

REGULATORY POLICY AT THE STAGE OF GETTING MEMBERSHIP IN THE EU



#UAtoEU

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I. Introduction

After the ratification of the Ukraine-EU Association Agreement, harmonization of European and national legislation has begun in Ukraine in accordance with the principles specified in the Association Agreement and within the scope specified in the annexes to it. Since 2015, this work has been carried out by state authorities in accordance with the harmonization plans. Results of this job were identified during filling out a questionnaire, which the President of the European Commission, Ursula von der Leyen, handed over to the President of Ukraine on April 8, 2022. Based on this data, on June 17, 2022, the European Commission recommended to grant Ukraine the status of a candidate for EU member, and on June 23, 2022, the leaders of 27 EU member states announced it officially. Therefore, the process of harmonization of EU and UA legislation under the frame of the Association Agreement has appeared completed, and a new stage of approximation of the national legislative and regulatory acts to the *acquis* EU has been started.

In the spring of 2023, the Office of the Vice-Prime Minister for European Integration announced that according to the list provided by the EU 29 000 additional acts of the *acquis* EU are to be implemented into national legislation. But it is obvious that such large-scale work is not possible to complete in a short period without a radical change in approaches to the law-making work.

To successfully fulfill this task, the efficiency of work on the harmonization of legislation at the previous stage should be analyzed, its "bottlenecks" should be identified, and approaches to the harmonization of legislation should be reconsidered. Also, the specifics and differences between national and European legal systems, changes in the *acquis* EU should be taken into account and conditions for the successful implementation of harmonized legislation in practice should be created.

The analytical monitoring report "Regulatory police at the stage of getting membership in the EU" examines the methodology of harmonizing the national legislative to the *acquis* EU, provides information on the specifics of the legal systems of the EU and Ukraine, and also contains recommendations for reforming the legislation of Ukraine at the stage of getting membership of Ukraine in the EU.

II. Current situation

The UA-EU integration process develops quite successfully in Ukraine and the harmonization of Ukrainian legislation to the *acquis* EU appears as its key component. The monitoring of this process implemented by the "Support for the implementation of the Association Agreement between Ukraine and the EU" (Association4U - A4U) indicates that by June 2023 more than 90% of regulatory acts have been harmonized in the areas of justice, freedom, security and human rights, humanitarian policy, statistics and information exchange, public finance management and intellectual property. Regarding technical barriers in trade, entrepreneurship, political dialogue, national security and defense, taxation, education, training and youth, public procurement, environment and civil protection, the degree of harmonization exceeded 80%. More than 70% of harmonization is in such important areas as sanitary and phytosanitary measures, energy, energy efficiency and housing and communal services. More than 60% of regulations are harmonized in agriculture, financial sector, customs, science, technology, innovation and space. More than half of the tasks have been harmonized for the transport, infrastructure, postal and courier services areas. And only such an important area for modern society as the protection of consumer rights does not reach the desired level – harmonization is only 49%. Things look worse for financial

cooperation and the fight against fraud, where the degree of harmonization is now 24%. However, these look like an exception to the general dynamics of the harmonization.

At the same time, there are a number of factors that reduce the effectiveness of the efforts made for approximation of national legislation to the *acquis* EU and prevent business and civil society of Ukraine to feel the effectiveness of the eurointegration:

'Top level' harmonization. This is the case when the norms of the basic laws fully correspond to the norms of the EU, but by-laws "correct" their essence in such a way that results of complying with these rules are just opposite to the European realities.

An example of such a situation is the regulation for procedures based on the principles of HACCP used by food market operators. The basic law of Ukraine "On the basic principles and requirements for the safety and quality of food products", as well as the EU Regulation No. 852/2004 on the hygiene of food products, establishes the 6+1 principle of risk analysis and determination of critical control points in the handling of food products. However, EU Regulation No. 852/2004 appeals to guidelines and standards, which are voluntary for application of these principles. Thus, recommendations on the implementation of HACCP principles in Ukraine is regulated by the act of the Ministry of Agriculture No. 590 of October 1, 2012 "On approval of Requirements for the development, implementation and application of permanent procedures based on the principles of the Food Safety Management System (HACCP)" which provisions are mandatory for food market operators. Taking into account the diversity of business entities recognized as market operators within the chain "from farm to table", the uniqueness of their food products and production processes, it is impossible to impose unified requirements that could be followed in practice. The situation is complicated as compliance with mandatory norms is subjected to state control and natural difficulties to keep conditions imposed by the order of the Ministry of Agriculture plays an additional source of corruption.

