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Research Article

EUROPEANISATION AND ITS IMPACT ON CANDIDATE COUNTRIES FOR EU MEMBERSHIP: A VIEW FROM UKRAINE

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ABSTRACT

***Background**: The nature of the European Union (EU) as a global actor has long been the subject of diverse academic debates. Proponents of an understanding of the EU as a normative force believe that its greatest transformative power lies not in coercion but in a policy of enlargement that allows the EU to stimulate reforms in the candidate countries of the Central and Eastern European region, despite the crisis of enlargement. The aim of the article is to study the impact of the Europeanisation process on the legal systems of member states and candidate countries, in particular Ukraine, as well as the formulation of proposals for national institutions regarding the perception of the 'Europeanisation' impact of EU law on the legal system of Ukraine.*

***Methods:** The methodological basis of the work is interdisciplinary and comprehensive approaches. The interdisciplinary approach is based on the application of theoretical developments in jurisprudence, philosophy, political science, and the theory of international relations, which make it possible to study the process of Europeanisation in relation to member states and candidate countries as fully and comprehensively as possible. The comprehensive approach is aimed at identifying the multifaceted and multifactorial ontological determinants of the Europeanisation process of legal systems. These approaches determined the choice of appropriate general theoretical and special scientific methods: hermeneutic, dialectical, analysis, synthesis, etc.*

***Results and Conclusions:** As a result of the study of the political will, capacity, and legitimacy of the EU to defend the values proclaimed in the founding treaties, in cases of violations of the regulations of the EU law by the member states, the authors come to the conclusion that the EU may face negative consequences due to the display of democratic reformist coalitions in individual member states (Poland and Hungary), as well as due to favouring (authoritarian) stability over uncertain (democratic) change. Concession to candidate countries for EU accession in terms of the fulfilment of the Copenhagen criteria in exchange for satisfying the interests of leading member states may undermine the credibility of the project of building a European identity based on the common values of the EU, as well as the loss of the reputation of the normative power of the European Union. Accelerating the process of Ukraine's accession to the EU, which is connected with Ukraine's acquisition of the status of a candidate for accession to the EU, requires the Europeanisation of the domestic legal culture as a prerequisite for the modernisation of all other elements of the legal system. This, in turn, implies the completion of the process of de-Russification of legal science and education, the development and approval of the Legal Education Development Program, and the modernisation of legal terminology.*

1 INTRODUCTION

The globalisation of law, as one of the directions of globalisation, is a consequence of the ever-increasing interdependence of economic and social relations that are formed between particular political, national and cultural units. It consists of the general process of internationalisation of national law. The meaning of the globalisation of law is to bring legal certainty and stability to these relations. However, it should be noted that political and legal globalisation is not developing as fast as economic, technological and information globalisation, and therefore there is a certain lag of legal and political development behind economic and technical.

Globalisation, which affects the unification of legal regulation of a wide range of social relations, naturally affects the confrontation between the global and the local. As a result, the tendency to localisation, as a reaction to globalisation, strengthens the process of regionalisation in various parts of the world, but primarily in Europe, where it has acquired a

supranational character. European integration, without denying the common objective that reflects the processes of globalisation, arises in the unification of national-state interests and their elevation to the level of regional (group) interests and thus is an alternative and a kind of solidarity group of states' response to challenges globalisation.

The problem of Europeanisation gained popularity at the end of the 20th and the beginning of the 21st centuries and almost immediately acquired the characteristics of a new field of interdisciplinary research:[1] it became an indispensable component of the subject of research not only in jurisprudence but also in political science and the theory of international relations. This is due to the fact that the scope of Europeanisation as a research agenda is broad. The emergence of the term 'Europeanisation' determines the need to reveal its relationship with 'European integration'. The indicated phenomena and the terms denoting them are not identical since the sphere of Europeanisation can go beyond European integration – for example, it can include the transfer of policy from one European country to several other countries.[2]

Today, this field of knowledge has come of age, and the literature on these issues has become an important source of academic debates about European integration, within which discussions continue both about the nature of Europeanisation,[3] its connection with the process of European integration, and its impact on international public[4] and international private law.[5]

In this article, we adhere to the position of those researchers who believe that Europeanisation should be considered a problem and not a solution. The introduction of the concept of Europeanisation into the scientific discourse contributed to the emergence of new original explanations on a number of important issues, in particular the analysis of the impact of the EU legal order on national legal systems, supranational governance on national models of the internal policy of EU member states and candidate countries, and, in some cases, neighbouring states.

Unlike European integration, which is based on the transfer of powers from member states to the EU ('downloading'),[6] the process of Europeanisation involves the transfer of models and content of the European decision-making process in the context of national management systems. The majority of researchers, with whose position we agree, believe that integration theories are not very well suited for revealing the content of Europeanisation, since their main goal is to explain the dynamics and results of European integration, but not the internal processes that Europeanisation[7] describes.

The narrow focus of Europeanisation literature focused on the consequences specifically for the legal systems of the EU member states seemed surprising since, throughout the history

1 CM Radaelli, 'Europeanisation: Solution or Problem?' (2004) 8(16) European Integration Online Papers (EIoP) 16.

2 CM Radaelli, 'The Europeanization of Public Policy' in K Featherstone, CM Radaelli (eds), *The Europeanization of Public Policy* (Oxford University Press 2020) 27. DOI: 10.1093/0199252092.003.0002.

3 R Ladrech, *Europeanization and National Politics* (Palgrave Macmillan 2010).

4 J Wouters, A Nollkaemper, E De Wet (eds), *The Europeanisation of International Law: The Status of International Law in the EU and its Member States* (TMC Asser Press 2008).

5 NA Baarsma, *The Europeanisation of International Family Law* (TMC Asser Press 2011); J Harris 'Understanding the English Response to the Europeanisation of Private International Law' (2008) 4(3) Journal of Private International Law 347-395.

6 IV Yakoviyk, SS Shestopal, PP Baranov, NA Blokhina, 'State Sovereignty and Sovereign Rights: EU and National Sovereignty' (2018) 34 (87-2) Opcion 376-385; R Sturm, 'The Europeanisation of the German System of Government' (2017) 3 German European Policy Series 377.

7 F Snyder (ed), *The Europeanisation of Law: The legal effects of European integration* (Hart Publishing 2000).

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of integration, its influence has always, to some extent, spread beyond the borders of the European Communities/EU: outsiders of this process have resorted to various forms of unilateral accommodation to EU law (mostly it resembled the reaction of the neighbouring states of the European Communities to various negative external effects of European integration for them). Therefore, a relatively new direction within this research agenda has been the focus, since the early 1990s, on the Europeanisation of the member states of the European Free Trade Association, and since the 2000s on the candidate countries and neighbouring states as part of the enlargement process of the EU to the East,[8] which provided for their unilateral acceptance of EU standards – *acquis communautaire*. In earlier studies of the adaptation of the law of candidate countries and new EU members, the term 'Europeanisation' was not used.

In Ukrainian legal science, despite the constitutional confirmation of the irreversibility of the European and Euro-Atlantic course of Ukraine (Preamble to the Constitution of Ukraine) and the signing of the Association Agreement between the EU and Ukraine,[9] this direction of scientific research is still not given enough attention.[10] This determines the relevance and practical significance of this study.

2 METHODOLOGY OF RESEARCH

The methodological basis of the work is interdisciplinary and comprehensive approaches. The interdisciplinary approach is based on the application of theoretical developments in jurisprudence, philosophy, political science, and the theory of international relations, which make it possible to study the process of Europeanisation in relation to member states and candidate countries as fully and comprehensively as possible. The comprehensive approach is aimed at identifying the multifaceted and multifactorial ontological determinants of the Europeanisation process of legal systems. These approaches determined the choice of appropriate general theoretical and special scientific methods: hermeneutic, dialectical, analysis, synthesis, etc.

