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Correlation of the International and National Institutional and Legal Regulations of Applying Some Aspects of Technical Barriers in Practices of Ukraine and the European Union

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Summary: This study contains the attempt of the comprehensive approach to issues of the correlation of concepts, provisions and obligations of States and their associations with respect to technical barriers to trade (in particular, technical regulations, standardization, certification, and accreditation, conformity assessment procedures and market surveillance systems) enshrined in international world treaties (in particular, the Agreement on Technical Barriers to Trade (TBT), which is binding for Member-States in the system of the WTO treaties) and regional multilateral and bilateral treaties (for example, the Association Agreement between Ukraine, from one part, and the European Union, European Atomic Energy Community, and their Member-States, from the other part, dd. June 27, 2014). The particular attention is paid to the national, including unified (or that being in the process of unification/adaptation), institutional and legal provision in this area, most notably in Ukraine and the European Union (first of all, the Regulation of the European Parliament and of the Council No. 765/2008/EC and Decision of the European Parliament and of the Council No. 768/2008/EC of 9 July 2008). The performance by Ukraine at the domestic/national level of its international obligations in accordance with the Association Agreement 2014 has been separately considered in terms of technical regulations and standardization, accreditation, conformity assessment procedures and market surveillance systems and their implementation (adaptation, entrenchment) in relevant regulatory legal, and organizational and institutional forms.

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1. Introduction

Goods and technologies (methods for their cultivation, extraction, and production) can be potentially dangerous (including harmful) for human life and health, and the environment. On the one hand, as a result of the aforementioned, States apply the non-tariff measures in the form of technical requirements (means, barriers) for the protection, in the first place, of national commodity consumers against potential risks. And on the other hand, technical norms and standards can be introduced by countries to restrict the undesirable competition in the domestic market, and to protect national commodity producers against it, and thus, such measures become additional obstacles in foreign economic activity and contradict the principles of freedom and liberalization of international trade. That is, the application by States or regional economic integrations of technical barriers as means of the non-tariff regulation of foreign trade depends on the purpose, for which they are introduced, and therefore, a comprehensive and all-encompassing approach to their study and settlement is required. The complexity and self-sufficiency of the system are based on the correlation and interdependence of the international (world and regional) and national (domestic) entrenchments of concepts, provisions and obligations of States and their associations regarding technical barriers to trade (in particular, technical regulations, standardization, certification, accreditation, conformity assessment procedures and market surveillance systems). However, it is worth specially focusing on the fact that "technical harmonization" is important not by itself, but as an element of the sophisticated system/mechanism of intermal and external markets functioning (movement and exchange of goods and services), their instruments and their institutional and legal support.

Undoubtedly, the main special multilateral international treaty in the said area is the WTO Agreement on Technical Barriers to Trade (hereinafter – the TBT Agreement), which contains three mechanisms for reducing trade barriers related to the product requirements, namely (Preamble[1]): – restrictions on the establishment of such requirements as a specific purpose and a necessary measure

[1] *Uhoda pro tekhnichni bariery u torhivli* vid 15.04.1994 r. [online]. Available at: http://zakon2.rada.gov.ua/laws/show/981_008. (in Ukrainian).

for its achievement; – inducement to harmonization of the requirements based on international standards, etc.; – encouragement to support developing countries. Accordingly, the WTO Member-States must perform the assumed obligations at both international and national levels, in particular to coordinate their actions with existing international commitments (for example, the content of bilateral agreements, national regulatory legal acts, etc.).

The determinative bilateral international treaty for modern Ukraine is the Association Agreement between Ukraine, from one part, and the European Union, European Atomic Energy Community, and their Member-States, from the other part, dd. June 27, 2014 (hereinafter – the Association Agreement). The Association Agreement is an international treaty of the complex nature, because the cooperation envisaged therein covers a wide range of interstate relations and all spheres of the economy; it lays the legal foundations for the mutual cooperation and proclaims its principles. A particular component of the Association Agreement, in view of the subject matter of the study, is a comprehensive program of adaptation/harmonization of legal rules/fundamentals (including the regulatory environment) in trade-related areas to the relevant EU requirements/standards. In particular, the free trade area between the European Union and Ukraine provides for the abolition of import duties, reduction in non-tariff barriers to trade, liberalization of services markets, ensuring transparency and predictability of regulations of the Ukrainian domestic market in accordance with the European and international standards, approximation of internal policies of Ukraine, including in the field of protection of the consumer's rights, to the generally accepted rules of international and European practices, ensuring the bilateral customs cooperation, etc.

We should particularly emphasize that one of the association agreement conclusion principles ("mixed external competence") is based on the EU Court of Justice's judgment on the case of *Demirel*[2], namely related to the formation of special relationship and participation commitments, within certain limits, of non-EU countries within the system of the Union[3] (for example, in the customs sphere[4], or common procedures, namely regarding technical barriers (technical regulations, standardization systems, conformity assessment accreditation, etc.).

[2] C-12/86, *Demirel v Stadt Schwäbisch Gmünd* case, [1987] ECR 3719, para. 7 and 28.

[3] See: HOLDGAARD, R. *External Relations Law of the European Community: Legal Reasoning and Legal Discourses*. Kluwer Law International, 2008, p. 206 (para. 12.3.1.1.); LOCK, T. The European Court of Justice and International Courts. Oxford University Press, 2015, pp. 100–113 (Chapter 3.IV.B); MENDEZ, M. *The legal effects of EU agreements: maximalist treaty enforcement and judicial avoidance techniques.* Oxford Studies in European Law: OUP Oxford, 2013, 374 p.

[4] SCHRÖMBGES, U., WENZLAFF, O. Doubts regarding the origin of goods based on OLAF mission reports vs protection of confidence. *World Customs Journal,* 2011, vol. 5, No. 1, p. 92.

Due to the performance of international obligations by States and their associations, coordination and harmonization among them of actions in certain spheres of the socio-economic life, in particular regarding the technical regulation (technical barriers) system, the special attention should be paid to relevant national regulatory legal acts and institutions, as a manifestation of the immediate state of affairs in one or another area[5]. That is, the study of the practice and status of the national institutional and legal regulation of technical barriers in Ukraine and the EU is important, both in terms of the correlation, interdependence and performance of their own international obligations under the TBT Agreement, and mutual ones in accordance with the Association Agreement, and for the identification of problems and next steps of collaboration.

2. Correlation of the provisions of the WTO Agreement on Technical Barriers to Trade and Association Agreement between Ukraine and the EU

Technical barriers to trade are any state control and restriction measures related to the technical requirements for imported goods, when they are used as a means of restricting access of goods of a foreign production/origin to the domestic market of a country[6]. In order to prevent the restrictive effect of technical barriers to international trade, while maintaining their protective function for security of States, their population, flora, fauna and the environment, the Agreement on Technical Barriers to Trade, also referred to as "Standards Code"[7], was elabo-

[5] It is interesting for Ukraine to study the experience of approximation (harmonization, adaptation) of laws in different spheres, in particular related to technical barriers, both within the EU itself, and of the countries which a while ago worked their way to the EU and now are its members. See, for example: BRENTON P., SHEEHY J., VANCAUTEREN M. *Technical Barriers to Trade in the European Union: Importance for Accession Countries.* CEPS: Working Document No. 144. April 2000, 27 p.; ŠIŠKOVÁ, N. *Základní otázky sbližování českého práva s právem ES.* Codex Bohemia, 1998, 336 p. (in Czech); CHEVASSUS-LOZZA, E., MAJKOVIČ, D., PERSILLET, V., UNGURU, M. *Technical barriers to Trade in the European Union: Importance for the new EU members. An assessment for agricultural and food products.* Paper prepared for presentation at the 11th congress of the EAAE (European Association of Agricultural Economists), The Future of Rural Europe in the Global Agri-Food System Copenhagen, Denmark, August pp. 24–27, 2005 etc.

[6] DANYLTSEV, A. V., DANYLOVA, E. V., ZAKHAROV A. V. *Osnovu torhovoi polytyky y pravyla VTO.* M.: Mezhdunar. otnoshenyia, 2005, p.. 127. (in Russian).

[7] OSYKA, S. H., PIATNYTSKYI, V. T. *Svitova orhanizatsiia torhivli*. K.: «K.I.S.», 2004, p. 283. (in Ukrainian).

rated within the framework of GATT during the Tokyo Round (1973-1979) of multilateral trade negotiations.

The issue of technical barriers to international trade, in addition to the regulation at the global (universal) level within the WTO, is also reflected in regional agreements, for example in the Association Agreement between Ukraine, from one part, and the European Union, European Atomic Energy Community, and their Member-States, from the other part, dd. June 27, 2014[8].

In accordance with Article XI of the Marrakesh Agreement establishing the WTO[9], the EU as a customs territory and Ukraine as a State (Article XII)[10] are members of the WTO[11], and therefore, parties to the Agreement on Technical Barriers to Trade[12]. As a result, having signed the Association Agreement, its parties (Ukraine and the EU) must abide by international obligations arising from the participation both in this Agreement and in those related to the WTO membership[13], including the TBT Agreement. The question arises as to the correlation between the TBT Agreement and Association Agreement themselves.

In analyzing the provisions of the TBT Agreement[14] and Association Agreement (Chapter 3, Articles 53-58)[15], it should be noted that:

- The TBT Agreement consists of a preamble, 15 articles and three annexes; in the Association Agreement, Chapter 3 consisting of six articles (Articles

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[8] *Uhoda pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony* vid 27.06.2014 r. [online]. Available at: http://zakon2.rada.gov.ua/laws/show/984_a11. (in Ukrainian).

