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PROCESS OF ADAPTATION OF THE UKRAINIAN LAWS TO THE EU LAWS: ORGANIZATIONAL ASPECTS

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Organizational support for the process of approximation of the Ukrainian laws to the EU laws has been analyzed. Provisions for developing additional institutional mechanisms to accelerate this process have been justified. Entities of the government bodies involved in their implementation have been defined.

Key words: approximation of the Ukrainian laws to the EU laws; European integration; Association Agreement; organizational aspects.

Проаналізовано організаційне забезпечення процесу адаптації українського законодавства до законодавства ЄС. Обтрунтовані положення щодо розробки додаткових інституціональних механізмів прискорення цього процесу. Визначено суб'єктний склад державних органів, які беруть участь у їх впровадженні.

Ключові слова: адаптація законодавства України до законодавства *СС*; євроінтеграція; Угода про асоціацію; організаційні аспекти.

Проанализировано организационное обеспечение процесса адаптации украинского законодательства к законодательству ЕС. Обоснованны положения по разработке дополнительных институциональных механизмов ускорения этого процесса. Определен субъектный состав государственных органов, участвующих в их внедрении.

Ключевые слова: адаптация законодательства Украины до законодательства EC; евроинтеграция; Соглашение об ассоциации; организационные аспекты.

Problem definition. European integration course of Ukraine's development is the leading vector in the Ukrainian present. It determines systemic transformation and reformation of all socially important areas of our country. These systemic changes should not occur randomly, but within a legal framework and the legal support of European integration course policy of Ukraine. One of the most important components of the modernization of the legal principles of efficient Ukraine's European integration implementation is the approximation of the Ukrainian laws to the European Union laws (hereinafter - EU), which involves the process of Ukrainian laws and other regulations alignment with the EU law or acquis communautaire.

The importance and urgency of the problem is complemented by the fact that Ukraine has already started the process of signing the Association Agreement, namely it has signed the political part of the agreement, and by the need to take further steps to accelerate this process.

Obviously, it should be noted that the approximation of Ukrainian laws to the EU laws is not a goal in itself. This is a process that, in fact, defines the priorities and competence of the government and executive bodies to create prerequisites required for the full membership of Ukraine in the EU and ensure an internal integration process. Thus speaking of the organizational component of this process it is important to understand the nature of business and organizational activities of the relevant authorities to ensure its efficient (meaning effective implementation).

Analysis of the recent studies and publications. A lot of works in the research literature are devoted to the problems of approximation of Ukrainian laws to the EU laws, including the works by V. Muravyov, L.Orysyuk and other researchers [1-5]. The majority of the researchers' developments are devoted to the determination of the general principles of adaptation and harmonization, analysis of the implementation situation and future development of the process of approximation of Ukrainian laws to the EU laws [6-7]. There are also studies on the main aspects of the review and transformation process

in legislative and regulatory support for economic and social life of Ukraine in the context of compliance with the EU acquis [8].

However, it should be noted that there are quite few developments that have been devoted to the study of organizational aspects of this process in the current political and social conditions of Ukraine, especially given the acceleration of the European integration, in connection with the process of signing of the Association Agreement.

Purpose of the article - analysis of organizational support for the process of approximation of the Ukrainian laws to the EU laws and justification of the provisions for the development of additional institutional mechanisms to accelerate this process, the definition of the entities of the government bodies involved in their implementation.

Presentation of the main data. First, we must determine the entities of the government bodies, including the executive branch that throughout the period of implementation of the Ukrainian aspirations for integration with the European Union participated or have been participating in their implementation (Table 1).

