

## **Effectiveness of Harmonisation of Ukrainian Legislation with the European: Analysis of Mechanisms**

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### **Abstract**

The study is centred on harmonising Ukraine's legislation with European human rights and justice standards. Through rigorous content analysis, formal legal and comparative methods, analysis of legal acts, and the abstract logical method, the study uncovers a comprehensive range of problems that hinder the harmonisation process's efficiency. As a culmination of the study, a significant proposal is put forth: the enshrinement in the Constitution of Ukraine of the fundamental economic freedoms of free movement of goods, services, and capital. This proposal, along with creating a dedicated body for harmonising Ukrainian legislation with the EU *acquis communautaire* and the strategic focus on the slowest areas of harmonisation, is crucial for the future of Ukraine's legal system and its alignment with EU standards. An alternative method of conflict resolution in criminal justice - mediation - is proposed as a potentially effective tool for reducing the courts' workload and increasing the efficiency of case consideration. Prospects for future research may include harmonising certain branches of Ukrainian legislation where the process of harmonisation is the slowest, namely, "Freedom of Movement of Goods", "Freedom of Entrepreneurship and Provision of Services".

**Keywords:** harmonisation of legislation, European integration, harmonisation mechanisms, criminal justice, crime index, EU *acquis communautaire*.

### **Introduction**

The term "harmonisation" has a broad meaning (the adoption of EU law in the national legal system as a process through which it becomes part of the

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domestic legal order) and a narrow meaning (legal approximation of national norms to EU law). In a narrow sense, harmonisation means creating functional integrity from different parts that retain their functional characteristics, which means combining or adapting elements from various legal systems to each other without losing their independence.

The harmonisation of the two legal systems - Ukraine and the EU - is highly relevant today, including combating crime. A study (Simmler et al., 2023) shows that adherence to humanity's principles significantly reduces offenders' recidivism rate. Harmonising a candidate country's legislation with EU law is one of the prerequisites for EU membership. Legislative harmonisation aims to create a legal system in the country that does not contradict EU rules (Manhora et al., 2023). Compliance with European legal standards also opens up new opportunities for Ukraine's economy (Makhinchuk, 2021), which contributes to improving the justice system.

Ukraine applied for EU membership on 28 February 2022 and was granted candidate status in May 2022 (Oprysk, 2023). This does not mean the beginning of Ukraine's path to EU membership; instead, it is a continuation of Ukraine's European course, as defined by the Constitution of Ukraine (1996). However, the candidate status and Ukraine's determination to start accession negotiations as soon as possible accelerate the speed of legislative adaptation. Amid a full-scale war, Ukraine continues to reform its legislation to EU standards (Oprysk, 2023). Currently, Ukraine still has some way to go and a lot of work to do to harmonise its legislation with the EU to meet the political criteria for EU membership.

Based on a set of rules in the Treaties of Paris, Rome, Maastricht, Amsterdam, Nice and Lisbon, EU law is a comprehensive set of rules that create mutual rights and obligations between the contracting states (Roller, 2022). More precisely, the legal system comes into force on the territory of the Member States for those areas of competence recognised by the treaties. Thus, the legal system works with national legal systems, although in most cases, there are several practical problems with implementing European law (Karjalainen et al., 2022).

Any state that aspires to become a full EU member after obtaining candidate status and starting negotiations usually faces the challenges of fully adopting and implementing the *acquis communautaire*. *Acquis communautaire* refers to the rights and obligations established by EU member states, and its content includes EU legislation that binds member states (Morina & Peci, 2023).

The *Acquis communautaire* is an integral part of EU membership negotiations. Accession negotiations with candidate countries focus on harmonising national legislation with the *acquis*, and states must develop the

capacity of their public administration and judiciary to implement the *acquis* effectively.

Candidate countries must implement the *acquis* before joining the EU. Some exceptions are allowed only if they do not affect the functioning of the EU. These exceptions are temporary and should be limited in scope and duration. There is no actual agreement on the meaning of *acquis* during negotiations, as the outcome is pre-determined and involves fully adopting the *acquis*, except transitional rules (Braun, 2002).