[9] *Uhoda pro zasnuvannia Svitovoi orhanizatsii torhivli* vid 15.04.1994 r., m. Marrakesh. [online]. Available at: http://zakon2.rada.gov.ua/laws/show/995_342. (in Ukrainian).

[10] *Protokol pro vstup Ukrainy do Svitovoi orhanizatsii torhivli* vid 05.02.2008, m. Zheneva. [online]. Available at: http://zakon2.rada.gov.ua/laws/show/981_049. (in Ukrainian).

[11] *World Trade Organization, WTO.* [online]. Available at: https://www.wto.org/.

[12] *Uhoda pro tekhnichni bariery u torhivli* vid 15.04.1994 r. [online]. Available at: http://zakon2.rada.gov.ua/laws/show/981_008. (in Ukrainian).

[13] See: HOLDGAARD, R. *External Relations Law of the European Community: Legal Reasoning and Legal Discourses*. Kluwer Law International, 2008, pp. 276–287 (para. 15.2.1.1.); MENDEZ, M. *The legal effects of EU agreements: maximalist treaty enforcement and judicial avoidance techniques.* Oxford Studies in European Law: OUP Oxford, 2013, 374 p. (Chapter IV); SCHILDBERG, B. *How are Technical Barriers to Trade treated in EU Trade Agreements? Recommendations for the Development Friendly Design of EPA Negotiations related to Technical Barriers to Trade.* Braunschweig, 2007, 21 p.

[14] *Uhoda pro tekhnichni bariery u torhivli* vid 15.04.1994 r. [online]. Available at: http://zakon2.rada.gov.ua/laws/show/981_008. (in Ukrainian).

[15] *Uhoda pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony* vid 27.06.2014 r. [online]. Available at: http://zakon2.rada.gov.ua/laws/show/984_a11. (in Ukrainian).

53-58) and Annex III to Chapter 3 are devoted to the issue of technical barriers.

- The EU and Ukraine in Article 54 of the Association Agreement confirmed their existing rights and obligations under the TBT Agreement.
- Although, both agreements do not explicitly define the concept "technical barriers to trade", they use the same terminology: technical regulations and standards (including packaging, marking and labeling requirements), and conformity assessment with the reference in the Association Agreement (paragraph 1 of Article 53) to the TBT Agreement (Annexes 1-3).
- The provisions of the Association Agreement (paragraph 2 of Article 53), as well as paragraph 1.5 of Article 1 of the TBT Agreement, do not apply to sanitary and phytosanitary measures, nor to purchasing goods by public authorities for needs of their own production or consumption (paragraph 1.4 of Article 1 of the TBT Agreement).
- Paragraph 1 of Article 55 of the Association Agreement defines the technical cooperation on technical barriers somehow broader and in more details: "The Parties shall strengthen their cooperation in the field of technical regulations, standardization, market surveillance, accreditation and conformity assessment procedures with a view of increasing mutual understanding of their respective systems and facilitating access to their respective markets". That is, the said provision is in line with the Preamble of the TBT Agreement, in particular: "Recognizing the important contribution of international standards and conformity assessment systems for production efficiency and facilitating the conduct of international trade; non-creation of unnecessary obstacles to international trade and taking measures necessary for the protection of security interests of countries, human, animal or plant life and health, and of the environment, or for the prevention of fraud and discrimination"[16].
- The particular attention should be paid to the fact that Article 55 of the Association Agreement entrenches a non-exhaustive list of areas and subjects of harmonization and unification in the field being studied, namely "the initiation of a dialogue on regulatory legal issues at both horizontal and sectoral levels", and also paragraph 2b): "by respective organizations, public or private, responsible for metrology, standardization, testing, market surveillance, certification and accreditation", including within the framework of "European organizations" (paragraph 2d), the WTO and the United Nations Economic Commission for Europe (UNECE)[17] (paragraph 2f), and in Ukraine (para-

[16] See: C-100/96, *The Queen v MAFF, ex parte British Agrochemicals Association Ltd* case, [1999] ECR I-1499.

[17] *The United Nations Economic Commission for Europe, UNECE.* [online]. Available at: http://www.unece.org/oes/nutshell/ member_States_ representatives.html

graph 2c) of Article 55). And the TBT Agreement operates with the following terminology: "preparation, adoption, and application of technical regulations, standards, and conformity assessment by central government bodies (Article 2), local government and non-government bodies (Article 3), international and regional systems (Article 9)".

- This is the TBT Agreement, which calls all the WTO Members, including both the EU and Ukraine, to actively participate in the work of international standardization organizations, in particular: – the International Organization for Standardization (ISO)[18], which, for example, has the Product Conformity Assessment Committee (CASCO), the Committee for the Protection of Consumer Rights (COPOLCO), and the EuropeAid Development and Cooperation Committee (DEVCO)[19] in its structure; – the International Standardized Testing Organization (ISTO)[20]; – the International Electrotechnical Commission (IEC)[21]; – the International Telecommunication Union[22] (ITU)[23], the structure of which has the ITU Telecommunication Standardization Sector (ITU-T)[24]; – the Codex Alimentarius Commission[25]; and the International Organization of Legal Metrology (OIML)[26]. In addition, Ukraine fully en-

[18] *International Organization for Standardization, ISO.* [online]. Available at: https://www.iso.org

[19] Ukraine, as a full-fledged member of ISO since 1993 (represented by the National Standardization Body SE "UkrNDNC" (Ukrainian Research and Training Center of Standardization, Certification and Quality), is a member-country of CASCO, and DEVCO Committees, and an observer-state of REMCO, and COPOLCO Committees. Ukraine also performs functions as a secretariat in ISO/TC218, is a member of 119 technical committees, and an observer in 217 technical committees.

For more details, see [online]. Available at: http://uas.org.ua/ua/zagalni-vidomosti-pro-dp-ukrndnts/kerivnitstvo/generalniy-direktor-dp-ukrndnts/pershiy-zastupnik-generalnogo-direktora-direktor-institutu-standartizatsiyi/viddil-mizhnarodnogo-regionalnogo-mizhderzhavnogo-spivrobutnytstva/spivrobitnitstvo-z-mizhnarodnimi-organizatsiyami/. (in Ukrainian); https://www.iso.org/member/2172.html

[20] *International Standardized Testing Organization, ISTO.* [online]. Available at: http://www.isto.ch/.

[21] *International Electrotechnical Commission, IEC.* [online]. Available at: https://www.iec.ch/dyn/www/f?p=103:5.

For more details, see [online]. Available at: http://uas.org.ua/ua/zagalni-vidomosti-pro-dp-ukrndnts/kerivnitstvo/generalniy-direktor-dp-ukrndnts/pershiy-zastupnik-generalnogo-direktora-direktor-institutu-standartizatsiyi/viddil-mizhnarodnogo-regionalnogo-mizhderzhavnogo-spivrobutnytstva/spivrobitnitstvo-z-mizhnarodnimi-organizatsiyami./. (in Ukrainian); https://www.iec.ch/dyn/www/f?p=103:16:0::::FSP_ORG_ID:1030

[22] The International Electric Communication Union (International Telecommunication Union, ITU), is sometimes called the International Telecommunication Union.

[23] *International Telecommunication Union, ITU.* [online]. Available at: https://www.itu.int

[24] *The ITU Telecommunication Standardization Sector, ITU-T.* [online]. Available at: https://www.itu.int/ru/ITU-T/Pages/default.aspx

[25] *Uhoda pro tekhnichni bariery u torhivli* vid 15.04.1994 r. Annexes 1, 3. [online]. Available at: http://zakon2.rada.gov.ua/laws/show/981_008. (in Ukrainian).

[26] *International Organization of Legal Metrology, OIML.* [online]. Available at: https://www.oiml.org/en

sures the participation of respective national bodies not only in international organizations, but also in European ones (paragraph 7 of Article 56 of the Association Agreement).

- Article 56 of the Association Agreement provides for the gradual achievement by Ukraine of conformity with EU technical regulations, standardization, metrology, accreditation, conformity assessment procedures and market surveillance systems (with the relevant list and schedule (Annex III)). Ukraine is also progressively introducing the corpus of European standards (EN) as national standards (paragraph 8 of Article 56).
- Just as in Articles 10-11 of the TBT Agreement, so in paragraphs 3-6 of Article 56 of the Association Agreement, reporting information about the status and changes in the field of technical regulations, standards and conformity assessment procedures is envisaged; it should be noted that the provisions of the TBT Agreement clearly state this procedure.
- Paragraph 5 of Article 57 of the Association Agreement provides for the direct link of the TBT with the potential Agreement on Conformity Assessment and Acceptance of Industrial Products (the ACAA Agreement), before signing of which Ukraine and the EU must take into account the provisions of the TBT Agreement in their relationship.
- The Association Agreement (Article 58), as well as some provisions of the TBT Agreement (for example, Annex I), also pays attention to the technical requirements for marking and labeling.

Thus, the EU-Ukraine Deep and Comprehensive Free Trade Area involves, inter alia, the cooperation at the international regional level with regard to technical barriers, their unification and harmonization. This cooperation should be conducted in order not to create additional non-tariff barriers, on the one hand, to international trade in the performance by States of their protective/security functions in respect of their own (national) interests, and on the other hand, to national commodity producers and consumers. By comparing the TBT Agreement and Association Agreement, one can argue about their interrelation and interdependence, due to the impact of the TBT Agreement provisions on the content of the Association Agreement and its participants, as well as about the relevance of their core provisions. The EU and Ukraine, while drafting the Association Agreement, adhered to their own international commitments as a result of their WTO membership, and in general, without repeating, supplemented and specified the provisions of the TBT Agreement in the international regional agreement.

