

Methodology on EU law compliance check and tables of compliance drafting



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Table of contents:

1. Introduction
2. Law approximation: the basics
3. Legal drafting and current EU law compliance requirements in Ukraine
4. How to approach and conduct a compliance check

1. Introduction

The aim of this Methodology is to assist the Ukrainian civil servants in drafting EU law compliant legislation, drafting and using tables of compliance and compliance checking. In particular, the addresses are members of governmental staff, whose task is to ensure the EU law compliance and verify the levels of compliance of proposed legislation with the EU-Ukraine Association Agreement and, more broadly, European Union law. This Methodology does not solve the problems these civil servants may face but rather provides them with a necessary toolkit to assist in their everyday work. It starts with an overview of absolute basics, that is the aims and modalities of law approximation (section 2). The sections that follow are structured in a way that reflects the logical sequence of actions undertaken as part of the compliance checking. Section 3 guides the readers through the current rules on EU law compliance. In Section 4 the readers are guided how to approach and conduct a compliance check. Annex to the present Methodology comprises three law approximation checklists, which have been tailor-made for persons involved in planning of approximation, drafting of national rules as well as persons conducting a compliance check.

This Methodology complements Guidelines on Law Approximation (hereinafter referred to as the Guidelines). Both documents provide useful cross-references and should be considered as a package.

The Methodology has been developed in the framework of the EU funded Project "[Support to the implementation of the EU-Ukraine Association Agreement](#)" (short name 'Association4U') and consulted with the Governmental Office for European and Euro-Atlantic Integration by the Cabinet of Ministers of Ukraine and with the European Commission [Support Group for Ukraine](#) (SGUA).

2. Law approximation: the basics

2.1. A brief reminder of the basics is necessary at the outset (for a full account see chapter 1 of the Guidelines). This is the quantum of background material that the person conducting a compliance check should have in mind before she/he commences a compliance check. To begin with, the Association Agreement between the EU, Euratom, the Member States and Ukraine requires the Ukrainian authorities to approximate its national law with hundreds of EU legal acts. It also requires Ukraine to implement and to enforce such approximated rules. This will not happen overnight but rather during a prolonged period of time, allowing the Ukrainian authorities to gradually bring the law-book and practice into compliance with EU

legislation. For this reason, the Association Agreement and accompanying documents provide different deadlines resulting from years of negotiations between the parties. As part of the compatibility check, compliance with the deadlines should be taken into account. Furthermore, other bilateral agreements between the EU and Ukraine may require a degree of law approximation, too. Last but not least, Ukraine may engage in so-called voluntary approximation, going beyond its obligations laid down in the agreements with the European Union. To put it differently, Ukraine may treat EU legislation as model to develop its own laws in the areas not covered by the Association Agreement or legal acts not listed therein. If it opts for the latter, it is up to the Ukrainian decision-makers whether they take on board EU legal acts in their entirety or in parts. The person conducting compliance check should bear in mind that an option of going beyond what is required under the Association Agreement may be chosen.

2.2. It should be emphasized that the Association Agreement not only requires technical changes to national laws but also imposes an obligation on Ukraine to implement and enforce the newly adopted legislation. This translates into an objective need to create new institutions or to enhance capacities of the existing state apparatus. Needless to say that law approximation may have considerable budgetary implications. All of this explains the deadlines in the Association Agreement and/or accompanying documents. These deadlines cannot be unilaterally altered by the Ukrainian authorities. They are binding as negotiated and agreed to. A potential leeway may be negotiated directly with the European Union in the framework of EU-Ukraine joint institutions based on the Association Agreement. This, too, should be taken into account by a person conducting a compliance check.

Things to remember:

- Association Agreement requires approximation AND implementation,
- Draft legislation may provide for partial approximation if, for instance, at the given point in time full implementation is not feasible for political, legal or economic reasons,
- when in doubt, the person conducting a compliance check should liaise with drafters of the original proposal.

2.3. Persons conducting the compatibility check need to bear in mind that the Association Agreement provides for so-called dynamic approximation. It is common knowledge that EU law, just like any other legal system, develops rather quickly with hundreds of legal acts adopted on annual basis. Hence, the drafters of the Association Agreement agreed that the lists of EU legal acts which Ukraine is required to comply with may be adjusted to reflect the changing EU legal environment. It should be noted, however, that even if changes are not made to the Association Agreement itself, in most cases nothing is stopping the Ukrainian law-makers from opting for newly adopted EU legislation on voluntary basis. The decisions should be based on thorough comparative analysis of both, the existing EU secondary legislation (thus required by the Association Agreement) and newly adopted EU *acquis*. For a person conducting a compliance check it is essential to be familiar with idiosyncrasies of dynamic approximation as many drafts of Ukrainian legislation are likely to be based on most recent EU legal acts than what is required under the Association Agreement.

When the Ukrainian drafter chooses to approximate the Ukrainian legislation to the newly adopted *acquis* the deadlines referring to “old” *acquis* set down in the Association Agreement remain in force. However, problematic cases should be discussed and settled in the framework of EU-Ukraine bilateral bodies, including a possible revision of Annexes to the Association Agreement by the Association Council. It is important to bear in mind that without Annexes amended Ukraine is legally obliged to approximate its legislation to the acts of the EU *acquis* foreseen in the Association Agreement, thus a relevant gap analysis and compliance checks should take it into account.

Things to remember:

- Draft legal act may provide for approximation with a recent piece of EU *acquis* not listed in the Association Agreement or any of the accompanying documents,
- Draft legal act may provide for approximation with a piece of EU legislation, which is no longer in force. It may be a conscious decision of the drafters,
- Approximation to new EU *acquis* does not automatically amend the deadlines referring to old *acquis* set down in the Association Agreement.

