

International Centre for Policy Studies

# PROTECTING UKRAINE'S CONSUMERS

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The purpose of this study was to assess the impact of civil society organizations (CSOs) on the formation of state policy regarding Protecting Ukraine's Consumers. This report is part of a project that includes similar studies on reforms in five other sectors: land, pension, education, labor law, and regional integration.

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# Executive Summary

Consumer protection is an integral part of human rights. Independent Ukraine's history of regulation and practice in this area dates back to 1991, when a framework law was introduced. This system emerged from the soviet one, based on detailed technical quality standards that ensured the homogeneity of products all across the USSR while severely restricting variety and quantity. However, such standards don't work in an open market economy: instead of ensuring consumer safety, they ensure bureaucratic pressure on business.

After numerous legislative and institutional changes, Ukraine's consumer protection system continues to demonstrate a number of problems:

- vague provisions in law that hamper consumer protection;
- liability for violations too marginal to provide incentives;
- poor consumer protection with regard to services and works;
- restricted access to key consumer product information on the part of businesses;
- poor capacity to test for and confirm defects in products;
- poor consumer information flow from the government;
- poor access to state authorities responsible for consumer protection at the local level;
- a government that neither supports nor cooperates with consumer-oriented CSOs;
- no collective or class-action judicial protection;
- no national strategy, program or plan for consumer protection reform.

Most of these problems are the result of Ukraine's consumer protection system not being in sync with modern international systems, such as the EU's. Worse, this issue has not been included in the current national reform agenda, which means that activities, measures and decisions are not only not planned—they are not even up for discussion. At the same time, reforms of technical regulation and food safety are quite detailed and properly planned, which should benefit both businesses and consumers.

The approximation of Ukraine's consumer protection system to that of the EU will be extensively covered in the upcoming Association Agreement, which contains a specific list of acts of EU *acquis* that must be harmonized. Ukraine will need the capacity for proper planning and change management to ensure that these acts are adopted and implemented.

Civil society has been active in consumer protection from the very beginning, concentrating on consumer education, product testing and assistance to consumers in protecting their rights. The consumer NGO community has been consolidated in initiating policy changes to address the existing problems, but it has not seen much success and its active-ness has waned.

The recent joint technical assistance project of EU and UNDP was successful in mobilizing and uniting consumer NGOs to form an All-Ukrainian federation that is lobbying its policy initiatives to reform the existing consumer protection system in Ukraine and adapt it to European norms and standards.

# Background

In developed democracies, people expect to have the right to a free choice of safe, high-quality goods and services. This is an integral element in the general system of human rights in modern society. It also fosters a high quality of life.

Consumer rights are set forth in a number of international instruments, such as the UN Guidelines for Consumer Protection. This document points out that informed consumers regulate market economies worldwide by their choices, that is, by voting with their pockets: they reject unfair business practices and low-quality goods by not buying them.

But good governance can only be maintained in this sphere when all players enjoy equal rights and opportunities, be they the state, producers, traders or consumers. This balance is ensured by proper legislation, effective enforcement, a strong, competent NGO movement, informed and alert consumers, and a fair and responsive judicial system.

The position of all consumers in a market, including rights, obligations and enforcement mechanisms, has two dimensions:

- Consumer protection itself, which includes: providing information on the safety and health aspects of products and the legal rights and remedies available to consumers; regulating relations between consumers; commercial operators, that is, producers, distributors and retailers; and state authorities responsible for protecting and enforcing consumer rights;
- Technical regulations, that is, the system of legal regulation of relations in the establishment, application of and compliance with mandatory standards or procedures, systems and services; responsible personnel and authorities; reviews of compliance through conformity assessments and/or market surveillance; and food safety, that is, sanitary and phytosanitary measures.

Ukraine's current technical regulation and consumer protection systems emerged during the spontaneous transition from the soviet system. That system was based on GOST,<sup>1</sup> a system of detailed product specifications that allowed the state to establish detailed requirements for not only the composition, physical parameters and manufacturing processes for any given product, but also the variety and range of products that were allowed to be manufactured and then sold through the state retail networks of the USSR. Products and services of a particular kind were supposed to be identical across the entire Union. All of this was completely controlled prior to a product reaching the market, so there was actually no need to oversee products at the retail level. The failure to follow standards was considered an "economic crime" and severely punishable. In this way, GOST compliance was supposed to guarantee product safety.

The centralized planning system has been replaced in Ukraine by a globalized open market economy that, by its very nature, does not provide for any restrictions on the quantity or variety of products entering the market, yet the GOST and its enforcement mechanisms remained unchanged. The quality of thousands of varieties of sausages continues to be inspected the way that, in soviet times, three varieties were.

Under the current conditions, the GOST simply cannot—and does not—work. Not the price, not product certification, not quality marking protect Ukrainian consumers from extension cords that catch fire, toys that injure children or foods that are toxic. Moreover, a vast range of products available on the market have never been certified and do not meet any standards, that is, they evade the system altogether.

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<sup>1</sup> Short for "Gosudarstvenniy standart," meaning "state standard" in Russian. The Ukrainian equivalent is DSTU.

