSSU.¹⁰ This potential conflict of interests is not in line with the EU norms and practice. Among other adverse effects of the existing system is the cost of conformity assessment procedures paid by enterprises, which is not always proportional to the services rendered.

On the whole, the current system creates barriers for innovation, imposes unnecessary administrative burdens on companies and does not conform to international benchmarks (including EU and WTO rules). As a result, it impacts adversely the competitiveness of the Ukrainian economy.

4. Preceding legislative measures, assumptions about the legislative and administrative actions

Since 2003, there have been a number of legislative and regulatory initiatives to tackle the issues above. Some elements of the EU “New Approach” have been introduced but without any consistency to allow the functioning of a similar system in Ukraine. In particular the following principles are already laid down in the Ukrainian legal framework:

- The product conformity assessment is based on the use of a series of modules similar to those applied in the EU (Council Decision 93/465/EEC).
- The technical regulations setting out essential requirements for health and safety of certain categories of products mirror the New Approach Directives.

¹⁰ Source: Fiche of the Twinning Project UA06/PCA/TR04 “Strengthening of Standardisation, Market Surveillance, Metrology and Legal Metrology, Conformity Assessment and Consumers Policy in Ukraine”. Project is part of the TACIS- National Action Programme 2005. Beneficiary: State Committee of Ukraine for Technical Regulation and Consumers policy (DSSU).

However, entry into force of the provisions of the national legislation is postponed until the corresponding standards are harmonized with the EU standards. Furthermore, implementing measures (for example, those related to the establishment of market surveillance authorities) are not yet in place either.

The shortcomings listed above will be eliminated and a system compatible with the New Approach Directives (including the LVD) will be established in Ukraine only if the following legislative and administrative actions are carried out, namely:

- The role of the DSSU and whether this body or other line institutions are empowered to enact and to implement technical regulations is clarified. Before 2004 technical regulations were adopted by the Council of Ministers of Ukraine. In 2004 this power was allocated to the DSSU and the Ministry for Industrial Policy, but in November 2007 the existing technical regulations have been submitted to the Council of Ministers of Ukraine for a formal adoption. For the above reasons, the decision making process has to be streamlined together with the allocation of responsibilities to Government agencies for the implementation of technical regulations which fall within their sphere of competencies;
- The Ukrainian technical regulation on LV products contained in the Order of DSSU No. 284 of 31 December 2003 “On approval of Technical Regulation on assurance of safety conformity of low voltage equipment” is fully harmonized with the LVD. In particular, it is important that the national technical regulation allows the application of the same conformity assessment modules as those of the LVD;
- Products covered by the LVD are removed from the list of products under mandatory certification and the obligation imposed by the DSSU for the use of the UkrSepro certification system is removed accordingly;
- Secondary legislation about the designation of conformity assessment bodies is issued and implemented, and conformity assessment bodies are accredited for specific categories of products. Low voltage equipment may represent the same category of products but may be divided also into sub-categories to determine the scope of scientific duties of the accredited conformity assessment bodies;
- A national legal and organizational framework to conduct market surveillance activities is established or, at least the function of market surveillance for low voltage equipments is assigned to a public body (with a clear separation of market surveillance and conformity assessment functions);
- EU standards are made applicable in Ukraine beside the national standards and, where appropriate, some national standards are cancelled. In order to speed up the process, the ‘cover page’ method would be useful (when only the cover page of the EU harmonized standard is translated in Ukrainian and the standard’s text remains in its original language but is ready for application);
- For low voltage products, manufacturers may issue a declaration of conformity without referring to the compliance to specific published standards but in this case they could be required to demonstrate that the related products satisfy the requirements for health and safety laid down in the corresponding technical regulation.

5. Identification of alternative options

In view of Ukraine's international obligations and intentions to sign an ACAA with the European Union, *the introduction of LVD into Ukrainian law practically does not have alternatives*. However, there is a wide range of options open, regarding when, in which sequence and accompanied by what type of organizational restructuring the New Approach Directives may be implemented.

First, the preconditions listed in the previous chapter should be ensured and only after that LVD may enter into force. Once the horizontal legislation is in place, the product-group-specific New Approach Directives can be adopted one by one, e.g. depending on which product group is represented in domestic and foreign trade, with special respect to EU-Ukraine trade.

For the above reasons this RIA is provided on an assumption that the LVD will be introduced, but in combination with the measures described in the previous chapter.