2.4. Association Agreement requires the Ukrainian authorities to approximate domestic law with two main types of EU legislation: regulations and directives (for a complete presentation of sources of EU law see chapter 2 of the Guidelines). It should be emphasized, that the main difference between them, that is the way they are applied in the member states of the European Union, is irrelevant for the Ukrainian authorities. In both cases, tailor-made domestic provisions giving effect to them are required. EU regulations will not be directly applicable in Ukraine as it is the case of the EU Member States. By this token they may be treated, for the purposes of legal approximation, in a similar fashion. In many cases law approximation will result with adoption of new legal standards, however, they may also require repeal of existing Ukrainian legislation that is not compatible with the Association Agreement or relevant EU *acquis* listed therein.

EU legal acts have a number of features that should be taken into account when a compliance check is being conducted. To begin with, EU regulations and directives always start with preambles. Although Ukrainian legal acts do not have to reproduce them (as they are not envisaged by the Ukrainian law drafting rules), they should duly take the preambles into account in the main body of national measures. Hence, a person conducting compliance check should not be surprised to see a domestic provision formulated on the basis of both, a preambular provision and one coming from the main body of the legal act. At the same time, a person conducting compliance check should verify if a preamble of an EU legal act is duly reflected in the Ukrainian legislation. Without it, the domestic legislative effort may be incomplete and amount to partial approximation only. Furthermore, attention should be paid to the statutory definitions. While conducting a compliance check it is worth verifying if all relevant statutory definitions are included in the draft and, should that be applicable, if they are consistent with definitions in other domestic pieces of legislation, which are governing the area in question. One should bear in mind, however, that some provisions determining the scope and aims of EU legal acts as well as some of the statutory definitions will not be relevant for Ukraine. Consequentially, they do not have to be taken into account. It may also be necessary to check if definitions provided in other Ukrainian legal acts are

consistent across the board. Last but not least, it is also essential to note that some provisions of EU law will have optional character or provisions addressed only to selected EU Member States which are unlikely to be of any relevance for the Ukrainian law-makers.

Things to remember:

- EU regulations and EU directives may be treated in a similar fashion for the purposes of law approximation,
- Approximation requires adoption of new legislation compatible with relevant EU acquis as well as repeal of provisions, which contradict the Association Agreement and EU secondary legislation listed therein,
- EU legal acts contain preambles, they are part of legal acts and need to be taken into account in domestic measures aimed at approximation,
- EU legal acts may contain optional provisions,

2.5. Approximation in stages

On the one hand, Ukraine has the obligation to approximate with EU legal acts listed in the Association Agreement. On the other hand, it does not have to do it immediately with its entry into force. This is why the annexes to the Association Agreement as well as accompanying documents provide for deadlines, which in some cases span for years. It allows Ukraine to prepare its economy and the business community for a new regulatory regime. Furthermore, it allows the Ukrainian authorities to approximate in stages. This is a perfectly agreeable method as long as the required level of compliance is achieved by the deadline set in the Association Agreement or any of the accompanying documents (for instance, in decisions of the Association Council). Bearing this in mind, the person conducting the compliance check should be aware that partial approximation envisaged in a draft piece of legislation may not be accidental but rather a part of longer process. Furthermore, there is nothing stopping the Ukrainian authorities from approximating with EU law by means of different types of domestic legal acts. Hence, a draft act of parliament may provide for partial approximation, while full approximation would be achieved *qua* by-laws at a later stage. In the latter case, the compliance check specialist should verify whether the draft legal act or its explanatory memorandum foresee further implementation measures, such as the adoption of by-laws or subsequent laws. Such further implementation shall be mapped out in compliance with the approximation deadlines set down in the AA.

Things to remember:

- Approximation may be conducted in stages, hence initially only partial approximation may be envisaged and perfectly acceptable, if further approximation is mapped out consistently and according to the deadlines,
- Relevant provisions may be split between different types of Ukrainian legal acts.

2.6. Full or partial approximation

Unless stated otherwise in the Association Agreement, Ukraine has the obligation to achieve full approximation with required EU legal acts. It is essential for the person conducting the

compliance check to appreciate the difference between these two notions. Full approximation is achieved when all relevant provisions of an EU legal act are included in the Ukrainian legislation. This does not equal to a verbatim reproduction of a text from an EU regulation or EU directive. The law drafters need to take into account other sources of EU law, including the jurisprudence of the Court of Justice. Partial approximation is achieved when only selected provisions of an EU directive or EU regulation, which are relevant for Ukraine, are given effect in the national legislation. The term in question is very broad as partial approximation extends from very low levels of approximation to quite high (but not full).

Things to remember:

- Incomplete/partial approximation should be identified in statements on EU compliance and relevant justification should be provided (approximation in stages; political decision, etc.).

2.7. Provisions on remedies and domestic institutions

EU law operates under the principle of procedural autonomy of the Member States. This means that - as a matter of principle - it will provide only substantive rules while their enforcement will be left to the domestic law. A typical provision containing a general rule on enforcement looks as follows:

Article 17
**Directive 2000/78 establishing a general framework for equal treatment in
employment and occupation**

Sanctions

"Member States shall lay down the rules on sanctions applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are applied. The sanctions, which may comprise the payment of compensation to the victim, must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by 2 December 2003 at the latest and shall notify it without delay of any subsequent amendment affecting them."

Approximation with such provisions requires a considerable effort and in order to make an assessment of its compliance it is frequently necessary to conduct a comparative analysis, taking into account a variety of solutions envisaged in national laws of the Member States. For that purpose, the drafters as well as persons conducting the compliance check need to familiarize themselves with implementation reports and other policy documents published by the European Commission or selected domestic authorities. Furthermore, outputs of academic research may come in handy. Any proposals envisaged in Ukrainian draft legislation will have to be checked against the principle of effectiveness. Any remedies and procedures regulated in national law must guarantee effective implementation and enforcement of adopted rules. The legal drafter and EU law compliance check experts might also study sanctions existing in domestic legislation for similar offences and evidence of their effectiveness, proportionality and dissuasiveness which could constitute a reference for drafting enforcement provisions.

