

_УДК 341.171

EU-UKRAINE ASSOCIATION AGREEMENT IMPLEMENTATION COORDINATION MECHANISM

КООРДИНАЦІЙНИЙ МЕХАНІЗМ ІМПЛЕМЕНТАЦІЇ УГОДИ ПРО АСОЦІАЦІЮ МІЖ УКРАЇНОЮ ТА ЄС

КООРДИНАЦИОННЫЙ МЕХАНИЗМ ИМПЛЕМЕНТАЦИИ СОГЛАШЕНИЯ ОБ АССОЦИАЦИИ МЕЖДУ УКРАИНОЙ И ЕС

Smyrnova K.

Doctor of Juridical Sciences (Dr.hab), Professor, Professor of the Chair of Comparative and European Law of the Institute of International Relations of Taras Shevchenko National University of Kyiv, Ukraine. E-mail: pep.skv@clouds.iir.edu.ua.

Sviatun O.

PhD in Law, Associate Professor, Associate Professor of the Chair of Comparative and European Law of the Institute of International Relations of Taras Shevchenko National University of Kyiv, Ukraine. E-mail: pep.sov@clouds.iir.edu.ua

Смирнова К.В.

Доктор юридичних наук, професор, професор кафедри порівняльного і європейського права Інституту міжнародних відносин Київського пер.skv@clouds.iir.edu.ua.

Святун О.В.

Кандидат юридичних наук, доцент, доцент кафедри порівняльного і європейського права Інституту міжнародних відносин Київського національного університету імені Тараса Шевченка. E-mail: pep.sov@clouds.iir.edu.ua.

Смирнова К.В.

Доктор юридических наук, профессор, профессор кафедры сравнительного и европейского права Института международных отношений Киевского национального университета имени Тараса Шевченко. E-mail: pep.skv@clouds.iir.edu.ua.

Святун Е.В.

Кандидат юридических наук, доцент, доцент кафедры сравнительного и европейского права Института международных отношений Киевского национального университета имени Тараса Шевченко. E-mail: pep.sov@clouds.iir.edu.ua.

Annotation. *The article is devoted to the analysis of the legal nature of the implementation mechanism of the EU-Ukraine Association Agreement in the legal order of Ukraine as well as coordination mechanism of its implementation. It is noted that the principles and provisions enshrined in the Association Agreement become the integral part of the contemporary legal order of Ukraine. Nevertheless, due to the peculiarities of the Agreement, Ukrainian authorities introduced special implementation coordination mechanism. It is pointed out that all major central authorities are included in the implementation mechanism and the Government Office for the Coordination of European and Euro-Atlantic Integration being on the forefront of these activities.*

It is underlined that the amendments introduced to the Constitution of Ukraine in 2019 played the unprecedented significance for the implementation of the Association Agreement. These amendments provided for inevitable foreign policy course of Ukraine for European and Euro-Atlantic integration.

Special attention is paid to the challenges that authorities are facing in the process of preparation for the implementation of the Agreement. The idea of National Implementation

Program's (NIP) development was supported and the proposals were made regarding the policy issues that need to be included into the NIP.

Key words: *European Union, Association Agreement, implementation, coordination, the Government Office for the Coordination of European and Euro-Atlantic Integration.*

Анотація. *Стаття присвячена аналізу правової природи механізму імплементації Угоди про асоціацію між Україною та ЄС у правовому порядку України, а також механізму координації цього процесу. Зазначається, що принципи та положення, закріплені в Угоді про асоціацію, стають невід'ємною частиною сучасного правового порядку України. Проте, через особливості Угоди, українські органи влади запровадили спеціальний механізм координації імплементації. Вказується, що всі основні центральні органи влади включені в механізм імплементації, а Урядовий офіс координації європейської та євроатлантичної інтеграції перебуває на передовій лінії цих заходів.*

Підкреслюється, що зміни, внесені до Конституції України у 2019 році, відіграють безпрецедентне значення для імплементації Угоди про асоціацію, оскільки вони закріпили неминучий зовнішньополітичний курс України на європейську та євроатлантичну інтеграцію.

Особлива увага приділяється викликам, з якими стикаються органи влади в процесі підготовки до імплементації Угоди. Була підтримана ідея розробки Національної програми імплементації (НІП), а також були запропоновані положення та сфери діяльності, які необхідно включити до НІП.

Ключові слова: *Європейський Союз, Угода про асоціацію, імплементація, координація, Урядовий офіс координації європейської та євроатлантичної інтеграції.*

Аннотация. *Статья посвящена анализу правовой природы механизма имплементации Соглашения об ассоциации между Украиной и ЕС в правовом порядке Украины, а также механизма координации этого процесса. Отмечается, что принципы и положения, закрепленные в Соглашении об ассоциации, становятся неотъемлемой частью современного правового порядка Украины. Однако, из-за особенностей Соглашения, украинские органы власти ввели специальный механизм координации имплементации. Указывается, что все основные центральные органы власти включены в механизм имплементации, а Правительственный офис координации европейской и евроатлантической интеграции находится на передовой линии этих мероприятий.*

Подчеркивается, что изменения, внесенные в Конституцию Украины в 2019 году, имеют беспрецедентное значение для имплементации Соглашения об ассоциации, поскольку они закрепили неизбежный внешнеполитический курс Украины на европейскую и евроатлантическую интеграцию.

