

The state and the legal basis of the approximation of the legislation of Ukraine on waste to the law of the European Union

Стан і правова основа апроксимації законодавства України про відходи до права Європейського Союзу

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approximation of legislation, European Union, cooperation between Ukraine and the EU, waste management.

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Integration into the European Union is one of the priority directions of Ukraine's foreign policy. Harmonization of legislation today is an objectively necessary step to prepare for accession to the European Union.

The starting point for the approximation of waste legislation to EU law should be March 1, 1998 – the date of entry into force of the Partnership and Cooperation Agreement between Ukraine and the European Communities and their member States (hereinafter referred to as the PCA) of 14 June 1994.¹

An important consequence of cooperation with the EU is the adoption by Ukraine of internal legal acts aimed at ensuring the fulfillment of the state's obligations to the EU. Among such acts was the decree of the Cabinet of Ministers of Ukraine "On the introduction of a mechanism for adaptation of Ukrainian legislation to the legislation of the European Union"², adopted in 1998. This decree established the procedure for approximation of Ukrainian legislation to EU legislation, while the Ministry of Justice was assigned the task of coordinating the activities of ministries and other executive bodies, by creating an Interdepartmental Coordination Council for the Adaptation of Ukrainian Legislation to the Law of the European Union.

A year later, in 1999, the Cabinet of Ministers of Ukraine (hereinafter the Cabinet of Ministers) developed and adopted a decree "On the Concept of Adaptation of Ukrainian Legislation to the Legislation of the European Union"³. The Concept defined the process of development of the national legislation in the direction of its convergence with the legislation of the EU and ensuring a high level of preparation of bills in Ukraine.

The Decree of the President of Ukraine "On the National Council on the Adaptation of Ukrainian Legislation to the Law of the European Union"⁴ was influenced on the further development of the mentioned implementation process. National Council took the task of preparing proposals and fulfilling Ukraine's obligations in relation to current and future legislation was set; ensuring coordination of measures taken by state authorities on adaptation of Ukrainian legislation to the legislation of the European Union, promotion of their interaction in this sphere; monitoring of the adaptation of Ukrainian legislation.

¹ Agreement on partnership and cooperation between Ukraine and the European Communities and their Member States of 14.06.1994 [Electronic resource]. – Access mode : http://zakon2.rada.gov.ua/laws/show/998_012.

² On introduction of the mechanism of adaptation of the legislation of Ukraine to the legislation of the European Union : the resolution of the Cabinet of Ministers of Ukraine of 12.06.1998 № 852 [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/852-98>.

³ On the Concept of Adaptation of Ukrainian Legislation to the Legislation of the European Union : a Resolution Cabinet of Ministers of Ukraine of 16.08.1999 № 1496 [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/1496-99>.

⁴ About the National Council on the Adaptation of Ukrainian Legislation to the Law of the European Union: Decree of the President of Ukraine dated August 30, 2000 No. 1033/2000 [Electronic resource]. – Access mode : <http://zakon3.rada.gov.ua/laws/show/en/1033/2000>.

The next stage in the process of approximation of Ukrainian legislation to EU legislation is characterized by the adoption of the Law of Ukraine "On the Concept of the National Program for the Adaptation of Ukrainian Legislation to the Legislation of the European Union"⁵.

We agree with Fedun M.V. opinion, that in future the processes of adaptation of legislation took place with different intensity and efficiency, and, unfortunately, the issue of environmental protection, including the management of waste, as a component of such protection, did not occupy a priority place⁶. Some measures in the field of waste management were defined by the Program of Ukraine's integration into the EU, which included, in particular, the need to implement the hazard classification waste classification for use in statistical reports; improvement of the existing system of indicators of the toxic waste, as well as the creation of registers of enterprises, information banks data on the formation and disposal of these wastes; development of normative and legal acts concerning the handling of hazardous waste; implementation of measures for the safety of radioactive waste, etc.⁷

And only with the adoption of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand (the "Agreement") of June 27, 2014, a new stage of integration has begun. The Association Agreement has defined the new terms of cooperation between Ukraine and the EU on environmental issues.⁸ A separate area of such cooperation in accordance with Article 361 of this Agreement is the field of management of the waste and resources. In general, some aspects of management of the waste and resources are covered by Chapter 6 "Environment" (Articles 360-366), as well as Chapter 1 "Energy cooperation, including nuclear energy" (Articles 338-339, 342), Section V "Economic and Industrial Cooperation" of Association Agreements. The procedure and specific timeframes for approximation of Ukrainian legislation with EU legislation in the field of waste management and resources are provided by Annex XXX to Chapter 6 of Section V of the relevant Agreement.