Things to remember:

- Provisions on enforcement, sanctions and procedures will not be found in EU legislation but will have to be solely based on existing or new domestic laws,
- For that purpose, it may be necessary to conduct a comparative analysis and learn from experience of EU Member States.

2.8. Choice of domestic legal acts for approximation

The choice of domestic legal acts for approximation is purely a matter of national law, especially the requirements set by a domestic constitution and good law drafting practices. The only requirement stemming from EU law is that EU directives should be transposed *qua* binding legal acts. Mere circulars will not be acceptable. In the context of legal approximation, the same principles should apply to EU regulations as they also require approximation under the terms of the Association Agreement (and unlike in the EU itself, they are not directly applicable).

Things to remember:

- The choice of a legal act/legal acts to be used for approximation is a matter for the Ukrainian authorities to decide and as a rule should not be assessed in statements on EU law compliance,
- However, it will be necessary to approximate *qua* binding domestic legislation and the incorrect use of non-binding acts for the purposes of approximation should be reported in statements on EU law compliance.

3. Legal drafting and current EU law compliance requirements in Ukraine

In this section of the Methodology the readers are guided through the requirements imposed by Ukrainian law. The Statement of Compatibility employed below is required as per [paragraph 35 of the Rules of Procedure of the Cabinet of Ministers of Ukraine and its Annex 1](#) (Додаток 1 (до пункту 3 § 35)).

**STATEMENT
on compliance of the draft act [insert a title of the legal act] with the obligations of
Ukraine in European integration area and with *acquis communautaire***

Draft Act prepared by

[insert details of the institution that prepared the draft]

- 1) Belonging of a draft act to the areas where legal relationships are regulated by *acquis communautaire*.**

Information if a draft legal act falls within the scope of EU law. This information should be provided by the drafter of a legal act. The role of the person conducting a compliance check is to verify if the information is provided and, if so, whether it is correct. Note that in some areas, although the EU has no competence, the Member States are not permitted to adopt/keep legislation, which is in breach of freedoms of internal market (for instance direct taxation). If there is no acquis in a given area, this section of the Statement should include a statement: "not applicable". For example:

"This draft does not fall within the scope of EU law."

OR

"This draft falls within the scope of EU law, however it remains outside the scope of the Association Agreement therefore Ukraine has no obligation to fully approximate with EU law in this respect."

OR

"This draft falls within the scope of EU law. It covers matters of non-discrimination, which is governed by Article 19 TFEU and EU secondary legislation. In particular, it is regulated in Directive 2000/78 establishing a general framework for equal treatment in employment and occupation."

2) Obligations of Ukraine in European integration area (including international legal obligations).

This section is of paramount importance. It allows readers to verify if a draft legal act falls under the Association Agreement or any other treaty between Ukraine and the European Union. This section, too, should be filled by the drafters of a legal act. The role of a person conducting a compliance check is to verify if the statement is accurate and complete and to provide the decision-makers with independent legal opinion. This is where the inventory developed as per section 3 of this Methodology may become very handy. This section should include references to relevant provisions of the Association Agreement (including its Annexes) or any other relevant legal acts. This could include, for instance, the Energy Community Treaty or any other sectoral agreement. This section does not have to be very elaborate, it is enough if it contains a detailed reference to a particular provision(s) of the Association Agreement or any other legal act). For instance:

"This draft gives effect to Directive 2000/78 establishing a general framework for equal treatment in employment and occupation. Approximation with it is required by the Association Agreement in Annex XL to chapter 21. Ukraine has the obligation to approximate with the Directive in question within four years from entry into force of the Association Agreement."

3) Program documents in European integration area

This section should be filled by the drafters of a legal act. As with sections 1-2, the task of the person conducting a compliance check is to make sure this section is filled properly and the information provided is as accurate as possible. It is necessary to include references to relevant law approximation plans, road maps or strategies. For instance:

"This draft is envisaged by Road Map on xxx, section xxx, page xxx"

4) Comparative legal analysis

Detailed information on compliance of a draft act with the relevant provisions of EU law and international legal obligations of Ukraine in European integration area is provided in one of the two tables of compliance as reproduced below. The choice of the table depends on the content of the draft Act and priorities or terms for implementation of international legal obligations in European integration area. Table No 1 is prepared if the deadline for approximation envisaged in the Association Agreement (or any other relevant international agreement between Ukraine and the EU) exceeds 2 years from the time of drafting. The table should be prepared by the drafters of a legal act. The key reason of drafting compliance tables is to ensure a user-friendly overview of the way of transposition of all relevant EU law provisions and, at the same time, an overview of the degree of compliance of all relevant provisions of Ukrainian law with EU legislation.

The role of the person conducting a compliance check is to check if the table is filled correctly and comprehensively. Furthermore, the task is to check if the statement of compatibility is accurate. This will require a good knowledge of EU law, in particular, all sources listed in the inventory prepared in the preliminary stages.

Table No 1

No	Provisions of draft act	Relevant provisions of <i>acquis communautaire</i>	Assessment of compliance with <i>acquis</i> (complies, does not contradict, partially takes into account, does not comply, not regulated)	Relevant provisions of the sources of international legal obligations of Ukraine in European integration area	Assessment of conformity with international legal obligations (complies, does not contradict, partially takes into account, does not comply, not regulated)
1	2	3	4	5	6

Section 1 is straight-forward, it includes a reference to a number of provision contained in the draft Ukrainian legal act.

Section 2 contains the text of a domestic provision. It is important to divide the text into small sections as this would give a clear picture as to the contents of particular norms.

Section 3 contains the text of relevant EU provision regardless their implementation is obligatory for Ukraine or not. Where applicable, it should also contain information as to interpretation of the provision in question in soft law instruments as well as jurisprudence of the Court of Justice.

