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Європейським Союзом

**QUESTIONNAIRE ON THE IMPACT ASSESSMENT OF THE PROPOSED MEASURES
OF THE DRAFT PoMLA¹ 2008 THAT COULD BE CIRCULATED AMONG THE
UKRAINIAN AUTHORITIES**

The State Department for Legal Approximation under the Ministry of Justice has sent out to the line ministries and agencies of Ukraine the draft 2008 Plan of Measures of the National Programme on Approximation of the Ukrainian Legislation to the Legislation of the European Union. Replies from line ministries and agencies are expected by 15 June. This year, the State Department for Legal Approximation would like to introduce an innovation and ask to fill in this questionnaire for every measure proposed in the draft Plan of Measures 2008.

This questionnaire is elaborated taking into account the best practices applied in the new Member States and candidate countries of the EU.

The purpose of this questionnaire is twofold. Firstly, it is a preparation of the Ukrainian central bodies for introducing of a practice of regulatory impact assessment of draft legal acts. Secondly, the answers to this questionnaire will constitute the basis for exchange of views between the State Department for Legal Approximation under the Ministry of Justice of Ukraine and Ukrainian central bodies while preparing the draft Plan of Measures for 2008 before its presentation to the Co-ordination Council for Legal Approximation of the Ukrainian Legislation to the Legislation of the European Union in September 2007.

(1) Title of measure proposed for the Plan of Measures 2008 on implementation of the National Programme on Approximation of the Ukrainian Legislation to the Legislation of the European Union (as proposed by the SDLA or by the line ministry itself)

.....
.....
.....
.....

(2) Brief description of the aim of the measure (the essence of transposition/implementation)

.....
.....
.....

¹ annual Plan of measures on implementation of the National Programme of Approximation of the Ukrainian Legislation to the Legislation of the European Union

(3) Title or titles of the EU legislation (e.g directive etc) that the proposed measure will be transposing (implementing)

.....
.....
.....

(4) If the measure is adopted, will the transposition of the above mentioned EU legislation be full or partial? (tick one)

Full _____ Partial _____ Difficult to say, need assistance to evaluate _____

(5) Is translation of the above mentioned EU legislation available in Ukrainian?

Yes _____
No, but we can work with it in English / German /French _____
No, and this is problematic _____

(6) In your opinion, do you fully understand provisions of the above mentioned EU legislation?

Yes, fully _____
Yes, but it would be useful to discuss with the experts of the EU law anyway _____
No, and we would need assistance in order to plan its transposition _____
No, we are not interested (this is not a priority to us) _____

(7) If adopted, will this (transposition) measure require implementing measures (eg additional staff, new institution to be set up or new functions to an existing institution assigned, training of staff, additional budgetary allocations etc)?

Additional staff	Yes	No	Don't know	
New institution (department, unit ...) to be set up	Yes	No	Don't know	
New functions to be assigned	Yes	No	Don't know	
Additional budgetary allocations needed		Yes	No	Don't know
EU technical assistance needed		Yes	No	Don't know
(anything else?) _____		Yes	No	Don't know

(8) If implementing measures will be needed, please briefly describe them, quantify them (if possible) and explain how they will be taken care of (eg who will finance, where additional budget will be found etc)

.....
.....
.....
.....

(9) Do transposition and/or implementing measures concern only your own institution or other institutions as well?

Only our own institution _____
 Institutions other than my own (please specify) _____

(10) Have you informed them about these transposition plans and what was their reaction?

.....

(11) Are you aware how new EU member states or EU candidate countries dealt with this issue?

Yes _____ No _____

(12) Will it be helpful for your institution to know the experience of the EU new member states and EU candidate countries?

No, we can manage on our own _____
 Yes, but only if an opportunity exists (no urgency) _____
 Yes, because without this information we will not be able to move forward _____

(13) Please define groups which will be most affected by adoption of this measure proposed (please mark negative impact by ‘-’, and positive one by ‘+’):

Subject	Duration of the impact		Intensity of the Impact	
	Short term	Medium/long term	Strong	Weak
A Business groups				
[name]				
B Social groups				
[name]				
C Public institutions				
[name]				

(14) Please rank the groups (subjects) according to the intensity of negative as well as positive impact:

Negative impact	Positive impact
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

