

COOPERATION OF THE EU AND UKRAINE IN THE SPHERE OF INTELLECTUAL PROPERTY: THE KEY ROLE OF THE ASSOCIATION AGREEMENT IN THE ADVANCEMENTS OF NATIONAL LEGISLATION

СПІВРОБІТНИЦТВО ЄС ТА УКРАЇНИ У СФЕРІ ІНТЕЛЕКТУАЛЬНОЇ ВЛАСНОСТІ: КЛЮЧОВА РОЛЬ УГОДИ ПРО АСОЦІАЦІЮ В УДОСКОНАЛЕННІ НАЦІОНАЛЬНОГО ЗАКОНОДАВСТВА

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The article examines the role of the Association Agreement between Ukraine and the European Union (EU) in improving Ukraine's national legislation on intellectual property (IP). Special attention is given to the implementation of Chapter 9 of the Agreement, which regulates copyright protection, trademarks, geographical indications, and other aspects of IP rights. Between 2022 and 2023, Ukraine made significant progress, increasing compliance with the Agreement's provisions to 98%. However, in 2024, the pace of harmonization with the EU *acquis* slowed, posing new challenges for completing legal adaptation.

The article identifies key obstacles hindering the implementation of the Agreement's provisions, including compulsory licensing, piracy prevention, and the protection of performers' rights. The authors emphasize that the effectiveness of Ukraine's IP protection system depends not only on aligning legislation with EU standards but also on proper enforcement. One of the major barriers is the absence of a specialized judicial body for IP disputes. Therefore, the article proposes accelerating the establishment of the High Court on Intellectual Property, which would enhance judicial efficiency in this area.

Additionally, the authors stress the importance of translating and applying the rulings of the Court of Justice of the EU in the field of IP, as their integration into national judicial practice will ensure uniform interpretation of EU *acquis* norms. The article further discusses the need to update specific provisions of the Association Agreement to align them with the latest EU legislative initiatives.

The authors highlight the necessity of strengthening Ukraine's cooperation with the EU through communication platforms, which would facilitate experience exchange and the adoption of best practices in the IP sector. Overall, the article underscores that legislative harmonization must be accompanied by effective enforcement and that further cooperation with the EU is essential for the efficient functioning of Ukraine's IP protection system.

Key words: Association Agreement, Ukraine-EU Dialogue, European integration, intellectual property, implementation of EU legislation, copyright protection, harmonization with the EU *acquis*, the Supreme Court on Intellectual Property.

У статті аналізується значення Угоди про асоціацію між Україною та Європейським Союзом (ЄС) у вдосконаленні законодавства України у сфері інтелектуальної власності (ІВ). Особлива увага приділена імплементації положень глави 9 Угоди, яка охоплює охорону авторських прав, торгових марок, географічних зазначень тощо. Відзначається, що в 2022–2023 роках Україна досягла значного прогресу, підвищивши рівень виконання положень Угоди до 98%. Проте у 2024 році темпи гармонізації з *acquis* ЄС сповільнилися, що створило нові виклики для завершення адаптації законодавства.

У статті розглядаються основні проблеми, що ускладнюють імплементацію положень Угоди, зокрема відсутність примусового ліцензування, неефективна боротьба з піратством та недостатній захист прав виконавців. Автори наголошують, що ефективність національної системи охорони інтелектуальної власності залежить не лише від відповідності законодавства стандартам ЄС, а й від дієвого правозастосування. Однією з ключових перешкод є відсутність спеціалізованого судового органу, що розглядатиме спори у сфері ІВ. У зв'язку з цим пропонується прискорити створення Вищого суду з питань інтелектуальної власності, що сприятиме ефективності правозастосування.

Також акцентується увага на важливості перекладу та застосування рішень Суду Європейського Союзу у сфері ІВ, оскільки їх інтеграція у національну судову практику сприятиме однаковому розумінню норм *acquis* ЄС і ще більшому рівню співпраці між Україною та державами ЄС. Додатково розглядається необхідність оновлення окремих положень Угоди про асоціацію, щоб забезпечити їх відповідність останнім законодавчим ініціативам ЄС.

Автори наголошують на необхідності активізації співпраці України з ЄС через платформи комунікації, що сприятиме обміну досвідом та впровадженню найкращих практик у сфері ІВ. Загалом у статті підкреслюється, що гармонізація законодавства має супроводжуватися якісним правозастосуванням, а подальша співпраця з ЄС є критично важливою для ефективного функціонування системи ІВ в Україні.

Ключові слова: Угода про асоціацію, Діалог Україна – ЄС, європейська інтеграція, інтелектуальна власність, імплементація законодавства ЄС, захист авторських прав, гармонізація з *acquis* ЄС, Вищий суд з питань інтелектуальної власності.

Formulation of the problem: The issue addressed in this article centers on the challenges Ukraine faces in aligning its intellectual property (IP) legislation with EU standards under the EU-Ukraine Association Agreement. Despite notable progress, gaps remain in legislative implementation and enforcement, hindering Ukraine's integration into the EU IP framework. This study aims to explore these legislative and institutional challenges, highlighting areas for improvement to facilitate Ukraine's deeper cooperation with the EU in IP protection.

