

DECEMBER 2017

REVIEW # 5

PARLIAMENTARY EXPERT GROUP

ELECTRONIC COMMUNICATIONS: CAN WE EXPECT ANY PROGRESS IN IMPLEMENTATION OF ASSOCIATION AGREEMENT?



**PARLIAMENTARY
EXPERT GROUP ON
EUROPEAN INTEGRATION**

Parliamentary Expert Group on European Integration is an independent expert community established by the Open Society Foundation NGO to promote implementation of the EU – Ukraine Association Agreement by improving the quality of lawmaking processes.

This Analytical Review is a part of the «Raising Parliamentary Capacity on EU Integration for improving the quality of adopted legislation and enhancing the process of legal approximation in line with the EU-Ukraine» project rolled out by the Open Society Foundation, NGO and supported by the British Embassy Kyiv.

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After 20-year growth, the world observes a reduction of trade flows against the GDP. At the same time, data flows between the states are growing, since the countries become more and more interconnected. Thus, digitalization becomes the key part of economic reality both in particular states, and in relations between European and world countries. Globalization of the 20-th century was predicated upon fast growing commodity trade, as large transnational corporations created supply chains, which penetrated the whole world. Today the world trade growth slowed down and unlikely return to its previous pick against the world GDP in the nearest future. That is why globalization in the 21st century is a data globalization. According to McKinsey Global Institute, during the last decade cross-border data flows increased 45 times and up to 2020 may increase 9 times more.

Taking into consideration the above mentioned, the European Union started the creation of the new co-market — digital one, which should develop and strengthen the freedoms of EU co-market to ensure entering into digital technologies epoch. It is necessary to have a chance to:

- develop digital technologies;
- conduct global discussions with regards to Internet management and approval of technical standards;
- insist on greater role of digital technologies in the trade policy;

Digital Single Market Strategy – is a strategy of Digital Single Market (DSM) in Europe. In May 2015, the European Commission approved 16 initiatives for the creation of DSM. By European experts, implementation of DSM may bring Europe supplementary 415 billion Euro annually and ensure creation of hundreds thousand of workplaces.

The strategy implementation program is fully based on European values, policy and normative model for the achievement of:

- fair and open competition with predictable and stable market conditions for the companies, investors and consumers;
- open and safe Internet, ensuring free data flow;
- special attention to data protection, confidentiality and cyber safety, including also the Internet management issue.

The issue of implementation of standards of the Digital Single Market is stressed in the annual state-of-the-nation address of the President of Ukraine to the Verkhovna Rada of Ukraine, which also pays attentions to importance of full participation of the Ukrainian economy and society in the Forth Industrial Revolution, or Industry 4.0., and the need to conduct reforms in Ukraine, which would contribute in it. Integration to the EU digital market is one of the priorities of the European Integration policy of Ukraine, which has been announced by the President in his address.

Reasonability of implementation of these standards corresponds to the Ukrainian society expectations (as of today according to different evaluations, online-audience of Ukraine is from 40% to 60% of the population) and does not require supplementary reasoning.

This also corresponds to the European Parliamentarians' initiative on strengthening of a number of priorities of Eastern Partnership, since the harmonization of digital markets is one of the 20 key priorities for 2020. Ukraine achieved significant progress in digitization of a number of administrative services and e-government implementation. However, the provisions of the Association Agreement between Ukraine and the EU regarding telecommunications (including electronic networks and services) are implemented very slowly. These tasks, as well as the provisions of the Association Agreement may form a complex road map for Ukraine on achievement of EU standards for the digital market, increasing of customers' advantages and

ensuring better safety for the online-services users.

At the same time, instead of effective steps in this field, the government only declares its “intentions on intentions”, i.e. once again, the task is expecting approval of program documents. As of today, only one law on electronic confidence services has been approved (in one year after its submission), which is aimed to reforming legislation in the field of electronic digital signature with consideration of European Union expertise.