(15) Please provide us with the list of interest groups you have contacted during this assessment. What are their main arguments on pros and cons with regard to adoption and implementation of this measure? Could you please comment their arguments (eg are their right or wrong and why?) (Please also fill this in even if you did not directly contact any groups, but happened to know their opinion from other sources, eg mass media etc)

(16) Please fill in a form (impact assessment: 5 [particularly strong impact]; 3 [medium impact]; 1 [no impact expected]). Please mark only **impact associated with this measure proposed** and based on the **assessment of the difference** between the present regulatory situation and the situation when the measure proposed is fully implemented:

Element	Topic	Score
A Economic significance (horizontal impact)	1. Changes in the output level	5-----3-----1
	2. Impact on price level (inflation rates)	5-----3-----1
	3. Number of employees	5-----3-----1
	4. Changes in export level	5-----3-----1

	5. Opportunities to import	5-----3-----1	
	6. Innovations in economic sector	5-----3-----1	
	7. Investment level	5-----3-----1	
B Enterprises (vertical impact)	8. Additional non-recurring costs	5-----3-----1	
	9. Changes in current expenses (costs)	5-----3-----1	
	10. Need for non-recurring and current expenses for SMEs	5-----3-----1	
	11. Need for non-recurring and current expenses for individual/separate region	5-----3-----1	
	12. Impact on production quality	5-----3-----1	
	13. Impact on the level of competitiveness	5-----3-----1	
	14. Opportunities to export	5-----3-----1	
	15. Opportunities to invest	5-----3-----1	
	16. Opportunities for modernization	5-----3-----1	
	17. Impact unknown, research needs to be carried out	5-----3-----1	
C Society	18. General level of life quality	5-----3-----1	
	19. Social differentiation	5-----3-----1	
	20. Uneven cost (benefits) for specific groups	5-----3-----1	
	21. Uneven cost (benefits) for specific regions	5-----3-----1	
	22. Public perceptions of the effect of implementation of requirements provided in draft legal act	5-----3-----1	
	23. Impact on environment	5-----3-----1	
	24. Impact on cultural environment	5-----3-----1	
	25. Impact on consumers' rights, health and protection	5-----3-----1	
	D Institutional structure	26. Need to establish new institutions	5-----3-----1
		27. Need to reorganize institutional structure	5-----3-----1

- | | |
|--|---------------|
| 28. Need for training of public servants | 5-----3-----1 |
| 29. Need for granted expenditures at public institutions | 5-----3-----1 |
| 30. Need for current expenses at public institutions | 5-----3-----1 |

(17) Please quantify, if at all possible, any of the impacts you mentioned above. Any additional comments? (if topics 20 and 21 were marked for impact, please specify the groups and regions):

(18) Is an extended impact assessment (study) needed to measure the impact of this proposed measure? If yes, what specifically it should target (eg which questions it should answer)?

Questionnaire filled in by:

Name, surname	
Telephone number	
E-mail address	
Position	
Division	
Institution	

Date:

Thank you!

State Department for Legal Approximation under the Ministry of Justice of Ukraine

Contact point: _____



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Проект фінансується
Європейським Союзом

Recommendations for the prioritisation of the Plan of Measures for 2008 on implementation of the National Programme on Approximation of the Ukrainian Legislation to the Legislation of the European Union

Those Recommendations of the European Union by Ukrainian-European Policy and Legal Advice Centre (UEPLAC) directed at prioritisation of measures suggested to be included in the draft Plan of Measures for 2008 on implementation of the National Programme on Approximation of the Ukrainian Legislation to the Legislation (PoMLA 2008). Those Recommendations are based on the preliminary recommendations of UEPLAC to the draft Plan of Measures for 2007 on implementation of the EU – Ukraine Action Plan and on the second phase of fulfilment of the National Programme, stated in the letter to the Ministry of Justice of Ukraine of 10 April 2007 No50-1-2007, as well as on the Review of the Level of Approximation of the Ukrainian Legislation to the *acquis communautaire* (in version of the January 2007) produced by the State Department for Legal Approximation (SDLA).

1. GENERAL APPROACH

The prioritisation should consider the implemented measures within the frames of the fulfilment of the National Programme on Approximation of the Ukrainian Legislation to the Legislation (National Programme), measures on implementation of the National Programme in 2007, as well as legal approximation component in the EU – Ukraine Action Plan (EU–Ukraine AP), which, by the UEPLAC's opinion, in presence of political will could significantly contribute in the enhancement of the process of legal approximation in Ukraine.