3 THE EUROPEAN UNION AS THE NORMATIVE POWER OF EUROPE

As part of European integration research, N. Fligstein notes that considerable attention is paid to EU law, which *de facto* created a European legal order similar to the federal legal system in the USA, and, in fact, constituted the founding Treaties of the European Union.[11] It is worth quoting the words of the first President of the European Commission, W. Hallstein, to characterise this community from his speech delivered on 12 March 1962 at the University of Padua. In his words:

> This community is not due to military power or political pressure, but owes its existence to a creative act. It is based on sound legal standards and its institutions are subject to legal control. For the first time, the rule of law takes the place of power and its manipulation, of the equilibrium of forces, of hegemonic aspirations, and of the game of alliances. [...] In the

8 U Sedelmei, 'Europeanisation in new member and candidate states' (2011). 6(1) Living Reviews in European Governance 17-22. DOI: 10.12942/lreg-2011-1.

9 Association Agreement between the European Union and Ukraine <https://www.kmu.gov.ua/en/yevropejska-integraciya/ugoda-pro-asociacyu> accessed 1 November 2022.

10 IV Yakoviyk, HV Anisimova, OY Tragniuk, 'Europeanization of Environmental Law of the European Union Member State' (2022) 158 Problems of Legality 85-86. DOI: 10.21564/2414-990X.158.263248.

11 N Fligstein 'The Process of Europeanization' (2000) 1 Politique Européenne 25-42. Doi: 10.3917/poeu.001.0025.

> relations between Member States, violence and political pressure will be replaced by the preeminence of the law.[12]

Since the 21st century, the EU has not been associated with civilian power, as it was in the 1970s, and not with a hybrid actor torn between civilian and military power, as it was considered in the 1990s, but identifies itself with the international arena as Normative Power Europe,[13] which is characterised by common principles and willingness to disregard the concepts of 'state' and 'international'. Some authors even use the concept of 'normative empire',[14] which gives them a reason to discuss the civilising mission of the EU, within which the EU uses its own law as a means of legitimising imperial policy towards its neighbours. J. Zielonka believes that a civilising mission is considered to have fulfilled its purpose if both the metropolis and the periphery consider it trustworthy; when the periphery views it as reliable and desirable for a combination of moral, historical, cultural, and utilitarian reasons. In his opinion, it was the imperial discourse that helped the EU legitimise its expansion project in Central and Eastern Europe.[15]

As a normative power, the EU exports universal norms, standards, practices and management models beyond its borders. Thus, access to the internal market of the EU and the signing of trade agreements with it is conditioned by the adoption of EU rules and standards by the respective country. At the same time, it should be noted that the way (persuasion, activation of international norms, formation of discourse and creation of an example for imitation,[16] but not coercion) in which the EU supports and spreads its values and interests in its relations with other countries (para. 5 Art. 3 of the Treaty of the European Union (TEU)[17]) is as important as what it promotes (values of peace, freedom, democracy, the supranational rule of law, human rights, social solidarity, fight against discrimination, sustainable development and proper governance (Arts. 2, 3 of the TEU)).

During the implementation of its normative power, the EU relies on the activity of the Court of Justice of the European Union (CJEU).[18] The fact is that from an early stage, the CJEU saw itself as the exponent of the normative foundations of integration. CJEU transformed the original system through bold and controversial legal decisions declaring the direct effect and supremacy of European law over national law.[19] The influence of the CJEU in the development of EU law has been defining and, in some respects, unprecedented in the history of legal systems: the CJEU has shaped EU law by 'constitutionalised' the treaties establishing the European Communities through its jurisprudence (the direct effect and supremacy of the

12 W Hallstein, 'Die EWG als Schrittzur Europäischen Einheit' in T Oppermann (ed), *Walter Hallstein — EuropäischeReden* (Deutsche Verlags-Anstalt1979); Von Danwitz T, 'Values and the Rule of Law: Foundations of the European Union – An Inside Perspective from the ECJ' (2018) 21 PER/PELJ 4 <https://perjournal.co.za/article/view/4792/6602> accessed 1 November 2022.

13 I Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) 4(2) JCMS 235 DOI: https://doi.org/10.1111/1468-5965.00353.

14 H Haukkala, 'The EU's Regional Normative Hegemony Encounters Hard Realities: The Revised European Neighbourhood Policy and the Ring of Fire' in D Bouris, T Schumacher (eds), *The Revised European Neighbourhood Policy* (Palgrave Macmillan 2017) 77-94.

15 J Zielonka, 'Europe's New Civilizing Missions: The EU's Normative Power Discourse' (2013) 18(1) Journal of Political Ideologies 35. DOI:10.1080/13569317.2013.750172.

16 T Forsberg, 'Normative Power Europe, once Again: A Conceptual Analysis of an Ideal Type' (2011) 49(6) 1184 JCMS 1184. DOI: https://doi.org/10.1111/j.1468-5965.2011.02194.x.

17 Consolidated version of the treaty European Union <https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF> accessed 1 November 2022.

18 M Kiener, Europeanization by the Courts. *General Aspects of Variance in Preliminary References Between Member States* (Examicus Verlag 2012).

19 KJ Alter, *Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe* (Oxford University Press 2010) 1. DOI: https://doi.org/10.1093/acprof:oso/9780199260997.001.0001.

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EU Treaties: these doctrines effectively transformed the European Economic Community Treaty into a constitution, in all but name, protecting fundamental rights, defining the internal market, and expanding EU competence.[20] The CJEU later went beyond these legal bases but was, despite resistance from some national courts and member state governments, considered legitimate to fill the political and legal void in the new supranational order.

According to G. Davies, the legislative competence of the CJEU is wider than the legislative competence of the legislature.[21] M. Blauberger and S. K. Schmidt, in turn, note that the Court's rulings have direct implications for policymaking at the European and domestic levels. And due to the unanimity rule for treaty changes, overruling the CJEU is even more difficult than in the context of national constitutional jurisprudence.[22]

The case law of the CJEU, as evidenced by the analysis, generates numerous effects of Europeanisation. When the case-law of the CJEU shapes policy issues of great political importance, it is expected that legislatures will be interested in participating in policymaking through codification. The European Commission, which systematically participates in legal proceedings as the guardian of the Treaty, actively promotes judicial pressure on EU member states and instrumentally uses the case law of the CJEU. The Commission combines its legislative role with the role of defender of the Treaty, emphasising that the codification of case law (consolidation of principles developed in case of law in the secondary legislature) is necessary for greater legal certainty. As a result of the analysis, D. Martinsen concludes that member states hardly ever override the Court's case law; they codify the case law mostly regarding technical issues; and they try to restrict the Court's impact in more contested areas through 'modification'.[23]

4 EUROPEANISATION AS A PHENOMENON OF EUROPEAN INTEGRATION

The creation of a united Europe is usually perceived primarily as an economic process aimed at the regional integration of production, commercial, banking and financial operations, technologies and information.[24] But in fact, this is a more complex social phenomenon, which, in addition to economic transformations, includes a fairly complex modernisation of the political, legal, social, and cultural systems of the EU member states,[25] which has an equally significant impact on all spheres of social life, including in the former post-socialist countries of the East, Central, and Southern Europe.

Europeanisation is certainly a managed and planned political project aimed at deepening European integration through law and the Europeanisation of law itself. This, however, does not imply the convergence of the national law of the EU member states, although some authors hold the opposite opinion.[26]

20 T Tridimas, 'The Court of Justice of The European Union' in R Schütze, T Tridimas (eds), *Oxford Principles of European Union Law: The European Union Legal Order: Volume I* (Oxford Academic 2018) 581. DOI: https://doi.org/10.1093/oso/9780199533770.003.0021.

21 G Davies, 'Legislative Control of the European Court of Justice' (2014) 51(6) Common Market Law Review 1593 DOI: https://doi.org/10.54648/cola2014133.

