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ПУБЛІЧНО-ПРАВОВИЙ ДИСКУРС У КОНТЕКСТІ ЄВРОІНТЕГРАЦІЇ ТА ГЛОБАЛІЗАЦІЇ

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PECULIARITIES OF A TRANSPOSITION OF "AN ACQUIS" OF THE EU IN THE LEGAL SYSTEM OF UKRAINE: ENERGY AND CUSTOMS SECTORS

ОСОБЛИВОСТІ ТРАНСПОЗИЦІЇ "ACQUIS" ЄС У ПРАВОВУ СИСТЕМУ УКРАЇНИ: ЕНЕРГЕТИЧНИЙ ТА МИТНИЙ СЕКТОРИ

ABSTRACT

The article is focused on the process of transposition "an acquis" of the EU in the legal system of Ukraine, provided by the Association Agreement and other international instruments. The author notes that the "acquis" of the EU transposition in the legal system of Ukraine is a difficult process which happens thanks to the participation of our state in foreign policies of the EU, the conclusion of bilateral agreements and sectoral cooperation with the EU. The first part of the article provides an overview of the place of association agreements in the EU legal system. The second part of the article analyses the process of transposition of the EU acquis into the legal system of Ukraine in the Association Agreement. The third part of the article reviews the transposition of the EU's "sectoral acquis" into the legal system of Ukraine in the fields of energy and trade in goods. The possible effects of the transposition of the EU "acquis" on the legal system of Ukraine with respect of its Europeanisation are analyzed.

The key words: Association agreement, EU legislation, EU "acquis", a legal system of Ukraine, sectoral transposition, Europeanization.

Introduction

The process of transposition of EU "acquis" into the legal system of Ukraine can be traced back to the mid of 1990th. That process has a distinctive legal framework comprised of the series of international instruments, both of the general and sectoral application. The entire process was launched with signing of the Partnership and Cooperation Agreement 1998 (hereinafter referred to as PCA) (Partnership and Cooperation Agreement, 1994). The signing of the Action Plan (hereinafter referred to as the AP) on February 21, 2005 marked the beginning of a new phase of EU-Ukraine relations. This document was adopted within the framework of the implementation of the European Neighborhood Policy (hereinafter referred to as the ENP) for countries that share a geographical, economic and political environment with the EU. The aim of the AP was to strengthen Ukraine's integration into the European Union (hereinafter referred to as the EU), including participation in the EU internal market and participation in EU policies and programs. In March 2009, the AP expired. After a political decision was reached to conclude a new Association Agreement in accordance with Article 217 of the EU Treaty, the AP was replaced by an Association Agenda (hereinafter referred to as the AA) between the EU and Ukraine. The boundaries of the new agreement were defined as an association agreement, which would include enhanced political and economic cooperation between the parties, the creation of a free trade area without exclusions and exceptions between the EU and Ukraine.

An indispensable prerequisite for the completion of negotiations between the EU and Ukraine on a new agreement was Ukraine's accession to the Energy Community (hereinafter referred to as the EnC). The protocol on Ukraine's accession to the EnC was signed on September 24, 2010 and subsequently ratified by the Verkhovna Rada of Ukraine on December 15, 2010 (Zakon pro ratyfikatsiiu Protokolu pro pryiednannia Ukrainy do Dohovoru pro zasnuvannia Enerhetychnoho Spivtovarystva, 2010). Ukraine's accession to the EU had a result in its obligation to implement a significant amount of the EU's "sectoral acquis" in the field of energy and was a preparatory stage for the establishment of an association between the EU and Ukraine.