Особое внимание уделяется вызовам, с которыми сталкиваются органы власти в процессе подготовки к имплементации Соглашения. Была поддержана идея разработки Национальной программы имплементации (НИП), а также были предложены положения и сферы деятельности, которые необходимо включить в НИП.

Ключевые слова: *Европейский Союз, Соглашение об ассоциации, имплементация, координация, Правительственный офис координации европейской и евроатлантической интеграции.*

With the support of the Erasmus+ Programme of the European Union within the Jean Monnet Centre of Excellence Project № 611625-EPP-1-2019-1-UA-EPPJMO-CoE “Advancing European Studies in Ukraine: Interdisciplinary Approach”.

Target setting. *The new generation of the EU Association Agreements with the EU's eastern neighbours substituted outdated partnership agreements which were concluded in 1994–1998. The solemn signing of the AAs between the EU and Ukraine, Moldova and Georgia took place at the*

EU Summit in Brussels on 27th June 2014, followed by ratifications by national parliaments in Moldova, Georgia and Ukraine. Signing and ratification of the Association Agreement between Ukraine and the European Union (AA) [*European Atomic Energy Community, European Union, The Member States, Ukraine: 2014*] is undoubtedly an important event both for domestic political development, and for relations with the EU. Towards the signing of EU-Ukraine Association Agreement there were external, as well as internal Ukrainian challenges due to the domestic Ukrainian political reforms and changings of international policy.

In January 2016 Ukraine's Deep and Comprehensive Free Trade Agreement (DCFTA) with the EU came into force. 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. The whole text of the EU-Ukraine AA entered into force since September 1, 2017.

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 EU [*Maresceau Marc: 2013: 151–92*].

Considering the wide range of issues governed by the EU-Ukraine Association Agreement, its provisions affect almost all the spheres of Ukrainian society. Most importantly, this Agreement provides the outer framework for implanting the European standards and for urgent internal systemic reforms in Ukraine. There should be a thorough and systematic approach to the implementation mechanism of the most ambitious bilateral international treaty in Ukraine's history.

Implementation of the Association Agreement promotes approaching of the Ukrainian regulatory environment to that of the EU, and therefore - not only the customs duties are eliminated, but non-tariff trade barriers as well, that contribute to integration of Ukraine into the European economic and legal field in general, and into the internal market of EU and the European Economic Area, in particular.

One key provision underpinning the Association Agreement sets out the concept of gradual approximation of Ukraine's legislation to EU norms and standards. Specific timelines are set within which Ukraine should approximate its legislations to the relevant EU legislation. These timelines vary between 2 and 10 years after the entry into force of the Agreement [*Van Elsuwege P.: 2015: 9-16*].

Considering the afore, the Association Agreement induces to implementation of measures on administrative modernization in the system of law enforcement and judicial authorities in order to improve their effectiveness, to guarantee the independence and impartiality, as well as to develop measures on fight against corruption.

The aim of the article. The aim of this article is to highlight the theoretical and practical problems of the implementation of the EU-Ukraine Association Agreement. The effective activities in the abovementioned sphere need special coordination mechanism and revision of the existing action plan with the view of development of the special National implementation program.

Analysis of latest researches and publications. The issues of the association between Ukraine and the European Union were elucidated mainly in the latest works by I. Berezovska [*Berezovska I.: 2011: 95-100*], Ya. Kostiuchenko [*Kostiuchenko Ya.: 2015: 42-52*], V. Muraviov [*Muraviov V. : 2015: 17-32*], R. Petrov [*Petrov R.: 2015: 33-41*]. Unfortunately, so far, the Ukrainian and foreign publications have not paid enough attention to research of the efficiency of the AA implementation coordination mechanisms. However, new challenges connected with implementation of the EU - Ukraine AA require special research on this issue.

Presentation of basic material of the research.

Peculiarities of EU-Ukraine AA

Furthermore, the AA is founded on a strict conditionality approach, which links the third country's performance and the deepening of its integration with the EU.

The AAs are not just ordinary international agreements, but complex framework legal structure that contain not only specific norms that govern the functioning of the association relations

and DCFTA between the EU and Ukraine, but also envisages a possibility of application of a vast scope of the pre-signature and post-signature EU acquis within the legal system of the eastern neighbouring countries, in particular Ukraine. The scope of the EU acquis to be applied by Ukraine covers not only primary and secondary EU laws, but also EU legal principles, common values, and even case law of the ECJ, as well as specific methods of interpretation of the relevant EU acquis within legal system. Hitherto, the Ukrainian legal system has not faced the necessity to implement and effectively apply a dynamic legal heritage of an international supranational organization. Subsequently, adherence of Ukraine, to the dynamic EU acquis via the AA will encapsulate a plethora of challenges to national legal order.