22 M Blauberger, SK Schmidt, 'The European Court of Justice and its Political Impact' (2017)40(4) West European Politics 908. DOI:10.1080/01402382.2017.1281652.

23 Ibid., 912.

24 I Yakoviyk, Ye Bilousov, K. Yefremova, 'European Integration as a Challenge for the Implementation of Economic State Sovereignty' (2022) 5 (3) Access to Justice in Eastern Europe 9. DOI: 10.33327/AJEE-18-5.2-a000330.

25 RH Cox '20.: Europeanization of social policy' in *Elgar Encyclopedia of European Union Public Policy* (Edward Elgar Publishing 2022) 189-195.

26 PhA Nicolaides, 'A Model of Europeanisation with and without Convergence' (2010) 45(2) Intereconomics 114-121.

The Europeanisation of law is often reduced to the multi-centrism of the sources of law, the plurality of bodies interpreting it and jurisdictions, which creates specific problems both for the bodies that interpret and apply EU law and for the subjects of this law. But, in our opinion, Europeanisation should be considered more broadly, including in its content the impact of EU law on national legal cultures and legal awareness (scientific, professional and public), since success depends on the effectiveness of changes in this segment of the national legal system: a) perception of new paradigms, styles, a common system of values and beliefs, which are defined and consolidated for the first time in the political process of the EU, and therefore need to be included in the logic of the development of national legislation, the formation of identities, and the implementation of public policy; b) alignment of domestic policies and institutions with their European counterparts; c) conducting negotiations of national authorities with EU institutions; d) effectiveness of adaptation of national legislation to EU legal standards; e) improvement of law enforcement activities.

The EU enlargement policy, which aims at the 'democratisation', 'Europeanisation', and 'modernisation' of the candidate countries before their accession to the EU, is today the main instrument of the Union's normative power in Europe. The EU's normative identity is thus central to debates about the EU's normative influence beyond its borders.[27]

The success of the 'united Europe' project is largely due to the fact that:

1. at the initial stage of the creation of the local social order, six states participated, and they had a common vision of the goals, values, directions of development, intentions and actions of other states and their associations, and a general idea of the rules by which the legal regulation will be carried out;
2. the founding states of the European Communities, and in the process of expansion, the new member states recognised their roles in the union, which were in a hierarchical relationship to each other (for example, the France-Germany tandem is perceived as the 'core' and 'locomotive' of integration, which legitimises their leadership in the EU);
3. the process of Europeanisation from the very beginning covered the national legal systems of the member states, and later also of the candidate countries and neighbouring states, and not only the economic and political spheres;
4. the unification process deepened gradually: starting with the sphere of coal and steel, integration initiatives, depending on the achieved success and therefore positive perception at the level of public consciousness, gradually shifted to new spheres of legal regulation (after the adoption of the Single European Act and changes in voting rules, the number of directives adopted in the EU has increased significantly);
5. the European Communities/EU was, from the beginning, closely linked to the North Atlantic Alliance (NATO) and the Council of Europe, membership of which later became a latent criterion for EU membership.

In general, it should be agreed that the growth of the intra-European economy, lobbying, the number of court cases, and directives – all these characteristics of Europeanisation are in a certain interdependence and develop together,[28] contributing to Europeanisation.

27 R Del Sarto, 'Normative Empire Europe: The European Union, its Borderlands, and the "Arab Spring"' (2015) 54 (2) JCMS 219-223. DOI: https://doi.org/10.1111/jcms.12282; I Manners, 'Normative Power Europe Reconsidered: Beyond the Crossroads' (2006) 13(2) Journal of European Public Policy 235-258. DOI: https://doi.org/10.1080/13501760500451600.

28 N Fligstein, 'The process of Europeanization' (2000) 1 Politique Européenne 35 DOI: 10.3917/poeu.001.0025.

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However, the majority of people in a united Europe are not involved in this process in a direct economic, political, or social sense, and therefore the transformation of their legal culture lags significantly behind the pace of integration, which potentially poses a threat to integration due to the possibility of blocking certain decisions during the ratification of founding treaties or bringing Eurosceptic parties to power.

Reference frames of Europeanisation due to the expansion of the EU at the expense of former post-socialist countries from the beginning of the 21st century went beyond the borders of the member states, covering the candidate countries and neighbouring states and demonstrating the significant influence of the legal culture of the united Europe of the EU even on those states that do not seek to acquire membership in the EU or are still outside the direct process of European integration.[29] As a result, the use of the term 'Europeanisation' is still not unified, and therefore this phenomenon is perceived as having many 'faces' and directions of action both within the united Europe and beyond. It is no coincidence that the discourse on the dimensions of Europeanisation is also projected onto the subject of scientific research on this process.

One should agree with the opinion of J. Olsen, who believes that as a result of the gradual deepening and expansion of integration, Europeanisation has acquired a multidimensional character and currently takes place in four spheres:[30]

a) Europeanisation of politics, that is, the influence of EU membership on the politics of individual member states. In this direction, the greatest effect was achieved during the Europeanisation of Germany (the political system and management system of the Federal Republic of Germany is imbued with European politics, and German statehood has lost its absolute character)31 and the least, in relation to Great Britain (the famous phrase of W. Churchill 'We are with Europe, but not of it' reflects the general approach of the British to European integration as at the time of its expression in 1930, during London's membership in the EU, as well as after leaving it);

b) institutional adaptation, i.e., the transformation of social and political institutions in EU member states;

c) Europeanisation of law, which involves not only the formation of European law but also, in particular, the convergence of national legal systems of member states, as well as countries that intend to join the EU;

d) transnational cultural diffusion, which consists of the spread of cultural standards, ideas, identities, and patterns of behaviour both within the EU and beyond.

Thus, one can agree with C. Radaelli, according to whom Europeanisation consists of processes of construction, use, and institutionalisation of formal and informal rules, procedures, political paradigms, styles, ways of doing things, and common beliefs and norms, which are initially defined and consolidated in the political process of the EU and then incorporated into the logic of internal (national and sub-national) discourse, political structures, and state policy.[32] Similar interpretations can be found in other authors.[33]

29 B Kohler-Koch 'The Evolution and Transformation of European Governance', in B Kohler-Koch, R Eising (eds), *The Transformation of Governance in the European Union* (Routledge 1999) 14-36.

30 JP Olsen, 'The Many Faces of Europeanization' (2002) 2(5) Journal of Common Market Studies 921-952.

31 R Sturm, The Europeanisation of the German System of Government. German European Policy Series № 03/17 (Institut für Europäische Politik (IEP)).

32 CM Radaelli, 'Europeanisation: Solution or Problem?' (2004) 8(16) European Integration Online Papers 9.

33 PhA Nicolaides, 'A Model of Europeanisation with and without Convergence' (2010) 45 (2) Intereconomics 114-121.

The evaluation of the results of the Europeanisation of the candidate countries is connected with the analysis of the internal influence of the EU on these states, in particular, the answers to the following questions:[34]

- Is there convergence in the trajectories and content of reforms, and if so, to what extent was this convergence due to the influence of the EU itself?[35]
- To what extent did external pressure or incentives of the EU contribute to the formation of the candidate country's institutional and political choices? Accession to the EU in itself is extremely important, but not the only reward offered to candidate countries by the EU. Other incentives for reform include preferential trade agreements, financial and technical assistance, and benefits such as the abolition of visa requirements. It should be borne in mind that political changes in candidate countries can occur for many reasons, including internal dynamics. This makes it difficult to attribute successful changes to the results of the Europeanisation process and the use of specific EU instruments. Voluntarily chosen forms of acceptance of EU rules, in which candidate countries use such EU rules either as exact 'copies' or as approximate 'templates', are not the result of Europeanisation.
- Under what conditions did candidate countries and neighbouring countries accept EU rules
- When and how did the EU influence the governments of the candidate countries to adopt relevant legislation? J. G. Kelley notes that usually, a combination of membership terms and diplomacy has been surprisingly effective in overcoming even significant internal resistance. However, diplomacy itself, without an offer of membership, is usually insufficiently effective unless domestic opposition to the proposed policy is limited.[36]

