



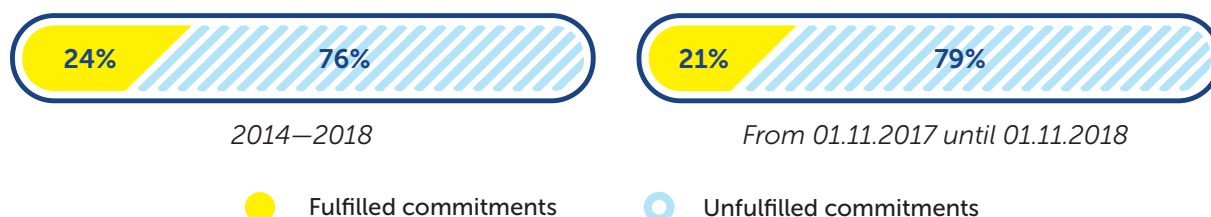
UKRAINIAN CENTRE
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POLICY

Policy brief

Labyrinths of the Association Agreement

In 2018, Ukraine had to approximate its legislation to EU legislation in six areas: transport, social policy, technical barriers to trade, establishment and trade in services, environment and company law. In view of the fact that the Association Agreement has been in force for 4 years, we decided to examine the changes in the approximation of legislation from 2014 to 2018 instead of focusing on annual analysis only. Our aim was to better understand the trends, problems and challenges associated with implementing the Association Agreement.

Progress in implementation of the Association Agreement between Ukraine and the European Union



Ukraine fulfilled only 21% of commitments with deadlines from November 1, 2017, to November 1, 2018; in 2017 this figure was 11%.

The sectoral indicators of the approximation of national legislation to the EU acquis in the period from November 1, 2017, to November 1, 2018, are as follows:

- 1) **Transport** — 0 %
- 2) **Social policy** — 0 %
- 3) **Technical barriers to trade** — 80 %
- 4) **Establishment, trade in services and electronic commerce** — 0 %
- 5) **Environment** — 17 %
- 6) **Company law** — 0%

According to the above data, there have been significant changes in the implementation of the commitments in the area of technical barriers to trade as regards vertical legislation: machinery and mechanisms, electromagnetic compatibility, simple pressure vessels, lifts, safety of toys, electrical equipment, appliances burning gaseous fuels and personal protective equipment.

Some minor progress has been made in the environment sector, in particular regarding the assessment and management of flood risks.

Other areas manifest virtually no progress in the approximation of national legislation to the provisions of EU legislation. This might imply that in these sectors: no laws and regulations have been developed; only draft laws or regulations have been developed; or Laws of Ukraine have been adopted, but they require further development and adoption of subsidiary legislation.

According to cumulative analysis of commitments with deadlines from November 1, 2014, to November 1, 2018, the progress made in the implementation of the Association Agreement amounts to 24%.

The sectoral indicators of the approximation of national legislation to the EU acquis for the period from November 1, 2014, to November 1, 2018, are as follows:

- 1) **Transport** — 5%
- 2) **Social policy** — 17%
- 3) **Technical barriers to trade** — 87%
- 4) **Taxation** — 67%
- 5) **Environment** — 13%
- 6) **Consumer protection** — 38%
- 7) **Customs matters and trade facilitation** — 0%
- 8) **Public procurement** — 100%
- 9) **Public health** — 0%
- 10) **Company law** — 40%
- 11) **Energy cooperation** — 6%
- 12) **Establishment, trade in services and electronic commerce** — 8%

During these four years, the most successful and systematic effort has been channelled in such areas as **public procurement, technical barriers to trade and taxation, company law, and consumer protection**, which attests to the efficiency of work in these sectors during the four years of the implementation of the Association Agreement.

European Integration Leaders

The commitments with regard to the approximation of national legislation with EU legislation in the area of **public procurement** have been fulfilled in full measure. During this time, two public authorities have been appointed in charge of policy development in the area of public procurement and review of customer decisions, and key standards governing the process of concluding public contracts have been introduced.

In the area of **technical barriers** to trade, horizontal legislation has been fully approximated and 80% of vertical legislation has been aligned.

In the area of **taxation**, the national legislation has been aligned with the European provisions on the general conditions of excise duty and on the structure and rates of the excise duty on tobacco products.