Undoubtedly the Review of the Level of Approximation of the Ukrainian Legislation to the *acquis communautaire* is an important reference book of the legal approximation process. The *Review* produced by the SDLA is based on an analytic approach. It allows keeping tracks of new provisions in the Ukrainian legislation which may mirror similar provisions in the EU legislations but gives no indication if the functioning of the Ukrainian legislation achieves the same results as the EU legislation, which is the criteria the European Commission for the assessment of the efficiency of the legal approximation process and implementation of the approximated legislation. Further revision of the Review could focus on these issues with the view to avoid formalised assessment of the progress in legal approximation, coming to the quantity of the transposed EU directives and regulations.

Along with that much work has still to be done for each individual piece of national legislation supposedly aligned to the corresponding piece of EU legislation. Very often, definitions have to be made fully compatible, key provisions that do not hamper the social and economic development of Ukraine have to be introduced, secondary legislation has to be adopted and discrepancies between existing texts have to be removed.

Consequently, it is recommended to revise in depth the national legal framework to improve the quality of the national legislation. This exercise could be partly done in the Plan of Measures for 2008 on implementation of the National Programme on Approximation of the Ukrainian Legislation to the Legislation of the European Union.

In the course of year 2007 several predictable events are liable to determine priorities for the year 2008:

- accession to the WTO;
- finalisation of the negotiations process on conclusion of the new Enhanced Agreement, replacing Partnership and Co-operation Agreement between Ukraine and European Communities and their Member States of 1994 (PCA);
- conclusion of the Agreement on Free Trade Area between the EU and Ukraine.

It is assumed consequently that a lot of work will have to be dedicated to the several key sectors, namely customs law (e.g. achieving by Ukraine full compliance with the rules on origin) and personal data protection, which is a cross-cutting issue prioritised in all the recent agreements concluded by the EU and which impacts many other areas of the EU legislation (e.g. financial services, transport, labour law, telecommunications, company registration, statistics and market surveillance).

If we consider only legal measures, those which are more relevant for the SDLA, we sort out priorities for 2008 in three categories:

- priorities not taken into account so far;
- priorities taken into account to a limited extent;
- priorities taken into account with some uncertainty that national measures will ensure compliance with the EU legislation,

which create a basis for the following analysis:

2. PRIORITIES NOT TAKEN INTO ACCOUNT SO FAR

Internal Market

Under UEPLAC's assessment, in the sphere of Internal Market the priorities not taken into account are as follows:

The priority in the area of public procurement, clearly expressed under the point (42) of the EU-Ukraine Action Plan, has not been addressed so far. At least, there is a need to introduce a EU comparable system of remedies in the event of disputes. Another step forward would be to start the opening up of public procurement for utilities.

In the area of customs law, some priorities set under the point (28) of the EU-Ukraine Action Plan for the introduction of legal measures do not seem to have been addressed in the PoMLA 2007. They should therefore be included in the PoMLA 2008.

They relate to the following:

- Adoption and updating of the **Harmonised System** and the adoption of the **Combined Nomenclature**;

- Preparation and entry into force of customs-related legislation: provisions on customs **control of precursors**², **dual use goods**³, and **cultural goods**⁴.

As regards, **counterfeit and pirated goods**, the draft law No 2414 enacted by the Verkhovna Rada on 16 November 2006 regarding the ex-officio action of customs authorities does not fully mirror the provisions of TRIPS Agreement and EC Regulations No 1383/2003 and No 1891/2004. Improvement should be sought in the PoMLA 2008.

It is also needed to fix deadlines in the area of technical regulations (point (30) of the EU-Ukraine AP). It is worth noting however that the area of fertilizers⁵ has not yet been considered in the legal approximation process.

Environment

Climate change issues in the sector of environment, which are still not reflected explicitly among the priorities of approximation, need particular attention. The objective in this area is to reduce greenhouse gases to a level that will not cause unnatural variations of the earth's climate. In the short term, the European Union's aim is to achieve the objectives of the Kyoto Protocol - to reduce greenhouse gas emissions by 8% by 2008-2012 compared to 1990 levels. In the longer term, by 2020 it will be necessary to reduce these emissions by 20 to 40%.