EU – UA Association Agreement as a driving force in the development of IP rights.

The EU-Ukraine Association Agreement (AA) has served as a critical catalyst in advancing Ukraine's intellectual property framework, not only in the adoption of EU norms but

also in embracing shared democratic values and fundamental EU legal principles [1]. The provisions that cover the IP area in Chapter 9 are specifically aimed at streamlining the development and commercialization of innovative products and creative works within the territories of the Parties, attaining an adequate and efficient level of protection for intellectual property rights [2].

Ukraine has clearly shown its determination to comply with the above-mentioned objectives by adopting numerous laws in order to align its legislation with the agreed-upon clauses. The activity in this field has especially been noticeable in recent years. The statistics data for 2022 posted by the Cabinet of Ministers [3] depicts a process of rapid advancement – the number of fulfilled clauses has risen from 61% to 94% in a year. A vast range of reforms was conducted in the following

spheres: copyright and related rights (the LU “On copyright and related rights”, “On amendments to the Code of Ukraine on Administrative Offenses and the Criminal Code of Ukraine concerning liability for violation of copyright and (or) related rights”), protection of IPR (The draft Law “On amendments to certain legislative acts of Ukraine concerning strengthening the protection of intellectual property rights”), geographical indications (the LU “On geographical indications of alcoholic beverages”) and so on. In spite of the full-scale invasion, Ukraine managed to adhere to its Association Agreement undertakings. Such a pace was sustained in the subsequent year as well. According to the developed and implemented by the Government monitoring project called “Pulse of the Agreement”, Ukraine succeeded in adopting 98% of the AA provisions by the end of 2023 [4]. The annual report of the CMU [5] lists the subsequent legislative changes: enhancement of protection of copyright and related rights (new version of the LU “On Copyright and Related Rights” and a number of the relevant by-laws), further enhancement and bringing in line provisions on the protection of IPR, orders aimed at the practical realization of the Law of Ukraine No. 2572-IX dated September 06, 2022, that concern geographical indications. In essence, last year's achievements were mostly dedicated to the upgrades of the already existing framework.

These relatively prompt advancements were accomplished as a consequence of the Action Plan [6] introduction. This document established deadlines for the implementation of AA provisions, in particular, Chapter 9 and its attachments should have been in force by the end of 2023. But, even though most of those points were adopted in time, the state failed to implement two requirements – the creation of an electronic register of geographical indications for flavored wine products (Articles 201–211, Annex XXII-A), the establishment of cooperation between Ukraine and the EU in order to promote and strengthen the protection of rights to plant varieties in accordance with the provisions of the Association Agreement (Article 228). Nevertheless, these issues will eventually be solved under the pressure of the European Commission and EU-Ukraine IP platforms of communication.

Despite the remarkable progress achieved in 2022 and 2023, Ukrainian legislators failed to maintain this momentum into 2024. Specifically, no significant legislative actions were taken to fulfill the remaining obligations under the Association Agreement. Moreover, the most recent European Commission Report highlights a concerning lack of advancement in aligning Ukraine's intellectual property laws with the EU *acquis* during this period [7]. The Report underscores the necessity for Ukraine to complete the implementation of agreed provisions and to intensify efforts in the recommended spheres. This stagnation not only hampers the development of a sophisticated intellectual property rights framework but also poses a barrier to Ukraine's deeper integration with the European Union.

In the process of enshrinement of the Association Agreement provisions, a legislator should keep in mind its arduous nature. The implementation of the aforementioned Agreement is a complex process that requires a comprehensive approach. The Agreement's complexity requires more than mere adherence, its successful implementation demands a specific set of measures that are aimed at deepening the cooperation between the parties. However, due to the specificity of the objectives outlined in the agreement, blind enforcement of the measures is not a viable option if complete uniformity in their interpretation is absent [8].

The distinct features referred to are prescribed by the preamble of the Association Agreement. The progress in implementing AA and EU values holds significant implications for political affiliation [9]. It is a crucial matter that requires attention and consideration in order to achieve the desired outcomes. Ukraine itself is an interested party; therefore, it ought to show unwavering interest and initiative that is of voluntary character. When drafting a law, it is imperative

to consider the criteria of approximation to the EU *acquis* and enactment effectiveness, as they are critical to achieving the desired result.

By virtue of the above-described nature of the clauses, it is completely fair to say that such association agreements are the pure form of EU legislation expansion [10]. It should be noted that adherence to the AA provisions does not equate to full alignment with the EU *acquis*. However, it can be regarded as a preliminary step towards achieving this goal. The CMU report on the progress of EU *acquis* implementation [11] highlights this distinctive difference: whereas Ukraine implemented 98% of Chapter 9 of the AA, it still needs to adopt 26 legal acts of obligatory character for the EU candidate.