Table 1
ENTITIES OF THE GOVERNMENT BODIES OF UKRAINE THAT PERFORMED OR
HAVE BEEN PERFORMING THE ORGANIZATIONAL FUNCTIONS ON THE
APPROXIMATION OF THE UKRAINIAN LAWS TO THE EU LAWS [9]

Existing authorities with powers to organize	Authorities that have ceased to perform the
the work on approximation	organizational functions on approximation
Verkhovna Rada of Ukraine	Interdepartmental Committee of Ukraine on
(Supreme Council of Ukraine)	European Communities (to 1995)
President of Ukraine	Interdepartmental Committee of Ukraine on
	European Communities (from 1995 to 1998)
Cabinet of Ministers of Ukraine	Agency for International Cooperation and
	Investment (mid-1995 to 1999)
Committee for the European Integration at the	Special Representative of the Government of
Verkhovna Rada of Ukraine	Ukraine to the European Union (mid-1995 to
	October 1997)
Mission of Ukraine to the EU	National Agency of Ukraine for Development
	and European Integration (mid-1998 to October
	2000)
Ministry of Economic Development and Trade of	National Legislative Centre (from July 2001 to
Ukraine	February 2002)
National Coordinator for the European Union	National Council for Quality (September 1997 to
Technical Assistance	mid-2000)
Ministry of Justice of Ukraine	State Council on European and Euro-Atlantic
	Integration of Ukraine (operated from 2000 to
	November 2005)
State Department for Approximation of the Law	Ministry of Foreign Affairs of Ukraine (from
(within the Ministry of Justice of Ukraine)	April 1999 to August 2006)
Commissioner of Ukraine on Foreign Policy and	Ministry of Economy of Ukraine (till May 2011)
Integration Process	
	Ministry of Fuel and Energy (April 2000 to April
	2011)
	Ministry of Ecology and Natural Resources of
	Ukraine (May 2000 to September 15, 2003)
	Ministry of Environmental Protection of Ukraine
	(mid-2003 to December 2005)
	National Council for the Approximation of
	Ukrainian laws to the EU laws (from September
	2000 to May 2006)

Interdepartmental Coordinating Council for the
Approximation of Ukrainian laws to the EU laws
at the Ministry of Justice of Ukraine (March 2004
- October 2004)

Currently, most of the main functions and responsibilities on the organization of the government authorities and the state policy on the European integration in general are assigned to two ministries - the Ministry of Justice of Ukraine, namely the State Department for Approximation of the Law and the Ministry of Economic Development and Trade of Ukraine. Thus, the aforementioned State Department is authorized to perform the functions on the organization of:

actions and measures on the implementation of the state policy on the approximation of Ukrainian laws to the EU laws;

work related to the implementation of the National Program on Approximation of the Ukrainian Laws to the EU laws and its research and expertise, information and methodological support;

work on the preparation of recommendations for the alignment of the Ukrainian laws with the European law, development of proposals for international agreements;

expert work on the compliance of draft laws and other regulations having subject of legal regulation within the areas, the relationship in which are governed by the EU acquis;

monitoring and coordination work (including generalization of information on the state of approximation of the Ukrainian laws to the EU laws, implementing the Ukrainian legislative acts that have been developed in accordance with the requirements of the EU acquis, coordinating Ukraine's and the EU's cooperation within their competence in ensuring the stability and efficiency of functioning of various democratic institutions).

Secondly, based on the consideration of the chronological and historical content of the process of approximation of the Ukrainian laws to the EU laws, its main advantages and disadvantages should be defined.

It should be noted at once that approximation of the Ukrainian laws to the EU laws by its definition as such, was defined in 1994 by the Partnership and Cooperation Agreement between Ukraine and the European Communities and their Member States (hereinafter referred to as the PCA), but actually it began before the entry into force of the PCA affecting the regulation of competition, labour and social relations. The so-called "voluntary harmonization", which in fact has become the first step in the whole process of approximation, took place in the absence of specific obligations of the parties in this area, unilaterally, that is the activity of Ukraine on the harmonization of its legislation with the EU acquis was unmanageable and chaotic at that moment. Obviously, Ukraine was able to use the relevant EU regulations and analyze the practices of other countries that also performed such work. But this process was rather languidly and slow. In particular, the White Paper adopted by the EU Commission in 1995, and hence determining the priority of the legislation harmonization for the Central and Eastern Europe and other EU documents, which had no up-to-date translation for a long time and have become actually a significant technical barrier to the introduction of the European rules of law. Subsequently, the first document that laid the foundations of approximation of the Ukrainian laws to the EU laws before the entry into force of the PCA, was the interim agreement between Ukraine and the EU on trade and trade cooperation, which was signed in June 1995 in Brussels, came into force on 01.02.1996 and was in force until May 1998, when it was replaced by the PCA [10].

