

Certificate of Conformity vs. Declaration of Conformity in Ukraine: What to Choose?

Most Ukrainian companies have become accustomed to the fact that since 1 January 2018 the state certification system no longer exists in Ukraine. The compulsory certification abolishment, the transition to voluntary certification, and the application of technical regulations are part of the technical regulation system reform. Ukrainian manufacturers and importers therefore wonder: which document should be used to certify the conformity of products – a certificate of conformity or a declaration of conformity?

Which document certifies the conformity?

According to the Law On Technical Regulations and Conformity Assessment of 15 January 2015, the certificate of conformity is not the only document of conformity. Such documents also include declarations of conformity, test protocols, reports, expert opinion reports, certificates and any other documents certifying that the specified requirements to the subject matter of the conformity assessment have been met. Notwithstanding the fact that the law provides for an inexhaustible list of documents of conformity, only certificates of conformity and declarations of conformity may be used in customs clearance. For example, the competent customs authorities may request only those documents to verify the conformity of the products for which there is a direct reference in the relevant legislative act, namely certificates of conformity and declarations of conformity.

What is the difference?

So what is the difference between a certificate of conformity and a declaration of conformity? The main difference is that certificates of conformity are issued on the basis of Ukrainian regulations, whereas declarations of conformity are issued based on technical regulations, having been harmonized with or drafted by reference to European laws. The technical regulations in Ukraine are basically similar to the European directives in the EU. The main difference between a declaration of conformity and a certificate of conformity is that when declaring conformity, Ukrainian manufacturers or importers assume responsibility for declaring the product compliance with the requirements and technical regulations established by law. The declaration of conformity can be drawn up in any form. However, as product testing is required to verify the compliance with the technical regulations, in most cases the declarations of conformity are issued and registered by the accredited conformity assessment bodies on the basis of a test protocol under the applicant's responsibility.

The declaration of conformity is a mandatory document if technical regulations contain specific requirements concerning the product safety. Since a product can be the subject of several technical regulations at the same time, there can be several declarations of conformity for one and the same product. Currently, it is possible to make a declaration, stating all the relevant regulations. It is worth noting that there are no

individual technical regulations for every product, making it impossible to apply for a declaration of conformity with the technical regulations. In this case, for example for crockery, it is necessary to obtain a voluntary certificate of conformity as there are no technical regulations, specifying the safety requirements for this product.

Thus, both the certificate of conformity and the declaration of conformity with the technical regulations have the same legal effect in terms of confirming the products quality and safety. It is only necessary to comply with the applicable statutory and legal requirements for the product quality and safety and methods of control thereof.

Declaration types and application steps

There are the following types of declarations of conformity:

- Declaration of conformity for a batch is issued for a batch of products imported into Ukraine on the basis of an invoice;
- Declaration of conformity for a series is issued for series production, stating the time of import of the respective products into Ukraine or the production time.

In accordance with the requirements of the technical regulations, the declaration of conformity shall be issued by the manufacturer or his/her authorized representative or by the supplier, responsible for placing the products on the market in Ukraine. At the same time, the manufacturer or his/her authorized representative or supplier must be a Ukrainian resident and assume full responsibility for the conformity of the products with the requirements of the relevant Ukrainian technical regulations.

The procedure of applying for a declaration of conformity involves the following steps:

Completing an application for declaration works by specifying the following information: product name with UKTZED code (Ukrainian Goods Classification for Foreign Economic Activities) or DKPP code (National Classification of Goods and Services) – for Ukrainian producers, full name and address of the production, applicant's name and address, contract and invoice if the declaration of conformity is issued for a batch.

Entering into a contract for the purpose of performing works on the documents assessment and verification and the registration of the declaration of conformity;

The declarations of conformity with the technical regulations requirements shall be registered with the conformity assessment bodies on a voluntary basis at the applicants' request.

Permit to carry out high-risk work

It should not be forgotten either that business entities have to apply for a permit to carry out high-risk work in order to perform the respective work. Pursuant to Part 21 of Article 3 of the Law of Ukraine On Labour Protection of 14 October 1992, the employer shall obtain a permit to carry out high-risk work and to operate (use) high-risk machines, mechanisms and equipment. This permit shall be issued by the respective local body of the Ukrainian State Labour Service. The permit is granted on the basis of a corresponding opinion of a certified expert organization. In the course of the assessment, it should be determined whether high-risk work conforms to the requirements of the occupational safety and health regulations. In Regulation No. 1107 of 26 October 2011, the Cabinet of Ministers of Ukraine established the procedure for issuing permits and types of high-risk work, machines, mechanisms and equipment for the performance or operation of which is subject to a permit.

Liability

In the absence of a permit to carry out high-risk work or a declaration of conformity (to the extent that the relevant technical regulations provide for obtaining such a declaration of conformity), the company's business activities may be suspended by a court order and/or the company may be held administratively or even criminally liable. Fines for administrative offenses are not as significant as criminal liability. For example, pursuant to Part 2 of Article 272 of the Criminal Code of Ukraine, the safety rules breach when carrying out high-risk work, with such a breach having caused the death of people or having had other serious consequences, shall be punishable by a freedom restriction for a term of up to five years or by imprisonment for a term of up to eight years with no right to hold certain positions or to be engaged in certain activities for a period of up to three years.

Therefore, before putting the equipment into operation it is necessary to check whether the latter one is on the list of high-risk equipment or if there is a relevant technical regulation for such equipment. Thereafter, one can apply for relevant permits. Currently, applying for a declaration of conformity or a certificate of conformity and, where applicable, for a permit to carry out high-risk work does not require much effort. Failure to obtain such documents, however, may significantly affect the company's reputation and cause moral and material damages to the company and its employees.