The obligations set forth in the Association Agreement extend beyond the scope of the provisions of Chapter 9 and its related Annexes. Certain articles serve to establish a general framework or prescribe a desired outcome in a specific sphere. As such, it is entirely at the discretion of each state to determine how to proceed, act with foresight, and conduct in good faith. On this basis, The High Court on Intellectual Property was founded in 2017 [12]. Subsequently, there was a submission to the Verkhovna Rada for consideration of the draft law “On the High Court on Intellectual Property” [13].

The establishment of a permanent, specialized court in the Ukraine judicial system - the High Court on Intellectual Property – would be instrumental in administering justice in line with the principles and procedures of judicial proceedings as defined by law. The primary objective of this esteemed institution is to safeguard violated or contested rights and legitimate interests in the field of intellectual property. At present, courts of different jurisdictions such as civil, economic, administrative, and criminal courts handle disputes related to intellectual property. However, the establishment of the High Court on Intellectual Property is expected to result in a more uniform approach to resolving intellectual property-related disputes. This development could bring about greater consistency and fairness in the resolution of such disputes. In support of this, G. O. Androschuk highlights the necessity of establishing the High Court on Intellectual Property in Ukraine due to the rising significance of intellectual property law globally, especially amidst economic growth. He underscores that the increasing number of disputes in this field impacts case outcomes, as judges unfamiliar with industry specifics may struggle to deliver quality decisions [14].

The primary factor to consider in the creation of the draft is the argumentation presented by legislators regarding their reasoning. Specifically, they refer to Article 230 of the Association Agreement on effective measures of protection, highlighting that this approach aligns with Ukraine's international obligations. Esteemed scientist M. Yu. Pototskyi has expressed personal approval of this action, as it will bring Ukraine closer to meeting EU standards [15].

Regrettably, draft law № 6487 has been suspended since the onset of the full-scale invasion, which is precisely when extensive amendments necessitate political will and coordinated efforts to expedite their development.

Despite Ukraine's best efforts to align its legislation with the European Union *acquis*, there remain several measures that require implementation to achieve full membership in the EU. According to surveys conducted within civil society organizations [16], the domain of intellectual property rights is one of the most challenging areas to implement. Consequently, Ukraine is still in the initial stages of preparation.

Despite the challenges it has faced, Ukraine has demonstrated a steadfast commitment to aligning its legislation with the European Union's legal framework. The Association Agreement has been instrumental in driving these initiatives and has laid a solid foundation for future reforms. The Intellectual Property Office has issued a public statement [17] outlining a framework for further legal development, which includes supporting anti-piracy measures, providing

guidance to law enforcement on intellectual property rights enforcement, advancing the establishment of a High Court on Intellectual Property, and translating significant EU Court rulings on intellectual property matters into Ukrainian.

The commencement of negotiations on December 14, 2023 has given rise to high expectations for the expeditious realization of these ambitious plans.

EU-Ukraine cooperation in protection and regulation of IP rights through the mutual communication platforms.

Article 4 of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part encourages the Parties to foster and enhance political dialogue in all areas of mutual interest. This includes strengthening respect for democratic principles, the rule of law and good governance, human rights and fundamental freedoms, including the rights of national minorities, non-discrimination against minorities, and respect for diversity, as well as contributing to the consolidation of internal political reforms. The EU and Ukraine have established various communication platforms to facilitate cooperation in protecting and regulating intellectual property (IP) rights. These communication platforms serve as links for continuous dialogue and collaboration between the European Union and Ukraine, fostering a dynamic exchange of insights, strategies, and best practices in the realm of intellectual property. By providing a structured framework for discussions, these platforms enable both parties to address emerging challenges, share experiences, and collectively work towards enhancing the protection and regulation of IP rights. Meetings within the framework of the Dialogue are held annually [18]. Ukraine and the European Commission (EC) began cooperation in the field of intellectual property back in 2006, when the Dialogue on the Protection of Intellectual Property Rights was launched to resolve issues in the field of intellectual property that are of mutual interest to the parties. The functioning of the Dialogue on Intellectual Property Law is also provided for by the provisions of Chapter IV of the Association Agreement. The Dialogue operates in accordance with Article 252 (3) of the Agreement in order to consider issues related to the protection and protection of intellectual property rights, in particular, covered by Chapter 9 "Intellectual Property" of Section IV of the Agreement [2].

In 2022, the Dialogue on Intellectual Property Rights between Ukraine and the EU took place on January 27. It was already the 19th meeting within the framework of this platform for cooperation. The meeting was chaired by the head of the intellectual property rights protection department of the General Directorate for Trade of the European Commission, Carlo Pettinato, and the Deputy Minister of Economy of Ukraine, Oleksandr Hryban. During the meeting, the parties discussed issues related to reforms in the field of intellectual property rights in Ukraine, the establishment of a specialized court on intellectual property issues, combating offenses, and trade in falsified and counterfeit medicines. Ukraine and the EU also drew attention to the state of affairs in the field of collective management of property rights of copyright subjects in the field of copyright and (or) related rights [19].