Shifting the meaning of European norms and rules due to harmonization only at the upper legislative level without analyzing the compliance of bylaws with the spirit and content of the *acquis* EU caused by an exaggeration of the role of the state in social and economic processes, insufficient implementation of deregulation policy, and misunderstanding of the basic principles of a modern system of conformity assessment.

Norm out of context. In this situation, a coincidence may appear in the text of the regulatory act but loss of the whole context, lack of understanding of the purpose of the initial EU regulatory act leads to results different from situations existing in the EU. Sometimes such results appear diametrically opposed to EU realities, contradicting the basic principles and values of the EU.

An example of such a situation is the development and submission to the Verkhovna Rada of Ukraine of bill No. 8149 of October 24, 2022 "On the organisations of agricultural commodity producers" by members of the Committee on Agrarian and Land Policy. They claim to harmonize the bill with Regulation No. 1308/2013 dated 17.12.2013 on establishing a joint organization of agricultural product markets. Regulation No. 1308/2013 concerns organizations of food producers implementing development programs in a strictly defined list of industries and receiving co-financing from the EU under the frame of sectoral support. The content of such development programs is strictly regulated. As well attention is paid to compliance with antimonopoly legislation. It is noted that authorized organizations of producers can propose to make their internal rules mandatory for the entire industry, but only for a certain period. Ignoring the context of the Common Agricultural Policy set out in EU regulations 2021/215, 2021/2116, 2021/2117 of 02.12.2021, the lack of understanding of the mechanisms for implementing this policy resulted in violations not only of the rules

fair competition, but also the norms of the Constitution of Ukraine, which was underlined by the Expert Department of the Verkhovna Rada of Ukraine.

Precedents while lobbyists use some norms of the acquis EU separately from its purposes and general context for realizing their interests usually is performed by deputies having a mandate for submitting legislative initiative.

Moving in the opposite direction. Authorities from legislative and executive offices are concentrated mainly on fulfillment of the "primary" harmonization plans. However, development of legislation is a vivid process, changes to legal acts including already harmonized are passing at the on-going base. In the absence of proper monitoring, such changes can cancel already harmonized norms and confuse the content of the initial regulatory act.

Attempt to adopt a new version of the law "On the basic principles of state supervision (control)" illustrates this situation. The state control system was harmonized to the European one at the end of 2016. However, already in 2020, new changes were proposed. formally connected with COVID-19 quarantine. In this new version of the law, the state control bodies were entrusted with auditing business functions that are not usual for the state control. Reducing the risk rate of the business entity and even releasing it from state control was connected to civil liability insurance. Institutions not having analogues in the EU countries were created - the Council on State Supervision aimed to obtain complaints from economic entities and specialists, and the Institute of Experts responsible for the reliability of compliance results. Due to the efforts of the expert community this process has been stopped/ But communication with the officials showed that the harmonization of legislation was the last thing they were concerning with while proposing these changes.

In this case, the reason for the "disharmonization" was the efforts of the insurance community to expand and activate their own market, as well as insufficient awareness of the state officials in matters of European integration.

Lack of harmonization at the policy level. Participation of Ukraine in European policies is indicated just in the second paragraph of the preamble to the Association Agreement. The deepening of Ukraine's connection with EU policy is indicated as the goal in the first article of the Association Agreement. Instead, being concentrated on the current work on the legislation, Ukrainian officials practically forgot about these fundamental principles. Unfortunately, this has negative consequences that are systemic and long-term playing.

The negative impact of the lack of harmonization of policies is evident in the case of the agricultural sector. Common agricultural policy emerged in Europe even before the formal formation of the EU, at the stage of the Common Market. Thanks to it, the EU has become one of the main global food producers and the largest integrated food market in the world. Currently, the EU countries have sustainable agriculture, introduce innovations and successfully adapt to climate change. Subsidies play the main tool for the CAP implementation. Since 2017, Ukraine has also provided subsidies to the agricultural sector. However, despite the financial mechanisms for providing subsidies in Ukraine and the EU being quite similar, whole parts of the European system fall out. In particular, in Ukraine there are no requirements for the activity of payment agencies. A whole complex of tools for political planning - from defining goals and ways to achieve them to monitoring the actual achievement of goals – is absent. It makes development of the agricultural sector spontaneous, vulnerable and unsustainable. Fragmentary and unconscious harmonization does not allow to ensure sustainable development of the domestic agricultural sector.

Likewise, almost every branch of both horizontal and sectoral legislation suffers from the lack of sectoral policies, including those harmonized with the EU ones. Returning the harmonization process to the policy dimension would significantly speed up and stabilize the eurointegration process in Ukraine.