The format of "association" between Ukraine and the EU has affected the process of adapting waste legislation to the *acquis communautaire* by enhancing the role of imperative principles in defining the boundaries, directions and timing for such adaptation. This, in turn, exacerbated the need for the fastest possible modification and continuous improvement of the effectiveness of its mechanism, without which it is impossible to fulfill the tasks set before the adaptation of waste legislation to EU law at the present time.⁹

Under the PCA, Ukraine has pledged to gradually bring its legislation into line with Community law, in particular in areas such as volume reduction, waste disposal and safe disposal, and compliance with the provisions of the Basel Convention (Articles 51, 63 of the Agreement).¹⁰

The first package of amendments to the Law of Ukraine "On Waste"¹¹ was envisaged by the Law of Ukraine "On Amending Certain Legislative Acts of Ukraine on Waste"¹² of March 7, 2002, No. 3073-III. From the point of view of approximation to the EU legislation, the meaning of this legislative act is ambiguous. On the one hand, the proposed changes aimed to adapting the Law of Ukraine "On Waste" to the current conditions of economic, social and environmental development of the country, took into account the latest scientific and technical developments and achievements in the field of waste recycling and resource conservation, waste management operations. For this aim, certain terms were defined and their definitions were clarified, new concepts and con-

⁵ On the Concept of the National Program of Adaptation of Ukrainian Legislation to the Law of the European Union: Law of Ukraine of November 21, 2002 No. 228-IV [Electronic resource]. – Access mode : <http://zakon3.rada.gov.ua/laws/show/228-iv>

⁶ Fedun M.V. Legal regulation of waste management in accordance with the Association Agreement between Ukraine and the European Union / M.V. Fedun // Scientific Herald of the International Humanitarian University, 2015. – No. 13. – P. 124.

⁷ On the Concept of the National Program of Adaptation of Ukrainian Legislation to the Law of the European Union: Law of Ukraine of November 21, 2002 No. 228-IV [Electronic resource]. – Access mode : <http://zakon3.rada.gov.ua/laws/show/228-iv>.

⁸ Association Agreement between Ukraine, on the one side, and the European Union, the European Atomic Energy Community and their Member States, on the other side of 27.06.2014 [Electronic resource]. – Access mode : http://zakon2.rada.gov.ua/laws/show/984_011.

⁹ Tregub O.A. Adaptation of waste legislation to the European Union law: increasing the efficiency of the mechanism: An analytical note [Electronic resource]. – Access mode : www.iepd.kiev.ua.

¹⁰ Association Agreement between Ukraine, on the one side, and the European Union, the European Atomic Energy Community and their Member States, on the other side of 27.06.2014 [Electronic resource]. – Access mode : http://zakon2.rada.gov.ua/laws/show/984_011.

¹¹ On Waste: Law of Ukraine dated 05.03.1998 No. 187/98-VR [Electronic resource]. – Access mode : <http://zakon3.rada.gov.ua/laws/show/187/98-%D0%B2%D1%80>.

¹² On Amending Certain Legislative Acts of Ukraine on Waste: Law of Ukraine dated March 7, 2002 No. 3073-III [Electronic resource]. – Access mode : <http://zakon3.rada.gov.ua/laws/show/3073-14>.

structions were introduced, the obligations of economic entities in the field of waste management were reviewed and substantially expanded, special requirements were established regarding the handling of hazardous wastes, and the procedure for carrying out activities related to harvesting and harvesting of certain types of waste as a secondary raw material. In general, such changes, although not implemented in the framework of adaptation to the *acquis communautaire*, however, created the preconditions for its successful implementation in the future.