The 20th meeting of the annual Dialogue on Intellectual Property Law between Ukraine and the EU took place on October 19, 2023. The progress of the reform of intellectual property rights in Ukraine, harmonization with the EU, as well as copyright, pharmaceuticals, patent law, protection of IP rights and technical assistance that the EU can provide - were the main topics during this meeting. The head of the IP office, Olena Orliuk, emphasized the importance of effective application of legislation in practice, in particular those harmonized with EU legislation, increasing the level of protection of intellectual property rights, and implementing the best practices that are used today in the EU. Attention

was also focused on the course of reforming the Institute of Intellectual Property Rights in Ukraine, improving the qualifications of experts and developing a culture of zero tolerance for corruption. The participants emphasized that since the beginning of 2023, the new Law of Ukraine On Copyright and Related Rights entered into force, by which Ukraine not only implemented the obligations taken under the Association Agreement with the EU, but also the EU acquis, which were introduced after the agreement came into force [20].

One more prominent example of successful cooperation and communication is the partnership between the European Union Intellectual Property Office (EUIPO) and the Ukrainian National Office for Intellectual Property and Innovations (UANIPO) that have established an effective collaboration to support Ukraine in developing a robust and constructive intellectual property (IP) system. The fruitful work of these two agencies resulted in the signing of a Memorandum of Understanding (MoU) on the sidelines of the sixty-fourth assembly of member states of the World Intellectual Property Organization (WIPO) in Geneva in July 2023. The memorandum is aimed at strengthening cooperation between the European Union and Ukraine in the field of intellectual property, in particular strengthening the Ukrainian intellectual property (IP) system and strengthening institutional opportunities for business development and for the benefit of citizens in Ukraine and the EU. The Memorandum of Understanding is an important stage for Ukraine, as a candidate country for EU accession, on the way to closer integration into the EU Single Market. As a result of the signing of the agreement, Ukraine received many useful opportunities that lay the foundations for new joint projects and the development of previous developments in the field of IP. The memorandum envisages mutually beneficial relations in matters of exchange of information on research, fight against fraud, harmonization of methods of re-registration and inspections, training of personnel and others. All this gives Ukraine prospects for attracting new international investments in business and integration into the EU [21].

Ukraine is also a participant in many other programs and events that deepen cooperation with the European Union, in particular in the field of intellectual property rights. This is, for instance, participation in the EU regional program to support the sphere of intellectual property. In October 2023, Ukraine, together with Moldova and Georgia, joined this program, which is designed for 4 years. It aims to bring Ukrainian legislation closer to European legislation, education and training for Ukrainian judges and grant support. Olena Orliuk, head of the IR office, noted that this is an important initiative for the development of Ukrainian business and for the European integration of Ukraine in general [22].

Already this year, on January 19, 2024, the Ukrainian delegation joined the work of the seminar on protection of intellectual property rights held by the Republic of Lithuania. This event was jointly organized by the European Union Intellectual Property Office (EUIPO) and the State Patent Bureau of the Republic of Lithuania (SPB). The Ukrainian side emphasized that such measures will contribute to the deepening of institutional cooperation between the patent offices of the two countries, and the achievement of a better level of IP protection for Ukraine and the EU. The representatives of Ukraine also spoke about the establishment of the Monitoring Centre for Violations of Intellectual Property Rights, the purpose of which is to: monitor legislative processes in the country, judicial practice and statistical data in the IP sphere; increasing the level of public awareness of IP rights and their importance; conducting training programs for state authorities, law enforcement agencies and businesses in the IP sphere, etc. [23].

In addition, on March 25, 2024, the official launch of the EU4IP platform took place in Chisinau, Moldova. This project unites national intellectual property offices of Ukraine

(UANIPIO), Georgia (Sakpatenti) and Moldova AGEPI. It is designed to deepen cooperation with EUIPO and is aimed at using intellectual property to create a favourable environment for innovation, creativity and free competition. This partnership helps the three candidate countries on their way to join the EU and the European Union IP Network (EUIPN) [24].

European Commission assessment of the effectiveness of IP novelties in Ukrainian legislation.

The European Union has established uniform regulations governing the legal safeguarding of intellectual property rights (IPR), encompassing copyright and related rights. These regulations extend to various forms of intellectual property, including patents, trademarks, designs, biotechnological innovations, and pharmaceuticals. Similarly, regulations pertaining to the protection of copyright and related rights encompass a broad spectrum of creative works such as books, films, software, and broadcasting.

In order to demonstrate its firm commitment to swiftly receive full membership in the EU, the Ukrainian Cabinet of Ministers initiated an extensive internal evaluation process on February 28, 2023. This process, outlined in Resolution No 189, titled "Procedure for the initial assessment of the progress in the implementation of the European Union legal acts (EU *acquis*)," aimed to align Ukrainian legislation with EU standards through self-screening. Its objectives included determining the progress in the alignment of the Ukrainian legislation with the EU *acquis*, identifying inconsistencies and gaps to be eliminated during the negotiation and preparation for the accession to the EU, and in particular, in the field of intellectual property law [25].

