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Criminal Policy Of The European Union And Ukraine: Issues And Prospects Of Rapprochement

Abstract: Ukraine's path to the European Union through associated membership and receipt of candidate status opens new opportunities and adds additional responsibilities to Ukraine. Ukraine should implement a great number of reforms through democratization of its institutions, decentralization and digitalization. Major issues in this area are deemed to be corruption and weakness in implementing reforms in certain areas (justice, law enforcement, etc.). However, since the beginning of large-scale Russian war against Ukraine, the war that actually blocks but does not necessarily stop the process of Ukraine gradual transformation into a European state has become the main challenge. In this respect, emphasis should be made on the need to implement criminal law reform as part of European integration processes and to approach the criminal law of the European Union. As of today, the Working Group on Criminal Law Development of the Commission on Legal Reform under the President of Ukraine, which is engaged in development of a new Criminal Code of Ukraine, should pay attention to trends of European Union Criminal Law to formulate a relevant criminal legislation as a result of the ongoing reform.

Key words: criminal policy, criminal legislation, criminal liability, European Union Criminal Law, criminal law reform

On the way to European integration, Ukraine is undergoing perhaps one of the most difficult and tragic paths in its history in particular and in the development of the European community in general. This is associated with the process of internal changes and systemic reform of Ukraine as well as democratization of its institutions, decentralization and digitalization, and also powerful external manifestations, including, first of all, military aggression by Russia with the support of the Republic of Belarus and perhaps other countries that aims to interrupt the above positive changes which influence can make Ukraine successful and prosperous. Also, Ukraine' example will help to stop tyrannies and dictatorships that continue to exist in various forms in the world.

On its European integration path, Ukraine received associate membership and gained the status of a candidate for the European Union¹. The Association Agreement between Ukraine, on the one hand, and the European Union, European Atomic Energy Community and their member states, on the other hand, dated June 27, 2014 (entered into force on September 1, 2017)², is a guide for developing relations between Ukraine and the EU indicating reforms that Ukraine has not yet implemented. An example

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Declaration of Competing Interest

The author declare that they have no conflict of interest.

¹ Official site of European Council. URL: <https://www.consilium.europa.eu/en/policies/enlargement/ukraine/>

² Угода асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони. URL: https://zakon.rada.gov.ua/laws/show/984_011

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**КРИМІНАЛЬНА ПОЛІТИКА
ЄВРОПЕЙСЬКОГО СОЮЗУ
ТА УКРАЇНИ: ПРОБЛЕМИ ТА
ПЕРСПЕКТИВИ ЗБЛИЖЕННЯ**

Наукова стаття присвячена проблемам та перспективам зближення кримінальної політики Європейського Союзу та України. Шлях до Європейського Союзу, який проходить Україна через асоційоване членство та набуття статусу кандидата, відкриває Україні нові можливості та додає нових обов'язків. Україна має провести велику кількість реформ шляхом демократизації її інституцій, децентралізації та діджиталізації. Основними проблемами у цьому напрямку вважають корупція та кваліфікація у проведенні реформ в окремих сферах (правосуддя, правоохоронна сфера, тощо). Однак з початку широкомасштабної агресії Росії проти України найбільшим викликом стала війна, яка фактично блокує, але повинна не зупиняє процес поступового перетворення України на європейську державу. У зв'язку із цим необхідно звернути увагу на необхідність проведення реформи кримінального права у частині євроінтеграційних процесів та наближення до кримінального права Європейського Союзу. Вже сьогодні Робочій групі з питань розвитку кримінального права Комісії з питань правової реформи при Президенті України, яка займається створенням нового Кримінального кодексу України, необхідно звернути увагу на тенденції Кримінального права Європейського Союзу з метою отримання актуального кримінального законодавства в результаті здійсненої реформи. Найбільш важливе місце в цьому контексті набуває вивчення директив Європейського Союзу, які містять фактичні вимоги та стандарти, яким має відповідати кримінальне законодавство держав-членів ЄС, а значить в майбутньому й України.