Implementation and application of the EU-Ukraine AA within the legal system of Ukraine is governed by national constitutional laws. Ukraine has to develop its own solutions to the problem of legislation approximation with EU law, because realization of this mechanism provides opportunities for EU law action under national legal order. This applies primarily to the cases of EU directives transposition into Ukrainian domestic legislation under the Association Agreement, and direct application of EU law's certain provisions at national level. However, it should be considered that the process of approximation of the legislation of Ukraine with the law of the European integration organizations has its own characteristics due to the level of relations between partners.

The fact that the Association Agreement does not provide preparation for Ukraine's accession to the European Union defines the boundaries of cooperation in legal field and particularly in legislation approximation. On the other hand, as practice shows approximation of the implementation at EU level as well as in Union relations with other countries (especially with those, which are under the Association Agreement), it is almost impossible to clear definition of process boundaries. Therefore, Ukraine has enough opportunities for forcing or, alternatively, suspending the legislation harmonizing process with EU law. This relates directly to goals, means and organizational and legal mechanism for harmonizing.

EU-Ukraine AA's coordination mechanism (competences & duties of state authorities)

The question of the existence of an effective body for European integration is central to ensuring the success of the process as a whole. So, it is necessary to analyze the system of central bodies of state power, which are empowered in the sphere of AA implementation.

Generally, EU-Ukraine AA implementation coordination mechanism is presented by three levels of state authorities: the President (and the competence of the Administration of the President); the Verkhovna Rada (Parliament) and the Cabinet of Ministers (the executive branch of power).

The powers of *the President of Ukraine*, envisaged by Article 106 of the Constitution of Ukraine regarding the ensuring of the state independence, national security, representing the state in international relations, administering the foreign political activity of the State, in the context of the aim of the political dialogue provided for in the Agreement (Article 4 of the Agreement):

- to deepen political association and increase political and security policy convergence and effectiveness;
- to promote international stability and security based on effective multilateralism;
- to strengthen cooperation and dialogue between the Parties on international security and crisis management, particularly in order to address global and regional challenges and key threats;
- to develop dialogue and to deepen cooperation between the Parties in the field of security and defence.

These issues covered by EU-Ukraine Summits as the forum for political dialogue and dialogue regarding policy at the highest level where the President of Ukraine participates.

Moreover, the President of Ukraine has implemented his mandate for advisory and other subsidiary bodies and services, establishing the National Council of Reforms. In accordance with the Regulation on the National Council for Reforms (Decree of the President of Ukraine dated August 13, 2014, No. 644/2014): "The decisions of the National Council for Reforms, if necessary, shall be implemented through the publication of the acts of the President of Ukraine in accordance

with the established procedure, the submission by the President of Ukraine of relevant draft laws to the Verkhovna Rada of Ukraine or taking by the appropriate members of the National Council of Reforms of public obligations to implement the right to legislative initiative, the right to initiate the adoption of acts of the Cabinet of Ministers of Ukraine and acts of the National Bank of Ukraine, which are documented by public agreements of such members of the National Council of Reforms” [President of Ukraine: 2014].

An important role here is played by the legislature of the country. The Rules of Procedure of the *Verkhovna Rada of Ukraine* stipulate that the Committee on European Integration shall consider draft laws regarding their compliance with the international legal obligations of Ukraine in the field of European integration (Article 93 of the Rules). These findings should be submitted by the Committee to the main committee responsible for reviewing the draft law within 21 days.

The institutional and functional components of the coordination system in the *executive* branch are made up of the following levels:

- the Cabinet of Ministers of Ukraine, which directs, coordinates and controls the activities of ministries and other central executive bodies;
- the Governmental Committee on European, Euro-Atlantic Integration, International Cooperation and Regional Development;
- the Government Office for the Coordination of European and Euro-Atlantic Integration of the Secretariat of the Cabinet of Ministers of Ukraine (hereinafter - the Government Office, GOCEEAI), which performs a number of functions related to the coordination, monitoring and control of the preparation and execution of program documents, examination of draft regulations, as well as functions of the secretariat of the EU-Ukraine Association Council and Association Committee;
- Deputy Ministers for European Integration and specialized units of the ministries responsible for formulating and implementing state policy in the areas of their competence, drafting legal acts in the field of European integration and their implementation, interaction with relevant structural units of EU institutions and agencies.

The Government Office (GOCEEAI) plays the leading role in institutional support of legal approximation of the Ukrainian legislation, as it currently ipso facto performs coordinating activities for approximation of legislation within the framework of the tasks of the Association Agreement implementation.

Originally it was established on August 13, 2014 by the Resolution of the Cabinet of Ministers of Ukraine No. 346 as a separate structural subdivision of the Secretariat of the Cabinet of Ministers of Ukraine. The main tasks of the Government Office are to provide the activities of the Cabinet of Ministers of Ukraine, the Prime Minister of Ukraine and the Deputy Prime Minister of Ukraine for European and Euro-Atlantic Integration. Undoubtedly, the appearance of such an institution is a progressive step, but the status and functions of the Government Office (GOCEEAI) are mainly "coordinating". In particular, the GOCEEAI does not draft legal acts, is not entitled to legislative initiative (submission of normative legal acts drafts for consideration by the Cabinet of Ministers), does not negotiate with the European counterpart at higher levels, has no right to issue instructions to other bodies of state power (only through the Prime Minister and only in exceptional cases). Its main task is to monitor the general situation what is considered to be not sufficient for the role of the sole and main coordinator of European integration in the country.