As noted by the commission that conducted self-screening, the Intellectual property law chapter covers the EU *acquis* on copyright and related rights, trademarks, designs, inventions and the protection of intellectual property rights and trade secrets. Ukraine's obligations in the field of intellectual property are defined in Chapter 9 "Intellectual property" of Title IV "Trade and trade-related matters" of the Association Agreement. In accordance with the Association Agreement, obligations in the field of intellectual property provide for the promotion of production and commercialization of innovative and creative products in Ukraine and member states, as well as the achievement of an adequate and effective level of protection and protection of intellectual property rights [2]. The assessment group found that the current degree of consistency of Ukrainian legislation in the field of intellectual property law with the EU *acquis* is 98% [26].

Nevertheless, in its Ukraine Report 2023, the European Commission was somewhat more modest in its assessment of Ukraine's convergence with EU legislation and the development of the field of intellectual property protection in general. The report stated, "Ukraine has some level of preparation on intellectual property law. Good progress was made during the reporting period". The Commission noted particularly positively the launch of the National Intellectual Property Authority and the adoption of the Law on copyright and related rights, which aims at legislative alignment with the EU copyright *acquis*. However, the Law on patents enacted in August 2020 aimed to integrate EU standards regarding the legal protection of inventions and utility models into national legislation, yet it does not entirely conform to the EU *acquis*. Although Ukraine's trademark legislation partially aligns with EU standards, the adoption of subsequent implementing rules is pending. While Ukraine's legislation incorporates EU norms regarding the legal safeguarding of designs, further harmonization with the EU *acquis* and the Protocol amending the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (as amended on 23 January 2017) is necessary concerning compulsory licensing. Despite some provisions in the Civil Code of Ukraine, there is no specific law addressing trade secrets. While Ukraine's Law on IPR

enforcement broadly mirrors the EU *acquis*, deficiencies persist in combating piracy and counterfeit products, with Ukraine remaining one of the primary transit points for such goods entering the EU. In December 2022, a new legislation concerning copyright and related rights was passed, followed by subsequent amendments in March 2023, alongside revisions to laws governing collective management organizations. Specific concerns persist regarding the duration of protection for copyright and related rights, equitable remuneration distribution between performers and phonogram producers, reproduction rights, and the broadcasting organizations' rights. Challenges remain in effectively enforcing the existing copyright law framework, notably in collective rights management, particularly concerning public broadcasting entities failing to compensate performers and phonogram producers appropriately. The Ukrainian National Office for Intellectual Property and Innovations as the new institution responsible for intellectual property also received a positive assessment. The agency, whose goal is promoting the strengthening of institutional capacity through training courses, successfully developed a closer collaboration with the World Intellectual Property Organization and the European Union Intellectual Property Office [27].

European Commission in its Ukraine Report 2024 maintain approximately the same level of optimism regarding the state's level of preparation in the field of intellectual property law. EC notes that during the year, limited progress was achieved in this area and once again emphasizes the shortcomings of the existing system, in particular: the improvement of the legislation on the payment of royalties, trade secrets, the fight against piracy and smuggling of intellectual property products. The report also draws attention to the insufficient level of work of justice bodies in cases related to IP rights and products [7].

Further development of the IP sphere through the alternative methods of AA regulations application.

Ukraine is diligently endeavoring to comply with its obligations and face the challenges of adhering to the Association Agreement by implementing new legislative acts and transferring AA provisions into the national legislation. Such a method has proved itself to be understandable, reliable, and quite predictable in terms of certainty. However, a simple relocation sometimes is not enough to deal with the spectrum of problems this Agreement entails.

Legislative activity is a time-consuming process. Some of the clauses underwent a 6-year long process of adaptation and enforcement. During this period of implementation, hundreds of cases were guided by outdated laws, which prevented them from being regulated by the norms of the Association Agreement that were already in force. A vivid example of the repercussions of not applying AA articles directly is a collision on the matter of rights on computer programs in labor relations. Article 429 of the Civil Code of Ukraine stipulated that property rights were held by both the employer and employee, whereas Article 16 of the LU "On Copyright and Related Rights" asserted that exclusive rights were held by the employer. Despite the AA's support for the latter in Article 181, and the preeminent authority of the norms of the international agreement, court rulings were conflicting and unpredictable. The courts' failure to refer explicitly to the Agreement violated the principle of legal certainty, resulting in inconsistent and unforeseeable judgments.

However, not every AA clause can be applied directly by the national courts. The criteria by which it will be possible to determine the admissibility as a norm of direct action are prescribed in the practice of the Court of Justice of the European Union [28]. In the Case *en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration* [29] the following conditions for the norm of direct effect were outlined: 1) the rule of law must contain a precise rule that is

clearly understandable; 2) certain rights and duties should follow from this norm, that is, it should act as a direct regulator of social relations; 3) the norm is unconditional since it does not depend on implementation, because in this case the national legislation is applied, and not the norm of law; unconditionality also implies the absence of a direct indication of the need for implementation and domestic settlement of this issue.

