

ACTION FICHE UKRAINE – ENPI AAP 2008

1. IDENTIFICATION

Title	Promoting mutual trade by removing technical barriers to trade between Ukraine and the European Union		
Total cost	<i>EC contribution – EUR 45.0 million (including EUR 8 million allocated from the Governance Facility)</i>		
Aid method & Management mode	Sector Policy Support Programme: - Sector budget support (EUR 39 million - centralised management) - Project mode for related technical assistance (EUR 6 million - centralised management). CRIS n. 19594		
DAC Code	33120	Sector	Trade facilitation

2. RATIONALE AND COUNTRY CONTEXT

2.1. Economic and social situation

Basic existing preconditions

The three basic pre-conditions for implementing a sector support programme in the chosen area are currently met:

- there is a Government strategy for the area whose objectives and principles are converging with those of the EU
- there is an active policy dialogue between the Government and the EC on trade related issues and more particularly on the harmonisation of the quality assurance infrastructure (legislation, regulations, institutions)
- a monitoring mechanism of the co-operation outcomes has been put in place.

Macro-economic policy and Public finance management

The September 2006 PEFA report assessing Ukraine's PFM system concluded that "Ukraine has in place the fundamental PFM systems for managing macro-fiscal developments and some elements for enabling strategic allocation of resources". A further assessment study confirmed that Ukraine has an effective PFM structure in spite of improvements needed in reporting and controls. To tackle these issues, the Government adopted on 19 October 2007 a PFM Reform strategy that explicitly aims at setting up modernised systems "in compliance with recommendations on governance issued by the European Commission." The World Bank is committed to financing its implementation as from 2008 through a loan estimated at US\$ 65 million.

2.2. Co-operation policy of beneficiary country

Ukraine-EC cooperation in the area of trade policy and in particular the elimination of technical barriers to trade (TBT) is based on the EU-Ukraine Action Plan of 21 February 2005¹ and the joint Action Plan on Conformity Assessment and Acceptance of industrial products (ACAA) of 19 December 2005. It has gained considerable momentum in 2006, thanks to the support offered by the EU to Ukraine's attempts to accede the WTO.

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The EU-Ukraine Action Plan of 21 February 2005 defines three priorities, which the proposed measure intends to support: (a) the approximation of Ukrainian legislation, norms and standards with those of the EU; (b) the improvement of conformity assessment procedures; and (c) the development of market surveillance capacities in preparation for the progressive participation of Ukraine in the Internal Market.

This framework establishes an institutionalised dialogue between the Government and the Commission on TBT issues, and requires the alignment of the national quality infrastructure with EU requirements in the areas of standardisation, accreditation, metrology, conformity assessment, and market surveillance². Beyond legal approximation in the area of technical regulations, this framework sets also as a priority to reform and strengthen the various institutions making up Ukraine's national quality infrastructure. This objective, targeted for 2011 in the ACAA Action Plan, is seen as a condition for implementing the New Approach and the Global Approach in EU-Ukraine trade relations. In preliminary discussions on the future EU-Ukraine Deep and Comprehensive Free Trade Area agreement (DFTA), both sides have recognised that economic integration can only be achieved by tackling non-tariff barriers, seeking closer regulatory approximation and institutional dialogue.

2.3. Government Sector Programme

"The Ukrainian Breakthrough", the new Government programme presented on 16 January 2008, aims to establish by 2010 a system of technical regulation fully adapted to the requirements of the WTO and the EU. This goal has been already pursued, though unevenly, since 1999. New laws on standardisation, on metrology, on conformity assessment, on accreditation of conformity assessment bodies, and on consumer protection have been adopted. The upgrading of the regulatory framework is progressing: 17 EU Directives have been approximated as "technical regulations"; 22 more such regulations are under development; 4248 national standards have been aligned with EU standards, while 870 "old" standards have been repealed.³

