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Legal regulation of non-food production safety in Ukraine

S u m m a r y

The This article is dedicated to content research of “non-food production safety” accordingly to Ukrainian legislation. Here the general requirements for non-food production safety are seen as well as its indices, which are verified by State.

Key words: safety, non-food production, indices of non-food production safety

Society's periodical renewal and renewal of its parts is general law. It's connected to the next circumstances: any system has its potential for development and a transit from one stage to another demands a renewal; human demands are always growing up, environment is changing and a society has to adopt to it; if a system can't change it gives its place to another system, which can satisfy new demands [1, p. 56]. Quality and safety, as categories, are the national idea of all developed countries and we can call it as a historical phenomenon. It concerns to every product, service, social welfare, all fields of human activities. Indeed the high requirements to the product quality and its execution provide a fact, that the production of developed countries dominates on international market, provides their safety and competition, and permits to play the first role on the international work market.

Adaptation of Ukrainian national law about general production safety to EU law is very urgent question due European integration course of Ukraine and Ukraine joining to free trade zone with EU.

The goal of this article is to specify the indices, which insure the safety of non-food production.

The main normative-legal acts in the legal regulation branch are the Constitution of Ukraine, accordingly to its art. 42 the State protects the customers rights and controls products safety; as well as the Economic Code of Ukraine, Laws of Ukraine "About customers rights protection", "About general safety of non-food production", "About standardization", "About standards, technical regulations and conformity evaluation", "About state market control and non-food production control", Ministry Decree No 46-93 "About standardization and certification", Ministry Resolution "Some questions of customers rights protection concerning non-food production safety" No 1400 dated 26.12.2011, "About risk degree confirmation of non-food production and its criteria to specify the correspondences of non-food production to certain risk degree" No 1404 dated 26.12.2011, "About state regulation of non-food industry control" No 1403 dated 26.12.2011.

Accordingly to the Law of Ukraine "About general safety of non-food products" the "safety non-food production" term specifies any product, which usage has no risk or minimum risk in ordinary situation or in predictable situation and such minimum risks are acceptable and they have no threat for community interests; taking in consideration: product characteristics, including its composition, package, mounting and maintenance requirements; product influence on other products if they are used together; precaution on product label, on product manual or on another product information; precautions about product use by certain customers groups (children, pregnant women, aged people, etc.) [2].

The Law of Ukraine "About customers rights protection" dated 12.05.1991 specifies the product safety as an absence of risks for life, health, customers property and environment, in case when the product is used, transported, stored, manufac-

tured or utilized in the normal conditions. The law foresees the general condition for product safety as a rule when a producer is obliged to place in operation only safety products.

The proof of product safety is its conformity to national standards, which correspond to the European standards.

There are law norms in Ukrainian law, which foresee a community access to information of product that provokes risks or might provoke risks, in order to realize the Constitution rights of human being and citizen for safety products. State control departments, according to their authorities, receive such information.

Besides, the State defines the requirements and determines the state supervision and control regulation for non-food production. A new type of state control has appeared, that is a control of product characteristics.

In fact, the Law about market state supervision marks the next responsibilities out:

A producer and a provider have total and whole responsibility for placing only a safe product on the market.

State control departments have responsibilities for:

- a. Legal function, by working out and promoting of technical regulation, and the national standards in correspondence.
- b. Assurance of the essential technical competence (by accreditation) and of the independence of agencies, which provide conformity evaluation.
- c. Law implementation operation (market supervision and control).

In the same time, one of the main demands to state agencies is non-intervention in the activities of economic subjects during their product developing and manufacturing.

The goal of market control agencies operating is to provide the product conformity to the determined standards and to insure an absence of any threats to the human life and health, to insure the safety place to work, to protect the customer's rights, to protect the environment.

The whole production from producers, importers, providers (any economic subjects, which operate in the product promotion chain from a producer to a customer) fall into this law function. All economic subjects are obliged to input in operation and provide on the market only safe products. The proof of the safe products is their conformity to the technical regulation, to the national standards that are in correspondence with the certain European standards.

The technical regulation is the law of Ukraine or legal norm that accepted by Ministry of Ukraine, where the product characteristics or its manufacturing methods are determined, as well as the requirements to the services, including certain statements, which are obligatory to complete. Such technical regulation can include the requirements to the terminology, signs, packing, marking, labels,

which are in use for certain products, process or production methods. There are 49 technical regulations in Ukraine actually.