It is worth mentioning that draft legislation is being considered on a weekly basis by the Governmental Committee for European, Euro-Atlantic Integration, International Cooperation and Regional Development. Coordination of activities regarding drafting of legal acts, as well as their expertise, is carried out by the Government Office for the Coordination of European and Euro-Atlantic Integration of the Secretariat of the Cabinet of Ministers of Ukraine (GOCEEAI) [Cabinet of Ministers of Ukraine: 2017]. The Office is constantly interacting with the ministries where the positions of Deputy Ministers on European Integration were established.

The GOCEEAI also serves as a moderator between the ministries and the European Commission experts. However, precisely the ministries bear the responsibility for the quality and

timing of the implementation activities, their compliance with EU law or other international standards.

Organizational, expert-analytical and informational support of the Cabinet of Ministers of Ukraine activities in the field of European and Euro-Atlantic integration is carried out by the Government Office (GOCEEAI). In the field of European integration, the GOCEEAI has the authority to develop and materialise measures for the implementation of the Agreement, other international treaties of Ukraine and agreements between Ukraine and the European Union; cooperation between Ukraine and the European Union, as well as the Members States of the European Union in accordance with their powers under the TFEU; approximation of the Ukrainian legislation to the European Union law (EU *acquis*); implementation of international treaties of Ukraine and agreements between Ukraine and the European Union; activities of the bilateral bodies envisaged by the Agreement and other international treaties of Ukraine; the target direction of budget financing; the employment and use of international aid from the European Union and other donors aimed at supporting the implementation of tasks; informing the public; involvement of citizens in the process of adoption by the Cabinet of Ministers of Ukraine and other executive authorities of relevant legal acts.

The Government Office (GOCEEAI), in accordance with the tasks entrusted to it, conducts an expertise of draft regulations and other acts (by-laws) submitted to the Cabinet of Ministers of Ukraine for their compliance with the program documents in the field of European integration and the aims of the AA, according to the achieved results the Office drafts conclusions and recommendations and expertise of the compliance of draft legal acts, which are introduced for consideration by the Cabinet of Ministers of Ukraine, with international legal obligations of Ukraine in the field of European integration, and also taking into account the provisions of the EU law (EU *acquis*) (Paragraph 2, Article 12, Clause 4 of the Regulation on the Government Office on European and Euro-Atlantic Integration of the Secretariat of the Cabinet of Ministers of Ukraine) [Cabinet of Ministers of Ukraine: 2017].

In the coordination mechanism of ensuring the implementation of European integration issues in the central executive authorities, there is a significant progress that reveals the strong euro integration commitments of Ukraine: every ministry established the position of deputy minister for European integration, created special units responsible for the euro integration direction.

As for the central executive bodies with a special status, only three of the five bodies established special divisions, departments responsible for euro integration policy. Thus, it is necessary to create a body responsible for European integration in the State Property Fund and the Administration of the State Service for Special Communications and Information Protection of Ukraine, which would contribute to a more effective and dynamic implementation of the provisions of the Association Agreement. Representative for this purpose is the example of the National Agency of Ukraine on Civil Service where the Centre for Approximation of the Civil Service to the European Union Standards [Centre for Approximation of the Civil Service to the European Union Standards: 2020] was established. This Centre in turn ensures the organization of cooperation between the state bodies of Ukraine and the state authorities of the EU Member States in order to share experience and support in matters of public administration and approximation of Ukrainian legislation to the EU legislation [Cabinet of Ministers of Ukraine: 2008]. Therefore, the establishment of the system of bodies and units that would be responsible for the issue of European integration in central executive bodies still needs attention and refinements from the government. Particular attention should be paid to the fact that currently the most important problem is the lack of monitoring and evaluation of the Association Agreement implementation in most state bodies.

EU-Ukraine AA's implementation mechanism

The framework dimension of AA's implementation consists of the basic documents including originally adopted the Action Plan on Association Agreement Implementation for the period of 2014-2017 (approved by the Resolution of the Cabinet of Ministers No. 847-p dated 17.09.2014). The Plan provided for the task of both organizational and normative character. The tasks of normative character were described in detail in the system of implementation plans of the EU legal

acts, which were endorsed by the specific authorities of Ukraine. These implementation plans specifically defined what the ministry should do to implement qualitatively the provisions of the act of the EU law that needs to be implemented on the basis of the obligations under the Agreement.

The updated AA implementation mechanism was presented in the form of the approval by the Resolution of the Cabinet of Ministers of Ukraine dated October 25, 2017 No. 1106 of the special Action Plan on Association Agreement Implementation, which was developed by the Government Office for the Coordination of European and Euro-Atlantic Integration, together with the Ministry of Economic Development and Trade of Ukraine and other ministries, and is aimed to increase the efficiency of coordination and promotion of the European integration process [Cabinet of Ministers of Ukraine: 2014].