Time lag. The rule-making process in the EU is intensive, regulations and other EU documents are improved quite often and regulation spreads to new areas. The Association Agreement, in the section on institutional, general and final provisions, contains very specific mechanisms aimed at solving this problem. In particular, the Association Council has the right to update or amend the annexes to the Agreement, and the Association Committee, together with its subcommittees, has the obligation to assist the work of the Association Council. As for trade, even stricter rules should be applied, as specified in Annex XVII. The EU side is obliged to inform Ukraine in written form about all new legislative acts in a specific sector, and the Committee on Trade shall make appropriate changes to the annexes to the Association Agreement within three months.

However, this mechanism does not work in practice. Monitoring of changes in European legislation is represented in Ukraine by newsletters of the Association4U project only. It has a rather limited scope of review and has an aim to spread information only. Official monitoring, which would be conducted by authorities on a regular basis and the results of which would be mandatory for further developments, including within the framework of the mechanism provided for by the Association Agreement, currently does not exist. This is a significant obstacle to effective European integration. Domestic business suffers from this state of affairs much.

A sound example of lagging in time is demonstrated by the Comprehensive Strategy for the Implementation of Chapter IV (Sanitary and Phytosanitary Measures) of Section IV "Trade and Trade-Related Matters" of the Association Agreement, approved by the Cabinet of Ministers of Ukraine Order dated February 24, 2016 No. 228-p. This document determines the list of acquis EU acts, which are to be transposed into Ukrainian legislation and establishes the deadlines for this work. The main part of documents on the list are dated 2002-2012, 5 documents are dated 2013, 12 are dated 2014. And only one document - on methods of identification of horses, dated 2015. The documents that appeared as part of the EU acquis during the last eight years fell out of the Ukrainian legislator's view. Changes to the document on the Comprehensive Strategy for the Implementation of Chapter IV were made only once in the summer of 2017 and were only for postponing the deadlines for the development of Ukrainian regulatory acts.

Overcoming the time lag is the key issue from the perspective of European integration effectiveness, achievement of success on the path of Ukraine's accession to the EU. Solving this problem should be achieved not so much by changing the annex, but at the level of the whole legislation of Ukraine. The emergence of a Ukrainian version in the EUR-Lex, which has already been announced by the Government of Ukraine, will also contribute to overcoming this problem.

Implementation procedure. The Law of Ukraine "On the Procedures of the Verkhovna Rada of Ukraine" provides that laws are passed in three readings. Before the third (and final) reading, the Cabinet of Ministers is to submit to the profile parliament committee the plan of organizational, personnel, resourcing, financial and informational measures for the implementation of the law. However, laws are usually passed in the second reading and 'as a whole'. The Cabinet of Ministers usually does not provide the plan of measures mentioned above. This is a permanent problem that concerns not only European integration. It influences enforcement of the law in the long-term perspective, reduces the effectiveness of the legislation and diminishes the public trust.

Complete absence of resources for activities of the Ukrainian side of the Civil Society Platform "Ukraine-EU" according to its mandate shows that this problem concerns not only the implementation of the norms of national and harmonized legislation, but also the institutions created to implement the Association Agreement.

The Verkhovna Rada of Ukraine has a working unit - The Committee on Regulations, Deputy Ethics and Current Activity of the Verkhovna Rada of Ukraine. So, it remains unclear why such a systemic, almost fundamental problem remains out of the attention of this profile committee, the chiefs and managers of the Verkhovna Rada of Ukraine, the expert community, and the wide public.

'Reduced' monitoring. Article 475 and paragraphs from 2 to 5 of Appendix XVII of the Association Agreement suggest monitoring of the "execution and implementation" of the Association Agreement. However, in practice, this norm applies only to the fulfillment of the plan of legislative work. Investigation of the equivalence of the norms of harmonized legislation in Ukraine and the EU, the adequacy of the harmonized legislation to Ukrainian realities, the effectiveness of the enforcing legislation, achieving the aims is usually not occurred.

Annual reports on the implementation of the Association Agreement are posted on the official EU-UA European integration portal "Ukraine-Europe". There is also a "Pulse of the Agreement" section, which provides and regularly updates data on monitoring the harmonization of national legislation with the acquis EU. However, there is no page on analysis of the results and effectiveness of the implementation of the Association Agreement. In this context, only the Analytical report to the Commission's notification to the European Parliament, the European Council and the Council and the Conclusions of the European Commission regarding Ukraine's application for membership in the European Union dated 02.01.2023, which is included in the "Analytics" section among other things exists. The document states it as a working document of the European Commission staff. No relevant reports from the Ukrainian side are available by now.