The importance of the *acquis* lies in the fact that it ensures the homogeneity of the EU legal system, as it is based on the idea that it will not change in cooperation with other subjects of international law. The *acquis* guarantees the system's integrity by implementing EU legislation in the State Parties, while the EU candidate countries must adopt it. Considering Ukraine's European integration aspirations, a study of the mechanisms of harmonisation of Ukrainian legislation with the EU *acquis* is essential for improving the efficiency of this process.

### **Literature review**

The issue of harmonising Ukraine's legislation with the EU's and the mechanisms of this harmonisation are considered exclusively by Ukrainian researchers. At the same time, similar problems concerning other countries have been addressed in the scientific works of scholars from different countries (Qejvani, 2023). Researchers note that the definition of the European vector of Ukraine's development in the model of international cooperation as a priority involves using European standards in law. On its way to European integration, Ukraine continues to fulfil its obligations under the Association Agreement (Dir, 2024). However, this is impossible without careful adaptation work to bring the domestic legal system in line with the system in place in the EU (Horodyskyy et al., 2021). Creating a harmonious and effective system of legislation is one of the most critical areas of development of Ukraine's legal system in the context of adaptation to the EU *acquis* (Skichko, 2023).

Several studies have been devoted to harmonising Ukraine's legislation with the EU's in certain areas, such as copyright. As noted by scholars, copyright, as one of the branches of intellectual property (IP), grants time-limited exclusive rights that are automatically preserved in works of authorship (Pila & Torremans, 2019) in literary, artistic, scientific or other fields, such as literature, music, painting, etc. There are several justifications for copyright protection, and their significance depends on the specific legal tradition and jurisdiction (Goldstein & Hugenholtz, 2019). According to (Butt, 2023), handling criminal cases in the

context of a high crime index requires the judiciary to find new approaches to optimise processes and attract additional resources. One of the most critical functions of copyright in modern democratic societies is to protect freedom of expression, which is also a fundamental right under the European Convention on Human Rights (ECHR) and the EU Charter of Fundamental Rights (CFR). At the same time, copyright can also restrict the freedom of expression of others. Thus, copyright aims to balance individual authors' protection and the public's interest in access to knowledge and culture rather than monopolising expression (Couto, 2018).

Copyright law is widely harmonised under the EU copyright *acquis* – secondary EU legislation and the relevant case law of the Court of Justice of the EU. From the point of view of the Ukrainian copyright law and the EU *acquis*, this is interesting for several reasons. First, in the EU, copyright is closely linked to fundamental (human) rights and private property. Human rights and individual autonomy were not notably recognised and protected during the Soviet period of Ukraine's history, which immediately preceded Ukraine's independence. Ukraine and other countries formerly occupied by the Soviet Union, such as Estonia, Latvia, and Lithuania, had to rapidly develop respect for and protect human rights to join the Council of Europe (CoE), among other things. Secondly, although human rights and private property were not protected during a specific part of Ukrainian history, copyright legislation existed in the 19th and 20th centuries in all the states that dominated Ukraine's territory. However, in the Soviet Union, copyright could not lead to the natural protection of authors. Instead, it became a tool for promoting state policy. Thirdly, and continuing with the previous point, the legacy of Ukrainian history seems to have led to significant obstacles to the practical and rapid alignment of Ukrainian copyright with EU standards.

Although several EU copyright directives exist, *de facto* copyright lawmaking is primarily done through CJEU jurisprudence (Rosati, 2023; Ramahlo, 2019). This is particularly evident in the extensive case law on the right of publicity, which covers posting works on the Internet (Oprysk, 2022). Thus, law approximation or, more importantly, the enforcement of national legislation implementing EU secondary legislation requires a thorough knowledge of the CJEU jurisprudence to interpret it in line with the EU *acquis*.

In general, the authors believe that harmonisation with the EU *acquis* leaves room to promote changing national priorities, among other things, by using flexibilities in international regimes and national legal orders. The *acquis* guarantees the system's integrity by implementing EU legislation in the Member States, while the EU candidate countries must adopt it.