This Action Plan was introduced as a paper variant of tested interactive electronic program “Pulse of the Agreement”. This electronic program (data base) was elaborated by the GOCEEAI with the technical support of European donors. The public access to the “Pulse of the Agreement” was opened November 20, 2019. It reflects the current progress of implementation of measures within each year and the overall progress of implementation, starting with the provisional application of certain provisions of the Agreement in 2014 and until 2024 [Cabinet of Ministers of Ukraine: 2019].

The Action Plan is a large-scale 1199-page document. It formulates 1943 tasks covering 27 spheres. 106 authorities of Ukraine are responsible for implementing its tasks. Each of these tasks corresponds to a separate article of the Agreement or implements the established provisions of European Union law (acquis).

The implementation of the Action Plan envisages amendments to the regulatory acts and the development of new ones in order to bring Ukraine's legislation closer to the law of the European Union in accordance with the obligations under the Association Agreement between Ukraine and the European Union.

The ministries, central and local executive authorities and other bodies of state administration responsible for implementation of the Association Agreement between Ukraine and the European Union will be able to provide consistent and concerted measures to timely implement Ukraine's commitments under the Association Agreement between Ukraine and the European Union.

Monitoring system of AA's commitments is currently based on the abovementioned Action Plan by GOCEEAI staff in the form of systematization of ministry's reports on implementation.

Implementation of the Association Agreement with the EU is the basis of the reform program of the Cabinet of Ministers. That is why the Government should make every effort to successfully implement the Association Agreement as a whole. Successful implementation of the tasks will allow deepening the work of the Free Trade Area with the EU, including the most sensitive areas, namely, in terms of reducing tariff and technical barriers to trade in goods, opening access to services markets and public procurement, approximating Ukraine's legislation to EU law.

In February 2018, the Cabinet of Ministers of Ukraine together with the Verkhovna Rada of Ukraine elaborated and approved the Roadmap of legislative support for the implementation of the Association Agreement between Ukraine and the EU for 2018-2019 [Cabinet of Ministers of Ukraine: 2018]. A document was designed to intensify European integration processes in Ukraine. The Roadmap is a package of 57 draft laws to be considered by the Verkhovna Rada of Ukraine within two years.

From the procedural point of view, all institutional elements are embedded in existing structures and mechanisms, a typical example of which is the consideration of preparation issues and holding of the Association Council and Association Committee at meetings of the Government and the Government Committee respectively. In the past, these issues were considered separately at meetings of the Ukrainian parts of the bilateral bodies (the EU-Ukraine Cooperation Council and the Committee), which subsequently required additional formulation of their decisions within the framework of governmental regulatory procedures. These two distinctive features of the coordination mechanism have made it possible to avoid creating a separate legal regime for

European integration policy and lay the preconditions for its final establishment as an integral part of each area of internal public policy.

Another important element of the monitoring mechanism of the AA implementation is Reporting. Starting from 2015 the Government Office produced a few reports on this issue [Cabinet of Ministers of Ukraine: 2019]. The latest was delivered in February 2019 regarding the implementation activities in 2018. Reporting is considered rather effective way of introducing the European Commission as well as Ukrainian stakeholders and general public to the overview of the Ukrainian actions and results in the field of AA implementation. On the other hand, the Office focuses rather on the achievements that indicating problematic issues. That is why the real picture of the whole implementation process is not made public.

European integration in Constitution of Ukraine

Ukraine has chosen its strategic direction namely the integration into European economic, political and legal area. Joining the European Union is defined as the main priority and strategic objective of Ukraine at the highest state level. The Verkhovna Rada (Ukraine's Parliament) has backed amendments to the Constitution of Ukraine's path to the European Union & NATO.

On September 20, 2018, The Verkhovna Rada sent to the Constitutional Court a presidential bill amending Ukraine's Constitution regarding the strategic course of the State for obtaining full membership of Ukraine in the EU & NATO (No. 9037). On November 22, 2018, the Constitutional Court of Ukraine green-lighted this Bill. And the same day the Verkhovna Rada adopted the Bill in its first reading. These amendments to Constitution of Ukraine came into force on February 21, 2019.

These amendments focused on Ukraine's irreversible course toward European & Euro-Atlantic integration be stipulated in the preamble of the Constitution of Ukraine along with the confirmation of European identity of the Ukrainian people. Article 85 suggests defining that the powers of domestic and foreign policy, implementing the state's strategic course for obtaining full membership of Ukraine in the European Union and NATO. Article 102 is supplemented with the provision that 'the President of Ukraine is the guarantor of the implementation of the state's strategic course for obtaining Ukraine's full membership in the EU & NATO'. Article 116 is amended with a new clause, according to which the Cabinet of Ministers 'ensures the implementation of the state's strategic course for obtaining Ukraine's full membership in the EU & NATO' [Verkhovna Rada of Ukraine: 1996].

In order to ensure the irreversibility of Ukraine's European and Euro-Atlantic course, based on the third part of Article 102 of the Constitution of Ukraine the special act was adopted - Decree of President of Ukraine "European and Euro-Atlantic integration matters" №155/2019 dated April 20, 2019, that contains Action Plan for implementation of the State's strategic course towards obtaining by Ukraine of the full membership in the European Union and in the North Atlantic Treaty Organisation [President of Ukraine: 2019]. This Decree of the President of Ukraine excludes the possibility of diverting from the strategic course since it enshrines the functions and responsibilities of all authorities in Ukraine to implement this course.

