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Basic Analysis.

Approximation of Ukrainian Law to EU Law.

Introduction.

Following the declared European foreign policy vector, it is impossible, in fact, to avoid the process of adaptation in the internal legal policy of Ukraine. The approximation of Ukrainian law to the EU acquis communautaire is not only the instrument for deepening our economic cooperation with the European Union, but also the important measure to enhance further development of Ukraine in general.

In the late 80-s, the Central and Eastern European countries voluntarily initiated the adaptation programs of their political, economic and legal orders to the ones of the European Community. It was unilateral initiative, without any legal obligations under international law. Hungary and Slovenia even before the Association Agreements had implemented the draft law examination procedures on its compliance with the EU legislation.

Striving to pave its way to the European Union membership, Ukraine should initiate the adaptation process as soon as possible.

Given basic analysis can not cover the full scope of adaptation problems, as a profound research paper can be written in any particular area.

That is why I will try to point out the key problems of the implementation of state policy in this area and the ways of its improvement.

We are not to forget the efficient successful experience of our neighbours, Poland and Slovakia, in their eurointegration aspirations, so the comparative method is used in analysis in order to enlighten the main tasks and challenges, which Ukraine could face on its way of adaptation.

The analysis consists of two chapters: theory and practice.

In theoretical chapter the following questions will be discussed:

1. The comparison of the approaches to the understanding of the terms: «adaptation», «harmonization», «approximation» in Ukraine and candidate countries.

2. What methods (implementation, reception, transposition) could be taken for the efficient implementation of adaptation? In what way the sources of law of the European Union could affect the choice of adaptation method?
3. The level of compliance of the legal act of Ukraine with the EU legislation.

The practical chapter will enlighten the following problems:
1. The legal grounds, institutional mechanism of adaptation, its disadvantages and the ways of improvement.
2. The analytical and methodological support and programming of the adaptation process.
3. The administrative capacities to implement acquis in Ukraine (personnel and information support).

I. Theory

1. The comparison of the approaches to the understanding of the terms: «adaptation», «harmonization», «approximation» in Ukraine and candidate countries.

I would like to compare in this table the approaches to the official understanding of the terms: «adaptation», «harmonization», «approximation» in Ukraine, Poland and Slovakia.

<table>
<thead>
<tr>
<th>Definition of legal approximation (adaptation)</th>
<th>Ukraine</th>
<th>Poland</th>
<th>Slovak Republic</th>
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<tr>
<td>Adaptation of Ukrainian legislation to EU legislation is the process of approximation and gradual bringing of Ukrainian legislation into accordance with EU legislation. (The Concept of the adaptation of Ukrainian legislation to the EU legislation, Regulation of the Cabinet of Ministers of 16 August 1999)</td>
<td>Adaptation of Ukrainian legislation to EU legislation is the gradual adoption and enforcement of legal acts of Ukraine elaborated with taking account fundamental provisions of the EU legislation. (Concept of the National Program of adaptation of National legislation to EU legislation, 21 November 2002)</td>
<td>Legal approximation with acquis communautaire – the level of convergence of Polish law and Community law (Report of the Office of the Committee for European Integration on the level of approximation of Polish law to EU legislation 1999).</td>
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<tr>
<td>Process of approximation – advancement of legislative process aimed at attaining the level of approximation which would mean convergence of the content of both legal systems (Report of the Office of the Committee for European Integration on the level of approximation of Polish law to EU legislation 1999).</td>
<td></td>
<td>Legal approximation (alignment) is the process of drafting and adopting legal regulations and creating conditions for their proper application with a view to the gradual attainment of full compatibility of legal regulations of the Slovak Republic with the law of the European Communities and the law of the European Union. (Legal approximation methodology)</td>
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To my mind, the coverage of the Ukrainian definition, restrained with adaptation of the Ukrainian legislation to the EU legislation and adoption and implementation of legal acts,
taking into account the provisions of the EU legislation, is a disadvantage of the Ukrainian approach.

The Polish approach is likely to be more adequate, presenting the approximation as the level of convergence of the content of the Polish law and EU law, because the meaning of acquis is wider than the EU legislation.

The criteria of ability to assume the obligations of the EU membership demands the adaptation of the whole acquis of the EU, the system of common rights and obligations, which are in force, concerning all member states in the European Union.

The system is constantly developing and involves:


Legislation adopted on the execution of the Treaties (regulations, directives, decisions);

Case law of the European Court of Justice, including general principles of EU law;

Declarations and resolutions of the EU;

Measures adopted within the framework of Common Foreign and Security Policy;

Measures adopted within the framework of Justice and Home Affairs;

International agreements concluded by Community and agreements concluded between member states in the field of competence of the Union.

So, acquis is not only the legislation of the EU in its narrow meaning but also the system of all acts, adopted under the second and the third pillars of the European Union and the common goals, defined in the Treaties.
Consequently, the states, striving to obtain the membership of the EU, are to adopt the whole acquis. Besides, the so-called Madrid criterion demands the establishment of administrative and judicial capacities for the acquis implementation.

That is why, even if the first stage of the adaptation in Ukraine is the adaptation of the legislation of Ukraine to the EU legislation in the area of internal market, the next stage should be the adaptation of the whole legal system of Ukraine to the EU acquis communautaire.

It should be mentioned that the candidate countries passed the same stages.

2. What methods (implementation, reception, transposition) could be taken for the efficient implementation of adaptation? In what way the sources of law of the European Union could affect the choice of adaptation method?