Ключові слова: кримінальна політика, кримінальне законодавство, кримінальна відповідальність, кримінальне право Європейського Союзу, реформа кримінального права.

of it is de facto obligation to cooperate with the purpose of strengthening peace and international justice through ratification and implementation of the Rome Statute of the International Criminal Court (ICC) dated 1998 and related documents (Article 8 of the Agreement)³. It is worth noting that this obligation, which implementation is only strengthened by the ongoing and increasingly aggressive large-scale war of Russia against Ukraine, remains unfulfilled. Numerous attempts to amend the current Criminal Code of Ukraine (draft laws No. 2689, No. 0892, No. 7290, No. 10310) have so far been unsuccessful, and the new Draft Criminal Code of Ukraine continues to be developed by the Working Group on Criminal Law Development of the Commission on Legal Reform under the President of Ukraine⁴. It is obvious that ratification and implementation of the Rome Statute of the International Criminal Court into current criminal and procedural legislation will enhance interaction between national law enforcement and judicial authorities and the International Criminal Court, and will shine some light on freedom of interpretation of war crimes, crimes against humanity, genocide and aggression that are subject to jurisdiction of this international institution that is currently only partially recognized by the Verkhovna Rada of Ukraine.

On June 17, 2022, the European Commission recommended that Ukraine be granted candidate status for membership in the European Union. In general, the European Commission stated that Ukraine has gradually approximated to substantial elements of the EU *acquis* in many areas. It has an overall satisfactory track record of implementation, while in some sectors the country is more advanced than in others⁵. The very status of a candidate for EU membership means that Ukraine is pursuing a reasonably successful efforts, and in the future should achieve success in areas that are also connected with introduction of amendments in the current criminal legislation of Ukraine: 1) further strengthen the fight against corruption; 2) ensure that anti-money laundering legislation is in compliance with the standards of the Financial Action Task Force (FATF); 3) adopt an overarching strategic plan for the reform of the entire law enforcement sector as part of Ukraine's security environment; 4) implement the Anti-Oligarch law to limit the excessive influence of oligarchs in economic, political, and public life, etc.⁶

The Venice Commission in its report dated October 21, 2005 (T-10-2005) provided a definition for *acquis communautaire* in connection with accession of new member states to the European Union and the need for their integration into its legal system. The *acquis* content is reduced to integration: i) legislation consisting of directives, regulations, decisions, "framework decisions" and conventions; ii) "unwritten law" (case law)⁷.

Obviously, the approach aimed at convergence of legal systems of the European Union's member states takes forms of integration and harmonization, which permit developing a common and stable law-making and law enforcement practice in the EU. Ukraine, as an associate member of the EU and since recently a candidate for EU membership, should bring its legal system closer to the standards of the European Union. This applies, in particular, to criminal law reform. It is crucial that the Working Group on Criminal Law Development of the Commission on Legal Reform under the

³ Римський статут Міжнародного кримінального суду. URL: https://zakon.rada.gov.ua/laws/show/995_588#Text

⁴ Проект нового Кримінального кодексу України. URL: <https://newcriminalcode.org.ua/upload/media/2022/09/29/1-kontrolnyj-tekst-proektu-kk-29-09-2022.pdf>

⁵ Сайт Європейської комісії. URL: https://neighbourhood-enlargement.ec.europa.eu/opinion-ukraines-application-membership-european-union_en

⁶ Див.: Представництво Європейського Союзу в Україні. URL: https://www.eeas.europa.eu/delegations/ukraine/eu-commissions-recommendations-ukraines-eu-candidate-status_en?s=232

⁷ Report of European Commission for Democracy through Law "Integration of the *Acquis Communautaire* into the Legal Order of New and Future Member States of the EU". URL: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UDT\(2005\)032-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-UDT(2005)032-e)



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**CRIMINAL POLICY OF
THE EUROPEAN UNION
AND UKRAINE: ISSUES
AND PROSPECTS OF
RAPPROCHEMENT**

President of Ukraine, which deals with the development of the new Criminal Code of Ukraine, focused on implementation of criminal law reform in conformity with EU standards today.