The main goal and consequence of the Europeanisation of law is the formation of a common legal space, within which the principle of the supremacy of EU law is established and in which differences between the legal systems of the member states of the EU are gradually reduced as a result of the implementation of European law by the member states, as well as the Europeanisation of national legal cultures. in particular, the way of legal thinking. This is a rather complicated and lengthy process, as it is necessary to take into account the state-territorial system, the ratio of the public and private sectors, the stability of the traditions of political and legal culture, and a number of other factors. An important consequence of this process is, first of all, the affirmation of the principle of supremacy of EU law. It is difficult to disagree with T. Judt, who points out that few lawyers or legislators, even in the most pro-European 'core' states of the European Communities, would be ready to renounce the supremacy of national law if they were asked to do so at the beginning of the integration process. The EU is ultimately an example of an unusual compromise: supranational governance, which is carried out by national governments. The abstract nature of the European idea, and the absence of a normatively defined final goal, thus played a positive role in the process of European unification.[37]

The Europeanisation of the sources of national law was equally revolutionary – it changed the perception of the national legislator, which is a monopoly in the implementation of

34 U Sedelmei 'Europeanisation in new member and candidate states' (2011) 6(1) Living Reviews in European Governance 9. DOI: 10.12942/lreg-2011-1.

35 MA Vachudova, 'Europe Undivided: Democracy, Leverage and Integration After Communism' (Oxford University Press2005).

36 JG Kelley, 'Ethnic Politics in Europe: The Power of Norms and Incentives' (Princeton University Press2004).

37 T Judt, 'Postwar: A History of Europe Since 1945' (Penguin, 2005) 733.

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legal regulation of all spheres of social relations by means of legal means and established in the public consciousness. It is obvious that without corresponding changes in the legal consciousness of lawyers and the political class, such revolutionary transformations of national legal systems would be impossible.

B. Glencorse and C. Lockhart draw attention to the fact that the enlargement of the EU should not be perceived as a monolithic process that was equally successful in all countries that joined the EU. In some cases, it has led to real and important reforms, while in other countries, the positive institutional changes have been much less obvious. Moreover, in the future, the EU itself will have to adapt to new realities and changing dynamics in order to ensure that future enlargement will be as successful as in the past.[38]The validity of this conclusion is evidenced by the statements of the Chancellor of Germany, O. Scholz,[39] and the President of France, E. Macron,[40] in 2022 in the context of the discussion on the expansion of the EU at the expense of Ukraine and Moldova, as well as the Balkan countries.

5 LESSONS OF EUROPEANISATION OF THE COUNTRIES OF EASTERN AND CENTRAL EUROPE

Some researchers analysing the process of Europeanisation, have come to the conclusion that it is not devoid of certain shortcomings in relation to candidate countries and neighbouring states from Eastern, Southern, and Central Europe.[41] This is due to the fact that the Europeanisation of post-socialist countries from this region of countries concerned states that were at various stages of transition to a market economy and a model of democratic, legal statehood, and in terms of legal culture, they were objectively not ready for the full implementation of the *acquis communautaire*. That is why the EU had to use 'soft instruments', including conditional positive incentives (the attractiveness of EU membership for post-socialist countries) and normative pressure and persuasion to induce them to reform their legal systems in the first place. It should be noted that the model of assistance in reforming candidate countries and potential candidates from the regions of Eastern, Central, and Southern Europe is more effective than the 'assistance complex' that was formed and implemented after the Second World War as part of bilateral and multilateral support for developing countries, in order to develop and stimulate management reforms in them.

According to B. Glencorse, the success of the European model is conditioned by:[42]

38 B Glencorse, C Lockhart, 'EU accession: norms and incentives. World Development Report, 2011' 2, 9 <http://web.worldbank.org/archive/website01306/web/pdf/wdr_2011_case_note_eu_accession4dbd.pdf>accessed 1 November 2022.

39 Thus, O. Scholz conditions the expansion of the EU by the abolition of the principle of unanimity in the field of foreign policy, as well as in other areas, such as tax policy.

40 At the 'Conference on the Future of Europe' (May 9, 2022), President of France E. Macron called for the restructuring of the EU. Instead of simplifying the procedure for acquiring membership in the EU, he proposed to form a 'European political community' in parallel with the EU. In fact, France returned to the idea of former President F. Mitterrand to create a European confederation (1989).

41 JW Scott, 'Visegrád Four Political Regionalism as a Critical Reflection of Europeanization: Deciphering the "Illiberal Turn"' (2022) 63(6) Eurasian Geography and Economics 704-725. DOI: 10.1080/15387216.2021.1972023; AL Dimitrova, 'Understanding Europeanization in Bulgaria and Romania: following broader European trends or still the Balkan exceptions?'(2021) 22(2) European Politics and Society 295-304. DOI: 10.1080/23745118.2020.1729054.

42 B Glencorse, C Lockhart, 'EU accession: norms and incentives. World Development Report, 2011' 3-4, <http://web.worldbank.org/archive/website01306/web/pdf/wdr_2011_case_note_eu_accession4dbd.pdf> accessed 1 November 2022.

- The variety of tools used. The EU applies flexible assistance instruments, the provision of which is conditioned by the progress achieved by the beneficiary countries and their needs, reflected in the evaluations and strategic documents of the European Commission. Accession assistance instruments are subject to the suspension of assistance to any beneficiary country that has not made sufficient progress in meeting the accession criteria or in the reform process.
- Harmonising and aligning assistance using different tools. This is about the use of a number of flexible instruments43 in the fields of institutional construction; cross-border cooperation; regional development; development of human resources, and development of rural areas at the stage preceding the accession of candidate countries to the EU.[44]
- Targeted technical assistance. This is about targeted technical assistance, as well as consulting, mutual visits and familiarisation with the administrative models of the EU member states, and not replacing the actions of the candidate state itself.
- Reforms within a period of time. The accession process involves a certain set of rules and a time frame for achieving long-term goals. This allows for clear communication and decision-making by EU member states. Support is provided directly to government agencies, helping to strengthen the credibility and legitimacy of national governments. The EU studies previous experience and constantly improves the accession procedure within the framework of the evolution of EU legislation.

In general, the Europeanisation of this category of countries took place in a 'top-down' mode since the candidate countries did not participate in the formation of European rules of conduct but only implemented all-European legal standards set by EU institutions.[45] It is quite natural that for many participants in the law-making process, the acceptance of the *acquis communautaire* had no intrinsic value in the process of changing the national regulatory practice.

Assessments of the consequences of Europeanisation for the countries of Eastern and Central Europe range from the recognition of certain pathologies of this process to the undermining of the rule of law, democracy, and good governance due to imperfect and inconsistent methods of promoting these principles. Thus, M. Mendelski notes that although judicial reforms initiated by the EU in the specified group of countries increase the capacity of the judiciary and bring national legislation into line with European and international standards, they are sometimes unable to prevent the strengthening of the power of authoritarian and corrupt elites, to prevent the violation of formal legality, which leads to such pathologies of reforms as instability, inconsistency of legislation and its non-compliance, the politicisation of the judiciary and inconsistency of its decisions, which ultimately undermines the establishment of the rule of law.[46] A similar conclusion is reached by a researcher who analyses the Europeanisation experience of Romania, which traditionally suffers from corruption.[47]

43 It is about the following instruments: Instrument for Pre-Accession Assistance; Programme of Community aid to the countries of Central and Eastern Europe; Pre-Accession Agricultural Instrument; Community Assistance for Reconstruction, Development and Stabilization.