National Environment Protection Strategy is under development and as result fulfilment of the Kyoto Protocol is not supported by corresponding legislation. To be included in the European emission trading schemes (ETS) framework for emission allocation to Ukrainian side should be supported by legal acts and institutional building, considering national emission targets.

Energy

There are several unaccounted priorities in energy sphere. In the context of a potential connection with the market of Central Europe, special attention should be paid to replacing of the existing “single buyer” model (in Ukrainian case – Energorynok), refused by EU Internal Market Directive 2003/54/EC, to competitive bilateral model.

Another important task is carrying out gradual adjustments to bring tariffs on electricity for all consumer groups to conformity with cost levels of energy production, transition and delivering, as well as gas prices to cost levels of its sale. This process should be based on the continual improvement of regulatory system for electricity, natural gas and district heating, strictly distinguishing natural monopoly elements from competitive market which are directly connected with sustainability and competitiveness of economy system developing by its own principles.

In the context of discussion by the Verkhovna Rada of the draft Law of Ukraine “On the National Energy Regulatory Commission” there is a need of revision of competence aiming at ensuring its efficiency as the body of market surveillance and appeal in power and natural gas sector. Other

² Regulation (EC) No 273/2004 of the European Parliament and of the Council of 11 February 2004 on drug precursors.

³ Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology.

⁴ Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods.

⁵ Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilizers.

important aim in this course is improvement of the regulatory methodologies and enhancing transparency of the NERC.

The proposal of pure technical nature could be studying of a possibility of establishing interconnection of Ukraine with UCTE with the view of participation in the Central European electricity market.

Justice, Freedom and Security (JFS)

Though JFS sphere still is not among the key sectors of approximation, UEPLAC suggests that efficient implementation of the EU – Ukraine Action Plan on JFS of 2006 (JFS AP) needs consideration of this sphere in the PoMLA. Regarding the flow of negotiations on JFS AP Scoreboard the priorities in PoMLA seems as follows:

Migration:

- to transfer institutional responsibilities (such as identification of illegal migrants, running of accommodation facilities for illegal migrants and return to the country of origin or former residence) from the State Border Guards Service and the police to the State Migration Service of Ukraine;
- to introduce a normative legal act on social integration of recognised refugees and other categories of legal immigrants;
- to continue revision of the legislative provisions relating to border guard and migration issues, ensuring that the legal framework is sufficient to facilitate legitimate migration while allowing for the deterrence, prevention and detection of illegal migration;
- to entry into force and implementation of EU – Ukraine readmission agreement;
- to establish a network to exchange information on (illegal) migration flows between Ukraine and source and destination countries.

Border Management:

- to develop practices of integrated border management, including by reviewing and simplifying the existing legal framework of basic laws;
- to take part in founding of the International Border Management.

Fight against Organised Crime and Terrorism:

- to consider the adoption of the European Criminal Intelligence Model adopted by Europol in 2005;
- to identify national Ukrainian authorities at operational level (contact points) in order to exchange information with EU Member States' law enforcement authorities.

Human Trafficking:

- to establish a national network of lawyers who might provide legal services to trafficked persons by representing their interests in court.

Judiciary:

- to ensure an adequate level of legal education through certificating, on a competitive basis, law schools which can demonstrate the requisite standards;
- to ensure that the judgments of the Supreme Court are coherently followed by lower courts in accordance with Art.124 of the Constitution;
- to clarify the role of the respective appellate levels;
- to define with precision the jurisdiction of each court;
- to bring the powers of the Prokuratura in line with the requirements of the Council of Europe, including the recommendation of the Venice Commission;

- to establish of predefined criteria and grounds for dismissal of the Prosecutor General of Ukraine;
- to develop an open and fair appointment order of prosecutors;
- to clarify the respective responsibilities of the Prosecutor General and of regional/local prosecutors in relation to a particular case

3. PRIORITIES TAKEN INTO ACCOUNT TO A LIMITED EXTENT

Legislation on Industrial Products

The priority industrial sectors for which Ukraine is aiming at participating in the EU internal market have been selected. They relate to the future conclusion of the ACAAs⁶ for categories of products subject to New Approach Directives: Electro-Magnetic Compatibility (EMC), Low Voltage (LVD), Machinery and Simple Pressure Vessels (SPV).

Those EC Directives are already reflected in the Ukrainian legislation, and the law approximation process targeting all New Approach Directives will be almost completed through the completion of the PoMLA 2007.

