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A BRIEF INTRODUCTION TO ACAAS

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1. Introduction

To date, Stabilisation and Association Agreements have been signed with almost all countries of the Western Balkan region. These agreements contain provisions on the approximation of laws, and specifically, they state that these countries shall take the necessary measures in order gradually to achieve conformity with Community technical regulations and European standardisation, metrology, accreditation and conformity assessment procedures. This includes promoting the use of Community technical regulations and European standards, tests and conformity assessment procedures under Agreements on Conformity Assessment and Acceptance of industrial products (ACAA). (It should be noted that the generic names of these agreements has evolved somewhat over time.)

The conclusion of a bilateral ACAA on specific sectors has the objective of facilitating the access of industrial products from the partner country to the EU Internal Market and vice versa. After the conclusion of an ACAA the products covered by the agreement can enter the EU without additional testing and conformity assessment procedures and EU products can similarly enter freely the market of the partner country. In other words, for products covered by it, the partner country is treated as equivalent to a Member state. Consequently, an arrangement of this type presupposes the full approximation and implementation of the EC product legislation in the sectors covered by the agreements in the partner country, to the same standard expected of a Member State of the EU.

So far, ACAAs are agreed in principle with Israel, under negotiation with Croatia and the former Yugoslav republic of Macedonia, and under consideration with several other countries in the Euro-Mediterranean, Western Balkans, and other regions.

2. The scope for ACAAs

The use of the Community system of standardisation and conformity assessment by third countries, building on the experience gathered from the negotiation and implementation of earlier agreements, is designed to facilitate trade and market access in both directions, while avoiding the problems that are evident from the operation of traditional MRAs. This will contribute to the elimination of technical barriers to trade, thereby increasing the accessibility of third country markets to products from the EU. At the same time, the level of health and safety protection existing in the EU is ensured and not compromised by the widened access to the single market for third country products.

The preparation of alignment may be regarded as a means of sharing the proven experience of the European system with other countries. The benefits for both parties should be emphasised, with particular attention paid to the advantages for third countries of adopting established common principles, within the context of existing WTO objectives. There is also a political advantage in consolidating and strengthening existing links between the markets of third countries and that of the EU.

3. Analysis of the ACAA

Each ACAA consists of a framework agreement, laying down the general principles, and one or more sectoral annexes, setting out the products covered, and the means adopted to extend the benefit of trade in that sector.

The generic ACAA provides for two mechanisms:

1. for the recognition of equivalence in technical regulation, standardization and conformity assessment for industrial products subject to equivalent regulation in Community law and the national law of the partner country; and
2. for the mutual acceptance of industrial products that fulfil the requirements to be lawfully placed on the market in one of the Parties.

*Mechanism 1: Mutual recognition of products on the basis of the *acquis communautaire**

Under the first mechanism, mutual recognition of products operates on the basis of the *acquis communautaire* that has been transposed by the partner country, in the same way as it would apply to products placed on the market of an EU Member State. It allows industrial products covered by it and attested as compliant according to the procedures of in the European Union to be placed on the partner country's market without having to undergo any further approval procedures, and *vice versa*.

As well as New Approach sectors, which are the commonest application, more traditionally regulated products can be covered; for example good manufacturing practice (GMP) for pharmaceutical products. In either case the partner country must have taken over - and committed to maintain itself in alignment with - the EU technical legislation in the sector covered by the Annex to the Protocol, and should participate in the European organisations in the sector covered by it.

Mechanism 2: Mutual acceptance of industrial products not commonly regulated

The second mechanism, the mutual acceptance of industrial products not commonly regulated, confirms that the principle of mutual recognition applies in areas where the EU does not regulate a product, but its Member States may do so. That is, Annexes applying this mechanism will provide that where no European technical regulations exist, industrial products listed under such Annexes that may be lawfully traded in the market of either Party

(i.e., on the territory of the partner country or that of one of the Member States of the EU) may be lawfully traded in the other. So far, this mechanism has not yet been put into service.

For both the framework agreement and the sectoral annexes of different types, the EU has a standard text which can be adapted as necessary to the partner country. However, for consistency between countries, it is desirable that where possible ACAA texts be harmonised as far as possible.

4. Specific issues related to “New Approach” sectors

The ACAA approach has been found to be of particular applicability in “New Approach” sectors, where European legislation is based on essential requirements with presumption of conformity through standards (though as mentioned above, it is not limited to these sectors).

An ACAA in such sectors must contain some essential, basic elements. The following conditions need to be fulfilled for implementing the *acquis*: all relevant European harmonised standards should be transposed; the applicable conformity assessment procedures for the sectors must be used; the CE-marking system must be implemented and applied; the competence of conformity assessment bodies to be notified must be proven; and a suitable market surveillance system and suitable safeguard procedures must be used.

The horizontal legislation setting up standards, metrology, certification and accreditation infrastructure, and market surveillance, when applicable, in accordance with the EU system in these areas must be transposed and implemented. Adequate infrastructure in the fields of standardisation, accreditation, conformity assessment and metrology should be in place. Institutionally, the separation of the regulatory, standardisation, accreditation and certification functions is advisable for the proper implementation of the *acquis*.

A particular issue to be considered is participation in European standardisation and accreditation work. As European standards play an important role in the implementation of the *acquis communautaire* the countries that are interested in concluding an ACAA agreement should be able to participate in the work of the European standardisation bodies CEN, CENELEC and ETSI. The European standardisation bodies have recently established the status of Partner Standardisation Body for organisations from countries that will not become members of the EU. The participation of these countries in European accreditation activities is also desirable.

5. The choice of sectoral priorities

In general, the selection of priority sectors is a matter for the economic interest of the partner country. Ultimately, however, potential candidate countries will be committed to progressive adoption of the entire *acquis*.

The sectoral priorities may differ from country to country. In the case of strongly industrialised countries, the partners should aim at a wide coverage of the ACAAs in terms of

industrial sectors, although focused in sectors where strategic mutual trade interest exists. It should also be noted that particularly in some new approach sectors, it is necessary to transpose some Directives in order to make others work; for example, if electrical products are to be covered, the Low Voltage Directive and the Electromagnetic Compatibility Directive are necessary along with any other specific Directive.

If the ultimate goal for the ACAA country is to participate in the EU internal market or at least to include many sectors in the agreement, the clearest solution is first to take over and implement the EU horizontal legislation in a small number of sectors of primary importance, and then gradually add new sectors.

The potential for coverage of sectors that are not regulated at European level has already been mentioned; but it is regarded as advisable that completion of transposition of the *acquis* be given priority over coverage of non-harmonised areas.

6. Relationship with other agreements

In general, ACAAs are constructed as a protocol to another Agreement, such as a Stabilisation and Association Agreement, Euro-Mediterranean Agreement, Free trade Agreement or similar agreement between the EU and another country or economic territory. This has the advantage of maintaining coherence with other agreements. However, an ACAA can be a stand-alone document if necessary.

By the terms of the Agreement creating the European Economic Area (EEA), that entered into force on 1 January 1994, when the EU negotiates agreements of this type, it will negotiate on the basis that the third countries concerned will conclude parallel agreements with the EEA EFTA Member States, equivalent to those to be concluded by the EU. Through this system of parallel agreements, third countries are granted simplified market access throughout the EEA for the sectors covered. This immediately increases the size of the potential market to cover the three EEA countries in EFTA.

It is also encouraged that where ACAAs are in place between the Community and partner countries, that partner countries consider negotiating parallel ACAAs between them to complete the extension of the internal market.