There is no clear defined approach to methods of approximation subject to the source of EU law in Ukrainian legal doctrine and practice. Thus I think it necessary to address to the experience of candidate countries.

Poland distinguishes the following methods of adoption of acquis communautaire:

- **Approximation (harmonisation)** of legislative solutions (institutions) of Polish law to this part of the acquis communautaire (mainly legislation), which is directly effective with regard to enterprises and individuals, that is to certain standards of primary legislation and Regulations (except those which are only applicable to members of the EU

- **Implementation** in Polish law of those Community legal acts which set goals to be attained by the member states leaving as to the means, to their discretion, i.e. mainly directives.

Therefore, Poland approximated national law to directly effective provisions of EU law including regulations. But directives were implemented.

In the Slovak Approximation Methodology I could distinguish the following methods of adoption of acquis communautaire:

- **Reception** (transposition) of laws means a process aimed at transposing of the legal system, a part thereof and/or legal culture of another state, Union, etc., into the legal system of the Slovak Republic. Reception of the European law takes the form of legal approximation.

- **Legal approximation (alignment)** is the process of drafting and adopting legal regulations and creating conditions for their proper application with a view to the gradual attainment of full compatibility of legal regulations of the Slovak Republic with the law of the European Communities and the law of the European Union. The approximation of law has the following forms:
a) **transposition (projection)** is a process aimed at attaining identical legal effects of legal regulations with those of relevant legal acts through adopting, amending, supplementing or abolishing legal regulations,

b) **adaptation (adjustment)** is the process aimed at adapting legal regulations to reach conformity with legal acts with a view to creating conditions for implementing the regime of the European Communities through adopting, amending, supplementing or abolishing legal regulations,

c) **co-ordination** is the process of aligning either the legislation or administrative practices where adaptation or transposition is not possible or required,

d) **implementation** is the process of transposing legal acts and issuing implementing rules (hereinafter referred to as "implementation in its narrower meaning"); it also includes interpretation, application, enforcement of and compliance with legal regulations that are in agreement with the law of the European Communities or the law of the European Union by the bodies of public power (hereinafter referred to as "implementation in its broader meaning").

In Slovak Republic **approximation** of the laws with the provisions of founding treaties that have direct effect shall be governed, as appropriate, by the rules regulating adaptation of regulations or decisions, or transposition of directives.

When **adapting a regulation or a decision**, the submitting body shall first identify corresponding provisions of legal regulations and examine the degree of their compliance with the provisions of the regulation or decision. The submitting body shall also make comparison with other related legal regulations. Based on this examination, the submitting body shall identify legal regulations that need to be adopted, amended, supplemented or abolished to reach full compliance with the regulation or decision compared. It should be noted that adaptation to a regulation or decision might involve several legal regulations. Where adaptation to a regulation or decision makes it necessary to adopt, amend, supplement or repeal a law and its implementing regulations, the submitting body shall submit legislative proposals on both the law and implementing regulations even if the latter's entry into effect is expected at a later date.

In the period preceding the entry into force of the Treaty on Accession of the Slovak Republic to the European Union, the submitting body has the right to transpose ("copy") normative text of a regulation or decision provided that:

a) normative text of a regulation or decision constitutes an independent and integral part of legal regulation,

b) no legal regulations provide for the given issue, and

c) this will not interfere with the legal system of the Slovak Republic.

The sponsor of a legal regulation shall be obliged, as from the date of entry into force of the Treaty on Accession of the Slovak Republic to the European Union and within the time limit set out in the regulation or decision, to propose a change, amendment or annulment of legal regulations that are contrary to the provisions of the regulation or decision concerned.

**Transposition of directives** shall take place exclusively by means of generally binding legal regulations.

The submitting body shall be obliged to enact, as a matter of priority, general principles provided for in a directive in the form of a law or approximation ordinance.
When transposing a directive, the submitting body shall proceed in conformity with the provision of Article 6 paragraph 2, first sentence. It is necessary to realise that a directive may require the transposition in several legal regulations. The submitting body shall, as a matter of priority, transpose the directive in a single legal regulation if the object of the directive is not provided for in any of the existing legal regulations. If a directive is transposed by means of a law and a corresponding implementing legal regulation, the submitting body shall submit both legislative proposals at the same time, including cases where the implementing regulation is scheduled to enter into force at a later date.

The submitting body shall co-ordinate the draft legal regulation, in particular, with legal acts of secondary law of the European Union. (General Guideline, Common Strategy, Joint Action, Common Position, Decision, Framework Decision) For coordination the same criteria of full, partial, non-compliance are applied as to the transposition of directives.

The sponsor of a draft legal regulation shall take account of the decisions of the Court of Justice of the European Communities and, in approximating these decisions, shall recognise the fact that the Court of Justice is not bound in its decision-making by its previous decisions. Where the Court of Justice makes two decisions on the same issue that differ from or are contrary to one another, the sponsor of the draft legal regulation shall consider only the decision that was published later.

If the legal regulation has been approximated with a legal act that the Court of Justice of the European Communities subsequently declared to be invalid (such as Articles 230 and 231 of the Treaty establishing the European Community), the submitting body shall, where necessary, propose a change or annulment of that legal regulation. The submitting body shall proceed in the same manner where the Court of Justice of the European Communities declares a regulation to be non-applicable (e.g. Article 241 of the Treaty establishing the European Community).