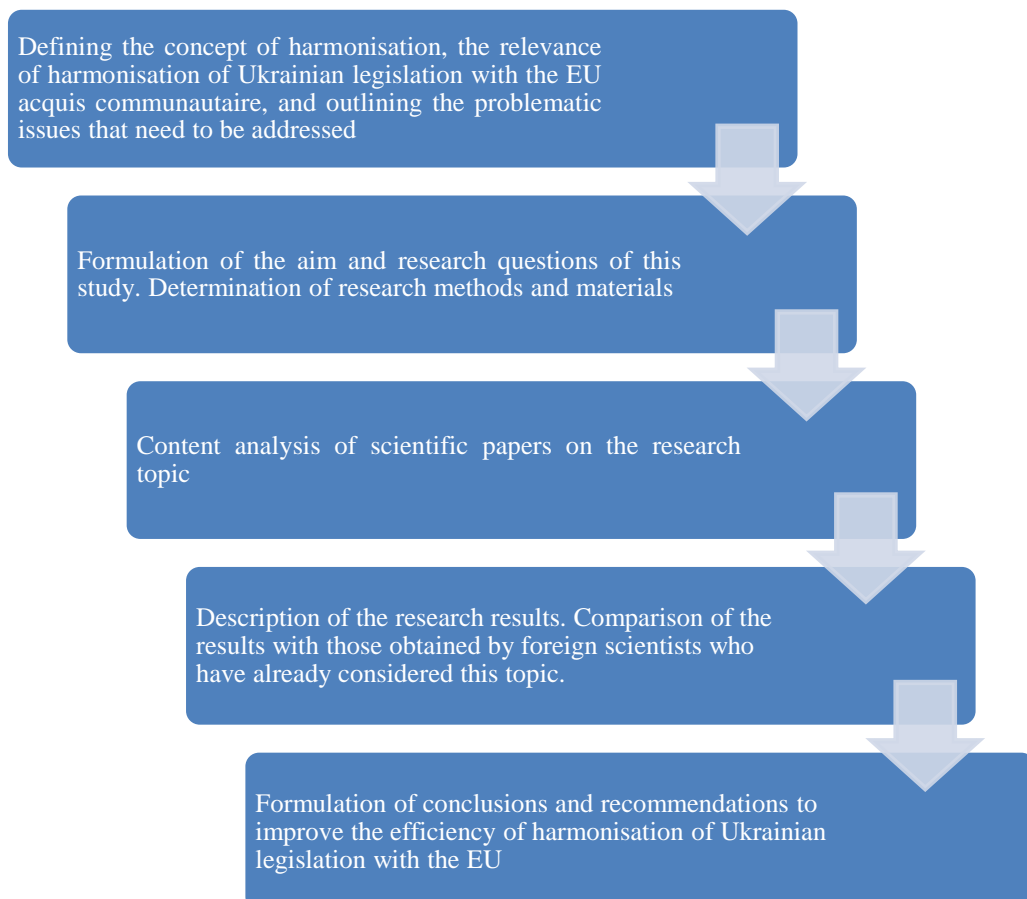
### Aim and objectives

This article *aims* to study the compliance of Ukraine's *acquis communautaire* with the European.

- identify the main features of the EU *Acquis Communautaire*;
- to define the mechanisms of the EU Member States' harmonisation of legislation;
- to analyse the current state and problems of Ukraine's harmonisation of legislation with the EU's;
- to formulate recommendations for improving the effectiveness of Ukraine's harmonisation of legislation with the EU's.

### Methods

The research procedure can be depicted using the following diagram (Figure 1):



**Figure 1.** The scheme of the study

## **Methods**

The study uses several methods: formal legal, comparative, legal act analysis, and abstract logical methods. Comparative and formal legal methods were used to study Ukraine's European and national regulations. Particular attention is paid to unique scientific research methods, particularly the interpretation of legal norms to study the content of international and national acts. The content analysis method was used for the literature sources of the study and aspects of the issue that scholars have already considered. The abstract and logical methods were used to formulate theoretical generalisations and conclusions for the study.