Finally, the EU-Ukraine Association Agreement was finally signed by the President of Ukraine Petro Poroshenko on June 27, 2014 in Brussels and ratified by the Verkhovna Rada of Ukraine at the same time as the European Parliament did on September 16, 2014. Since then, the EU-Ukraine Association Agreement has come into force and become a part of the legal system of Ukraine. According to Herman Van Rompuy, President of the European Council, the Association Agreement is "the most advanced agreement with a country outside the Community in the history of our Union" and an unprecedented document in terms of the volume and level of detail of mutual relations (Van Rompuy, 2014). The text of the Association Agreement is striking (EU-Ukraine AA comprises 7 titles, 28 chapters, 486 articles, 43 annexes of about 1000 pages). The objectives of the Association Agreement include: 1) a political association; 2) creation of a deep and comprehensive free trade area; 3) Ukraine's participation in some EU programs (education and practice, research and innovation); 4) sectoral cooperation; 5) approximation of Ukrainian legislation to EU standards; 6) cooperation in the fields of justice and home affairs.

Every subsequent agreement provided the enhanced obligations on approximation of Ukrainian national legislation to the EU's "sectoral acquis", furthermore the achievement of respective levels of approximation was a precondition for the accession to next agreement.

1. Association agreements in the EU legal system

Association agreements belong to a group of EU external agreements concluded in accordance with the EU's "mixed external competence" (i.e. with all EU Member States) and are being concluded in accordance with Art. 217 of the Treaty on the Functioning of the EU (hereinafter referred

to as the TFEU), which it is stated that: "The Union may conclude with one or more third countries or international organizations an agreement on establishing an association characterized by reciprocal rights and obligations, joint actions and special procedures".

One of the guiding principles for concluding association agreements is enshrined in the CJEU ruling in the *Demirel* case, in which the CJEU stated that the association agreement provides for "the formation of special relations between a non-member country, which is obliged, at least within certain limits, to take participation in the [Union] system" (Case 12/86). Thus, there are several features that can be identified in relation to association agreements enshrined in EU law: 1) mutual rights and obligations; 2) joint actions and special procedures; 3) special relations between the EU and the third country; 4) participation of a third country in the EU system. Some features of an association agreement make such bilateral contractual relations particularly advantageous to a third country. This includes mutual rights and obligations, the possibility of acquiring full EU membership. If the first attribute is key to the association between the EU and the third country, then the second means that the signing of the association agreement does not imply automatic membership of the third country in the EU. EU law regulates the procedure for establishing an association with the EU and the acquisition of full EU membership as two different processes, although most EU member states have concluded association agreements with the EU before acquiring full EU membership.

The first question is whether the EU-Ukraine Association Agreement is similar to the existing agreements between the EU and non-EU countries? In our view, the EU-Ukraine Association Agreement has no analogues to the existing Association Agreements concluded by the EU with other countries. In particular, the Association Agreement renews the system of joint institutions, deepens bilateral relations in all spheres of cooperation, strengthens political association and economic integration by establishing mutual rights and obligations.

The EU-Ukraine Association Agreement occupies a place different from the EU's external agreements and has become the prototype of a new group of EU external agreements with ENP countries (Ukraine, Moldova and Georgia) – association agreements between the EU and neighbouring countries. In our view, the objectives of such EU-Neighbourhood Association Agreements are not identical but differ, depending on the

level of relations between the EU and each neighbouring country, and are consistent with the goals of the jointly agreed the AP and the AA.

It is alleged there are three major features of this new type of Association Agreements, that make them distinct from the previous ones:

– the requirements are unprecedented not just in terms of its sheer volume and scope, but also in terms of the variations of each partner's obligations across chapters;

– the scope and strictness of the legislative undertaking is greatest in areas where integration in the internal market will follow, but also extends beyond such areas, including an entire system of foreign law and regulation;

– the EU reproduces and enhances the reliance on strict approximation with the EU acquis as a means for modernization (Wolczuk at al., 2017, p. 13-14).

This type of Association Agreements between the EU and neighbouring countries aim at deepening bilateral cooperation in the following areas (as set out in the ENP documents): 1) political dialogue; 2) economic and social development policies; 3) participation in some EU programs (education and practice, research and innovation); 4) sectoral cooperation; 5) opening of national markets in accordance with the principles of the World Trade Organization (hereinafter – WTO) and approximation to the EU standards; 6) cooperation in the fields of justice and home affairs (Communication "Strategy paper of European Neighbourhood Policy").