These figures hide a contrasted picture: depending on the sector considered, the level of harmonisation varies from 6% to 46%. Such disparities stem from the two main practical obstacles to reform:

- Insufficient funding from the State budget: in spite of recent increases (+86% since 2006), they still cover only one third of the estimated funds necessary to achieve the Government's objectives in harmonisation of standards
- Insufficient number of laboratories technically competent to perform internationally recognised tests: limitations exist in terms of equipment, trained personnel, reference materials, availability of national and international comparisons, networking (blind tests), testing procedures, and, as a result, mutual recognition of certificates

Responsibility for this achievement lies both with the Ministry of Economy and the State Committee for Technical Regulation and Consumer Policy (DSSU). To provide direction to these activities, the Government adopted on 11 May 2006 a Concept paper (broad strategy), soon thereafter complemented with a White paper on the reform of the national quality assurance system developed in co-operation with civil society representatives, within the framework of "policy formulation groups".

Based on this strategic framework, the DSSU is now working out a time- and budget-bound Red Paper covering the 2008-2012 period, which will be used as an anchor for the EU-Ukrainian dialogue on quality assurance and quality infrastructure, and as a reference to design benchmarks for disbursing budget support under the proposed measure.

2.4. Lessons learnt

Trade-related technical assistance has proven instrumental in supporting Ukraine's WTO accession process. Therefore, a confident working relationship pre-existed in the sector, which has considerably eased talks with the stakeholders of the measure. However, in the

² In implementation of Step 2 of the ACAA Action Plan, the Ukrainian State Committee for Technical Regulations and Consumers Protection (DSSU) has identified four priorities : New Approach directives for immediate harmonisation: Low voltage (LVD, Directive 2006/95/EC); Simple pressure vessels (Directive 87/404/EEC); Electromagnetic compatibility (EMC, Directive 89/336/EEC); Machinery (Directive 98/37/EC).

³ As of today, about 30 % of the harmonisation work can be deemed done. The current agreements envisage the ACAA to be extended to cover up to 75% of all goods traded, provided both sides agree.

Tacis context, these projects could only deal with certain aspects of quality infrastructure (quality management, certification, or accreditation). The political priority placed on the area and the holistic nature of the sector reform emphasise the need for a sector-wide approach. It will have to be reflected in the proper choice of the budget support indicators.

2.5. Complementary actions

Tacis projects

The Ukraine NAP 2005 includes a EUR 9 million sector-wide action in the field of “Norms and standards” to be implemented through service contracts, supply contracts, grants and two twinning projects. The latter projects co-operate closely with the Ukrainian-European Policy and Legal Advice Centre (UEPLAC), which is the principal provider of Community assistance on legal approximation.

The TAIEX instrument has also allowed delivering workshops on practical aspects of the New Approach Directives and on Quality Management Systems in public authorities, including those forming the national institutional infrastructure for quality.

Other donors’ activities in the sector⁴

The USAID “Trade, Investment and Business Acceleration” project, which focuses on the ‘demand-side’ of quality assurance services: assistance to WTO accession and post-accession measures; improvement of business environment; and the streamlining of business regulations under the MDC Threshold Programme.

The International Finance Corporation -IFC- “Business Enabling Environment” project consists in surveying the impact of the national quality infrastructure on small and medium enterprises, and promoting reform of the business environment.

2.6. Donor coordination

Ukraine has recently established a framework for government-led donor coordination. This mechanism includes a Trade-related assistance group (Thematic group A1), led by the Government with support of the Commission as “lead donor”. Frequent working contacts between the EC Delegation and the World Bank and the IFC; USAID; UNDP and smaller donors involved provide a certain degree of cohesion and coordination of efforts.

Donor coordination has made less progress in the field of PFM. The PEFA assessment of the PFM system was carried out by the World Bank. The PFM reform strategy and Action Plan are being prepared by the Government with technical assistance of the World Bank, other donors providing assistance to the Ministry of Finance and related institutions not being involved. However, the Commission is defining the PFM related conditions essential for introduction of budgetary support based on the PEFA assessment. This work is carried out in close coordination with the World Bank to ensure that unified criteria are applied.

