

Annex 2. Legislative and institutional frameworks for the Ecodesign and Energy labelling in Ukraine

A2.1. Energy labelling and Ecodesign in Ukraine

Ukraine has made considerable progress in the transposition of EU legislation in the field of Energy labelling and to some extent also in Ecodesign.

From 2002 – 2011, SAEE elaborated eight national Energy Labelling standards for household appliances, which were in line with the requirements of the *Acquis Communautaire*, but were applied on a voluntary basis only. In 2012 and 2013, with the support of the EU Twinning Project "Improvement of the Policy Framework in the Sphere of Energy Efficiency and its Approximation to the EU Legislation, Ukraine 2012 - 2013", SAEE elaborated Technical Regulations equivalent to the EU Labelling Directive 2010/30/EU and CDRs for various energy-related products.

So far, the following EU Legislative Acts were transposed into Ukrainian legislation, as Technical Regulations, by the following Resolutions of the Cabinet of Ministers:

- Res. 702 of 7 August 2013 "On approval of technical regulations on Energy Labelling", transposing Directive 2010/30/EU, CDR 1060/2010 for household refrigerating appliances and CDR 1061/2010 for household washing machines. The Resolution eventually entered into force on 1 July 2015.
- Res. 340 of 27 May 2015, transposing CDR 874/2012 for electrical lamps and luminaires, which entered into force on 5 December 2015.
- Res. 514 of 17 July 2015, transposing CDR 1059/2010 for household dishwashers, which will enter into force on 17 January 2016.

Draft Energy Labelling TRs for household tumble driers, air conditioners, televisions, vacuum cleaners, ovens & range hoods, water heaters and space heaters are under preparation and at different stages of elaboration, review and adoption. Market surveillance for products subject to Energy Labelling regulation will probably start in mid 2016.

In addition to Energy Labelling regulation, Ukraine has introduced Minimum Energy Performance Standards for household refrigerating appliances in line with Directive 96/57/EC and proposed an amendment which would align the minimum requirements with Ecodesign regulation 643/2009.

While the transposition of the Energy Labelling Directive and CDRs for Energy Labelling are obligations of Ukraine under the Energy Community Treaty, the transposition of the Ecodesign Directive by November 2017 is a requirement under the Ukraine-EU Association Agreement¹.

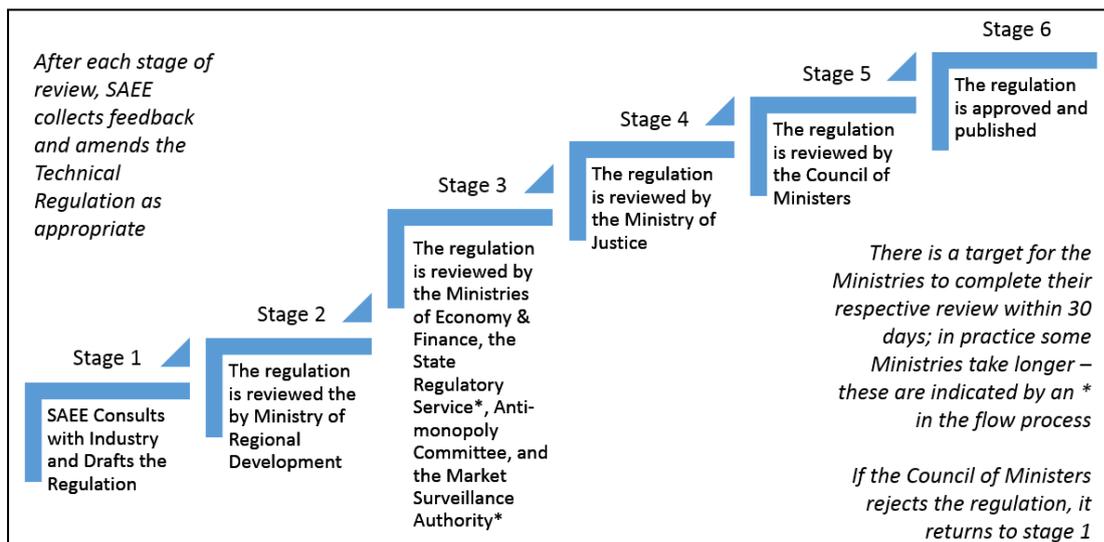
The transposition of the Ecodesign Directive and of product-specific Ecodesign regulations is therefore a priority for SAEE, and has been mandated by several Resolutions of the Cabinet of Ministers of Ukraine, which will be discussed in detail in Section 5 of this Report.