In our opinion, these association agreements between the EU and neighbouring countries necessarily meet both the general and specific objectives of the AP. Thus, according to the AP, the common goals of the association agreements between the EU and neighbouring countries focus on close political, economic, cultural and security cooperation, with the access of neighbouring countries to the EU internal market. The individual objectives of association agreements between the EU and neighbouring countries reflect the different EU strategic priorities for neighbouring countries.

However, the important feature of AA with Ukraine, Moldova and Georgia is the absence of any references to future membership perspectives but somewhat diplomatically acknowledge the 'European aspirations' and the 'European choice' of the associated countries. This formulation does not entail any legal or political commitment towards further enlargement on behalf of the Union (Van Elsuwege, Chamon, 2019, p. 30).

Thus, the association agreements between the EU and the post-Soviet countries focus more on adapting the EU's democratic values, cooperation

in justice and home affairs, the fight against corruption and regional security, as the EU wants to see post-Soviet countries such where there are functioning effectively democratic institutions and mechanisms for combating illegal immigration to Europe. Ensuring stability and security at the EU's external borders is a very important issue for the EU in its relations with third countries.

2. Transposition of the EU "acquis" into the legal system of Ukraine in the Association Agreement

It is further provoked to modify the Association Agreements and the elements of the EU "acquis" that allow transposition in the legal system of Ukraine. We propose to determine the "substantive" and "procedural" methods of transposition the EU "acquis" into the legal system of Ukraine that are provided by the Association Agreement. In our view, the "substantive ways" of transporting the "acquis" of the EU in the legal systems of third countries in external relations of the EU include: homogeneity, reduction of legislation, mutual definition of standards and legislation. The "procedural means" of transposing the EU acquis into third country legal systems are conducted through: formal/informal participation in EU legislative procedures, exchange of information, as well as technical and financial assistance from the EU (Petrov, 2012).

The objectives of the Association Agreement reflect a wide range of cooperation between the parties, which provide for "substantive" and "procedural" means of transposing the EU acquis into the legal system of Ukraine. The following objectives of the cooperation of the Parties include: 1) political dialogue, the promotion of European and international democratic values, the rule of law, human rights and fundamental freedoms, ensuring regional and global stability; 2) social and economic development, encouragement of structural reforms aimed at building a functional and competitive market economy, limiting state intervention in the economy and privatization, liberalization of services, including the financial sector, social and humanitarian policies, fiscal, monetary and exchange policies; 3) participation in some EU programs (education and practice, research and innovation); 4) cooperation in the sectors of energy, transport, environment and the information society); 5) establishment of a deep and comprehensive free trade area and, as a result, opening of the Ukrainian market in accordance with WTO principles and approximation with the standards of the EU internal

market; 6) cooperation in the fields of justice and home affairs, on cross-border cooperation, migration, combating terrorism, trafficking in human beings, illegal drugs and weapons, organized crime, money laundering, financial and other economic crimes.

Since the objectives of the EU-Ukraine Association Agreement have been outlined, it is necessary to identify the elements of the EU "acquis" that are part of this agreement and are subject to a "substantive" transposition into the legal system of Ukraine. The main objective of the Association Agreement is to further develop political dialogue between the EU and Ukraine. The political dialogue between the EU and Ukraine is aimed at establishing democratic freedoms, protecting human rights, ensuring freedom of the press and the media. To achieve these goals, the preamble to the EU-Ukraine Association Agreement calls on Ukraine to share the EU values and principles set out in the founding treaties of the EU (for example, Article 2 of the EU Treaty) and to urge Ukraine to adhere to recognized international principles and standards concerning the protection of human rights and democratic freedoms contained in the UN Charter, the OSCE Helsinki and Paris Documents. One of the main objectives of the EU-Ukraine Association Agreement is to provide Ukrainian business entities with access to the EU internal market and to create a deep and comprehensive free trade area between Ukraine and the EU.