The Lisbon Treaty of 2007 that regulates criminal policy of the EU member states becomes important in this context. Thus, Article 69 of the Treaty specifies that “The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis”. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime (e.g., para. 2 Section 1 Article 83 of the Treaty on the Functioning of the European Union dated 2000). At the same time, “If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonization measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned” (Section 2 Article 69 of the Lisbon Treaty dated 2007).

Communication from the Commission to the European Parliament on EU policy through the prism of criminal law is gaining interest and importance. The European Commission insists on a two-step approach when taking the decision on criminal law measures to ensure harmonization policy: 1) the decision on whether to adopt criminal law measures at all (Necessity and Proportionality – Criminal law as a means of last resort (“ultima ratio”); 2) principles guiding the decision on what kind of criminal law measures to adopt. Moreover, the latter is limited to “minimum rules” under the Treaty on the Functioning of the European Union dated 2000 (Article 83) in which the focus is made on: 1) necessity and proportionality (including according to Article 49 of The Charter of Fundamental Rights of the European Union dated 2012: the principle of legality and proportionality regarding criminal offenses and penalties); 2) clear factual evidence about the nature or effects of the crime in question and about a diverging legal situation in all Member States which could jeopardise the effective enforcement of an EU policy; 3) tailoring the sanctions to the crime (for example, whether to include types of sanctions other than imprisonment and fines to ensure a maximum level of effectiveness, proportionality and dissuasiveness, as well as the need for additional measures, such as confiscation; and whether to impose criminal or non-criminal liability on legal persons)⁸.

In line with this, Ukrainian criminal law due to European integration is gradually approaching a new legislative framework of European Union Criminal Law, which, given the speed of integration processes, becomes common in the reform of the Criminal Law of Ukraine today. Such criminal offenses as terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime should already be considered under EU directives, and not only in terms of implementation of Conventions of the UN, Council of Europe, compliance with international obligations given by Ukraine and

The research paper is dedicated to issues and prospects of rapprochement in criminal policy of the European Union and Ukraine. Ukraine's path to the European Union through associated membership and receipt of candidate status opens new opportunities and adds additional responsibilities to Ukraine. Ukraine should implement a great number of reforms through democratization of its institutions, decentralization and digitalization. Major issues in this area are deemed to be corruption and weakness in implementing reforms in certain areas (justice, law enforcement, etc.). However, since the beginning of large-scale Russian war against Ukraine, the war that actually blocks but does not necessarily stop the process of Ukraine gradual transformation into a European state has become the main challenge. In this respect, emphasis should be made on the need to implement criminal law reform as part of European integration processes and to approach the criminal law of the European Union. As of today, the Working Group on Criminal Law Development of the Commission on Legal Reform under the President of Ukraine, which is engaged in development of a new Criminal Code of Ukraine, should pay attention to trends of European Union Criminal Law to formulate a relevant criminal legislation as a result of the ongoing reform. The most important place in this context is study of European Union directives containing actual requirements and standards that must be met by criminal legislation of EU member states as well as Ukraine in the long term.

Key words: criminal policy, criminal legislation, criminal liability, European Union criminal law, criminal law reform.

⁸ Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law /* COM/2011/0573 final */ URL: <https://eur-lex.europa.eu/legal-content/EN/TEXT/HTML/?uri=CELEX:52011DC0573&from=EN>

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POLITIQUE CRIMINELLE DE L'UNION EUROPÉENNE ET DE L'UKRAÏNE: PROBLÈMES ET PERSPECTIVES DE RAPPROCHEMENT