## **Sampling**

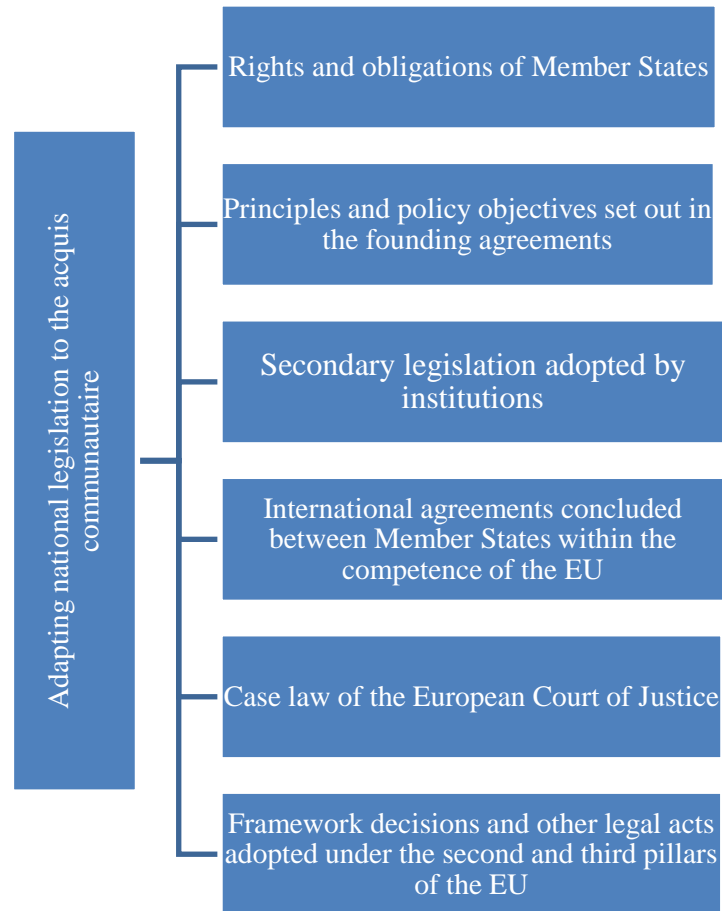
To conduct this study, a content analysis of the EU fundamental acts, particularly the TFEU and the EU Treaty (the Maastricht Treaty) (Verkhovna Rada of Ukraine, 2010), was carried out to determine the legal regulation of legislative harmonisation. The author has identified and reviewed the provisions relevant to the subject matter of the study, in particular, the provisions of Article 3, Sections V, VI of the Maastricht Treaty, etc.

To determine the current state and problems of harmonisation of Ukrainian legislation with the European, the author used the results of the study set out in the Cabinet of Ministers of Ukraine "Report on the Initial Assessment of the Progress in the Implementation of the European Union Legal Acts (EU Acquis)" (Cabinet of Ministers of Ukraine, 2023), as well as the official reports of the Cabinet of Ministers of Ukraine on the implementation of the association agreement between Ukraine and the European Union for 2021-2022 (Cabinet of Ministers of Ukraine, 2021; Cabinet of Ministers of Ukraine, 2022). "The Government Office", with more than 80 public authorities, government agencies, international projects and NGOs, reviewed about 28,000 acts of EU law for implementation in Ukrainian legislation over 6 months. As a result, it was determined which EU legal acts are subject to complete and partial implementation and which do not require implementation at all.