The striking peculiarity of the AA is its enhanced conditionality. On the one hand, the AA includes several provisions related to Ukraine's commitment to the common European values of democracy, rule of law and respect for human rights and fundamental freedoms ('common values' conditionality). On the other hand, the part on the DCFTA is based on an explicit 'market access' conditionality implying that Ukraine will only be granted additional access to a section of the EU Internal Market if the EU decides, after a strict monitoring procedure, that Ukraine successfully implemented its legislative approximation commitments (Van der Loo at al., 2014, p. 12).

The process of effective implementation of the EU-Ukraine Association Agreement has proved to be difficult for Ukraine. Our country must respond to the common democratic and economic values of the EU and ensure the proper functioning of a deep and comprehensive free trade area. This can only be achieved by building a competitive market economy and introducing international and EU legal standards. Besides, Ukraine may be bound by the resolutions of the dispute settlement bodies established

under the Association Agreement. In order to encourage Ukraine to achieve these far-reaching goals, the Association Agreement contains provisions for approximation clause and so-called conditionality clauses. "Approximation clause" are widely used in agreements between the EU and other countries, including in the Association Agreement. These reservations foresee Ukraine's access to the freedoms of the EU internal market and the granting of a visa-free regime, provided that Ukraine successfully moves towards political, economic and legal reforms [for example, the removal of trade barriers and anti-competitive practices or the effective functioning of standards of democracy and a market economy (such as free and fair elections and the overcoming of corruption)]. In addition, the "conditionality clause" provide for regular monitoring of the implementation of reforms in Ukraine and the observance of democratic standards by the Ukrainian authorities. The provisions concerning the rapprochement of the legislation to the Association Agreement are not similar to the identical obligations in previously concluded EU Association Agreements. The EU-Ukraine Association Agreement contains more than one annexation of legislation, as was the case with the earlier EU Association Agreements, but many provisions that send up to 46 annexes. These annexes contain a list of the "sectoral acquis" of the EU, which Ukraine needs to implement in national law and effectively apply in a clearly defined timeframe. The largest volume of the "sectoral acquis" of the EU concerns liberalization of mutual trade, competition and state aid, ensuring the principle of non-discrimination and liberalization of the Ukrainian services market, etc. (consumer protection, taxes, technical standards, environmental protection), and so on. Despite the fact that the EU-Ukraine Association Agreement has no prospects for Ukraine's accession to the EU, Ukraine has made legal commitments to implement the EU "acquis" almost to the extent required by candidate countries for the accession to the EU.

The Association Agreement provides for "procedural" means of transposing the EU "acquis" into the legal system of Ukraine. These include Ukraine's participation in EU programs in the fields of education, culture and scientific cooperation. This means that Ukraine may be offered the access to some EU-funded sectoral cooperation programs (Erasmus Mundus, Socrates), but on conditions that Ukraine will adhere to the European values and principles. In addition, the EU-Ukraine Association Agreement provides for the provision of information, technical and financial assistance to ensure the success of the legal approximation program

in Ukraine, as well as closer cooperation in other areas such as justice, home affairs and cross-border trade. Such assistance will be to provide information to the Ukrainian authorities and society about the EU "acquis", EU institutions, organize training for Ukrainian officials, and advise on the approximation of laws. Of course, EU assistance may be halted if Ukraine does not comply with EU values and principles. Sectoral cooperation is concentrated in areas of mutual interest of the EU and Ukraine. Taking into account the geographical location of Ukraine as a transit territory and the high level of industrial development of our country, the EU-Ukraine Association Agreement provides for enhanced sectoral cooperation in the field of justice and home affairs, control over illegal immigration, in the field of transport, energy, information society environment, innovation and outer space.

The EU-Ukraine Association Agreement offers an expanded exchange of information with EU legislation that has entered into force or is being discussed in EU legislative institutes. In response, Ukraine is under an obligation to inform the EU in a timely manner of the new laws and regulations affecting associate relations with the EU. Joint institutions are empowered to make binding decisions which will be part of the national legislation of Ukraine. This gives the joint institutions a significant advantage for the "procedural" transposition of the EU "acquis" into the Ukrainian legal system.