L'article scientifique est consacré aux problèmes et perspectives de rapprochement de la politique criminelle de l'Union européenne et de l'Ukraine. La voie de l'Ukraine vers l'Union européenne par le biais du statut de membre associé et de l'acquisition du statut de candidat ouvre de nouvelles opportunités et ajoute de nouvelles responsabilités à l'Ukraine. L'Ukraine doit mener un grand nombre de réformes à travers la démocratisation de ses institutions, la décentralisation et la numérisation. Les principaux problèmes dans ce sens sont considérés comme la corruption et la faiblesse dans la conduite des réformes dans certains domaines (justice, maintien de l'ordre, etc.). Cependant, depuis le début de l'agression à grande échelle de la Russie contre l'Ukraine, le plus grand défi a été la guerre qui bloque en fait, mais n'arrête pas nécessairement, le processus de transformation progressive de l'Ukraine en un État européen. À cet égard, il convient de prêter attention à la nécessité de procéder à une réforme du droit pénal dans le cadre des processus d'intégration européenne et d'aborder le droit pénal de l'Union européenne. Déjà aujourd'hui, le Groupe de travail sur le développement du droit pénal de la Commission sur la réforme juridique sous la direction du Président de l'Ukraine, qui est engagé dans la création d'un nouveau Code pénal de l'Ukraine, doit prêter attention aux tendances du droit pénal de l'Union européenne afin d'obtenir une législation pénale pertinente à la suite de la réforme en cours. L'endroit le plus important dans ce contexte est l'étude des directives de l'Union européenne, qui contiennent les exigences et les normes réelles auxquelles la législation pénale des États membres de l'UE doit se conformer, et donc à l'avenir, l'Ukraine également.

Mots-clés : politique pénale, législation pénale, responsabilité pénale, droit pénal d'Union européenne, réforme du droit pénal.

amendment of Ukrainian criminal legislation in conformity with practices of the European Court of Human Rights.

Given criminal law trends in Ukraine, it is vital to emphasize the need of focusing on a separate legal branch being formed: European Union criminal law. N. A. Zelinska repeatedly noted it, stating that "the term *EU criminal law* refers to the system of legal rules governing cooperation of EU member states in crime counteraction"⁹. M. I. Pashkovskyi attempts to reveal importance of the formation of EU criminal law, stressing that "EU criminal law is not domestic criminal legislation, but is one of the types of regional transnational criminal law in the substantive and procedural sense"¹⁰.

O. V. Honcharuk claims that the European Union has done great legislative work on unification and harmonization of EU criminal law: "The European Union attempted to systematize a large array of legal regulations that had been adopted by it over decades in the field of using controlling instrument of criminal law. Against this background, the adoption of the Resolution on criminal procedures in the European Union (Corpus Juris OJ C 219, 30.7.1999, p. 106), where attempts were made to unify rules of European criminal and criminal procedural law, seems interesting. This code was adopted in 1997 and entered into force by the Resolution of the European Parliament dated 1999"¹¹.

The Member of the Working Group on Criminal Law Development of the Commission on Legal Reform under the President of Ukraine M. I. Khavroniuk puts emphasis on the need for a more in-depth process of adapting provisions of the general part of the current and forward-looking criminal legislation of Ukraine to EU criminal law. For this purpose, he believes that "Ukraine needs to adapt both current criminal legislation and the new Draft Criminal Code of Ukraine to EU criminal legislation... Perhaps, adaptation procedure will be as follows: – all corresponding EU acts will be clearly specified and officially translated into Ukrainian; – Ukraine will be provided with deadlines for adoption and implementation of laws and by-laws required to comply with each relevant EU act;

– The Ministry of Justice will organize thematic working groups in order to develop amendments for the Criminal Code; Ukraine will notify the European Commission about introduction of the specified laws and by-laws;

– implementation will be monitored later."¹².

From our perspective, it is necessary to agree with all researchers who indicate the formation of European Union Criminal Law. The issue of adapting and harmonizing criminal legislation in Ukraine in connection with projected accession to the EU is also becoming urgent. It is obvious that Ukraine does not have enough resources to formulate two drafts of the new Criminal Code of Ukraine at once (before and after accession to the European Union). And this brings authors closer to introduction of a new Criminal Procedural Code of Ukraine that would include required amendments allowing to obtain the one adapted to requirements and standards of the EU.

M. I. Khavroniuk, studying issues of adapting provisions of the general part of the current and forward-looking criminal legislation of Ukraine to EU criminal law, attempted to provide a classification of principal acts of

⁹ Зелінська Н. А. Євроінтеграційні процеси в сфері транснаціонального кримінального права / Н. А. Зелінська // Правові та інституційні механізми забезпечення розвитку держави та права в умовах євроінтеграції : матеріали Міжнародної науково-практичної конференції (20 травня 2016 р., м. Одеса) : у 2 т. Т. 1 / відп. ред. М. В. Афанасьєва. Одеса : Юридична література, 2016. С. 313. С.313-315.

