

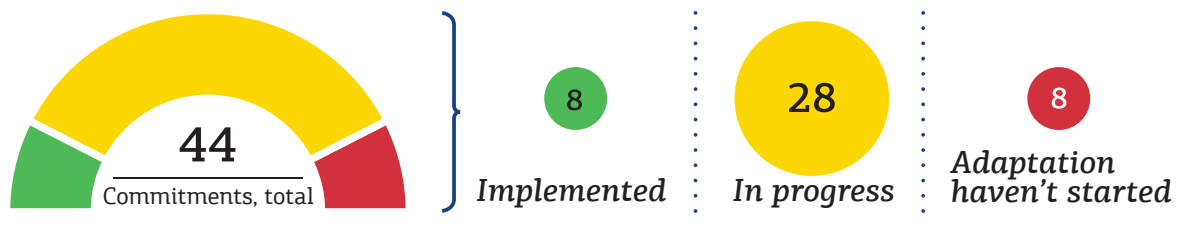
Association Agreement implementation monitoring (July 1, 2016 – November 1, 2016)

Ukraine is stuck ‘in the process’

The Association Agreement provides that Ukraine is obliged to implement approximately 350 EU legal acts (directives, regulations, decisions) by 2025.

Under the terms defined in the Agreement for the period of **July 1, 2016 – November 1, 2016**, Ukraine had to adapt 44 EU legal acts in the sectors of **energy, environment, public health, social policy, company law, taxation, and public procurement**, most of which belonged to the sectors of energy (13) and environment (15).

The list of commitments for EU standards implementation to Ukraine laws with a deadline passed at July 01 - November 01, 2016



The conducted assessment indicates a lack of significant progress in the implementation of commitments under the Association Agreement, as only 8 of the 44 commitments have been implemented (the Ukrainian legislation has been approximated with the EU requirements).

As in the previous report, the spheres of public procurement and energy have become most successful, demonstrating systematic work aimed at the approximation of the Ukrainian legislation to the EU law. In other areas, implementation of the European integration commitments is on different levels – from the legislation regulating the collection of excise duty, where only several technical amendments to the legislation are to be made to fully implement the EU requirements, to the regulation in the sphere of environment, where approximation is progressing quite slowly.

The Parliament’s delay in the consideration and adoption of the relevant laws, slow and bureaucratic procedure of approving the drafts of legal acts by the Cabinet of Ministers, as well as poor ability of the personnel of the governmental agencies to develop high-quality drafts are the biggest obstacles to a timely approximation of the Ukrainian laws to the EU standards.

THE MOST SUCCESSFUL APPROXIMATION OF LEGISLATION

Public procurement. The team of the Ministry of Economic Development and Trade of Ukraine (MEDT) has showed the best results, having taken all the steps related to the approximation and implementation provided for in the Association Agreement with the deadline of November 1, 2016. In particular, a basic policy document “Public procurement roadmap” was adopted, having set the requirements for the conclusion of procurement agreements and ensured institutional distribution of powers between the MEDT and the Antimonopoly Committee of Ukraine (AMCU), when the former shall determine the governmental policy in public procurement, while the latter shall review the customers’ decisions.

Energy sector. Systemic activity of the State Agency for Energy Efficiency and Energy Saving and the MEDT relating to the reform of the national technical standards has allowed Ukraine to launch a national system of energy labeling of energy-related products which fully meets the requirements of the new Directive 2010/30/EU. As of November 1, 2016, Ukraine has adopted the framework legislation and four technical regulations on labeling for refrigerators, washing machines, dishwashers and electric lamps and illumination devices, which have been fully incorporated into the practice of manufacturing companies, importers, and public authorities. To complete this reform, it is necessary to adopt other regulations as soon as possible, and implement the requirements of this directive as to the state’s ability to control the accuracy of the information on energy labeling.

The requirement to meet new, more stringent EU standards on nuclear safety was initiated by the State Nuclear Regulatory Inspectorate of Ukraine (SNRIU) to improve the safety standards of nuclear installations, the protection against ionizing radiation, and the transportation of radioactive waste and spent nuclear fuel. Most subordinate acts of the SNRIU have been adopted. However, some important institutional changes, such as regulatory reform in the field of nuclear energy, have, unfortunately, been blocked due to unsatisfactory Parliament’s activity and a delay in the approval of the draft regulations on the level of the Cabinet of Ministers.