Under this document the Cabinet of Ministers of Ukraine shall ensure the implementation, in cooperation with the relevant state authorities, of the Action Plan for implementation of the State's strategic course towards obtaining by Ukraine of the full membership in the European Union and in the North Atlantic Treaty Organisation, as approved by this Decree, and informing, on a quarterly basis, the President of Ukraine of the status of its implementation; and ensure the reporting on the implementation of the aforementioned Action Plan within the prescribed time periods.

The Action Plan itself consists of 31 items with various objectives for the period of 2019-2020. In particular, the Plan contains an item on the elaboration of proposals for revision of the Association Agreement between Ukraine and the EU in December this year, and during 2019-2020 for cooperation with the EU side on further trade liberalization, the conclusion of an Agreement on the Conformity Assessment and Acceptance of Industrial Goods (Agreement ACAA); integration into the EU internal markets in the fields of energy and digital economy; cooperation in the field of justice, freedom and security.

Challenges on effective EU-Ukraine AA's implementation

One of the serious challenges to be faced by the eastern neighbouring countries is the reluctance of the judiciaries in the eastern neighbouring countries to apply and effectively implement international law sources in their own judgments.

Another problem of the EU-Ukraine AA implementation is that law-making activities of the state authorities should consider the dynamic changes in the EU law, to which Ukraine is approximating its legislation. In this regard the possibility to include new dynamic norms of the EU Law to the annexes to the Agreement by the adopting of amendments. Moreover the Association Council has the competence to update or amend the Annexes [I to XLIII] to this Agreement to this effect, taking into account the evolution of EU law and applicable standards set out in international instruments deemed relevant by the Parties (Art. 463 para 3) [European Atomic Energy Community; European Union; The Member States; Ukraine: 2014].

The objective of effective implementation and application of the EU-Ukraine AA may be achieved by issuing a special implementation law that will clarify all potential conflicts of provisions of the Agreement with Ukrainian legislative acts.

For example, we can stress on the comparison of the mechanism of implementation of EU-Ukraine AA with the application of European Convention of Human Rights (ECHR), which Ukraine ratified in 1997. The situation was the following that the ratification of the ECHR by Ukraine took place by means of two laws. The first law was the law on ratification of the ECHR, wherein Ukraine recognised the jurisdiction of the European Court on Human Rights (ECtHR) [Verkhovna Rada of Ukraine: 1997]. The second law was a special one about the strict legal mechanism of application of case law of the ECtHR in Ukraine [Verkhovna Rada of Ukraine: 2006]. In accordance with the art. 17 of the Law "On Execution of Judgments and Application of Case Law of the ECtHR", judgments of the latter become the source of law in Ukrainian legal order. Nevertheless, as Petrov R. stressed and practice shows that, the rate of effective application of the ECtHR case law in Ukraine is considered as unsatisfactory and lags far behind other European countries [Committee of Ministers: 2014].

In comparison with this we can stress on another practical problematic issue of the AA implementation that comes from the application of the EU case law while interpretation of some provisions of the Treaties. We can confidently stress that the application of EU jurisprudence in the judgements of Ukrainian courts is controversial and ambiguous. One thing that has become unique, from our point of view, is that the application of EU law case law can be added only while the interpreting the principles of fair mutual trade between parties.

This way the similar law on the EU-Ukraine AA implementation may solve problems of its application, especially due to the fact of supremacy of the EU law.

The most important question in the process of AA implementation is the legal force of the decisions of the Association Councils and the way how they should be applied in Ukrainian legal order. Direct applicability of the Association Council's decisions will depend on their undisputed acceptance by national judiciaries.

Nowadays this draft law is being elaborated by experts, government officials & parliament members.

The main problems in the process of preparation for the implementation of the Agreement are as follows:

1) No provisions were made to implement the Agenda of the EU-Ukraine Association on time and in full;

2) National mechanism for implementation of Association Agreement was not determined and not presented at the state level;

3) The National Association implementation program which should provide for the detailed list of activities for step by step implementation of the Agreement and their due dates was not approved.

4) The staff of the Ukrainian state authorities is quite often unaware of the peculiarities of the EU legal mechanisms. While implementing decisions and AA Action Plans of the Government they

try to “Ukrainise” EU mechanisms and approaches to legal approximation. As a result, the outcome of those actions does not correspond to the existing aims and objectives of the AA. So, there is an urgent need in development of human resources aware of EU peculiarities.

Ministry of Economic Development and Trade developed the program for the implementation of the EU-Ukraine Association Agreement by Ukraine which is developed to ensure full compliance with obligations made by Ukraine. Implementation of this program will ensure effectiveness of the implementation mechanism for the Association Agreement. The implementation of the Agreement, in turn, will facilitate the transition of EU-Ukraine relations to a new level, i.e. political association and economic integration.

There are the opinions that the National implementation program (NIP) shall be developed in the form of public policies in specific areas, that would provide systematic implementation of the Agreement and structural reforms in the specific areas.