*To my mind Ukraine should take into account different legal nature of EU legal acts when choosing method of legal adaptation paying and utilize the experience of Slovak Republic in this dimension.*

3. **The level of compliance of the legal act of Ukraine with the EU legislation.**

There are no clear criteria of evaluation of the level of compliance of Ukrainian legal act with EU law. Therefore Ukrainian sponsor of draft legal act or competent official assessing conformity of draft with EU law could be guided only by common sense and intuition. The quality of such evaluation shouldn’t depend on individual qualities and legal background of the lawyer. Although professionalism of the expert is very important factor.

Here I would like to address to the experience of Poland and Slovak Republic.

In Poland three situations could arise:
- full approximation (harmonisation) occurs when:
  a) the premises of corresponding provisions of Community law and Polish law are identical;
  b) the interpretation of these premises in the case law of Polish courts is convergent with the judgments of Community courts (in the cases of under-defined concepts);
- total lack of harmonisation occurs when:
a) there is no corresponding provision in Polish law;
b) the Polish law is based on an opposite premise than those adopted in Community law.

- partial approximation (harmonisation) partial lack of harmonization includes all transitionary situations between full approximation (harmonisation) and complete absence of it.

In Slovakia there are different criteria of compliance subject to the EU legal act.

The submitting body (body that submits draft of legal act) shall declare the legal regulation to be in **full** compliance with relevant regulation or decision if:

- a) all the provisions of a legal regulation have been adapted to correspond to the relevant provisions of a regulation or decision, except for those provisions that will not be applicable to the Slovak Republic even after the entry into force of the Treaty on Accession of the Slovak Republic to the European Union, and
- b) the provisions of a legal regulation are not contrary to any provisions of the relevant regulation or decision.

The submitting body shall declare the legal regulation to be in **partial** compliance with the relevant regulation or decision if:

- a) only some of the provisions of the legal regulation have been adapted to correspond to the relevant provisions of a regulation or decision although other provisions of the legal regulation should also have been adapted to the regulation or decision, except for the provisions that will not be applicable to the Slovak Republic even after the entry into force of the Treaty on Accession of the Slovak Republic to the European Union, and
- b) no provision of the legal regulation is contrary to the provisions of the relevant regulation or decision.

The submitting body shall declare a draft legal regulation to be **contrary** to a regulation or decision if its provisions are contrary to at least one provision of the relevant regulation or decision, except for the provisions that shall not be applicable to the Slovak Republic even after the entry into force of the Treaty on Accession of the Slovak Republic to the European Union.

The submitting body shall declare a regulation or decision **not to be applicable** to the Slovak Republic if:

- a) the provision of a regulation or decision is addressed only to one Member State or only to certain natural or legal persons,
- b) a derogation has been granted in respect of the given provision in the negotiating position, or
- c) the provision may not be applied due to objective conditions that are independent on the will of the Slovak Republic.

The submitting body shall declare the legal regulation to be in **full** compliance with the relevant **directive** if:

- a) all the relevant provisions of the directive have been transposed to the draft legal regulation in question except for those provisions that shall not be applicable to the Slovak Republic even after the entry into force of the Treaty on Accession of the Slovak Republic to the European Union, and
- b) provisions of the legal regulation are not contrary to any provisions of the directive, or
c) all relevant provisions of the directive have been transposed into the draft legal regulation, some of which are to take effect only at a later date, but not after the date of entry into force of the Treaty on Accession of the Slovak Republic to the European Union.

The submitting body shall declare the legal regulation to be in *partial* compliance with the relevant directive if:

a) only some of the provisions of the directive have been transposed to the draft legal regulation, although other provisions of the directive should also have been transposed, except for those provisions that shall not be applicable to the Slovak Republic even after the entry into force of the Treaty on Accession of the Slovak Republic to the European Union, and

b) no provision of the legal regulation is contrary to the provisions of the directive.

The criteria of non-compliance with and non-applicability of the directive are the same as to the regulations and decisions.

*Therefore Ukraine should formally define such criteria of full, partial, non-compliance with EU law, cases when EU legal acts are not applied to Ukraine.*

**II. Practice.**

1. **The legal grounds, institutional mechanism of adaptation, its disadvantages and the ways of improvement.**

The legal grounds for cooperation are stipulated by the Partnership and Cooperation Agreement between Ukraine and the European Communities (PCA), signed on the 14th of June of 1994 and ratified on the 10th of November of 1994 by the Verkhovna Rada of Ukraine. In March 1998 the PCA entered into force after the ratification by all the EU member states.

The approximation of the legislation of Ukraine to the EU legislation is defined as the basis for economic cooperation between Ukraine and the European Union.

With a view to implementing of the strategic course of Ukraine for the integration to the EU the President of Ukraine approved the Strategy of Integration of Ukraine to the European Union with his Decree dated 11 of June 1998 # 615/98.

The Decree of the President of Ukraine dated 14 of September 2000 # 1072/2000 approved the Program of Integration of Ukraine to the European Union, which is to become the key instrument of the general strategy on the way of approximation of Ukraine to the European Union at the full range of cooperation - political, social, financial, economic, trade, scientific, educational, cultural etc.

Taking into account that approximation of the legal system of Ukraine to the European Union acquis communautaire is the necessary basis for the economic cooperation, the Resolution of the Cabinet of Ministers dated 16 of August 1999 approved the Concept of the Adaptation of the Legislation of Ukraine to the EU legislation. Ukrainian legal system should be developed in
order to comply with Copenhagen criteria on the stability of society, rule of law and market economy functioning.

The Decree of the President of Ukraine #1033/2000 established the National Council on the Adaptation of the Ukrainian legislation to the EU legislation, which is a consultative body.