3. Transposition of the EU "acquis" into the legal system of Ukraine through the sectoral obligations in specific instruments.

The Treaty of Lisbon created the preconditions for the legal formalization of new EU policies and significantly broadened the external dimension of the EU internal market. The most striking example of this is usually considered to be the EU's energy policy. The EU's external energy policy goals are achieved through the EnC, which includes not only EU Member States but also candidate countries as well as third countries that have no chance of gaining EU membership. The EU is an excellent example of what is known as "non-membership integration", which enables third countries to gain a foothold in the EU internal market and extend the EU's "sectoral acquis" beyond its borders.

The process of "integration without membership" takes place within the framework of sectoral multilateral cooperation and differentiated integration in the EU. Sectoral multilateral cooperation implies approximation of

legislation, for example, through the voluntary application of a "sectoral acquis" by a third country. Usually, sectoral multilateral cooperation takes place through the conclusion of sectoral bilateral agreements between the EU and third countries, such as the Single Economic Space Agreement (hereinafter referred to as the SES) and bilateral agreements between the EU and Switzerland. There is no consensus on how third countries are governed by voluntarily supporting multilateral integration with the EU. However, we can speak about the obvious positive impact of multilateral cooperation on the processes of democracy development in the countries of Central and Eastern Europe (hereinafter – CEE). However, these processes cannot be considered exceptional, they are complementary. It can be said that the formation of a European legal space is not possible without the successful Europeanization of third countries. One of the means of successful Europeanization of third countries is the gradual granting of access to the EU internal market and, as a consequence, the adaptation of the EU's "sectoral acquis" (Petrov, 2008).

But in many respects such integration without membership, as well as extension of EU sectoral legislation can be traced back to the times far before the common energy policy. Obviously, the issue was originally concerned to the external aspects of the functioning of EU Customs Union as a predecessor of the more enhanced common marked. Furthermore, both sectors even have specific international instruments dedicated to creating legal frameworks for extension of EU legislation and policy to the third countries.

For the transposition of the EU sectoral "acquis" into third country legal systems such an instrument is provided by the Energy Community Treaty. The ECT was signed in Athens (Greece) on October 25, 2005 and entered into force on July 1, 2006. The primary purpose of the ECT was to formulate a common regulatory framework between the EU and third countries and to transpose the EU's "energy acquis" (regarding electricity, natural gas and fuel materials) into the legal systems of third countries.

The European Commission's Communication "EU Energy Policy: Working with Partners Beyond Our Borders" clearly states that "signing the Energy Community Treaty is the starting point for most EU neighbour countries to participate in the European energy system" and is a prerequisite for a third country free trade with the EU. This means that the further rapprochement of third countries with the EU and its deep integration into the EU internal market depends on the successful transposition of the EU's "sectoral acquis".

In the case of transposition of EU customs rules, it is possible to mention two conventions, signed between EU and its neighbor countries in 1987: The Convention on a common transit procedure and the Convention on the simplification of formalities in trade in goods. Obviously, these agreements were not such sophisticated and comprehensive as ECT, especially in terms of institutional framework, however, they also had integrative focus for specific sectors.

For example, the Convention on the simplification of customs formalities (SAD Convention) has a direct impact on national customs legislation requiring usage of specific documents, data formats and procedures for the movement of goods between EU and other countries – Parties to that Convention. In particular, the SAD Convention introduced the Single Administrative Document (SAD). According to the Article 2 of SAD Convention, where goods are the subject of trade between the Contracting Parties, the formalities connected with such trade shall be completed using a single document based on a declaration form, the specimens of which are to be found in Annex I to this Convention".

Furthermore, accession to different instruments of customs cooperation vividly reflects the idea of gradual integration to the EU.