Section 4 contains information as to the level of compliance with pieces of EU legislation mentioned in Section 3. The options available to the drafters are:

- compatible,
- not contradicting,
- partially compatible,
- not compatible,
- not regulated by EU law.

Section 5 contains information international legal obligations of Ukraine in the scope of regulation of the draft Ukrainian act under consideration.

Section 6 contains information as to compatibility of relevant provision with international obligations of Ukraine mentioned in the Section 5. The options available to the drafters are:

- compatible,
- not contradicting,
- partially compatible,
- not compatible,
- not regulated by EU law.

Bearing the above in mind a sample table may look as follows:

Table No 1 Draft xxx on rights of passengers [fictitious]

No	Provisions of draft act	Relevant provisions of <i>acquis communautaire</i>	Assessment of compliance with <i>acquis</i> (complies, does not contradict, partially takes into account, does not comply, not regulated)	Relevant provisions of the sources of international legal obligations of Ukraine in European integration area	Assessment of conformity with international legal obligations (complies, does not contradict, partially takes into account, does not comply, not regulated)
1	2	3	4	5	6
Art. 3	In case of delay passengers shall be offered free of charge meals and refreshments in a reasonable relation to the waiting time.	Regulation 261/2004 Art. 9 1. Where reference is made to this Article, passengers shall be offered free of charge: (a) meals and refreshments in a reasonable relation to the waiting time; (b) hotel accommodation in cases; - where a stay of one or	Partly compliant with Article 9 of Regulation 261/2004. It does not take into account Art. 9.1(b) and Article 9.2-9.3.	Art. 137 of AA and Art. XXX of EU-Ukraine Common Aviation Area Agreement	Partial compliance with Art. XXX of EU-Ukraine Common Aviation Area Agreement

		<p>more nights becomes necessary, or</p> <ul style="list-style-type: none"> - where a stay additional to that intended by the passenger becomes necessary; <p>2. In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails.</p> <p>3. In applying this Article, the operating air carrier shall pay particular attention to the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied children.</p>			
Art. 4	<p>a. "denied boarding" means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation.</p> <p>b. Denied boarding covers cases of overbooking as well as boarding is denied on other grounds, including operational reasons.</p> <p>c. Denied boarding includes a situation where, in the context of a single contract of carriage involving a number of reservations on immediately connecting flights and a single check-in, an air carrier denies boarding to some</p>	<p>(j) "denied boarding" means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;</p>	<p>Full compliance with Article 2 para. j of Regulation 261/2004. It takes into account not only the text of the Regulation but also the jurisprudence of the Court of Justice. Point b takes on board judgment of the Court of Justice in case C-22/1 <i>Finnair Oyj v. Timy Lassooy</i>. Point c takes into account judgment of the Court of Justice in case C-321/11 <i>Germán Rodríguez Cachafeiro, v Iberia, Líneas Aéreas de España SA</i>.</p>	<p>Art. 137 of AA and Art. Xxx of EU-Ukraine Common Aviation Area Agreement (full compliance)</p>	<p>Convention for the Unification of Certain Rules for International Carriage by Air, opened for Signature at Montreal on 28 May 1999 (ICAO Doc No 4698).</p>

	<p>passengers on the ground that the first flight included in their reservation has been subject to a delay attributable to that carrier and the latter mistakenly expected those passengers not to arrive in time to board the second flight</p>				
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Table No 2 has to be produced if approximation is required under the Association Agreement or any other international treaty in the field of European Integration and the deadline is two years away at the time of drafting. In such case the point of reference is EU law, not Ukrainian legislation. Hence, if one draft law envisages approximation with several pieces of EU acquis, the drafters should prepare one table of compliance per one EU legal act. They should reproduce EU legal acts in their entirety and include references to Ukrainian provisions which are already in force as well as the newly drafted ones.

Table No 2

No	Provisions of the EU act and\or other sources of acquis (provisions are given article-by-article)	International legal obligations in European integration area (it is necessary to specify the norms relating to the provisions given in Column 2)	Conformity assessment (assessment of Ukrainian legislation compliance with the provisions set out in columns 2 and 3 (complies, does not contradict, partly complies, does not comply, not regulated), it's necessary to specify the norms Ukraine with reference to the legal acts regulating the relevant subject and with relevant provisions implemented)	Further measures required for a proper approximation of legislation (necessary draft laws, regulations, guidelines, etc.)
1	2	3	4	5

Section 1 is straight-forward, it includes a reference to a number of provision contained in the draft Ukrainian legal act.

Section 2 contains the text of an EU provision. Where applicable, it should also contain information as to interpretation of the provision in question in soft law instruments as well as jurisprudence of the Court of Justice.

Section 3 contains references to the Association Agreement and/or any other international treaties in the field of European Integration.

Section 4 contains reference to the proposed domestic legislation as well as information as to the level of compliance with relevant pieces of EU legislation. The options available to the drafters are:

- compatible,

- not contradicting,
- partially compatible,
- not compatible,
- not regulated by EU law.

Section 5 contains information as to future plans regarding a given piece of EU legislation, that is – if relevant - steps that need to be taken in order to achieve full compliance.