The admissibility of these norms has proved to be possible not only theoretically, but practically too. The practice of the Supreme Court of Ukraine has plenty of relevant examples. In the decision of the Supreme Court dated 17.07.2018 in case № 910/14972/17 the priority of application was given to Article 198 of the Association Agreement over the national legislation stating that international agreements, the binding consent of which has been given by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine [30]. Moreover, in the decision of the Supreme Court as part of the panel of judges of the Cassation Economic Court dated 04.07.2019 in case № 910/4947/18 the distinct legal position was created that Article 198 is a norm of direct effect as it sets new standards for the protection of intellectual property rights [31].

Due to the successful implementation of the Association Agreement in the field of intellectual property to a 98% extent, this method has, unfortunately, become obsolete and irrelevant. Nonetheless, there are still a few opportunities to refine the AA application.

Another issue is the lack of clarity as to what extent the AA clauses shall be introduced. While other chapters specify the need to approximate provisions based on the relevant EU acts and establish the necessity to amend legislation in case of EU legislative act novelties [2], Chapter 9 does not provide such adjustments. As a result, EU acts are not fully implemented; the process of approximation turns out to be quite chaotic and incomplete. Furthermore, the absence of articles regulating respective EU acts adopted after the ratification makes the IP area of the Association Agreement outdated [32].

For the purpose of resolving this issue, Parties ought to refer to the procedure of introducing amendments proscribed by paragraph 5 of Article 479. According to it, the Parties may supplement this Agreement by concluding separate agreements in any field within its scope. Therefore, it becomes imperative for the involved parties to engage in proactive measures to address the discrepancies within Chapter 9 of the Association Agreement. One crucial step towards rectifying this situation is to establish a clear framework for the introduction of AA clauses, ensuring that they align with relevant EU acts and are subject to timely adjustments in response to legislative novelties at the EU level. Besides that, the Parties may agree upon inserting the clause that would enshrine the requirement of keeping up with the changes and advancements in the EU legislation. By adhering to such a structured approach, the process of approximation can be streamlined, leading to a more coherent and comprehensive implementation of EU regulations within the Association Agreement framework.

Lastly, it is essential to address the issue of differences in the interpretation of EU law. EU Member States adhere strictly to the practice of the Court of Justice of the EU. Although it is not mandatory for Ukraine to do so, the legislature should bear in mind the importance of complying with the Court's rulings, as its decisions are fundamental and cannot be overlooked to ensure a thorough and accurate approach [33]. The righteousness and significance of this interpretation source was even underlined by the Supreme Court. In the decision of the Supreme Court dated March 31, 2020, in case № 640/65/19, the court confirmed the legality of using

decisions of the Court of Justice of the EU and other sources of EU law [34].

Conclusion: Criticism and Further Actions. All things considered, despite Ukraine's significant strides in implementing the Association Agreement with the EU, several critical issues still remain: 1) significant lack of advancements in 2024; 2) full implementation of the AA is still pending; provisions of Articles 201–211, Annex XXII-A and Article 228 of AA are incomplete, essential deadlines have been missed; 3) some AA articles were previously not treated as norms of direct effect, limiting their enforceability and diminishing legal clarity; this missed opportunity delayed the alignment of national legislation with the EU *acquis*, creating uncertainty for stakeholders relying on these standards; such inconsistent interpretation of EU norms violated the fundamental EU principle of legal certainty; 4) the issues raised by the European Commission were not addressed; 4) finally, the launch of the High Court of Intellectual Property, which can fulfil "effective measures of protection" under Article 230 of AA, has been delayed, hindering needed advancements in the enforcement of intellectual property rights (IPR) and impeding progress toward a unified standard aligned with EU practices.

To address these gaps and be in line with EC recommendations, several targeted actions are necessary: 1) Ukrainian legislators should continue a steady approach to bringing national legislation closer to the EU *acquis*, especially in the field of legal protection of inventions and utility models, protection of trademarks; 2) the AA's implementation must be finalized by integrating its norms into national legislation, with full alignment with relevant EU laws; 3) being allowed by Article 479's mechanisms, introduce amendments to the Chapter 9 of AA that Ukraine should be pursued to ensure mandatory adherence to EU legislation during integration and to allow for timely updates in line with EU legislative changes, similarly to Article 153 mechanism; in this way, legal approximation will be uniform throughout the AA; 4) translating and providing access to key CJEU rulings on intellectual property rights will improve consistency in judicial interpretations; 5) the establishment of the High Court of Intellectual Property should be accelerated to provide a specialized platform for IPR disputes, fostering a stable, predictable adjudication process that aligns with EU standards; 6) the creation and adoption of a specialized law that would thoroughly regulate the issue of trade (commercial) secrets; 7) the problem of effective compliance with the existing legislative framework on copyright needs to be solved, in particular in the collective management of rights, especially in relation to public broadcasters who do not pay adequate compensation to performers and producers of phonograms; 8) for even greater harmonization with the EU *acquis* and the TRIPS Agreement, further work is needed on the regulation of compulsory licensing; 9) proper control and effective fight against illegal piracy in the field of IPR also remains an important issue, because it is necessary not only to create legal norms, but also to effectively implement them.