¹⁰ Пашковський М.І. Кримінальне право ЄС: від Паризької угоди до Лісабону. Альманах міжнародного права. 2009, Вип. 1. С. 69-75.

¹¹ Гончарук О. В. Передумови виникнення та перспективи розвитку європейського кримінального права. Актуальні проблеми міжнародних відносин. Випуск 115 (частина II). 2013. С. 69. С. 66-70.

¹² Хавронюк М. І. Проблеми адаптації положень загальної частини чинного та перспективного кримінального законодавства України до кримінального права ЄС. Центр політико-правових реформ. URL: <https://pravo.org.ua/blogs/problem-y-adaptatsiyi-polozhen-zagalnoyi-chastyny-chynnogo-ta-perspektyvnogo-kryminalnogo-zakonodavstva-ukrayiny-do-kryminalnogo-prava-yes/#link4>

EU criminal law by dividing them into groups: 1) acts on criminalization and penalization of certain deeds specified in Article 83 of the Treaty on the Functioning of the European Union; 2) comprehensive acts directly resolving individual issues of the General part of the criminal law and at the same time belonging to the field of criminal procedure and international public law; 3) acts defining terms essential for criminal law; 4) acts belonging exclusively to criminal procedure area¹³. The majority of acts of EU criminal law include conventions, directives, and framework decisions.

T. M. Anakina and L. V. Chornozub call the directive the main legal instrument of EU influence on national legal systems, "It is EU regulatory act that gives member states discretion in governing social relations, obliging them to formulate the final part that must be implemented within the specified period. This is exactly the result of national criminal legislation that implements amendments of a corresponding directive"¹⁴. Therefore, when adapting current national criminal legislation, emphasis should be made on European Union directives.

This approach is correlated with provisions of Sections 1 and 2 of Art. 83 of the Treaty on the Functioning of the European Union (TFEU), stating that it is the EU directives adopted by ordinary legislative procedures that determine minimum rules concerning the definition of criminal offenses and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. The TFEU classifies them as follows: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime. What is more, based on events in the field of crime, the Council may decide to define other areas of crime that meet the above-mentioned criteria. It acts unanimously upon European Parliament consent.

A vital clarification is that "If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonization measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned" (Section 2 of Article 83 of the TFEU). It further states that when member of the Council considers that a draft directive as referred to in paragraph 2 would affect fundamental aspects of its criminal justice system, it may request that the draft directive be referred to the European Council. In that case, the ordinary legislative procedure shall be suspended. After discussion, and in case of a consensus, the European Council shall, within four months of this suspension, refer the draft back to the Council, which shall terminate the suspension of the ordinary legislative procedure (Section 3 of Article 83 of the TFEU).

Shreder V., shaping boundaries for harmonization of Ukrainian legislation with the European one, stresses the presence of emergency brakes for these processes. He emphasized that when harmonizing criminal law, each Member State has a right of objection, the so-called emergency brake (Art. 82 para. 3, Art. 83 para. 3 TFEU) in order to stop an ongoing EU legislative procedure in the Council. This instrument may be used by a Member State if the planned EU measure were to affect "fundamental aspects of its criminal justice system." In such cases, a specific procedure provides for the referral to the European Council, which must seek a consensus. It should be up to each Member State to define such "fundamental aspects." From the

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KRIMINPOLITIK DER EUROPÄISCHEN UNION UND DER UKRAINE: PROBLEME UND AUSSICHTEN DER WERTSCHÄTZUNG