3. Some aspects of technical regulations, standardization, accreditation, conformity assessment procedures and market surveillance systems of products/goods in the EU

The introduction/application of technical barriers (including technical regulations, standardization, certification, conformity assessment, etc.) in the EU was regulated and is being regulated by specific statutory acts: – directives and decisions of the European Parliament and of the EU Council (formerly the EEC), in particular: by the Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, and of rules on Information Society services[27], and the Decision 1673/2006/EC of the European Parliament and of the Council of 24 October 2006 on the financing of European standardization[28], and the Council Decision No. 87/95/EEC of 22 December 1986 on the standardization in the field of information technology and telecommunications[29]. However, the Regulation of the European Parliament and of the Council 1025/2012 of 25 October 2012 recognized the inconsistency of the above-mentioned legal framework with changes in EU standardization over the last decades. Accordingly, the Regulation makes amendments in the Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council, and repeals the Council Decision 87/95/EEC, and the Decision of the European Parliament and of the Council 1673/2006/EC[30].

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[27] *Laying down a procedure for the provision of information in the field of technical standards and regulations: Directive of the European Parliament and of the Council* of 22 June 1998 № 98/34/EC. No longer in force. Date of end of validity: 06.10.2015. [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31998L0034

[28] On the financing of European standardisation: Decision of the European Parliament and of the Council of 24 October 2006 № 1673/2006/EC. No longer in force. Date of end of validity: 31.12.2012. [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006D1673

[29] On standardization in the field of information technology and telecommunications*: Council Decision* of 22 December 1986 № 87/95/EEC. No longer in force. Date of end of validity: 31.12.2012. [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31987D0095

[30] On European standardisation, amending Council Directives 89/686/EEC and 93/15/EEC and Directives 94/9/EC, 94/25/EC, 95/16/EC, 97/23/EC, 98/34/EC, 2004/22/EC, 2007/23/EC, 2009/23/EC and 2009/105/EC of the European Parliament and of the Council and repealing Council Decision 87/95/EEC and Decision No 1673/2006/EC of the European Parliament and of the

The technical regulation system established in the European Union is recognized as the most effective model for international cooperation in the world[31]. The large number of the agreements concluded on the mutual recognition of conformity assessment results with many countries attests to the high efficiency of the European approach in the field of technical regulations[32]. One has to agree that the free movement of products/goods in the EU is based on a new approach to technical harmonization and standardization, and on a global approach in the area of conformity assessment[33].

Thus, by the Decision of 7 May 1985 on a new approach to technical harmonization and standards (85/C 136/01), the EEC Council[34]:

– emphasized the need to resolve the situation as regards technical barriers to trade;
– stated its importance and necessity for reference, primarily, to European standards in order to define the technical characteristics of products;
– determined the principles of European standardization policies (for example, revising applicable technical regulations to eliminate obsolete or unnecessary ones; ensuring the mutual recognition of test results and creating the agreed rules for functioning of certification bodies; expanding practices to define the technical characteristics of products in accordance with European standards).

Council: Regulation (EU) of the European Parliament and of the Council of 25 October 2012 № 1025/2012. In force. [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012R1025

[31] See: BRENTON P., SHEEHY J., VANCAUTEREN M. *Technical Barriers to Trade in the European Union: Importance for Accession Countries.* CEPS: Working Document No. 144. April 2000, 27 p.; CHEVASSUS-LOZZA E., MAJKOVIČ D., PERSILLET V., UNGURU M. *Technical barriers to Trade in the European Union: Importance for the new EU members. An assessment for agricultural and food products.* Paper prepared for presentation at the 11th congress of the EAAE (European Association of Agricultural Economists), The Future of Rural Europe in the Global Agri-Food System Copenhagen, Denmark, August 24–27, 2005 etc.

[32] To study an example of the practical use of provisions of the WTO's Agreement on Technical Barriers to Trade (TBT) and various EU's regulations in this sphere we may attend to: C-147/96, *Netherlands v Commission* case, [2000] ECR I-4723; C-27/00 & 122/00, *Omega Air* case, [2002] ECR I-2569; C-377/98, *Netherlands v Parliament and Council (Biotech)* case, [2001] ECR I-7079; C-100/96, *The Queen v MAFF, ex parte British Agrochemicals Association Ltd* case, [1999] ECR I-1499; C-149/96, *Portugal v Council (Portuguese Textiles)* case, [1999] ECR I-8395 etc.

[33] KRYVOSHEIA, S. O., DIADIURA, K. O. Obgruntuvannia natsionalnoi systemy tekhnichnoho rehuliuvannia ta yii transformatsiia do zahalnoievropeiskoi. *Tekhnolohycheskyi audyt y rezervы proyzvodstva*, 2015, vol. 2/3 (22), p. 58. (in Ukrainian).

[34] *On a new approach to technical harmonization and standards: Council Resolution* of 7 May 1985 № 85/C 136/01. In force. [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31985Y0604%2801%29

The guidelines for a new approach to technical harmonization and standards (Annex II[35]) include the following principles among basic ones:

– legislative harmonization is limited to the adoption of directives;
– the task of drawing up the technical specifications is entrusted to bodies competent in the standardization area;
– technical characteristics are not mandatory and maintain their status of voluntary standards;
– the producer has the choice of not manufacturing in conformity with the standards, but in this event he has an obligation to prove that his products conform to the essential regulatory requirements.

In 1989-1990s, the EEC Council adopted the Resolution on a global approach and Decision 90/683/EEC, which determined the general guidelines and detailed conformity assessment procedures[36]. As of today, "the relevant EU decisions and regulations", on "technical regulations and standardization, metrology, accreditation, conformity assessment procedures and market surveillance systems" (paragraph 1 of Article 56[37]) are the Regulation of the European Parliament and of the Council No. 765/2008/EC of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing the Regulation (EEC) No. 339/93[38] (hereinafter – the Regulation No. 765/2008/EC), and the Decision of the European Parliament and of the Council No. 768/2008/EC of 9 July 2008 on a common framework for the marketing of products, and repealing the Council Decision 93/465/EEC[39] (hereinafter – Decision No. 768/2008/EC) and its Annexes (Annex I. Reference Provisions For Community Harmonization Legislation For Products; Annex II. Conformity

[35] *On a new approach to technical harmonization and standards: Council Resolution* of 7 May 1985 № 85/C 136/01. In force. [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31985Y0604%2801%29

[36] Concerning the modules for the various phases of the conformity assessment procedures which are intended to be used in the technical harmonization directives: Council Decision of 13 December 1990 № 90/683/EEC. No longer in force. Date of end of validity: 22.07.1993. [online]. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1533063499296&uri=CELEX:31990D0683

[37] *Uhoda pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony* vid 27.06.2014 r. [online]. Available at: http://zakon2.rada.gov.ua/laws/show/984_a11. (in Ukrainian).

[38] *Pro vstanovlennia vymoh do akredytatsii ta rynkovoho nahliadu, poviazanykh z realizatsiieiu produktiv, ta pro skasuvannia Rehlamentu (IeES) № 339/93: Rehlament Yevropeiskoho Parlamentu i Rady (IeS)* vid 09.07.2008 r. № 765/2008. [online]. Available at: http://zakon5.rada.gov.ua/laws/show/994_938. (in Ukrainian).

[39] *Pro spilni ramky dlia realizatsii produktiv ta pro skasuvannia Rishennia Rady 93/465/IeES:* Rishennia Yevropeiskoho Parlamentu i Rady vid 09.07.2008 r. № 768/2008/IeS. [online]. Available at: https://zakon.rada.gov.ua/laws/show/994_b42. (in Ukrainian).

Assessment Procedures). Let us consider some of the provisions of these regulatory legal acts.

The Regulation No. 765/2008/EC provides for the recognition of a single accreditation organization at the regional level (the European Accreditation Organization (EA)), whose task is to promote a transparent, quality-led system for the evaluation of the competence of conformity assessment bodies throughout Europe (paragraph 23 of the Preamble of the Regulation No. 765/2008/EC).

Paragraph 2 of the Preamble and Article 2 of the Decision No. 768/2008/EC lay down common principles and definitions required for the adoption of sectoral regulatory acts; and define the structure of a future unified legislation on procedures for trade in products/goods. These are principles and rules for the organization and accreditation of conformity assessment bodies, according to which a Member-State shall appoint only a single national accreditation body operating on a non-for-profit basis, having financial and personnel resources for the performance of tasks, not providing consultancy services, not owning shares nor otherwise having a financial or managerial interest in a conformity assessment body (Article 4), i.e. is independent, objective and impartial, and upon that, it shall publish audited annual accounts and ensure confidentiality of information (Article 8 of the Regulation No. 765/2008/EC, Article R17 of Annex II to the Decision No. 768/2008/EC).