According to the Resolution of the Cabinet of Ministers dated 12 of June 1998 #852 the Ministry of Justice is to coordinate the actions of ministries, other central executive bodies on the implementation of the adaptation of the legislation of Ukraine to the EU legislation. For this reason the Interinstitutional Coordination Council of the adaptation of the legislation of Ukraine to the EU legislation was founded at the Ministry of Justice. The Comparative Law Center at the Ministry of Justice is the Secretariat of the ICC. It provides the activity of the ICC and improves the draft-law making process with taking into account the international experience and main provisions of the EU legislation, scientific-analytical support of the adaptation.

The ministries and other central executive bodies provides annual introduction to the Ministry of Justice of the working plan on the adaptation of the legislation for the next year in the area of its authority before the 15th of December. The drafts of the legal acts, worked out under the draft-law making plans of the relevant central executive bodies, if subject of legal regulation of any draft provision concerns the performance of the obligations under the PCA, or is among the priority areas of the adaptation of the legislation are introduced to the annual working plan on the adaptation of legislation. The working plan on the adaptation of legislation is an integral part of the working plan on the realization of the priority provisions of the Program of Integration of Ukraine to the European Union, worked out since 2001.

With a view to enforcing the adaptation of the legislation of Ukraine to the legislation of the EU, pursuant to the Interim Procedural Rules of the Cabinet of Ministers, the drafts of the resolutions of the CM, the drafts of the decrees of the President of Ukraine, the drafts of laws are to be elaborated, taking into account the fundamental provisions of the EU legislation. The draft sponsor is to examine its compliance with the fundamental provisions of the EU, to edit the draft according with the results of examination, to introduce it for the expertise to the Ministry of Justice with the document of draft compliance or non-compliance with the EU provisions, the Ministry of Justice makes legal expertise of the draft, if its subject of legal regulation is in the priority area for adaptation of the legislation of Ukraine to the legislation of the European Union, informs the draft sponsor about the expertise results and approves the draft in the agreed period.

Other ministries and central executive bodies provide the realization of the area cooperation between Ukraine and the European Union, the implementation of the PCA, take other measures pursuant to their authorities and defined by the Strategy tasks with a view to deepening of the integration of Ukraine to the EU. In fact, as it was in other candidate countries, the departments for European integration were founded in the structure of central executive bodies.

The establishment of the Committee for European Integration of the Verkhovna Rada of Ukraine in 2002 confirms the deeper involvement of the legislature into the integration process.
It should play the key role in the institutional mechanism of adaptation at the parliamentary level.

But the subsequent development of the eurointegration process, aimed at concluding the Association Agreement will demand the improvement of the institutional mechanism of adaptation.

Under the current legislation, the draft act examination for its compliance with the EU legislation covers only the drafts, elaborated by the Cabinet of Ministers. The significant part of the draft acts, elaborated by other subjects of the legislative initiative passes without this examination. It essentially reduced the efficiency of the adaptation.

Poland faced the similar problem. In particular, the conclusions stated, that the Resolutions #16/94 and 13/97 of the Council of Ministers, which stipulated the examination of the governmental drafts had some restraints:

1. the procedure of examination for the compliance covers only the draft acts, elaborated by the government and that was their main disadvantage. The drafts, elaborated by deputies, Senate or the President, passed no examination for their compliance with the EU legislation because of absence of relevant provisions of the examination for the compliance with the EU law in the Seim Regulation.

2. absence of such mechanism of monitoring for the subsequent elaboration of the drafts, which passed the examination according to the Regulation of the Council of Ministers, means that the drafts are examined for the compliance with the EU law only at early stage of legislative procedure. Any amendments, made at the following stages, are not examined for their compliance with the EU legislation.

On the 19th of March 1999 the Sejm Procedural Rules were amended. According to new provisions, the Committee for the European Integration give its conclusions for the compliance of the parliamentary acts with the EU law.

Up to date in Polish Parliament there is the following procedure of draft examination for the compliance with the EU legislation:

1. in the grounds for every draft act is to add the Declaration on its compliance with the EU law, the level and the basis for non-compliance or declaration, which confirms that the subject is not regulated by the EU law.

2. before the first reading, Marshal is to transmit the draft to the Secretariat experts for the preparation of the conclusions for the compliance with the EU law.

3. should the experts confirm the non-compliance the Sejm European Committee is to give the draft conclusions, which is transmitted to the draft sponsor. This procedure is not used to the governmental drafts.

4. during the legislative procedure, which provides the draft examination by the Committees, it is necessary to obtain the conclusions for the compliance from the governmental European Integration Committee. This conclusion is added to the Committee report after the second reading.
5. it is also necessary to obtain the conclusions for the compliance of the proposals of minorities, amendments and proposals at the stage of second reading, amendments, proposed by Senate, also the Committee report on the amendments in the text of law, returned to the Sejm by the President with a view to complying with the Constitution, when such non-compliance is confirmed by the Constitutional Tribunal.

Besides, in Poland there is a special parliamentary procedure for approximating bills. These drafts are transmitted to the European Committee of Parliament.

The Sejm Procedural Rules demand from the draft sponsor the translation in Polish of the EU acts, to which the draft is approximating the Polish legislation. Before putting the draft to the procedure, the European Committee makes a schedule of work with this draft. According to these Procedural Rules the amendments should be introduced only in written form at the Committee session by at least 3 deputies, which are the members of the Committee. During the second reading the approximating bills can be amended only with the proposals, introduced by at least 5 deputies.

The Procedural Rules of the Verkhovna Rada of Ukraine should be amended in the same way as the Polish one with a view to providing the obligatory examination of drafts introduced by all subjects of legislative initiative, except those drafts, which are elaborated by the government and passed the expertise for their compliance with the EU legislation in the Ministry of Justice.