The government is simply unable to control every product coming from every manufacturer and importer: there aren't enough people or resources to do so. Instead, this kind of oversight becomes a means of bureaucratic pressure on honest businesses and a cover for dishonest one—exactly the situation in Ukraine today.

In the European Union, the regulatory system has gradually learned to overcome such problems and to ensure a maximum of protection for the widest number of consumers while placing a minimum of pressure on business and barriers to trade. The safety of products on the market is ensured through a market surveillance system, a system that appeared in response to the objective nature of a free, unlimited market, where the notion of quality is subjective, but the safety of goods and products is a must. The result is that, when a product that is clearly unsafe or poses a risk is identified at a point of sale, it can be traced across the entire supply chain and restrictive and corrective measures can be applied against it at the national and even all-EU level.

Instead of an EU-style market surveillance system that protects the interests of both consumers and honest manufacturers and suppliers, Ukraine has, until recently, had a system of total pre-market control of products at the processing, manufacturing and market entry stages, that is, government surveillance, combined with a system of oversight of goods and services at the retail level, that is, consumer protection. Every product category is supposed to comply with specific quality standards that are outdated,<sup>2</sup> incompatible with those of EU or other developed economies, and fail to ensure the safety of consumers.

With the approval of the Law of Ukraine "On state market surveillance over non-food products" and the Law of Ukraine "On the general safety of non-food products" in December 2010, the current system of pre-market state surveillance and control of goods, which is completely incompatible with EU norms, is replaced by a market surveillance system that is in line with European principles and practice. Both businesses and consumers will benefit from this reform.

Meanwhile, the consumer protection system remains unchanged. On paper, at least, legislation provides consumers with a wide range of rights and means of protection—it even contains some provisions in line with EU norms<sup>3</sup>—but, in practice, the mechanisms are very difficult to use and most of consumer protection mechanisms that exist in the EU are not implemented in Ukraine at all.

The government agency responsible for consumer protection is more preoccupied with inspecting businesses for compliance with obsolete quality requirements—a function that does not exist in such institutions in Europe—, than with solving real problems faced by real consumers or improving policy to ensure better consumer protection. As a result, even honest business is threatened by possible rulings that can shut down their production or trade, over such things as the external appearance of a product not being in conformity. The problem is that such inspections do little to help the situation because of the marginal impact of any measures taken: an unsafe product that has been taken off the shelves in one store can easily be selling in the next store over. Meanwhile, consumers risk buying products that could be dangerous to their health or property.

Civil society organizations dealing with consumer issues appeared in Ukraine, as well as in other parts of the USSR, in 1980s as a reaction to a situation where consumer goods were certified for quality but did not actually satisfy consumer needs, and retail and service entities abused consumer rights without effective recourse. Consumer activists learned to protect their own rights and then helped others do the same.

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<sup>2</sup> About 60% of quality standards currently valid in Ukraine were adopted before 1993.

<sup>3</sup> Some provisions of the framework law are harmonized with EC Directives on Distance Selling, Doorstep Selling and Product Liability.

Those and new consumer NGOs launched since independence are concentrating on legal assistance, providing information and educating consumers. In time, they have found resources, both from international donors and domestic sources, to independently test products, run media campaigns on products and consumer rights, analyze existing policies, point out to actual problems with consumer rights and their protection, and advocate changes they consider necessary. Consumer NGOs don't concentrate only on consumers whose rights have been violated, however: they also try to empower consumers with knowledge about what they can expect in the market and what to do before buying a product. They also represent collective interests of the consumer community before the government at the local, regional and central levels.

Ukrainian consumer NGOs quite often share their opinions on reforms with international technical assistance projects working in this area. Unfortunately, their joint efforts have not been enough to overcome the lack of interest on part of the government and opposition from individual bureaucrats and businesses that are interested in maintaining status quo.

As a result, many problems in this area have been properly identified but remain unresolved for many years.

## Goal of the reform

Improving consumer protection is simply not among official reform priorities in Ukraine today. This issue is mentioned in passing as a minor element in the list of more specific objectives in the Presidential Program of Economic Reforms for 2010 – 2014 “Prosperous Society, Competitive Economy, Effective Government.” Better protection of consumer rights is one of the objectives in the priority “Improving the Business Climate and Increasing Investments,” in the Section on “Deregulation and the development of entrepreneurship,” Subsection 6, “Food safety (sanitary and phytosanitary measures).”<sup>4</sup>

The President's State of the Nation address to the Verkhovna Rada titled “Modernizing Ukraine—Our strategic choice” on April 2011 makes setting up a consumer protection system to ensure goods and services of a proper quality in sufficient amounts at a fair price as one of the objectives in developing and stimulating the competition necessary for a large domestic market to emerge.<sup>5</sup>

However, neither of these two strategic documents, nor the National Action Plan for implementation of the Program of Economic Reforms for 2010 – 2014<sup>6</sup> mentions any specific measures or actions related to consumer protection. These issues are equally absent in the platforms of all political forces in Ukraine.