6. Government agencies affected by the regulation

DSSU. According to the Decree of the Cabinet of Ministers of Ukraine "On standardization and certification" (№ 46-93 from 10.05.1993 – last updated in 2005), the State Committee on Technical Regulation and Consumer Policy is entrusted to establish and maintain the functioning of the national certification and standardization system. DSSU's head is accountable before the President of Ukraine and the Prime-minister of Ukraine for the Committee's performance. DSSU is an independent budgetary institution, but as far as conformity assessment regulations are concerned it should co-operate with the Ministry of Industrial Policy and the Ministry of Economy.

The total number of employees in the DSSU institutional network is approximately 7.450. The network of DSSU consists of 115 accredited product certifying bodies including 53 accredited certifying bodies for quality management systems, 780 testing laboratories, 27 territorial departments for consumer protection and 28 state centers for standardization, systematizing weights and measures, and certification.

UkrTest. One of the certification bodies, responsible for enforcing LV regulation in Ukraine is a State Enterprise Ukrmetrteststandart / UkrTest. This is an abbreviation for Ukrainian Institute for Testing and Certification of Electric Equipment. The organization is subordinated to DSSU. Every oblast has some authorized enterprise to provide this kind of services. Moreover, numerous certification bodies in Ukraine effectively operate as independent, often monopolistic, entities on a profit-making basis, returning just 20 percent of their fees to the state.

The future legal status and affiliation of this organizational network is dependent on the discussion about the separation of market surveillance and certification functions within DSSU and its subordinated organizations.

Ukraine has some 600 testing laboratories.

7. Impacts on Government

The institutional development of market surveillance, standardization and certification infrastructure will need the re-deployment of substantive resources of the State. These costs are to be interpreted only in the wider context of the Low Voltage Directive, i.e. only as integral parts of the re-organization and support to the above mentioned institutions. However, the State will be later compensated for these efforts in form of a better and more competitive industrial structure, enhanced foreign investment and consequently, increased revenues. Moreover, introduction of these elements into the legislation can bring political dividends, because Ukraine's commitments to the EU can be fulfilled.

In order to implement LVD and the related New Approach directives, the Government has to thoroughly reform and re-organize the whole conformity assessment infrastructure. This re-organization is not necessarily costly, because it can involve a streamlining of the existing system, which may be accompanied with privatization and outsourcing of certain conformity assessment organizations.

The major change for the low voltage product market, and it implies a serious re-organization of market surveillance mechanism, is in the timing of control: LVD equipment will be controlled after they have appeared on the market instead of controlling them before they have been marketed.

The re-organization will involve large training and awareness raising projects in the conformity assessment community. Many stakeholders in Ukraine's conformity assessment community are not yet fully aware of the European quality and conformity infrastructure. In particular, the creation of new market surveillance structures will be necessary, but this does not imply the hiring of additional public officials, rather the re-organization of existing facilities and staff.

Awareness-raising should also be extended to businesses as well. Manufacturers, importers and consumers should be informed and trained on the role and responsibilities of CE marking and other marks enforced by the EU. Manuals and guidelines have to be developed and training courses held in order to facilitate the compliance with the recently proclaimed technical regulations. The willingness of Ukrainian businesses to co-operate needs to be raised in issues of conformity assessment, standardization and technical regulations. The involvement of exporting and foreign owned enterprises will be straightforward, but in other strata of the private sector a very intensive work with companies and associations will be needed.

According to the New Approach (NA) directives, the European Commission should be informed, if the free movement of products within the Single European market is in any way hampered. If Ukraine adopts the system compatible with the requirements of the Low Voltage Directive and the associated horizontal legislation, and signs the Agreement on Conformity Assessment and Acceptance of Industrial Goods (ACAA), the task of notifying the Commission about unsafe products, will be the task of the market surveillance organization which is in charge of inspecting the market for conformity of electric products.

The above activities can be financed partly from the Government budget, partly from incomes and fines of the market surveillance system, partly from the privatization of laboratories and certification bodies, and partly from aid programmes supported by the European Union

The following examples offer some insight into the structure and budget of market surveillance bodies enforcing New Approach regulations in the EU member states.

