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## **ROLE OF ACQUIS IN THE EU LEGAL ORDER**

The article investigates the notion of the EU acquis and the establishment of its content. The research analyzes the legal acts of the European Union, the judicial practice of the European Union Court of Justice, foreign and national doctrine on the interpretation of the EU acquis. The article defines the basic provisions of the concept of «common heritage» both for the EU Member States and third countries.

The EU acquis includes internal and external components. The inner part of acquis implies unconditional compliance of the EU Member States legal acts adopted by EU institutions in the process of European integration. The external component of acquis is referred to the recognition of third countries which will join the EU common heritage. The legal instruments of external component of acquis are the EU adopted international documents with third countries.

**Key words:** Acquis of the European Union, Concept of a Common Heritage, Third Countries, Implementation, International Agreements.

The legal system of the European Union stands out due to its supremacy and direct effect of its legal norms in the domestic legal systems of the EU Member States. Also, one of the peculiarities of the legal system of the European Union is the availability of legal heritage - *acquis communautaire*, which must be acknowledged and applied by the EU Member States, associated countries and states applying for EU membership.

The relevance of this study lies in the fact that the EU Member States and third countries should implement into their national legal systems and apply legal definition which, in turn, has an undefined content and structure. Moreover, due to the abolition of the European Community and in accordance the term *acquis communautaire*, this definition has modified and instead it today used the term EU acquis.

The Article aims to define the content and scope of the concept of the EU acquis in the legal instruments adopted by EU institutions, to analyse the practice of the EU Court of Justice for the establishment of what constitutes acquis, to research the acquis in the field of external relations of the EU with third countries.

The issue of analysis and research of the concept of the EU acquis is the subject of scientific interest of both Western and domestic researchers. The EU acquis as a system of law that must be recognised by the EU Member States and third countries was studied in detail in the scientific work of the British scientist A. Toz, the issue of the content and structure was meticulously analysed in the writings of K. Lasok and K. Mortelmans. In turn, in the Ukrainian science of EU law only in the works of V. Muraviov and R. Petrov most fully and meticulously discovered the content of the EU acquis as a legal category that ensures the integrity of the EU legal system and the obligatory uniform application of the EU law by all Member States.

The term “acquis” was borrowed from French. Despite the existence of the translations of acquis into other languages of the Member States and third countries, many documents and works of EU law used its French version.

It should be noted that the first mention of the acquis took place on July 18, 1961, at the meeting of heads of member states of the European Economic Community (hereinafter - EEC) in Bad Godesberg (Germany). During this meeting, were determined the first steps of strengthening of the political cooperation between the member states of the EEC and specified obligations of the candidate states for accession that consisted in compliance with *acquis communautaire* of the EEC<sup>1</sup>.

In the report of the Foreign Ministers of member states of the EEC, known as the “Davignon Report” stated that candidate states for the EEC accession must adhere to all policies and areas of the EEC activity and adopt common legal heritage of the EEC. In particular, in this document ministers had emphasised on the relationship between membership in the European Communities and participation in activities which

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<sup>1</sup> Petrov, R.A. The evolution of the concept of «*acquis communautaire*» in EU law.  
<[http://www.nbuv.gov.ua/old\\_jrn/Soc\\_Gum/Nzivru/2012\\_4/p13\\_44.html](http://www.nbuv.gov.ua/old_jrn/Soc_Gum/Nzivru/2012_4/p13_44.html)> (2016, June, 21).

entails political unification. Moreover, it was proposed to consult on the aims and mechanisms of cooperation that have to be fulfilled and implemented by the candidate states before entering the Community<sup>1</sup>. Thus, even at the earliest stage of the European integration was clearly stated that the candidate state for the EEC accession should not only adopt a common legal heritage of the EEC but also give their consent to participate in further initiatives leading to a deepening of political cooperation between member states of the EEC<sup>2</sup>.

References to the *acquis* were also in the Treaty on European Union, the Treaty establishing the European Community, the documents adopted by the EU bodies, in the EU international agreements and the EU Court of Justice judgments<sup>3</sup>. For example, in art. 2 of the Treaty on European Union stated that the Union aims to fully enforce “*acquis communautaire*”; Art. 43 (d) provided that a close cooperation between certain Member States does not affect the “*acquis communautaire*”; Art. 11.5 of the Treaty establishing the European Community emphasised that articles of the founding treaty do not contravene the provisions of the Protocol on the Schengen *acquis* inclusion in the legal system of the European Union and etc.