This suggests that there is a general impression among Ukrainian politicians that this sector does not have serious problems that require immediate attention. On the contrary, reforms of technical regulation and food safety to approximate EU norms are among official priorities, complete with detailed action plans, because they are favored by many Ukrainian and international businesses interested in a better business environment to foster trade. If they are implemented properly, Ukrainian consumers will benefit from reforms in these sectors, but indirectly only, so consumers and consumer protection CSOs are not involved in these reforms.

It is worth remembering that even successful reforms of technical regulation and food safety will not resolve the problems with protection of consumer rights. The formulation of the purpose of this reform should be forward-looking:

- to empower all consumers nationwide through accurate, full information, market transparency and the confidence that comes from effective protection and solid rights, through a simple legal framework, improved evidence, better consultation and better representation of consumer interests;
- to enhance the wellbeing of consumers in terms of price, choice, quality, diversity, affordability, and safety. Consumers should be confident they can shop anywhere, from corner shops to hypermarkets to websites, and be assured that their rights and interests are equally protected;
- to protect consumers effectively from serious risks and hazards that they cannot tackle as individuals, such as dangerous products or unscrupulous sellers;
- to ensure businesses, especially retailers, that they can operate in the consumer market anywhere and in all possible forms on the basis of a clear, simple set of rules.

In practical terms, this means approximating the sector to EU norms and standards by:

- adopting the appropriate acts of the EU *acquis* and removing all provisions from Ukrainian law that are incompatible with EU norms or hamper consumer protection;

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<sup>4</sup> [http://www.president.gov.ua/docs/Programa\\_reform\\_FINAL\\_1.pdf](http://www.president.gov.ua/docs/Programa_reform_FINAL_1.pdf)

<sup>5</sup> [http://www.president.gov.ua/docs/Poslannya\\_sborka.pdf](http://www.president.gov.ua/docs/Poslannya_sborka.pdf)

<sup>6</sup> <http://www.president.gov.ua/documents/13492.html>

- building the institutional capacity of government agencies and reviewing their functions and responsibilities in terms of compliance with international practice;
- providing complete information to all consumers and adequate support to consumer NGOs to function as strong partners of the state.

# Problems in the sector

According to data from the State Consumer Protection Inspectorate (SCPI),<sup>7</sup> more than 90% of commercial entities in Ukraine—producers, suppliers, service companies, and so on—operate in violation of consumer rights.

Ukraine's consumer market is full of unsafe, poor quality or knock-off products, especially foods and alcoholic beverages. The consumer's right to timely, accurate and accessible information about goods, works and services is regularly violated. The quality of basic services such as medical, housing and utilities needs serious improvement. New developmental challenges to consumer protection have emerged in modern Ukraine as well, among them the quality and safety of genetically modified organisms (GMOs), e-commerce, mobile phone services, and much more.

Consumer protection is directly mentioned as a duty of the state in Art. 42 of Ukraine's Constitution. This Article also provides for state support of consumer-oriented NGOs and guarantees the right to free access to information about the state of the environment and the quality of foodstuffs and non-food goods. This sphere is regulated by the framework Law "On the protection of consumer rights" dated May 12, 1991, which was considerably revised on December 1, 2005. Provisions concerning consumer rights are also contained in some 100 other laws and regulatory acts.

The state's function of protecting consumers is the responsibility of the SCPI through its offices in every oblast, Crimea, Kyiv and Sevastopol.

But the existing legislative and institutional environment has serious flaws, both recent and historical and consumers continue to be poorly protected. At a time when markets are growing more and more complicated, consumers are at a disadvantage compared to commercial operators in terms of both access to information and leverage to negotiate and resolve disputes. This is partly due to:

- lack of state consumer policy and appropriate regulation;
- lack of self-regulation and appreciation of consumer rights, among businesses;
- consumers that are not empowered enough and a consumer movement that is too fragmented to represent the interests of consumers collectively before the authorities.

## 1. Vague legal provisions are an obstacle to consumer protection.

Amendments to the Consumer Protection Law of 2005 narrowed consumer rights when purchasing damaged goods or goods of improper quality. The amended version introduces the concept of "substantial defect" of goods and services. The level of "substantiality" is not specified in the Law, neither is any procedure for its assessment. This particular provision contradicts EU norms. As a result, consumers often cannot get a refund or replacement for damaged or poor-quality products. There are a number of provisions in the Consumer Protection Law that allow for multiple interpretations or contradict each other or the provisions of other laws, such as the Civil Code of Ukraine. This makes dispute resolution difficult even for conscientious courts and professional lawyers, which undermines a consumer's chances to see the related rights protected—something that is confirmed by the very low number of court cases in this area in Ukraine.<sup>8</sup>

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<sup>7</sup> The central executive body (CEB) responsible for this area, until December 2010, was the State Committee for Technical Regulation and Consumer Policy.

<sup>8</sup> According to UNDP data, only about 5–7% of consumers are prepared to appeal to courts to protect their rights.

Moreover, such lawsuits are handled by general jurisdiction courts without any special, that is, streamlined, procedure. This means it requires excessive time and effort for an ordinary consumer to go this path.

