

Kseniia Smyrnova, ScD in Law

Iryna Letunovska, PhD in Philology

Taras Shevchenko National University of Kyiv, Ukraine

EU-UKRAINE ASSOCIATION AGREEMENT: LEGAL TERMINOLOGY AND IMPLEMENTATION CHALLENGES

The article focuses on issues relating implementation EU-Ukraine Association Agreement due to the process of harmonization of Ukrainian legislation. Research of legal foundations to regulate the EU's relations with third countries is important both for national legal science and international legal practice of Ukraine. The most important instrument of the impact of the EU law on the internal legal order of Ukraine is harmonization of legislation. In relations between the EU and Ukraine the compatibility of the Ukrainian legislation with EU law can be achieved at the level of international obligations and the level of EU obligations. With the aim of implementation of EU-Ukraine AA in good faith manner including the assessments of regulatory approximation the necessity of establishment of the Legal Terminology Center was proved.

Key words: EU, Ukraine, Association Agreement, *acquis*, implementation, approximation, harmonization.

Last decade of XX century was a critical, fateful page of Ukrainian contemporary history. The centuries-old struggle of Ukrainian people for freedom and independence resulted in the formation of the independent state, opened the way for joining Europe and creating a civilized and democratic society. Under these conditions the geopolitics for our young country acquires additional, even more important weight determined by some objective factors. Ukraine has chosen its strategic direction, namely the integration into European economic, political and legal space. Joining the European Union is defined as the main priority and strategic objective of Ukraine.

The importance of Ukraine's European integration consists in the fact that Ukrainian state solves a wide range of problems arising out of the need of modern geopolitical choice. The geopolitical future of Ukraine will depend on its orientation in the political environment - interstate relations especially with neighbouring countries, as well as on identified priorities.

Thematic justification of international legal aspects of Ukraine's European integration consists in the fact that Ukrainian state solves a wide range of problems facing them due to the need of modern geopolitical choice. Geopolitical future of the country will depend on how it is oriented in the environment, on interstate relations especially with neighbouring countries, as well as on identified priorities.

Legal issues on relations regulation between Ukraine and the EU were researched by Ukrainian scientists: M.Buromenskyi, O.Hrinenko¹, V.Kopiyka², M.Mykiyevych³, V.Muravyov⁴, R.Petrov⁵ and others. Western European doctrine also paid a great attention to these issues (M. Cremona⁶, C. Hillion⁷, Guillaume Van der Loo¹, P. Van Elsuwege², A. Ott & K., Inglis³, K. Wolczuck⁴, etc). The issue of

¹ Грінченко, О.О. (2011). *Міжнародно-правове регулювання зовнішніх зносин Європейського Союзу: нормативний аспект*. Київ: Фенікс.

² Копійка, В.В. (2005). *Європейський Союз: Досвід розширення і Україна*. Київ: Юридична думка.

³ Микієвич, М.М. (2007). *Правові засади організації та діяльності Європейського Союзу у сфері зовнішньої політики та безпеки*: автореф. дис.... д-ра юрид. наук: спец. 12.00.11 «Міжнародне право». Київ.

⁴ Муравйов, В.І. (заг. ред.) (2015). *Європейське право: право Європейського Союзу*. Київ: Ін Юре.

⁵ Petrov, R. (2015). Constitutional Challenges for the Implementation of Association Agreements between the EU and Ukraine, Moldova and Georgia. *European Public Law*, 21(2), 241–253.

⁶ Cremona, M. (2004). The European Neighbourhood Policy: Legal and Institutional Issues *Center on Democracy, Development, and the Rule of Law, Stanford Institute for International Studies, Working paper, No.25*, 27.

⁷ Hillion, C. (2007). Mapping-Out the New Contractual Relations between the European Union and Its Neighbours: Learning from the EU-Ukraine «Enhanced Agreement». *European Foreign Affairs Review*, 12(2), 169-182.

of establishing the association between Ukraine and the EU was raised in the works of the following scientists - I. Berezovska⁵, J. Kostyuchenko⁶, N. Mushak and others. However, new realities of cooperation between Ukraine and the EU require further study of this issue. Since signing the Association Agreement Ukraine has begun a new phase of European integration process.

The aim of this paper is to review some of the basic documents on Ukraine's integration into the European Union and indicate the most urgent problems that must be solved in the course of promoting the Ukrainian nation and state into the European legal area. So the main goal of this article is to analyze main challenges within the implementation of the EU-Ukraine Association Agreement (AA) from legal and linguistic terminology views.