¹ The transposition of certain Ecodesign regulations is also a requirement under the EU Deep and Comprehensive Free Trade Area (DCFTA).

A2.2 The process of approving Technical Regulations

Error! Reference source not found. Figure A2.1 provides a schematic of the process for approving TRs in Ukraine. The source of the schematic is in-depth discussions with SAEE during the first mission of the team of experts.

Figure A2.1: Schematic of the Approval Process of Technical Regulations in Ukraine



A description of each of the stages featured in Figure A2.1 is featured below:

Stage 1: According to Article 18 of the Law of Ukraine "On technical regulations and conformity assessment procedures" SAEE, as a central executive body which is in charge of the organisation of the development of TRs, may establish a Technical Working Group with stakeholder representatives interested in a specific topic and/or issue that is considered under the scope of the TR. The common goals for the working group includes 1) drafting TRs, 2) discussing the need for changing existing TRs and 3) determining conformity of the provisions of the draft TR with the *acquis communautaire*. The size and composition of the group participation will be dependent on the group's task. Each working group is chaired by SAEE and could be comprised of representatives from the following:

- Central bodies of executive power such as the Ministry of Economic Development and Trade of Ukraine, Ministry of Regional Development, Construction and Housing and the Ministry of Ecology and Natural Resources.
- Relevant technical standardisation committees, such as TC-13 "Standardisation of household appliances and equipment," TC- 34 "Lamps", TC-100 "Audio-visual systems and services".
- Manufacturers, suppliers and distributors of the related equipment, such as the European Business Association (EBA) and national manufacturers of the equipment.
- International experts of EU funded projects.

SAEE currently has a Technical Working Group established to respond to the feedback from the Cabinet of Ministers on their first review of the draft Energy Labelling TR for air conditioners.

In terms of the procedure, after SAEE has prepared the first draft of the TR, they send it to members of the Working Group and arrange the first review meeting. After consideration of the comments of the working group, the final version of the draft TR is forward to the Ministry of Regional Development for approval.

Stage 2: According to the SAEE's Statute², its activities are directed and coordinated by the Cabinet of Ministers of Ukraine via the Deputy Prime Minister of Ukraine – the Minister of Regional Development. The procedural issues relating to the development of the decisions by the Cabinet of Ministers of Ukraine are defined by the Rules of the Cabinet of Ministers³. This document establishes the order in which draft legal texts are reviewed, and places the responsible ministry as the first reviewer. Only after that can the draft legal act be sent to other interested bodies⁴. That is why the first draft of the TR is reviewed by the Ministry of Regional Development.

Stage 3: Once the Ministry of Regional Development approves the draft TR, SAEE sends it to the following ministries (if the draft TR contains provisions relating to the competence of other central authorities, the list of authorities may be expanded):

- Ministry of Economy⁵: The central executive body that is responsible for the development and implementation of state policy in the sphere of TR. The Ministry of Economy examines draft TRs to make certain they meet specific legislation in the field of TRs for example the Law of Ukraine "*On technical regulations and conformity assessment procedures*", and the *Rules of preparation of draft technical regulations based on legislative acts of the European Union*⁶ and other legislation in this field. The Ministry can determine that there is an urgent need for the adoption of a TR and prepare a Conclusion for submission along with the draft TR, directly to the Cabinet of Ministers of Ukraine⁷.
- Ministry of Finance⁸: The central executive body that is responsible for the development and implementation of state financing policy.
- State Regulatory Service⁹: The central executive body that is responsible for the implementation of state regulatory policy. According to the Law of Ukraine "*On Principles of Regulatory Policy in Economic Activity*"¹⁰, the State Regulatory Service conducts a regulatory impact assessment with a recommendation either to approve or reject the regulation.