## 2. Liability for violations provides little disincentive.

Ukraine's consumer protection system is currently oriented towards finding minor violations and levying fines that are usually less than an average retailer's daily income. For instance, the SCPI ran about 45,000 inspections in both 2009 and 2010 and violations were found in 89% and 87% of cases. By contrast, Poland's Office for Competition and Consumer Protection, the country's main market surveillance body, carried out only 3,348 inspections in 2008 and 2,591 in 2009. Yet the number of products in violations revealed was 4,103 or 119% effectiveness and 3,309 or 128% effectiveness.

The average penalty levied on violators in Ukraine in 2010 was about UAH 640 or about US \$80. In the EU, fines are levied only after all other means of undoing the damage from non-compliance have been attempted. The size of losses from such fines and the loss of reputation can actually cause a business to go bankrupt—one of the reasons why European businesses respect consumer rights even in Ukraine.

## 3. The regulation of consumer rights regarding services and works is poor.

The absence of proper policy and regulations regarding services and works that have a large share in the consumer market<sup>9</sup> and the lack of standardization in this area lead to a large number of violations of consumer rights precisely during the provision of services and performance of works. This, in turn, increases the number of complaints and appeals on the protection of consumers' legitimate rights.

## 4. Businesses restrict consumer access to key information on products.

The significant role of product standards for consumers often amounts to nothing because of widespread technical specifications of products, by which manufacturers not only establish requirements different from those of the state standards of Ukraine, but also do not disclose such technical specifications to consumers, using the argument that this information constitutes a "commercial secret"—and they are supported in this by the government agency responsible for registering normative and technical documentation. Such products are slowly but surely making inroads in the domestic consumer market, which in and of itself is a violation of consumer rights. This also violates the market principle according to which consumer demand determines and influences market supply. In reality, a consumer has to buy what the market offers. In Europe, producers cannot avoid providing consumers with full information as required by the law, or they risk serious fines.

## 5. The capacity for testing and verifying defective products is low.

The Law states that independent testing should be available, but there is no system in place for this and the only "independent" testing facilities are those in the public sector. There are numerous testing laboratories and facilities scattered throughout various state institutions: ministries, government agencies, and scientific and educational institutions. Generally they are underfinanced and consumers don't even have information about where such facilities exist and how to access them. Thus, to prove the extent of a defect, the consumer has to pay in a commercial facility or to turn to the seller's own

<sup>9</sup> According to the SCPI, 48% of consumer complaints filed in 2010 were about the quality of services and works.

service centre, where the tester's neutrality is questionable. European consumers have a large selection of testing facilities, both private and public.

## 6. The state fails to inform consumers properly.

Consumers should be aware of their rights as consumers and the remedies available if their rights are violated. They should also have easy access to information about product safety, quality and price comparisons, and sustainable consumption. The State has the responsibility to make this information available, especially consumer rights information. But the SCPI does not provide this kind of information on its website and provides only limited amounts through other means. For instance, the Inspectorate and its regional offices produce quarterly and annual reports on consumer protection activities, but these are very broad and, so, of little practical use to consumers. The Ministry of Health disseminates some consumer related information on disease prevention, but this, too, is not enough. Consumer information should be channeled to consumers to a much greater extent through both government and non-government channels. For Ukraine, with relatively low internet penetration, consumer information should be available physically through some form of information offices, broadcast, print and other media. Consumers in the EU have access to the most up-to-date information on unsafe products and other important issues regarding protection of their rights.

## 7. Consumers have no access to state authorities responsible for their protection at the local level.

The SCPI has local offices only at the oblast level, which means that this Inspectorate is effectively not present on 65% of Ukraine's territory. This makes access difficult for people from remote areas and, as a result, the highest level of violations of consumer rights is in small towns and villages. The Consumer Protection Law specifies the powers of local governments concerning consumer protection, with the intention of encouraging the delegation of powers from the central body to the local level. In practice, the number of operating units and authorized persons at the local level is either insufficient or absent altogether. A major challenge in establishing local consumer protection facilities is the constant lack of resources among local governments to carry out such delegated functions. At present, consumer protection funding is still entirely at the discretion of state officials. Consumers are left to face numerous problems without the ability to exercise their legitimate rights or turn to the state for protection when their rights are violated.

This is one of the reasons why, according to assessments by consumer NGOs, only a small share of those whose rights are violated apply to government offices. Other reasons include lengthy and unfriendly procedures to get even the slightest reaction from the state: only applications in writing, a 30-day waiting period for replies, and so on.

## 8. The state neither supports nor cooperates with civil society organizations in this area.

The Consumer Protection Law requires the state to promote and support consumer non-government organizations. In practice, the state does not do any of this. Even initiatives by consumer NGOs receive little meaningful support from the state. One flagrant example was a series of letters from the SCPI to its regional offices saying that, should consumer NGOs file claims, these offices did not have to respond.<sup>10</sup> Despite protests among consumer NGOs against such a blatantly uncooperative position, this instruction was not

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<sup>10</sup> Letter №4305-5-7/18 dated 05 December 2006 is one example, but there have been several such letters.

retracted. This is precisely the kind of thing that significantly undermines the effectiveness of NGO efforts.