The research of legal foundations regulating the EU's relations with third countries is important both for national legal science and international legal practice of Ukraine. It is significant to determine the nature and content of organizational and legal foundations for the regulation of relations with third countries, as well as to clarify the specifics of the establishment and the functioning of agreements with third countries. The research of nature and peculiarities of integration processes of legal regulation in the EU is important, primarily for the definition of optimum legal forms and mechanisms of Ukraine's integration into the European Union.

Integration processes in different regions and different continents between countries with different legal traditions differ in rate, content and intensity. An obligatory condition of integration processes in the world is compatibility of legal, economic, political systems and corresponding synchronicity of legal, economic, social and political transformation of the states which unite.

The establishment of common legal area for regulating international relations through the harmonization of requirements to international and national law is an objective necessity that requires focused and coordinated activities of different states and international organizations. The study of convergence features of Ukrainian legal system and the EU law should be considered as an important part of efforts towards gradual integration of Ukraine into European political, economic and legal area.

Recently, much attention of the researchers has been focused on the law of the European Union. The European Union is, at the present stage, the most developed form of integration of the countries that transferred part of their sovereign rights to supranational institutions. The harmonization of Ukrainian legislation and that of the EU means the convergence of the national legal system and its subsystems with the EU legal system and the requirements of international legal standards⁷.

The EU-Ukraine Association Agreement⁸ that was ratified during an unprecedented synchronized session by both the European Parliament and the Verkhovna Rada on 16 September 2014, (essentially) has the objective to establish a unique form of political association and economic integration between Ukraine and the EU. EU-Ukraine AA belongs to the selected group of «integration-oriented agreements», i. e., agreements including principles, concepts and provisions of EU law that are to be interpreted and applied as if the third State is part of the EU⁹.

In January 2016 Ukraine's Deep and Comprehensive Free Trade Agreement (DCFTA) with the EU

¹ Van der Loo, G., Van Elsuwege, P., Petrov, R. (2014). The EU-Ukraine Association Agreement. Assessment of an Innovative Legal Instrument. *EUI Working Papers, Law 2014/19*.

² Van Elsuwege, P., Petrov, R. (eds.). (2014). Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union. *Towards a Common Regulatory Space?*. Routledge, Oxon, 13-21.

³ Ott & Inglis, K. (eds.). (2002). *Handbook on European enlargement. A Commentary on the Enlargement Process*. T.M.C. Asser Institute, The Hague.

⁴ Wolczuck, K. (2009). Implementation without Coordination: The Impact of EU Conditionality on Ukraine under the European Neighbourhood Policy. *Europe-Asia Studies*, 61(2), 187-211.

⁵ Березовська, І.А. (2013). Гармонізація законодавства України щодо технічних стандартів з правом Євросоюзу в контексті Угоди про асоціацію. *Право України*, 8, 184-200.

⁶ Костюченко, Я.М. (2011). *Правове регулювання співробітництва України та Європейського Союзу*. Київ: LAT&K.

⁷ Пархоменко, Н.М. (2012). Гармонізація законодавства України з європейським та міжнародним правом: методи, етапи, види. *Часопис Київського університету права*, 1, 338-342.

⁸ Муравйов, В.І. (2013). *Зібрання актів європейського права*. Київ: Ред.журн. «Право України».

⁹ The expression «integration-oriented agreements» is borrowed from Marc Maresceau. See: Maresceau, M. (2013). *Les accords d'intégration dans les relations de proximité de l'Union européenne. Les frontières de l'Union européenne*. Bruxelles: Bruylant, 151-92.

came into force¹. One of the most complex accords since the Treaty of Lisbon, it envisages a reciprocal and gradual opening of the two parties' markets. Implementation requires Kyiv to carry out extensive legal approximation across key economic sectors and many in Ukraine hope the agreement will help transform the country into a modern economy.

At the heart of the EU-Ukraine AA, especially of the DCFTA, is the obligation on Ukraine to apply, implement or incorporate in its domestic legal order a predetermined selection of EU *acquis*. It is clear that legislative approximation as foreseen in the EU-Ukraine AA/DCFTA is not an objective on its own but is an instrument to achieve economic integration.

Each DCFTA approximation clause imposes on Ukraine a strict *obligation* to 'approximate' to a predetermined selection of EU *acquis*. Every DCFTA approximation clause states that Ukraine *shall* act. The DCFTA has strict deadlines for legislative approximation². Only Title V on Economic and Sector Cooperation includes several non-binding 'best endeavours' approximation commitments.