44 L'instrument d'aide de préadhésion (IAP) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:e50020> accessed 1 November 2022.

45 Y Bytyak, I Yakovyuk, O Tragniuk, T Komarova, S Shestopal, 'The State Sovereignty and Sovereign Rights: The Correlation Problem (2017) 97(23) Man in India 584.

46 M Mendelski, 'The Limits of the European Union's Transformative Power: Pathologies of Europeanization and Rule of Law Reform in Central and Eastern Europe' (Doctoral thesis, University of Luxembourg 2014).

47 L Martin-Russu, 'Deforming the Reform. The Impact of Elites on Romania's Post-accession Europeanization' (Springer Cham 2022). DOI: https://doi.org/10.1007/978-3-031-11081-8.

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It should be noted that the length of stay in the EU does not remove the problem. Thus, in 2014, Mendelski cited Poland as an example of a country with a more consistent and successful implementation of reforms, thanks to which the requirements of the principle of the rule of law are implemented and strong and independent institutions are built (for example, the Constitutional Court, the ombudsman, the judicial system), which mitigate the pathologies of reforms and ensure accountable, gradual and non-politicised implementation of reforms.[48] Some experts, in particular, Mendelski, were inclined to the opinion that Poland is entering the final stage of 'democratic consolidation', during which qualitative changes in the socio-political sphere are taking place as a result of consolidation at the following levels:[49] 1) constitutional consolidation, which provides for the formation of the highest constitutional bodies on democratic principles: the president, the government, the parliament and the courts; 2) representative consolidation, i.e., consolidation of a territorial and functional representation of interests; 3) integrative consolidation involves reducing the incentives for unconstitutional actions on the part of potential veto groups (the military, big business, landowners, media owners, radical movements, etc.) to such a level that they are integrated into democracy to the extent that this system is considered more functional and effective than any other.

The analysis of the processes related to the accession to the EU confirms that, as a result of the implementation of the requirements and recommendations of the EU in the candidate countries, the existing differences are gradually being overcome, a common vision of development paths is being formed, legal mechanisms and rules are being developed that allow resolving differences within the country, as a result of which there is a decrease in the level of conflict in society ('the EU... provides security through transparency and transparency through interdependence',[50] as a result of which the possibility of conflict between member states seems absurd). Judt notes that at the end of the 20th century, national elites and EU institutions have become so interdependent that armed conflict, while never impossible, has become somewhat unthinkable. This is why a united Europe has become such a desirable object for applicants for EU membership, as an escape from their past and an insurance policy for the future.[51] All this indicates an increase in the level of legal culture and legal awareness in society.

The peculiarity of the Europeanisation of post-socialist countries was that these candidate countries were at various stages of transition to a market economy and a model of democratic, legal statehood and therefore were not ready for the full implementation of the *acquis communautaire* and therefore the EU used the attractiveness of the incentive of membership for post-socialist countries to achieve broader political goals through the enlargement policy (the model of external incentives confirms that trust in them is a crucial condition for the success of the EU enlargement policy).[52]

Reforms in the political-legal and socio-economic systems taking place at the stage of preparation for joining the EU are largely caused by the conditions of accession and are accompanied by the process of 'Europeanisation', during which countries adopt European norms and values transmitted in various ways. Poland's success, in particular, was determined by the fact that the EU and leading member states (France and Germany) purposefully contributed to the acceleration of democratisation, involving official Warsaw in the closed

48 M Mendelski, 'The Limits of the European Union's Transformative Power: Pathologies of Europeanization and Rule of Law Reform in Central and Eastern Europe' (Doctoral thesis, University of Luxembourg 2014).

49 P Schmitter, T Karl 'The Conceptual Travels of Transitologists and Consolidologists: How Far to the East Should They Attempt to Go?' (1994)53 Slavic Review 173-185.

50 R Cooper, *The Breaking of Nations: Order and Chaos in the 21st Century* (Grove Press 2003) 37.

51 T Judt, Postwar: *A History of Europe Since 1945* (Penguin 2005) 734.

52 F Schimmelfennig, U Sedelmeier 'The Europeanization of Eastern Europe: the external incentives model revisited' (2020) 27(6) Journal of European Public Policy 818. DOI: 10.1080/13501763.2019.1617333

'elitist club', 'Weimar Triangle', supporting the closed 'semi-elitist' organisation 'Visegrad Group', and also granting Poland the status of a candidate country for EU membership. But the artificial 'pulling up' of Warsaw to the Western European level of cultural and value development, even on the condition that Poland has always had a significantly higher level of development of values and orientations characteristic of the political and legal culture of society than in other post-socialist countries, turned out to be in the complete formation of a high legal culture in both the political class and society as a whole, built on a system of established legal and political values.

In 2017, the Polish government adopted a package of laws on the judiciary, which caused heated discussions both in Poland itself and in the EU. In December 2017, the European Commission noted that the laws adopted by the Polish Parliament destroy the separation of powers, as they lead to the concentration of all power in the hands of the Law and Justice party, as well as limit the level of freedom of the mass media,[53] and initiated a procedure in accordance with Art. 7 of the TEU in response to risks to the rule of law. Case law of the CJEU and the European Court of Human Rights, as well as documents compiled by the Council of Europe, based, in particular, on the experience of the Venice Commission, contain a non-exhaustive list and define the main meaning of the rule of law through a system of principles: legality, which provides transparent, accountable, democratic, and pluralistic process of adopting laws; legal certainty; separation of powers; prohibitions of executive arbitrariness; an independent and impartial court; effective judicial supervision, including the observance of fundamental rights; equality before the law.[54] The European Parliament supported this move by the Commission in March 2018.[55] The delegation of the European Parliament, after visiting Poland in February 2022, during which MEPs met with politicians, judges, civil society, and journalists to assess the situation with the rule of law, stated that the situation with the rule of law since 2018 in Poland has deteriorated even more: in addition to the violation of the principle of the independence of the judicial system, media freedom, and fair elections, European values of equality and non-discrimination are not observed in Poland, especially with regard to migrants, women, and the LGBTI+ community; there is a criminalisation of sex education and a de facto ban on abortion. At the same time, it was emphasised that the situation with the rule of law in Poland is not only a national issue but also a European issue since the primacy of EU law is at the heart of the European project and enshrined in the Polish constitution.[56]

During 2016-2022, the Commission made extensive use of the opportunities provided by the Rule of Law Concept for a constructive dialogue with the Polish authorities. However, Poland, which until recently was considered a model of democratic transformations, allowed significant violations of the requirements of the principles of a democratic and legal state and common European values, ignoring the legitimate requirements of the EU institutions (this is because due to the absence of pro-democratic reform coalitions in Poland and Hungary in recent years, the society of these countries prefers (authoritarian) stability over uncertain (democratic) changes[57]). Despite the violation of the situation in Poland in recent years,

53 Proposal for a Council Decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law COM/2017/0835 final – 2017/0360 (NLE) <https://www.europarl.europa.eu/doceo/document/TA-8-2018-0055_EN.html> accessed 1 November 2022.

54 Ibid.

55 European Parliament resolution of 1 March 2018 on the Commission's decision to activate Article 7(1) TEU as regards the situation in Poland (2018/2541(RSP)) <https://www.europarl.europa.eu/doceo/document/TA-8-2018-0055_EN.html> accessed 1 November 2022.

56 EU values in Poland: MEPs wrap-up fact-finding visit to Warsaw <https://www.europarl.europa.eu/news/en/press-room/20220218IPR23604/eu-values-in-poland-meps-wrap-up-fact-finding-visit-to-warsaw> accessed 1 November 2022.

57 K Pomorska, G Noutcheva, 'Europe as a Regional Actor: Waning Influence in an Unstable and Authoritarian Neighbourhood' (2017) 55(S1) JCMS 165-176. DOI: https://doi.org/10.1111/jcms.12612.