In order to realize the State policy of the market control, the market control agencies:

- Fulfil the monitoring of the reasons and quantities of customer's calls concerning their rights protection for the safe products; of the reasons and quantities of injuries or health damages after the product use.
- Provide the verification of product specification, including product samples collection and their examination (their usage also).
- Verify the meeting requirements for the product that is introduced on the exhibitions, shows, fairs, festivals, etc., and that doesn't correspond to the determined requirements.
- Take the decisions about restrictive measures and control how the economic subjects complete their decisions.
- Fulfil the monitoring of the economic subjects actions concerning the taking the products out of market, which are liable to be taking out.
- Take the decisions about product destruction or recycle to avoid the product usage.
- Take measures to alert the customers about any danger that the product provides and that was determined by market control agencies.
- Make statistics reports about market supervision and analyse the reasons of law violation.
- Inform the state power agencies, local government and communities about the results of market control.

The market control agencies complete the systematic and casual verification of product specifications.

Systematic verification of product characteristics is accomplished at the place of product providers.

Casual verification of product characteristics is accomplished at the place of product providers or producers.

Product verification can be at the control agency or in the field.

During the product characteristics verification the objects of verification are:

1. The presence of the national sign of conformity (including identification code developed by conformity control agency) if the presence of the sign is foreseen by technical regulation for certain production and the rules of the national sign location are completed (Resolution of Ministry of Ukraine No 1599 dated 29.11.2001 "About determination of description of National sign conformity and the rules of its accomplishment").
2. The presence of supporting documentation that liable to be for certain production (particularly the product manual), label, marking, other signs, if it

determined by legal regulation (including technical regulation), and their conformity to the determined requirements.

3. The presence of conformity declaration, if it's necessary accordingly to the technical regulation for such type of products.
4. Product samples examination of certain production and producer identification.
5. Product samples collection and their testing if there is the reason to suspect that the product is dangerous, unsafe or present the risks, and/or doesn't correspond to the determined requirements.

The time to complete the product verification in the field has to be less than two days for product providers and less than three days for product producer. The report is done by the result of the verification. According to the results of the verification the control agency can take the decision to take the restricting measures concerning the product, which doesn't correspond to the determined requirements, including the cases of violence of National sign conformity usage, of conformity declaration application, of technical documentation presentation, a namely:

- Limitation for product placing on market (to make such product to correspond to the determined requirements, temporary prohibition of product promotion).
- Prohibition of product placing on the market.
- Taking the product out of market, the return the product to a producer by a provider or by a customer. Taking the product out of market in order to its destruction or recycle. Recall the production is taking as an extraordinary case.

The economic subjects have civic, administrative or criminal responsibilities for violation of Ukrainian Law "About state market supervision and control of non-food production" according to actual legal norms. There are penalties (financial fines) for the economic subjects conditionally the law violence from 75 till 3 000 untaxed minimal income that is from 1 275 UAH till 51 000 UAH, for the repeated the same violence during three years it is from 100 till 5 000 untaxed minimal income or from 1 700 UAH till 85 000 UAH.

Legislation of market supervision foresees the bases for release of the economic subjects from responsibilities if they prove the following:

- The unsafe production wasn't placed on the market.
- The production becomes unsafe because of third person activity or inactivity or because of force-major.

In conclusion I'd like to pay attention that economic subjects are obliged to keep all technical documentation and the documentation, which can identify the product suppliers and/or the customers during the term accordingly to the technical regulation for certain production. If the term is not determined:

- For producer – during 10 years from the date of beginning the product manufacturing.
- For authorized agent, importer or provider – during 10 years from the date of receiving the products.

In case of absence such documentation, if impossible to identify the producer, the economic subject should pay the penalties as a subject which place unsafe products on the market.

Thereby the positive moments of the system of State market control are:

- It changes the actual state control system of manufacturing for control of product characteristics.
- It brings the European way for the control and supervision of the ready production on the stage its placing on the market instead of its manufacturing. This way the state intervention in the economic subject activities is minimal.
- It creates the close cooperation between the economic subjects and the state control agencies that insures more effective control of product safety and urgent reaction in case of unsafe product appearance.

Such cooperation decreases negative consequences of unsafe products as for the economic subjects so for customers.

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