² <http://zakon5.rada.gov.ua/laws/show/676-2014-%D0%BF>

³ <http://zakon5.rada.gov.ua/laws/show/950-2007-%D0%BF>

⁴ N° 37 of the Rules of CMU

⁵ Statute of Ministry of economy <http://zakon5.rada.gov.ua/laws/show/459-2014-%D0%BF>

⁶ <http://zakon3.rada.gov.ua/laws/show/708-2012-%D0%BF>

⁷ According to article 24 of the Law of Ukraine "*On technical regulations and conformity assessment procedures*"

⁸ Statute of Ministry of Finance <http://zakon5.rada.gov.ua/laws/show/375-2014-%D0%BF>

⁹ Statute of State regulatory service <http://zakon5.rada.gov.ua/laws/show/724-2014-%D0%BF>

¹⁰ <http://zakon5.rada.gov.ua/laws/show/1160-15>

- State Inspection on Consumer Rights Protection¹¹: The central executive body that is responsible for the implementation of state policy on market surveillance – specifically for Energy Labelling and Ecodesign¹².
- Anti-monopoly Committee¹³: The state body with a special responsibility to ensure state protection of competition in business and in public procurement. The Anti-monopoly committee examines the draft TRs for compliance with anti-monopoly legislation.

In practice the majority of comments are received from the Ministry of Economy. After collecting all the comments, SAEE finalises the draft TR. If a draft TR has undergone significant changes then it needs to be re-approved by stakeholders¹⁴. If not, SAEE sends the draft TR to the Ministry of Justice for legal examination.

Stage 4: All draft legislative acts are subject to legal examination by the Ministry of Justice¹⁵. The Ministry of Justice examines if the draft TR complies with the Constitution of Ukraine, legislative acts, the provisions of the European Convention on Human Rights, and in the case where the draft document refers to the priority areas Adaptation of Ukraine to the European Union – on its compliance with the *acquis communautaire*. The experience from approving the draft TRs on Energy Labelling has shown that the Ministry of Justice has provided a significant number of comments. After obtaining the opinion of the Ministry of Justice, SAEE then finalises the draft TR for submission to the Government.

Stage 5: Once the Ministry of Economy receive the draft TR from SAEE they submit it to the Government¹⁶. Experience has shown from the adoption of the TRs on Energy Labelling that this review could last from one to three months or longer, depending on the complexity of the draft TR. Experts of the Cabinet of Ministers Secretariat prepare an Expert opinion for when the draft TR is presented.

Stage 6: If a positive Expert opinion is returned, and if there are no other comments from the Government, then the draft TR is adopted and published in the official publication of the Cabinet of Ministers of Ukraine. The regulation comes into force in the time specified in the Resolution of the Cabinet of Ministers, but not earlier than six months from the date of publication.

Experience has shown that on occasion a TR can gather significant feedback at stage 5, the review by the Council of Ministers. This can lead to the draft TR returning to stage 1 and undergoing another round of inter-ministerial consultation.

¹¹ <http://zakon3.rada.gov.ua/laws/show/465/2011>

¹² The list of state market surveillance authorities approved by the Government
<http://zakon3.rada.gov.ua/laws/show/573-2011-%D0%BF>

¹³ <http://zakon5.rada.gov.ua/laws/show/3659-12>

¹⁴ N^o 40 of the Rules of CMU

¹⁵ N^o 44-47 of the Rules of CMU

¹⁶ Article 22 of the Law of Ukraine "On technical regulations and conformity assessment procedures"