To create proper basis for the implementation of standards of the Digital Single Market, first it is necessary to accelerate the fulfillment of the respective provisions of the Association Agreement.

Annex XVII-3 to Section IV of the Association Agreement obliges Ukraine to implement a number of EU deeds, which establish joint framework in the market of electronic telecommunication services. At the same time, the framework draft law No. 3549-1 “On electronic communication” does not takes into account a significant number of norms, stipulated in EU deeds, and a regulatory strategy offered thereby differs from approaches, applicable in the European Union. Main weaknesses are weak comparing to the EU guarantees of the rights protection for the electronic communication services consumers, insufficient guarantees of the state regulation and fair competition provision.

Among the field documents, described by the Association Agreement, the principal one is the Framework Directive 2002/21/EU on joint legal framework in the field of electronic telecommunication networks and services. The Directive stipulates the definition of such concepts as “consumer”, “user” and “end user” of electronic telecommunication services. The Ukrainian draft law stipulates only the definition of the “consumer” concept; however, its content does not comply with the Directive provisions. According to the Directive, the electronic communication services can only be consumed by

individuals, however, the draft law stipulates the customer as both individuals and legal entities, and does not prevent consuming the service for commercial purposes. Defined concept “generic service” does not comply with the Directive provisions, since it does not contain a descriptor named provision to consumers at reasonable price. State rate management for generic services is stipulated, however no requirements related to ensuring transparency and reasonability of rates are provided, as established in the Directive 2002/22/EU.

The mentioned draft law implements no effective mechanism for the contestation of the resolutions of the National Regulatory Body based on principles, stipulated in Article 4 of the Directive 2002/21/EU and does not guarantee proper delimitation of competence and mechanism of collaboration between the National Regulatory Body and other regulatory authorities, the powers of which are related to the activities in the field of electronic communications.

Provision of the state support for the development of domestic production of technical means for electronic communications is stipulated, as well as possible investments at the expense of the state resources. At the same time, in the European Union the support of the national manufacturer is limited by the regulations, governing the provision of the state aids. Thus, proposed novels create the risk of distort competition in the trade relations with the EU.

Recommendations:

1. The Government as soon as possible should approve the road map of regulatory rapprochement in the field of telecommunications, as stipulated by Annex XVII to the Association Agreement.
2. The Government in cooperation with the regulator in the field of telecommunications and other stakeholders should closer cooperate with the Committees of the Verkhovna Rada of Ukraine to adapt the draft laws “On electronic communications”, “On radio frequency resource”, etc.

EUROPEAN INTEGRATION BILLS CONSIDERED CURRENTLY BY THE VERKHOVNA RADA OF UKRAINE (III QUARTER 2017)

No	Registration number	Title	Stage
1.	0906	On the government control to observe the compliance with laws on safety and quality of food and animal feedstock, on animals' health and welfare	Signed by the President and returned to Parliament
2.	2009a-A	On Environmental Impact Assessment with the proposals of the President of Ukraine as of 28.10.2016	Signed by the President and returned to Parliament
3.	2431	On amending legislation on protection of economic competition regarding establishment by the Antimonopoly Committee of Ukraine the size of penalties for violations of the competition laws	Handed for additional second reading (26.01.2016)
4.	2845	On Animal Feedstock Security and Hygiene	Released by the Committee to be approved in principle (30.06.2015)
5.	3445	On amending legislation on protection of flora and fauna under international agreements	Prepared for the second reading (29.11.2016)
6.	4126-1	On Consumer Information on Food	Returned for revision to the introducing body (03.10.2017)
7.	4493	On the Electricity Market of Ukraine	Signed by the President and returned to Parliament
8.	4571	On amending Article 5 of the Law on Distribution of Copies of Audiovisual Works, Phonograms, Videograms, Computer Programs, Databases to combat piracy and improve the investment climate	Received the Committee submission for consideration
9.	4577	On amending Article 31 of the Law on Employment on regulating public works	Declined
10.	4578	On amending legislation on employment of disabled persons	Released by the Committee to be approved in the first reading (17.06.2016)