Der wissenschaftliche Artikel ist den Problemen und Perspektiven der Annäherung der Kriminalpolitik der Europäischen Union und der Ukraine gewidmet. Der Weg der Ukraine in die Europäische Union durch assoziierte Mitgliedschaft und den Erwerb des Kandidatenstatus eröffnet neue Möglichkeiten und fügt der Ukraine neue Verantwortlichkeiten hinzu. Die Ukraine muss eine Vielzahl von Reformen durch die Demokratisierung ihrer Institutionen, Dezentralisierung und Digitalisierung durchführen. Als Hauptprobleme in dieser Richtung gelten Korruption und Schwäche bei der Durchführung von Reformen in bestimmten Bereichen (Justiz, Strafverfolgung usw.). Seit Beginn der groß angelegten Aggression Russlands gegen die Ukraine ist die größte Herausforderung jedoch der Krieg, der den Prozess der allmählichen Umwandlung der Ukraine in einen europäischen Staat zwar blockiert, aber nicht unbedingt aufhält. Dabei ist auf die Notwendigkeit der Strafrechtsreform im Rahmen der europäischen Integrationsprozesse und die Annäherung an das Strafrecht der Europäischen Union zu achten. Bereits heute muss die Arbeitsgruppe für die Entwicklung des Strafrechts der Kommission für Rechtsreform unter dem Präsidenten der Ukraine, die sich mit der Schaffung eines neuen Strafgesetzbuches der Ukraine befasst, den Trends des Strafrechts der Ukraine Aufmerksamkeit schenken. Der Europäischen Union, um als Ergebnis der durchgeführten Reform einschlägige Strafgesetzgebung zu erhalten. Wichtigster Ort in diesem Zusammenhang ist das Studium der Richtlinien der Europäischen Union, die die konkreten Anforderungen und Standards enthalten, denen die Strafgesetzgebung der EU-Mitgliedstaaten und damit zukünftig auch der Ukraine entsprechen muss.

Schlüsselwörter: Kriminalpolitik, Strafrecht, Strafbarkeit, Strafrecht der Europäischen Union, Strafrechtsreform

¹³ Хавронюк М. І. Проблеми адаптації положень загальної частини чинного та перспективного кримінального законодавства України до кримінального права ЄС. Центр політико-правових реформ. URL: <https://pravo.org.ua/blogs/problemy-adaptatsiyi-polozen-zagalnoyi-chastyiny-chynnogo-ta-perspektyvnogo-kryminalnogo-zakonodavstva-ukrayiny-do-kryminalnogo-prava-yes/#link4>

¹⁴ Анакіна Т. М., Чорнозуб Л. В. Гармонізація кримінального права держав-членів Європейського союзу. Актуальні проблеми вітчизняної юриспруденції. № 1. 2022. С. 163. С. 160-165.

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POLITYKA KRYMINALNA UNII EUROPEJSKIEJ I UKRAINY: PROBLEMY I PERSPEKTYWY DOCENIENIA

Artykuł naukowy poświęcony jest problemom i perspektywom zbliżenia polityki kryminalnej Unii Europejskiej i Ukrainy. Droga Ukrainy do Unii Europejskiej poprzez członkostwo stowarzyszone i uzyskanie statusu kraju kandydującego otwiera nowe możliwości i nakłada na Ukrainę nowe obowiązki. Ukraina musi przeprowadzić wiele reform poprzez demokratyzację swoich instytucji, decentralizację i cyfryzację. Za główne problemy w tym kierunku uważa się korupcję i słabość w przeprowadzaniu reform w niektórych obszarach (sprawiedliwość, egzekwowanie prawa itp.). Jednak od początku wielkoskalowej agresji Rosji na Ukrainę największym wyzwaniem jest wojna, która skutecznie blokuje, ale nie zatrzymuje całkowicie, proces stopniowego przekształcania się Ukrainy w państwo europejskie. W tym zakresie należy zwrócić uwagę na konieczność reformy prawa karnego pod kątem procesów integracji europejskiej i zbliżenia do prawa karnego Unii Europejskiej. Już dziś Grupa Robocza ds. Rozwoju Prawa Karnego Komisji ds. Reformy Prawnej przy Prezydencie Ukrainy, która jest zaangażowana w tworzenie nowego Kodeksu karnego Ukrainy, musi zwracać uwagę na trendy w prawie karnym Ukrainy Unii Europejskiej w celu zapewnienia odpowiedniego ustawodawstwa karnego w wyniku wdrożenia reformy. Najistotniejsze miejsce w tym kontekście zajmuje studium dyrektyw Unii Europejskiej, które odpowiadają rzeczywistym wymogom i standardom, jakim musi odpowiadać ustawodawstwo karne państw członkowskich UE, a w przyszłości także Ukrainy.