Paragraph 17 of the Preamble and Article 1 of the Decision No. 768/2008/EC declare the position that the quality of products placed on the EU market shall comply with the requirements of the European legislation. The general principles of the CE marking and the obligation of Member-States to ensure the correct implementation of the regime governing in this field and to take appropriate measures (sanctions) for the improper use of the marking are contained in Article 30 of the Regulation No. 765/2008/EC, and upon that the following has been entrenched: – the CE marking right belongs to the manufacturer or his authorized representative, who thereby assumes responsibility for the conformity of a product with all applicable requirements; – the CE marking shall be affixed only to products, to which its affixing is provided for by the specific harmonized legislation; – the affixing to a product of markings, symbols, or inscriptions, which are likely to mislead third parties regarding their meaning or form shall be prohibited. The Decision No. 768/2008/EC, however, contains the provision on the CE marking, which indicates the conformity of a product quality with the requirements established (paragraph 29), and is applied only for that purpose (paragraph 30). Article R12 of Annex I to the Decision No. 768/2008/EC substantially supplements the general principles of the CE marking set out in Article 30 of the Regulation 765/2008/EC[40], with the

[40] *Pro vstanovlennia vymoh do akredytatsii ta rynkovoho nahliadu, poviazanykh z realizatsiieiu produktiv, ta pro skasuvannia Rehlamentu (IeES) № 339/93: Rehlament Yevropeiskoho*

rules for its affixing. Thus, the CE marking applied to products or their label shall be legible and visible; it shall be affixed to products before they are placed on the market; it may contain the identification number of the conformity assessment body, where that body has carried out the conformity assessment at the manufacturing stage. The EU Member-States are under the obligation to develop a legal mechanism to regulate public relations in the field of marking, as well as to bring business entities to responsibility, up to criminal one, for committing infringements in the field of marking products[41].

Paragraphs 20-27 of the Decision No. 768/2008/EC identify the participants in the process of distributing goods on the market, namely: – the manufacturer's sole responsibility is to carry out the conformity assessment procedure (paragraph 21); – importers must guarantee that conformity assessment procedures of products supplied by them have been fully implemented, products have been labeled, and documentation drawn up by manufacturers is suitable for inspection by the supervisory public authorities (paragraph 22); – the distributor of products must monitor that during their sale or other handling of them, their quality characteristics are not adversely affected (paragraph 23), as well as should be involved in control and supervisory measures, and provide the specially authorized state authorities with all necessary information about products/goods (paragraph 27).

Article R2 of Annex I to the Decision No. 768/2008/EC contains the obligations of the manufacturer, who shall: – ensure that products are manufactured in accordance with the requirements of a specific regulatory act; – draw up the technical documentation, carry out the conformity assessment procedure of products/goods, and deliver goods already assessed for the conformity; – draw up the EU declaration of conformity, and affix the marking of products/goods, etc. The requirements for products are: – availability of a serial number, indications on belonging to the series of goods, other designations and elements allowing them to be identified; – providing each product with instructions and safety information on precautionary measures when using it (set out in a language, which can be easily understood by consumers of a country, on whose market it is sold). The manufacturer is also obliged, further to a reasoned request from government authorities, to provide with information and documentation regarding the conformity of the product in a language they understand. According to Article R10 of Annex I, it is the obligation of the manufacturer to draw up and regularly update

Parlamentu i Rady (IeS) vid 09.07.2008 r. № 765/2008. [online]. Available at: http://zakon5.rada.gov.ua/laws/show/994_938. (in Ukrainian).

[41] *Pro spilni ramky dlia realizatsii produktiv ta pro skasuvannia Rishennia Rady 93/465/IeES:* Rishennia Yevropeiskoho Parlamentu i Rady vid 09.07.2008 r. № 768/2008/IeS. [online]. Available at: https://zakon.rada.gov.ua/laws/show/994_b42. (in Ukrainian).

the EU Declaration of conformity (of a standard form (Annex III), with modular elements (Annex II)), indicating the conformity in the manufacture of products with all the requirements established by regulatory legal acts[42].

The obligations of the importer according to Article R4 of Annex I to the Decision No. 768/2008/EC include placing only compliant products on the EU market of goods. The importer shall ensure that the manufacturer of products has carried out the conformity assessment procedures, drawn up the technical documentation, and affixed the marking; the necessary documents are attached to products/goods; goods are provided with instructions and documents containing the information about its safe use in a language, which can be easily understood for the consumer. The importer shall indicate their name and trademark, as well as contact information. Further to a request from public authorities, the importer shall provide with the information and documentation regarding the conformity of products/goods. When placing goods on the market, in accordance with the provisions of Article R5 of Annex I to the Decision No. 768/2008/EC, the distributor shall take into account all the requirements established by law: shall verify the marking available on goods, and be convinced that goods are accompanied by the required documentation, instructions and safety information in a language, which can be easily understood. In the event of uncertainty as to the fact that a product is in conformity, it shall not make products available on the market until they have been brought into conformity with the requirements established. If products/goods pose a threat, the distributor is obliged to provide the manufacturer or importer with all necessary information, as well as to report this fact to the market surveillance authorities. Further to a request from public authorities, the distributor shall provide with the information and documentation regarding the conformity of products/goods. Article 4 of the Decision No. 768/2008/EC establishes the conformity assessment procedures to be applied when the EU legislation imposes the specific conformity requirements for certain products. The procedures shall be chosen from among the determined modules (Annex II to the Decision No. 768/2008/EC), taking into account a number of the following criteria: – the module shall be appropriate to the category of goods in terms of its characteristics; – the conformity assessment shall be determined by the degree of risk and the type of threat inherent in it; – there is a need to avoid imposing modules that may lead to appearance of artificial obstacles to the conformity assessment of products/goods. Annex II to the Decision 768/2008/EC contains the description of the conformity assessment procedure of products/goods by modules: Module A "Internal Production Control "; Module B

[42] See: C-149/96, *Portugal v Council (Portuguese Textiles)* case, [1999] ECR I-8395; C-147/96, *Netherlands v Commission* case, [2000] ECR I-4723.

"EC-type Examination"; Module C "Conformity to Type Based on Internal Production Control"; Module D "Conformity to Type Based on Quality Assurance of the Production Process"; Module E "Conformity to Type Based on Product Quality Assurance"; Module F "Conformity to Type Based on Product Verification"; Module G "Conformity Based on Unit Verification"; and Module H "Conformity Based on Full Quality Assurance".

The market surveillance mechanisms for goods (including products originating from third countries) are a guarantee of their compliance with the safety requirements (including protection of the consumers' rights, and the environment). The Member-States are obliged to set up market surveillance authorities with the relevant competence, powers, and resources, as well as communication and coordination between them (Articles 17, and 18 of the Regulation No. 765/2008/EC). The important aspect of activities in this matter is the procedures for tracking complaints, and reports on risks that arise in relation to products/goods subject to the harmonized EU legislation; monitoring accidents and health damages caused by such products. The market surveillance measures determined by the Regulation include the checks of product characteristics according to the appropriate scale (document verification, physical and laboratory checks of samples). According to Article 19 of the Regulation No. 765/2008/EC, market surveillance authorities shall be empowered not only to require business entities to provide with the necessary documentation, but also, if needed, to enter premises of such entities, take samples of products, destroy or otherwise dispose of products that present a serious risk. Other duties of market surveillance authorities include the prevention and reduction of risks identified for any product; independence, impartiality and objectivity of activities. The concept of "products presenting a serious risk" is enshrined in Article 20 and stipulates the duty of the Member-State to guarantee that such products will be promptly withdrawn or removed, or their placement on the market will be prohibited. In this case, the clear criteria are set for decisions on qualifying products as those presenting a serious risk: they must be based on a risk assessment that takes into account the nature of the hazard and the likelihood of its occurrence.

As defined by the 'Blue Guide'[43] on the implementation of EU products rules, the Decision No. 768/2008/EC updated, harmonized and consolidated the various technical tools: terms, criteria for the designation and notification of conformity assessment bodies, rules for the notification procedure, conformity assessment procedures (modules) and rules for their use, mechanisms of interim measures,

[43] The 'Blue Guide' on the implementation of EU products rules 2016: Commission Notice, C/2016/1958. [online]. Available at: https://op.europa.eu/en/publication-detail/-/publication/ca3224fa-5303-11e6-89bd-01aa75ed71a1

business entities' duties and traceability requirements. Therefore, the Regulation (EC) No. 765/2008 and the Decision No. 768/2008/EC contain all the necessary elements of the comprehensive regulatory framework for the effective work on safety and conformity of products/goods with the requirements adopted for the protection of different public interests and proper functioning of the single market, which is particularly important for Ukraine in view of paragraph 1 of Article 56 of the Association Agreement.

4. Current state and prospects of the performance by Ukraine of its commitments on national technical barriers to trade in the context of the EU-Ukraine Association Agreement

The EU-Ukraine Association Agreement[44] has been already in force for five years, including its full effect since September 1, 2017[45];[46]. The Provisions of the Agreement envisage the freedom for the movement of goods (Article 26 and certain provisions of Chapter 2), with the exception of agricultural ones (Article 40, Chapter 17 "Agriculture and Rural Development" (Articles 403-406). The signing of the Association Agreement, as well as creation within this Agreement of the deep and comprehensive free trade area between Ukraine and the European Union have a serious impact on the development of foreign trade, because: – Ukrainian commodity producers have acquired certain improved opportunities to enter the EU market, which envisages the connection with improving the level of quality, safety and the environmental profile of Ukrainian goods; – the increase of competition on the domestic market; – more opportunities to share experience and technology; – implementation of more modern tools for the non-tariff regulation (including technical regulations, standardization, metrology, accreditation, conformity assessment procedures systems, sanitary and phytosanitary measures,

[44] *Uhoda pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony* vid 27.06.2014 r. [online]. Available at: http://zakon2.rada.gov.ua/laws/show/984_a11. (in Ukrainian).

[45] *Pro ratyfikatsiiu Uhody pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony: Zakon Ukrainy* vid 16.09.2014 r. №1678-VII. [online]. Available at: https://zakon.rada.gov.ua/laws/show/1678-18. (in Ukrainian).

[46] *Shchodo nabrannia chynnosti Uhodoiu: Lyst Ministerstva zakordonnykh sprav Ukrainy* vid 20.07.2017 r. № 72/14-612/1-1713. [online]. Available at: http://zakon5.rada.gov.ua/rada/show/v1713321-17. (in Ukrainian).

etc.) on the one hand, and ways of combating them, or unification/minimization of their impact on international trade, etc., on the other hand.