3. DESCRIPTION

3.1. Objectives

The overall objective of the proposed measure is to contribute to economic reform and the gradual integration of Ukraine’s economy into the Internal Market⁵.

The purpose of the proposed measure is to implement policy measures to remove technical barriers to trade between the EU and Ukraine. Such policy measures include the modernisation of the institutional framework for quality assurance.

⁴ An informal survey conducted among EU Member States has shown that the latter are not actively involved in this field of co-operation.

⁵ NIP 2007-2010, Priority Area 2 “Support for regulatory reform and administrative capacity building”, Sub-priority 1 “Trade facilitation and improving the investment climate”.

3.2. Expected results and main activities

The national sector strategy contemplates the following results, which will be supported by the proposed measure:

- Approximation of the legislative framework in the sphere of technical regulation (to EU and WTO TBT requirements), including the transition from mandatory certification to conformity assessment and the separation of the conformity certification and State surveillance functions
- Set-up of a State market surveillance system
- Upgrading of domestic metrological services
- Introduction of ISO-compatible quality management systems in domestic enterprises
- Improved access by national and foreign interested parties to information on standardisation, metrology and conformity assessment
- Reform of the institutional infrastructure for quality assurance, with a view to enable it to perform and maintain over time the above-listed changes.

Activities to implement the measure will consist in setting up and running an appropriate system to monitor progress on the above-listed objectives and more specifically attainment of the agreed disbursement targets. This may imply the use of support technical assistance or specific equipment, budgeted for this purpose (section 4.3).

3.3. Stakeholders

Primary responsibility for reforming the sector and therefore removing TBTs in EU-Ukraine trade lies with the Ministry of Economy and the State Committee for Technical Regulation and Consumer Policy (DSSU), a central executive body reporting to the Ministry of Economy. The National Accreditation Agency (NAAU) and the future National Standardisation Body to be established in the course of the structural reform will also play a key role in implementing the measure. These institutions generally need strengthening of their institutional capacity to refine, maintain, and monitor reform in their fields of responsibility. External capacity support will be provided in the form of technical expertise, whereas capacity-building twinning projects are already underway with DSSU and NAAU.

The wider target group of recipients includes the sectoral standardisation bodies (Ministry for Agrarian Policy, Ministry of Housing), organisations (conformity assessment bodies; fundamental and industrial metrology bodies; market surveillance authorities; scientific and training institutions) and groups of professionals (industrial and professional associations)⁶.

3.4. Risks and assumptions

Assumptions

- Ukraine will keep up to its commitments under the TBT-related chapters of the EU-Ukraine Action Plan and the preliminary ACAA agreement, and will continue demonstrating heightened interest in the proposed measure, as during the formulation phase
- Ukraine will not substantially revise the objectives of its quality assurance reform strategy, and its government will be willing to pursue the reform path, translating it into concrete policies.

Risks

- One or several of the ministries, agencies or companies involved in the project will obstruct cooperation, or will prove unable to cooperate in an ordered manner. This risk

⁶ These various groups of potential stakeholders have been consulted during the formulation phase of the proposed measure.

can be mitigated via the use of the established dialogue mechanisms under the PCA and its contemplated successor agreements, and the provision of tailored assistance.

- The changes required under the AAP 2007 budget support to the reform of the energy sector to align the Ukrainian public procurement system with EU rules may be delayed for political reasons. To a certain extent, this risk can be reduced through a strict monitoring of the AAP 2007 budget support operation, as well as through a timely implementation of the Tacis NAP 2006 Public finance management reform measures.

3.5. Crosscutting Issues

The cross-cutting issue of good governance is integrated into the proposed programme, through the alignment of market regulation rules and practices with EU rules and best practices.