Also it is necessary to implement the examination for the compliance with the EU legislation of the draft acts, elaborated by the government and examined for the compliance with the EU law by the Ministry of Justice. Taking into account the efficient experience of the candidate countries of the Central Europe, the function of the draft analysis for the compliance with the EU law in Parliament and approving of the conclusions can be relied on the Committee for European Integration, which is to cooperate with other bodies, responsible for the adaptation.

The improvement of the institutional mechanism should take place as by Ukraine’s initiative as by the partnership with the EU. Taking into account the experience of the countries of the Central Europe, the joint development with the European Commission of the Action Plan on the Enhancement of Administrative and Judicial Capacities, which put clear tasks for Ukraine, terms for their fulfilment and the sources of the EU assistance may be quite efficient. The subsequent assistance is to depend on the fulfilment of set tasks.

The important role in the improvement of the institutional mechanism of adaptation should play regional and area programs of cooperation between Ukraine and the EU member states, the countries of Central and Eastern Europe in the area of approximation of Ukrainian legal system to the EU acquis with a view to coordinating activity and learning the experience, obtained in this area.

2. Analytical and methodological support, the programming of adaptation process.
The adaptation process is impossible without necessary scientific-analytical and methodological support. We should understand the very importance of the eurointegration of Ukraine. As the practice of the Central European states shows, the European Union involves and assists only when it is sure that the state really intents and makes real efficient steps to comply with Copenhagen criteria. We should not hope for the EU assistance in this question. Such a support would be real only if the European Union saw the seriousness of our intentions and practical results.

Scientific-analytical and methodological support of the adaptation process from Ukraine should consist of the following steps:

First of all, the elaboration of the National Adaptation Program should be based and accompanied with the fundamental researches in the field of the EU legislation, the state of law in Ukraine, the level of its compliance with the EU law primarily in the priority areas and then in the whole acquis. To make this step it is necessary to form the working expert groups of the European and national law and experts in particular area. These researches should become the basis for the elaboration, annual introduction of the amendments to the National Adaptation Program, draft-law making plans in the area of adaptation.

For example, «Polish White Book – law section» has the systematized and arranged description of those legal areas, which are to be first to be harmonized with the EU law. This is the set of 34 analytical research papers, done in 1994-95 by the famous European law experts. Every paper consists of three parts:

- description of the EU legislation in certain area;
- state of law in Poland in this certain area;
- conclusions for the volume of necessary changes, methods of approximation.

The «Polish White Book – law section» became the theoretical ground for the legislative activity in the area of legal approximation.

21.11.2002 the Verkhovna Rada of Ukraine adopted the Concept of the National Program on the Adaptation of the legislation of Ukraine to the EU legislation. So the second logical step is the elaboration of this program itself.

Unfortunately, the Concept has some disadvantages.

It does not establish the principles for the definition of the priorities of the adaptation. «The adaptation process should cover all areas of legislation, but the priorities should not be constant and should be defined for the certain period and correlate according to current situation», thus the provision 6.1 states the areas of priority. To my mind it is possible to elaborate with the European Commission the Integration Partnership (like the Accession Partnership in the candidate countries), which will stipulate the strong priorities, measures, actions, period and assistance from the EU. Such a Partnership should form a basis for the National Program for the Adaptation of acquis communautaire.
1. The Concept does not establish the principles of the building the stages of approximation. They should be different in all areas and it is clearly impossible to formulate the general stages for the adaptation of the whole system. To my mind the stages of Commission White Book could be taken for the basis with certain reconsideration.

The third part of each section of the Annex is the most concrete one. It proposes, within each area of legislation referred to in the White Paper, a detailed alignment scheme which is characterized by the adoption of the community legislation in subsequent phases. This approach, introducing de facto a hierarchy in the Community rules, may appear somewhat surprising in view of the complexity of these rules, which are often considered as forming a single invisible block. The Commission acknowledges that the resources available for the approximation exercise are scarce, whether in terms of legal and technical expertise or in terms of financial means. For these reasons, the White Paper provides for a working scheme that should ensure that these resources are focused on areas where they will produce the greatest effect. Within each area of legislation, the Commission identifies „key measures” which are themselves further subdivided into two categories: the so-called „stage-I” and „stage-II” measures. This division in stages does not necessarily reflect the respective importance of the measures. It intends to help the associated countries to organize their approximation work in the most effective way. Measures which provide for overall framework of a specified area of Community law or which address fundamental principles of EU law are considered as „stage I” measures. They require the highest priority and have to be tackled before all other measures. Measures requiring particularly long time for effective implementation or forming an essential precondition for the effective functioning of the Internal Market fall also in the first category. Stage II measures have a more subordinate or complementary character. They may be adopted at a latter stage of the approximation process because they aim at completing task which will already have started during the first stage of the procedure or simply because they relate to items which can only be adopted after a certain period of time, necessary to put the appropriate legal and administrative structures into place.

But division into two subsequent stages is not absolute. In some cases, no distinction is made between the first and second stages because it is impossible distinguish the most important and less important legislation, when all measures are equally important and isolated adoption of any single part wouldn’t yield any benefit in terms of free movement.

In the most sensible areas a third stage could be introduced. The Commission prefers to introduce an additional stage in the approximation process rather than to undermine its chance by proposing a quick alignment scheme, which could cause serious problems in the associated countries and in the EU member states.