Instead, the mentioned project of the Association Agreement implementation program developed in Ukraine by now does not meet the best practices, but is the list of the EU acquis indicating deadlines (often it simply repeats the provision of annexes to the Association Agreement) and responsible state authorities.

Thus, to develop the NIP, there should be done the following:

1. Make detailed plans for institutional development within all sub-sectors covered by the agreement.
2. Determine the total scope of work including short-, medium- and long-term priorities and phasing within Agreement implementation.
3. Determine the need for funding the actions on the program implementation from the EU technical assistance funds and other national and international donors.
4. Summarize the financial resources for the program implementation activities in a single table including sectoral and time profiles (at the final NIP development stage) and financing sources.
5. Create the NIP updating mechanism at annual bases (optionally bi-annual or as required).
6. Ensure consistency of NIP, the program of activities of the Cabinet of Ministers and programs of central executive bodies between each other, wherefore examine the need for establishing formal procedures that would ensure effective cooperation between the departments in charge for strategic planning, legal matters, and the departments/units of European integration within the ministries.
7. Consider the possibility and format for involving lawyers of the Verkhovna Rada of Ukraine into the working groups of the central executive bodies and interministerial working groups which would develop draft laws with the view of implementing the Association Agreement.
8. While preparing for the development of the statutory legal acts for the implementation of the Association Agreement, central executive bodies shall clear up the availability of EU information and explanatory materials in the field of regulation of statutory legal acts and send them along with the original text of the statutory legal act to EU for translation. These materials shall be available for the working group during development of the statutory legal act and subsequently transferred (e.g., electronically) to all the executives involved in the NIP implementation.
9. Provide adequate funding and start assessing the impact of the scheduled specific executed EU legal acts, and groups such acts to facilitate drawing up the soundly based plans for NIP.
10. Conduct legal trainings for Ukrainian judicial personnel in order to introduce them to the specifics of the EU legal system and the importance of application of European Court of Justice case law while administering justice.
11. In order to prepare the national versions of acquis acts, the following steps should be ensured:
 - translation process;
 - technical editing by highly experienced representatives of the ministries;
 - revision of translated texts by legal experts in specific areas governed by the acquis act;
 - editorial proofreading.

Implementation and monitoring of NIP implementation to be performed through the following actions:

1. Approve the NIP by the legal act which shall define the mechanism for monitoring, reviewing, financing, development and organization of work of interagency groups and sub-groups under the leadership of Deputy Ministers for coordination and supervision of the plan revision in each institution, and for other actions in the Agreement implementation through the NIP.

2. Establish a periodic (quarterly or semi-annual) reporting of the central executive bodies to the coordinating body in relation to implementation of the NIP actions.

3. Achieve a common understanding between the coordinating body and ministries and agencies the issues, needs and goals during implementation.

4. Ensure consideration and immediate response to comments by the EU in the Agreement implementation process, that provides the following:

- review and analysis of comments;
- depending on the agreement/disagreement: correction of the implementation plan/measures or submit sound arguments to come to a mutual agreement or compromise.

5. Develop and introduce the information system for on-line monitoring of the NIP actions performance, basing on the deliverables of the preparatory work for the NIP development.

6. Improve the level of assessing the laws conformity with the EU legislation and other international legal obligations of Ukraine in its relations with the EU, and make the approval procedure impossible for the legal acts that do not meet the abovementioned standards.

7. Establish a monitoring system for NIP implementation, which would be of the same significance as the similar monitoring system for the government program implementation.

8. The coordinating body shall trace the orders and instructions of the central executive authorities issued for the NIP performance and introduce the procedure of mandatory informing the coordinating body by the central executive bodies.

Conclusions. Thus, at the present stage of modernization of Ukraine shall be carried out considering the chosen path towards European integration. Ukraine faces a task to complete the reform of public governance, taking into account European standards and recommendations expressed by Western experts and the governing bodies of the EU. So, the implementation of EU-Ukraine AA/DCFTA, accompanied by reforms, will bring about the comprehensive approximation with EU legislation and standards leading to the gradual economic integration of Ukraine in the EU internal market and therefore to the creation of an economic area.

References

1. European Atomic Energy Community; European Union; The Member States; Ukraine (2014) *Association Agreement between the European Union and its Member States, of the one part, and Ukraine of the other part*, <<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:22014A0529%2801%29&rid=3>>
2. Committee of Ministers (2014), *7th Annual Report of the 'Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights' in 2013*, <http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2013_en.pdf>.
3. Verkhovna Rada of Ukraine (1996) *Constitution of Ukraine* of 28 June 1996, <<https://zakon.rada.gov.ua/laws/card/254%D0%BA/96-%D0%B2%D1%80>>.
4. Verkhovna Rada of Ukraine (2006) *Law of Ukraine 'On Execution of Judgments and Application of Case Law of the European Court of Human Rights'*, No. 3477-IV, <http://sutyajnik.ru/rus/echr/etc/2006_law_ukraine.htm>.
5. Verkhovna Rada of Ukraine (1997) *Law of Ukraine of 17th July 1997, 'On Ratification of the European Convention on Human Rights 1950, First Protocol and protocols No. 2, 4, 7 and 11' No. 475/97-BP*, <<https://zakon.rada.gov.ua/laws/show/475/97-%D0%B2%D1%80>>.
6. President of Ukraine (2014) *Decree 'Issues of the National Council for Reforms, the Advisory Council on Reforms and the Executive Committee on Reform'* of 13 August 2014, <<https://www.president.gov.ua/documents/6442014-17529>>.