On October 6, 2005, the Verkhovna Rada of Ukraine adopted the Resolution "On the status of implementation of legislation in the field of waste management in Ukraine and the ways of its improvement"¹³ No. 2967-IV, according to which Cabinet of Ministers activity on many indicators, including the improvement of the regulatory framework in the field of waste management is considered unsatisfactory. In order to effectively address waste management issues, the Cabinet of Ministers was recommended, before January 1, 2006, to prepare amendments to the Law of Ukraine "On Waste" regarding the harmonization of its provisions with the EU Waste Framework Directive, to ensure the implementation of the requirements of Directive 94/62 / EC "On packaging and packaging waste"¹⁴ and take other urgent measures.

In spite of the fairness of the comments made regarding the passivity of the Cabinet of Ministers in the issue of modernizing waste legislation, the timeframe recommended by the Verkhovna Rada of Ukraine to remedy the situation clearly did not correspond to the level of complexity of the tasks set and the principles of the process of adaptation itself (systematic, planning, etc.).

In contrast to the availability of many prerequisites, the temp of adaptation of the Ukrainian legislation on waste to the *acquis communautaire* remained critically low, as evidenced by the fact that over the course of almost eight years (from March 2002 to January 2010) to the Law of Ukraine "On Waste" no significant changes and additions were made. During this time, the fundamental legislative act of Ukraine on waste management has not been adapted to any of the general principles and approaches of the EU legislation in the field of waste management and resources, not mention the provisions of special directives designed for the regulation of certain waste operations (for example, disposal and burning) and the handling of their individual species (packaging waste, hazardous waste, etc.).

The impetus for the gradual activation, restoration of the relevant process was the exit of Ukraine and the EU to a higher level of relations, which was embodied in the EU-Ukraine Association Agenda for preparation and facilitate the implementation of the Association Agreement (entered into force on November 23, 2009)¹⁵. In particular, in January 21, 2010, the Law of Ukraine "On amending certain legislative acts of Ukraine in the field of waste management" No. 1825-VI was adopted and aimed at bringing the legislation in line with European practice and the EU Waste Framework Directive¹⁶. However, despite the declared objectives, the amendments and additions proposed by this Law (in particular regarding the identification and recording of non-owner waste, requirements for the handling of animal waste, etc.) were consistent with the requirements for adaptation to EU law only selectively and for the most part they were of the current modernization of legislation, carried out at the discretion of the state.

A certain overvaluation of the importance and prospects of adapting waste legislation (as well as all environmental legislation) to the *acquis communautaire* took place with the adoption of the Law of Ukraine "On the basic principles (strategy) of the state environmental policy of Ukraine for the period until 2020" of December 21, 2010, No. 2818-VI (hereinafter – Strategy 1)¹⁷. In fulfilling the crucial task of improving the ecological-resource component of Ukraine's state development, Strategy 1 had high hopes from the outset. Numerous functions of this document were largely aimed at servicing environmental and legal reform, therefore it was

¹³ On the state of implementation of legislation on waste management in Ukraine and ways to improve it: the resolution of the Verkhovna Rada of Ukraine dated October 6, 2005 No. 2967-IV [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/2967-15>.

¹⁴ Directive 94/62 / EC of the European Parliament and of the Council on packaging and packaging waste EC of 20.12.1994 № 94/62 / EC [Electronic resource]. – Access mode : http://zakon3.rada.gov.ua/laws/show/994_b05.

¹⁵ Agenda of the EU-Ukraine Association for the Preparation and Promotion of the Implementation of the Association Agreement Ukraine-EU dated November 20, 2009, 12.11.2009 [Electronic resource]. – Access mode : http://zakon3.rada.gov.ua/laws/show/994_990.

¹⁶ On Amending Certain Legislative Acts of Ukraine in the Field of Waste Management: Law of Ukraine dated January 21, 2010 No. 1825-VI // Bulletin of the Verkhovna Rada of Ukraine. – 2010. – No. 10. – Art. 107.