- *Finland.*¹¹ An indicative sum regarding the costs of market surveillance is as follows. In Finland the annual national investment from the State budget for market surveillance is about 8.5 million EUR. Out of this sum, annually about 2 million EUR and the resources of 11 personnel have been applied to the market surveillance of electric products, which is a relatively high investment for a small country. The bulk of monitoring and surveillance tasks is outsourced to civil and profit-oriented bodies, the costs of which comes to tens of millions of euros per year.
- *Lithuania.*¹² The activities of the State Non Food Products Inspectorate under the Ministry of Economy of Lithuania are financed from a budget of 2.41 million EUR for 2007. The central and regional offices employ 109 staff, of which market surveillance (1.77 million EUR, 103 staff), laboratory tests (0.61 million EUR, 4 staff), quality control programmes (0.038 million EUR, 2 staff). The Inspectorate has experts are in the following fields: production of machinery and construction products, electrotechnical products, textile and footwear, chemistry, toys, economy, law, IT and other fields.
- *Hungary.* The Hungarian National Authority for Consumer Protection (Nemzeti Fogyasztóvédelmi Hatóság – NFH) checks product safety for all consumer goods, with the exception of food, cosmetics, medical devices, personal protective equipment. In 2007 it had a yearly budget of 4.62 million EUR, of which 2.6 million EUR was assigned to expenses on employees, including taxes and contributions. Some 58% of the total budget was covered by Government subsidies, while the rest was covered by incomes generated by the National Authority for Consumer Protection.¹³ The Authority has 120 staff in the central office, of which 40 work in the central laboratory. It has 220 staff in its seven regional offices. The authority plans to recruit 150 new staff in 2008.¹⁴

¹¹ “Market Surveillance of Electrical Equipment in Finland. Analysis and Development” Jyri Rajamäki. TUKES Safety Technology Authority Helsinki 2002. TUKES Publication 9/2002. Doctoral Dissertation. ISBN 952-5095-65-7 and ISSN 1455-0822.

¹² Source: Strategic activity/development plan of the State Non-Food Products Inspectorate under the Ministry of Economy of Lithuania for 2007-2009

¹³ Law on the 2007 Budget of the Republic of Hungary.

¹⁴ Mission report of Turkish market surveillance authorities on the study visit to market surveillance authorities in Hungary and Poland.. Study Visits in 27 and 28 September 2007 and 1 and 2 October 2007, respectively. Twinning file document 2007.

8. Companies and markets affected by the regulation

In 2003 more than 50% of intra-EU trade was covered by harmonized regulations.¹⁵ In a typical European market economy there are approximately 100.000 product types on the market which are subject to the LVD.

The following analysis shows the extent of Ukrainian production and trade in the product groups closely associated with low voltage equipment.¹⁶

- *Production.* In Ukraine the value of production of electric, electronic and optical devices has significantly increased since 2001 and by 2006 it has surpassed the value of 15 billion UAH which is equivalent to 3 % of the output of Ukrainian industry.
- *Number of companies.* In 2006 there were altogether 4805 companies in the sector producing electric, electronic, optical devices, which is 9 % of the number of industrial companies. Out of these firms, 0.4% are large, 14.6% are medium sized and 85% were small companies. This means that the share of small companies in the sector producing electric, electronic and optical devices is bigger than the share of small companies in the whole industry.
- *Employment.* In 2006 the sector producing electric, electronic, optical devices has employed 189 thousand people, 34% of them have worked in large enterprises, 54% - in medium sized enterprises and 12% in small ones.
- *Export and import.* Ukraine's trade with the European Union has been steadily growing throughout the last decade, but there is a trade deficit in the machinery product group. In particular, in the TDC XVI Product Group (Mechanical equipment, machines and mechanisms, electric equipment and their parts, image and sound recorders or reproducers) in 2006 Ukrainian imports from the EU amounted to 6358 million EUR, while Ukrainian exports to the EU have been only 565 million EUR.

The production of household appliances is dominated by a few large companies that have survived the transformation crisis, the economic decline, have been restructured and compete successfully on local and international markets.

In the product group of small household appliances Ukrainian-made kitchen devices have significant market share on the Ukrainian retail market ranges: over 20% in absolute number and 10.4 % in monetary value. In particular, Ukrainian brands dominate the non-expensive segment of the market (below 170 USD). Here they occupy 86% share. On the Ukrainian market of refrigerators local products have 11% of the market. On the Ukrainian market of computers local products have more than 20% of the market. In all other product groups of the electric industry the market share of local producers is below 5%. (Examples: washing machines, vacuum cleaners, ironing devices, radio sets, TV sets, tape recorders, sewing machines, video tape recorders, computers, air condition devices.)