ONE STEP TOWARDS SUCCESSFUL APPROXIMATION OF THE LEGISLATION

Taxation. Approximation to the requirements of two EU directives regulating codification and collection of excise duty has almost been completed and incorporated into the practice of the State Fiscal Service of Ukraine (SFSU). To fully accomplish it, it is necessary to unify the list of excisable goods in accordance with the EU requirements and harmonize the structure and the rates of excise duty levied on tobacco products with the EU requirements.

FALLEN OUT OF THE SUCCESSFUL APPROXIMATION RACE

Environmental protection. The commitments in this sector are being implemented rather slowly, given a large number of obligations. In addition, the environment is not a priority in the national agenda of the reforms, which also affects the speed of legislation implementation.

The Ministry of Ecology and Natural Resources of Ukraine has made a good attempt to start adapting the national legislation to the European standards of the development of basic, systemic laws such as “On the strategic environmental assessment” and “On the environmental impact assessment.” However, due to a conflict between the main stakeholders and poor awareness campaign of the social and environmental importance of these draft laws, they were vetoed by the President.

The legislation necessary to adapt to the norms of the EU Water Framework Directive has also been adopted. As for the other changes, relevant draft laws are being developed. Implementation of the requirements of the Directives on the protection of habitats, protection of birds, control of volatile compounds emissions, the marine environment, and carbon emissions trading has not even started yet.

STUCK IN THE PROCESS OF APPROXIMATION

Company law. The reform of the law regulating company law in line with the EU standards is being implemented with varying degrees of success. Opening of the Unified State Register of Enterprises and Organizations of Ukraine (USREOU) can be considered as a very positive accomplishment, yet the access to the companies' registration cases has not been granted. Information about the branches of foreign companies working in Ukraine is not open either. The relevant EU standards are being implemented in the sphere of corporate governance, while the international financial reporting standards (IFRS) are used in a somewhat narrower scope than provided for in Regulation (EC) No. 1606/2002.

Public health. Effective legislation in the field of transplantation of tissues, cells, and organs only partially meets the requirements of the EU directives which should have been implemented by November 1, 2016. In particular, when it comes to the permission for transplantation, the right to use a full range of anatomical materials in clinical practice is provided, while the standards of confidentiality, proper quality system, and standards of tissues and cells preparation do not meet the relevant European regulations yet. To harmonize the national legislation in the field of transplantation with the requirements of the EU directives, it is necessary to adopt the draft law No. 2386-1 "On amendments to certain legislative acts of Ukraine on healthcare and transplantation of organs and other human anatomic materials" which should fulfill most of the requirements of the European directives.

As to the regulation of tobacco, approximation of the Ukrainian legislation to the European standards have been delayed over the past year. The Verkhovna Rada is yet to consider two draft laws No. 2430-1 (based on the old directive No. 2001/37/EC) and No. 2820 (based on the new directive No. 2014/40/EC). However, after a long debate on which draft law should be adopted – the one based on the new directive or that on the old – the process of approximation in this field has actually been suspended.

Social policy. Approximation of the Ukrainian laws to the EU regulations on the job safety at the mining enterprises is on the preparatory stage and violates the deadlines set by the Association Agreement. To complete this process, it is necessary to adopt two orders of the Ministry of Social Policy of Ukraine setting minimum requirements for job safety and health protection of the employees of the mining enterprises. They have not been made public so far.

Conclusions:

1. Due to poor capabilities of the staff of the public authorities, effective work is random and depends on the capacity of a particular institution. If there are responsible executors with a sufficient institutional capacity to ensure high-quality management and effective communication at the level of the Cabinet of Ministers and the Parliament, the process of approximation is successful, otherwise it progresses slowly.
2. Today, the Parliament remains a weak link in the process of the European integration reforms. Most draft laws to be adopted are blocked in the process of consideration and voting. This is due to poor motivation of MPs and their lack of understanding of the importance of the European legislation, as well as unpopular and often quiet stringent EU requirements to the approximation of the national legislation.
3. A complicated procedure of considering the draft laws at the level of the Cabinet of Ministers, when approval of an act can take years, is yet another problem.

Recommendations.

Aiming at effective Association Agreement implementation and approximation of national legislation to the EU legal system, we encourage to develop and introduce a mechanism to adopt the draft legislation related to the AA implementation by fast track procedure. For example, the Parliament could schedule a specific time for the European integration draft laws during every session day or develop a fast track procedure for the Cabinet of Ministers of Ukraine to consider the European integration draft laws.

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