7. President of Ukraine (2019) *Decree 'On the Action Plan for Implementation of the State's Strategic Course towards Obtaining by Ukraine of the Full Membership in the European Union and in the North Atlantic Treaty Organisation'* of 20 April 2019 No. 155/2019, <<https://eu-ua.org/en/action-plan-implementation-states-strategic-course-towards-obtaining-ukraine-full-membership>>.
8. Cabinet of Ministers of Ukraine (2008) *Resolution "Issues of the Center for Support of the Civil Service Institutional Development"* of 4 June 2008 N 528 // Official Bulletin of Ukraine. - 2008, No. 41, p. 44.
9. Cabinet of Ministers of Ukraine (2016) *Resolution 'On the Formation of Government Committees and the Approval of their Positions'* of 11.05.2016 № 330, <<https://zakon.rada.gov.ua/laws/show/330-2016-%D0%BF>>.
10. Cabinet of Ministers of Ukraine (2017) *Resolution 'On Government office of coordination of the European and Euro-Atlantic integration'* of 4 October 2017 No. 759 , <<https://cis-legislation.com/document.fwx?rgn=101271>>.
11. Cabinet of Ministers of Ukraine (2014) *Plan on Association Agreement Implementation for the period of 2014-2017*, <<https://www.kmu.gov.ua/storage/app/media/uploaded-files/zakhodiv-z-implementatsii-ugodi-mizh-ukrainoyu-ta-es-vid-25-zhovtnya-2017-roku.pdf>>.
12. Cabinet of Ministers of Ukraine (2018) *Roadmap of Legislative Support for the Implementation of the Association Agreement between Ukraine and the EU for 2018-2019*, <<https://www.kmu.gov.ua/storage/app/media/uploaded-files/karta-prioritetnikh-zakonoproektiv-u-sferi-evropeyskoi-integratsii.pdf>>.
13. Cabinet of Ministers of Ukraine (2019) *Reports on Implementation of the EU-Ukraine Association Agreement*, <<https://eu-ua.org/zvity-pro-vykonannia-uhody-pro-asotsiatsiiu>>.
14. *Berezovska I.* (2011) "Pravovi Osnovy Asotsiatsii Ukrainy z Ievropeiskym Soiuzom" [Legal Framework of the EU-Ukraine Association], *Aktualni problemy mizhnarodnykh vidnosyn* 97(II): 95 -100.
15. *Kostiuchenko Ya.* (2015) "Aktualni pytannia institutsiinoho mekhanizmu Uhody pro asotsiatsiiu mizh Ukrainoiu ta Ievropeiskym Soiuzom" [Current Issues of the Institutional Mechanism of the EU-Ukraine Association Agreement], *Pravo Ukrainy* 08: 42-52.
16. *Maresceau Marc* (2013). "Les accords d'intégration dans les relations de proximité de l'Union européenne", *Les frontières de l'Union européenne*, ed. Claude Blumann (Bruxelles: Bruylant, 2013): 151–92.
17. *Muraviov V.* (2015) "Organizatsiino-pravovii Mekhanizm Realizatsii Uhody pro asotsiatsiiu mizh Ukrainoiu ta Ievropeiskym Soiuzom" [Organisational and Legal Mechanisms of the EU-Ukraine Association Agreement], *Pravo Ukrainy* 08: 17-32.
18. *Petrov R.* (2015) "Konstitutsiini aspekty implementatsii uhod pro asotsiatsiiu mizh Ievropeiskym Soiuzom ta Ukrainoiu, Moldovoju i Gruziieju" [Constitutional Aspects of the Implementation between the European Union and Ukraine, Moldova and Georgia], *Pravo Ukrainy* 08: 33-41.
19. *Van Elsuwege P.* (2015) *Uhoda pro asotsiatsiiu mizh Ukrainoiu ta Evropeiskim Soiuzom iak innovatsiinii pravovii instrument* [Association Agreement between Ukraine and the European Union as an Innovative Legal Instrument] , *Pravo Ukrainy* 08: 9-16.
20. Cabinet of Ministers of Ukraine (2019) *Government has opened the Pulse of the Agreement – an online system of monitoring of the progress in the implementation of the Association Agreement with the EU*, <<https://www.kmu.gov.ua/en/news/uryad-vidkriv-puls-ugodi-onlajn-sistemu-monitoringu-realizaciyi-zahodiv-vikonannya-ugodi-pro-asociaciyu-z-yes>>.
21. European External Action Service (2011) *European Guide to the Association Agreement*, <http://eeas.europa.eu/images/top_stories/140912_eu-ukraine-associatin-agreement-quick_guide.pdf>.
22. Centre for Approximation of the Civil Service to the European Union Standards (2020), <<http://www.center.gov.ua>>.