The second stage, which may be singled out is a stage associated with the entry into force of the PCA, when the process of harmonization of the Ukrainian laws to the EU laws not only acquired a clear legal framework, but also diverse forms. In addition to the accession to international agreements, the PCA determined the legal principles for the implementation of approximation by adopting internal rules aligned with the EU acquis. The areas of harmonization of the Ukrainian laws to the EU laws were determined as follows: the protection of intellectual property rights, customs, company law, banking, accounting of the companies, taxation, occupational safety, financial services, competition rules, public procurement, health care and protection of life of humans, animals and plants, the environment, consumer protection, technical rules and standards, nuclear power, transport, industry, agriculture, energy industry, money laundering, social area, activities of small and medium-sized enterprises, statistics etc.

However, PCA has practically nothing about harmonization period. The only exception was the protection of intellectual property rights, in which Ukraine had to fulfill the obligations assumed under the Agreement within five-year period. In addition, Article 51 stipulates that Ukraine will endeavour to ensure the gradual approximation of its legislation with the Community laws, but does not specify the degree of approximation to be achieved.

According to the analysis of the PCA provisions and other documents related to the harmonization, almost all of them belong to the category of so-called "soft law", i.e. mainly outline the intent rather than clear obligations of the parties.

The third stage of approximation of the Ukrainian laws to the EU laws took place in accordance with the provisions of the National Program on Approximation of the Ukrainian Laws to the EU laws (hereinafter – the Program), approved by the Law of Ukraine dated 18.03.2004, as amended on 14.01.2009, which provides for prolongation of the Program first stage to the PCA expiration [11].

This program covers the main aspects of the legislation adaptation process: the implementation stages and the objectives of the first stage of the program, sequence of the adaptation process, institutional mechanisms and powers of the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine. Annual action plans are developed to implement it. As of today, seven such plans have been approved. They include a list of measures, mainly on the development of draft laws (specifying the relevant EU regulations and responsible executive bodies) and support of their adoption by the Verkhovna Rada of Ukraine.

The general situation with the adaptability of the Ukrainian laws to the EU laws in priority areas, including the legislation development and adaptation prospects for the subsequent period in accordance with the provisions is given in Table 2.

Table 2
LEVEL OF ADAPTABILITY OF THE LEGISLATION PRIORITY AREAS TO THE
REQUIREMENTS OF THE EU ACQUIS [12]

Legislation area Legislative acts (regulations)	
Degisiation area	or institutional measures on approximation of the legislation
1	
Customs	Customs Code of Ukraine, revised version,
Customs	46 Resolutions of the CMU and 44 Orders of the Ministry of Finance of
	Ukraine to implement its provisions,
	accession to the Convention on the Simplification of Formalities in Trade
	in Goods dated 25.03.2003 and the Convention on Common Transit
	Procedure dated 20.05.1987
Economic activity	Economic Code of Ukraine, Laws of Ukraine on Business Associations
Economic activity	and on Joint Stock Companies
	Introduction in the Verkhovna Rada of the draft Law of Ukraine on
	Amendments to Certain Legislative Acts of Ukraine (concerning the
	improvement of joint stock companies' activities), developed on the basis
	of the Second EU Council Directive of 13.12.1976, No. 77/91/EEC on
	the coordination of safeguards required by the Member States of
	companies
Banking	Laws of Ukraine on the National Bank of Ukraine, on Banks and Banking
	Activity, on Payment Systems and Money Transfers in Ukraine and on
	Individual Deposit Guarantee System.
	It is necessary to adopt the regulation to determine the features of
	corporate governance in the banks, aimed at taking into account the
	Directive of the European Parliament and the Council of 20.03.2000 No.
	2000/12 on the establishment of credit institutions and their management.
Accounting	Law of Ukraine dated 12.05.2011 on Amending the Law of Ukraine on
	Accounting and Financial Reporting in Ukraine.
	Transition to international accounting standards in accordance with the
	Regulation of the European Parliament and of the EU Council of
	19.07.2002, No 1606/2002/EU
1	2

