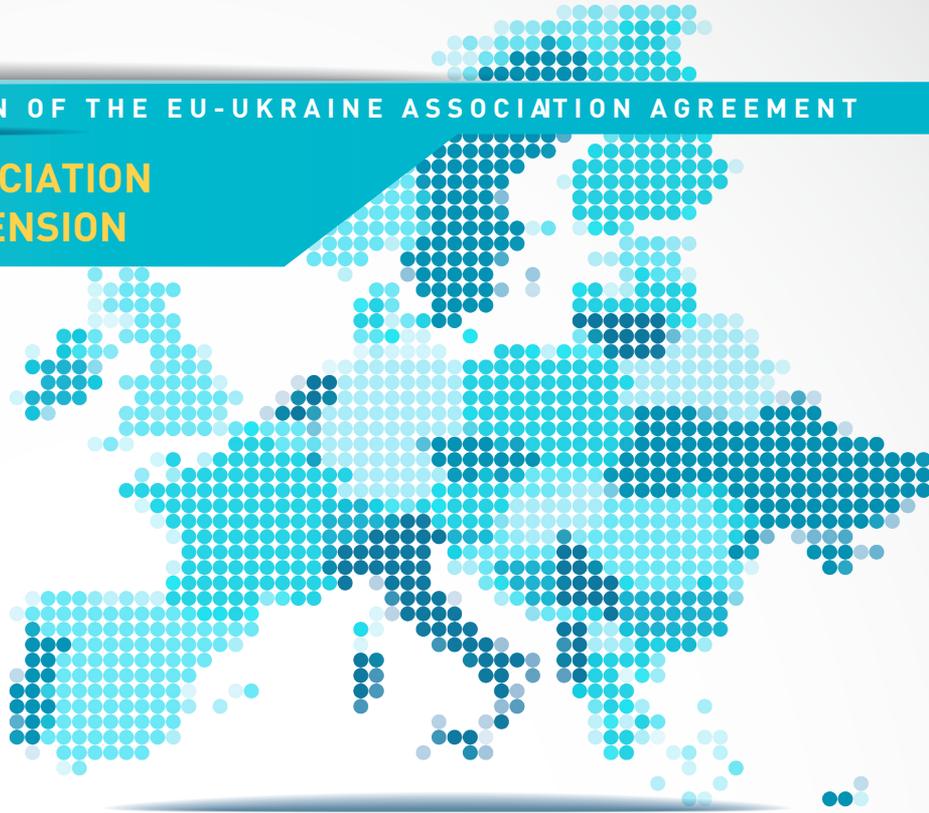


IMPLEMENTATION OF THE ASSOCIATION
AGREEMENT: LEGISLATIVE DIMENSION**PARLIAMENTARY
EXPERT GROUP ON
EUROPEAN INTEGRATION**

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.

**BACKGROUND**

This Analytical Review is a part of the «Legislative Transparency and Accountability in Ukraine's European Integration» project rolled out by the Open Society Foundation NGO and supported by the Black Sea Trust for Regional Cooperation.

Opinions expressed in the written or electronic publications do not necessarily represent those of the Black Sea Trust, the German Marshall Fund, or its partners.

B | S | T The Black Sea Trust
for Regional Cooperation**A PROJECT OF THE GERMAN MARSHALL FUND**

Open Society Foundation, NGO
12 Sagaydachnogo str., office 221,
Kyiv, Ukraine 04070
+38 067 930 62 80

info@osf.org.ua
www.peg.org.ua www.osf.org.ua

As of April 1, 2017, the government and the members of the Ukrainian parliament (MPs) jointly submitted about 40 bills focused on the implementation of the Association Agreement between Ukraine and the EU. Parliament is extremely slow in considering these bills, with the average of adopting one law per year, and thus faces the risk of violating the terms of Ukraine's commitments under the Association Agreement regarding free trade zone, economic and sectoral cooperation.

During 2014-2016 the lawmaking followed certain trends, using or neglecting the provisions of the EU law. Parliamentary Expert Group on European Integration analyzed more than 500 bills on the Association Agreement and found more than 50% of these did not meet the obligations of Ukraine or required substantial revision. The poor quality of legislative work illustrates the paradox: the subjects of legislative initiative have no obligation to submit documents that meet the provisions of the Agreement; Ukraine had assumed these obligations as a state, but individual actors (MPs, the government, and the president) – had not.

In addition, since December 2014 the absolute number of MP-submitted bills approaches 6,500. Of course, not all these bills impact the implementation of the Agreement, but they certainly create a significant burden on the parliamentary committees. In practice this means two risks for the bills on European integration: a delay in consideration due to the heavy workload and a need of substantial amendments in the future.

The present document summarizes the main problems of the legislative process effecting European integration laws and proposes recommendations to address them.