The activities of such organizations are extremely important, as they file court cases to protect consumers and engage in consumer education, among others. It would be a huge step towards European integration if Ukraine's Government were to give basic support to umbrella organizations or even support the activities and projects of consumer organizations on a competitive basis. Another important step would be to improve dialog with, and trust in, consumer organizations.

Civic organizations engaged in consumer rights advocacy are often separated both from each other and from government authorities, which leads to the dissipation of resources and inefficiency of actions. Bringing together the efforts of government officials and the public in this area is urgent, considering the global lack of financial resources.

Many civil society organizations working for consumer rights and interests are largely unconsolidated as a result of both internal and external factors: lack of real support from the state and local authorities, the temporary nature of grant funding, unwillingness in the private sector to undertake social programs for the benefit of consumers, and so on. In Europe, cooperation between government offices and CSOs is ensured by harmonized legislation.

## 9. Collective or class action judicial recourse is not available.

Ukrainian consumers and consumer NGOs do not enjoy such collective legal protection instruments as class action suits on behalf of an indefinite group of claimants. Ukrainian law does provide for it, but there is no actual mechanism for it to be applied, so domestic courts don't accept class action cases. This tool could be much more effective than individual suits to influence businesses that violate consumer rights as a standard practice, such as mobile communication companies, gas stations or water and heating utilities. Such lawsuits are common in the West and help to overcome large-scale consumer rights violations. They also are a source of revenues for consumer protection NGOs, both in the US, where claim amounts have no caps, and in the EU, where such limits do exist.

## 10. Ukraine has no national strategy—program or plan—for consumer protection.

There has been no such document for several years now. This means there is no prospect that the policy flaws noted above will be addressed and a consumer protection system developed.

# The cost of non-doing

Unless consumer protection reforms are properly planned and implemented, consumers will continue to face problems with the exercise of their rights, dishonest businesses will continue to take advantage of legal and institutional loopholes, and the state will continue to take the blame for all of this from consumers, CSOs and the international community.

Lack of reforms in technical regulation will also bear a high long-term cost for all stakeholders.

## *The cost to consumers*

The lack of basic conditions to ensure product safety has led to a situation where it is entirely possible to buy a product in Ukraine that has been certified but is unsafe. According to Ukrmetrteststandart, the state company responsible for state control and surveillance of food and non-food products, nearly 10% of products that undergo certification are of unacceptable quality. This means that, among products that are prepared for certification, some are of poor quality even by soviet standards—and there is no guarantee that the remaining 90% that passed certification are actually safe to use.

As a result, the cost to companies of mandatory soviet-style certification and ineffective state surveillance is passed on to consumers in the form of prices that are higher than they might otherwise be.

## *The cost to business*

It is very difficult to bring a new product onto Ukraine's market. It costs businesses both time and money to take a product through the surveillance and permit process. The outdated technical regulation system hampers the development and manufacture of new products for which there are no official standards. This significantly increases production costs, pushing consumer prices up and reducing the competitiveness of domestic manufacturers on both the domestic and foreign markets.

Moreover, the current regulatory system does not allow the legal introduction of new technology until it is approved by the regulators. As a result, Ukraine's economy is being modernized extremely slowly.

Finally, this technical regulation system, including mandatory quality certification and outdated standards, is in violation of WTO rules, which Ukraine has committed to follow since accession in 2008.

## *The cost for government*

The government is clearly to blame on all counts:

- Consumers are in an uproar about the number of unsafe and poor quality products being sold.
- Honest business is angry about convoluted inspections, the time and cost of regulatory procedures, and the inevitable extortion on the part of bureaucrats who meanwhile do not protect honest manufacturers from those who ignore or deliberately violate requirements and engage in corruption to evade liability.
- Ukraine's international partners complain about the fact that market principles are not being applied and that the country is not making good on its international commitments.

At the same time, state agencies are left on their own with all the root problems. Incompatible systems mean that Ukraine cannot take advantage of the results of the working market surveillance systems in the EU and other developed countries—notifications of hazardous products—or properly exchange best practice with them.

## Policy decisions

At this time, Ukraine's Government has no policies in the works regarding consumer protection, although plans for reforms of technical regulation and food safety are thoroughly elaborated and pertinent.

With the approach of the conclusion of Ukraine's Association Agreement with the EU, which includes approximating the national consumer protection system to the EU system, such policy decisions will have to be drafted, planned and implemented. Ukraine will have a commitment to adopt a number of EU *acquis* (see Annex 1) and ensure their proper implementation.

To resolve the existing problems and become more in line with the EU, such policies should include:

- eliminating the current loopholes in legislation and institutions that impede effective consumer protection, primarily the provision on "substantial defects" and other ill-defined provisions that allow for multiple interpretations and conflict with other laws;
- institutionalizing class action lawsuits involving an indefinite group of claimants;
- introducing a simplified, streamlined judicial procedure for consumer rights cases;
- eliminating existing legislative and institutional gaps that restrict consumer access to key product information, especially the option of classifying product information as a "commercial secret;"
- empowering consumers nationwide by increasing open access to independent testing facilities and to government consumer protection offices at the local level;
- eliminating provisions in consumer protection legislation that are in conflict with the newly introduced market surveillance system;
- ensuring the Government's sustainable cooperation with and support for the activities and initiatives of consumer NGOs;
- adopting EU norms and standards for consumer products and rights;
- adding these reforms to the national reform agenda and drafting a reform program and plan.