¹⁵ "Standardization union effects: the case of EU enlargement". Jan HAGEMER, Warsaw University and Jan J. MICHALEK, Warsaw University. Working paper of the European Trade Study Group (ETSG) 2005.

¹⁶ Based on data of the State Statistical Committee of Ukraine.

The Ukrainian sector of electric products manufacturing is in a critical situation, because for many companies the consequences of the industrial crisis are not yet over, and import competition is very strong. The market share of local production on the Ukrainian market of household electric and electronic devices is under 10 per cent. The largest international producers gradually open their representative offices in Ukraine, expanding supply to all regions of the country. For too strong import competition the spokesmen of the industry insiders blame state custom policies, in particular the recent significant reduction of tariffs on imported electric goods.

Foreign direct investment. Ukraine has designated certain Special Economic Zones in order to boost investment, but investors often complain about bureaucratic Ukrainian customs regimes and poor tax incentives. Despite this fact, foreign investors have shown certain interest in the Ukrainian electric and electronic market. A handful of Western companies are increasingly transferring production itself to Ukraine, based on the availability of sufficiently skilled in the Ukraine and cheap labor.

Export procedures are time-consuming in Ukraine:¹⁷ an exporter needs as much as three times more time (33 days) to prepare the necessary documents than average exporter in the OECD countries. Ukrainian exporting companies face irregular and partial VAT refund, burdensome customs procedures and must comply by a big number of procedures and permits.

9. Macro economic impacts and Ukraine's WTO membership

The trade and investment related impacts of reforming the conformity assessment system can hardly be separated from the impacts of Ukraine having entered the WTO in February 2008. Among the commitments undertaken by Ukraine are the following¹⁸:

- *Tariff Barriers.* The average customs tariff rate for industrial goods has been reduced to 4.95%. In particular, in the product group of machinery and appliances, the sectors of greatest interest for EU exporters, the tariffs will be 5.32%.
- *Non-Tariff Barriers.* Ukraine will comply with the Technical Barriers to Trade (TBT) Agreement upon accession, which includes the following commitments:
 - *Standardization.* Ukraine has agreed to give priority to international standards over regional and other national ones. All national and regional standards will be voluntary, except those referred to in technical regulations intended to protect national security interests, prevent deceptive practices, protect the life and health of people, animals or plants, as well as protect the environment. By 30 December 2011, all of Ukraine's technical regulations will be based on the relevant international standards.
 - *Mandatory certification.* Ukraine will reduce further the number of products subject to mandatory third party certification and will notify the revised list to the WTO by 31 January 2012.

¹⁷ "Doing Business in 2006". Survey conducted by the World Bank.

¹⁸ "WTO welcomes Ukraine as a new member". WTO Press Release No. 511. 5th February 2008.

Empirical evidence has shown that the introduction of European product conformity regulations in the new member states of the EU was followed by an increase of industrial output, foreign trade and an improvement of competitiveness. However, economic growth itself does not prove that these positive developments are consequences of the introduction of the New Approach Directives. But theoretical considerations and model calculations have also proved that the removal of trade barriers in fact has positive impacts on welfare.¹⁹

In the short term, the potential impacts of Ukraine's WTO accession and its integration into European markets are likely to be limited, because only the most competitive Ukrainian companies will be able to use the immediate direct benefits of improved access to foreign markets.²⁰ However, in the medium term, after the initial adjustment, the economy will benefit from increased production efficiency and there is a substantial welfare gain to be expected from the reduction of formal and informal barriers to foreign investment, from the strengthening of property rights and from removal of excessive burden of technical regulations. The effect of electrotechnic manufacturing industry will be reduced by the fact that local machinery plants export their products mostly to the CIS. On the other hand, import competition will grow, which will crowd out a stratum of un-competitive companies from the market, but in the medium term will have a positive impact on stimulating the productivity of domestic firms.

10. Impacts on companies

Decreasing administrative costs. It is to be expected that the phasing out of mandatory certification of low voltage products will decrease the administrative burden and the compliance costs of companies. In the framework of the LVD RIA Project consultations were conducted with large, medium sized and smaller Ukrainian manufacturing companies, producers, exporters and importers.