Intellectual property	Civil Code of Ukraine and Laws of Ukraine on Protection of Rights to
intercectual property	Inventions and Utility Models, on Protection of Rights to Industrial
	Designs, on Protection of Rights to Trademarks for Goods and Services,
	on Copyright and Related Rights, on Protection of Rights to Indication of
	Origin of Goods and on the Protection of Rights to Integrated Circuit
	Topographies.
Financial services	Laws of Ukraine on Insurance, on State Regulation of Stock Market in
	Ukraine, on National Depository System and Peculiarities of Electronic
	Circulation of Securities in Ukraine, on Banks and Banking Activity, on
	Payment Systems and Money Transfer in Ukraine, on Financial Services
	and State Regulation of Financial Services, on Non-state Pension
	Schemes, on Mandatory Insurance of Civil Liability of Vehicle Owners,
	on Securities and the Stock Market and on Individual Deposit Guarantee
	System. Provisions of the Directive of the European Parliament and the
	EU Council of 20.03.2000 No. 2000/12 on the establishment of credit
	institutions and their management should be taken into account.
Antimonopoly and	Laws of Ukraine on the Antimonopoly Committee of Ukraine, on
Competition Law	Protection Against Unfair Competition, on Natural Monopolies, on
	Protection of Economic Competition, the Concept of the National Program on the Competition Development in 2013 - 2023 (approved by
	the Resolution of the Cabinet of Ministers of 19.09.2012, No. 690), other
	regulations, which requirements are aimed at improving the conditions of
	competition in commodities markets
Public procurement	Law of Ukraine dated 01.06.2010 on Public Procurement; Law of
	Ukraine on Peculiarities of Procurement in Specific Areas of Economic
	Activity, intended to bring the national legislation of Ukraine on public
	procurement in line with the specific provisions of the Directive of the
	European Parliament and of the Council of 31.03.2004 No.2004/17/EU.
	However, some provisions of the Law on Public Procurement contain
	some exceptions for goods, works and services procured not according to
	the general rules, which violates the principles of procurement of goods,
0. 1 1 1	works and services laid down in the EU directives.
Standardization and	Laws of Ukraine on Conformity Assessment, on Accreditation of
Technical Regulations	Conformity Assessment Bodies, on Standardization, on Standards,
	Technical Regulations and Conformity Assessment Procedures Regulations (DSTU (State Standard of Ukraine), TTU (Technical
	Specifications), etc.), which have no EU analogues have not been
	repealed, technical regulations subject to the acquis communautaire and
	the national standards harmonized with international and European
	standards have not been adopted.
Energy industry	Accession to the European Energy Charter, which is the basis for
	regulating the relations in energy product circulation and provisions of
	services on energy transit to the EU, and in 2010 – ratification of the
	Protocol on Ukraine's accession to the Treaty establishing the Energy
	Community (Law of Ukraine dated 15.12.2010) and the implementation
	of measures pursuant to the Law of Ukraine on Principles of Natural Gas
Renewable energy	Market dated 08.07.2010 Implementation of the CMU ordinance dated 03.08.2011 No. 733 on
sources and efficient	Approval of the Action Plan to Perform Obligations under the Treaty
use of fuel and energy	establishing the Energy Community, as well as measures to implement
resources	the State Target Economic Program on Energy Efficiency in 2010-2015,
	approved by the CMU dated 01.03.2010 No. 243, aimed at creating
	conditions for the approximation of the energy intensity of gross domestic
	product of Ukraine to the level of developed countries and the EU
	standards.

These main results of approximation under the National Program on Approximation of the Ukrainian Laws to the EU laws were evaluated quite positively by the Coordinating Council of Ukraine for Approximation of the Ukrainian laws to the EU laws at the CMU [13].