But there is also strong advantage of the Concept. It is the correct structure of the chapters of the adaptation, which corresponds the one from the Polish Program for Preparation for Membership in the EU and the Slovakian National Program for the Adoption of acquis communautaire 2000. The positive elements of this Concept are also the provisions on the calculation of human and financial resources, necessary for the efficient adaptation in certain area.

In asserting before mentioned thesis I would like to introduce the comparative table of the structure of chapters Polish, Ukrainian and Slovakian programs.
Poland

The National program of preparation for membership, 1999

description of the set task and its background;
- institutions, responsible for task programming and their execution;
- definition of the necessary legislative transformations and other necessary measures;
- necessary institutional transformations (creation of new institutions, improving the existing ones);
- additional changes, connected with effective implementation of the new legal provisions (changes in administrative or judicial procedures, changes in the procedures of technical control);
- new demands for personnel; personnel, necessary for new legal rules enforcement and/or creation of new institutions; personnel training for attaining this goal;
- necessary material investment;
- time-table (time framework, depending on the chosen implementation method)
- financing - laying out the list of expenses both from Phare resources and State budget, self-managed funds, private funds, international financial institutions credits, etc.

Ukraine

The Concept of National program of adaptation of national Ukrainian legislation to the EU legislation, 2002
- description of the Ukrainian legislation in the relevant area;
- analysis of the relevant EU legislation and EU policy in this area as well as listing of the most important legislation acts of the European Union to considered in the process of the adaptation;
- estimation of the level of compliance between the Ukrainian legislation and the legislation of the European Union;
- defining the instruments of legislation adaptation with referring to the draft-laws, to be worked out, or acts to be amended or modified, or which need to be acknowledged obsolete;
- economic, social and political estimation of the forthcoming transformations in the relevance to particular undertakings in each area, defining the institutional transformations, (setting up of the new institutions, or modifying the features of the existing ones) as well as other consequences, fostered by enforcing new rules, including transformation of the administrative or judicial procedures, transformation of control procedures for obeying technical rules, etc.;
- defining the demand in new personnel, equipment and informational network, necessary for realisation of undertakings for legislation adaptation, as well as means of their training and improving of qualification, including intensive increasing of foreign languages knowledge;
- anticipated time-framework of the legislation adaptation undertakings;
- anticipated expenses amounts, necessary for the legislation adaptation undertakings (expenses on working out of graft-laws, staff-training, institutional changes, comparative-law studies, working-out the glossary of legal terms in the area of European Law, providing with necessary equipment, etc.).

Slovakia

The National Program of adoption of the acquis communautaire, 2000.

Program division have the same structure:
- The means taken, which are divided in subdivisions (groups) (law approximation and the existing administrative institutions). Short description of the means, taken in 1999. As to „law approximation”, it is defined the level of compliance with EU law. The estimation of the compliance level is made on the basis of legislative rules of legislation preparation, binding the body, submitting the draft to compose the provisions on compliance estimation procedure. In the „existing administration structures” one can find the description of the existing institutional machinery, including regional structures, where is necessary the linkage with administrative and judicial bodies.
- short-term priorities;
- mid-term priorities;
- administrative needs, including material, technical and human resources at the level of emerging ministries.
- financial needs – needs, counted on each chapter, sector, which demand state budget financing;

As far as Ukrainian approach to approximation on this stage is narrowed only to the adaptation of national legislation to that of the EU it would be reasonable to take White Paper Regarding
Integration of the Associate Members of Central and Eastern Europe with the Internal Market of the European Union, which covers legislation in the field of internal market, as a basis of Ukrainian program on adaptation. White Paper was adopted in 1995 by Cannes European Council in the form of recommendations on the approximation of national legislation in the field of internal market.

From the very beginning White Paper was addressed to the six countries which already signed Association Agreements with EC: Poland, Hungary, Czech Republic, Slovakia, Bulgaria and Romania. It was later extended to the Baltic States and Slovenia, after the signature of the similar agreements in June 19995 and June 1996. At a latter stage it is not excluded that that White Paper might be a reference for all the countries of Central and Eastern Europe, including Albania and all former Yugoslavia. Such evolution of the application of the White Paper would be a logical sequence of its open character and that it is not tailored to the specific needs of particular country.

Therefore EU legislation and implementing measures provided for in the White Paper should be a basis of the first Ukrainian national program of adaptation.

White Paper consists of two parts: general introduction and the annex. The general introduction describes in general terms the nature, goals and the content of the approximation process. The annex consists of the analysis of all areas of the EU legislation, legislative actions, and necessary to be taken by the candidate countries, internal philosophy and the consequences of such changes in administrative and organizational area. This approach suits the countries, which passed rapidly the transition period from the administrative economy to the market one.

Each chapter of the Annex consists of three parts: first part - general introduction to the certain area of the EU legislation. Second one - the conditions necessary for the implementation of the legislation in the candidate countries. And the third proposes the particular scenarios of approximation. And now there is more detailed information on these parts.

1. The first part briefly describes the nature of the Community legislation. Depending on the area of regulation the following aspects are covered: the effect of the legislation on internal market, its final goals, development, possible correlation with national instruments and Community instruments. I.e. this part should deliver to associated states the nature of enforcement instruments of the Community legislation.

2. The second part is of vital importance, which stipulates common enforcement conditions of the legislation, envisaged by the White Paper. The core idea of this part is that legislation acts, whatever nature and effect they are, can’t be isolated from the common frames, in which they should be enforced. Effective functioning of the internal market depends on existence of relevant institutions both – on international and State level, which can provide the necessary implementation of the mentioned rules. Herewith the Commission stresses upon the necessity of the adequate administrative instruments and the role of state and non-governmental institutions in supervising and ruling economic activities. For example, they may be the certification agencies, experiment laboratories, consumer societies and commercial organizations. Judicial systems of the candidate-states should be also adapted to demands of the
internal market. As the core elements of the approximation process should serve the enforcement institutions, responsible for the implementation of the EU law rules.