- The interviews have indicated that typical companies welcome the phasing out of mandatory certification for their products.
- A wide stratum of manufacturing companies is able to assess the conformity of their products by themselves.
- Interviews conducted with importer companies have verified that administrative and personnel costs of product certification are excessively high. In particular, in case of devices imported individually, the costs of obtaining certification may add several percentage points to the final price of the product.

The following example should illustrate the magnitude of administrative burden and costs. Today, in order to apply for service of product certification 4 documents should be submitted to UkrTest: (a) Application form for product certification (b) License Agreement (c) Questionnaire CIG 022.Part B (d) Power of attorney from the manufacturer. For a typical low voltage product a certificate that is valid for 5 years costs around 3000 EUR. The time to test TV set takes on average 5 days.

¹⁹ H. L. Kee, A. Nicita, M. Olarreaga, "Estimating Trade Restrictiveness Indices", the World Bank, January 2005. The study reviews 90 countries from all regions of the world.

²⁰ See the article cited above from Gamella and Thompson (OECD) and the following source: "Ukraine: assessing the impact of WTO entry" Dragon Capital Macro Research, Monthly Overview, January 2007.

Empirical evidence in Ukraine²¹ has shown that there is high degree of duplication of efforts due to necessity to test production for both Ukrainian and the EU requirements. A survey conducted in November and December 2006 among Ukrainian companies that have exported to the EU has shown the following. The costs of passing the testing and certification procedures as a share of total production costs incurred during 2006 amounted on average (i.e. for the surveyed 500 companies) to 4.2%. This proportion was higher in the machinery industry, much smaller in case of large private foreign-owned firms and much higher in case of small foreign-owned firms.

Moderate additional costs for re-designing products to meet EU requirement

- *Company views.* Consultations conducted with large, medium sized and smaller Ukrainian manufacturing companies have shown that the overwhelming majority of Ukrainian low voltage products satisfy European safety requirements.
- *Experience of EU accession.* Empirical evidence in new member countries of the EU has shown (e.g. a survey conducted in Poland in 2004 among companies exporting electric products to the EU²²) that the adjustment costs in order to meet the requirements of LVD were moderate and that most of the adaptation process to new technical regulations was already completed at the time of accession. 22% out of the responding 55 companies of the Polish electrotechnic industry stated that they had to redesign their product so that it would meet the EU requirements, but those firms that had to redesign their products usually had to make only minor investments.

The risk of increasing import competition. The simplification of conformity assessment rules will likely motivate further foreign producers to increase their import of electric devices to Ukraine. Import competition is already intensive in this sector, and for this reason, during the last decade a significant stratum of local manufacturers has lobbied for market protection. However, the additional impact of LVD on import competition is negligible, if compared to previous measures of import liberalization, in particular to the tariff and non-tariff measures that have been agreed by Ukraine in the WTO Agreement in February 2008.

11. Impacts on consumers

Consumers will enjoy the benefits of safer and better documented electric equipment, enhanced competition, wider product choice, and lower prices. On the other hand, the proper enforcement of LVD may crowd out certain product types that do not meet the conformity requirements of the Directive. Due to this fact, a limited stratum of low income consumers preferring cheap products may be compelled to buy more expensive equipment than previously.

²¹ “Non-tariff barriers in Ukrainian export to the EU” Maigorzata Jakubiak, Maryla Maliszewska, Irina Orlova Magdalena Rokicka, Vitaliy Vavryschuk. Published by CASE – Center for Social and Economic Research as Report No. 68. Warsaw 2006.

²² “Comparative analysis of importance of technical barriers to trade (TBT) for Central and Eastern European Countries’ and Mediterranean Partner Countries’ exports to the EU”. FEMISE Research Programme, September 2005.

Safety risks. International experience has shown that the number of fatal electric accidents is continuously decreasing due to technical development, increasing consumer awareness and market surveillance efforts.²³ In the USA there are over 400 electrocutions yearly, and out of this number, approximately 180 electrocutions are related to consumer products.²⁴ However, most fatal electric accidents are not attributed to faulty products, but to various violations of the rules of their use.

The experience of countries experimenting with various market surveillance regimes has shown that the introduction of LVD, if accompanied by the institutional development of market surveillance, has not increased the frequency of electric accidents or fires.²⁵ In 2006 in Ukraine there were 51.000 fires out of which 21% was caused by the violation of the rules for installation and usage of electrical equipments and electrical home appliances.²⁶

For the above reasons, the removal of obligatory certification should be effectively counterbalanced by improving the efficiency of so-called post-market activities of the Market Surveillance, i.e. the intensity of inspection of products that had been already marketed. Otherwise more unsafe products will reach the consumers.