# Analysis of stakeholder positions

## Business

### *Lower costs for market entry and doing business*

Regulatory reforms are clearly in the interest of honest Ukrainian business. Reforming technical regulation and consumer protection procedures will relieve them from the excessive burden of outdated "quality" specifications and multiple compliance inspections and will make it possible to avoid considerable financial, temporal and manufacturing risks while simplifying the market entry process for new products.

### *Greater liability for producing and selling defective products*

Increasing responsibility among manufacturers by increasing the size of fines and instituting criminal liability for particularly serious violations should force manufacturers to become more scrupulous about the safety standards of their products. This should also provide considerable incentive not to market products at all costs, even if they are risky or unsafe.

### *Removed possibilities for unfair practices towards consumers*

Some businesses are undoubtedly interested in preserving status quo. Domestic producers of durable goods, especially cars and electronics, have been actively lobbying the adoption of amendments to the Consumer Protection Law that undermine its effectiveness, particularly the provision on "substantial defects." Moreover, this lobbying was done in an opaque manner, without public debate or substantive argumentation.

Different domestic businesses, both small and large, also take advantage of the existing situation. International businesses working in Ukraine take a more socially responsible position and generally respect consumer interests and rights.

## Consumers

### *Less risk of buying an unsafe product*

As the biggest contact group, consumers have the greatest interest in seeing a European-style consumer protection system introduced in Ukraine. The main advantage of such a system, compared to the one in place today, is its flexibility, responsiveness and effectiveness. If risky or unsafe products are found at one retailer, they will be restricted or removed from the market across the country.

### *Lower prices as production costs go down*

Implementing European technical regulations and compliance procedures will considerably simplify access to the market for both domestic and foreign manufacturers, which potentially means lower prices for consumers.

### *More responsibility when choosing products*

Consumers cannot count on the market to provide only high-quality goods. The quality of every specific product can range considerably, especially in different price categories. The state should ensure equal safety across different product groups. However, quality features need to be studied based on information provided by the manufacturer, and decisions to buy one product or another should be made knowledgeably.

## The State

### *Proper effort for greater product safety*

The state is clearly a stakeholder in the institution of a proper consumer protection system, as this will:

- improve the general welfare of Ukraine's citizens;
- increase consumer confidence in and support of the government;
- increase Ukraine's competitive edge;
- help fight corruption by eliminating conflicts of interest and overlapping functions.

### *Reduced public costs*

For Ukraine, undertaking reform will mean cutting regulatory costs. A reformed system should apply a risk-based approach that should considerably reduce the need for inspections and thus save the State Budget considerable administrative costs.

## The State Consumer Protection Inspectorate

### *Reduced powers, cutting off possibilities for rent-seeking*

The excessive concentration of powers prior to reforming this institution<sup>11</sup> in December 2010 had led to conflicts of interests. It also gave its own officials ample opportunities to abuse their office for personal gain without any risk of being punished, since it was responsible for auditing itself and all its sub-units.

- Specializing the SCPI on consumer protection and market surveillance takes unlimited power and authority away from its officials.
- Instituting external independent audits of consumer protection and market surveillance should reveal all its weak points and flaws. Such external audit and control will be the responsibility of the Ministry of Economic Development and Trade.

Clearly defined procedures and increased liability on the part of public servants in the form of high fines and criminal liability for violations of regulatory law should stimulate them to turn their backs on corrupt activity.

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<sup>11</sup> See footnote 7.

## Obstacles to policy

The main obstacle is the position of government officials and some businesses.

Government officials, especially at the SCPI, have largely seen consumer protection as a means of putting pressure on business, rather than helping business and consumers establish mutually beneficial relations. They take advantage of ambiguous provisions in domestic legislation and adjust practice in this area at their own discretion for their private interests.

Businesses interested in maintaining the status quo, particularly domestic car makers, are likely to oppose streamlining legislation in this sector. Their opposition will be hard to overcome, as they often either sit in the Verkhovna Rada or have their own "representatives" who do.

## Timetable of the reform

As there are no official programs or plans to reform the consumer protection system, there are no timetables either. The EU-Ukraine Association Agreement will include specific deadlines for adapting every act of EU *acquis* agreed therein. This is typically three to five years. Ukraine will have to draw up a timetable to deliver on its commitments.

# The European framework

Ukraine-EC cooperation in trade policy and in particular the elimination of technical barriers to trade (TBT) is based on the EU-Ukraine Partnership and Cooperation Agreement (PCA) and the joint Action Plan on Conformity Assessment and Acceptance of industrial products (ACAA) dating from 19 December 2005. This framework establishes an institutionalized dialog between the Government of Ukraine and the Commission on TBT issues and requires, beyond legal approximation in technical regulation, the alignment of the national quality infrastructure, which includes standardization, accreditation, metrology, conformity assessment and market surveillance, with the EU practices, **by 2011**.