The third part is the most detailed and was described in the part, considering the principles of defining the Stages of adaptation in the National Program on Adaptation.

Despite of the recommendation character of the White Book and domination of the European Agreements as the legal grounds for the relations between the EU and the candidate countries, White Book played an extraordinary positive role in the approximation process.

First, the European Agreements lacked the clear formulation of the approximation of law, so White Book provided more detailed conditions.
Second, White Book covered all the areas under the EA and such areas as energy, environment, taxation, which were not involved in these Agreements.
Third, it stipulated the conditions necessary for the implementation of the EU legislation under the legal order of the associated countries.

In spite of the significant role of White Book, the implementation of its recommendations was insufficient for the involvement in legal, economic, political fields of the EU. Some areas of acquis are not covered with the White Book, such as the second and the third pillars of the Maastricht Treaty, some aspects of common agricultural, regional, ecology policy.

But nevertheless White Book became the important instrument for the candidate countries in the process of the preparation to the EU accession.

For example, in Poland, aiming preparation of the Program the principal central state bodies were authorized to work out schemas, including lists of Polish legal acts, regulating the issues, envisaged by the White Paper, to define the level of compliance with the Community Law, to define the areas in the law of Poland, necessary to be adopted on the priority basis for integration in the internal market, including drafting the legislation, necessary for institutional transformation. It would provide internal organizational basis, vital for the internal market rules enforcement.

„The program of measures for the Polish economy and legal system harmonization to the demands of the European Treaty, on the period of 1995-1996 years”, which was annexed to the Council Resolution № 133/95, contains the list of EU acts, envisaged in the White Paper, authorizes the relevant Ministries and central governmental bodies, responsible for implementation of the separate acts, as well defining the special responsible governmental body, and the Ministry, assisting the process of implementation. These measures had made the White Paper an effective instrument for the reformation of Polish Law.

I guess, on the present stage, the White Paper may become a principle guide for working out the Ukrainian program of adaptation. For that purpose it should at least be made an official translation in Ukrainian language. As well, translation of the relevant most essential EU acts,
envisaged in the White Paper, should performed, as they should form the basis of the first Ukrainian Program on legal adaptation.

To provide a complex approach in framing each Chapter of the Program it should provided participation of Ministries, central governmental bodies, leading experts of national and European law, specialists. Economists also should be included to provide effective assessment of financial expenses.

Division of each chapter into relevant stages should reflect self-consistent necessity of the measures implementation in each area. Each chapter must stipulate human and financial resources, necessary for adaptation in this area. Taking into account that Ukraine fulfils a number of outlined in the Program tasks, constant EU law development, the national Program should be revised every year.

At third, the next step, following the adoption of the National Program of Ukrainian legislation adaptation to the EU law should be working out of a National program on adoption of *acquis communautaire*.

On the present stage, under the article 51 of the PCA Ukraine undertook an obligation to approximate the national legislation in force to the EU law just in the top-priority areas, which effect economic relationship between Ukraine and the EU. However the adaptation process aiming conclusion of the association agreement and further accession to the EU, cannot be limited only by these areas, and in perspective Ukraine should be ready to adopt all the *acquis* necessary for attaining membership.

Legal provisions of the adaptation process of the Ukraine’s legal system to *acquis* of the European Union should be based on foreground principles, approaches, priorities, which find further implementation in the legislative and law-enforcement activities of the governmental bodies.

The adaptation in the light of Ukraine’s purpose – accession to the European Union – should include all the national legal system, and not just laws themselves, i.e. not just lawmaking in all possible forms, but as well law enforcement, as far as the majority of basic EU law principles by their nature cannot be stipulated in the acts of legislation in force, as well as cannot we imagin the adoption of law on legal certainty, proportionality as well as on any other principle of EU law. Therefore to provide the effectiveness of the adaptation process, there is need to involve herein all the branches of power, including judicial. Adaptation demands an overall cooperation with Parliament and executive branch on the stage of bill drafting and with judicial branch on the stage of law enforcement. One should acknowledge that the judicial power has self-superseded from the national process of adaptation, wereas it should play one of the core roles. Adaptation to *acquis* should be accompanied with other processes in the State, inter alia legal and administrative reform.

At fourth, there should be adopted effective internal instruments with involving EU institutions to estimate Ukraine’s progress on the way of adaptation in every sphere. On behalf of the EU it
should be created clear and concise machinery to monitor the legal adaptation by Ukraine, which could be resulted in Regular Reports of the Commission by analogy with that on progress of candidate countries. The mentioned machinery would assist Ukraine’s side in more clear understanding the criteria of the national legislation compliance with acquis to define foreground and secondary problems, form the time-framework of the adaptation process, to from an effective Adaptation program on each following year.

3. The administrative capacities to implement acquis in Ukraine.

3.1. Staffing of the adaptation.

Effectiveness of the adaptation process at first depends on staffing. Here the highly qualified specialists are needed, who have high legal education in the area of European law, desirably received abroad, excellent knowledge of foreign languages, at first – English and French. This year was the first class of masters in European Law (The Institute of international relations, Kyiv National Shevchenko University).