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EU member states have opted out of a vote to determine whether there is a 'clear risk of serious violations' of common EU values, which is the next step in the Art. 7 of the TEU procedure. Poland was able to avoid this procedure thanks to the mutual support of Warsaw and Budapest. Thus, the situation with respect to the basic values and principles of EU law gives reason to recognise that the conclusion that the EU has a normative identity is built primarily on the rhetoric of EU leaders and individual scientists. This is not enough for the EU to be a full-fledged normative actor. The EU would have full normative power when it is able to compel a member state to do something it would not otherwise do.[58] But, as the experience of Poland proves, the EU cannot always achieve this.

6 PROSPECTS OF EUROPEISATION OF THE LEGAL SYSTEM OF UKRAINE

The Europeanisation of the Ukrainian state and law is not a new process in the history of the modernisation of Ukraine and has deep roots. The analysis of political processes in Ukraine throughout its history allows us to single out several waves of Europeanisation. The first wave, which covered the period from the beginning of our era to the 10th-13th centuries, was marked by the realisation of the civilisational choice of Prince Volodymyr the Great of Kyiv, which was of decisive importance for choosing the vector of the integration process of Eastern Slavs, its Christianisation, and the entry of the Old Russian state as an equal member of the Christian community of Europe. The second wave spanned the 14th to the first half of the 17th century when Ukraine became part of Poland and the Grand Duchy of Lithuania and thus, a part of the European world. The third wave (the second half of the 17th to 18th centuries) is associated with the functioning of the Ukrainian Cossack state, which adopted Western political and legal values. The fourth, fifth, and sixth waves of Europeanisation of public administration were less effective, as they were caused by the modernisation processes of the Russian Empire.

Ukraine's course towards European integration provided reasons to return to the process of Europeanisation of law. However, it should be noted that Europeanisation, in contrast to the problems of European integration, has not become the subject of deep and extensive research by Ukrainian lawyers. Activity in the development of this problem was observed during 2004-2014, but in the following years, attention to it decreased noticeably. Unlike other countries in Eastern Europe, there are no empirical studies on the influence of the EU on the internal politics of Ukraine. This is explained by the fact that the Europeanisation process proceeds more actively and effectively when there is a closer relationship between the national and supranational levels, in particular, thanks to better coordination between EU institutions and national governments and political parties and their representatives in the European Parliament. It is in this case that the process of reorientation of the direction and form of policy takes place so actively that the political and economic dynamics of the processes taking place in the EU become part of the logic of national policy formation.[59] In the conditions of relatively weak politicisation of Ukraine-EU relations with an unclear prospect of acquiring the status of a candidate country, the Ukrainian government did not have the necessary incentives to adapt its economic, political, and legal systems to EU standards before acquiring the status of a candidate country, and therefore there was no need to talk about Europeanisation amongst noticeable successes in the process.

58 T. Diez 'Constructing the Self and Changing Others: Reconsidering `Normative Power Europe' (2005) 33(3) Millennium - Journal of International Studies, 616 DOI: https://doi.org/10.1177/03058298050330031 7

59 G Pittoors, N Gheyle 'Living up to expectations? EU politicization and party Europeanization in Flanders and the Netherlands' (2022) Acta Politica 2. DOI: https://doi.org/10.1057/s41269-022-00281-4.

In general, during the years of Ukraine's independence, comprehensive monographic studies of the Europeanisation of the Ukrainian legal system and its law were not conducted. An exception is the attempt of the team under the leadership of K. Smyrnova (2021) to investigate the process of Europeanisation of the legal order of Ukraine within the framework of the Association Agreement between Ukraine and the European Union.[60] At the same time, traditionally, Ukrainian lawyers focus their attention on the study of the problems of Europeanisation of legal[61] and judicial systems,[62] higher legal education,[63] as well as relatively narrow issues within the framework of certain branches of legislation, mainly administrative,[64] environmental,[65] criminal,[66] civil,[67] civil procedural[68] law, etc. Thus, conducting comprehensive studies not only of particular branches of law but also of the legal system of Ukraine as a whole remains a real and practically significant issue.

The process of Europeanisation, which takes place both in the member states and in the candidate countries, has its differences. Despite this, there are certain common problems on this path, which Ukraine will also face. One should agree with M.-C. Ponthoreau, who believes that today no common legal epistemic community currently exists in Europe.[69]

60 KV Smirnova (ed), *Association between the European Union and third countries: current state and dynamism in the conditions of integration and disintegration* (VOC 'Kyiv University' 2021).

61 DO Deineko, 'The concept of "European law" and "Europeanization" of the legal system of Ukraine' (2019) 10(1-2) Journal of European and Comparative Law 79-87.

62 RA Petrov, 'Europeanization of the Ukrainian judicial system as a component of the European integration policy of Ukraine' (2012) 1-2 Law of Ukraine 300-306; IM Sharkova, 'Legal and judicial education in Ukraine: requirements of European integration' (2015) 15 Legal Regulation of the Economy 286-294.

63 IV Lukach, VV Poedynok, 'Practical directions for improving legal education in Ukraine' (2020) 26 Scientific Works of the National University 'Odesa Law Academy' 64-71. DOI: https://doi.org/10.32837/npnuola.v26i0.662; PS Patsurkivskyi, RO Havryliuk, 'To be or not to be a European higher legal education in Ukraine? or Committee hearings on the concept of development of higher legal education continue...' 2020 <https://law.chnu.edu.ua/buty-chy-ne-buty-vyshchii-yurydychnii-osviti-v-ukraini-yevropeiskoiu/> accessed 1 November 2022; T Mann (ed), *Europäisierung der Ukrainischen Juristen aus bildung: Dokumentationeiner Tagungim Rahmen des Deutsch-ukrainischenrechtswissenschaftlichen Dialogs e. v.* (Universitätsdrucke Göttingen 2016, Band 1) <http://rechtsdialog.org/images/2016/09/mann_europaeisierung_dt.pdf>accessed 1 November 2022.

64 OR Radyshevska, 'Europeanization of Administrative Law of Ukraine: Features of Modern Tectonics of Influence Mechanisms' (2020) 1 Journal of the Kyiv University of Law 150-154. DOI: 10.36695/2219-5521.1.2020.30.

65 IV Yakoviyk, HV Anisimova, OY Tragniuk, 'Europeanization of Environmental Law of the European Union Member State' (2022) 158 Problems of Legality 82-109. DOI: 10.21564/2414-990X.158.263248.

66 TM Anakina, LV Chornozub, 'Harmonization of the criminal law of the member states of the European Union' (2022) 1 Actual Problems of Domestic Jurisprudence 160-165. DOI: https://doi.org/10.32782/392259; YuV Baulin, 'Europeanization of the General Part of the Project of the CC of Ukraine' in VYa Tatsii (ed), Criminal Law in the Conditions of Globalization of Social Processes: Traditions and Innovations: Materials of the International of Science Practice Round Table, Kharkiv, 15 May 2020 (Pravo, 2020) 45-50.

67 OYu Chernyak, 'The form of the contract in the context of the Europeanization of the civil legislation of Ukraine'(2022) 56 Scientific Bulletin of the International Humanitarian University. Ser.: Jurisprudence 117-120. DOI: https://doi.org/10.32841/2307-1745.2022.56.25; RA Maydanyk, 'Methodology of Ukrainian law in conditions of Europeanization: universal method, algorithm, stages of resolving a legal dispute (case)' (2020) 20 Private Law and Entrepreneurship 8-19. DOI: https://doi.org/10.32849/2409-9201.2020.20.2; *OO Haydulin, Europeanization of contract law* (KNEU 2012).