Nevertheless, the entry into force of the related Ukrainian legislation is postponed until the introduction in Ukraine of the full set of CEN/CENELEC Standards. Furthermore, the Order of the DSSU⁷ No 28 of 1 February 2005 provides for a list of products subject to mandatory certification.

The priority set under the point (31) of the EU-Ukraine Action Plan is not yet met. As a result, the drastic reduction of mandatory certification for specific products that are not regulated in the EU legislation, or are regulated by the EU through requirements limited to the labelling of products, should be included in the PoMLA 2008.

In parallel the PoMLA 2008 could provide for various legal and institutional measures to ensure appropriate inspections and market surveillance operations in line with individual New Approach Directives and Regulation (EEC) No 339/93 on checks for conformity with the rules on product safety in the case of products imported from third countries.

For the time being, the Ukrainian legislation on the labelling of non-food products is only reflecting the EU legislation on the indication of prices. The PoMLA 2007 identifies measures on the labelling of textile products but it does not appear that the EC Directive on classification, packaging and labelling of dangerous substances has been addressed so far.

Food law

Under the *Review 2005* the Regulation 178/2002/EC laying down the general principles and requirements of food law has been fully implemented (except 2 articles).

However, it has to be noted that none of the basic EU implementing Regulations (food hygiene package) has been addressed so far:

- Regulation (EC) No 853/2004 of 29 April 2004, laying down specific hygiene rules for food of animal origin;

⁶ Agreement on Conformity Assessment and Acceptance of Industrial Products.

⁷ State Committee for standardisation, technical regulations and consumer protection.

- Regulation (EC) No 852/2004 on the hygiene of foodstuffs;
- Regulation (EC) No 853/2004 of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules;
- Regulation (EC) No 854/2004 of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption.

The PoMLA 2007 contains measures on feedstuffs, epizooties and zoo-technical requirements. That is not sufficient to meet the priorities set under the point (32) of the EU-Ukraine AP (towards the requirements of WTO/SPS Agreement).

There is still a lot of work to do to allow Ukraine to export foodstuffs to the EU. Apart from the hygiene package mentioned above, it will belong to Ukraine to take stock of the gaps to fill to align the national legislation to the EC rules on the following:

- Animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption;
- Procedures and maximum level of contaminants in foodstuffs;
- Contamination due to contact with foodstuffs, food packaging and containers (plastics, ceramics, cellulose);
- Products added to improve the organoleptic properties of foods (colorants, sweeteners flavourings) and verification of purity criteria for certain additives;
- General requirements on product labelling and packaging (labelling, presentation and advertising of foodstuffs, identification of foodstuffs by lot, foodstuffs treated with ionising radiation, frozen food);
- Identification and labelling of specific products (for example, beef products, organic production, milk derivatives);
- Animal welfare.

To take benefit from the future Free Trade Agreement between the EU and Ukraine, it is recommended to **put the focus on the food law in the PoMLA 2008** and to conduct in parallel an institutional and administrative reform for its correct implementation (with clear allocation of responsibilities between various institutions).

Establishment and operations of companies

Under the analysis of the Ukrainian legislation (e.g. Draft law No 2402 adopted on 16 November 2006 authorising foreign banks to open branches), as well as under results of the meetings with stakeholders (SDLA, National Bank), it has become clear that the distinction between subsidiary and branch of a company is not well perceived in Ukraine. The concept of “permanent establishment” (for taxation purpose, in line with the OECD requirements) is wrongly assimilated to the concept of subsidiary.

It is therefore recommended to scrutinise and, where appropriate, to revise the pieces of the Ukrainian legislation concerning the establishment of foreign companies.

Environment

Principles of the Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental

damage are taken in account partly. Under the terms of the Directive, environmental damage is defined as:

- a) direct or indirect damage to the aquatic environment covered by Community water management legislation ;
- b) direct or indirect damage to species and natural habitats protected at Community level by the 1979 " Birds " Directive or by the 1992 " Habitats " Directive;
- c) direct or indirect contamination of the land which creates a significant risk to human health.

The "polluter pays" principle, which is in the heart of Directive, must be taken in all legal acts related to environment of Ukraine. Trans-border pollutions will relate to specific conventions and bilateral international agreements.