№	Registration number	Title	Stage
11	4579	On amending certain legislative acts of Ukraine to acquire, exercise and protect the copyright and related rights	Recalled (03.10.2017)
12	4584	On amending certain laws of Ukraine that regulate government statistics	Received the Committee submission for consideration (31.05.2016)
13	4589	On amending certain food safety laws of Ukraine	Released by the Committee to be approved in principle (06.12.2016)
14	4591	On Business Ombudsman	Endorsed in the first reading (31.05.2016)
15	4593	On Rail Transport of Ukraine	Returned for revision to the introducing body (21.02.2017)
16	4611	On Requirements to Food Contact Items and Materials	Released by the Committee to be approved in principle (20.09.2016)
17	4614	On amending the Customs Code of Ukraine to protect intellectual property in the movement of commodities across customs borders of Ukraine	Not included onto the agenda
18	4615	On amending the Customs Code of Ukraine to comply with the EU – Ukraine Association Agreement	Not included onto the agenda
19	4619	On amending the Tax Code of Ukraine (in regard to tobacco products taxation)	Voted as an amendment (06.12.2016)
20	4629	On amending certain legislative acts of Ukraine to protect the copyright and related rights in the Internet	Recalled (03.10.2017)
21	4644	On amending certain legislative acts of Ukraine to harmonize them with the EU legislation on transportation of dangerous goods	Declined
22	4646	On amending the Law of Ukraine On Accounting and Financial Reporting in Ukraine to improve certain provisions	Considered while revising the bill 4646-А

№	Registration number	Title	Stage
23	4683	On amending certain automotive transport acts of Ukraine to harmonize them with the EU regulatory acts	Returned for revision to the introducing body (21.02.2017)
24	4685	On Electronic Trust Services	Adopted
25	4775	On amending certain laws of Ukraine related to European groupings of cross-border cooperation	Received the Committee submission for consideration (07.02.2017)
26	4776	On amending the Tax Code of Ukraine regarding peculiarities of taxation of import of goods to Ukraine by authorized economic operators	Received the Committee submission for consideration (11.07.2017)
27	4777	On amending the Customs Code of Ukraine regarding authorized economic operator and simplified customs formalities	Received the Committee submission for consideration (11.07.2017)
28	6229	On Ensuring Transparency in Extracting Industries	Included onto the agenda (25.05.2017)
29	4901	On Commercial Accounting of Utility Services	Signed by the President and returned to Parliament
30	4941-А	On the Energy Efficiency of Buildings	Signed by the President and returned to Parliament
31	5448	On the basic principles and requirements for the organic production, handling and labeling of the organic products	Received the Committee submission for consideration (14.03.2017)
32	5548	On amending legislation on protection of consumer rights	Being studied by the Committee
33	5598	On the Energy Efficiency Fund	Signed by the President and returned to Parliament
34	5627	On amending the Customs Code of Ukraine to bring transit procedures in line with the Convention on a common transit procedure and Convention concerning the simplification of formalities in trade in goods	Received the Committee submission for consideration

№	Registration number	Title	Stage
35	6106	On Strategic Environmental Assessment	Endorsed in the first reading, prepared for the second reading
36	6016	On the Audit of Financial Statements and Audit Activity	Returned to the Committee for revision
37	6023	On amending certain legislative acts of Ukraine to improve the legal protection of geographical values	Received the Committee submission for consideration
38	6085	On amending legislation on cross-border cooperation	Endorsed in the first reading
39	6598	On amending legislation on implementation of provisions of certain international agreements and EU directives on protection of flora and fauna	Recalled (03.10.2017)
40	6602	On amending the Law on Waste regarding the implementation of EU directives on waste management	Being studied by the Committee