68 IO Izarova, *Theoretical foundations of the EU civil procedure* (Dakor Publishing House, 2015); IO Izarova, 'Common standards of civil procedure in the EU: General Characteristics and Prospects for Implementation' (2018) 1 Scientific notes of NaUKMA. Legal Sciences 55-61; VV Komarov, 'Civil procedure in the global context' (2011) 9-10 Law of Ukraine 22-44; V Komarov, T Tsuvina, 'The Impact of the ECHR and the Case law of the ECtHR on Civil Procedure in Ukraine' (2021). 1(9) Access to Justice in Eastern Europe 14–36.

69 M-C Ponthoreau, 'Europeanization of minds Imagining a Transnational European Legal Community' 1 < https://www.academia.edu/11184774/Europeanization_of_Minds_Imagining_a_Transnational_European_Legal_Community> accessed 1 November 2022.

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Today, this legal epistemic community appears to be still inherently national. Thus, we can speak of a convergence between legal rules in Europe, but it is altogether more complicated to speak about convergence between legal traditions and particularly between legal (in particular the constitutional) cultures.[70]

The Europeanisation of the domestic legal culture is a prerequisite for the successful modernisation of all other elements of the legal system on the path of Ukraine's entry into a single legal, political, economic and cultural space. The success of the implementation of this task depends on the process of Europeanisation of domestic legal science and education, the completion of the process of de-Russification (the Parliament of Ukraine is considering a draft of the Law, which provides for the prohibition of the use of information sources of the aggressor state or the occupying state in educational programs, in scientific and scientific-technical activity).[71] This is explained by the fact that the formation of a common European legal space and the entry of new legal systems into it involves not only the implementation of EU law by the candidate countries but also the Europeanisation of the sources of law, the concept of human rights and the rule of law, the judiciary, interpretation of law, legal procedures and methods and, ultimately, also the manner of legal thinking.[72] The perception of the doctrines, concepts, principles, practices, and procedures prevailing in EU law by the Ukrainian legislator, courts, and law enforcers depends on the proper legal and language training, first of all, of civil servants of all levels and categories, professional lawyers, legal translators, human rights defenders, and public activists. This requires significant modernisation of higher legal education.

Ukraine needs to increase the training of specialists in the field of EU law with parallel high-quality language training (it should be taken into account that as a result of the Europeanisation of law, there is a hybridisation of the legal languages of the EU member states and the formation of a new European legal culture[73]), as well as an increase in the number budgetary places for the training of specialists in the specified speciality by the Ministry of Education and Science of Ukraine. Institutions of higher education in the legal profile should revise their educational-professional and educational-scientific programs in order to move away from the formal and limited teaching of EU law. It is necessary to introduce Europeanised educational programs, preferably in English, instead of continuing to use traditional national approaches to the study of law. At the same time, it should be noted that student and teacher mobility programs do not solve the problem of Europeanisation of legal education, as they cover a small percentage of students and teachers. Although they are important, they have a quantitatively limited impact on legal education.

The problem of training Ukrainian judges to work in the conditions of Ukraine's accession to the EU requires special attention. Although it is impossible to predict the date of Ukraine's accession to the EU, this line of work must be implemented in advance. For this purpose, it is expedient for the Cabinet of Ministers of Ukraine to consider the issue of developing and approving the Legal Education Development Program (similar programs were approved in

70 VS Lomaka, 'Legal Culture of Society in the Context of European Integration'(2022) 159 Problems of Legality 109. DOI: 10.21564/2414-990X.159.268418.

71 On amendments to some laws of Ukraine regarding the prohibition of the use of sources of information of the aggressor state or the occupying state in educational programs, in scientific and scientific and technical activities: draft Law of Ukraine <https://itd.rada.gov.ua/billInfo/Bills/Card/40164?fbclid=IwAR2HisjRFAKAbrPktEOUQpASAONhHynFZkTalepw4RgeK3y_rSy0DOG9StY>accessed 1 November 2022.

72 M Ečeřa,'The process of Europeanization of law in the context of Czech law' (2012) LX(2) *Actauniv. agric. et silvic. Mendel. Brun.* 461.

73 M Bajčić,'The Role of EU Legal Englishin Shaping EU Legal Culture' (2018) 7 International Journal of Language & Law 8. DOI: https://doi.org/10.14762/jll.2018.008; V Sosoni, L Biel, 'EU Legal Culture and Translation' (2018) 7 International Journal of Language & Law 3. DOI: 10.14762/jll.2018.001.

the early 2000s), as well as adapting the activities of the Institute of Law and Postgraduate Education under the Ministry of Justice of Ukraine to the requirements for the retraining of justice workers in the context of the requirements Europeanisation of the judiciary.

The problem of modernisation of legal terminology[74] is no less important and difficult. The adaptation of Ukrainian legislation to the legislation of the EU and, after joining the EU, the process of harmonisation gives relevance to the problem of modernisation of legal terminology and the introduction of new terms in accordance with EU legal standards. T. Takis draws attention to the fact that, for example, 'diverse and often bewildering judicial terminology serves to obfuscate the role of principles which, in terms of positive law, stand at the apex of the EU law edifice'.[75] During the years 1995-2000, the Commission on Legal Terminology, designed to ensure the exact and uniform use of legal terms in law-making work and in official acts, was functioning in Ukraine. In addition, the Commission studied legislative material with the aim of defining and unifying legal terminology, compiling registers of Ukrainian legal terms, compiling legal dictionaries; preparing recommendations regarding the uniform application of legal terms in various fields of law; implementing terminological and linguistic examination of draft legislative acts.[76] The Commission approved the normative table for the reproduction of Ukrainian proper names in the English language and the rules for it. We believe that at the current stage of integration, it is expedient to create such a body, adjusting its powers in accordance with the needs of the Europeanisation process.

The methodological support of the law-making process in Ukraine needs updating. At the beginning of the 2000s, this issue was regulated at the sub-legal level in Ukraine. Thus, in 2000, the Ministry of Justice approved the Methodological Recommendations for the development of draft laws and compliance with the requirements of normative design techniques, aimed at unifying the drafting of laws and compliance with the requirements of normative design techniques,[77] taking into account the needs of adapting Ukrainian legislation to EU legislation. Although the specified Methodological Recommendations are valid, they are significantly outdated, as they are based on the Partnership and Cooperation Agreement between Ukraine and the European Communities, which expired in 2017.

7 EUROSCEPTICISM AS AN OBSTACLE TO EUROPEANISATION

The development of a united Europe does not exclude the parallel development of processes that hinder the deepening and expansion of integration. It is about separatist tendencies within the EU,[78] the existence of Eurosceptics among current and former (Great Britain) EU member states, as well as candidate countries, as well as the development of the process of

74 MI Lyubchenko, *Legal Terminology: Concepts, Features, Types* (Human Rights Publishing House 2015).

75 T Takis, 'The general principles of EU law and the Europeanisation of national laws' (2020) 13(2) Review of European Administrative Law 5. DOI: https://doi.org/10.7590/187479820X15930701852193.

76 On the provisions on the Committee of Legislative Initiatives under the President of Ukraine, on the Ukrainian Codification Commission and on the Ukrainian Commission on Legal Terminology: Approved by the Decree of the President of Ukraine dated 23 August 1995 N 796/95 <https://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=796%2F95#Text>accessed 1 November 2022.

77 Methodological recommendations for the development of draft laws and compliance with the requirements of normative design techniques: approved by Resolution of the Board of the Ministry of Justice of Ukraine dated 21 November 2000 No. 41 <https://zakon.rada.gov.ua/laws/show/v0041323-00#Text>accessed 1 November 2022.

78 IV Yakoviyk, MG Okladna, RR Orlovskyy, 'Separatism in the United Europe: old problem with a new face' (2018) 140 Problems of Legality 132-143. DOI:10.21564/2414-990x.140.125989.

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de-Europeanisation[79] of certain EU policies with the help of such tools as 're-nationalisation', 'differentiation', 'circumvention', 'resistance', etc.