Słowa kluczowe: polityka karna, ustawodawstwo karne, odpowiedzialność karna, prawo karne Unii Europejskiej, reforma prawa karnego.

German point of view, this would probably concern the principle of personal guilt (*Schuldprinzip*) and the principle of non-retroactivity. In this respect, the German Federal Constitutional Court has set strict rules according to which the German representative in the Council of the EU must apply the emergency brake¹⁵.

EU procedures on broadening definition of criminal offenses and sanctions in the area of particularly serious crime with cross-border dimension and establishing the need for its counteraction are promising for Ukraine as a future EU member; however, preparation of a new Criminal Code of Ukraine considering EU directives may already be relevant, despite its optionality today but fundamentality in the future.

For example, Directive (EU) 2018/1673 of the European Parliament and the Council dated October 28, 2018, on combating money laundering by means of criminal law includes objectives as well as a list of definitions in this area: definition of money laundering offenses, aiding and abetting, incitement, initiation and assassination attempt, punishment for individuals and legal persons, list of aggravating circumstances. Equally important is that the Commission must submit a report to the European Parliament and the Council by December 3, 2022, assessing the extent to which member states have fulfilled required measures to comply with this Directive.

Superficial analysis of this Directive (EU) 2018/1673 on money laundering by means of criminal law demonstrates only partial correspondence (Art. 209)¹⁶ of the current Criminal Procedural Code of Ukraine and the new Draft one (Art. 6.3.13)¹⁷. It refers to a title: the Directive is about money laundering, however, the current and the new Draft Criminal Code of Ukraine outline laundering of money and assets (income).

From our judgment, this also applies to inconsistency of disposition content with money laundering (property, assets, income). In this context, it would be desirable to reflect this rule on the basis of the text and forms of gradation of socially dangerous acts stipulated in the Directive. It also applies to penalties for natural persons for whom the Directive provides for a maximum term of imprisonment (at least 4 years), which does not comply with current Criminal Code of Ukraine, but has already been harmonized with the new Criminal Code of Ukraine (crime of the 3rd degree). At the same time, in our viewpoint, it is essential to impose liability on legal persons in the current and new Criminal Code of Ukraine. The current Criminal Code of Ukraine introduces the possibility of applying criminal law measures on legal persons (section XIV-1 of the Criminal Code of Ukraine), and criminal and legal measures regarding legal person (section 3.11 of a new Criminal Code of Ukraine) in the new Draft Criminal Code of Ukraine. Obviously, its title is not about criminal liability. In addition, Art. 8 of the Directive (EU) 2018/1673 provides a more specific and extensive list of sanctions that may be imposed on legal persons for money laundering: (a) exclusion from entitlement to public benefits or aid; (b) temporary or permanent exclusion from access to public funding, including tender procedures, grants and concessions; (c) temporary or permanent disqualification from the practice of commercial activities; (d) placing under judicial supervision; (e) a judicial winding-up order; (F) temporary or permanent closure of establishments which have been used for committing the offence.

The analysis of the European Union acts, views of researchers in the field of European Union criminal law, allows to state that in specific areas European Union member states implement activities aimed at convergence of substantive and procedural criminal legislation. This means that European Union criminal policy is currently being developed that already has a significant impact on Ukraine as an associate member and candidate for

¹⁵ Schroeder W. Limits to European Harmonisation of Criminal Law. *The European Criminal Law Associations' Forum*. № 2, 2020. P. 146. P. 144-148.

¹⁶ Кримінальний кодекс України. URL: <https://zakon.rada.gov.ua/laws/show/2341-14#Text>

¹⁷ Проект нового Кримінального кодексу України. URL: <https://newcriminalcode.org.ua/upload/media/2022/09/29/1-kontrolnyj-tekst-proektu-kk-29-09-2022.pdf>

the EU. Such an impact becomes even more important while formation of the new Criminal Code of Ukraine, which, in our opinion, given the speed of Ukraine's approach to the EU, can already include approaches essential for European Union member states. Selective analysis of the current Criminal Code of Ukraine and the new Draft one indicates that such amendments are possible and vital in the long term.

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