In connection with the Poland’s perspective of EU accession in the nearest future, entry in its internal market it also needed to develop institutional machinery in the number of areas. The Program of institutional development envisaged long-term agreements on twinning between governmental bodies of the member-states and associated states, long-term exchange of experts and counsellors, performing analysis for Polish Ministries, seminars, short-term training visits.

The negotiation process on the further participation in the policy of the EU demands intensive training of the governmental authorities and officers of all levels. The training should also include the diplomatic missions personnel. Especially important is the officers training for effective fulfilment of the National Program on preparation for membership. Inter alia like in Poland the following forms of training should be lined out:

1. general training on the principles and rules of activities in certain areas of the EU policy, including the methods of EU law implementation by the national systems of the EU member-states.
2. special training on implementation of the certain acts of the European Union law;
3. negotiations trainings;
4. learning the end-consumer advantages within the EU internal market;
5. foreign languages study;
6. as well a special program of regional executive stuff training should be worked out.

There was adopted a special instrument in Slovakia, stipulating administrative demands in financing and qualified personnel. The mentioned document contained analytical report on the ways of transformation the existing institutions and creation of new ones, which should endeavour acquis implementation. The methodology of that document was worked out by the governmental office together with the Ministry of Finance to estimate the financial needs in the most accurate way.

The institutions, as a rule, were lacking qualified stuff, necessary for acquis implementation – especially lawyers and economists. Therefore the Slovakian government adopted „The concept of professional stuff training of State administration for integration process” (Resolution 320/1999 from 28.4.1999), which aimed:
to provide systematic training of the ministerial and regional/local-administration stuff in the area of European integration;

- providing the coordinating approach to the educational activities in the domain of European integration;

European integration training should include, in first turn, the EI departments in Ministries, ministerial regional/local administrations stuff, responsible for planning and coordination of the EI departments activities, aiming the gradual enforcement of the EU law rules. As well we should consider the training of the future tutor stuff in governmental and non-governmental bodies.

Taking into consideration the experience of the candidate-states and Ukraine’s needs in EU law profiled stuff the following measures might be desirable:

1) to work out the concept of the civil-servants professional training and education in the area of European Law and European integration;

2) to open departments of the European law and specializations in EU law in the establishments of high education of Ukraine, include training courses on European Law in the educational courses of legal and economic faculties of Universities, involving professors of the leading European universities;

3) to set up foreign languages courses for civil servants, working with adaptation;

4) to launch the obligatory program of the training of judges in the domain of the European law;

5) to work out and implement the common-standard terminology on EU law in the official sphere;

6) to discuss with the European Commission possibilities of Ukraine’s involvement to educational programs in the EU member-states, which are available now for candidate-countries.

3.2. Information support of the adaptation.

The following measures should be taken:

1) to elaborate the website in Ukrainian with the information about the eurointegration processes, development of the relations between Ukraine and the EU, the documentation of the EU. It will provide the accession of the state bodies, educational centers, and wide public to the EU legislation and other relevant information.

2) to provide the financial assistance for the subscribing of the state bodies relevant to adaptation to the data base CELEX.

3) to provide the publication of the key legal documents in Ukrainian;

4) to provide the subscribing of the state bodies for the official legal issues of the EU;
5) to elaborate and enforce the unified rules for the EU legal translation, to establish the centralized translation system. It will improve the quality of translation, make it easier to get access to the EU legislation, provide coordination of the translation by the bodies involved in adaptation. The experience of Hungary is evident. Up to 1997 the translations of the EU law were financed partly by the ministerial budgets, partly by Phare. At the beginning the quality of translations was different as the central coordination and registration were absent. In such a way 12000 pages were translated. The translations were gathered in the Department for Coordination of the Translations of the Ministry of Justice. The linguists of the Department consolidated these translations, and elaborate the general rules for the translation, mentioning the technical details and formal demands for the process. Also the Department translated in Hungarian the guidelines of the EU «Forms of Act», consisting of the standard provisions for each type of the EU act in English and Hungarian. The unified terminology was obligatory. The final translations passed the linguistic control.

6) to organize the scientific researches of the processes of unification and harmonization of law in Ukraine and the member states of the EU, the EU candidate countries of the Central and Eastern Europe on the basis of existing analytical centers at the government, with involvement of the leading experts of Ukraine and the EU.

Conclusions.

The candidate-states to the EU membership for the present moment have already fulfilled their integration process to the EU, while Ukraine is just on its beginning. The national law approximation to *acquis communautaire* was a challenging task as well, and they gained astounding experience in this sphere. Therefore with a view to advance and to perfect the process of Ukrainian legal adaptation it is necessary to intensify the cooperation between Ukraine and candidate-states both on governmental and expert level in domains of:

1. elaboration of the national programs on adoption of *acquis communautaire* and on preparation for EU membership;
2. functioning of the parliamentary committees, specializing in European integration, and exchange of the experience on the level of compliance with the EU law.
3. different methodological approaches to approximation subject to the sources of EU law, CFSP, JHA:
   - directives,
   - regulations;
   - decisions,
   - general principles of EU law;
   - case law
   - framework decisions;
   - common positions, strategies, actions.

1. performing administrative, judicial reform aiming to apply *acquis*, including basic principles of the EU law as direct effect and applicability, superiority of EU law and general principles of law;
2. the creation of the financing machinery of the approximation process from the State budget and EU funds.

3. coordination of translation, working out accepted rules of translation of Community acts.

4. reforming of law making technique in line with requirements to quality of legal acts in the EU member states in order to avoid gaps, contradictions, and vague formulations etc.

5. stuff changes and training in state authorities with a view to perform tasks of approximation.