## **Results**

The analysis has shown that the term "harmonisation" means the adaptation of national legislation to the *acquis communautaire*, which includes the rights and obligations of member states, principles and policy objectives established by the founding treaties, secondary legislation adopted by the institutions, international agreements concluded between member states within the competence of the EU, case law of the European Court of Justice, framework

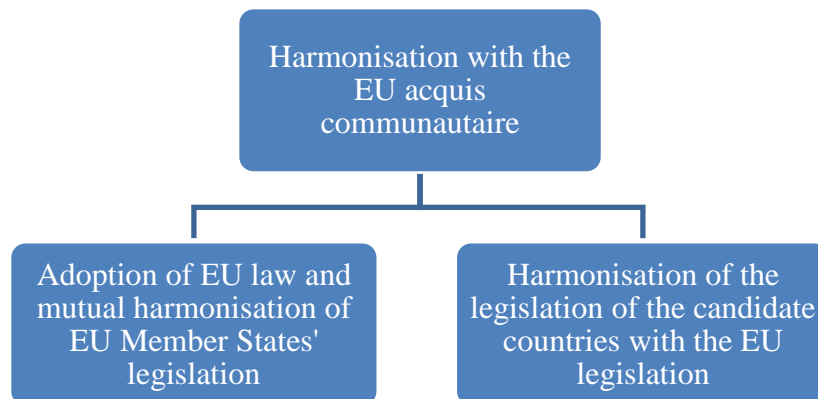
decisions and other legal acts adopted under the second and third pillars of the EU (Figure 2).



**Figure 2.** Components of the adaptation of Ukrainian legislation to the *acquis communautaire*

From a legal perspective, the term “harmonisation” includes:

- adoption of EU law and mutual harmonisation of legislation of EU member states;
- harmonisation of the legislation of the candidate countries with EU legislation (Figure 3).



**Figure 3.** Harmonisation of Ukrainian legislation with the EU acquis communautaire from a legal perspective

The convergence of states' laws that do not reach the level of total unification of legislation is called harmonisation. Harmonisation can be carried out by any rule that must comply with national legislation, and if such harmonisation achieves full equality, then we are talking about unification. Thus, harmonisation is the first step towards unification. Unification envisages special EU powers in many areas, a common market, a monetary and customs union, four economic freedoms and the removal of all legal restrictions for Member States, as well as many areas of law (labour, intellectual property, environment, public procurement, financial, customs, banking, contractual, and other areas of law).

Harmonisation of Member States' legislation effectively implements European integration processes, shared principles, and standards. Therefore, EU institutions can adopt directives and other acts to harmonise their legislation.

Harmonisation in the Member States usually means the approximation of legal systems in areas that do not fall within the exclusive competence of the EU and where EU law has priority and direct application. Areas where we are talking about the unification of law and the application of the same rules in all Member States are the founding treaties, regulations and directives in some instances. Other areas remain the competitive competence of the Member States. Mediation is becoming part of a broader trend towards harmonisation of legal processes in the EU, which aims to unify legislation and improve justice mechanisms across jurisdictions. This process supports initiatives aimed at reducing legal barriers and ensuring greater consistency in the application of rules, which includes using mediation as an alternative method of conflict resolution.

Mediation in criminal cases is an innovative approach that uses conflict resolution techniques to reach a mutually acceptable resolution of disputes between the offender and the victim. The process allows both parties to actively



participate in conflict resolution, which can help restore relationships and provide reparations. Mediation can reduce alienation and aggression between the parties, as it aims to find a standard solution rather than a traditional legal battle for the right.

Harmonising legal systems in the EU contributes to standardising legal approaches and improves cooperation in conflict resolution. Mediation is a harmonisation tool that provides an alternative mechanism for resolving criminal disputes. The importance of mediation in criminal justice also lies in the fact that it can contribute to a deeper understanding of the causes and consequences of a crime by the parties. Through direct communication, the victim can express their feelings and expectations of compensation, and the perpetrator can confess guilt and express remorse. In addition to criminal offences, it is also widely used in administrative measures.

The EU Treaty provides for the harmonisation of legal and administrative measures that directly affect the functioning of the common market. Article 3 (h) lists harmonisation of Member States' legislation as a tool for achieving the objectives. Chapter V is entitled "Harmonisation of legal provisions", with sections 100-102 defining the authorities' powers and procedures for harmonising legal provisions. Whereas Articles 94-97 provide that for the harmonisation of laws, Council directives should be used and transposed into national law to achieve specific results.