The abolition of the non-tariff restrictions in the EU for goods from Ukraine is provided for in Articles 34-35 of Part 3 "Non-Tariff Measures" of Title IV of the Association Agreement. It should be noted separately that there is a significant number of individual provisions in the Agreement and its annexes/supplements regarding different groups/types (quantitative, hidden and financial) of non-tariff restrictions, in particular as for technical barriers (Article 53-58). However, the parties have not waived their right to apply the trade protective measures in some cases.

In the framework of the Association Agreement (Article 54), Ukraine and the EU countries have undertaken to strengthen their cooperation in the field of technical regulations, standardization, market surveillance, accreditation and conformity assessment procedures with a view to increasing mutual understanding of their respective systems and facilitating access to their respective markets. Accordingly, to this end, the Parties to the Association Agreement may initiate a dialogue on regulatory legal issues at both horizontal and sectoral (vertical) levels (paragraph 1 of Article 55). At the same time, this cooperation involves: – reinforcing regulatory cooperation through the exchange of information, experience and data; – scientific and technical cooperation with a view to improving the quality of their technical regulations, standards, testing, market surveillance and accreditation; – encouraging cooperation between their respective organizations responsible for metrology, standardization, certification and accreditation; – fostering the development of the quality infrastructure for standardization, accreditation, and conformity assessment systems in Ukraine; – promoting the participation of Ukraine in the work of European organizations; – seeking solutions to overcome barriers to trade; – coordinating their positions in international trade and regulatory organizations (the WTO, and UN-ECE (in particular, for example, UN-ECE on the use of ISO standards[47])) (paragraph 2 of Article 55)[48].

The Cabinet of Ministers of Ukraine, by the Resolution No. 1106 of 25 October 2017, approved the Action Plan, the implementation of which is intended to demonstrate the performance by Ukraine of the obligations assumed, availability of the information about the performance of its obligations, clarity of response mechanisms and taking appropriate measures[49]. The fulfillment of

[47] Note: ISO published 22969 international standards. [online]. Available at: https://www.iso.org/standards.html

[48] *Uhoda pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony* vid 27.06.2014 r. [online]. Available at: http://zakon2.rada.gov.ua/laws/show/984_a11. (in Ukrainian).

[49] *Pro vykonannia Uhody pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi*

the Action Plan envisages, inter alia, making amendments to regulatory legal acts, and developing new documents in order to approximate the Ukrainian legislation to the EU law in accordance with the obligations under the Association Agreement. The analysis of the provisions of the Action Plan makes it possible to distinguish those that relate primarily to the investigated issue: – mechanisms and actions on the part of Ukraine in terms of achieving the compliance with EU technical regulations, and EU standardization, metrology, accreditation, conformity assessment procedures and market surveillance systems. The Ministry of Economic Development, Trade and Agriculture (former – the Ministry of Economic Development and Trade)[50], which quarterly publishes reports on the performance by Ukraine of its obligations under the Association Agreement[51], shall be responsible for implementing the action.

The performance of obligations to implement the EU acquis provisions in the national legislation of Ukraine, to carry out the necessary administrative and institutional reforms, and to introduce the effective and transparent administrative system (paragraph 2 of Article 56) takes place in accordance with the schedule set out in Annex III to the Association Agreement (paragraph 3 of Article 56). In addition, Ukraine must inform the EU once a year about the implementation of measures, and in cases where the actions listed in the timetable have not been implemented within the applicable time frame, a new timetable for their completion should be defined (paragraph 4 of Article 56)[52].

Ukraine has undertaken the obligations, in paragraph 1 of Article 56 of the Association Agreement, to follow the principles and practices laid down in the EU Decisions and Regulations on technical barriers, in particular with regard to

storony: Postanova Kabinetu Ministriv Ukrainy vid 25.10.2017 r. № 1106. [online]. Available at: https://zakon.rada.gov.ua/laws/show/1106-2017-%D0%BF. (in Ukrainian).

[50] *Ministerstvo rozvytku ekonomiky, torhivli ta silskoho hospodarstva Ukrainy.* [online]. Available at: http://www.me.gov.ua/?lang=uk-UA. (in Ukrainian).

For research topics ("Cooperation between Ukraine and the European Union", "Technical Regulation") see [online]. Available at: http://www.me.gov.ua/Tags/DocumentsByTag?lang=uk-UA&id=10ca8da3-169d-419b-a6f2-d42635f92b8b&tag=SpivrobitnitstvoMizhUkrainoiuTaYevropeiskimSoiuzom; http://www.me.gov.ua/Tags/DocumentsByTag?lang=uk-UA&tag=TekhnichneReguliuvannia. (in Ukrainian).

[51] See the Quarterly Monitoring of Fulfillment in the Ministry of Economic Development and Trade for 2018/2019 of the Action Plan for Implementation of the Association Agreement between Ukraine and the EU [online]. Available at: http://www.me.gov.ua/Documents/List?lang=uk-UA&id=f1bdcc6c-abc8-46dc-9648-ed56b2fcea1c&tag=ImplementatsiiaUgodiProAsotsiatsiiuMizhUkrainoiuTas. (in Ukrainian).

[52] *Uhoda pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony* vid 27.06.2014 r. [online]. Available at: http://zakon2.rada.gov.ua/laws/show/984_a11. (in Ukrainian).

the Regulation of the European Parliament and of the Council No. 765/2008/EC of 9 July 2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products and repealing the Regulation (EEC) No. 339/93[53] and the Decision of the European Parliament and of the Council No. 768/2008/EC of 9 July 2008 on a common framework for the marketing of products, and repealing the Council Decision 93/465/EEC[54].

Of great importance for the development of trade between Ukraine and the EU is the signing of the Agreement on Conformity Assessment and Acceptance of Industrial Products (hereinafter – the ACAA Agreement, (ACAA)), as a Protocol to the Association Agreement (paragraph 3 of Article 57), which will simplify access of Ukrainian industrial products to the European market, but only after the full harmonization of sectoral and horizontal legislations, institutions and standards of Ukraine with European counterparts. We note that the ACAA Agreement may initially cover one or more industrial sectors, with a gradual extension to all 27 sectors/categories of industrial (non-food) products/goods (Annex III) envisaged in the Association Agreement; after this, Ukraine and the EU have undertaken to consider the possibility of its extension to other categories of industrial products. The ACAA Agreement is called the "industrial visa-waiver", underlining its potential for the development of foreign trade relations between Ukraine and the European Union, and modernization of the Ukrainian economy, as well as its validity as a factor in the path of the European integration. It should be noted that the issue of concluding the ACAA Agreement between the EU and Ukraine has already had a continuous history, since December 2005, long before the beginning of negotiations on the future Association Agreement.

In accordance with the provisions of the Association Agreement, in order to conclude the ACAA Agreement, Ukraine shall[55]:

- Make its own national legislation, both horizontal (framework) and vertical (sectoral) full compliant with the European one – paragraph 1 of Article 57;
- Adopt the European harmonized standards for relevant types of products as national ones;

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[53] *Pro vstanovlennia vymoh do akredytatsii ta rynkovoho nahliadu, poviazanykh z realizatsiieiu produktiv, ta pro skasuvannia Rehlamentu (IeES) № 339/93: Rehlament Yevropeiskoho Parlamentu i Rady (IeS)* vid 09.07.2008 r. № 765/2008. [online]. Available at: http://zakon5.rada.gov.ua/laws/show/994_938. (in Ukrainian).

[54] *Pro spilni ramky dlia realizatsii produktiv ta pro skasuvannia Rishennia Rady 93/465/IeES:* Rishennia Yevropeiskoho Parlamentu i Rady vid 09.07.2008 r. № 768/2008/IeS. [online]. Available at: https://zakon.rada.gov.ua/laws/show/994_b42. (in Ukrainian).

[55] LUTSENKO D. *Uhoda ASAA: intehratsiia Ukrainy do rynku promyslovykh tovariv YeS.* V ramkakh proektu "Hromadska synerhiia". Sichen 2019, S. 3. [online]. Available at: https://www.civic-synergy.org.ua/analytics/ugoda-asaa-integratsiya-ukrayiny-do-rynku-promyslovyh-tovariv-yes/. (in Ukrainian).

- Bring all its own national conformity assessment infrastructure (the national standardization body, the national accreditation body, metrological institutions, conformity assessment bodies) as well as state market surveillance infrastructure (market surveillance bodies and procedures) in line with the European requirements;
- Abolish all regulatory regimes (the major part of which exists since the Soviet and post-Soviet times), which contradict, duplicate and/or are complementary to the European requirements for relevant types of products (first of all, sanitary norms and rules and regulatory legal acts in the field of labor protection).

The obligations to adapt the horizontal (framework) legislation have been implemented in Ukraine in the form of regulatory legal acts, in particular these are the Laws of Ukraine "On General Safety of Non-Food Products"[56], "On Accreditation of Conformity Assessment Bodies"[57], "On State Market Surveillance and Control of Non-Food Products"[58], "On Technical Regulations and Conformity Assessment"[59], "On Metrology and Metrological Activity"[60], "On Liability for Damage Caused by a Defect in Products"[61], etc. In addition, in order to align the infrastructure with the European requirements, the Law of Ukraine "On Standardization" has also been adopted in Ukraine[62]. As all of these legislative acts have been drafted in accordance with the relevant EU regulatory legal requirements and some of them were previously analyzed by European experts, they are generally in line with the European requirements, but this does not exclude the need to amend them (for example, the Laws of Ukraine "On Standardization" and "On State Market Surveillance and Control of Non-Food Products").