For the beginning limited to EU – EFTA relations, lately the application of SAD proved to be the obligatory "pre-integration" requirement for all EU neighbor countries. For example, Article 76 of the Partnership and Cooperation Agreement between EU and Ukraine, in particular demanded form Ukraine "the introduction of the combined nomenclature and the single administrative document". Ukraine has introduced the analogue of SAD in 2008, as well as uses the EU combined nomenclature as a base for its national goods classification system.

Indicatively, that the countries that have not fully adopted SAD on the earliest stages of integration are bound to do so by the association agreements. For example, Article 193 (c) of Association Agreement between EU and Moldova has obliged the latter to apply a Single Administrative Document (SAD) for the purposes of customs declarations, as a one of the trade facilitation measures.

At the same time, "joining the Common Transit Convention had become an essential step for deepening economic integration from free trade zones to full EU membership or at least to comprehensive customs unions with EU" (Kril, 2020, p. 60). Particularly, the respective consequence of steps has been followed by all new EU members and candidate states.

The potential for effective transposition and implementation of the EU's "acquis" in Ukraine has been greatly increased due to implementation of the Association agreement with the EU since its annexes significantly enhanced the volumes and degree of approximation of Ukrainian sectoral legislation.

Furthermore, in 2016 EU and Ukraine signed the bilateral Memorandum of Understanding on a Strategic Energy Partnership, which confirmed the goal of the full integration of energy markets of the EU and Ukraine for the benefit of consumers and with a view to strengthening mutual energy security and environmental sustainability; and outlined the need of to intensify cooperation in the energy field and to reform energy sectors (Memorandum of Understanding, 2016).

Regarding this Memorandum the EU-Ukraine Association Council agreed the amendments to the Annex XXVII to Chapter 1 of AA "Energy cooperation, including nuclear issues". It was, particularly stipulated, that the EU acquis in the energy sector has substantially evolved since the conclusion of negotiation of the Agreement, as have Ukraine's obligations arising from the implementation of the Agreement and its membership of the Energy Community Treaty. And this evolution needs to be reflected in Annex XXVII to the Agreement which should therefore be updated (Council Decision (EU) 2019/466).

However, according to the Ukrainian Cabinet of Ministers' report on implementation of Association Agreement for 2019, the average progress of implementation has reached 43% due to the plan for 2014–2024. Both, the customs and energy sectors are not among the sectors with the highest implementation rates, with 24% and 42% of implementation, respectively (Zvit pro vykonannia Uhody pro asotsiatsiiu mizh Ukrainoiu ta YeS za 2019 rik).

Also, due to the above-mentioned report, the distribution of shares in the implementation of the Association Agreement between the different public authorities is pretty distinctive. The Cabinet of Ministers of Ukraine possess implementation rate of 64%, while Ukrainian Parliament shares only 34% and the other state agencies – 25%. This particularly indicate a lack of political will rather than technical issues with approximation to EU legislation. On the other hand, the mere existence of the said implementation plan is the most effective driver of transposition and implementation of the existing and dynamic "acquis" of the EU in Ukraine.

Conclusions

The transposition of the EU "acquis" into the legal system of Ukraine is a complex process due to our country's participation in EU external policies, bilateral agreements and sectoral cooperation with the EU. Ukraine's accession to the EnC and the conclusion of the Association Agreement with the EU have a significant impact on the process of Europeanization of Ukraine's legal system. Firstly, the success of the Europeanization of the Ukrainian legal system and the achievement of the objectives of the Association Agreement depends not only on the transposition of EU regulations, but also on the application of common democratic values, fundamental principles of EU law and "dynamic acquis" by judicial and administrative bodies and citizens of Ukraine. Secondly, the "substantive" and "procedural" means of transposing the EU's "sectoral acquis" through the Association Agreement and the other international instruments facilitate Ukraine's integration into individual EU sectoral policies. The question of the direct effect of the provisions of the founding treaties of such communities, dispute settlement procedures, and the application of a "dynamic sectoral acquis" will bring Ukraine closer to full participation in the European legal space.

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АНОТАЦІЯ

Петров Р. А. Особливості транспозиції "acquis" ЄС у правову систему України: енергетичний та митний сектори. – Стаття.