Bearing the above in mind a sample table may look as follows:

Table No 2 Regulation 261/2004 [fictitious]

No	Provisions of the EU act and\or other sources of acquis (provisions are given article-by-article)	International legal obligations in European integration area (it is necessary to specify the norms relating to the provisions given in Column 2)	Conformity assessment (assessment of Ukrainian legislation compliance with the provisions set out in columns 2 and 3 (complies, does not contradict, partly complies, does not comply, not regulated), it's necessary to specify the norms Ukraine with reference to the legal acts regulating the relevant subject and with relevant provisions implemented)	Further measures required for a proper approximation of legislation (necessary draft laws, regulations, guidelines, etc.)
1	2	3	4	5
Art. 9 (1a)	1. Where reference is made to this Article, passengers shall be offered free of charge: (a) meals and refreshments in a reasonable relation to the waiting time;	Art. 137 of AA and Art. Xxx of EU-Ukraine Common Aviation Area Agreement (partial compliance).	Article 3 of the Draft: partly compatible.	As per Road Map XXX full compliance planned for 2019.
Art. 9 (1b)	(b) hotel accommodation in cases; - where a stay of one or more nights becomes necessary, or - where a stay additional to that intended by the passenger becomes necessary;	Art. 137 of AA and Art. Xxx of EU-Ukraine Common Aviation Area Agreement (partial compliance).	No relevant provision of Ukrainian law.	As per Road Map XXX full compliance planned for 2019.
Art. 9 (2)	2. In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails.	Art. 137 of AA and Art. Xxx of EU-Ukraine Common Aviation Area Agreement (partial compliance).	No relevant provision of Ukrainian law.	As per Road Map XXX full compliance planned for 2019.
Art. 9 (3)	3. In applying this Article, the operating air carrier shall pay particular	Art. 137 of AA and Art. Xxx of EU-Ukraine	No relevant provision of Ukrainian law.	As per Road Map XXX full compliance planned for 2019.

	attention to the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied children.	Common Aviation Area Agreement (partial compliance).		
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5) Expected results

*In this section the results of economic, social and political analysis of act implementation and, if necessary, justification of the ways selected for implementation of relevant EU act provisions should be presented. This should include elaboration on, *inter alia*:*

- the choice of domestic legal act,*
- reasons behind particular solutions, in particular if they are not fully compatible with EU law,*
- if the subject area covers measures required to liberalize trade between Ukraine and the EU this should also be explained.*

Results of regulatory impact assessment should also be presented (or reference to such assessment should be given).

6) General conclusion

The final section should comprise summarized information on compliance of draft act with the obligations of Ukraine in European integration area, including international legal obligations, and with EU acquis. If the draft act does not comply with the obligations in European integration area (excluding international and legal obligations), program documents of the CMU or the acquis, the necessity of act adoption and its validity shall be justified by the drafter.

4. How to approach and conduct a compliance check

4.1. Compliance check has a straight-forward aim, that is to verify if a proposed piece of domestic legislation is compatible with the Association Agreement and, in more detail, with a particular piece of EU legislation (or several EU legal acts). The most important tools for that activity include the inventories prepared as a preparatory stage and the statements of compatibility, including tables of compliance, developed by the drafters of legal acts.

The modalities of EU compliance check of draft legislation vary across EU Member and Associated States, from a basic and quick scan comparative analysis to a thorough verification of actual compliance. There is no "one size fits all" approach, each and every country has its own specificity. Having said that, it is important to emphasize that it should be conducted in steps and on continuous basis as the legal act goes through different stages of law-making procedures. This Methodology has been prepared for the benefit of the

personnel of the governmental administration and other experts involved in law approximation at the level of planning, drafting and compliance checking.

It should be noted, that before any compliance check is commenced it is necessary to make a number of preliminary steps:

- preparation of inventory of relevant EU legal acts, policy documents and case-law,
- preparation of inventory of relevant Ukrainian legal acts and draft legislation, policy documents, including draft by-laws supplementing the draft legislation, if available,
- verification if the table of compliance and associated documents (including the statement of compatibility) meet the requirements envisaged by Ukrainian law.

4.2. To begin with, a complete understanding of EU law is required before a comparative analysis is conducted. For that purpose, it is worth preparing a basic inventory of documents that may be required for the substantive work. This should be prepared alongside other preparatory documents covering relevant domestic law. There is no one size fits all approach as to how such an inventory should look like. The example presented below may serve as an inspiration.

Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation	
EU-Ukraine AA	<p>Article XXX</p> <p>Ukraine will carry out approximation of its legislation to the EU acts and international instruments referred to in Annex XXX to this Agreement in accordance with the provisions of that Annex.</p> <p>Deadline for Directive 2000/78/EC: within three years of the entry into force of the Agreement</p>
Proposals	<p>Proposal for a Council Directive establishing a general framework for equal treatment in employment and occupation, COM (1999) 565</p>
Reports	<p>1) Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - The application of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, COM(2008) 225 final</p> <p>2) Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('Racial Equality Directive') and of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ('Employment Equality Directive'), SWD(2014) 5 final</p>
Selection of case-law	<p>- C-157/15 Samira Achbita and Centrum voor gelijkheid van kansen en voor racismebestrijding v G4S Secure Solutions NV, ECLI:EU:C:2017:203</p> <p>- C-188/15 Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA, ECLI:EU:C:2017:204</p> <p>- C-548/15 I.J. de Lange v Staatssecretaris van Financiën, ECLI:EU:C:2016:850</p> <p>- C-539/15 Daniel Bowman v Pensionsversicherungsanstalt, ECLI:EU:C:2016:977</p> <p>- C-443/15 David L. Parris v Trinity College Dublin and Others, ECLI:EU:C:2016:897</p> <p>- C-423/15 Nils-Johannes Kratzer v R+V Allgemeine Versicherung AG, ECLI:EU:C:2016:604</p> <p>- C-406/15 Petya Milkova v Izpalnitelen direktor na Agentsiata za privatizatsia i sledprivatizatsionen control, ECLI:EU:C:2017:198</p> <p>- C-395/15 Mohamed Daoudi v Bootes Plus SL and Others, ECLI:EU:C:2016:917</p> <p>- C-258/15 Gorka Salaberria Sorondo v Academia Vasca de Policía y Emergencias, ECLI:EU:C:2016:873</p> <p>- C-159/15 Franz Lesar v Beim Vorstand der Telekom Austria AG eingerichtetes Personalamt, ECLI:EU:C:2016:451</p> <p>- C-122/15 Proceedings brought by C, ECLI:EU:C:2016:391</p> <p>- C-441/14 Dansk Industri (DI), acting on behalf of Ajos A/S v Estate of Karsten Egil Rasmussen, ECLI:EU:C:2016:278</p>