Article 56 of the Association Agreement provides for the gradual achievement by Ukraine of the compliance with EU technical regulations, standardization, metrology, accreditation, conformity assessment and market surveillance systems (Annex III), as well as gradual implementation of European standards (EN) as

[56] *Pro zahalnu bezpechnist nekharchovoi produktsii: Zakon Ukrainy* vid 02.12.2010 r. № 2736-VI. [online]. Available at: https://zakon.rada.gov.ua/laws/show/2736-17. (in Ukrainian).

[57] *Pro akredytatsiiu orhaniv z otsinky vidpovidnosti: Zakon Ukrainy* vid 17.05.2001 r. № 2407-III. [online]. Available at: https://zakon.rada.gov.ua/laws/show/2407-14. (in Ukrainian).

[58] *Pro derzhavnyi rynkovyi nahliad i kontrol nekharchovoi produktsii: Zakon Ukrainy* vid 02.12.2010 r. № 2735-VI. [online]. Available at: https://zakon.rada.gov.ua/laws/show/2735-17. (in Ukrainian).

[59] *Pro tekhnichni rehlamenty ta otsinku vidpovidnosti: Zakon Ukrainy* vid 15.01.2015 r. № 124-VIII. [online]. Available at: https://zakon.rada.gov.ua/laws/show/124-19. (in Ukrainian).

[60] *Pro metrolohiiu ta metrolohichnu diialnist: Zakon Ukrainy* vid 05.06.2014 r. № 1314-VII. [online]. Available at: https://zakon.rada.gov.ua/laws/show/1314-18. (in Ukrainian).

[61] *Pro vidpovidalnist za shkodu, zavdanu vnaslidok defektu v produktsii: Zakon Ukrainy* vid 19.05.2011 r. [online]. Available at: https://zakon.rada.gov.ua/laws/show/3390-17. (in Ukrainian).

[62] *Pro standartyzatsiiu: Zakon Ukrainy* vid 05.06.2014 r. № 1315-VII. [online]. Available at: https://zakon.rada.gov.ua/laws/card/1315-18. (in Ukrainian).

a national standard, including technical requirements to the marking and labeling, which should be met by products/goods imported to the EU (Article 58). In accordance with paragraph 8 of Article 56 of the Association Agreement, Ukraine shall progressively transpose the corpus of European standards (EN) as national standards and, at the same time, abolish the "conflicting national standards, in particular the application of interstate standards (GOST/ГОСТ) developed before 1992", according to Annex III. The responsibility for implementing this action is borne by the National Standardization Body, SE "UkrNDNC"[63]. The program of the national standardization works in Ukraine for 2019 has been approved by the Order of SE "UkrNDNC" of 25 February 2018 No. 33[64]. At the end of 2019, the National Standard Fund amounted to 22682 standards, of which: 7110 – those harmonized with international standards; 7790 – those harmonized with European standards, and the level of harmonization was 65,7%. The Program 2019 includes 288 topics for drafting national standards to replace GOST developed before 1992; also it envisages 1964 topics for drafting national standards identical to relevant harmonized European standards, for the purposes of acts of the European law (paragraph 213[65]).

Therefore, despite some difficulties in the implementation of certain tasks in the field of standardization, we conclude that Ukraine is performing its obligations to harmonize the standardization system with the EU norms. The prospects of the sectoral (vertical) development of the Ukrainian standardization law include, first of all, continuing the process of reforming and harmonizing the technical regulation system. The objective need to unify and harmonize national state standards with international and European ones is particularly urgent. We agree with the opinion of scientists that the norm for the implementation at the national level of 80% of standards in force in the EU requires to accelerate the pace of harmonizing the national regulatory framework of Ukraine with EU standards[66]. However, as Yu.Y. Harasym specifies, the question of the existence

[63] *Derzhavne pidpryiemstvo «Ukrainskyi naukovo-doslidnyi i navchalnyi tsentr problem standartyzatsii, sertyfikatsii ta yakosti», DP «UkrNDNTs».* [online]. Available at: http://uas.org.ua/ua/. (in Ukrainian).

[64] *Prohrama robit z natsionalnoi standartyzatsii v Ukraini na 2019 rik: Nakaz DP "UkrNDNTs"* vid 25.02.2018 r. № 33. [online]. Available at: http://uas.org.ua/ua/services/standartizatsiya/programa-robit/. (in Ukrainian).

[65] *Zvit shchodo vykonannia Uhody pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony za IV kvartaly 2019 roku.* Monitorynh vykonannia v Minekonomiky v IV kvartali 2019 roku planu zakhodiv z vykonannia Uhody pro asotsiatsiiu mizh Ukrainoiu ta YeS. [online]. Available at: http://www.me.gov.ua/Documents/List?lang=uk-UA&id=f1bdcc6c-abc8-46dc-9648-ed56b2fcea1c&tag=ImplementatsiiaUgodiProAsotsiatsiiuMizhUkrainoiuTas. (in Ukrainian).

[66] LYTVYNSKA, S. Harmonizatsiia ukrainskykh natsionalnykh standartiv serii «Informatsiia ta dokumentatsiia» z mizhnarodnymy i yevropeiskymy: zdobutky i perspektyvy. *Ukrainian Scientific*

of duplicate regimes in terminology remains unresolved: technical regulations (as a regulatory legal act) and technical regulation (as a process)[67], as opposed to English, in which there is a single term "technical regulation" as a process, etc.

For the purpose of signing the ACAA Agreement, in order to determine the priority sectors of industrial products (Article 57, Annex III of the Association Agreement), the term has been set: -- until September 1, 2022[68], and the work in this area is ongoing and consists of: ensuring that the legislation, standards and infrastructure are reviewed in terms of the compliance with the EU requirements, which will allow increasing the competitiveness of domestic products and expanding the export capabilities of Ukraine[69]. It can be argued that Ukraine is moving ahead in the matter of performing the "homework" in the preparation for concluding the ACAA Agreement[70], but the near-term perspective of its signing

Journal of Information Security, 2012, vol. 2, s. 44. (in Ukrainian).

[67] *Pro vykonannia Uhody pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony: Postanova Kabinetu Ministriv Ukrainy* vid 25.10.2017 r. № 1106. [online]. Available at: https://zakon.rada.gov.ua/laws/show/1106-2017-%D0%BF. (in Ukrainian).

[68] *Pro vykonannia Uhody pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony: Postanova Kabinetu Ministriv Ukrainy* vid 25.10.2017 r. № 1106. [online]. Available at: https://zakon.rada.gov.ua/laws/show/1106-2017-%D0%BF. (in Ukrainian).

[69] See: *Zvit pro diialnist natsionalnoho orhanu standartyzatsii za 2017 rik.* [online]. Available at: http://uas.org.ua/wp-content/uploads/2018/02/Zvit-na-KR-NOS.pdf. (in Ukrainian); *Zvit pro vykonannia Prohramy robit z natsionalnoi standartyzatsii na 2019 rik.* Hruden, 27.12.2019 r. [online]. Available at: http://uas.org.ua/ua/services/standartizatsiya/programa-robit/. (in Ukrainian); *Zvity shchodo vykonannia Uhody pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony za I-IV kvartaly 2018 roku.* Monitorynh vykonannia v Minekonomrozvytku v I-IV kvartalakh 2018 roku planu zakhodiv z vykonannia Uhody pro asotsiatsiiu mizh Ukrainoiu ta YeS. [online]. Available at: http://www.me.gov.ua/Documents/List?lang=uk-UA&id=f1bdcc6c-abc8-46dc-9648-ed56b2fcea1c&tag=ImplementatsiiaUgodiProAsotsiatsiiuMizhUkrainoiuTas. (in Ukrainian); *Zvit shchodo vykonannia Uhody pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnimy derzhavamy-chlenamy, z inshoi storony za IV kvartaly 2019 roku.* Monitorynh vykonannia v Minekonomiky v IV kvartali 2019 roku planu zakhodiv z vykonannia Uhody pro asotsiatsiiu mizh Ukrainoiu ta YeS. [online]. Available at: http://www.me.gov.ua/Documents/List?lang=uk-UA&id=f1bdcc6c-abc8-46dc-9648-ed56b2fcea1c&tag=ImplementatsiiaUgodiProAsotsiatsiiuMizhUkrainoiuTas. (in Ukrainian).

[70] See: *Zvit pro diialnist natsionalnoho orhanu standartyzatsii za 2017 rik.* [online]. Available at: http://uas.org.ua/wp-content/uploads/2018/02/Zvit-na-KR-NOS.pdf. (in Ukrainian); *Prohrama robit z natsionalnoi standartyzatsii v Ukraini na 2019 rik: Nakaz DP "UkrNDNTs"* vid 25.02.2018 r. № 33. [online]. Available at: http://uas.org.ua/ua/services/standartizatsiya/programa-robit/. (in Ukrainian); *Zvit pro vykonannia Prohramy robit z natsionalnoi standartyzatsii na 2019 rik.* Hruden, 27.12.2019 r. [online]. Available at: http://uas.org.ua/ua/services/standartizatsiya/programa-robit/. (in Ukrainian); *Proekt Chastyny 1 «Novi temy» do proektu Prohramy robit*

is not foreseen; it would be appropriate to consider the possibility to temporarily simplify procedures or mitigate requirements for the assessment and documentary certification of conformity and acceptability of certain industrial products of the Ukrainian origin for the EU requirements.