Legislative approximation can be achieved through the direct application of EU resources (treaties and regulations), which, from the moment of their adoption, are considered part of the domestic legal order and have the same effect as national laws. Instruments of approximation are also international conventions signed by countries. Regulations of the EU institutions are the most effective tool for harmonising the legal provisions of the Member States, and recommendations of the institutions, conclusions of meetings of representatives of the Member States, agreements between the states, protocols, memoranda, etc. are also important.

According to the Maastricht Treaty, harmonisation is used in the third pillar in addition to the first pillar (Chapter VI provides for the obligation of Member States to harmonise legislation to curb terrorism, trafficking in human beings, arms, drugs, corruption, and financial fraud and to define harmonised rules for such offences).

From Ukraine's perspective, harmonisation implies establishing EU law in national legislation through a specific harmonisation procedure and methods as a candidate country for EU membership. Approximating national legislation to EU law in the process of European integration is an essential step for any country

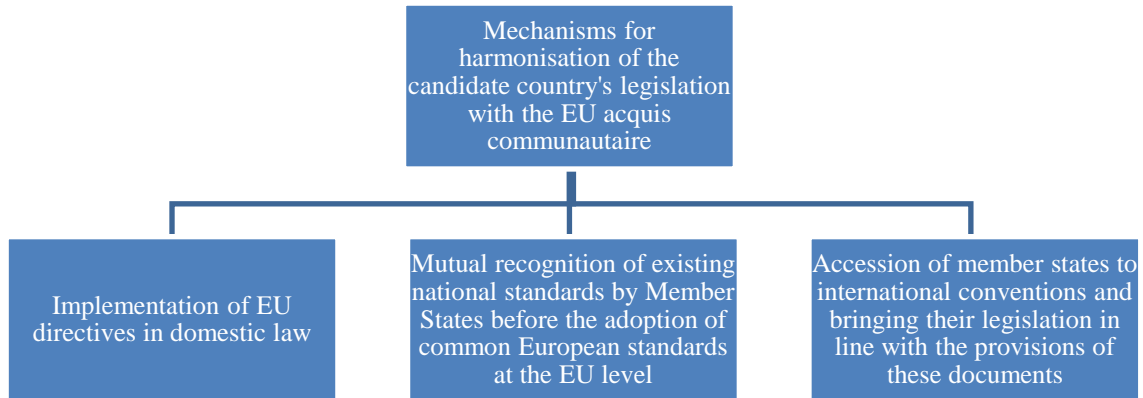
wishing to become a full member. One of the Copenhagen criteria is harmonising national legislation with EU law.

For the candidate countries, harmonisation is a process aimed at reforming their legal systems and harmonising them with EU law. With the signing of the Stabilisation and Association Agreement (SAA), candidate countries are obliged to harmonise their legislation with EU law, in particular, to meet the Copenhagen criteria and prepare for the next stage of EU membership negotiations. The candidate country treats EU law as an international rule that should be implemented into national law based on the Stabilisation and Association Agreement. Such coordination does not require direct application of EU laws, even if they have such effects. Still, it's necessary to incorporate them into national legislation, usually those relating to the four freedoms of domestic law.

Harmonisation will be effective if a formal approximation of national legislation is achieved and the adopted legislation is effectively implemented. However, this will largely depend on the use of appropriate institutional mechanisms.

Analysing the TFEU provisions allowed us to identify the primary mechanisms for harmonising Ukrainian legislation as a candidate country with the EU *acquis communautaire* (Figure 4).

According to the Cabinet of Ministers of Ukraine, many EU acts have already been implemented in Ukrainian legislation. Of these, the most significant number relates to such sections as Customs Union (742 acts), Statistics (245 acts), and External Relations (160 acts). At the same time, a lot of work remains to be done to incorporate acts in the following sections: "Transport Policy" (399 acts), "Food Safety, Veterinary and Phytosanitary Policy" (304 acts), "Freedom of Movement of Goods" (289 acts), etc. The general state of implementation of the EU *acquis communautaire* acts for 2023 is shown graphically, based on the analysis of the Cabinet of Ministers of Ukraine Reports (Fig. 5).