In conclusion, while Ukraine has made significant strides in aligning its legislation with the provisions of the Association Agreement, particularly in the realm of intellectual property, there are still challenges that need to be addressed to ensure the effective and harmonious implementation of the Agreement. By navigating these challenges and adopting proactive approaches, Ukraine can further strengthen its adherence to the AA and enhance cooperation with the EU in the field of intellectual property.

REFERENCES

1. Petrov R. A. Transposition of the EU "acquis" into the Legal System of Ukraine under the Association Agreement between Ukraine and the EU. *Scientific Notes of NaUKMA. Legal Science*. 2015. № 168. с. 84.
2. Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони : Угода Україна від 27.06.2014 р. : станом на 30 листопада 2023 р. URL: https://zakon.rada.gov.ua/laws/show/984_011#Text (дата звернення: 29.02.2024).

3. Report on Implementation of the Association Agreement between Ukraine and the European Union. 2022. 102 с. URL: https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/report_2022_.pdf (дата звернення: 10.02.2024).
4. Пульс Угоди | Інтелектуальна власність. *European integration portal*. URL: <https://pulse.kmu.gov.ua/ua/direction/intelektualna-vlasnist> (дата звернення: 17.02.2024).
5. Report on Implementation of the Association Agreement between Ukraine and the European Union. 2023. 128 с. URL: <https://www.kmu.gov.ua/storage/app/sites/1/18%20-%20Department/18%20-%20PDF/2024/03.2024/AA%20implementation%20report%20for%202023.pdf> (дата звернення: 10.02.2024).
6. Про виконання Угоди про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони : Постанова Кабінету Міністрів України від 25.10.2017 № 1106 : станом на 18 верес. 2020 р. URL: <https://zakon.rada.gov.ua/laws/show/1106-2017-p#Text> (дата звернення: 07.11.2024).
7. Ukraine 2024 Report. *European Commission*. Brussels, 2024. 104 с. URL: https://neighbourhood-enlargement.ec.europa.eu/document/download/1924a044-b30f-48a2-99c1-50edeac14da1_en?filename=Ukraine%20Report%202024.pdf (дата звернення: 05.11.2024).
8. Fredriksen H. H. The EEA and the Case-Law of the CJEU: Incorporation Without Participation? / Eriksen E. O., Fossum J. E. (eds). *The European Union's Non-Member – Independence under Hegemony?* Routledge, 2015. С. 102–117.
9. Komarova T. V. EU Values as Benchmarks for Reforms in Ukraine. *Adaptation of Ukraine's Legal System to EU Law: Theoretical and Practical Aspects* : Proceedings of the 5th All-Ukrainian Scientific and Practical Conference with International Participation (October 22, 2020, Poltava, 2020. С. 63.
10. Lavenex S., Schimmelfennig F. EU rules beyond EU borders: theorizing external governance in European politics. *Journal of European Public Policy*. 2009. Т. 16, № 6. С. 791–812. URL: <https://doi.org/10.1080/13501760903087696> (дата звернення: 03.11.2024).
11. Report on the Initial Assessment of the Progress in the Implementation of the European Union Legal Acts (EU Acquis). 2023. 306 с. URL: https://eu-ua.kmu.gov.ua/wp-content/uploads/Zvit_EN.pdf (дата звернення: 29.02.2024).
12. Про утворення Вищого суду з питань інтелектуальної власності : Указ Президента України від 29.09.2017 №299/2017. URL: <https://www.president.gov.ua/documents/2992017-22722> (дата звернення: 01.03.2024).
13. Про Вищий суд з питань інтелектуальної власності : Проект Закону від 29.12.2021 № 6487 / *Верховна Рада України*. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/38712> (дата звернення: 02.03.2024).
14. Андрощук Г. О. Спеціалізований суд з інтелектуальної власності: роль експертів і консультантів. *Проблеми теорії та практики судової експертизи з питань інтелектуальної власності* : матеріали наук.-практ. конф. (21 грудня 2017 р., м. Київ) ; за заг. ред. проф. В. Л. Федоренка. Київ : Видавництво Піра-К, 2017. С. 79–95.
15. Потоцький М. Ю. Вищий суд з питань інтелектуальної власності: підвищення стандартів захисту права інтелектуальної власності. *Інтелектуальна власність*. 2018. Вип. 7. С. 13–17.
16. На шляху до європейської інтеграції | дослідження наявних проєктів та потреб зацікавлених сторін в Україні / О. Булана та ін. Київ, 2023. 36 с. URL: https://ucerp.org.ua/wp-content/uploads/2023/11/zvit_ei_ukr_web.pdf (дата звернення: 09.03.2024).