In the area of **company law**, the national legislation has been approximated to the EU regulations on the annual accounts and consolidated accounts of banks and other financial institutions and associated reports of certain types of companies as regards application of international accounting standards and single-member private limited-liability companies.

In the area of **consumer protection**, the national legislation has set provisions that protect consumer rights as regards indication of the prices of products offered to consumers, approximation of legislation on products which, appearing to be other than they are, endanger the health or safety of consumers, and ensuring that magnetic toys placed or made available on the market display a warning about the health and safety risks they pose.

European Integration Fluctuations

Some progress has been made with regard to approximation in the areas of energy, transport, social policy and the environment.

In the area of **energy**, the most successful examples of the fulfilment of commitments are associated with the markets of energy efficiency, gas and electricity, oil and petroleum products, where the reforms launched stand a good chance of being completed within the next few years.

In the **transport** sector, the national legislation has been approximated in the area of transport of dangerous goods by inland waterways, and a roadmap for international maritime transport has been adopted.

In the area of **social policy**, the national legislation has been approximated to the provisions of the EU regulations on the gradual introduction of the principle of equal treatment of men and women in matters

of social security, the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries and the minimum safety and health requirements for the use of work equipment by workers at work.

In the area of **environment**, the national legislation has been approximated with the European regulations in the field of water policy, assessment of the effects of certain public and private projects on the environment, and assessment and management of flood risks.

Running on the Spot

The slightest progress as regards approximation of national legislation in 2014-2018 has been made in the following areas: establishment of business enterprises, trade in services and electronic commerce, public health and customs matters. Despite the fact that some work has been performed in these areas, the process of approximation has not been completed.

Conclusions and Recommendations

The speed, scope, and quality of the approximation of national legislation with the EU provisions vary for each sector of the Association Agreement.

The main challenges of the approximation of Ukrainian legislation with the EU acquis and recommendations for their solution are as follows:

1. Weak institutional capacity of the state institutions responsible for aligning national legislation with EU laws. Ways to enhance the institutional capacity include improvement of the quality of their staffing, ensuring effective management, continuous cooperation with interested bodies, focusing the work of state institutions on the result rather than the process, and political will for the necessary changes.
2. The process of implementation of the Association Agreement is often accompanied by “Ukrainisation” of EU law, especially in the process of aligning national legislation with EU laws and regulations. Draft laws often fail to fully comply with European legislation and practice of their application (in particular, due to the fact that certain public authorities tend to interpret some EU regulations at their own discretion, apply these regulations selectively, are unwilling to lose power, etc.). This results in systemic errors and non-conformity of the legislation with EU laws and regulations that are supposed to be implemented via this legislation. This problem is due to both reluctance to address the systemic challenges associated with implementing EU laws and regulations (which are mainly related to the fact that Ukraine is not a member of the EU) and the quality of the process of approximation.

To overcome this challenge, it is necessary:

- For the Government and Parliament to abandon the practice of developing pinpoint changes to national legislation and to adopt regulatory frameworks that take into account the objectives, tasks and the entire set of requirements of the EU acquis;
 - For the Government to plan ex-post evaluation of the effectiveness of the implementation of the approximated legislation and to report on progress on an ongoing basis;
 - For the Government, together with the EU, to solve systemic problems with the implementation of EU laws and regulations, taking into account the requirements of Ukraine’s other international commitments;
 - For the European Party to evaluate draft laws and regulations and adopted legislation, in particular, by providing official statements (as opposed to expert opinions).
3. Obstruction or inhibition of the passage of laws and regulations in Parliament by interested parties and groups of interests who are afraid of the changes that are supposed to follow from the approximated legislation. It would be a good idea to carry out an awareness building campaign among interested parties, to compile and publish in the public domain comparative tables that would show in detail the compliance of the national legislation of Ukraine with each article of the relevant EU regulation.
 4. The lack of political will and the lack of interest in EU integration draft laws on the part of MPs, which results in delaying their consideration in the committees of the Verkhovna Rada; these draft laws tend to end up at the bottom of the Parliament’s agenda list and are impassable due to the time of consideration. A way to improve the situation might be for Government representatives to focus on the result rather than on the process.

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