Energy

With the view of continuation of fulfilment of the EU – Ukraine AP target (51) on the possibility for Ukraine to take part in the Intelligent Energy-Europe Programme, it is proposed to ensure necessary prerequisites, which are the existence of the National or Regional Energy Efficiency Agencies (the EU might finance 50% of Agencies internal costs for 3 years), sustainable legal base and implementation measures (monitored by the EU Intelligent Energy Agency). That is why it is also proposed to enhance the competence of the National Agency for Efficient Use of Energy Resources and to establish its regional branches.

In the PoMLA 2008 particular attention should be paid to the elaboration of the Concept of operation and development of the Wholesale electricity market of Ukraine considering the EU Energy legislation and trends of the EU electricity market developments. In this field the project for rehabilitation of hydropower plant governors is already launched within the frames of the World Bank's loan project for reformation of the power sector in Ukraine. Amendments to exiting sector legislation are non-avoidable. Those amendments will be related to approximation and broad regulatory impact assessment activities. Mentioned approximation will be related not only to primary legislation, but in great extend to secondary norms as well. Adoption of the general principles of the UCTE Hand Book for cross-boarder trade of electricity is the simplest way how to recognize legal approximation areas in power sector.

Another one potential priority of the PoMLA 2008 is the target (57) of the EU – Ukraine AP in the context of ensuring of the nuclear safety and adoption of a nuclear waste strategy. Provisions of the Council Directive 96/49/EC are partially incorporated in Ukrainian legislation, but issues of transportation dangerous goods trough the domain of Ukraine must be reflected in full extents by national legislation. Nuclear waste strategy will be intensively discussed during the negotiations on PCA. No doubt, amending legislation will be urgently required. Therefore this part of approximation will be paramount important, and nuclear waste strategy will facilitate assessment of performance standards and quality of legislation.

The PoMLA 2008 should also consider the target (53) of the EU – Ukraine AP regarding energy networks, particularly in the issues of increasing performance of networks and reduction of network losses (oil, gas, electricity). And thus, it is proposed measures to make transmission and distribution tariffs transparent and cost reflective. It is worth stressing that not only good regulatory practices will give the contribution, but balanced legal requirements for reasonable framework on information collection, performance standards of network companies and customer information systems.

The EU does have great experience and cooperation practice in this specific field. The same time problem of market access might be solved, which allows make approximation process more practical and bringing benefits to customers and other market participants of Ukraine. Specific issues of network security, quality of services and good functioning of market would be covered by this chapter.

The target (54) of the EU – Ukraine AP on the transit of natural gas, namely increasing of performance, safety and security of the gas transit networks is one of mutual interests for all parties involved – Ukraine, EU and Russia, especially in the context of the new PCA negotiations. The European Charter Treaty is important argument for transparency, but EU Directives and regulations are binding for EU parties, therefore they are approximation indicators and benchmarks, and thus they are the guiding lines for the approximation in the PoMLA 2008. Approximation of transparency clauses will be in the core of substantial improvement of cooperation.

Continuing the fulfilment of the target (56) of the EU – Ukraine AP on progress in improving energy efficiency and enhancing the use of renewable energy, it is proposed to focus on the approval of the Energy Efficiency Strategy and relative state programme, directed on the substantial efficiency gains, savings and security of supply improvements. Involvement in early stage of legal activities in the demand side sector is needed and will facilitate regulatory impact assessment.

In this light the approval of the Law “On efficient use of energy resources” with appropriate impact assessment of its draft, as well as the Law “On Energy Audit” are also important to improve efficiency gaining for public and private sector in buildings, specifically in time of booming construction activities and active real estate market.

4. PRIORITIES TAKEN INTO ACCOUNT WITH SOME UNCERTAINTY REGARDING COMPLIANCE WITH THE EU LEGISLATION

The PoMLA of 7 March 2007 is addressing a number of pieces of EU legislation. Notwithstanding it is dubious that such work of law approximation could be completed by the end of 2007. Secondly, it is not expressed in the Plan whether Ukraine is seeking full or partial compliance with the EU legislation. Third, there is always the risk of a flawed transposition. Depending on the assessment to be made at the end of 2007, some priorities of the PoMLA 2007 should be postponed or revised in the PoMLA 2008.

They may include the following:

Company law

The priorities set under the point (17) of the EU-Ukraine AP (eliminate inconsistencies in the existing economic and civil codes).and under the point (20) on the adoption of a new Joint Stock Company law are liable to be met in 2007. Furthermore, the PoMLA 2007 foresees the adoption of the law on limited liability companies.