With the entry into force on 1 December 2009 of the Treaty amending the Treaty on European Union and the Treaty on the Functioning of the European Union, signed at Lisbon, 13 December 2007 (hereinafter - the Treaty of Lisbon) there have been major changes in the organisational and institutional structure of the EU. *Acquis* mentions can be traced in the text of the treaty only twice. First, Art. 20 of the TEU, which refers to the enhanced cooperation of States. According to this article: “Acts adopted in the framework of enhanced cooperation shall bind only participating Member States. They shall not be regarded as part of the *acquis* which has to be accepted by candidate States for accession to the Union”. Secondly, the article 87 of the TFEU refers to the Schengen *acquis* in the context of cooperation between police authorities of the Member States in relation to the prevention, detection and investigation of criminal offences<sup>4</sup>.

This means that today the founding treaties of the European Union do not properly define the scope and content of the EU *acquis*. There is only about the *acquis* observance by the EU Member States and compliance with the EU *acquis* by third countries respectively.

It is worth mentioning that in addition to governing relations between the EU *acquis* governs the relationship between the EU and the third countries. Drafting of international agreements by the EU with the third countries is the subject of the external component of the *acquis* content and form.

In particular, among adopted by EU institutions documents regulating the sphere of external relations of the EU *acquis* links reflected in the Qualified Opinion of the EU Commission on 29 May 1979 concerning the accession of Greece to the European Communities. The document provided a detailed interpretation of the *acquis communautaire*. The EU Commission stated that “from the moment of becoming the member of the Community, requested state unconditionally recognises treaties and their political objective guidelines, decisions of any kind taken after the treaties entry into force. Since the adoption of the treaties establishing the Communities legal regime, established by them, there is the possibility of direct effect of certain of their provisions and certain acts of the Community institutions, the supremacy of the EU law in relation to the individual national legal provisions that are contrary to it, and the availability of proceedings that can provide unity in the interpretation of EU law. Joining to the Communities implies recognition of the binding character of these rules, their direct compliance to ensure the effectiveness and unity of the EU law”<sup>5</sup>.

The Qualified Opinion of the EU Commission was only about “common heritage” of the European Community. Later, on 26-27 June 1992 in Lisbon, it was specified in the Conclusions of the European Council. According to the document, the detailing was already held concerning the “common heritage” of the EU as a structure that includes the EU’s common foreign and security policy, cooperation in justice and

<sup>1</sup> The Report of Davihnyon (20 July 1970).

<[http://www.nbu.gov.ua/old\\_jrn/Soc\\_Gum/Nzizvru/2012\\_4/p13\\_44.html](http://www.nbu.gov.ua/old_jrn/Soc_Gum/Nzizvru/2012_4/p13_44.html)> (2016, June, 21).

<sup>2</sup> Муравйов, В.І. (2015). *Європейське право: право Європейського Союзу*. Київ: Ін Юре.

<sup>3</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon. (13.02.2007). <<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2007:306:SOM:EN:HTML>> (2016, June, 21)

<sup>4</sup> The Qualified Opinion of the European Commission (29.05.1979). <<http://eur-lex.europa.eu/legal-content/GA/TXT/?uri=celex:31991L0692>> (2016, June, 21)

<sup>5</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions «Updating and simplifying the Community *acquis*» (2003). <[http://ec.europa.eu/governance/docs/comm\\_simple\\_en.pdf](http://ec.europa.eu/governance/docs/comm_simple_en.pdf)> (2016, June, 21)

home affairs. While defining conditions and criteria for membership in the European Union, the European Council stated that membership includes accepting the rights and obligations of both existing and potential, community system and institutional framework, known as the Community *acquis*. It includes: the content, principles and political objectives of the treaties including Maastricht Treaty; legislation adopted with the aim of implementation of treaties; the case law of the Court of Justice; declarations and resolutions adopted by the Community; international treaties and agreements between the Member States relating to the activities of the community.