Eurosceptics form a separate subculture within the framework of the democratic legal culture of a united Europe, in which legal and political components are closely intertwined. The creation of a separate subculture of Eurosceptics, who are represented not only in national governments but also in the European Parliament, became possible in particular because EU citizens are poorly informed about how the EU is organised and functions. In 2017, 42% of respondents believed that they were well informed about EU-related issues, while 57% said they were not, and 1% could not state their position on the issue. In 23 of the 28 member states, less than half of respondents say they are well informed about issues related to immigration and integration.[80] This ignorance of a large part of Europeans gives rise to the most dangerous type of Euroscepticism because it is based on a lack of knowledge or understanding or simple ignorance; it spreads quickly and is carefully fuelled by certain mass media, which create and reproduce a bad image of the EU.

The legal subculture has an impact on decision-making both at the national and European levels. Eurosceptics express ideas and judgments, give assessments that express doubts, a certain degree of rejection and criticism regarding the directions and methods of integration (for example, criticism of the strengthening of manifestations of supranationalism in the legal nature of the EU or the delegation of the right to exercise sovereign rights from national governments to EU institutions), or a certain EU policy (the idea of creating an all-European army is an example of a policy that has caused heated debates since the development and failure of the ratification of the Treaty on the European Defence Community until today; criticism of the EU's currency and migration policy is no less acute), or leadership in the middle of the EU,[81] or activities of its separate institute. Eurosceptic countries not only express ideas but also try to influence the process of development and functioning of the EU. It should be noted that 'hard Euroscepticism' means a complete rejection of the entire project of European political and economic integration and opposition to joining or maintaining membership in the EU, while the more common 'soft Euroscepticism' is defined as 'conditional or qualified opposition to European integration'.[82]

Quite often, the basis of Euroscepticism, which inhibits or directly hinders Europeanisation, is the national egoism and populism of individual member states (political parties of both the right and left spectrum, individual public organisations at the national level, as well as the activities of transnational groups). At the same time, the level of public Euroscepticism is not always correlated with the levels of party Euroscepticism), which was clearly demonstrated by the currency and financial crisis (2009-2014) and the migration crisis (2015), as well as the Russo-Ukrainian War.

The very presence of Eurosceptics in the all-European political arena carries a potential threat of slowing down or even suspending the process of European integration, as they

79 J Dyduch, P Müller 'Populism meets EU Foreign policy: the de-Europeanization of Poland´s Foreign policy toward the Israeli-Palestinian conflict' (2021) 43(5) Journal of European Integration 569-586. DOI: https://doi.org/10.1080/07036337.2021.1927010

80 Special Eurobarometer 469: Report Integration of immigrants in the European Union, 2018 <https://www.europeanmigrationlaw.eu/documents/EuroBarometer-IntegrationOfMigrantsintheEU.pdf> accessed 1 November 2022.

81 Actually, the origins of Euroscepticism come from the position of Great Britain, which was opposed to French-German dominance in the EU; in the conditions of the Russo-Ukrainian War, Poland and the Baltic countries question the leadership of Bonn and Paris.

82 P Taggart, A Szczerbiak 'Parties, Positions and Europe: Euroscepticism in the EU Candidate States of Central and Eastern Europe. Working Paper' (Sussex European Institute 2001). https://www.researchgate.net/publication/252483207_Parties_Positions_and_Europe_Euroscepticism_in_the_EU_Candidate_States_of_Central_and_Eastern_Europe accessed 1 November 2022.

represent opposition to the development of any form of supranational European institutions that would encroach on national sovereignty and the traditional European state system.[83] Brexit proved the validity of these fears.

In scientific studies, attention is usually focused on the positions of such countries as Great Britain, Poland, and Hungary, whose policies give reasons to classify them in the camp of principled and consistent Eurosceptics. But there are countries, such as France and the Netherlands, which, although they were the founders of the unification process and are considered to be its driving force, at the same time, occasionally inhibit certain directions of integration (for example, France's failure to ratify the Treaty on the European Defence Community), the process of its deepening (in 2004, France and the Netherlands disrupted the process of ratification of the Treaty establishing a Constitution for Europe, because they believed that it would accelerate the process of federalisation of the EU), or the pace of integration even more seriously than principled Eurosceptic countries. This especially proves the attitude of the specified countries to the EU enlargement process.[84] The inhibition of European integration by individual member states is explained by the desire of the European Commission to gain the widest possible public support for the EU and its initiatives.

8 CONCLUSIONS

Europeanisation should be considered a problem and not a solution. The introduction of the concept of Europeanisation into the scientific discourse contributed to the emergence of new original explanations on a number of important issues, in particular, the analysis of the impact of the EU legal order on national legal systems and supranational governance on national models of the internal policy of EU member states and candidate countries, and, in some cases, neighbouring states.

'Europeanisation' and 'European integration' are not identical phenomena, as the scope of Europeanisation can go beyond European integration, for example, to include the transfer of EU policies to third countries. Unlike European integration, which is based on the transfer of powers from member states to the EU, the process of Europeanisation involves the transfer of models and content of the European decision-making process in the context of national management systems.

The EU is seen as one of the most highly institutionalised supranational political systems in the world, a system developed in part through decisions taken by the Court of Justice of the European Union. The rule of law is the value on which the EU was founded and which its member states must respect and observe. The CJEU regards it as a constitutional meta-principle that informs other constitutional norms and can justify review procedures and sanctions against member states. Consequently, this value is a legal principle applicable to legal disputes under Union law. The activities of the Commission are not sufficient to

83 R Katz 'Euroscepticism in Parliament: A Comparative analysis of the European and National Parliament' European Consortium for political research Joint Sessions of Workshops, Torrino, 22-27 March 2002 <https://ecpr.eu/Events/Event/PaperDetails/14932>accessed 1 November 2022.

84 During the 1960s, France blocked Great Britain's attempts to become a member of the European Communities twice. In 2009, at the stage of negotiations on the signing of the Association Agreement with Ukraine, the Netherlands, Germany, Belgium, and Luxembourg opposed the words 'European perspective' in the text of the draft Agreement. During 2016-2017, the Netherlands blocked the ratification of the Association Agreement with Ukraine. During the Russo-Ukrainian war, the President of France expressed the idea of creating a European political community, which many see as an attempt to slow Ukraine's accession to the EU.

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constitute the rule of law of the Union. The Commission therefore relies primarily on the case law of the CJEU.

The main goal and consequence of the Europeanisation of law is the formation of a common legal space, within which the principle of the supremacy of EU law is established, differences between the legal systems of the member states of the EU are reduced, and the Europeanisation of national legal cultures, in particular, the way of legal thinking, takes place. As a normative power, the EU exports universal norms, standards, practices, and management models beyond its borders.

The EU enlargement policy, which aims at the 'democratisation', 'Europeanisation', and 'modernisation' of the candidate countries before their accession to the EU, is today the main instrument of the Union's normative power in Europe. The EU's normative identity is thus central to debates about the EU's normative influence beyond its borders.

Throughout history, the Ukrainian state has experienced several stages of Europeanisation of its own state and law. The current stage of this process is due to Ukraine's aspiration to become a member of the EU. After Ukraine acquired the status of a candidate for EU accession on the basis of its application to the EU, dated 28 February 2022, this task became particularly relevant and of practical significance. Its implementation requires the Europeanisation of domestic legal culture as a prerequisite for the modernisation of all other elements of the legal system. This, in turn, implies: the completion of the process of de-Russification; high-quality training of a significant number of specialists in the field of EU law with parallel high-quality English language training; the introduction of Europeanised educational programs, preferably in English, instead of continuing to use traditional national approaches to the study of law; the development and approval of the Legal Education Development Program and adaptation of the activities of the Institute of Law and Postgraduate Education under the Ministry of Justice of Ukraine to the requirements of retraining of justice workers in the context of the requirements of the Europeanisation of the judiciary; the modernisation of legal terminology.

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