¹⁷ On the Basic Principles (Strategy) of the State Environmental Policy of Ukraine for the Period up to 2020: Law of Ukraine dated December 21, 2010 No. 2818-VI // Bulletin of the Verkhovna Rada of Ukraine. – 2011. – No. 26. – Art. 218.

not by accident that they were dictated by the priority directions of bringing the environmental legislation of Ukraine in line with the provisions of the *acquis communautaire*. As a matter of fact, for waste legislation, this direction was limited to controlling the handling of certain types of waste (used chemical sources of current, spent oils, electronic equipment, etc.). The issue of adaptation to the fundamental approaches of the EU waste management legislation (the hierarchy of waste management practices, the institution of the end of the waste regime, the criteria for their differentiation with by-products, etc.) is left out of consideration. A similar alignment of emphasis and priorities in the adaptation of waste legislation to the *acquis communautaire* is false and contradicts previously set goals and objectives.

On the basis of Strategy 1 and for the implementation of the National Action Plan on Environmental Protection for 2011–2015, approved by the Decree of the Cabinet of Ministers of Ukraine dated May 25, 2011 No. 577-p, in December 2011, with the support of the Swedish Environmental Protection Agency, was prepared “An overview of the harmonization of Ukraine’s legislation with the requirements of EU law”¹⁸. As expected, the degree of compliance of the Ukrainian legislation in the field of waste management and resources with the EU law (in particular with respect to key approaches and separate principles in the field of waste management) was low. In fact, this proved to be an irreparable loss of time and opportunities offered to Ukraine to adapt its legislation to the status of the EU’s neighbor state (as opposed to adaptation in the process of acceding to the EU, such adaptation should be more flexible and in depth, as well as the priority mastering of the principles and approaches common to all Member States of the Community¹⁹).

Based on this, a group of experts from Ukraine and the EU prepared the Basic Plan for the Adaptation of the Environmental Legislation of Ukraine to the European Union Legislation (Basic Approximation Plan), which was approved by the Decree of the Ministry of Ecology and Natural Resources of Ukraine dated December 17, 2012 No. 659²⁰. An undeniable advantage of this document is that it was designed in advance to meet Ukraine’s future commitments due to the conclusion of an association agreement with the EU. It finally allowed us to outline the approximate scope and content of Ukraine’s legislation on waste for the *acquis communautaire* at its new stage.

The updated list of EU sources of waste and resources management, to which the Ukrainian legislation has to be adapted, were Directive 2008/98/EC on waste (framework), Directive 1999/31/EC on waste disposal and Directive 2006/21/EC on waste management in the extractive industry. To date, this list is set out in Annex XXX to Chapter 6 of Section V of the Association Agreement²¹.

In addition to the Basic Plan for approximation of Ukraine’s obligations to approximate its waste legislation to the *acquis communautaire* established by the Association Agreement, the following are ensured:

- The plan of measures for the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, for 2014–2017, approved by the Decree of the Cabinet of Ministers of Ukraine dated September 17, 2014. No. 847-p²² (hereinafter – Implementation Plan);
- The measures envisaged by the Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and their Member States, on the other hand, the responsibility for which realization is entrusted to the Ministry for Environmental Protection, approved by the Decree of the Ministry for Environmental Protection of October 15, 2014 No. 317 (hereinafter – Measures of the Ministry of Environmental Protection);

¹⁸ An overview of the state of harmonization of Ukraine’s legislation with the requirements of EU law and the Basic Plan of Harmonization of Ukrainian Legislation with EU Law (Environment): A package of documents for discussion [Electronic resource]. – Mode of access : <http://www.menr.gov.ua/adaptation/336-ohliad-stanu-harmonizatsii-zakonodavstva-ukrainy-z-vymohamy-prava-yes-ta-bazoviyi-plan-harmonizatsii-zakonodavstva-ukrainy-z-pravom-yes-dovkillya>.

¹⁹ Zerkal O., Kachka T. Methodical guidelines on adaptation of Ukrainian legislation to the *acquis communautaire* / O. Zerkal, T. Kachka. — K.: LLC “Nika-Print”, 2005. — P. 19.

²⁰ Concerning the adoption of the Basic Plan for the Adaptation of the Environmental Legislation of Ukraine to the Legislation of the European Union (Basic Approximation Plan): Order of the Ministry of Ecology and Natural Resources of Ukraine dated December 17, 2012 No. 659 [Electronic resource]. – Access mode : http://search.ligazakon.ua/l_doc2.nsf/link1/FIN81968.html.