12. Winners and losers

The main *winners* of the implementation are the following groups of economic operators and households:

- Importers of EU-made low voltage electrical goods,
- Individual and household consumers, corporate and institutional users of low voltage products
- Ukrainian producers of low voltage products already exporting to the EU which are already complying by the requirements of LVD.
- Foreign owned Ukrainian producers of low voltage products which are already complying by the requirements of LVD.

The latter two groups of manufacturers will gain competitive advantages over those competitors that are not exporting to the EU who will have to adapt themselves to the new conformity assessment system.

²³ “Supplier’s Declaration of Conformity (SDoC). Experience with respect to electrical and mechanical sectors” Presentation of Georg Hilpert, European Commission, Enterprise Directorate General.

²⁴ Figures cited from the U.S. Consumer Product Safety Commission at the following website: www.esfi.org

²⁵ Source: “Market Surveillance of Electrical Equipment in Finland. Analysis and Development”. Full bibliographical details above.

²⁶ Source: Annual Statistical Book of Ukraine, 2006, p.504

The main *losers* of the implementation are the following groups of economic operators and households:

- *Product certification bodies* will lose many clients in the short term because of the planned abolishment of obligatory certification. However, in the medium term the competent certification bodies will be able to develop new functions and business lines, in order to satisfy enhanced overall need for laboratory tests, and in particular, the increasing need of the Market Surveillance for product conformity controls. Ukrainian experts expect that after implementation of LV technical regulation, due to the reduction of the list of goods under mandatory certification, the number of types subjected to certification will considerably decrease (by some two thirds). This will increase the competition between them. It is the task of the Government to keep this competition fair, i.e. to prevent a large number of laboratories to issue unfounded certifications.
- There is a range of *predominantly small Ukrainian companies* which will be losers of the measure - those which are not able to finance (a) the upgrading of their products and technologies to the level of the essential requirements for product safety defined by LVD and (b) the implementation of some administrative procedures for conformity assessment.
- *Non-EU producers exporting to Ukraine and importers from non-EU countries* may face compliance costs due to the implementation of some new administrative procedures for conformity assessment.
- *Consumers of cheap electric products* to whom these additional costs will be shifted may face the narrowing of the portfolio of cheap electrical goods on the local markets.

Some incumbent Ukrainian producers with traditional market niches may be also on the loser side, for the following reason. A wide class of their competitors may benefit from the simplification of compliance procedures. For this reason, incumbent big enterprises may not be in favour of implementation of EU-compatible certification procedures in Ukraine.

13. Tabular summaries of impacts

Overview of impacts of introducing the Low Voltage Directive into Ukrainian law

Major impacts by stakeholders:

Stakeholder	Benefits	Costs
Local manufacturers	<ul style="list-style-type: none"> Export turnover of competitive Ukrainian companies is likely to increase due to better access to the Single Market, under the condition that LVD-related company adjustment is successful. Abolishment of obligatory certification, in particular abolishment of double certification of imported goods. Competitors with low quality, low safety, badly documented cheap products will be crowded out from the market. This benefit appears only if the reformed Market Surveillance will be effective. Involvement of foreign investors becomes easier, because investors are more likely to invest in companies with EU-wide established safety procedures. The option of self-certification (i.e. internal production control) appears for companies, which can be done fully by the producer, or part of tests and measurements can be outsourced to external laboratories. 	<ul style="list-style-type: none"> Companies choosing the option of self-certification but for the time being not having relevant controlling and testing equipment must invest into new controlling and testing equipment, personnel, organisation. Companies with obsolete technology and products must upgrade technology, must use better materials and components. Companies choosing the option of self-certification (i.e. internal production control), but not having adequate administrative capacity must develop their administrative departments in terms of know how of New Approach procedures. Personnel must be hired and / or trained to prepare and maintain (1) Conformity Assessment Declaration and (2) Technical Documentation files.
Importers	<ul style="list-style-type: none"> Abolishment of obligatory certification, in particular abolishment of double certification (re-certification). 	<ul style="list-style-type: none"> Importers, choosing the option of self-certification will need to provide for preparation of (1) Conformity Assessment Declaration and (2) Technical Documentation files. To store these documents and to provide them for authorities according to LVD.
Consumers of low voltage products	<ul style="list-style-type: none"> Safer and better documented electric equipment. Removal of barrier to trade enhances competition, widens product choice, and decreases prices. 	<ul style="list-style-type: none"> Risk: the removal of obligatory certification must be effectively counterbalanced by improving the efficiency of inspection activities of the Market Surveillance regarding low voltage products that are already on the market. Otherwise more unsafe products will reach the consumers.