The most recent bilateral arrangement covering these issues, among many others, is the EU-Ukraine Association Agenda (AA). It provides for the two sides to cooperate on consumer protection with a view to preparing to implement the EU *acquis* specified in the annexes to the Association Agreement between Ukraine and EU:

- exchanging information and initiating a dialog on consumer protection. The Parties may explore the possibility to further cooperate on subjects of mutual interest;
- encouraging the empowerment of consumers;
- strengthening administrative capacity for consumer protection enforcement in Ukraine, notably through training and technical assistance in the framework of the TAIEX program for Ukrainian Public Administration, including the Judiciary and the Legislative branch and civil society organizations, on the transposition of EU legislation and its subsequent implementation and enforcement.

Specific policy changes are not envisaged here, unlike many other areas of the AA. Moreover, this area was not included in the jointly agreed list of AA priorities for 2010 and 2011.

The issue of approximating Ukraine's consumer protection system to that of the EU will be extensively covered in the future Association Agreement. Apart from general goals and cooperation priorities, it will contain a specific list of acts of the EU *acquis* that will have to be adapted and implemented in Ukraine over the following 3–5 years, specified in Annex 1. This will mainly consist of drafting and adopting new laws to introduce EU-compliant legal definitions and mechanisms for different spheres of commercial activity such as tourism, e-commerce and financial services, as well as introducing new mechanisms of legal protection and enforcing cooperation between government institutions and civil society organizations.

Consumer protection in the EU is a fairly recent addition to common legislation, with a low level of harmonization. It is being extensively reviewed upon the initiative of the European Commission in response to the expansion of globalized consumer markets and the need to increase the competitiveness of European business. The EC put forward a Communication on March 13, 2007<sup>12</sup> titled "EU Consumer Policy strategy 2007–2013: Empowering consumers, enhancing their welfare, effectively protecting them." It describes current problems and challenges in this area and identifies goals, priorities and actions to address them. As a part of its implementation, the EC proposed to consider adopting a Directive on consumer rights (Proposal of October 8, 2008)<sup>13</sup> that provides for a high level of harmonization across the EU. The proposal is undergoing active consultations and public debate in the EU.

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<sup>12</sup> Brussels, 13.3.2007, COM(2007) 99 final.

<sup>13</sup> Brussels, 8.10.2008, COM(2008) 614 final, 2008/0196 (COD).

Ukraine should consider these developments in addition to current EU policies and legislation when preparing reform in this sector in order to avoid one problem faced by most accession countries: the need to urgently again overhaul sectors that had been recently reformed, in order to address the relevant changes in the EU policies. This would save a lot of time, administrative effort and resources needed for reform.

## Civil society impact

There are approximately 100 non-governmental consumer organizations in Ukraine. Their rights and status are defined by Art. 25 of the Consumer Protection Law. These organizations mostly deal with human rights, legal assistance, informational and educational activity, independent testing of products and the representation of consumer interests in public decision-making.

However, Ukraine's consumer NGOs face an unstable financial situation because no support is forthcoming from the state. As a result, the implementation of their programs is very slow and sometimes fails altogether. Consumer organizations are more likely to get support from big businesses that often act as donors. Naturally, this type of "cooperation" balances on the edge of conflict of interests between businesses and consumers.

Another important source of support for activities and capacity development, including policy development and implementation, is international technical assistance. National and international donors have provided different types of support, including research and advice, capacity-building and funding for reforms of technical regulations and consumer protection in Ukraine involving government, civil society and private sectors.

The first major project in this area, **Support for Consumer Policy in Ukraine** was implemented over 1997 – 1999 with support from EU-TACIS. Its purpose was to strengthen the legislative, institutional, organizational and material underpinnings of consumer policy in Ukraine by providing policy advice, drafting laws and building capacity among consumer NGOs and related government agencies, running public awareness campaigns and promoting consumer education in primary and secondary schools.

More recently, the **Consumer Society and Citizen Networks project** was implemented in 2006 – 2010 by UNDP with financial support from the EU. Its aim was to promote consumer access to information on product safety, consumer protection, and the results of independent testing, as well as to promote broader public discussion of challenges facing the consumer community in Ukraine. It also provided capacity-building programs for consumer protection CSOs and the media; the development and testing of methodology for Customer Satisfaction Measurement Index; courses on consumer issues for secondary schools and universities; the launch of a national consumer information web resource ([www.consumerinfo.org.ua](http://www.consumerinfo.org.ua)); polls of consumer behavior; and consumer awareness campaigns.

Another important project, **Technical Assistance to Ukrainian Quality Infrastructure** was implemented over 2008 – 2010 also with the support from EU-TACIS. Its main objective was to contribute to safer products and services in Ukraine, to improve the performance of Ukraine's economy in producing EU and internationally compliant goods and services, and to increase foreign investment by aligning Ukraine's quality infrastructure with international and EU regulatory and administrative practices. The main activities included:

- supporting the reform of Ukraine's quality infrastructure institutions to make them EU-compatible, as required by the ENP Action Plan and ACAA Action Plan and consolidating reviewed responsibilities, governance and accountability mechanisms;
- assisting in shoring up the Ukrainian economy to produce EU- and internationally compliant goods and services, through assistance in developing an understanding of the EU Internal Market Quality Infrastructure system, and dissemination and awareness of new legislation in the corresponding technical fields;

- supporting the transposition of EU and internationally compliant legislation and standards and the removal of outdated Ukrainian legislation and standards in relevant fields.