²¹ Association Agreement between Ukraine, on the one side, and the European Union, the European Atomic Energy Community and their Member States, on the other side of 27.06.2014 [Electronic resource]. – Access mode : http://zakon2.rada.gov.ua/laws/show/984_011.

²² On the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, No. 847-p – [Electronic resource]. – Access mode : <http://www.kmu.gov.ua/control/uk/cardnpd?docid=247612342>.

- The plan for the implementation of Directive 2008/98/EC and the Implementation Plan of Directive 1999/31/EC, approved by the Decree of the Ministry for Environmental Protection of Ukraine dated October 15, 2014, No. 317²³.

In order to improve the quality of realization of the Implementation Plan in the area of adaptation of national legislation to Directive 2008/98/EC and Directive 1999/31/EC, the Ministry of Environment and Natural Resources of Ukraine dated December 1, 2014, No. 385²⁴ established a Working Group on Waste Management and resources, which includes representatives of responsible authorities and leading scientists in this field.

On August 21, 2017, the Ministry of Environment and Natural Resources of Ukraine (MESR) presented the National Strategy for approximation of Ukrainian legislation to EU environmental law, supported by the EU project "Additional support of the Ministry of Ecology and Natural Resources of Ukraine in the implementation of sectorial budget support"²⁵.

Despite a large number of legal acts, Ukraine was practically the only country in the world where waste management techniques did not use the methods of programmatic planning, there was no reliable information on the dynamics of waste generation and secondary resources, there was no systematic policy in the field of resource conservation. But such situation, we hope, should radically change. For today, for the first time, the "National strategy of waste management until 2032"²⁶ (hereinafter – Strategy 2) has been developed and will be adopted in the near future. Strategy 2 is a national-level document defining the state policy on waste management for the next fifteen years, in accordance with the obligations set out in the Association Agreement between Ukraine and the European Union.

To date, the implementation of an effective waste management system has faced many challenges, such as the lack of enterprises involved in waste disposal and treatment, low level of environmental monitoring and environmental management, ineffective regulatory compliance, illegal disposal (including dumping), fragmented institutional structures and financial constraints. Therefore, the lack of a national strategy has become a major obstacle to the development of the waste management industry and a major barrier for attracting investment.

Unfortunately, the envisaged legislative measures are not always implemented in practice to the fullest. In order to create an efficient waste management system, it is necessary to take into account and adapt the best foreign experience, especially those European countries that have already gone through harmonization of the environmental legislation with the EU legislation and have achieved compliance with the relevant European directives.

Summary

The article analyzes the legal acts of Ukraine and the European Union on the issues of the approximation of Ukrainian legislation on waste to EU norms. The problems of this approach are revealed and the conclusion is drawn on the need to take into account the best foreign experience especially those European countries that have already gone through harmonization of environmental legislation with the EU legislation and have achieved compliance with the relevant European directives.

²³ Implementation plan of the Directive 2008/98 / EC and the Plan of implementation of the Directive 1999/31 / EC, approved by the Order of the Ministry of Natural Resources of Ukraine dated October 15, 2014 No. 317 [Electronic resource]. – Access mode : <https://menr.gov.ua/documents/702.html>.

²⁴ About the Working Group on Waste and Resources Management: Order of the Ministry of Ecology and Natural Resources of Ukraine dated January 12, 2014 No. 385 [Electronic resource]. – Access mode : <https://menr.gov.ua/documents/706.html>.

²⁵ National strategy of approximation of Ukrainian legislation to EU law in the field of environmental protection [Electronic resource]. – Access mode : http://www.kmu.gov.ua/control/publish/article?art_id=247539701.

²⁶ <http://www.kmu.gov.ua>

Анотація

У статті здійснено аналіз нормативно-правових актів як України, так Європейського Союзу з питань апромаксимації законодавства України про відходи до норм ЄС. Виявлені проблеми цього наближення, і наданий висновок про необхідність врахування кращого зарубіжного досвіду, особливо тих європейських країн, які вже пройшли шлях гармонізації екологічного законодавства до законодавства ЄС і добилися дотримання вимог відповідних європейських директив.

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