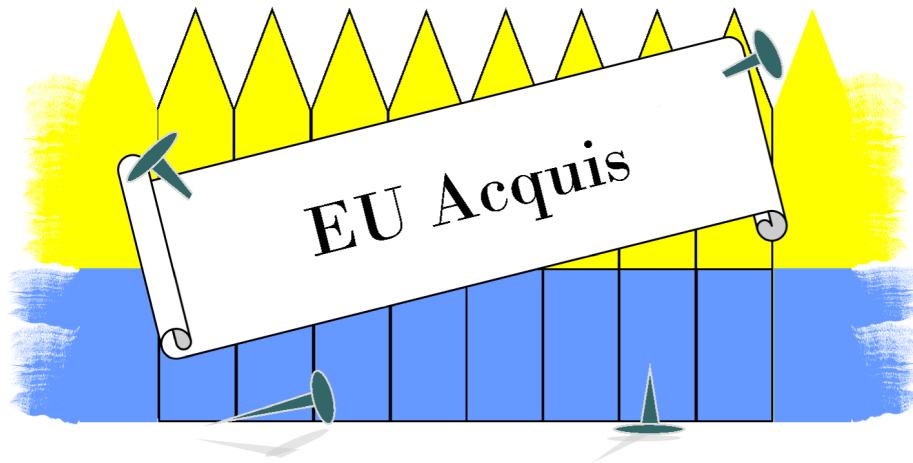




Policy paper
Executive Summary

LIMITS OF IMPLEMENTATION OF ENVIRONMENTAL *ACQUIS* *COMMUNAUTAIRE* in Ukraine



Date: March 2016



Resource & Analysis Center "Society and Environment"

Executive Summary

*Implementation of *acquis communautaire* has high importance for Ukraine due to both the need to comply with its obligations under EU - Ukraine Association Agreement and the critical demand for progressive reforms towards European standards.*

Article 363 of the Association Agreement provides for “Gradual approximation of Ukrainian legislation to EU law and policy on environment shall proceed in accordance with Annex XXX to this Agreement”. The Annex sets deadlines for approximation and the list of legal acts (26 directives and 3 regulations in total).

*The policy paper “Limits of implementation of environmental *acquis communautaire* in Ukraine”, by experts of “Society and Environment”, offers analysis of selected challenges and barriers emerging in the process of implementing EU environmental legislation, as well as ways to deal with them.*

Challenges and solutions, which we identified, often go beyond environmental issues and could be considered in the context of other areas, covered by the Association Agreement.

There are objective limits of implementation, i.e. special circumstances, which complicate transposition and implementation of EU norms and standards in Ukraine.

- Ukraine is not a member of the EU and does not have candidate status for membership in the EU, therefore implementation process in Ukraine is objectively different from such processes in member-states or candidate countries.
- Implementation of environmental *acquis* faces a number of challenges, which tentatively may be grouped as institutional, those stemming from legal nature of *acquis* and those of technical character.

Institutional challenges are related to reporting mechanisms by member-states on implementation of directives, control function of the European Commission and CJEU upon non-compliance by member-states with EU legislation, cooperation with member-states and the need to take joint actions, functioning of special bodies for assisting in implementation.

- Directives provide for reporting obligations by EU member-states to the European Commission on specific measures taken, as well as implementation of a directive in general. Reporting mechanism under Association Agreement is insufficient for these purposes.
- A number of directives provide for establishment of special bodies, which assist and promote implementation of a directive in member-states. Ukraine cannot use the benefits of the work by such bodies or participate in their work.
- Implementation process in Ukraine lacks traditional controlling function by the Commission and proceedings in the Court of Justice of the European Union.

Challenges related to the legal nature of the sources of EU law include direct effect of EU regulations, role of the decisions by CJEU as a source of EU law, inclusion of international obligations of EU member-states and the EU itself in relevant directives and regulations, specific wording of some provisions in EU acts.

- Given special legal nature of regulations as a source of EU law, their implementation in Ukraine requires special (distinct) approaches, which should be different from those when implementing directives.
- There are provisions of directives, which are only applicable to EU member-states, their direct implementation is not possible, particularly where such provisions define goals, scope of application of a directive and/or powers/obligations of Ukraine as a state.
- Ignoring decisions of the Court of Justice of the European Union can lead to development of a “Ukrainian EU law”. Yet, neither bilateral agreements between the EU and Ukraine, nor national legislation directly provides for an obligation to take into account CJEU decisions during implementation of *acquis communautaire* in Ukraine (except the provisions related to free trade area).

Technical challenges include quality of translation of EU acts and the need to ensure implementation of the newest (latest) versions of EU directives/regulations.

- EU legislation in all areas is a dynamic, evolving process. For Ukraine no mechanism was put in place to enable implementation of the newest

versions of EU legal acts or for Ukraine's involvement into discussions of current issues in various areas. In such circumstances, Ukraine will be constantly catching up with the EU but not achieving proper implementation level of legislation in relevant areas.

- Only accurate translation of EU legislation terminology or adequate substitutes (where no term exists in Ukrainian language) will enable effective implementation of directives in Ukraine.

Key recommendations for a mechanism to deal with challenges:

Implementation process should not be seen as technical, but rather a strategic process. Its goal is what should make it important, i.e. effective European legislation which works for the benefit of Ukraine.

- Special mechanisms need to be developed to overcome some challenges, therefore Ukraine and the EU need to start bilateral consultations.
- Association Council may become a platform for bilateral problem-solving related to implementation process, including by establishment of a special body to assist in finding solutions for key challenges.
- Government Office for European Integration within the Secretariat of the Cabinet of Ministers of Ukraine can play an important role in developing specific solutions of difficulties in implementation. It can serve as a discussion platform for various stakeholders at national level.
- Screening process is an important must-have for legal acts adopted for the purpose of implementation of EU *acquis*: whether they comply with specific directive or regulation and whether proposed national mechanisms are effective.

Recommendations for dealing with some specific challenges:

- Identification of a way to implement should first of all be oriented at achieving the objectives of a directive, proposed mechanisms are a second line priority. The process should take into account recent European trends for refraining from so called "gold-plating" of EU law.

- There is a need for a special reporting mechanism for each specific directive and regulation, which should start working since the implementation deadline set by the Association Agreement.
- There's a need for a special mechanism (approach) for implementing regulations into national legislation of Ukraine.
- Implementation of directives or regulations should take into account newest versions of the documents.



Resource & Analysis Center “Society and Environment” – independent non-profit think-tank organization.

Our mission: Environment 3D — opportune analysis for meaningful changes in society .

Our vision: Environment and human being are in the focus of state policy .

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Limits of implementation of environmental *acquis communautaire* in Ukraine. Policy paper (Executive Summary) (in English) (2016)

Full policy paper is available only in Ukrainian at our web-site.