- C-432/14 [O v Bio Philippe Auguste SARL](#), ECLI:EU:C:2015:643
- C-530/13 [Leopold Schmitzer v Bundesministerin für Inneres](#), ECLI:EU:C:2014:2359
- C-529/13 [Georg Felber v Bundesministerin für Unterricht, Kunst und Kultur](#), ECLI:EU:C:2015:20
- C-515/13 [Ingeniørforeningen i Danmark v Tekniq](#), ECLI:EU:C:2015:115
- C-417/13 [ÖBB Personenverkehr AG v Gotthard Starjakob](#), ECLI:EU:C:2015:38
- C-416/13 [Mario Vital Pérez v Ayuntamiento de Oviedo](#), ECLI:EU:C:2014:2371
- C-354/13 [Fag og Arbejde \(FOA\) v Kommunernes Landsforening \(KL\)](#), ECLI:EU:C:2014:2463
- C-20/13 [Daniel Unland v Land Berlin](#), ECLI:EU:C:2015:561
- Joined cases C-501/12 to C-506/12, C-540/12 and C-541/12 [Thomas Specht \(C-501/12\)](#), [Jens Schombera \(C-502/12\)](#), [Alexander Wieland \(C-503/12\)](#), [Uwe Schönefeld \(C-504/12\)](#), [Antje Wilke \(C-505/12\)](#) and [Gerd Schini \(C-506/12\) v Land Berlin](#) and [Rena Schmeel \(C-540/12\)](#) and [Ralf Schuster \(C-541/12\) v Bundesrepublik Deutschland](#), ECLI:EU:C:2014:2005
- C-492/12 [Siegfried Pohl v ÖBB Infrastruktur AG](#), ECLI:EU:C:2014:12
- C-363/12 [Z. v A Government department and The Board of management of a community school](#), ECLI:EU:C:2014:159
- C-286/12 [European Commission v Hungary](#), ECLI:EU:C:2012:687
- C-267/12 [Frédéric Hay v Crédit agricole mutuel de Charente-Maritime et des Deux-Sèvres](#), ECLI:EU:C:2013:823
- C-81/12 [Asociația ACCEPT v Consiliul Național pentru Combaterea Discriminării](#), ECLI:EU:C:2013:275

In such a simple table, all relevant documents and jurisprudence of the Court of Justice are grouped in one place. This considerably eases the work of a person conducting a compliance check. An inventory may be easily compiled by using EUR-Lex database available at <http://eur-lex.europa.eu>. A tailor-made Manual on how to navigate it is provided in the Annex to Guidelines on Law Approximation. Furthermore, a lists of jurisprudence that may be of relevance is also provided in the annex to the Guidelines (Review of the Case-Law of the EU Court of Justice). Once an inventory is compiled it is essential to familiarize oneself with the relevant information provided there. It will serve as background information facilitating a robust compliance check of proposed legislation as to its compliance with a given piece of EU legislation.

4.3. A table of compliance is one of the most important tools for compliance checking. It is usually annexed to a statement of compatibility and becomes a part of legislative package. Ideally it should be prepared already at the time of planning of approximation in order to allow for an early determination of legal gaps between the existing Ukrainian legislation and the standard required under a relevant EU legal act. That would, surely, facilitate a more robust planning of law approximation. In reality of EU Member States, as well as third countries aligning their legislation with EU law, the tables of compliance are frequently prepared at later stages and may be far from perfect. As explained in section 3 of the present Methodology, the Ukrainian Rules of Procedure of the Cabinet of Ministers provide a requirement for tables of compliance, which are part of the statement of compatibility to all draft laws developed by ministries and agencies.

4.4. Compliance check

As explained earlier in the present Methodology, in order to proceed with a robust law approximation exercise, compliance checks should be conducted at several stages of the decision-making process. Depending on who conducts it and at what stage, the step-by-step checklist will differ. Ideally, the most comprehensive activities rest on the shoulders of the drafters of domestic provisions. The main role of those conducting compliance checks is more modest and should center on the comparative analysis of tables of compliance. In

Annex to the present Methodology the readers will find three different tables comprising checklists applicable to those different stages of policy and law-making.

4.5. Legal statement on EU law compliance

The content of the legal statement on compliance with obligations of Ukraine in the field of European integration and EU law should reflect all the necessary information based on relevant comparative analysis.

In case of non-compliance of the draft legal act with these obligations and/or EU law, the legal statement should contain sufficient information and argumentation proving it. In case of provisions found compliant with the EU law / obligations of Ukraine, the reasoning is not necessary.

The statement may contain supporting information (for example information on relevant case-law of the EU Court of Justice or guidance documents of the European Commission).

The legal statements on EU law compliance could follow subsequent order:

1. References between the draft act and the obligations of Ukraine in the field of European integration
2. Indication of relevant legal acts of the EU and supportive documents
3. Provision by provision comparative legal analysis, including legal reasoning (argumentations) of all identified non-compliances and partial compliances.
4. Recommendations on possible bringing of relevant draft to the compliance with EU law / obligations of Ukraine in the field of European integration
5. Conclusion on the compliance of the draft act with obligations of Ukraine in the field of European integration (compliant / non-compliant / partially compliant).

The content of this publication does not reflect the official opinion of the European Union. Responsibility for the information and views expressed in it lies entirely with the authors.