III. Law infrastructure in the EU

The legal system of the EU is presented by the *acquis* (*acquis communautaire*), which was created and developed at all previous stages of the formation of the European Community and finally embodied in the format of the European Union. The *acquis* EU is a set of common rights and obligations that are mandatory for all EU member states. However, mandatory implementation does not mean that normative documents are formed exclusively at the EU level. Number of documents that are formed at the EU level is relatively small, the main part of rule-making and law enforcement takes place at national level.

Competences of the EU. The exclusive competence of the EU concerns customs rules, competition rules for the EU internal market, monetary policy of the euro area, fisheries and marine biological resources, trade policy, foreign policy and international agreements. The shared competence of the EU is based on the principle of subsidiarity, which suggests that the EU acts only when the member states cannot achieve a certain goal acting independently. If the EU has not enforced its competence to establish common rules, member states may act independently. The common competence concerns regulation of issues related to the functioning of the internal market, social policy, economic, social and territorial integration, agriculture, internal fishing, the environment, protection of consumer rights, transport and trans-European networks, energy, freedom, security and justice, common problems in the field of health care. Also, the EU has supporting competence,

which consists in introducing measures to support, coordinate or complement the actions of member states within the framework that do not go beyond the competence of such member states. The supporting competence of the EU extends to the protection and improvement of people's health, industry, culture, tourism, education, vocational training, youth and sports, civil protection and administrative cooperation.

Hierarchy of the EU legislation. At the top of the hierarchy in the EU there are the "three pillars" – the Treaties on the European Union, on the Functioning of the European Union, and on Euratom together with the Treaties on Amendments (Amsterdam 1997, Nice 2001, Lisbon 2007), as well as the Charter of Fundamental Rights and treaties on the accession of new members (waves of expansion in 2003, 2005, 2011). These documents inherited the general principles including constitutional, of the national legal systems of the member states. As the EU Constitution is at the stage of adoption, these documents contain the basic principles of the European Union, which are basic for all other legislative activities in the EU and its member states.

Next level of the hierarchy of EU legislation is international public law, to which the EU has joined. Like the fundamental principles, the norms of public international law constitute a framework in which all internal EU legislation should fit and the compliance of which is carefully checked during the formation and revision of the *acquis* EU.

The central role in the composition of the *acquis* EU belongs to "secondary law", which is implemented in the form of directives, regulations and decisions. Each format of secondary law has its own characteristics: only regulations act as direct regulative norms, which are to be enforced in member states. Decisions are also binding, but their scope is usually limited by a specific area. The directives do not contain norms of direct enforcement, they rather provide guidelines for the development of national legislation according to the traditions and rules of the member states. Directives are binding (as well as framework decisions) in the sense that they demand transposition of their provisions into the national legislation of member states. Another parameter of the EU secondary law is the way of their passing. Regulative acts may be adopted by different governing bodies of the EU as the Council of the EU, the European Parliament, the European Commission and the European Central Bank.

The "soft law", as well, forms the essential part of the *acquis* EU. Although there are quite a lot of precedents for the development and application of soft law in Ukraine, it is currently not recognized as part of the national legal system. Moreover, it looks just unusual to have documents of a soft nature that are not mandatory in the national legal system. Standards are a classic example of soft law documents. Other formats of soft law are recommendations, conclusions, appeals, notices, guidelines, framework documents, codes of good practices, rules of conduct, etc. In Ukraine, documents of such formats are usually approved by profile authorities and thus are mandatory. Instead, in the EU, soft law documents usually play the role of guidelines for implementation and interpretation of EU law in business, competition, consumer protection, environmental, social and other areas. Recently, a rapid development of the soft law is aimed at preventing climate change.

One more component of the *acquis* EU is the practice of the EU Court. Generally, two components can be distinguished in it: decisions based on requests from national courts regarding the interpretation of EU law and decisions based on lawsuits by the European Commission against EU member states. In these cases, the decisions of the European Court have final legal force. Decisions of the EU Court often improve the provisions of EU law, clarify the specifics of their implementation and enforcement, and play the role of framework documents and guidelines for the next development of the legislation.

Distribution of competence in the EU. The principle of the rule of law in the EU suggests that national legislation of the EU member states should not conflict with the norms of the three basic EU pillars: the Charter of Fundamental Rights, international treaties of the EU, regulations, directives and decisions of the EU Court. In all other aspects, member states have freedom to adopt national legislative and regulatory acts, including soft law enforcing voluntarily. At the same time, the EU law apply both to member countries and to legal entities and individuals. Norms of national law of member states apply to internal entities and individuals.

Structure of the legal act. The main principle of the rule-making is the relevance of the name, the simplicity of the structure of the regulatory act, and easy understanding of the legal norms. Acts of the *acquis* EU starts with a preamble outlining the environment in which the act should operate, reveals the reasons and prerequisites for the adoption of the act, and explains in detail its content. The purpose of adoption of the legal act is at the top of the preamble. Definitions used further in the body of the normative act are also provided in the first articles. Regulatory acts are meticulously structured and accompanied by numerous annexes containing detailed information on different aspects that are regulated by the act. The body of a normative act ends with provisions on the amendment or cancellation of other normative acts, and the terms of entry into force of this normative act. In contrast to Ukraine, where sanctions for violation of the provisions of the normative act are issued in separate codes, EU law-making practice insists on introducing relevant provisions directly into the body of the normative act. Special attention is paid to the harmonization of sanctions for violations of legislation in the EU member states.

Database of EU law. In the EU, like in Ukraine, the law-making has been covered by comprehensive digitization. In addition to the official paper publications, which are updated on a daily basis in the languages of all EU countries, the portal <http://eur-lex.europa.eu> is available. It consists of two series L and C. The first one contains EU secondary legislation, and the second one includes all other *acquis* EU documents. The structure of the portal includes pages of EU secondary law documents, international documents, EU Court decisions, legislative proposals of the European Commission (COM), including joint proposals, communiqués, reports, white and green papers (JOIN), documents developed by officials of the European Commission (SWD), consolidated regulatory acts and draft bills. The portal provides an opportunity to search for a regulatory act by its name, number and date of adoption. On the page of the regulatory document, there is information about its validity and the full text of the document, which can be viewed and downloaded in any language of EY member states. If necessary, the text can be presented simultaneously in two selected languages. Decisions of the EU Court are also posted on the specialized portal <http://curia.europa.eu>.

IV. Law infrastructure in Ukraine

The Constitution. The Constitution is at the top of the legal system of Ukraine as the main law that establishes fundamental principles and rules. And this is the only pillar for the national legal system of Ukraine. Any legal acts should be in line with the norms of the Constitution.

Codes. In order to ensure a systematic regulation in a certain area, norms are often placed together in thematic codes. The Code is a coherent, logical, well-structured legal document that systematically and comprehensively regulates a certain sphere of relations. Thematic codes as absent in the EU as a format of legal acts. However, the respect for the legal traditions of the member states imposes no objections for member countries to have them.

Law. A law is a universal rule established by a legislative body that has the highest legal force. EU regulations, which are documents of direct effect, are the most common analogue for the format of the law in Ukraine. Although the other two formats of EU secondary law - decisions and directives - are obligatory and therefore correspond to the format of the law of Ukraine.

Bylaw. By-laws of the authorized agencies, officials and local self-government bodies are issued in accordance with the basic law and are aimed at its implementation through a specific, detailed regulation of the sphere of relations regulated by the basic law. By-laws exist in the formats of order, resolution, decision. They have a special procedure for adoption and are to be registered in the Ministry of Justice of Ukraine. A number of acts are issued by sub-divisions of the state agency in the form of provisions, instructions, rules, orders, lists, etc are recognized as by-laws as well.

Other formats. The database of the Verkhovna Rada of Ukraine indicates 132 formats for national normative documents. The range of these starts from formats of international and EU legal acts (convention, pact, communiqué, directive, regulation) and ends in formats for historical documents like universal. The list of formats of regulatory documents includes all possible formats (even templates), as well as soft law documents (explanations, recommendations, information).

Database of legislation in Ukraine. The database of the legislation of Ukraine has existed since 1994. By August 2023 it contained 270,101 regulatory documents. The database is structured by publishers, types of documents, years of passing and state of validity of documents. Separate menu items present new arrivals and popular documents. There are also sections on legislative terminology, structured in alphabetical order, and Ukrainian versions of regulatory documents of the *acquis* EU, structured by the years. The database of draft laws is presented in a separate section "Legislation" on the website of the Verkhovna Rada of Ukraine. Database of legislation of Ukraine is presented there separately. The main, most popular function of the database of the legislation of Ukraine is a search for regulatory acts. The search is guided by keywords in the title or text, by publishers or types of documents, date of adoption or document number, including the document's registration number in the Ministry of Justice.

On the page of a regulatory document there is its card containing information on the history of passing and regulatory environment of the document. There are also opportunities to view the content of the document and to access its sections, search by words, present the text in a form convenient for viewing, download the document, share it via mail or social networks.

Y. Roadmap for the regulatory environment reforming

At the stage of the Association Agreement, Ukraine had the task to harmonize national legislation with the *acquis* EU. The methodology of this activity is provided in the manual "Recommendations for Ukrainian state administration bodies on approximation to EU law", developed by the governmental Office for the Coordination of European and Euro-Atlantic Integration of the Cabinet of Ministers supported by the EU projects "Association4U", EU/UNDP "Council for Europe: Strengthening the potential in support of the Verkhovna Rada of Ukraine". However, these methods are unlikely to suit the next stage of approximation of Ukrainian legislation to the *acquis* EU. Therefore, it is necessary to introduce conceptual changes in the regulatory policy. And this road map is the first attempt to approach this historically important task.

Generally, there are two dimensions of reforming regulatory policy at the stage of gaining EU membership (EU competences and formats of the *acquis* EU) and two distinct topics - the Constitution and format for policy papers.

Competences of the EU. In general, mechanisms of reforming national legislation depend on a certain area of competence of the EU.

For areas where the EU has exclusive competence (customs, competition in the EU market, monetary policy of the euro area, fisheries and marine biological resources, trade policy, foreign policy and international agreements), a full list of directives is to be composed first of all. For shared competence, the whole number of directions and regulatory documents (directives, regulations, decisions) are to be identified. To do this, documents of exclusive competence should be excluded from the full list of EU secondary documents mentioned above.

For each directive, it is necessary to compile a complete list of national legislative and regulatory acts regulating a certain direction. It is also necessary to compile a list of national regulatory acts of EU member states that are significant for Ukraine in the specified area (Germany, the Netherlands, Poland, etc.). The next step is the verification of the entire package of domestic legislative and regulatory acts for compliance with the provisions of EU directives. In the event that the norms correspond to the spirit and letter of the directive, they remain unchanged. If provisions of the domestic document contradict the directive provisions, they are excluded in the whole mass of domestic legislation in a systematic manner. When the national legislative act contains provisions that are absent in the EU directive, an analysis of the legislation of the relevant countries is carried out and, taking into account its results, a decision is made to preserve, transform or cancel these provisions. If after all a need for additional regulation still exists, the relevant innovations are checked for compliance with the spirit and letter of the directive and the legislation of the relevant EU countries.

Regulations are documents of direct action issued according to the exclusive and shared competence of the EU. They should be directly and promptly introduced as part of the national legislation of Ukraine. In cases where the legislation of Ukraine has not been harmonized or has been harmonized improperly, a table of inconsistencies is to be developed, a regulatory act is adopted, thus its implementation is postponed and measures to overcome the problems emerging in application of the approved legislation are introduced. The text of the regulations in Ukrainian is posted in the Euro Lex and "Legislation of Ukraine" databases. The same procedure is used for implementation of EU decisions and EU Court decisions. The only difference here is that some of them may concern Ukraine exclusively and are to be adopted within the framework of the EU's supporting competence.

As mentioned above, soft legislation, despite its voluntary nature, plays an extremely important role in the interpretation and further development of EU legislation. Therefore, Ukraine should pay more attention to the soft part of the *acquis* EU for strengthening authority among the EU countries, gaining the image of an honest and reliable partner, and gaining a leading position in the EU internal markets. For this, a separate section for voluntary documents is to be formed as part of the national legislation and the "Legislation of Ukraine" database. In turn, three parts are to be formed there: domestic soft law documents, EU soft documents and soft documents of EU countries. Documents of the EU and EU countries are to be presented in Ukrainian and supplied with links to their texts in the Euro Lex database.

Ukraine will have two transitional periods in the near future: the transformation of the national system at the stage of gaining EU membership and the period of "getting into the role" after acquiring EU membership. In the last case, the EU supporting competence will play a particularly

important role as the EU will be able to introduce measures to support, coordinate or supplement actions that belong to the competence of the member states. For Ukraine, it will be possible to adopt individual directives aimed at strengthening and accelerating the harmonization of all aspects of national life, provide support and coordinate the reform of the regulatory environment of Ukraine, solve problems in the format of decisions of the EU Court, which are mandatory for implementation.

The table of reforming the regulatory environment according to EU competences is presented in Annex 1 to this report.

Formats for regulatory acts. For the natural joining acquis EU system, actions on introduction of various formats of the acquis EU into the national legislative framework may differ. The formats of the acquis EU are to be grouped into three categories: framework documents, obligatory documents (secondary law, section L) and soft law, whose rules are voluntary (section C).

The Constitution, as a document that fixes the fundamental principles of the functioning and development of the EU, has not yet been adopted. Instead, its role is performed by the "three pillars", the principles of which are presented in the Association Agreement and are to be fixed when revising the Constitution of Ukraine. So, this task has already been completed, and in the future, it is necessary to ensure that the established principles are strictly followed as national legislation is changed. The same concerns the Charter of Fundamental Rights, which also plays the role of another pillar of the EU.

In the future, at the stage of concluding the treaty on the accession of Ukraine to the EU, which will also play the role of a "pillar", it is necessary to analyze the entire array of treaties on the accession of other countries to the EU, paying special attention to the Baltic countries, Eastern Europe and other countries that recently joined the EU. It would be good to take advantage of their experience. As for international agreements signed by the EU, it needs to organize an audit on whether all relevant agreements are also signed by Ukraine. If gaps are found, they should be filled as soon as possible.

As mentioned above, such documents of EU secondary law as regulations, general and framework decisions, including decisions of the European Court, are to be translated and directly introduced into national legislation. It is to be done in packages - sectoral (industry) and horizontal. If a certain area of regulation is not ready for the direct introduction of European norms, the implementation of the adopted legislation should be postponed, and the Cabinet of Ministers should present a plan of organizational, personnel, resourcing, financial, and informational measures aimed at effective application of the adopted provisions. Exceptions are only for decisions of an individual nature that do not concern Ukraine, they are to be simply linked to the "Legislation of Ukraine" database.

The format of the directive, which establishes mandatory requirements, but does not contain directly applicable norms, needs special attention. In essence, directives are political documents aimed at implementing EU policies in narrow areas. Reforming the regulatory policy here suggests providing access to the text of EU directives in the Ukrainian language, and ensuring that the experience of EU countries is taken into account when implementing the provisions of the directive within the framework of national legislation.

Secondary law in the EU is adopted by bodies authorized to regulate a certain area (the Council of the EU, the European Parliament, the European Commission, the ECB) and in these forms they are enforced in the member states. For documents implementing the provisions of directives, the member states use their national legal traditions, including the determination of the authorities

responsible for the implementation of the normative act. Therefore, Ukraine can also compose its own system of legislative and executive bodies, or reform and clarify the present system.

As for arbitrary 'soft law' documents, it is necessary to clarify the national classification of such acts and harmonize it with the classification that exists in the EU. At the same time, respect for the national legal traditions suggests that formats not existing in the EU should not be put away. However, what really needs to be in focus of reforming is clear watershed between acts of a mandatory and voluntary nature. Acts and norms of soft law should not be included in the legislative and regulatory framework, especially in cases where they have potential to stimulate corruption.

The table of reforming the regulatory environment from the perspective of the EU formats for legislative and regulatory acts is presented in Annex 2 to this report.

Structure of the legal act. As mentioned above, in Ukraine tradition to use a preamble to a normative act is absent. The detailing of legal norms is usually presented in a number of by-laws, rather than in appendices to the main document. And if the advantages of the tradition to generate a number of by-laws may be discussed. There is some sense to leave this tradition because the separation of certain aspects of regulation into separate normative acts has advantages in terms of administration, revision and renewal. Thus, the absence of a preamble is a significant drawback of the national legal tradition. Transforming the 'explanatory note' obligatory for a draft law, into a preamble could mark the beginning of the harmonization of this legal tradition in Ukraine and EU. Also, when forming a legislative act, special attention should be paid to posting sanctions for violation in the text of the act.

The national legislative technique is currently standardized by the document of the Verkhovna Rada of Ukraine "Rules for drafting draft laws and basic requirements of legislative technique". In the future, the harmonized document should be approved as an appendix to the law "On the Regulations of the Verkhovna Rada of Ukraine".

Policy. Strategic documents and policy papers deserve special attention. By now, there is no legal format for such documents in Ukraine. If policy is developing in the EU, the Euro Commission holds consultations with the public and the expert environment, generalizes received information and, on this basis, develops a communique and sends it to all EU bodies. Such a communique contains guidelines that will be used by official bodies in the future for development of normative documents of the EU *acquis*.