However, the type of action that Ukraine is obliged to undertake in the legislative approximation process is referred to in the DCFTA by many different legal terms. In its first documents that proposed and conceptualized the ENP/EaP DCFTAs, the Commission used a mishmash of legal terms such as «alignment with the EU *acquis*», «convergence in regulatory areas», «approximation of EU rules and practices», «regulatory approximation» and «adoption of elements of the EU *acquis*». Norms of the AA & references to the EU directives & regulations illustrate that also in the final DCFTA, different legal terms are used interchangeably to define the specific approximation obligations. The overall process of Ukraine's approximation to the EU law under the DCFTA – and the AA as such – is referred to in the preamble and objectives (Article 1) of the AA as «legislative approximation» or «regulatory approximation»³.

However, almost every DCFTA chapter uses different legal terminology in its approximation clauses. According to this patchwork of legal concepts, Ukraine must «approximate to», «align to» or «achieve conformity with» the EU *acquis* or make its domestic legislation «compatible» with the EU *acquis* or «incorporate» it in its domestic legal order. Moreover, it was even illustrated in the analysis of the TBT chapter that one single DCFTA provision can include several different approximation terms⁴. These legal terms are increasingly being used interchangeably by the EU in its external – especially neighborhood – relations⁵.

As a result clear or consistent language in the process of integration was lacking. For example, in its different policy papers on the DCFTAs, the Commission referred to the process of «alignment with EU standards», «regulatory convergence», «progressive approximation of EU rules and practices» and «regulatory alignment». The standardization of legal terminology shall result in a situation in which Ukrainian legislation would apply legal concepts and terms that meet European and generally defined legal standards.

Considering this, it is important to develop appropriate «official» legal dictionaries, suitable for the use in the legislative process, which would contain the list of legal terms and disclose the contents of the main legal terms, concepts and categories. To this end, we consider it expedient to establish Legal Terminology Center and involve both lawyers and linguists to work in it. But the primary problem to be solved is the normalization of legal terminology because it is the starting point in adapting the Ukrainian law to the EU law.

If the terminology used in those two legal systems is not standardized, understanding in the legal field will be practically impossible. So it is important to develop dictionaries of terms and concepts. The process of translation is significant but when it comes to such important legal documents as the EU-Ukraine

¹ As of January 2016 the Agreement has been applied provisionally (Titles III, V, VI and VII, and the related Annexes and Protocols have been provisionally applied since 1 November 2014, while Title IV has been applied from 1 January 2016), as far as the provisions concern EU competences. Provisions shall formally come into force upon ratification of the Agreement by all signatories.

² Van der Loo, G. (2016). *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area*. Leiden, Brill Nijhoff.

³ Also the general approximation clause in the Final Provisions (Art. 474) refers to the process of «legislative» and «regulatory» approximation.

⁴ Art. 56 EU-Ukraine AA.

⁵ Matta, A. (2014). Differentiating the methods of *acquis* export. The case of the Eastern neighbourhood and Russia', in Van Elsuwege P., Petrov R. (eds.), *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union. Towards a Common Regulatory Space?* Routledge, Oxon, 21–45.

AA the concept of translation must be substituted by localization, i.e. adaptation of the previously translated the AA text to the specific country, Ukraine.

For the purpose of implementing the EU-Ukraine AA in good faith manner, it is necessary to include the assessments of regulatory approximation of the unification of legal terminology. In fact it is a core element of the whole enforcement process. Special attention in the AA is paid to the interpretation of the *acquis*. For example, in Art. 264 it is stipulated that the Parties will apply the AA by using the criteria arising from the application of articles of the Treaty of the Functioning of the European Union as sources of interpretation of the *acquis*. The process of the application of the AA includes the relevant jurisprudence of the Court of Justice of the European Union, as well as relevant secondary legislation, frameworks, guidelines and other administrative acts in force in the Union. In this issue the lack of translation of case law into Ukrainian will prevent judges from adapting their decisions to best European standards and might lead to the spontaneous & inaccurate implementation of AA provisions.

In this view, it will be crucial that Ukraine will develop, jointly with the EU institutions, a kind of a National Programme for the adaptation of the *acquis* (NPAA), which is used in the pre-accession policy, in order to prioritize and manage the implementation process of these approximation obligations. With the latest update of the Association Agenda, the EU and Ukraine tried to develop a document which has to «prepare and facilitate the implementation of the Association Agreement» and which makes «a list of priorities for joint work on sector by sector basis»¹. However, this document is rather general and does not define clear guidelines for Ukraine. Noteworthy, the Government of Ukraine adopted a «Plan of implementation of the Association Agreement on 17 September 2014»². This plan, which is developed with the input of the EU Delegation in Ukraine, aims to provide an overall strategy for the implementation of the EU-Ukraine AA for the period 2014–2017.