It is expected that the national legal framework will achieve conformity with the corresponding EU legislation. The assessment to be made when the final version of the draft laws will be submitted to the Verkhovna Rada will indicate if further work is necessary in 2008.

Bankruptcy Law

Bankruptcy law is a priority in the PoMLA 2007. It seems that the main purpose of this initiative is the introduction of provisions to deal with the cross-border aspects of insolvency procedures. The priority set under the point (33) of the EU-Ukraine AP does not go so far. The main issue is the proper functioning of the current law.

Competition and State Aid

Some of the measures contained in the PoMLA 2007 intends to deal with the objectives (39) and (40) of the EU-Ukraine AP. It is realistic to expect the adoption of the procedural rules to implement the domestic anti-trust legislation. By contrast the issue of state aids is more sensitive, especially where there is still discussion on the definition of state aids. On the WTO and EU levels, only full compliance with the definitions will be acceptable.

Intellectual and Industrial Property Rights (IPR)

To a large extent the basic EU legislation on IPR prioritised in the White Paper for CEECs (trade marks and copyright) is already reflected in the Ukrainian legislation and the PoMLA 2007. Furthermore PoMLA 2007 adds others measures to address the EU legislation on plant variety rights. Maybe, in the PoMLA 2008 Ukraine could move again forward to deal with other issues, considered as “priority stage I” in the White Paper for CEECs: topographies of semiconductors, computer programs. The partial harmonisation could be also advanced in the following areas: copyright applicable to satellite broadcasting, geographical designation of origin and certificate of specific character for agricultural products, design, databases. More importantly, the focus should be put on the effective enforcement of IPR to ensure “a level of protection similar to that in the EU” (point 41 of the EU-Ukraine AP).

Labour law, Health and Safety at Work, Social security

The priorities set in the EU-Ukraine Action Plan under the points (11) and (21) relate to the application of the best endeavour clause of the article 51 of the PCA. There are no tangible targets to reach within a limited period of time.

Some work has been made in those fields and there are also a number of measures in the PoMLA 2007 (health and safety at work, working time, etc). Nevertheless, in most cases the relevant pieces of EU legislation are not fully implemented. Sometimes, the definitions are not compatible, sometimes, key provisions are missing.

It is recommended to review the national legal framework accordingly.

Indirect Taxation

The PoMLA 2007 provides for a very advanced stage of transposition of the EU legislation on VAT and excise-duty (rates, exemptions, etc). The objective (38) of the EU-Ukraine AP, seeks for more modest results: efficiency of the legislation (VAT refund backlog) and removal of discrimination on imports (adoption and implementation of VAT and excise-duty legislation compatible with PCA and WTO norms). It would be advisable to address the longstanding issues of the functioning of the existing legislation before envisaging further alignment.

Other areas

It is noted that the PoMLA 2007 identifies a number of legal measures in the area of free movement of goods (Old Approach). This ambitious programme includes the following sectors:

- Cosmetics
- Vehicle Type-approval (motors vehicles/trailers, two or three wheeled motorised vehicles, agricultural and forestry tractors)⁸
- Detergents
- Pharmaceuticals

As regards, the law approximation process to progressively allow the supply of financial services between the EU and Ukraine, the PoMLA 2007 intends to improve the regulatory and supervisory framework towards the *acquis communautaire*.

Depending on the results achieved in 2007, the PoMLA 2008 will have probably to fill the gaps between the national legislation and the EU legislation in the same fields.

Guiding by the further conceptualisation of legal approximation measures in 2008, UEPLAC suggests it impossible without assessment of the implementation of the PoMLA 2007 and measures on fulfilment in 2007 of the EU – Ukraine AP and expresses its readiness to co-operate closely with State Department for Legal Approximation and other partners on working out of the joint adjusted approach to the formulating of the targets and concrete measures of the process of legal approximation to the *acquis communautaire* in Ukraine.

⁸ It is assumed that the approximation process does not aim at transposing the EC Directives but, more significantly in the case of Ukraine, takes into consideration the 1958 Agreement of the United Nations Economic Commission for Europe (UN/ECE) on international technical harmonisation in the motor vehicle sector and the Global Agreement of 1998 (ECE/TRANS/132), where the European Community is actively participating.