**Figure 4.** Main mechanisms of harmonisation of the candidate country's legislation with the EU acquis communautaire

Implementation started (up to 20%)

High level  
(up to 80%) - 6%

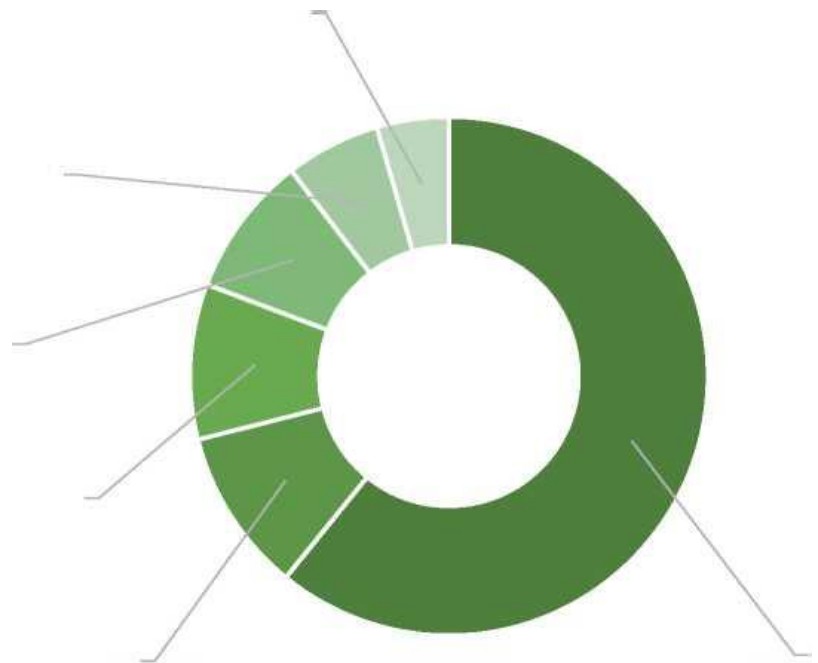
Average level  
(more than 80%) - 9%

Low level  
(up to 40%) - 10%

Partially implemented

(up to 60%) - 10%

Not implemented (61%)



**Figure 5.** The state of implementation of the acquis communautaire acts, 2023 (compiled by the author based on the Cabinet of Ministers of Ukraine Reports)

The above information shows a significant level of Ukraine's *acquis communautaire* with the EU. At the same time, a lot of work still needs to be done to implement the 2739 acts of the *acquis communautaire*. The country's status as an EU candidate and the ongoing full-scale Russian invasion force the government to move as quickly as possible to implement the reforms necessary to start accession negotiations. Justice and anti-corruption reforms have been moving forward at an extraordinary pace since 2022. Efforts towards European integration in the context of Ukraine's resistance to Russian aggression are becoming a catalyst for the development of the Ukrainian legal system.

### **Discussion**

The issue of the effectiveness of harmonisation of Ukrainian legislation with the EU and its mechanisms has been studied by many Ukrainian scholars in recent years. For example, Harasymiv considered the critical theoretical and methodological issues and prospects for harmonising national legislation with international legal standards. The author provides a similar concept of harmonisation to the one formulated in our study (Harasymiv, 2022). Another researcher focuses on generalising copyright law (Kondyk, 2023). We agree with his conclusion that harmonising Ukrainian legislation is essential to deepening our country's cooperation with the European Union and its member states (Kondyk, 2023). Other scholars focus their attention on the problems of harmonisation of legislation at different stages of Ukraine's European integration (Makarenko et al., 2023). However, the authors' conclusions on strengthening institutions and increasing transparency and accountability are too general and non-specific (Makarenko et al., 2023). Only one of the available research papers (Dir, 2024) attempts to analyse information from the Cabinet of Ministers of Ukraine reports considered in this study. That is, the "Report on the results of the initial assessment of the progress in the implementation of EU legal acts" and the Cabinet of Ministers of Ukraine reports on the implementation of the EU-Ukraine Association Agreement for 2015-2022) (Cabinet of Ministers of Ukraine, 2019).