1. ANALYSIS OF COMPLIANCE WITH ASSOCIATION AGREEMENT AND THE EUROPEAN UNION LAW

The opinion on the compliance of the bill with Ukraine's international obligations in the field of EU integration is provided by the parliamentary Committee on European Integration. The Chief Scientific-Expert Department, the Chief Legal Department, as well as specialized parliamentary committees use the provisions of the Association Agreement, acts of the EU law and government plans, to prepare opinions, proposals on improvement and justifications for returning the bill for revision to the initiator. If the MPs or the government provided an opinion on compliance of their bill with the Association Agreement, they would make this process more structured

In addition, in March 2016 the European Parliament mission issued a number of recommendations for improvement of Verkhovna Rada operation (also not yet implemented), including:

— Only the bills which comply with **Article 92** of the Verkhovna Rada of Ukraine Rules of Procedure and accompanied by the explanatory notes and reliable financial and economic justification can be registered for consideration (maintaining with

The experts' recommendations:

— Adopt in principle the bill 2046a amending the Law On the Verkhovna Rada of Ukraine aimed at the improved approximation of Ukraine to the EU law;

and efficient. In case the bill does not comply with the Association Agreement an accompanying note might explain the underlying reasons for this. Polish Sejm regulations, for example, contain such rule.

In June 2015, the members of the Committee on European Integration registered the bill on changes to the parliamentary Rules of Procedure (**bill 2046a**). In November that year the bill was released by the Committee on Rules and Organization of the Verkhovna Rada of Ukraine to be approved in principle. However, it was never considered in the session hall.

the principles of fiscal neutrality, constitutionality, compliance with the obligations under the **Association Agreement**);

— Parliament of Ukraine has the right to expect that all bills submitted by the Cabinet of Ministers of Ukraine, are accompanied by an explanatory note (certificate, conclusion) on compliance with the obligations under the **Association Agreement**.

— Cabinet of Ministers of Ukraine should further provide the opinions on compliance of EU integration laws with the Association Agreement.

2. THE «ROAD MAPS» OF REGULATORY CONVERGENCE UNDER THE ASSOCIATION AGREEMENT

According to the Association Agreement, some areas of the approximation of Ukraine to the EU law should be guided by the «road maps», providing logic, consistency and predictability. Approximation in financial services, government procurement and sanitary and phytosanitary measures follows such «maps». However, the government had not yet approved the road maps for postal services, maritime transport and electronic. The National Strategy in the field of waste management also remained under discussion. In the area of fiscal policy, the Ministry of Finance increased an excise duty, supposedly based on the Association Agreement. The Agreement, however, provides that a country must first adopt a schedule for such increase.

The absence of the «road maps» significantly complicates the consideration of the legislation; MPs and experts spend a great deal of time to study the provisions of the EU law and its predicted impact on the sector. Moreover, the very absence of such «road maps» provides a formal discrepancy with the provisions of the Agreement. At the same time, a draft «map» agreed at the expert level, helps to avoid the bills which do not comply with the Association Agreement. The experience of Committee on Environmental Policy illustrates this with nearly 20 bills on waste management.

The experts' recommendations:

— The Cabinet of Ministers of Ukraine should speed up the approval and adoption of the 'road maps' on regulatory convergence in the areas of postal services, maritime transport and electronic communications.

3. INSTITUTIONAL QUALITY

Legal certainty and predictability of the legal framework remains a key issue for Ukraine. The Association Agreement defined areas and strategic objectives, but the instruments to achieve these should be developed by Ukrainian legislators. Otherwise, the country will constantly face the criticism and misunderstanding on the part of the European partners.

The issue of the investment incentives is one of the most problematic. Parliament registered almost 40 bills on tax and customs privileges, creation of special economic zones and territories of priority development or support of individual enterprises. The majority of these bills fail to comply with the provisions of the Association Agreement or the EU rules, although the Agreement establishes a trans-

parent and accountable regime for state aid for enterprises. If some of these 40 bills become law, they are likely to be amended in the short-run - within the next few years. Tax incentives, however, need to be planned at least for the medium term - 5-10 years.

In theory, Ukraine can adopt the laws which contradict the obligations under the partnership with the EU if the timing of their implementation had not yet come. Likewise, the debates about policy benefits at the national level are also useful. However, this discussion should have an institutional framework. Currently the arguments 'for' and 'against' certain policy are spreading more in the media than in parliament.

Since 2016 the approximation of Ukraine to EU norms in terms of institutions and human capital had deteriorated:

- The government failed to realize the 'implementation plans' for approximation to the EU law, approved in 2014-2015, and offered no alternative mechanism for coordination of the activities of the ministries;
- The Government Office on European integration significantly reduced a number of staff, especially the experts responsible for legislative approximation;

The experts' recommendations:

— The Cabinet of Ministers of Ukraine should strengthen the institutional capacity of the Government Office on European integration and ensure the effective use of the EU financial resources.