The enormous amount of EU legislation that Ukraine has to implement or «incorporate in its domestic legal order» also raises questions regarding the legitimacy of the AA's approximation exercise from a Ukrainian constitutional perspective³.

The main EU legal development lines which are marked out by both domestic and foreign scholars⁴ are as follows:

- Priority of the legal system of the European Community in relation to the legal systems of (the) member states, that is provided by the European Court invested with the exceptional powers to interpret the European law;
- Integral combination and better significance of (the) legal acts of (the) international governance structures (Euratom, ECSC, etc.) within the EU legal system along with the EU regulations, and gradual development of (the) unwritten case-law developed by the European Court⁵;

Relying on the interpretation of European legal integration as a process of unification and mutual adaptation of the national legal systems we can point out its main stages as follows: 1) the approximation of national legal systems to European international legal systems by prior adaptation of the domestic law; 2) their entry to the European international legal systems within a single European legal space and their final legal adaptation.

Basic Ukrainian problems of European integration should be solved in the following areas.

1. Improving and strengthening public control over the process of European integration of Ukraine, ensuring effective interaction between government and civil society, information transparency of government through conferences with the representatives of non-governmental organizations, roundtable discussions and other scientific and communication activities on topical issues of European integration of Ukraine through informing public on the issues of European integration which plays a crucial role in the integration process.

2. Adopting of legal acts aimed at adaptation of Ukraine's legislation to the law of the European

¹ E EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement (2015). *U-Ukraine Association Council*.

² Government approves the Plan of Implementation of the Association Agreement with the EU', *press release*, 17 September 2014. *Government of Ukraine*.

³ Petrov, R. (2015). Constitutional Challenges for the Implementation of Association Agreements between the EU and Ukraine, Moldova and Georgia. *European Public Law*, 21(2), 241–253.

⁴ Jacobson, B., Laegreid, P., Pedersen, P. (2004). *Europeanization and Transnational States. Comparing Nordic Gavernets*. London.

⁵ Fligstein, N., Eurodash, P. (2008). *The EU. European Identity and Future of Europe*. Oxford.

Union. For that end, it is necessary to develop an effective mechanism for the implementation of legal acts, take measures to prepare and enforce the legislation of Ukraine, implement an action plan for the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, as of 2014-2017 years approved by Order No. 847-p of the Cabinet of Ministers of Ukraine dated September 17, 2014.

3. Taking into account the experience of European countries in their integration into the European Union, it is useful to define the aspects of European integration based on the experience of Central European countries, members of the EU8 group (Poland, Hungary, Czech Republic, Slovak Republic, Slovenia, Latvia, Lithuania, Estonia, Cyprus and Malta).

4. Promoting the Ukrainian nation and state in Europe and the world; addressing the pressing issues of the ratio of European and national identity; orientation of the strategic course of Ukraine to European values should be implemented through the formation of its own national identity, preserving cultural archetype of Ukraine and the status of unity with simultaneous formation of a new national and political identity and mentality. The strategic course of Ukraine's integration into the EU also determines the need to focus on European values, such as generally accepted democracy, market economy, and social and legal state.

Analysis of the EU-Ukraine AA allowed to define advantages and possibilities of the Agreement ratification for Ukraine as well as challenges and risks, such as rising prices of some categories of goods, possible bankruptcy of some non-competitive Ukrainian producers that can cause unemployment in the relevant fields; difficulties related to achievement of compliance with the standards of technical trade barriers (TTB) and sanitary and phyto-sanitary measures (SPM), need in financial expenses (both by state and business) to fulfill reforms and achieve compliance; need in training and obtaining the required qualification by Ukrainian workers.

The main directions of further European integration of Ukraine include the development of the National Implementation Program for the Association Agreement, Ukraine's obligations in terms of preparation for a visa-free regime with the EU, establishment of the mechanism for coordination of the integration policy. Ukraine considers the process of European integration as a means of systematic internal reforms which have to bring our country to the European standards of democracy and ensure its rightful place in the European economy and help turn into a powerful, advanced and high-tech state.

So, the most effective factor that will increase support for European integration in the Ukrainian society is domestic reforms and their positive effect notable for ordinary citizens.

Regarding prospects for cooperation between Ukraine and the EU it can be concluded that the depth of European integration depends entirely on the ability and willingness of Ukraine to implement political, economic and legal transformation required to meet the EU membership criteria.

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