Besides, a well-conceived quality infrastructure system is an invaluable input to long-run environment conservation and consumer protection. Besides the related economic development, implementation of the proposed measure will result in linking directly environmental factors to business competitiveness and improving access of Ukrainian consumers to goods manufactured to high levels of safety and quality.

The proposed programme has no identified impact on gender equality, although the expected greater involvement of civil society organisations in implementation of the proposed measure should indeed lead to the increased participation of women in decision-making processes related to standardisation and consumer protection.

4. IMPLEMENTATION ISSUES

4.1. Implementation method

Untargeted budget support programme, centrally managed.

4.2. Procurement and grant award procedures

All contracts implementing the action must be awarded and implemented in accordance with the procedures and standard documents laid down and published by the Commission for the implementation of external operations, in force at the time of the launch of the procedure in question.

The essential selection and award criteria for the award of grants are laid down in the Practical Guide to contract procedures for EC external actions. The maximum possible rate of co-financing for grants is 80%. Full financing may only be applied in the cases provided for in Article 253 of the Implementing Rules of the Financial Regulations where financing in full is essential to carry out the action in question.

All programme estimates must respect the procedures and standard documents laid down by the Commission, in force at the time of the adoption of the programme estimates in question.

4.3. Budget and calendar

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| – Budget support (maximum): | € | 39 million |
| – Related technical assistance (maximum): | € | 6 million |

The budget support will be disbursed as follows: a fixed tranche of €12 million within 3 months following the signature of the Financing Agreement, and three variable tranches of respectively €10, €9 and €8 million maximum each, by the end of the 18th, the 36th and the 48th month following such signature. Variable tranches are to be released subject to the matching of agreed indicators, to be agreed with the main partners. Implementation will be supervised by a joint Monitoring group, to be supported with ad-hoc technical assistance. The technical assistance component will include an indicative allocation of 0.5M€ for Evaluation, Audit, and Visibility actions.

The programme will be implemented within 48 months after the signature of the Financing Agreement.

4.4. Performance monitoring and criteria for disbursement

Performance monitoring will be exerted by a Joint monitoring group whose basis has been laid down with the establishment of the ACCA contact group partnering the Ministry of Economy and the European Commission. The larger Joint monitoring group will rely on official information provided by Ukraine and verified as appropriate.

Disbursements of the tranches will be contingent on the continuous implementation by Ukraine of a sound macroeconomic and financial policy and on the adoption and effective implementation of an Action Plan for improving the Public Finance Management system. It will also be related to monitored progress towards achieving a set of benchmarks in quality infrastructure reform. Performance indicators will typically include:

- For the fixed tranche: sound macroeconomic policy; certified and funded PFM reform strategy; established Joint monitoring group based on satisfactory and workable intra-Ukrainian arrangements; proven progress in implementation of the relevant actions of the EU-UA Action Plan and the Action Plan on ACAA.
- For the variable tranches: a maximum of 10 indicators related to PFM and quality infrastructure reform implementation. A combination of follow-up of adopted measures; impact indicators and outcome indicators related to implementation of the quality infrastructure reform will be defined for that purpose.

4.5. Evaluation and audit

The measure will be subject to regular monitoring by the joint Monitoring group. A specific mid-term evaluation will be organised to check the overall validity of the monitoring system.

Evaluation of the results achieved will be entrusted to independent consultants, as well as external audits (which will be carried out if necessary). Evaluation and audit will be funded out of the technical assistance component of the programme.

4.6. Communication and visibility

The programme will follow the orientations of the Manual on Visibility of External Actions (e.g., press release at the signature of the FA, visibility for reports and studies, etc).

Proper communication and visibility of the action will be achieved via regular joint communication events on the occasion of the achievement of the disbursement criteria, as well as in connection with the results of technical assistance projects in the energy sector. A reasonable communication budget will be set aside, to be funded out of the “technical assistance” budget, for promotion of the measure throughout its lifetime.