- The government failed to implement own provision on Secretariat's expertise on compliance of the proposed bill with obligations of Ukraine under European integration, including international legal obligations and the law of the European Union.

LAWMAKING AND IMPLEMENTATION OF THE EU-UKRAINE ASSOCIATION AGREEMENT

EUROPEAN INTEGRATION BILLS CONSIDERED CURRENTLY BY THE VERKHOVNA RADA OF UKRAINE

№	r/n	Title	Stage
1.	4577	On amending Article 31 of the Law on Employment on regulating public works	Declined
2.	4644	On amending certain legislative acts of Ukraine to harmonize them with the EU legislation on transportation of dangerous goods	Declined
3.	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
4.	4615	On amending the Customs Code of Ukraine to comply with the EU – Ukraine Association Agreement	Not included onto the agenda
5.	4584	On amending certain laws of Ukraine that regulate government statistics	Received the Committee submission for consideration (31.05.2016)
6.	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
7.	4775	On amending certain laws of Ukraine related to European groupings of cross-border cooperation	Received the Committee submission for consideration (07.02.2017)
8.	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)
9.	6229	On Ensuring Transparency in Extracting Industries	Received the Committee submission for consideration (14.04.2017)
10.	4593	On Rail Transport of Ukraine	Returned for revision to the introducing body (21.02.2017)
11.	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)
12.	2009а-д	On Environmental Impact Assessment with the proposals of the President of Ukraine as of 28.10.2016	Returned to the Committee for revision (07.02.2017)
13.	4579	On amending certain legislative acts of Ukraine to acquire, exercise and protect the copyright and related rights	Опрацьовується в профільному комітеті

LAWMAKING AND IMPLEMENTATION OF THE EU-UKRAINE ASSOCIATION AGREEMENT
EUROPEAN INTEGRATION BILLS CONSIDERED CURRENTLY BY THE VERKHOVNA RADA OF UKRAINE

Nº	r/n	Title	Stage
14.	4629	On amending certain legislative acts of Ukraine to protect the copyright and related rights in the Internet	Being studied by the Committee
15.	4646	On amending the Law of Ukraine On Accounting and Financial Reporting in Ukraine to improve certain provisions	Being studied by the Committee
16.	4776	On amending the Tax Code of Ukraine regarding peculiarities of taxation of import of goods to Ukraine by authorized economic operators	Being studied by the Committee
17.	4777	On amending the Customs Code of Ukraine regarding authorized economic operator and simplified customs formalities	Being studied by the Committee
18.	5548	On amending legislation on protection of consumer rights	Being studied by the Committee
19.	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	Being studied by the Committee
20.	6106	On Strategic Environmental Assessment	Being studied by the Committee
21.	6016	On the Audit of Financial Statements and Audit Activity	Being studied by the Committee
22.	6023	On amending certain legislative acts of Ukraine to improve the legal protection of geographical values	Being studied by the Committee
23.	6085	On amending legislation on cross-border cooperation	Being studied by the Committee
24.	2845	On Animal Feedstock Security and Hygiene	Released by the Committee to be approved in principle (30.06.2015)
25.	4611	On Requirements to Food Contact Items and Materials	Released by the Committee to be approved in principle (20.09.2016)
26.	4589	On amending certain food safety laws of Ukraine	Released by the Committee to be approved in principle (06.12.2016)
27.	4578	On amending legislation on employment of disabled persons	Released by the Committee to be approved in the first reading (17.06.2016)
28.	3445	On amending legislation on protection of flora and fauna under international agreements	Prepared for the second reading (29.11.2016)

LAWMAKING AND IMPLEMENTATION OF THE EU-UKRAINE ASSOCIATION AGREEMENT

EUROPEAN INTEGRATION BILLS CONSIDERED CURRENTLY BY THE VERKHOVNA RADA OF UKRAINE

Nº	r/n	Title	Stage
29.	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	Handed for additional second reading (21.02.2017)
30.	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)
31.	4685	On Electronic Trust Services	Handed for additional second reading (07.02.2017)
32.	4126-1	On Consumer Information on Food	Received the Committee submission for revision (14.03.2017)
33.	4591	On Business Ombudsman	Endorsed in the first reading (31.05.2016)
34.	4901	On Commercial Accounting of Utility Services	Endorsed in the first reading (18.10.2016)
35.	4941-д	On the Energy Efficiency of Buildings	Endorsed in the first reading (04.04.2017)
36.	4619	On amending the Tax Code of Ukraine (in regard to tobacco products taxation)	Voted as an amendment (06.12.2016)
37.	5598	On the Energy Efficiency Fund	Endorsed in the first reading (21.03.2017)
38.	4493	On the Electricity Market of Ukraine	Adopted and sent to the President