17. IP дайджест Євроінтеграції: прогрес на шляху України до ЄС. *IP офіс (УКРФОІБІ) - IP Office (UANIPIO)*. URL: <https://nipo.gov.ua/ip-daidzhest-yevrointehratsii/> (дата звернення: 17.03.2024).
18. Dialogue on intellectual property rights. *European integration portal* : веб-сайт. URL: <https://eu-ua.kmu.gov.ua/en/authorities/dialogues/dialog-z-prav-intelektualnoyi-vlasnosti/> (дата звернення: 14.02.2024).
19. The EU and Ukraine had the annual IPR Dialogue on 27 January. *The Diplomatic Service of the European Union (EEAS)*. URL: https://www.eeas.europa.eu/delegations/ukraine/eu-and-ukraine-had-annual-ipr-dialogue-27-january_en?s=162 (дата звернення: 22.02.2024).
20. IP офіс поінформував учасників Діалогу з права інтелектуальної власності Україна-ЄС про основні досягнення в IP-сфері. *Український національний офіс інтелектуальної власності та інновацій (УКРФОІБІ)*. URL: <https://nipo.gov.ua/vidbuvsia-dialoh-z-prava-iv/> (дата звернення: 22.02.2024).
21. EU-Ukraine cooperation on Intellectual Property: EUIPO and UANIPIO forge new partnership. *The Diplomatic Service of the European Union (EEAS)*. URL: https://www.eeas.europa.eu/delegations/ukraine/eu-ukraine-cooperation-intellectual-property-euipo-and-uanipio-forge-new-partnership_en?s=232 (дата звернення: 01.03.2024).
22. Ukraine joined EU's regional program to support intellectual property. *Ukrainian National Office for Intellectual Property and Innovations (IP office)*. URL: <https://nipo.gov.ua/en/ukraine-joined-eu-s-regional-program-to-support-intellectual-property/> (дата звернення: 16.03.2024).
23. Обмін досвідом щодо IP захисту: представники IP офісу беруть участь у роботі семінару в Литві. *Український національний офіс інтелектуальної власності та інновацій (УКРФОІБІ)*. URL: <https://nipo.gov.ua/ip-ofis-seminar-lytva/> (дата звернення: 22.03.2024).
24. Проєкт EU4IP стане практичним інструментом підтримки малого і середнього бізнесу, підприємств, креаторів та інноваторів. *Український національний офіс інтелектуальної власності та інновацій (УКРФОІБІ)*. URL: <https://nipo.gov.ua/proiekt-eu4ip/> (дата звернення: 06.11.2024).
25. Про затвердження Порядку проведення первинної оцінки стану імплементації актів права Європейського Союзу (acquis ЄС) : Постанова Каб. Міністрів України від 28.02.2023 р. № 189. URL: <https://zakon.rada.gov.ua/laws/show/189-2023-p#Text> (дата звернення: 24.03.2024).
26. Опубліковано звіт про виконання Угоди про асоціацію між Україною та ЄС за 2023 рік. *European integration portal*. URL: <https://eu-ua.kmu.gov.ua/en/news/opublikovano-zvit-pro-vykonannya-ugody-pro-asotsiatsiyu-mizh-ukrayinoyu-ta-yes-za-2023-rik/> (дата звернення: 24.03.2024).
27. Ukraine 2023 Report. *European Commission*. Brussels, 2023. 152 с. URL: https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf (дата звернення: 06.11.2024).
28. Komarova, T. The role of the Court of Justice of the European Union in forming the EU law constitutionalization doctrine. *Law of Ukraine*. 2019. с. 81.
29. En Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration. Court of Justice of the European Union. № 26-62, 05.02.1963. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61962CJ0026> (дата звернення: 23.03.2024).
30. Постанова Верховного Суду у складі колегії суддів Касаційного господарського суду від 17.07.2018 у справі № №910/14972/17. URL: <https://reyestr.court.gov.ua/Review/75399206> (дата звернення: 25.02.2024).
31. Постанова Верховного Суду у складі колегії суддів Касаційного господарського суду від 04.07.2019 у справі №910/4947/18. URL: <https://reyestr.court.gov.ua/Review/82858256> (дата звернення: 28.02.2024).
32. Kapitsa Y. Association Agreements and Problems Approximating Intellectual Property Legislation of Third Countries with the EU Acquis: The Case of Ukraine. *SSRN Electronic Journal*. 2023. URL: <https://doi.org/10.2139/ssrn.4353800> (дата звернення: 02.11.2024).
33. Lazowski A., Komarova T. Switching Gear: Law Approximation in Ukraine After the Application for EU Membership. *Croatian Yearbook of European Law and Policy*. 2023. Т. 19, № 1. URL: <https://doi.org/10.3935/cyelp.19.2023.532> (дата звернення: 03.11.2024).
34. Постанова Верховного Суду у складі колегії суддів Касаційного адміністративного суду від 31.03.2020 у справі № 640/65/19. URL: <https://reyestr.court.gov.ua/Review/88534719> (дата звернення: 04.11.2024).