The Ministry of Economic Development, Trade and Agriculture of Ukraine is the institutional center for reforming the technical regulation system and preparing for the conclusion of the ACAA Agreement. It is responsible for the formation of state policies in this area, performs regulatory and/or coordinating functions in the field of the horizontal legislation (technical regulations and conformity assessment, standardization, metrology, market surveillance), and with regard to the vertical (sectoral) legislation, it is also the regulator that develops technical regulations in the defined sectors. Other central executive authorities perform functions of the regulator, or inspection (supervisory) functions in the defined sectors[71].

One of the components of the institutional reforming and harmonization of standardization, according to Article 11 of the Law "On Standardization", is the establishment of the National Standardization Body (NSB)[72], whose functions are entrusted to the State Enterprise "Ukrainian Research and Training Center for Problems of Standardization, Certification, and Quality" (SE "UkrNDNC")[73], in accordance with the Decree of the Cabinet of Ministers of Ukraine of 26 November 2014 No. 1163-2014-p "On Definition of a State-Owned Enterprise that Performs Functions of the National Standardization Body"[74]. Therefore, the significant step on the transfer of functions of the National Standardization Body from the State (represented, for example, by the State Consumer Standard) to the enterprise (even if it is the state-owned one) has been made.

At the same time, we should agree with the statement that the State is not able to promptly respond to changes and developments in new technologies[75]. That

z natsionalnoi standartyzatsii na 2020 rik. [online]. Available at: http://uas.org.ua/ua/services/standartizatsiya/programa-robit/. (in Ukrainian).

71 LUTSENKO, D. *Uhoda ASAA: intehratsiia Ukrainy do rynku promyslovykh tovariv YeS.* V ramkakh proektu "Hromadska synerhiia". Sichen 2019, S. 4. [online]. Available at: https://www.civic-synergy.org.ua/analytics/ugoda-asaa-integratsiya-ukrayiny-do-rynku-promyslovyh-tovariv-yes/. (in Ukrainian).

72 *Pro standartyzatsiiu: Zakon Ukrainy* vid 05.06.2014 r. № 1315-VII. [online]. Available at: https://zakon.rada.gov.ua/laws/card/1315-18. (in Ukrainian).

73 *State Enterprise "Ukrainian Research and Training Center for Problems of Standardization, Certification, and Quality", SE "UkrNDNC".* [online]. Available at: http://uas.org.ua/ua/. (in Ukrainian).

74 *Pro vyznachennia derzhavnoho pidpryiemstva, yake vykonuie funktsii natsionalnoho orhanu standartyzatsii: Rozporiadzhennia Kabinetu Ministriv Ukrainy* vid 26.11.2014 r.№ 1163-2014-r. [online]. Available at: https://zakon.rada.gov.ua/laws/show/1163-2014-%D1%80. (in Ukrainian).

75 KOVALOVA, M. L. Osoblyvosti systemy standartyzatsii ta sertyfikatsii v Ukraini. *Biznes ta intelektualnyi kapital*. Intelekt XXI, 2016, vol. 4, s. 69. (in Ukrainian).

is why in the European countries, private entities are engaged in the elaboration of standards, in particular the indicative example is the German Institute for Standardization DIN – a non-profit association, whose members are enterprises, unions, state organizations, trade firms, scientific institutes, etc. Thus, the Terminology DIN Standards Committee consists of 47% of the industry representatives, 44% of scientists and researchers, and only 8% of participants from the public sector. Such a committee structure is an effective mechanism for creating market standards that, first of all, have credibility as well as undoubtedly promote global trade, encourage rationalization, and contribute to ensuring quality and improving security and communications[76].

In addition, according to paragraph 7 of Article 56 of the Association Agreement, Ukraine fully ensures the participation (or cooperation) of relevant national bodies not only in international world organizations[77], but also in European ones, in particular in: – the European Committee for Standardization (CEN), which brings together national standardization bodies of 34 European countries[78]; – the European Committee for Electrotechnical Standardization (CENELEC)[79]; – the European Telecommunications Standards Institute[80] (the European Telecommunications Standards Institute, ETSI)[81], etc.

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[76] *The German Institute for Standardization, DIN.* [online]. Available at: https://www.din.de/en

[77] Which have already been discussed.

[78] *The European Committee for Standardization, CEN.* [online]. Available at: https://www.cen.eu/about/Pages/default.aspx.

For more details, see [online]. Available at: http://uas.org.ua/ua/zagalni-vidomosti-pro-dp-ukrndnts/kerivnitstvo/generalniy-direktor-dp-ukrndnts/pershiy-zastupnik-generalnogo-direktora-direktor-institutu-standartizatsiyi/viddil-mizhnarodnogo-regionalnogo-mizhderzhavnogo-spivrobutnytstva/spivrobitnitstvo-z-mizhnarodnimi-organizatsiyami/. (in Ukrainian); https://standards.cen.eu/

[79] *European Committee for Electrotechnical Standardization, CENELEC.* [online]. Available at: https://www.cenelec.eu/aboutcenelec/whoweare/index.html

For more details, see [online]. Available at: http://uas.org.ua/ua/zagalni-vidomosti-pro-dp-ukrndnts/kerivnitstvo/generalniy-direktor-dp-ukrndnts/pershiy-zastupnik-generalnogo-direktora-direktor-institutu-standartizatsiyi/viddil-mizhnarodnogo-regionalnogo-mizhderzhavnogo-spivrobutnytstva/spivrobitnitstvo-z-mizhnarodnimi-organizatsiyami/. (in Ukrainian); https://www.cenelec.eu/dyn/www/f?p=104:11:1958283374840701::::FSP_ORG_ID:5777

[80] Also called the European Telecommunications Standards Institute

[81] *European Telecommunications Standards Institute, ETSI* [online]. Available at: https://www.etsi.org/.

For more details, see [online]. Available at: http://uas.org.ua/ua/zagalni-vidomosti-pro-dp-ukrndnts/kerivnitstvo/generalniy-direktor-dp-ukrndnts/pershiy-zastupnik-generalnogo-direktora-direktor-institutu-standartizatsiyi/viddil-mizhnarodnogo-regionalnogo-mizhderzhavnogo-spivrobutnytstva/spivrobitnitstvo-z-mizhnarodnimi-organizatsiyami/. (in Ukrainian); https://www.etsi.org/; https://www.etsi.org/newsroom/news/394-news-release-25-may-2012?highlight=WyJ1a3JhaW5lIl0=

The institutional legal changes may also include the measures for possible gaining by Ukraine, before the end of 2020, of the membership in the International Organization of Legal Metrology (OIML), which are still ongoing, and signing of the Metre Convention in order to participate to the full extent in the Mutual Recognition Arrangement for national standards and calibration and measurement certificates issued by national institutes of metrology (CIPM MRA) (Article 56 of the Association Agreement).

On August 7, 2018, Ukraine became a full-fledged member of the International Bureau of Weights and Measures (BIPM, Fr.: Bureau International des Poids et Mesures)[82] (before that, since 2002, it was an associate member of the General Conference of Weights and Measures), following the adoption of the Law of Ukraine of 23 May 2018 No. 2445 "On Accession of Ukraine to the Metre Convention"[83]. The said events open for Ukraine the possibility to ensure comparison of benchmarks and to strengthen its national infrastructure/quality institution, the basis of which is exactly metrology; accordingly, this gives the right to the future full membership in the International Organization of Legal Metrology (OIML).

Within the framework of implementing the Association Agreement, the Trade and Sustainable Development Council was established[84], which consists of representatives of public authorities, business, employers, trade union organizations, environmental NGOs, etc. The Council has the status of an advisory and consultative body, and its activities are primarily aimed at resolving the issue to prepare recommendations and proposals for the establishment of an institutional component within the framework of implementing the provisions of Chapter 13 "Trade and Sustainable Development" of the Association Agreement between Ukraine and the EU, namely regarding: the organization of work of the Consultative Group on sustainable development issues; and the selection of candidates for the Expert Group. The first meeting of the Trade and Sustainable Development Council was held on September 10, 2018.

Another priority element of the institutional legal reforming/adaptation of the technical regulation system is to bring the accreditation system of Ukraine in line

[82] Bureau International des Poids et Mesures, BIPM. [online]. Available at: https://www.bipm.org/en/about-us/

For more details, see [online]. Available at: https://www.bipm.org/en/about-us/member-states/ua/

[83] *Pro pryiednannia Ukrainy do Metrychnoi konventsii: Zakon Ukrainy* vid 23.05.2018 r. № 2445-VIII. [online]. Available at: https://zakon.rada.gov.ua/laws/show/2445-19. (in Ukrainian); *Metrychna konventsiia vid 20.05.1875 r., m. Paryzh.* [online]. Available at: https://zakon.rada.gov.ua/laws/show/250_001-75#n2. (in Ukrainian).

[84] *Pro utvorennia Rady z pytan torhivli ta staloho rozvytku: Postanova Kabinetu Ministriv Ukrainy* vid 13.06.2018 r. № 478. [online]. Available at: http://zakon5.rada.gov.ua/laws/show/478-2018-p. (in Ukrainian).

with the requirements of the European Accreditation of Certification[85] (European Accreditation of Certification, EA)[86] and to sign relevant bilateral recognition agreements with EA. In this regard, the Law of Ukraine "On Accreditation of Conformity Assessment Bodies"[87] is of the exceptional importance, with the adoption of which the conformity assessment (certification) and accreditation functions have been separated. The result of these actions was the formation of the National Accreditation Agency of Ukraine (hereinafter – NAAU)[88] in 2002.

The NAAU's activities are recognized in the European Union and across the globe; it is a member of a number of international and regional accreditation organizations: an associate member of the European Accreditation of Certification (EA)[89], which ensures the mutual recognition of accreditation results of conformity assessment bodies on the basis of the Bilateral Recognition Agreement, (EA BLA) in the areas of accreditation of testing and calibration laboratories, product certification bodies, management system certification bodies, personal certification bodies and inspection bodies.