Stakeholder	Benefits	Costs
The State	<ul style="list-style-type: none"> • The adoption of the Directive facilitates the political and economic integration of Ukraine into the structures of the EU. • Harmonized Technical Legislation indirectly improves the structure of electrotechnical industry. • The introduction of LVD, and in a wider context, the signing of ACAA enhances trade relations with the EU. Subsequently this will generate additional tax income. • Harmonized technical regulation indirectly facilitates foreign investment because EU-based investors prefer EU compatible regulations. 	<ul style="list-style-type: none"> • Costs of institutional development of the market surveillance system and of standardisation • Support of certification bodies
Certification bodies	<ul style="list-style-type: none"> • Adaptation of their procedures to conformity assessment culture prevailing in the main trade partners of the country. 	<ul style="list-style-type: none"> • (Short-term?) Decrease of income due to abolishment of obligatory certification of low voltage electric goods (in medium to long term, the income will have almost restored itself?). • Investments are needed in order to improve laboratory infrastructure to develop capacity to assess the fulfillment of LVD's safety requirements.

Impact Scores of the introduction of LVD into Ukrainian law

Scores: -2 = strong negative impact; -1 = some negative impact; 0 = no impact expected; 1 = some positive impact; 2 = strong positive impact.

Only those impacts are marked that are associated with (i.e. attributed to) the proposed measure, and based on the assessment of the difference between the present regulatory situation and the situation when the measure proposed is fully implemented:

Element	Topic	Score
A National economy	Changes in the output level	-2...-1...0...+1...+2
	Impact on price level (inflation rates)	-2...-1...0...+1...+2
	Number of employees	-2...-1...0...+1...+2
	Changes in export level	-2...-1...0...+1...+2
	Opportunities to import	-2...-1...0...+1...+2
	Innovations in economic sector	-2...-1...0...+1...+2
	Investment level	-2...-1...0...+1...+2
B Enter- prises	Additional non-recurring costs	-2...-1...0...+1...+2
	Changes in current expenses (costs)	-2...-1...0...+1...+2
	Need for non-recurring and current expenses for SMEs	-2...-1...0...+1...+2
	Need for non-recurring and current expenses for individual/separate region	-2...-1...0...+1...+2
	Impact on production quality	-2...-1...0...+1...+2
	Impact on the level of competitiveness	-2...-1...0...+1...+2
	Opportunities to export	-2...-1...0...+1...+2
	Opportunities to invest	-2...-1...0...+1...+2
	Opportunities for modernization	-2...-1...0...+1...+2
Impact unknown, research needs to be carried out	-2...-1...0...+1...+2	
C Society	General level of life quality	-2...-1...0...+1...+2
	Social differentiation	-2...-1...0...+1...+2
	Uneven cost (benefits) for specific groups	-2...-1...0...+1...+2
	Uneven cost (benefits) for specific regions	-2...-1...0...+1...+2
	Public perceptions of the effect of implementation of requirements provided in draft legal act	-2...-1...0...+1...+2
	Impact on environment	-2...-1...0...+1...+2
	Impact on cultural environment	-2...-1...0...+1...+2
	Impact on consumers' rights, health and protection	-2...-1...0...+1...+2
D Instituti- onal structure	Need to establish new institutions	-2...-1...0...+1...+2
	Need to reorganize institutional structure	-2...-1...0...+1...+2
	Need for training of public servants	-2...-1...0...+1...+2
	Need for granted expenditures at public institutions	-2...-1...0...+1...+2
	Need for current expenses at public institutions	-2...-1...0...+1...+2

14. Engaging with Stakeholders

Three ministries and the responsible Government Agency (DSSU) have been interviewed about the planned changes. From December 2007 to February 2008 a series of affected companies have been visited and interviews were made with the relevant managers. Moreover, an email-based survey was organized among companies subjected to the planned changes. A round table for the regulated companies and for the relevant Government agencies is being planned for March 2008.