In the EU Commission Communication of 10 May 2004 “European Neighbourhood Policy, The strategic document” *acquis* term used in the context of Libya’s full rights participation in the Barcelona process, under the condition of full adoption by country of Barcelona *acquis*. The use of this term is also associated with the implementation of treaties on partnership and cooperation and association agreements. It is emphasized that the approximation of the laws and regulations of neighbouring countries will be based on mutually agreed priorities, focusing on elements of the *acquis*, which primarily encourage trade and economic integration, counting the economic structure of the partner country and the current level of harmonization of its legislation with the EU legislation<sup>1</sup>.

It is worth mentioning that at the EU Commission website *acquis* is interpreted as the body of common rights and obligations that is binding on all the EU Member States and comprises: the content, principles and political objectives of the founding treaties of the EU; EU secondary legislation adopted pursuant to the Treaties of the EU; the case law of the Court of Justice; declarations and resolutions adopted by the EU; legal instruments under the Common Foreign and Security Policy; international agreements entered into by the member states among themselves within the sphere of the Union's activities and the international agreements concluded by the EU with the third countries<sup>2</sup>.

Therefore, candidate countries have to accept the *acquis* before they can join the EU and make EU law part of their own national legislation. Consequently, adoption and implementation of the *acquis* are the bases of the accession negotiations.

In other words, in adopted by the institutions EU documents revealed the content of the EU *acquis* through the prism of conformity and application of its provisions by the candidate countries for EU accession.

This means, that the EU Commission and the European Council consider *acquis* not only as an internal area of the EU but as the prospect of the conformity of the third countries legislation with the EU *acquis* and its admissibility. This affirms the external part of the EU *acquis*.

According to the Commission's Communication EU passiveness of the process of simplification and codification of EU legislation is obstructing the process of developing a common approach to determine the scope and meaning of *acquis*<sup>3</sup>.

Furthermore, the external component of the EU *acquis* is evidenced by the international agreements concluded by the European Union with third countries in the form of association and partnership agreements. Most of them include provisions for the approximation of legislation, which provides for the approximation of laws of third countries to the EU *acquis*. For example, provisions on the approximation of legislation in Stabilisation and Association Agreements between the EU and the Balkan countries provide a two-stage process of approximation of legislation. The first stage of the process aims the approximation of national legislation of the Balkan countries with certain fundamental elements of the *acquis* in the area of the EU internal market and other areas related to trade. In this case, the successful voluntary implementation of the *acquis* is a key prerequisite for liberalisation of access to the EU of the Balkan countries goods and services.

Association Agreement between the EU and Georgia on June 27, 2014, provides an obligation of Georgia to convergence its national legislation with the EU *acquis*<sup>4</sup>. In particular, Georgia has gradually

<sup>1</sup> Муравйов, В.І. (2015). *Європейське право: право Європейського Союзу*. Київ: Ін Юре.

<sup>2</sup> Cremona, M. (1998). *The European Union as an International Actor: Issues of Flexibility and Linkage*. EFA Rev, 86.

<sup>3</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions «Updating and simplifying the Community *acquis*» (2003). <[http://ec.europa.eu/governance/docs/comm\\_simple\\_en.pdf](http://ec.europa.eu/governance/docs/comm_simple_en.pdf)> (2016, June, 21).

<sup>4</sup> Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part. (30.8.2014). <[http://eeas.europa.eu/georgia/pdf/eu-ge\\_aa-dcfta\\_en.pdf](http://eeas.europa.eu/georgia/pdf/eu-ge_aa-dcfta_en.pdf)> (2016, June, 21).

harmonised technical regulations and standards with the EU acquis (article 47); adapt their national legislation on public procurement (art. 141) and statistic issues (art. 286) in accordance with the EU acquis.

The same condition included in signed on June 27, 2014 the Association Agreement between the EU and Moldova<sup>1</sup>. Thus, the scope of statistics (art. 41), public procurement (art. 152), technical regulations and standards (art. 173), aviation (art. 10 Annex) is subject to compliance with the EU acquis.

Much more areas to comply with the EU acquis, defined by the Association Agreement between Ukraine, on one hand, and the European Union and its Member States, on the other hand (hereinafter - AA)<sup>2</sup> signed on 27 June 2014 and ratified by Verkhovna Rada of Ukraine and the European parliament on 16 September 2014.