Annex:

Checklists for civil servants involved in planning of approximation; drafting of domestic provisions and conducting a compliance check



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Checklist for staff involved in planning of law approximation	
Step	Comments, examples
1. Identification of relevant short-term and mid-term obligations of Ukraine under the EU-Ukraine Association Agreement, including potential decisions of Association bodies amending them	<p>As the first step the personnel involved in planning of law approximation should verify the existing obligations under the Association Agreement. This should cover not only the AA itself but also relevant decisions of the Association Council and the text of Association Agenda. Matters to be verified include:</p> <ul style="list-style-type: none"> - whether a piece of EU legislation listed in the Association Agreement (or any other relevant instrument) is still in force, - should the listed legal act of the EU be repealed, or subject to a pending revision, a verification is required if: <ul style="list-style-type: none"> i. as per AA the option for dynamic approximation and revision of the AA or any other instrument has been chosen, ii. a decision was made to proceed with approximation with the old piece of legislation - scope of the obligation to approximate (entire EU legal act or only parts of it), - type of the obligation to approximate: the best endeavors clause or a straightforward obligation to approximate, - deadline for approximation and, consequentially, whether a particular piece of EU legislation should be penciled in as a short-term or mid-term priority.
2. Identification of other relevant obligations of Ukraine in the field of European Integration	<p>Furthermore, it should be also verified if other bilateral or multilateral agreements between the EU and Ukraine (alone or with other countries) require approximation with EU law. This should extend to, <i>inter alia</i>,</p> <ul style="list-style-type: none"> - Energy Community Treaty, - Agreements on Civil Aviation (bilateral or multilateral), - WTO obligations. <p>These obligations should be also taken into account when short and mid-term planning is conducted.</p>
3. Identification of all relevant Ukrainian legal acts and draft legal acts, including bylaws	<p>Once we identify all obligations resting on the shoulders of the Ukrainian authorities as per the Association Agreement (or any other acts listed above) it is fitting to proceed with identification and collection of all relevant domestic rules. This is crucial in order to make an early assessment of compatibility of existing Ukrainian legislation with EU <i>acquis</i> and to prepare the tables of compliance.</p>
4. Preparation of table of compliance	<p>At the stage of planning it is fitting to prepare the first draft of table of compliance. This is for a number of reasons:</p> <ul style="list-style-type: none"> - it allows an assessment if domestic rules are already compatible, at least partly, with EU <i>acquis</i> (for instance they may have been already approximated with under the Partnership and Co-operation Agreement), - it facilitates a general assessment as to how much work will be needed in order to fully approximate Ukrainian law with EU <i>acquis</i>, - based on the above, it allows to plan the approximation and, should the deadline in the Association Agreement be fast approaching, it gives the ground for a fast track treatment of a particular piece of legislation. <p>In addition to the table required as per Ukrainian legislation (see earlier in this Methodology) it may be worth to prepare a provision-by-provision table.</p>
5. Comparison of Ukrainian provisions and relevant provisions contained in an EU legal act	<p>Once a table of compliance is put together it is time to make an early assessment of compatibility. This should be done on provision-by-provision basis.</p>
6. Planning approximation	<p>Based on the conducted analysis, planning of approximation should be made. Depending on the area covered, this requires a contribution to relevant plan, road map or strategy. It is essential to ensure horizontal consistency across different policy documents and plans of action.</p>

Checklist for staff involved in drafting of Ukrainian provisions aimed at law approximation	
Step	Comments, examples
1. Identification of relevant obligations of Ukraine under the EU-Ukraine Association Agreement, including potential decisions of Association bodies amending them	<p>As the first step the drafters should verify the existing obligations under the Association Agreement. It should be based on documents prepared by members of the state administration, who were involved in planning of law approximation. A reminder is fitting, that this should cover not only the AA itself but also relevant decisions of the Association Council and the text of Association Agenda. Matters to be verified include:</p> <ul style="list-style-type: none"> - whether a piece of EU legislation listed in the Association Agreement (or any other relevant instrument) is still in force, - should the listed legal act of the EU be repealed, or subject to a pending revision, a verification is required if: <ul style="list-style-type: none"> i. as per AA the option for dynamic approximation and revision of the AA or any other instrument has been chosen, ii. a decision was made to proceed with approximation with the old piece of legislation - scope of the obligation to approximate (entire EU legal act or only parts of it), - type of the obligation to approximate: the best endeavors clause or a straight-forward obligation to approximate, - compliance with relevant plan for law approximation/road map/action plan, - deadline for approximation.
2. Identification of other relevant obligations of Ukraine in the field of European Integration	<p>Furthermore, it should be also double checked if other bilateral or multilateral agreements between the EU and Ukraine (alone or with other countries) require approximation with EU law. This should extend to, <i>inter alia</i>,</p> <ul style="list-style-type: none"> - Energy Community Treaty, - Agreements on Civil Aviation (bilateral or multilateral), - WTO obligations.
3. Identification if the Ukrainian authorities are proceeding with voluntary approximation not required by the Association Agreement or any other instrument	<p>As explained earlier in this Methodology, Ukraine may also proceed with voluntary approximation. This happens when the drafters use EU <i>acquis</i> as a model, although it is not covered by any of the instruments listed in paras. 1-2. Even in such a case it is worth having an inventory as well as a table of compliance. It may serve the transparency of the law-making process as well as facilitate political gains in relations with the EU, when such a move may be used to demonstrate a political will.</p>
4. Identification of all relevant EU legal acts and accompanying documents (among others, soft law, jurisprudence of the Court of Justice of the European Union, guidelines or reports on transposition by the Member States)	<p>In the next step, it is crucial to identify all relevant EU <i>acquis</i>. This is necessary even if the Association Agreement, or any other bilateral document, lists only EU regulations or EU directives. It may be handy to develop an inventory of EU <i>acquis</i>, in the format provided in section 4 of this Methodology.</p>
5. Identification of all relevant Ukrainian legal acts and draft legal acts, including bylaws	<p>Once we identify all obligations resting on the shoulders of the Ukrainian authorities as per the Association Agreement and all relevant EU <i>acquis</i> it is fitting to proceed with identification and collection of all relevant domestic rules. Documents prepared by the staff involved in planning of law approximation may be of use. This is crucial in order to make an assessment of compatibility of existing Ukrainian legislation with EU <i>acquis</i> and to work further on the tables of compliance prepared by staff involved in planning of law approximation.</p>