It is believed that within the Program a number of measures on the adaptation of the Ukrainian laws to the EU laws have been successfully implemented and a solid direction of Ukraine's law development based on the European standards under the first stage of the program and Ukraine's commitments arising from the PCA have been ensured. The report of the Coordinating Council of Ukraine for Approximation of the Ukrainian laws to the EU laws at the CMU stated that, despite the fact that not all issues have been solved in some other segments, such as taxation, occupational safety, health care and protection of human life, the environment, consumer rights protection, transport, legislation of Ukraine and the EU, particularly in the economic area, are quite consistent. It will facilitate a less painful and costly deepening and development of the cooperation with the EU in the changeable adaptation format.

Fourth stage – up-to-date – coincides with the start of cooperation in the new format when the new Association Agreement between Ukraine and the European Union (hereinafter – the AA) was initialed on 30.03.2012.

The following points should be pointed out. Analysis of the AA structure between Ukraine and the EU shows more or less the same nature of the EU requirements to laws of the national legislation in similar agreements signed between the EU and third countries (Poland, Estonia, and others).

It is important to understand that the provisions of this Agreement, unlike the PCA provisions, enshrine not the intentions of the parties, but envisage legally binding obligations of Ukraine in approximation of the legislation, failure to perform which may result in applying the relevant economic sanctions against Ukraine. Moreover, the introduction of the Association Agreement provisions on the harmonization of the legislation requires the adoption of the corresponding regulations of Ukraine and the EU, creating the necessary institutional mechanisms and implementing the specific actions both at the international level of the parties' relationship, and the legal systems of Ukraine and the EU [9, p.16].

In addition, it is believed that not all EU requirements on harmonization of Ukrainian laws and the EU laws will be beneficial to our country as a result of a combination of such factors as the complexity or excessive cost of such harmonization, contradiction of fundamental principles of the legal system of Ukraine, as well as the harm of new rules for economy of Ukraine or the Ukrainian economic entities. Thus, according to the experts' calculations, Ukraine, in the case of joining the FTA with the EU (which is an integral part of the Agreement), may lose up to 1.5% of baseline GDP volume [14, p.26].

Given the above, it should be noted that the general conditions for approximation of Ukraine and the EU are already fixed in the future provisions of the Association Agreement, which formally cannot be amended. However, in the implementation of the Association Agreement provisions, subject to a large amount of work related to the harmonization of legislation, there may be mitigation options for negative effect (if any) of such harmonization for Ukraine. For this purpose, all means not prohibited by the EU laws are to be used.

That is, despite the list of areas for approximation of the legislation formed in the draft Agreement, the Ukrainian authorities shall pursue a balanced policy aimed at the implementation of the adaptation in a way that seeks to protect the interests of our state, business entities and society in general. For this purpose, it is suggested to focus the relations between Ukraine and the EU primarily on the approximation of legislation on the segments of the economic acquis, which primarily concerns the definition of priorities in the economic sphere, creation of appropriate institutional infrastructure, taking into account the nature of adaptation and features of means for implementing this process. This approach is optimal both in terms of achieving the right balance between the costs on harmonization and expected outcome.

Conclusions: there are diverse opinions on the objective assessment of the degree of harmonization of the Ukrainian laws to the European Union laws, and on the works to be performed and recommendations to be developed for more or less efficient clear answer to the major question on the achieved level of the legislation harmonization or actual degree of the Ukrainian laws consistency with the EU acquis;

current weak nature of the economy and financial situation of the EU countries and Ukraine should be considered as primary detriment factors constraining the intrusive and excessive harmonization of the Ukrainian legislation to the EU acquis;

further transformation of the Ukrainian laws to the European Union acquis and relevant reforming changes in Ukraine's economy should take place based on a balanced state policy on the development of relations between Ukraine and the EU, because real organizational and legal mechanism of approximation (harmonization) of the Ukrainian laws to the EU laws is not perfect and does not fully comply with the economic realities.

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