Currently, a major **Sector Policy Support Program “Promoting Mutual Trade by Removing Technical Barriers to Trade between Ukraine and the European Union”** runs through 2013 with funding from the EC ENPI worth EUR 40 million.

The specific objective of the project is to implement policy measures to remove technical barriers to trade (TBT) between the EU and Ukraine, including the modernization of the quality assurance institutional framework, by providing support to the Ukrainian Government and institutions in reaching the performance indicators, building action plans for the target institutions, ensuring proper monitoring and visibility, and providing institution- and capacity-building support. Objectives include:

1. Approximating the legislative framework in technical regulation to EU and WTO/TBT requirements, including standardization, metrology, conformity assessment, procedures for notification/designation of conformity assessment bodies; amending consumer protection legislation to abolish provisions that constitute possible barriers to trade; harmonizing technical regulations with the EU New Approach Directives and ensuring that they are enforced by Ukrainian authorities; reviewing and replacing old Soviet and GOST standards through the adoption of ISO and European Standards.
2. Strengthening the quality assurance institutional infrastructure and freeing it of conflicts of interests, including institutions for standardization, market surveillance, metrology, conformity assessment and accreditation.

International technical assistance has succeeded in supporting and mobilizing a critical mass of consumer civil society activists at the regional and central levels, promoting consumer education, and raising general consumer awareness. However, this support, as in many other sectors, has achieved only limited tangible results in terms of policy changes because they proved unable to overcome the ambivalence and outright opposition of established interest groups.

As a result, very few all-Ukrainian consumer NGOs have a long-term engagement in policy-making. Two main CSOs at the national level with a long history, the Ukrainian Consumers Association and Consumer Union of Ukraine, used to be very influential and active in promoting consumer rights, advocating necessary improvements of the legislation and institutions in this area and opposing practices among certain government institutions aimed at putting pressure on business instead of helping consumers protect their rights. They applied different types of influence such as publications, active social dialog, working groups, public councils and committees. However, lack of external support and actual achievements due to poor cooperation on part of the government and opposition on part of business interests eventually forced them to roll back their activities in this area.

At the same time, a new national player emerged: the Pulse All-Ukrainian Consumers Federation was established as a result of the Consumer Society and Citizen Networks project. The Federation brings together more than 20 local, regional and national consumer NGOs in Ukraine and has experts with recognized experience and knowledge in the field. Still, their capacity for policy analysis and public policy campaigns is limited. The Federation is now in search of opportunities to advocate its policy initiatives.

## Recommendations

Ukraine's reform agenda in consumer protection has not changed over the last 5 – 6 years, with one exception: the government institution formerly concentrating all responsibilities and functions in technical regulation, market oversight and consumer protection was dismantled last December and a new agency established to concentrate on market surveillance and consumer protection. The role and effectiveness of this new institution remain to be seen. The policy initiatives of consumer NGOs related to these policy decisions need considerably more support.

Another area that needs support is public monitoring of the new government institution responsible for consumer protection and performance assessment.

In order to be successful, these activities should include:

- mobilizing consumer NGOs throughout the country;
- building partnership with government in order to promote the necessary changes;
- building partnership with socially responsible businesses to overcome opposition from those businesses interested in preserving status quo;
- preparing public policy documents with in-depth analysis and strong arguments for the proposed changes;
- running a public policy campaign, including publications and public consultations with stakeholders.

# Annex 1: List of EU *acquis* acts Ukraine must implement under the Association agreement

1. Directive 87/357/EEC of 25 June 1987 on the approximation of the laws of the Member States concerning products which, appearing to be other than they are, endanger the health or safety of consumers.
2. Decision 2008/329/EC of 21 April 2008 requiring Member States to ensure that magnetic toys placed or made available on the market display a warning about the health and safety risks they pose.
3. Decision 2006/502/EC of 11 May 2006 requiring Member States to take measures to ensure that only lighters which are child-resistant are placed on the market and to prohibit the placing on the market of novelty lighters.
4. Directive 98/6/EC of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers.
5. Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council.
6. Directive 1999/44/EC of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees.
7. Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts.
8. Directive 97/7/EC of 20 May 1997 on the protection of consumers in respect of distance contracts.
9. Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises.
10. Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours.
11. Directive 2008/122/EC of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday product, resale and exchange contracts.
12. Directive 2002/65/EC of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC.
13. Directive 2008/48/EC of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC.
14. Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes.
15. Recommendation of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes not covered by Recommendation 98/257/EC.
16. Directive 98/27/EC of 19 May 1998 on injunctions for the protection of consumers' interests.
17. Regulation (EC) No 2006/2004 of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws.