

## European Union and Ukraine: Some Issues of Legal Regulation of Relations – From Partnership and Cooperation Agreement to Association Agreement – \*

*European Union on the basis of analysis of the Association Agreement and the Partnership and Cooperation Agreement between the EU and Ukraine. The specific features of the Agreements are considered and the goal of the article is to depict the key points of the development of legal relations between Ukraine and the circumstances that may prevent the effective implementation of the Association Agreement are studied.*

*European choice* is an integral component of the national idea and the strategic direction of the state and legal development of *Ukraine* at the same time. This was declared by our country in the period of obtaining of independence<sup>1</sup> in the early 90th. The attempts to review this course in November 2013 met the powerful resistance from the society and gave impetus to the mass protests that eventually led to a change of the ruling power in the state. The main demand of the protesters was the introduction in *Ukraine* of *European* social and economic, political and legal development models that required structural system reforms in the country.<sup>2</sup>

In 1993, *European* integration was defined as a foreign policy priority on the legislative level. Immutability of *European choice* of *Ukraine* is predetermined by civilization belonging to the community of *European* nations.<sup>3</sup>

In political and legal terms the cooperation with the *European Union* for our country envisages first of all strengthening of democratic and political system and its institutions,

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1 Yakovyuk I.V. Legal basis of European Integration: the general theoretic analysis [Text] : Monography/ I.V.Yakovyuk. – Kharkiv: Pravo, 2013. – p. 611-612.

2 According to the survey (March 2014), the structural reforms particularly had priority among social expectations in Ukraine. The majority of respondents gave priority to measures of combating corruption (63%) and economic reform (61%); according to the 42% of respondents there was a need of army reforming (33%); 35% of respondents expected reforms in health care sector, 30% – in social protection, 28% – industry, 25% – in agriculture, 21% – the police (Source: Mechanism of Implementation of the Association Agreement between Ukraine and the EU and development relevant state politics in particular areas (tax, banking) [Electronic resource]. – Regime of access: <http://evropa-kiev.org/75-mekhanizm-implementatsijiugodipro-asotsiatsiyu-mizh-ukrajinoyu-ta-es-i-rozrobka-vidpovidnikh-derzhavnikh-politik-v-okremikh-sferakh-podatkova-sfera-ta-bankivskijsektor>.

3 Mykivych M. M, Tragniuk O. Y. International legal doctrine on the participation of Ukraine in international alliances / Legal Doctrine of Ukraine (in 5 volumes). – Volume 2 – Public-legal doctrine of Ukraine. Ed. Y.P. Bytyak. – P. 696-731.

modernization of the legal framework and ensuring transparency in national legislation, the deepening of the culture of democracy and respect for human rights.<sup>4</sup>

At the present stage of international cooperation between *Ukraine* and the *European Union* the most urgent issues of bilateral relations is the implementation of the *Association Agreement*,<sup>5</sup> the political part of which was signed on 21 March 2014. The economic part of the agreement was signed on 16 September 2015 and entered into force on 01 January 2016.

The new level of relations between *Ukraine* and the EU is the result of a long process, the aim of which is to create conditions for mutually beneficial relations for both sides.

It has to be noticed that the legal basis of cooperation between *Ukraine* and the *European Union* were the subject of research of several *Ukrainian* scholars, such as *T. Anakina, I. Berezovska, I. Vlyalko, Yu. Voloshin, M. Hnatovskiy, Ya. Kostyuchenko, I. Kravchuk, L. Lutz, M. Mykievych, V. Muravyov, Yu. Movchan, Ye. Perehygin, R. Petrov, N. Rylach, K. Smirnova, O. Staroseltseva, N. Sur, Yu. Hobbi, O. Shpakovych, I. Yakovyuk* and others. Fundamental theoretical surveys on EU cooperation with the third countries were carried out by *Russian* and *Western* researchers: *M. Herdehen, A. Kapustin, S. Kashkin, A. Moiseyev, B. Topornin, N. Shelenkova, B. Shemyatenkov, T. K. Hartley* and others. Despite this solid base, the development of legal relations between *Ukraine* and the EU and its Member States needs further research to work a more effective model of cooperation and its improvement.

While studying issues of legal regulation of relations between *Ukraine* and the *European Union* it should be mentioned that even in the period of existence of the *Soviet Union*, the first steps were made to initiate cooperation between the USSR and the *European Communities*. Since *Ukraine* was a subject of the *Federation of the USSR*, such cooperation also concerned our republic.

For a long period the *Soviet Union* and the *European Communities* did not enter into official relations with each other for political reasons. The *Soviet Union* did not establish formal diplomatic relations with the *Communities*. The "sole authority" in such area (economic international relations and creation of common economic rules) was recognized the *Council for Mutual Economic Assistance (Comecon)* (1949-1991). But diplomatic relations with the Members State of the *Communities* were established.

Only changes in the top leadership of the *Soviet Union*, the review of its foreign policy priorities (weakening of "cold war") have made significant adjustments on the possibility of cooperation with the EEC. In this regard, on 25 June 1988 *Community* and *Comecon* signed a *Joint Declaration* on the establishment of official relations,<sup>6</sup> under which for the first time the parties have expressed a desire to cooperate directly with

4 Mykievych M. M. Legal principles of organization and activities of the European Union in the field of foreign policy and security: Dis.... Candidate. Legal. Sciences: 12.00.11 / M. M. Mykievych; Ivan Franko Lviv National University, 2006. – P.311/.

5 Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part of 27/06/2014 [Electronic resource]. – Regime of access: [http://eeas.europa.eu/ukraine/docs/association\\_agreement\\_ukraine\\_2014\\_en.pdf](http://eeas.europa.eu/ukraine/docs/association_agreement_ukraine_2014_en.pdf).

6 Relations between the Community and the member countries of COMECON/ European Commission Press releas Database [Electronic Resources].- Regime of ecess: [http://europa.eu/rapid/press-release\\_MEMO-88-97\\_en.htm](http://europa.eu/rapid/press-release_MEMO-88-97_en.htm).

each other on all issues that were subject to the jurisdiction of these international organizations and created for them mutual interest.

Subsequently, the provisions of the *Declaration* were specified in the Agreement between the *European Community* and *Euratom* and the *Soviet Union* on trade, commercial and economic cooperation of 18 December 1989 (entered into force on 1 April 1990),<sup>7</sup> which replaced the relevant bilateral agreements between the USSR and the Member States. This international agreement introduced MFN regime and provided clear deadlines of gradual and complete withdrawal of the Community quantitative restrictions on imports from the *Soviet Union*, with the exception of textile products, coal and steel (Art. 2). The Agreement served as a legal ground for the future development of relations with the *Community*, since a significant part of its norms formed the basis for the future *Partnership and Cooperation Agreement* between *Ukraine* and *European Communities* of 1994.<sup>8</sup>

The collapse of the *Soviet Union* and the gaining of independence by our state raised before *Community* questions on the necessity of cooperation with the new subject of international law – *Ukraine* – and determination of its place in *European* integration processes. In that period the *Declaration of State Sovereignty of Ukraine* from 16 July 1990 was adopted.<sup>9</sup> Section X of this document proclaimed that

*"the Ukrainian Soviet Socialist Republic acts as an equal participant in international communication..., directly participates in the European process and European structures".*

This desire was later confirmed in numerous acts of independent *Ukraine*.

*European Community* was among the first who had established formal relations with *Ukraine*, after getting convinced of the democratic character of the national referendum on the proclamation of independence of our state. The *Declaration of the European Council on Ukraine* of 2.12.1991 essentially dealt with the recognition of *Ukraine* in the *de jure* form.

Considering *European* integration as a strategic direction of international legal activity of *Ukraine* meets its national interests, the *Ukrainian Parliament (Verkhovna Rada)* on 02 July 1993 adopted Resolution on "*Main directions of foreign policy of Ukraine*"<sup>10</sup> – the first legislative act in which the membership in the *European Communities* was defined as a purpose of the national prospective diplomacy.

The quintessence of the *Community's* international policy on our country was the conclusion *Partnership and Cooperation Agreement* between *Ukraine*, the *European*

7 Agreement between the European Community and Euratom and the Soviet Union on trade, commercial and economic cooperation of 18 December 1989 / OJ L 68, 15.3.1990, p. 1.

8 Agreement between the European Community and Euratom and the Soviet Union on trade, commercial and economic cooperation had legal force for Ukraine even after the USSR collapse until the Agreement on Partnership and Cooperation between Ukraine and Communities of 1994 entered into force.

9 Declaration on State Sovereignty of Ukraine 16.7.1990 // Bulletin of Verkhovna of USSR, 1990. – N 31. – Art. 429.

10 Main Directions of Ukraine's foreign policy: The Resolution of the Verkhovna Rada of Ukraine of 2.7.1993 p. № 3360-XII // Vidomosti Verh. Rada of Ukraine. – 1993. – № 37. – Art. 379.

*Communities* and their Member States (14 June 1994)<sup>11</sup> – the basic international agreement which defined the main principles of future international cooperation on a wide range of political, trade and economic and humanitarian issues (entered into force 1.3.1998)<sup>12</sup> and suspended the *Agreement on trade and economic cooperation with the Soviet Union* of 1989 (p. 3 of Art. 108 PCA). Similar Partnership and Cooperation Agreements were also concluded by the *European Community* with other new independent states of the former *Soviet Union* (*Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan*,<sup>13</sup> *Moldova*,<sup>14</sup> *Russia*,<sup>15</sup> *Tajikistan*<sup>16</sup> and *Uzbekistan*)<sup>17, 18</sup>

The date of signature of the *Partnership and Cooperation Agreement* between *Ukraine*, the *European Communities* and their Member States (hereinafter PCA) can be conditionally considered as the completion of the initial stage of relations between *Ukraine* and the EU. However, the development of bilateral relations at this stage was complicated by *Brussels* demands on *Ukraine's* nuclear-free status. The EU had put the principle condition for development cooperation and the signing of the *Agreement* – the withdrawal of nuclear weapons from *Ukraine* and the accession of the state to the

- 11 Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Ukraine, of the other part of 14.06. 1994 Official Journal. – Series L 049. – P. 0001 – 0002.
- 12 The legal basis for the concluding of the Partnership and Cooperation agreements is Art. 8 and Art. 212,216 of Treaty on the Functioning of the European Union.
- 13 Partnership and Cooperation Agreements (PCAs): Russia, Eastern Europe, the Southern Caucasus and Central Asia [E] // [Electronic Resources].- Regime of access: [http://europa.eu/legislation\\_summaries/external\\_relations/relations\\_with\\_third\\_countries/eastern\\_europe\\_and\\_central\\_asia/r17002\\_en.htm](http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/eastern_europe_and_central_asia/r17002_en.htm).
- 14 Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Moldova of 28.11. 1994// Official Journal. – 1998. – Series L 181. – P. 0003-0048.
- 15 Agreement on partnership and cooperation establishing a partnership between the European Communities and their Member States, of one part, and the Russian Federation, of the other part of 24.6.1994 // Official Journal. – 1997. – Series L 327. – P. 1-69.  
In the Agreements with the Russian Federation and Uzbekistan the subject of cooperation, inter alia is the prevention and the fight against illegal migration, drug trafficking, money laundering ". At the same time the agreement with the Russian Federation provides an opportunity of establishment free trade area in the future (Art. 1), which is typical for Association Agreements.
- 16 Partnership and Cooperation Agreement between the European Community and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Tajikistan, of the other part of 11.10.2004 [Electronic Resources].- Regime of access: [http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004\\_0521en01.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004_0521en01.pdf).
- 17 Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Uzbekistan, of the other part of 21.6.1996 // Official Journal. – 1999. – Series L 229. – P. 1-52.
- 18 The Partnership and Cooperation agreement between the EU and Uzbekistan was signed on 25 May, 1998, but it is still not ratified. (Turkmenistan. European Union External Action // [Electronic Resources].- Regime of access: [http://www.eeas.europa.eu/turkmenistan/index\\_en.htm](http://www.eeas.europa.eu/turkmenistan/index_en.htm)). Thus, Belarus is the only country with which the PCA was not signed after the negotiation period. The negotiations for the conclusion of PCA started already in 1995, but in 1997 were suspended, considering the political situation in the country. (Belarus. European Union External Action // [Electronic Resources].- Regime of access: [http://www.eeas.europa.eu/belarus/index\\_en.htm](http://www.eeas.europa.eu/belarus/index_en.htm)).

*Treaty* on the nonproliferation of nuclear weapons. Other acute problems, disturbing the EU, were the closure of *Chernobyl* NPP and ensuring nuclear safety of new reactors.

Signing of the agreement between the USA, *Russia* and *Ukraine* on the withdrawal of nuclear weapons from *Ukraine* in *Moscow* in January 1994 opened the way for the signing of the *Partnership and Cooperation Agreement* between *Kyiv* and *Brussels*. The forming factor of the EU policy towards *Ukraine* in the first half of the 90-s was the *Brussels* vision of the latter in the context of relations with *Russia*. Thus, the Common position of the EU on *Ukraine* adopted on the basis of the aforementioned agreement in November 28, 1994,<sup>19</sup> emphasized the importance of *Ukraine* to EU as a main *European* industrial country located between *Russia* and the EU Eastern neighbours. It was also emphasized that the aim of the EU – to promote *Ukraine* as a state that has balanced relations with *Russia* and the *West*.

Turning back to the *Partnership and Cooperation Agreement* between EC and *Ukraine*, it provided several key principles of cooperation:

- political dialogue between the parties;
- promotion of trade and investment and the development of harmonious economic relations between the parties;
- creation of basis for mutually advantageous economic, social, financial, scientific-technical and cultural cooperation;
- support for *Ukraine's* efforts to strengthen democracy and the end of the transition to market economy.

The *Agreement* gave the particular significance to the rule of law and respect for human rights provisions and the norms about economic and political freedoms. *Joint Declaration* in the annex to the *Agreement* established the possibility of immediate suspension of the all rights and obligations of Parties under the *Agreement* without the use of normal procedures in case of violation of democratic principles and human rights, as well as the principles of market economy.

The PCA between *Ukraine*, the *European Communities* and their Member States provided mutual rights and obligations in 28 areas, such as: industrial cooperation; investment promotion and protection; public procurement; standardization and certification; mining and production of raw materials; science and technology; education and training; agriculture; energy; use of nuclear energy for civil purposes; the environment; transport; space industry; postal services and telecommunications; financial services; money laundering; monetary policy; regional development; cooperation in the social sphere; tourism; information and communications; consumer protection; customs policy; statistics; the fight against drug trafficking; culture.

The Parties undertook the obligation to ensure the principle of freedom of transit of goods (Art. 11 of the PCA). In the field of trade and investment Parties should respect the principle of most favoured nation with limited use of the national regime (Articles 10, 30, 31, 39).

19 Common Position of 28 November 1994 defined by the Council on the basis of Article J.2 of the Treaty on European Union on the objectives and priorities of the European Union towards *Ukraine* of 28.11.1994 // Official Journal. – 06/12/1994. – Series L 313. – P. 0001 – 0002.

Art. 15 of the *Agreement* provided the obligation of application of the national regime by the Parties, according to which they provide the imported product, treatment no less favourable than that was given to the similar products of national origin.

The parties obligated to trade on the market prices base and fully ensure the implementation of the principle of market pricing in their mutual relations. These and other agreements became the basis for further cooperation and *Ukraine's* membership in the WTO.

Art. 4 of the PCA provided the possibility of establishment of a free trade area between the EU and Ukraine on condition of further progress of *Ukraine* through economic reforms.

Political, economic and social objectives, defined in the *Agreement*, reflected the political vision and economic realities of that time. Considerable part of its content meets the content of EC agreements, such as provisions on political dialogue, the provisions on the establishment, the movement of workers and capital, cooperation in the sphere of economy, finance and culture.

The PCA opened the possibility of gradual convergence of *Ukraine* to the EU. In its framework the regular political dialogue took place between *Ukraine* and the EU at all levels, including the presidential. The Agreement was an important step towards the involvement of *Ukraine* in the legal framework of the EU single market.

To ensure the implementation of the *Agreement* the special institutions were created. There were the *Cooperation Council*,<sup>20</sup> the *Cooperation Committee*,<sup>21</sup> and the *Parliamentary Cooperation Committee*.<sup>22</sup>

The great importance for the development of relations between *Ukraine* and the EU in the framework of the *Partnership and Cooperation Agreement* had a provision on the necessity of the harmonization of national legislation with the standards of EU law (*acquis communautaire*) in specific areas of cooperation. It was about achieving a certain degree of interpenetration of economic, political, social and cultural spheres of Partner State and the EU on the basis of the law. Thus the *Agreement* was aimed at achieving compatibility of the national legal system and the EU legal system, which could be achieved through maximum approximation of the main areas of legal regulation.

Based on the analysis of the content of the PC Agreement it can be concluded that the main ways of adaptation were the accession to the agreements to which the EU Member

20 A Cooperation Council supervised the implementation of the Agreement. It should meet at ministerial level once a year and when circumstances require. It should examine any major issues arising within the framework of the Agreement and any other bilateral or international issues of mutual interest for the purpose of attaining the objectives of the Agreement. The Cooperation Council could also make appropriate recommendations, by agreement between the Parties. Ukrainian part of the Council were founded according to the Decree of President from February, 24, 1998 and composed from Ukrainian Government members (another part of the Council composed from Council and Commission of EC).

21 Cooperation Committee tasks were the preparation of meetings of the Cooperation Council, supervision of the implementation of the Agreement between meetings of the Council. Composition of the Committee was similar to Council composition, but with representation at the level of senior officials.

22 Parliamentary Cooperation Committee was founded as forum for Members of the Ukrainian Parliament and the European Parliament to meet and exchange views. The Parliamentary Cooperation Committee could make recommendations to the Cooperation Council.



States were the parties, the adoption of legislation, which provisions met the requirements of the *European* integration organizations, mutual recognition of relevant standards provided in the agreements which were in force in Member States.

It should be noted that such format of agreements as the PCA, became an alternative version of cooperation that went much further than standard formats of agreements on trade and cooperation, but not approaching the *European Association Agreements*. The *Partnership and Cooperation Agreement* also differed from standard non-preferential agreements primarily through the institutional interaction elements and the possibility of extensive consultations on the general political issues.<sup>23</sup>

After entry into force of the PCA the several steps had been taken towards the institutionalization of relations between *Ukraine* and the EU, as well as legal providing of internal integration process in *Ukraine*.

*Presidential Decree* of 24 February 1998 created the *Ukrainian* part of the *Cooperation Council* between *Ukraine* and the EU, headed by the *Prime Minister of Ukraine*. The *Decree* provided the foundation of units in cooperation with the EU in all bodies of state. *National Agency of Ukraine for Development and European Integration* was also founded.

11, June, 1998 *President of Ukraine* approved in his *Decree* the Strategy of *Ukraine's* integration into the *European Union*, which set out the main directions of cooperation between *Ukraine* and the EU.<sup>24</sup> The Strategy identified state bodies of *Ukraine*, which were responsible for ensuring the integration process, and the ways of organizational, financial, legal and information support of *Ukraine's* integration into the EU. During the EU summit in *Cologne* (3-4 June 1999) the EU *Presidency (Germany)* in its Conclusion noted the achievement of a new level of relations between the EU and *Ukraine*.<sup>25</sup>

Thus, at the beginning of the new millennium, *Ukraine* was at the stage of implementation of the PCA. After entry into force of the *Agreement* a mechanism of bilateral cooperation between *Ukraine* and the EU was finally formed. It included regular political contacts at the highest level. At the same time the work on harmonization of *Ukrainian* legislation with EU rules and standards was started.

In particular, the Government adopted a *Resolution* of 1998, introducing a mechanism of approximation of national legislation of *Ukraine* to the EU legislation, approved the Concept of Adaptation of legislation of *Ukraine* to the EU legislation (August 16, 1999).<sup>26</sup> The fourth meeting of the *Interagency Coordinating Council* (14 April, 2000) approved the Working Plan of approximation, which provided the development of 50 draft laws and resolutions of *Ukrainian Government* that took into account the main

23 EU Law: Textbook / Ed. V.I. Muravyev. – Kyiv.: Yurinkom Inter, 2011. – 704 p.

24 On approval of the Strategy of *Ukraine's* integration into the *European Union*: Decree of the President of *Ukraine* of 11.6.1998 p. № 615/98 // Official bulletin of *Ukraine*. – 1998. – № 24 (02/07/98). – Art. 870.

25 European Council. Presidency Conclusions, *Cologne European Council*// 150/99 REV 1 CAB.- 3-4 June 1999. – 79 p.

26 On the Concept of Adaptation of *Ukraine's* Legislation to the *European Union* Legislation: Resolution of the Cabinet of Ministers of *Ukraine* № 1496 of 8.16.1999 // Official bulletin of *Ukraine* of 3.9.1999. – 1999. – № 33, p. 168.

provisions of the EU legislation. National *Council* for adaptation of Ukraine to EU legislation was established according to the *Decree of the President of Ukraine*.

Among the most important legal act, which regulates the process of cooperation between *Ukraine* and the *European Union* is a "*Program of Ukraine's integration into the European Union*" of 14.9.2000.<sup>27</sup> The Program was the main instrument for the general strategy towards rapprochement of *Ukraine* to the EU for the whole range of cooperation – political, social, financial, economic, commercial, scientific, educational, cultural and others. Other programs and plans of the political, social and economic nature should be based on the goals of the program. Its structure was defined based on the experience of the candidate countries for accession to the EU as well as sectoral programs of *Ukraine's* integration into the EU. The program covered almost all spheres of public life of the state to achieve the criteria arising from the objectives of monetary, economic and political union of the EU Member States and formulated by the *European Council* in June 1993 in *Copenhagen*.

Further historical changes in *Europe* influenced the development of relations between *Ukraine* and the EU. In particular, as a result of the enlargement of the EU during 2004-2007 *Ukraine* has turned to a neighbouring country to the *European Union*.<sup>28</sup>

To strengthen cooperation with neighbour-countries of the EU and to establish a zone of stability the *European Neighbourhood Policy* was established,<sup>29</sup> which covered 16 neighbouring countries (not only *European – South Africa, Asia*, etc.).

Subsequently, in order to select from this group countries, which can be involved in more intensive cooperation, in 2009 the *Eastern Partnership* policy was introduced.<sup>30</sup> It provided the active cooperation with *Ukraine* and other 5 neighbouring countries (*Azerbaijan, Belarus, Armenia, Georgia, Moldova*), including the possibility of establishment of a deep and comprehensive free trade agreement (hereinafter – FTA +) that combines some elements of the common market.

27 The program of Ukraine's integration into the European Union // Presidential Decree N 1072/2000 of 14.9.2000. – [Electronic Resources].- Regime of access: <http://zakon5.rada.gov.ua/laws/show/n0001100-00>.

28 Communication from the Commission to the Council and the European Parliament On strengthening the European Neighbourhood Policy. – Brussels. – 2006. – 4 December. – 2006 COM(2006)726 final.

Cremona M. L'Union fait la force? Potential and limitations of the European Neighbourhood Policy as an integrated EU foreign and security policy / M. Cremona. – European University Institute, Leiden University, 2007 – 114 p.

Hillion, Christophe, 'Mapping-Out the New Contractual Relations between the European Union and its Neighbours: Learning from the EU-Ukraine 'Enhanced Agreement''// European Foreign Affairs Review, vol. 12, 2007, pp.169-182.

29 European Commission, 'European Neighbourhood Policy Strategy Paper', Communication from the Commission, COM(2004) 373 final, Brussels, 12 May 2004, retrieved 16.8.2014, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004DC0373&from=EN>.

30 Anakina T. M. Influence of the Eastern Partnership politics on the Ukrainian – European Union legal relations / T. M. Anakina // state building and Local selfgovernance : collection of research papers / Editorial Board.: Yu.G. Barabash and others. – Kharkiv.: Right, 2012. – № 24. – P. 154-165.



The main instrument of the *European Neighbourhood Policy* was the Action Plans signed with each neighbour country. *Ukraine – EU Action Plan*, signed in 21, February, 2005, defined the main tasks of the Parties to the three-year period.<sup>31</sup>

The *Action Plan* defined the strategic framework for cooperation, directed at development of bilateral relations based on common *European* values and set the list of priorities both within and outside the framework of the *Partnership and Cooperation Agreement* between *Ukraine* and the EU.

During the twelfth session of the *Cooperation Council* (11 March, 2008) the *Joint Evaluation Report* on the implementation of the *Action Plan* was approved.<sup>32</sup> The integral part of the *Report* covered 23 additional priority measures of cooperation in 2008, at which parties concentrated their attention.

*Ukrainian* and *European* parties unilaterally determined annually tasks on the achievement of the objectives and priorities of the *Action Plan*. Parties periodically prepared information about implementation of the *Ukraine-EU Action Plan*.

Instead of the *Ukraine-EU Action Plan* the *Association Agenda* was approved in 23 November, 2009.<sup>33</sup> This document became a new tool, which was to prepare the entry into force of the *Association Agreement* between *Ukraine* and the EU,<sup>34</sup> and to facilitate of this process. The *Association Agenda* defined the key priorities of the reforms, to which *Ukraine* should pay attention during the next years and which would help to fully seize the opportunities to take an advantage of intensified cooperation and improved market access provided by the new *Association Agreement* between *Ukraine* and the EU.

The *Association Agenda* provided the establishment of the *Joint Committee* at the level of senior officials to review progress in implementing the reform priorities set out in the document and to up-date it periodically as appropriate. The *Joint Committee* reported regularly to the EU-Ukraine *Cooperation Council*.

During its first meeting in January, 26, 2010, the *Joint Committee* approved the List of priorities of the *Association Agenda Ukraine-EU* in 2010.

The document was amended twice (in 2012 and 2013) in order for it actualization. The *Cooperation Council* was submitted 3 Joint Reports on implementation of the *Association Agenda Ukraine-EU* in 2010, 2012, 2013.

In March, 13, 2015 the *Government of Ukraine* adopted the Order "On approval of the recommendation of the *Association Council* between *Ukraine* and the EU on the

31 EU-Ukraine Action Plan adopted 21.2.2005// EU Neighbourhood Library. – [Electronic Resources].- Regime of access: <http://www.enpi-info.eu/library/content/eu-ukraine-action-plan-0>.

32 Joint Evaluation Report EU-Ukraine Action Plan of 11.3.2008 // EU Neighbourhood Library. – [Electronic Resources].- Regime of access: <http://www.enpi-info.eu/library/content/joint-evaluation-report-eu-ukraine-action-plan>.

33 European Commission, European Union-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement of 23.11. 2009. – [Electronic Resources].- Regime of access: [http://www.eas.europa.eu/ukraine/docs/2010\\_eu\\_ukraine\\_association\\_agenda\\_en.pdf](http://www.eas.europa.eu/ukraine/docs/2010_eu_ukraine_association_agenda_en.pdf).

34 The characteristic of the Association Agreement between Ukraine and the EU will be given further.

implementation of the Association Agenda between Ukraine and the EU" (№ 207).<sup>35</sup> And in March, 16, 2015 the Association Council between Ukraine and the EU approved the new Association Agenda (by exchange of letters). Now the Association Agenda is considered to be a practical tool joint on preparation and promotion of full implementation of the Association Agreement.

Characterizing the development of legal regulation of relations between Ukraine and the EU at the present stage, it is necessary to point out that one of the main aspects of cooperation between Ukraine and the EU is the convergence (adaptation) of national legislation to the EU legislation. According to the Strategy of integration, Ukraine is obliged to adapt of Ukrainian legislation to EU legislation. This process is the approximation of national legislation to the modern European system of law and adduction it to the level that has developed in the EU Members States.

Adaptation involves the reforming of the legal system of Ukraine and bring it into compliance with European standards. Not the last role in this process plays the participation of Ukraine in the Council of Europe Conventions by which the general standards of legal regulation are established. These standards are also common for the EU Member States.

The profile normative legal act in the sphere of adaptation of the legislation of Ukraine to the legislation of the EU is the Law "On the National Program of Adaptation of the Legislation of Ukraine to the Legislation of the European Union", of 18.3.2004,<sup>36</sup> which defines the mechanism of achievement of compliance by Ukraine to the third Copenhagen and Madrid criteria of acquisition of membership in the European Union.

This mechanism includes the adaptation of the legislation and establishment of the relevant institutions and other additional measures necessary for effective law-making and enforcement, as well as creation of prerequisites for preparation of a legislative framework for accession of Ukraine to the European Union.

In the context of the survey, it is worth to recall also the Law of Ukraine "On the principles of domestic and foreign policy" of 01 July, 2010. (Ch. 2, Art. 11),<sup>37</sup> in which the immutability of chosen priority of international diplomacy of our state – ensuring integration of Ukraine in the European political, economic, legal area with the purpose of gaining of the EU membership is confirmed.

The active legislative process in Ukraine in the sphere of European integration resulted generally in the adoption of more than 100 subordinate normative legal acts concerning national regulation of the relevant issues. The majority of them concerned the economic and social sphere.

35 On Approval of the Recommendations of the Association Council between Ukraine and the EU on the Implementation of the Association Agenda between Ukraine and the EU: the Cabinet of Ministers of Ukraine Order of 13.03. 2015 p. № 207-p // Government official courier of 19.3.2015. – № 50.

36 On the Concept of the National Program of Adaptation of Legislation of Ukraine to the European Union Legislation: Law of Ukraine of 21.11.2002. – № 228-IV // Official. Visn. Ukraine. – 2002. – № 50. – P. 2233.  
On the National Program of Adaptation of the Legislation of Ukraine to the European Union Legislation: Law of Ukraine of 18.3.2004. N 1629-IV // Bulletin of Verkhovna Rada of Ukraine of 16.7.2004. -2004. – № 29. – Art. 367.

37 On the Basis of Domestic and Foreign Policy: the Law of Ukraine of 1.7.2010. – №2411-VI // Bulletin of Verkhovna Rada of Ukraine of 8.10.2010 – 2010. – № 40. – Art. 527.

It should be noted, that in parallel with the general deepening of the economic relations between *Ukraine* and the EU sectoral cooperation became more active. For example,

- in the energy sphere: the Cooperation agreement in the sphere of peaceful use of nuclear energy of 28.4.2005 was adopted; the Protocol on the accession of Ukraine to the *Treaty* establishing the *Energy Community* uniting the markets of energy resources of EU Member States and 8 other *European* countries;
- in transport – the *Agreement* between the *European Union* and *Ukraine* on certain aspects of air traffic of 1.12.2005; the *Agreement* between the *European Union* and *Ukraine* on cooperation on civil global navigation satellite system of 1.12.2005.
- in the social sphere – the *Agreement* between the *European Union* and *Ukraine* on scientific and technology cooperation of 4.7.2002;
- in the field of justice, security and migration – the *Agreement* between the *European Union* and *Ukraine* on security procedures for the exchange of classified information of 13.6.2005; the *Agreement* between the *European Union* and *Ukraine* establishing a framework for the participation of *Ukraine* in the *European Union* crisis management operations of 13.6.2005; the *Agreement* between *Ukraine* and *European Communities (European Union)* on facilitation of the issuance of visas of 18.6.2007 (amended on 23.7.2012 p.); *Agreement* between the *European Community* and *Ukraine* on the readmission of persons of 18.6.2007; *Agreement* between *Europol* and *Ukraine* on strategic cooperation of 4.12.2009.

The contractual mechanism of cooperation of *Ukraine* with the *European Union* also covers cooperation agreements and participation of *Ukraine* in agencies and programs of the *European Union*. 1.11.2011 the *Protocol to the Partnership and Cooperation Agreement between the European Communities* and their Member States, of the one part, and *Ukraine*, of the other part, on a *Framework Agreement* between the *European Union* and *Ukraine* on the general principles for the participation of *Ukraine* in *Union* programmes entered into force.<sup>38</sup> According to *Protocol* our country can participate in more than 20 sectoral programs in the areas of energy, competitiveness and innovations, communications, consumer policy, health, culture, education and science, youth policy, etc. It is possible the full participation of *Ukraine* with active involvement in the work of EU agencies without decisive right. This form of participation provides an opportunity for countries to appoint a representative to the Board and Agency advisory bodies as an observer.

The last 6 years of cooperation between *Ukraine* and EU could be considered as the most productive. In this context the *Ukrainian* membership from 16 May, 2008 in the WTO<sup>39</sup> was the event of a great significance for the process of further economic inte-

38 Protocol to the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and Ukraine, of the other part, on a Framework Agreement between the European Union and Ukraine on the general principles for the participation of Ukraine in Union programmes of 01.11. 2011// European External Action Service. Treaties Office Database. – [Electronic Resources]. – Regime of access: <http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=14502>.

39 On ratification of the Protocol on Ukraine's accession to the World Trade Organization: Law of Ukraine of 10. 04.2008. – №250-VI // Bulletin of the Verkhovna Rada of Ukraine. – № 23. – Art. 213.

gration of our country to the *European* structures. The consequences of this were: 1) the emergence of objective reasons for the introduction of a free trade area with the EU; 2) the formal compliance with the so-called "second" *Copenhagen* criteria for EU membership, since the inclusion of the state in the WTO presumes the existence of mechanisms of the market economy in it. This created epy conditions for the development and signing of a new agreement between *Ukraine* and the EU, which would reflect the new format of relations and a higher level of integration.

After five years of negotiations the EU and *Ukraine* came very close to the conclusion of the most ambitious and most ambitious document in the history of bilateral relations – the *Association Agreement* (AA). The *Association Agreement* is the most advanced type of international agreements which the EU may conclude with third countries<sup>40</sup> – countries with which the EU is ready to develop strong long-term allied relations based on mutual trust and respect for common values.<sup>41</sup> As noted by R. Petrov, such agreements have become "one of the most recognizable brands of the foreign policy of the Union".<sup>42</sup>

AA is the largest international legal agreement of *Ukraine* with its scope and thematic coverage and the biggest international legal instrument<sup>43</sup> in the international practice of the EU.<sup>44</sup>

Preparation of the text of AA lasted about 4 years (2007-2011). It was carried out more than 21 rounds of negotiations on the development and adoption of the text of the *Agreement* and 18 concerning the Free trade Area.

The signing of the *Association Agreement* took place in two stages. During the first phase (on March 21, 2014.) at the extraordinary *Ukraine* – the EU summit the political part was signed. At the second stage (on June 27, 2014), during a meeting of *Council* of the EU, the *President of Ukraine* and the EU leaders, and also heads of states and

40 Sushko, Oleksandr., Zelinska, Olga., Khorolsky, Robert., Movchan, Veronika., Solonenko, Iryna., Gumeniuk, Viktoria., & Triukhan, Vadym, 'EU-Ukraine Association Agreement: Guideline for Reforms', KAS Policy Papers, 20/2012; Kyiv: KAS Stiftung. – [Electronic Resources]. – Regime of access: [http://www.kas.de/wf/doc/kas\\_32048-1522-1-30.pdf?120912140526](http://www.kas.de/wf/doc/kas_32048-1522-1-30.pdf?120912140526);

'The Association Agreement: A Pearl of Great Value at Risk of Loss', Konrad Adenauer Stiftung (KAS) Policy Brief, Kyiv, January 2012. – [http://www.kas.de/wf/doc/kas\\_30051-1522-1-30.pdf](http://www.kas.de/wf/doc/kas_30051-1522-1-30.pdf).

41 In modern EU foreign policy practice, the association agreements are quite common. So, today the EU supports an association with approximately 100 states of the world. In addition, the contemporary association agreements could be concluded with the states which are considering the prospect of EU membership and countries which can not formally join the EU (eg., The Association Agreement with Chile in 2002).

42 Petrov R. Association agreement versus partnership agreement. What is the difference? / R. Petrov. [Electronic Resources]. – Regime of access: [http://uesa.blogspot.com/2011/04/blog-post\\_04.html](http://uesa.blogspot.com/2011/04/blog-post_04.html).

43 Association: Stepping-Stone or Alternative to EU Membership / Phinnemore, David/ Sheffield Academic Press, 1999. – 166 p.

44 Anakina T. N., Buromenskiy M. V., Steshenko V. M., Tragniuk O. Y. Analytic report on the Draft Association Agreement between Ukraine, on the one part, and the European Union and its Member States, on the other part // State building and Local Selfgovernance: Collection of research papers / Editorial Board: Yu.G. Barabash and others. – Kharkiv: Pravo, 2013. – № 26. – P.294-305.

governments of EU Member States signed economic part of the *Agreement*. On September 16, 2014 the *European Parliament* and the *Supreme Council of Ukraine* simultaneously ratified the *Association Agreement*. But the AA will enter into force only after the ratification of the document by all parties.

Today the ratification of the *Agreement* by EU Member States is still proceeding.

From 1.11.2014 the AA is temporary applying<sup>45</sup> (there is a majority of provisions of political part and some provisions of economic ones) (p. 3 Art. 486 of the AA).<sup>46</sup> Such provisional or interim (temporal) application was an expected and necessary measure to mitigate the adverse effects of the lengthy ratification procedure.<sup>47</sup> From 1.1.2016 the implementation of the provisions on the establishment of the deep and comprehensive free trade area<sup>48</sup> (Title IV: Trade and Trade-Related Matters) have started.

As has been noted, by its legal nature, the *Association Agreement* as well as PCA, is a bilateral international public law agreement which defines the international cooperation regime between *Ukraine* and the EU and its 28 Member States.

In the *European* law theory, this type of agreements is recognized as "mixed", since their object is not fully covered by the exclusive competence of the *Union*, and therefore a number of its provisions are concerning shared competence of the EU and the Member States.<sup>49</sup> This fact causes the peculiarities of expression of consent to the binding force of this *Agreement*. The binding force of the agreement should be proven both in the *Union* and each of its Member States according to the constitutional legislation of the

45 Delegation of the European Union to Ukraine, 'De Gucht: We will Speed up Association Agreement's Provisional Application as Much as Possible', EU-Ukraine Cooperation News – The Newsletter of the Delegation of the European Union to Ukraine. – [Electronic Resources]. – Regime of access: – <http://euukrainecoop.com/2013/10/03/de-gucht/>.

46 '[...] the Union and Ukraine agree to provisionally apply this Agreement in part, as specified by the Union, as set out in paragraph 4 of this Article, and in accordance with their respective internal procedures and legislation as applicable' (Article 486 para.3 EU-UA AA).

47 Provisional application of the EU-Ukraine Association Agreement is an intermediary measure enabling application of the treaty before its full and unconditional enactment. It has to be noted thereby that the agreement's provisions become applicable earlier than provided for in the treaty itself (through the reference passages 'date of entry into force of this Agreement'). Misinterpretation of the terms and misunderstanding of procedural law and politics in the context of EU-Ukraine Association Agreement may have serious repercussions for the treaty application and adjudication of related therewith claims, especially due to the anticipated problem with a fake 'retroactive effect'. Guided by the legal certainty principle, the Association Agreement of the European Union with Ukraine has not been granted retroactive effect, but once entered into force (which can be a several years later *fait accompli*) it will cover the preceding period, starting with the date from which the agreement will be provisionally applicable.

48 Van der Loo, G. (2014), 'The EU-Ukraine Deep and Comprehensive Free Trade Area: A Coherent Mechanism for Legislative Approximation?' in P. V. Elsuwege & R. Petrov (eds.) *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union: Towards a Common Regulatory Space?* London & New York: Routledge, pp. 63–88.

49 EU Law: Textbook / Ed. V.I. Muravev. – Kyiv.: Yurinkom Inter, 2011. – P.458..

latter.<sup>50</sup> After entering into force the AA becomes a part of national legislation (Part 1 Art. 9 of the Constitution of Ukraine)<sup>51</sup> and in case of conflict with the norms of the current legislation should be subject to prior application (Part 2 Art. 19 of the *Law "On International Treaties"*).<sup>52</sup> At the same time the AA becomes the source of law of the EU and its 28 Member States.

First of all it is necessary to note that the *Association Agreement* as well as PCA does not impose any legal obligation on the parties towards *Ukraine* accession to the *European Union*. The Preamble of the *Association Agreement* clearly states that

*"this Agreement will not prejudice and leaves open future developments in EU-Ukraine relations".*

The Agreement also does not grant *Ukraine* the status of an "associate member" because such status is not provided by founding treaties of the EU (*European Union Treaty of 1993 and the Treaty on the Functioning of the EU*, 1957). In this regard it is necessary to pay attention to that fact that in some legislative acts of *Ukraine* the term "the associated membership in the EU" is extremely incorrectly used. For example, the Strategy of integration of *Ukraine* to the EU of 1998<sup>53</sup> defined that the main priority of foreign policy of *Ukraine* was the obtaining of "the EU association member" status. The *Law of Ukraine "On the National Program of adaptation of legislation of Ukraine to the EU legislation"* of 2002<sup>54</sup> mentioned the aim of conclusion of the agreement on association membership in the *European Union*. But in the present time the statutes of only some international organizations (*Council of Europe*, CIS, the Food and Agriculture Organization (FAO), UNESCO), operating this term, provide an opportunity to cooperate with sovereign states on the base of their limited participation in the organization without a decisive voice in decision-making. Thus, unlike the PCA, *Association Agreement* only extends (in terms of areas of cooperation) and deepens (particularly in terms of economic integration) relationship of the parties. For the purpose of the accession to the EU between the parties the separate international agreement has to be signed. This agreement

50 As for today, the agreement has been ratified by Ukraine and the European Parliament on September 16, 2014, and by the following Member States: Romania – July 14, 2014; Lithuania – July 29, 2014; Latvia – July 31, 2014; Malta – August 29, 2014; Bulgaria – September 9, 2014; Slovakia – October 21, 2014; Estonia – January 12, 2015; Hungary – April 7, 2015; Sweden – January 9, 2015; Poland – March 24, 2015; Croatia – March 24, 2015; Denmark – February 18, 2015; UK – April 8, 2015; Ireland – April 17, 2015; Finland – May 6, 2015; Luxembourg – May 12, 2015; Spain – May 19, 2015; Portugal – May 13, 2015; Germany – July 22, 2015; Slovenia – July 27, 2015; Austria – August 6, 2015; France – August 10, 2015; Czech – November 12, 2015; Italy – December 11, 2015.

51 Constitution of Ukraine of 28.6.1996 // Bulletin of Verkhovna Rada of Ukraine, 1996. – № 30 – Art. 141.

52 On International Treaties of Ukraine: Law of Ukraine of 29.6.2004 // Bulletin of the Verkhovna Rada of Ukraine. – 2004. – № 50. – Art. 540.

53 On Approval of the Recommendations of the Association Council between Ukraine and the EU on the Implementation of the Association Agenda between Ukraine and the EU: the Cabinet of Ministers of Ukraine Order of 13.03. 2015 p. № 207-p // Government official courier of 19.3.2015. – № 50.

54 On the Concept of the National Program of Adaptation of Legislation of Ukraine to the European Union Legislation: Law of Ukraine of 21.11.2002. – № 228-IV // Official. Visn. Ukraine. – 2002. – № 50. – P. 2233.



in case and on condition of coming into effect forms the sole basis of legal relations of membership in that international organization.

In this connection, it is expedient to note that the *Agreement* do not disclose the term "association". There are also no clear definitions of it in any legal act in the EU. But at the same time the EU founding *Treaties* contain provisions on the association with "overseas countries and territories" (Articles 198-204 of the Treaty on the Functioning of the EU), and recognize the possibility of concluding of special association agreements with third countries and international organizations involving the reciprocal rights and obligations, common actions and procedures (Art. 217 of the *Treaty on the Functioning of the EU*).

The first type of relations provides a specific legal relationship of non-European countries and territories (*Greenland, New Caledonia, French Polynesia*, etc.), which are dependent on the certain Member States, with the *Union*. The second type of relations is introduced between the EU and third countries and international organizations to establish mutually beneficial enhanced cooperation of parties in various fields of subject competence of the EU on the ground of relevant international treaties. According to EU foreign policy practice, such relationships are often established to prepare for the state for accession to the *Union*.<sup>55</sup> At the same time an association relations can be established with the state, that due to the geographical criterion under Art. 49 of the EU *Treaty*, can not formally access the *Union* (for example, the *Association Agreement* with *Chile* in 2002).

The subject of the *Association Agreement* is much wider than a subject PCA. Except traditional spheres of bilateral cooperation – economic (including trade, investment, commercial), social, cultural, scientific and technical, the Agreement regulates questions of cooperation in the sphere of foreign policy and a security policy, military cooperation, justice, human development, civil society etc.

The largest number of the *Agreement* provisions is devoted to economic cooperation (Article 434, i.e 89.3% of all articles of the Agreement). In particular, the economic relations are regulated by Title IV (Trade and trade-related matters -Articles 25-336), Title V (Economic and sector cooperation- Articles 337-452) and to some extent by Title VI (Financial cooperation, with anti-fraud provisions – Articles 453-459).

The integral part of the *Association Agreement* is the provision on gradual introduction (within 10 years from entering into force) of a deep and comprehensive free trade area (hereinafter – FTA +).<sup>56</sup> This could be indicated as the main feature of the AA. Thus, it is about participation of *Ukraine* in the very first and elementary form of the international economic integration with the European Union which at the same time has certain specifics. So, unlike "traditional" free trade area, which are usually limited to cancellation of common customs duties and quantitative restrictions in mutual trade only in industrial goods, FTA + extends on agricultural production and other production, "sensitive" in terms of market relations, and also the sphere of rendering of services, the establishment

55 Muravyev V. I. Legal framework governing economic relations of the EU with third countries: Dis.... Dr. Legal. Sciences: 12.00.11 / Victor Ivnovich Muravyev. – K., 2003. – P. 211.

56 Article 25 EU-Ukraine AA stipulates that 'The Parties shall progressively establish a free trade area over a transitional period of a maximum of 10 years starting from the entry into force of this Agreement [...]... '[u]nless otherwise provided in Annexes I and II to this Agreement', as stated in the footnote to the Article.

of the companies, direct foreign investments, the movements of the capitals and payments, government procurements. It provides regulatory approximation or unification of technical regulations, standards, conformity assessment, sanitary and phytosanitary rules of Ukraine with the corresponding *acquis* in the Union (it is about elimination of non-tariff barriers). So DCFTA covers some characteristics of a higher form of economic integration – a common market that currently exists among all EU Member States.

UA provides significant fundamental obligations of the parties in the political and legal sphere. These obligations are stated in concentrated form in the Title II ("Political dialogue and reform, political association, cooperation and convergence in the field of foreign and security policy", Articles 4-13) and the Title III ("Justice, freedom and security", Articles 14-24).

In particular, the AA extends the possibilities of coordination of foreign policy of Ukraine and EU Member States in the sphere of global and regional international relations, which are of the common interest and in which Ukraine is leaving the right to freely choose and develop its own position.

For example, this concerns combating money laundering and terrorism financing (cr. 20), fighting against illicit drugs, and on precursors and psychotropic substances (cr. 21), fighting against crime and corruption (cr. 22) etc.

Unlike the PCA, the Association Agreement provides for the obligations of the parties in the area of foreign and security policy. So the cooperation went beyond purely economic and social field.

At the same time considering the importance of foreign political and security spheres for internal interests of the parties, their mutual duties in this area by its legal nature are only rules of so-called "soft" international law.

The provisions of the *Agreement* do not determine a clear legal obligations on their implementation, giving the parties a wide arsenal of tools for its realization, considering the specific of national interests and priorities. Thus, according to p. 1, Art. 7 of the AA:

*"The Parties shall intensify their dialogue and cooperation and promote gradual convergence in the area of foreign and security policy, including the Common Security and Defence Policy (CSDP), and shall address in particular issues of conflict prevention and crisis management, regional stability, disarmament, non-proliferation, arms control and arms export control as well as enhanced mutually-beneficial dialogue in the field of space. Cooperation will be based on common values and mutual interests, and shall aim at increasing policy convergence and effectiveness, and promoting joint policy planning. To this end, the Parties shall make use of bilateral, international and regional fora".*

Hence, according to the document

*"Nothing in this Agreement shall prevent a Party from taking any measures:*

- (a) which it considers necessary to prevent the disclosure of information contrary to its essential security interests;*
- (b) which relate to the production of, or trade in, arms, munitions or war materials or to research, development or production indispensable for defence purposes, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes;*

(c) which it considers essential to its own security, in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security" (Art. 472 of AA).

Special attention deserves Art. 8 of the *Agreement*, whereby the parties take the obligation to «cooperate in promoting peace and international justice by ratifying and implementing the Rome Statute of the International Criminal Court (ICC) of 1998 and its related instruments". So, this norm unambiguously defines the further direction of development of the domestic criminal legislation. But it does not set the time intervals during which *Ukraine* must agree to be bound by the ICC and to bring its legislation in compliance with its provisions.

At the same time, considering the *Conclusion of the Constitutional Court Ukraine in the Rome Statute* case of 11 July 2001, the implementation of such a rule would require amending the *Constitution of Ukraine*, because, according to Art. 1 of the Treaty "International criminal court... supplements national organs of criminal justice" and that does not match p. 1 and p. 3 of Art. 124 of the *Fundamental Law* of the state.

Basically there is a distinguished feature of the *Association Agreement* in comparison with the *Partnership Agreement* that is a substantial increase of spheres of legal regulation, which needs an adaptation of *Ukrainian* legalization to *acquis* of the *European Union* and fixation of the detail lists of legislative acts of the *European Union*, which is subjected to be attached in *Ukraine* with the certain terms of their adoption. It concerns the implementation and appropriate incorporation of about two hundred regulations and directives of the *European Union*, and other acts of the *acquis* and international agreements and standards, effective application of the international agreements which have been already ratified by *Ukraine*.

According to the researchers, the implementation of more than 350 acts of the EU legislation, the EU *acquis*, and international agreements during 2-10 years from the entry into force of the *Agreement* or its particular provisions are required. In addition, the *Association Agreement* takes into account a conception of dynamic rapprochement of *Ukrainian* legalisation with the EU *Law*, which norms are not static and change constantly.

In addition, unlike the legislative approaching, defined by Article 51 of the PCA, a procedure of adaptation of the the *Assosiation Agreement* is provided for not only concordance of domestic legislation but also practice of its application, that is commonly represented in the decisions of the ECJ. The above said is typical for agreements concluded with the aim of preparing countries for membership in the *European Union*. Hence, the achievement of the proper compliance of the *Ukrainian* legislation to the acts of the *European* legislation, will contribute for the further integration of *Ukraine* in the international organization.

The *Association Agreement* introduces an extensive, ramified institutional structure (Council, Committee, Parliamentary Committee),<sup>57</sup> which should provide an imple-

57 This institutional structure is similar to ones created by the PCA.

mentation of its provisions.<sup>58</sup> At the same time with the aim of democratization of the process of realization of the *Agreement*, the creation of the Platform of civil society (Article 469 of Partnership Agreement) is provided. It is an innovation for the similar agreements with the *European* countries, which creates preconditions for the deep and systematic involving of the civil society to the whole spectrum of relations between *Ukraine* and EU. For example, *Parliamentary Committee* and Platform of civil society must be informed about the decision and recommendations of the *Association Council*. The Agreement also envisages that *Committee of the Association* and *Parliamentary Committee* will carry out regular contacts with the representatives of the Civil Society for the conclusion of the latter, which concerns the achievement of the aims of this Agreement.

It is important to note that there is a difference in the status of some common leading organs and legal nature of decisions that can be adopted as legally binding.

According to the *Agreement*, such power is enshrined for the *Association Council* and in an order of delegation – the *Association Committee* (p. 1, Art. 463; p. 2 Art. 465). In comparison with the decisions of common bodies of PCA,<sup>59</sup> the degree of influence of the acts common organs of AA on *Ukraine's* legal order is considerably higher. In addition, the *European Court of Justice* in the decision 12/86 "*Demirel*"<sup>60</sup> in 1987 explained, that

*"an association agreement implies creating special privileged links with a non-member country which must, at least to a certain extent, take part in the [Union] system"* (p. 9). *"A provision in an agreement concluded by the Community with non-member countries must be regarded as being directly applicable when, regard being had to its wording and the purpose and nature of the agreement itself, the provision contains a clear and precise obligation which is not subject, in its implementation or effects, to the adoption of any subsequent measure"* (p. 14).

It means that provision of the *Association Agreement* as part of legislation of *Ukraine* (according to p.1 Art. 9 of the *Constitution of Ukraine*) can directly create rights and duties for legal and natural persons, which can be protected by domestic courts in *Ukraine*.

The *Association Agreement* unlike the *Partnership and Cooperation Agreement*, has been concluded for the indefinite period of time (Art. 481). Due to

the unlimited term of its validity, there is a possibility of realisation of all-round revision of its provisions, including the expansion and setting of more ambitious aims and tasks, during five years since the entering into force, and also at any time on parties mutual consent.

58 Tyushka A. Empowered to Deliver: The Institutional Model and Implementation Arrangements under the EU-Ukraine Association Agreement // Romanian Journal of European Affairs. – Vol. 15. – N. 1, March 2015. – P. 5-22.

59 At the same time, according to the Art. 85 and 92 of the Partnership and Cooperation Agreement, a Partnership Council can adopt only recommendation decisions.

60 Judgment of the Court of 30 September 1987. – Meryem Demirel v Stadt Schwäbisch Gmünd. – Reference for a preliminary ruling: Verwaltungsgericht Stuttgart – Germany. – Association agreement between the EEC and Turkey – Freedom of movement for workers. – Case 12/86// European Court Reports, 1987 -03719.

On the opinion of *M. Kuzio*, this provision creates preconditions not only for the regular updating of this *Agreement*, but also for the possible formal fixing of deepening *Ukraine's European* integration process.<sup>61</sup>

So, as can be seen, the AA creates perspectives for the further economic and political development of *Ukraine*.

However, the success of the *European* integration process in *Ukraine* and the implementation of the *Association Agreement* depends on the willingness and capacity of our country to carry out reforms, which should provide a basis for mutually beneficial EU-*Ukraine* relations. These reforms concern both political and economic spheres (micro- and macroeconomic level) and all state and business infrastructure.

Among the most painful and politically difficult problems for *Ukraine* remain corruption, reforming the judiciary and law enforcement system in general, personal data protection, anti-discrimination reform, etc.

Among the basic economic indexes of the development of *Ukraine*, there is a considerable gap in economic and social development between *Ukraine* and EU Member States and even candidate countries, and also substantial structural disparities and deformations of the *Ukrainian* economy, a low level of direct foreign investments. On these indexes *Ukraine* substantially stands behind not only from countries of the *European Union*, but also countries of *Eastern Europe*.

Among the factors deterring cooperation between *Ukraine* and the *European Union* are:

inconsistency of the development of democratic institutions and state of civil society with *European* standards, in particular, which has become apparent in accusations against *Ukraine* in violation human rights, violations during election campaigns etc.;

low level of economic development; the slow pace of reforms, low GDP and per capita incomes;

undeveloped regulatory support of business in *Ukraine* and the basic institutions of the economy; unfavourable investment climate; high levels of corruption and economic crime; the problem of protection of intellectual property, debt obligations of *Ukraine*; narrow export structure of *Ukraine's* proposals for the EU internal market;

lack of experienced specialists in *European* integration issues in state structures of *Ukraine*.

Analysis of the causes of containment of cooperation between *Ukraine* and the EU allows to define prior directions of the *Ukrainian* government activities in this area:

1. structural transformations, which necessary for providing of increasing of economy; market transformation of national economy on the base of the *European* standards; increasing the competitiveness of domestic producers through privatization of enterprises and the introduction of effective competition policy of domestic products on the majority products positions; attraction of foreign investment, joining of cost-effective enterprises to transnational groups to promote adaptation of the *Ukrainian* economy to enter into the world economic order;

61 The Association Agreement between Ukraine and the European Union: a special relationship based on values / ed. By M. Kuzio. – Kyiv.: Laboratory of Legislative Initiatives, 2012. – P. 33.

2. democratization of public relations; development of civil society; combating corruption;
3. improvement of protection of intellectual property rights; bringing the national legal base in the compliance with *European* standards;
4. implementation of administrative reforms in line with *European* experience; implementation of appropriate training and retraining programs for employees; strengthening financial component of European integration course of *Ukraine*;
5. realization of the wide-ranging information and educational programs to improve public knowledge about nature and essence of *European* integration, the specifics of functioning of the EU;
6. participation of *Ukraine* in common economic the EU projects;
7. participation in the construction of the *European* security architecture;
8. further deepening of frontier and customs cooperation; coordination of combating organized crime, illegal migration, drug trafficking, money laundering.

Concerning the *EU-Ukraine Association Agreement*, it also should be noted that the main difficulties of its implementation lie first of all in arranging the *Agreement's* implementation framework and complying therewith. As noted by *A. Tyushka* such complexities may relate to implementation modes and models (transitional implementation period, suspension clause, institutional implementation models), substantial and procedural implementation policies (legislative and regulatory approximation, institutional association policy) as well as legal effects (constitutional tolerance, direct applicability, direct effect, interpretation rules, the dispute settlement mechanism).<sup>62</sup> The implementation of the *Association Agreement* also involves high costs, especially as regards such policy areas as the internal market *acquis* transposition, customs regulations, environment policy, agriculture (and land reform) policy, and also transport, energy and nuclear safety policies. Significant institutional and personnel costs are also to be accounted for in the context of the agreement's effective implementation policy.<sup>63</sup>

In conclusion, it should be said that *Association Agreement* is a significant result of political and legal cooperation between EU and *Ukraine* in recent years. It is a document of the "new generation", which provisions envisage a higher level of economic integration of *Ukraine* in the economic area of united *Europe* in comparison with the provisions of *Partnership and Cooperation Agreement*. The institutional basis, which was founded by PCA, has been developed by AA. All political, legal, economic and social reforms to be carried out for the successful implementation of the *Agreement* require not only significant economic costs, but also the political will to support this challenge.

62 Tyushka A. Association through Approximation: Procedural Law and Politics of Legislative and Regulatory Approximation in the EU-Ukraine Association Agreement *Baltic Journal of European Studies*. – Tallinn University of Technology. – Vol. 5, No. 1. – (18). – P. 57.

63 Tyushka A. Association through Approximation: Procedural Law and Politics of Legislative and Regulatory Approximation in the EU-Ukraine Association Agreement *Baltic Journal of European Studies*. – Tallinn University of Technology. – Vol. 5, No. 1. – (18). – 57-58.