Results of consultation with companies

- Typical big companies producing electric products are able to perform all necessary tests for assessing the conformity of its products, with the exception of EMC tests.²⁷ They fully understand the significance of the planned reform. Successful companies welcome the planned regulative changes and are looking forward to implement self-certification conformity assessment procedure.
- Other visited companies would not be interested in self-certification regarding the safety features of their products, even if it was legally and technically possible. The reason is, that – besides safety related regulations - their products are subject to strict metrological regulations as well, and for this reason their products are subject to mandatory certification both under the existing and under the proposed regime as well.
- Some visited companies have rejected the planned measures: due to strong import competition these firms were not interested in any type of liberalization of regulation.

15. Monitoring and Evaluation

The implementation of LVD norms into Ukrainian legislation should be continuously monitored and in regular time intervals, e.g. bi-annually evaluated. For this reason, the following indicators should be observed:

- indicators on production, retail, export, import of low voltage goods
- development of the relevant sub-sector of Ukrainian manufacturing industry
- issued certificates, number of faulty products, number of inspections, results of inspections,
- number of the relevant standards, number of times these standards are applied, number of times each conformity assessment module is applied
- Number of companies using self-certification possibilities
- Number of accidents caused by LV equipment
- Cost of certification services and time spent for going certified
- etc.

²⁷ Electromagnetic Compatibility (EMC) is the subject of another New Approach directive, but because many electrotechnical products fall under both EMC and LVD, all the tests are to be conducted.

16. Summary and Recommendations

This RIA strongly recommends the introduction of LVD norms into Ukrainian law not later than 2011. The main reason to do so is that administrative compliance costs of companies caused by existing certification procedures will decrease, while adaptation costs for companies are moderate and appear only on the short term. Although the measure will somewhat increase import competition, but already in the medium term the advantages of more competitive industrial structure will appear.

However, important legal and institutional conditions must be met beforehand, that have been detailed above. Out of these organizational changes the most important one is that the control of low voltage products will be implemented after these goods have been put on the market, instead of – as it is practiced today in Ukraine – before they have been marketed.

17. RIA management issues and further information needed

This preliminary RIA does not have sufficient information to inform its readers about the following issues:

- Quantified costs and benefits for Government and businesses
- Safety of electric products in Ukraine (accidents and fires)

These impacts would have to be analyzed by further data collection and analysis.

The LVD RIA Project will end in February 2008.

18. Glossary²⁸

Concept	Source	Definition
Certification	ISO	Procedure by which a third party gives written assurance that a product, process, or service conforms to specified requirements.
Conformity	ISO	Fulfillment by a product, process or service of specified requirements.
Conformity Assessment	ISO	Any activity concerned with determining directly or indirectly that relevant requirements are fulfilled. In more tangible terms, conformity assessment refers to a variety of processes whereby goods and/or services are determined to meet voluntary or mandatory standards or specifications.
Conformity assessment procedure	WTO	Any procedure used to determine that relevant requirements in technical regulations or standards are fulfilled.
Harmonized standards	ISO	Standards on the same subject approved by different standardizing bodies, that establish interchangeability of products, process and services, or mutual understanding of test results or information provided according to these standards.
Mutual recognition	ISO	Recognition arrangement about using the results of conformity assessments.
Non tariff barriers to trade (NTB)	WTO	Government measures other than high import duties (tariff) employed to restrict imports. Types of NTB: export subsidies, exchange rate manipulations, discriminatory customs surcharges, lengthy customs procedures, establishment of minimum import prices, unreasonable standards and inspection procedures, import licensing.
Standard	ISO	A document that establishes uniform engineering or technical specifications, criteria, methods, processes, or practices.
Standard	WTO	Document approved by a recognized body, that provides for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory . It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method.
Standardization	ISO	The process of agreeing on technical standards.
TBT Agreement	UNCTAD	International agreement seeking to assure that (1) mandatory product regulations, (2) voluntary product standards, and (3) conformity assessment procedures (procedures designed to test a product's conformity with mandatory regulations or voluntary standards) do not become unnecessary obstacles to international trade and are not employed to obstruct trade.

²⁸ Source: ISO/IEC Guide 2 and WTO.

Concept	Source	Definition
Technical barriers to trade (TBT)	WTO	Domestic regulatory process as a means of protecting domestic producers.
Technical regulation	WTO	Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory . It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method.
Test	ISO	Technical operation that consists of the determination of one or more characteristics of a given product, process or service according to a specified procedure.

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