At the first stages of democratic and market transformations in Ukraine, some similar procedure existed in Ukraine. The President outlined principles and direction of agenda for the state policy in the decree. However, this tradition did not receive proper development. At the stage of accession to the EU, it is worth to focus on EU policies, the mechanisms of their formation and implementation, especially since the corresponding provision was established in the Association Agreement. Ukrainian civil society and the expert community should be involved in the discussions concerning development of the EU policies at the earliest stages (in the process of acquiring membership – having an advisory vote).

The Constitution. In general, EU law takes precedence over any source of national law, including the constitutions of member states. It suggests that the constitutions of member states are to be harmonized with the "pillars of the EU" and not contain provisions that conflict with the documents of the secondary law of the EU, primarily with directives.

By now, the Constitution of 1996 is in force in Ukraine. It reflects the realities of the post-Soviet period. Having the status of a candidate for EU membership, gaining experience in overcoming

the Russian military aggression, this document must be significantly modernized in accordance with the realities and values of the democratic world and the "pillars" of the EU.

Database. At the stage of gaining the status of EU member candidate, the structure of the IT support of the national legislation also needs reforming. It should include sections of EU documents of direct action, national documents created to implement EU directives, national documents harmonized and non-harmonized to the EU acquis, EU soft legislation and national documents with the status "for your information". For each document, marks should indicate the document's status according to the sections mentioned above. All documents must be presented in Ukrainian.

Monitoring of implementation. The European Commission has functions to investigate the effectiveness of the adopted legislation, to develop reports, which, among other things, contain proposals for solving the identified problems. It performs these functions on a regular basis. Of course, civil society organizations and the expert environment help the European Commission to identify gaps in the legislation in a timely and qualitative manner. In Ukraine, state authorities currently do not have similar functions. At the stage of acquisition to the EU, special attention should be paid to the implementation of feedback mechanisms aimed at researching the achievement of policy goals and the effectiveness of legislation.

**Reforming the regulatory environment
according to EU competences**

	Exclusive	Shared	Supporting
Legal forms	<ul style="list-style-type: none"> • customs rules • competition rules for the internal market • monetary policy for euro-area • common fisheries policy • common commercial policy. 	<p>member states cannot achieve the goal on their own</p>	<p>measures to support, coordinate or complement the actions of member states within their own competence</p>
Directive	transposition into national legislation taking into account the best practices of EU countries	transposition into national legislation taking into account the best practices of EU countries	individual directives to strengthen and accelerate European integration
Regulation	<ul style="list-style-type: none"> • translation • implementation • table of differences • measures to implement 	<ul style="list-style-type: none"> • translation • implementation • table of differences • measures to implement 	
Decision	as for regulation	as for regulation	
Soft legislation	<ul style="list-style-type: none"> • translation • incorporating to the database 	<ul style="list-style-type: none"> • translation • incorporating to the database 	support and coordination of reforming the regulatory environment
Decisions of the Court	as for regulation	as for regulation	as for regulation

**Reforming the regulatory environment from the perspective of the EU formats
for legislative and regulatory acts**

	Formats of the acquis EU	Recommendation
Basic documents	«Pillars» of the EU	<ul style="list-style-type: none"> • already present in the Association Agreement • compliance monitoring required
	Charter of fundamental rights	<ul style="list-style-type: none"> • harmonization at the level of the Constitution of Ukraine • conformity assessment at the stage of the Constitution rethinking
	Accession agreements	<ul style="list-style-type: none"> • analysis of treaties on the accession of other countries • benchmarking and best practices
	International agreements	<ul style="list-style-type: none"> • find out what has not yet been signed • sign and ratify in a shortest term
Obligatory documents	Directives*	<ul style="list-style-type: none"> • to perceive as guidelines for the development of national legislation • to reform national legislation in accordance with the best practices of EU countries
	Regulations*	<ul style="list-style-type: none"> • Ukrainian version • immediate implementation into national legislation and establishment of transitional periods • excluding duplication of norms of regulations in legislative and normative acts of Ukraine
	Decisions general, framework, and those related to Ukraine*	<ul style="list-style-type: none"> • as for regulation
	Individual decisions that do not apply to Ukraine*	<ul style="list-style-type: none"> • Ukrainian version • separate structural unit within the national legislation • taking into account
	Decisions of the EU Court*	<ul style="list-style-type: none"> • monitoring of EU court decisions • separate structural unit within the national legislation • execution of the EU Court decisions concerning Ukraine • using as road signs for development of the national legislation

Non-obligatory	Soft law	<ul style="list-style-type: none">• create a separate section of EU soft law as part of the "Legislation of Ukraine" database• specify the soft law formats used in Ukraine• fill the soft law different formats sections with existing documents
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* - documents of secondary law, which are mandatory for EU member states