Статтю сфокусовано на процесі перенесення "acquis" ЄС у правову систему України, що передбачено Угодою про асоціацію та іншими міжнародними документами. Автор зазначає, що транспозиція "acquis" ЄС у правову систему України є складним процесом, який відбувається завдяки участі нашої держави у зовнішній політиці Європейського Союзу, укладанню двосторонніх угод та галузевому співробітництву з ЄС. У першій частині статті подано огляд місця угод про асоціацію у правовій системі ЄС. У другій частині статті проаналізовано процес перенесення законодавства ЄС у правову систему України відповідно до Угоди про асоціацію. У третій частині статті розглядається перенесення "секторального acquis" у правову систему України у сфері енергетики та торгівлі товарами. Проаналізовано можливий вплив транспозиції "acquis" Європейського Союзу на правову систему України щодо її європеїзації. Автор підсумовує, що приєднання України до Енергетичного співтовариства та укладення Угоди про асоціацію з ЄС мають суттєвий вплив на процес європеїзації правової системи України. По-перше, успіх європеїзації української правової системи та досягнення цілей Угоди про асоціацію залежить не лише від перенесення регламентів ЄС, а й від застосування загальних демократичних цінностей, основоположних принципів права ЄС та "динаміки acquis" судовими і адміністративними органами, а також громадянами України. По-друге, "змістовні" та "процедурні" засоби транспонування "секторального acquis" через Угоду про асоціацію та інші міжнародні інструменти сприяють інтеграції України в окрему галузеву політику Європейського Союзу. Питання прямої дії положень установчих договорів таких громад, процедур врегулювання спорів та застосування "динамічного секторального acquis" наблизить Україну до повної участі в європейському правовому просторі.

Ключові слова: Угода про асоціацію, законодавство ЄС, "acquis" ЄС, правова система України, галузеве транспонування, європеїзація.

АННОТАЦИЯ

Петров Р. А. Особенности транспозиции "acquis" ЕС в правовую систему Украины: энергетический и таможенный сектор. – Статья.

Статья сфокусирована на процессе переноса "acquis" ЕС в правовую систему Украины, что предусмотрено Соглашением об ассоциации и другими международными документами. Автор отмечает, что транспозиция "acquis" ЕС в правовую систему Украины является сложным процессом, который происходит благодаря участию нашего государства во внешней политике Европейского Союза, заключению двусторонних соглашений и отраслевом сотрудничеству

с ЕС. В первой части статьи представлен обзор места соглашений об ассоциации в правовой системе ЕС. Во второй части статьи проанализирован процесс переноса законодательства ЕС в правовую систему Украины в соответствии с Соглашением об ассоциации. В третьей части статьи рассматривается перенос "секторального acquis" в правовую систему Украины в сфере энергетики и торговли товарами. Проанализировано возможное влияние транспозиции "acquis" Европейского Союза на правовую систему Украины относительно ее европеизации. Автор заключает, что присоединение Украины к Энергетическому сообществу и заключение Соглашения об ассоциации с ЕС имеют существенное влияние на процесс европеизации правовой системы Украины. Во-первых, успех европеизации украинской правовой системы и достижения целей Соглашения об ассоциации зависит не только от переноса регламентов ЕС, но и от применения общих демократических ценностей, основополагающих принципов права ЕС и "динамики acquis" судебными и административными органами, а также гражданами Украины. Во-вторых, "содержательные" и "процедурные" средства транспонирования "секторального acquis" из Соглашения об ассоциации и другие международные инструменты способствуют интеграции Украины в отдельную отраслевую политику Европейского Союза. Вопрос прямого действия положений учредительных договоров таких общин, процедур урегулирования споров и применение "динамического секторального acquis" приблизит Украину к полному участию в европейском правовом пространстве.

Ключевые слова: Соглашение об ассоциации, законодательство ЕС, "acquis" ЕС, правовая система Украины, отраслевое транспонирование, европеизация.