6. Preparation of table of compliance	An early draft of table of compliance should be prepared by staff involved in planning of law approximation. However, at the stage of drafting, this should be taken much further and include: - an update to the existing table of compliance, - coverage of relevant EU <i>acquis</i> including a preamble, - coverage of other sources of EU law, including soft-law and jurisprudence of the Court of Justice of the European Union.
7. Comparison of draft Ukrainian provisions and relevant EU <i>acquis</i>	The comparative analysis should cover: - the legal act itself, including its preamble, - soft law and relevant jurisprudence of the Court of Justice of the European Union, - in case of more general provisions of EU legal acts (including the rules on remedies and enforcement) an explanation how the drafted domestic rules comply with the general rules of EU law.
8. Preparation of statement of compatibility	As the last step, the drafters of a Ukrainian legal act should prepare the statement of compatibility (as required by the relevant domestic legislation, see further above).

Checklist for staff involved in compliance check of proposed drafts	
Step	Comments, examples
1. Identification of relevant obligations of Ukraine under the EU-Ukraine Association Agreement, including potential decisions of Association bodies amending them	<p>As the first step the persons conducting the compliance check should double check the existing obligations under the Association Agreement. This should cover not only the AA itself but also relevant decisions of the Association Council and the text of Association Agenda. Matters to be verified include:</p> <ul style="list-style-type: none"> - whether a piece of EU legislation listed in the Association Agreement (or any other relevant instrument) is still in force, - should the listed legal act of the EU be repealed, or subject to a pending revision, a verification is required if: <ul style="list-style-type: none"> i. as per AA the option for dynamic approximation and revision of the AA or any other instrument has been chosen, ii. a decision was made to proceed with approximation with the old piece of legislation - scope of the obligation to approximate (entire EU legal act or only parts of it), - type of the obligation to approximate: the best endeavors clause or a straight-forward obligation to approximate, - deadline for approximation.
2. Identification of other relevant obligations of Ukraine in the field of European Integration	<p>Furthermore, it should be also verified if other bilateral or multilateral agreements between the EU and Ukraine (alone or with other countries) require approximation with EU law. This should be provided by the drafters of proposed bills, however the persons involved in compliance checking need to verify the findings of the drafters. It is worth to remember that this exercise should extend to, <i>inter alia</i>,</p> <ul style="list-style-type: none"> - Energy Community Treaty, - Agreements on Civil Aviation (bilateral or multilateral), - WTO obligations.
3. Identification if the Ukrainian authorities are proceeding with voluntary approximation not required by the Association Agreement or any other instrument	<p>As explained above, Ukraine may also proceed with voluntary approximation. This happens when the drafters use EU <i>acquis</i> as a model, although it is not covered by any of the instruments listed in paras. 1-2. Even in such a case it is worth for the persons involved in compliance checking to double check if an inventory and table(s) of compliance were prepared. Having such documents may serve transparency of the law-making process as well as facilitate political gains in relations with the EU, when such a move may be used to demonstrate political will.</p>
4. Identification of all relevant EU legal acts and accompanying documents (among others, soft law, jurisprudence of the Court of Justice of the European Union, guidelines or reports on transposition by the Member States.)	<p>In the next step, it is crucial to double check if the drafters of bills identified all relevant EU <i>acquis</i>. This is necessary even if the Association Agreement, or any other bilateral document, lists only EU regulations or EU directives. If that has not been done at the drafting stage, it may be handy to develop an inventory of EU <i>acquis</i>, in the format provided in section 4 of this Methodology.</p>
5. Identification of all relevant Ukrainian legal acts and draft legal acts, including bylaws	<p>Once we double check that all obligations resting on the shoulders of the Ukrainian authorities as per the Association Agreement and all relevant EU <i>acquis</i> were identified, it is fitting to proceed with verification by the drafters, ever so diligently, identified and collected all relevant domestic rules. This is crucial in order to make a robust assessment of compatibility of existing Ukrainian legislation with EU <i>acquis</i>.</p>
6. Verification of table of compliance	<p>One of the tasks of the personnel involved in the compliance checking is verification if the table of compliance was prepared in accordance with relevant Ukrainian rules and if the assessment of compatibility has been</p>

	done to a required standard. We leave the actual compliance check to the next stage.
7. Comparison of Ukrainian provisions and relevant provisions contained in EU <i>acquis</i>	At this stage, the role of the persons conducting the compliance check is to verify if the assessment of compatibility has been done accurately by the drafters. For that purpose, it is necessary to take into account all relevant sources of EU <i>acquis</i> , including: <ul style="list-style-type: none"> - a relevant EU regulation or EU directive, - its preamble, - relevant soft law and jurisprudence of the Court of Justice of the European Union, - in case of more general provisions of EU legal acts (including the rules on remedies and enforcement) analysis whether the drafted domestic rules are compatible with the threshold requirements.
8. Verification of quality and accurateness of the statement of compatibility	As explained above, the Ukrainian law requires the statements of compatibility to meet a particular standard. The role of the persons conducting a compliance check is to check if those requirements have been complied with and if needed to propose improvements or updates.
9. Decision whether to suggest decision-makers passing the draft to the next stages of the decision-making process or to return the draft and accompanying documents for further elaboration.	Depending on the degree of non-compliance, the person conducting a compliance check should suggest: <ul style="list-style-type: none"> - rejecting the draft in its entirety, - sending the draft act back to the drafter for improvement, - correction of the draft at the current stage of legislative process (in cooperation with the drafting institution).