Publications by foreign authors from countries that have also chosen the European integration course often address the issues of their countries' harmonisation of legislation with that of the EU. The scholar Ursu (2023) claims that the harmonisation of national legislation with European legislation means the process by which a country adapts its domestic legislation to the standards and rules set by the European Union. According to Burchard (2023), the consequences of a high crime index affect a society's overall security and stability, highlighting the need to develop more effective criminal justice strategies, including preventive measures and improved case management procedures. This harmonisation is

necessary to facilitate the country's international integration into the global economy and ensure that European standards protect its citizens' rights. The process of harmonisation can be complex and take several years, as all areas of activity, such as labour law, commercial law, personal data protection, human rights protection, environmental protection, etc., need to be examined and ensured that they are in line with European legislation.

At the same time, the scholar is more cautious than we are about the harmonisation process. In his opinion, harmonising criminal law and criminal procedure in the EU is subject to certain conditions. They can prevent negative convergence of national systems through mutual recognition and positive convergence through secondary EU law. In addition, the author has serious doubts about the EU's total respect for the rule of law, which is a prerequisite for any form of judicial cooperation (Ursu, 2023). The authors of another scientific publication also take a cautious position, but as a result of the analysis of the implementation of the provisions of EU legislation on freedom of movement in the national legislation of the Western Balkans (Vasilkov et al., 2023).

Other scholars agree that a candidate state needs to follow a gradual harmonisation process. However, they insist that the country is not obliged to fully harmonise national legislation before obtaining membership (Međak & Vehar, 2022).

Other scholars have drawn similar conclusions about the EU *acquis communautaire* through a thorough analysis of EU legal standards (Qejvani, 2023). The authors note the importance of the EU *acquis* (Schroeder, 2020). The *acquis* fully guarantees the system's integrity by implementing EU legislation in member states, while EU candidate countries must adopt it. The capacity to implement the *acquis* includes four stages: transposition, implementation, adaptability and implementation (Satzger, 2019).

Scholars are generally unanimous regarding the importance and necessity of the candidate country's harmonisation of national legislation in the EU *acquis communautaire*. Anyone wishing to join the EU must understand that constant changes to the country's legislation and the principal legal act - the Constitution - are necessary, starting with constitutional amendments related to EU membership.

## **Conclusions**

The study has shown a significant level of Ukraine's *acquis communautaire* with the EU. At the same time, much work remains to be done to implement the 2739 acts of the *acquis communautaire*. Evaluating the effectiveness of judicial reforms, conducting regular analyses of the crime index and introducing adaptive legal mechanisms can help reduce pressure on the

judiciary and improve the quality of justice. The country's status as an EU candidate and the ongoing full-scale Russian invasion force the government to move on the reforms needed to start accession negotiations as quickly as possible. Justice and anti-corruption reforms have been moving forward at an extraordinary pace since 2022. Efforts towards European integration in the context of Ukraine's resistance to Russian aggression are becoming a catalyst for the development of the Ukrainian legal system.

Limited political will, insufficient administrative capacity, corruption, weak enforcement mechanisms, and stakeholder resistance are the primary internal challenges that reduce the effectiveness of the harmonisation process.

### **Recommendations**

1. To enshrine in the Constitution of Ukraine the fundamental market freedoms of free movement of goods, services, capital and persons by adopting the provisions of the TFEU on limiting state influence on economic processes;
2. Pay attention to the areas where harmonisation is slowest, namely, "Freedom of movement of goods", "Freedom of entrepreneurship and provision of services", etc.
3. Establish a body responsible for Ukraine's *acquis communautaire* with the EU.

The above recommendations can improve the effectiveness of Ukraine's *acquis communautaire* with the EU *acquis*. Prospects for future research may include harmonising certain branches of Ukrainian legislation, where the process of harmonisation is the slowest, namely "Freedom of movement of goods," "Freedom of entrepreneurship and provision of services," etc.

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