The EA acknowledged that the areas of the NAAU's activities are in line with the European accreditation regulatory requirements. The NAAU is a full-fledged member of the International Laboratory Accreditation Cooperation[90] (International Laboratory Accreditation Cooperation, ILAC)[91] and a signatory to the Mutual Recognition Arrangement (ILAC Mutual Recognition Arrangement, ILAC MRA) in the areas of accreditation of testing and calibration laboratories and inspection bodies[92].

In August 2016, the NAAU applied for the membership in the International Accreditation Forum (IAF)[93], as a result of which in June 2017, the NAAU joined

[85] Sometimes called the European Accreditation of Certification. See [online]. Available at: http://www.ukrcsm.kiev.ua/index.php/en/services-ua/standard-ua/inter-org-standard-ua. (in Ukrainian).

[86] *European Accreditation of Certification, EA.* [online]. Available at: https://european-accreditation.org/.

[87] *Pro akredytatsiiu orhaniv z otsinky vidpovidnosti: Zakon Ukrainy* vid 17.05.2001 r. № 2407-III. [online]. Available at: https://zakon.rada.gov.ua/laws/show/2407-14. (in Ukrainian).

[88] *National Accreditation Agency of Ukraine.NAAU.* [online]. Available at: https://naau.org.ua/?lang=en *Natsionalne ahentstvo z akredytatsii Ukrainy*. [online]. Available at: https://naau.org.ua/. (in Ukrainian).

[89] For more details, see [online]. Available at: https://european-accreditation.org/ea-members/directory-of-ea-members-and-mla-signatories/

[90] Sometimes called the International Laboratory Accreditation Cooperation, See [online]. Available at: http://www.ukrcsm.kiev.ua/index.php/en/services-ua/standard-ua/inter-org-standard-ua. (in Ukrainian)

[91] *International Laboratory Accreditation Cooperation, ILAC.* [online]. Available at: https://ilac.org/

[92] *ILAC MRA Annual Report 2018.* [online]. Available at: https://ilac.org/ilac-mra-and-signatories/

[93] *International Accreditation Forum, IAF.* [online]. Available at: https://www.iaf.nu/

the IAF[94]. In August 2017, the NAAU received the status of a signatory to the Multilateral Recognition Arrangement in the areas of accreditation of product certification bodies, personnel certification bodies, and certification bodies of quality management systems, the environment, information security, food safety, as well as quality management systems for medical products and energy management systems (IAF MLA (Multilateral Recognition Arrangements)[95]. In September 2017, the NAAU and IAF signed the agreement on the use of a mark, which provides the accredited product, personnel and management system certification bodies with the opportunity to use the combined mark of IAF MLA on their own documents, subject to signing of a separate agreement with the NAAU.

Therefore, the accreditation provided by the NAAU in the above areas is equivalent to the accreditation provided by national accreditation bodies – parties to ILAC MRA and IAF MLA in more than 80 countries of the world[96]. The perspective tasks concerning the NAAU's activities, first of all, include developing and deepening the international cooperation within the framework of EA, ILAC and IAF, as well as the further cooperation with national accreditation bodies of different countries for the mutual recognition of accreditation.

By determining overall prospects for the development in the field of technical regulations and standardization, metrology, accreditation, conformity assessment procedures and market surveillance systems, the priority remains to work on the further and full performance by Ukraine of its obligations under the Association Agreement not only in regard to institutional and legal (framework, organizational) aspects, but also their strict observance, implementation/application, as well as monitoring.

5. Conclusions

It's worth approaching the technical barriers subject in an integrated, prudent and responsible manner as it covers various spheres of socio-economic and public life, in particular, for example, foreign economic (foreign trade and customs) aspects; the equality of the goods made by national producers with the goods originated in other countries on states' internal markets, states' social responsibility for the current and prospective health of their population, national economic (including food) security; as well as legal confirmation/legalization (including

[94] See: [online]. Available at: https://www.iaf.nu/articles/IAF_MEM_Ukraine/502

[95] *IAF MLA Committee Members.* IAF Secretariat. 13 November 2019. P. 31. [online]. Available at: https://www.iaf.nu/upFiles/MLA%20Member%20List.pdf

[96] See: https://naau.org.ua/mizhnarodna-diyalnist/. (in Ukrainian); https://european-accreditation.org/ea-members/directory-of-ea-members-and-mla-signatories/#UKRAINE

harmonization, adaptation and coordination) of all the above mentioned matters both on the national and the international level.

Technical barriers to international trade (the institutional and legal (regulatory) manifestation of which is technical regulations, standardization, metrology, accreditation, conformity assessment procedures and market surveillance systems) can be used by States both to improve the quality and safety of goods/products and to fight against unwanted competitors. Thus, on the one hand, there is a need to align (including to unify, to adapt) technical barriers to trade and regulate their application within the framework of international cooperation (world and regional, multilateral and bilateral), and on the other hand, the countries themselves (at national and domestic levels) must protect their own economic and security interests, their commodity producers, consumers and the environment. Due to the socio-economic importance and ambiguity of the application of technical barriers to trade, States actively cooperate on issues of either their limitation, or transparent regulation/application, without ignoring also the unification and adaptation processes of regulatory legal, organizational, documentary and procedural aspects with regard to technical regulations, and standardization, metrology, accreditation, conformity assessment procedures and market surveillance systems, etc.

Firstly, the need to regulate technical barriers is addressed in the WTO system multilateral international agreement: – the Agreement on Technical Barriers to Trade (TBT), the references to the provisions of which are also contained in regional international agreements, in particular in the Association Agreement between Ukraine and the EU 2014. Certainly, any international treaties with the same participants should not contradict one another with regard to provisions enshrined in them and, accordingly, obligations arising from them. Having compared the content of the TBT Agreement and the Association Agreement, one can argue about their interdependence, interrelation, consistency with each other, influence (first of all, the TBT Agreement), and in some cases, interchangeability, as well as relevance and correlation of their basic provisions. As a rule, international treaties with fewer participants (regional or bilateral) are more specific by reason of their sense in terms of entrenching their parties' special/sectoral obligations, as well as more effective and stricter in their performance, as it is observed in the context of Chapter 3 "Technical Barriers to Trade" (Articles 53-58, Annex III) of the Association Agreement.

The European Union and its Member-States have a long-standing practice of international and national institutional and legal support and regulation of technical barriers as non-tariff means of international trade; thus, the use of their experience and achievements in this field is reasonable and appropriate, both in theoretical and practical terms, especially for countries with the European

integration vector. For example, the Regulation (EC) No. 765/2008 and Decision No. 768/2008/EC contain the essential elements of the modern integrated regulatory framework for the effective work on safety and compliance of products/goods with the requirements adopted to protect different public interests, and for the proper functioning of the single market within the EU Member-States and deep and comprehensive free trade area between Ukraine and the European Union.

Within the framework of the Association Agreement, the focus is predominantly put on harmonization (adaptation) of the regulatory environment of Ukraine with relevant EU standards. In the field of technical barriers, Ukraine has undertaken a number of institutional and legal obligations (namely: to take necessary steps in order to achieve the conformity with the EU technical regulations, and EU standardization, metrology, accreditation, conformity assessment procedures and market surveillance systems; to adhere to the principles and practices outlined in the EU decisions and regulations), the performance of which can be now observed at both domestic and international levels. The national regulatory legal activity in the investigated area may primarily include adopting or updating of legislative and non-legislative acts of Ukraine (in particular, the Laws of Ukraine "On Accreditation of Conformity Assessment Bodies", "On State Market Surveillance and Control of Non-Food Products", "On Technical Regulations and Conformity Assessment", "On Metrology and Metrology Activities", "On Standardization", etc.), as well as the large-scale work on the gradual implementation of European standards (EN) in relevant harmonized/adapted national technical regulations and standards. As concerns the domestic institutional and organizational activity of Ukraine in performing its obligations regarding technical barriers of the Association Agreement, it is necessary to point out the formation of the National Standardization Body represented by the State Enterprise "Ukrainian Research and Training Center for Problems of Standardization, Certification, and Quality" (SE "UkrNDNC") and the National Accreditation Agency of Ukraine (NAAU). Within the framework of international (world and regional) cooperation of Ukraine in various formats, the attention is paid to the cooperation (or its attempts) with the European Committee for Standardization (CEN), the European Committee for Electrotechnical Standardization (CENELEC), the European Telecommunications Standards Institute (ETSI), the European Accreditation of Certification (EA), the International Bureau of Weights and Measures (BIPM, Bureau International des Poids et Mesures), the International Organization of Legal Metrology (OIML), the International Organization for Standardization (ISO), the International Standardized Testing Organization (ISTO), the International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU), and the International Laboratory Accreditation Cooperation (ILAC), etc.

Stability and predictability in international trade relations can be ensured, to no small degree, through a system of rules/norms recognized by most countries of the world, which enters into force by its implementation and application, first of all, at the national (domestic) level. (Although, in the modern world predominantly, this is driven by external and international factors). Despite the certain progress of Ukraine in the adaptation and institutional and regulatory provision, at domestic and international levels, of some aspects related to technical barriers to international trade, a whole lot of things remain to be done on the way of reforming and harmonizing the national technical regulation system. In summary, the attention should be paid to the need for a more active integration of Ukraine into the world economy, including through: the implementation of commitments resulting from the WTO membership and participation in the Association Agreement with the EU; the further liberalization of foreign trade and domestic economic policies; the simplification of export-import procedures and optimization of regulating the non-tariff barriers to trade, etc.

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