In particular, in the document were established areas of adaptation of the national legislation of Ukraine with the EU acquis. Thus, Ukraine must implement the provisions of the EU acquis in areas related to technical regulations, standards and assessment of the conformity with EU technical regulations and systems of standardization, metrology, accreditation, works on the assessment and market supervision of the EU (art. 56); gradually bring existing and future legislation on public procurement in accordance with the EU acquis in the area of public procurement (art. 148, 153); to approximate the competition law with the EU acquis (art. 256); to approximate the legislation on environmental protection and labor, policies and priorities for sustainable development with the EU acquis (art. 290); to strengthen cooperation on the issues of statistics, taking into account the EU acquis in statistics area based on the national development strategies of the Ukrainian statistical system and the development of the European Statistical System (art. 355, 358).

Also, Ukraine is obliged to bring its legislation in accordance with the EU acquis on information society and electronic communications as defined in Annex XVII-3 (“Rules applicable to telecommunications services”) (art. 394); ensure mutual experience exchange and provide support for the implementation of sustainable fishing policy based on the priority areas of the EU acquis in this area (art. 410); to approximate legislation to the EU acquis in the field of the consumer protection (art. 415, 416, 417) and in the area of infectious diseases, blood services, transplantation of tissues and cells and in tobacco area (art. 428).

Due to the document adaptation of the Ukrainian current legislation with the EU acquis started from the date of signing of the agreement on June 27, 2014, and shall gradually spread to all elements of the EU acquis listed in Annex XVII to the AA (articles 114, 124, 133).

In addition to the EU institutions, its own contribute to the interpretation of the “acquis communautaire” did the Court of Justice. In particular, in joint cases 80 and 81/77 *Commissionnaires Reunis et Ramel* [1978] the Court of Justice referred to the acquis communautaire as the heritage of the Community on the market merger<sup>3</sup>. However, as was demonstrated by the practice, the role of the Court of Justice in the development of the doctrine of the common heritage of the European Union is negligible.

Therefore, governed by the provisions stipulated by the founding treaties, legal acts of the EU institutions as well as the case law of the Court of Justice, we are going to define the content, structure and scope of the EU acquis concept.

Taking into account the complex nature of the EU acquis concept, we suggest that as the basis of the EU legal order, acquis is a body of laws, judicial decisions, doctrinal concepts, guidelines, agreements etc. that arose during the existence of the European integration associations. Such laws should be unconditionally recognised by the Member States for the effective implementation of its obligations arising from the membership in the European Union. Concerning third countries, the acquis is an essential tool in the process of their preparation for the EU accession and implementation of the acquis is a prerequisite for the strengthening of the economic and political cooperation between the EU and third countries.

<sup>1</sup> Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part (30.8.2014). <[http://eur-lex.europa.eu/legal-content/ro/TXT/?uri=uriserv:OJ.L\\_.2014.260.01.0004.01.ENG](http://eur-lex.europa.eu/legal-content/ro/TXT/?uri=uriserv:OJ.L_.2014.260.01.0004.01.ENG)> (2016, June, 21).

<sup>2</sup> Association Agreement between the European Union and its Member States, of the one Part, and Ukraine, of the other Part (15.05.2013). <[http://www.europarl.europa.eu/RegData/docs\\_autres\\_institutions/commission\\_europeenne/com/2013/0290/COM\\_COM\(2013\)0290\(PAR2\)\\_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2013/0290/COM_COM(2013)0290(PAR2)_EN.pdf)> (2016, June, 21)

<sup>3</sup> Joined Cases 80 & 81/77, *Société les Commissionnaires Réunis S.a.r.l. v. Receveur des Douanes; S.a.r.l. Les Fils de Henri Ramel v. Receveur des Douanes*, [1978] ECR 927 (French Tax on Italian Wines). <<http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX%3A61977CJ0080>> (2016, June, 21)

Acquis of the European Union has an internal and external component. The internal part of acquis implies unconditional compliance by EU Member States with legal acts adopted by EU institutions in the process of European integration. The external component of the acquis means recognition and application of the common heritage of all European Union by the third countries willing to join the EU. The legal instruments of the acquis external component are adopted with the third countries international agreements in the form of association agreements, agreements on association and stabilisation, etc.

Overall, the EU policy is aimed at the maintenance and further development of the EU acquis. For the realisation and proper implementation of the growing system of mutual and common rules and procedures, Member States should be properly organisationally equipped and administered by the relevant institutions, which must comply with the EU acquis in the defined area.

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