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**ЕВРОПЕЙСКАЯ
ИНТЕГРАЦИЯ –
ОСНОВА СБЛИЖЕНИЯ
ПОЛИТИЧЕСКИХ И
ПРАВОВЫХ СИСТЕМ
УКРАИНЫ И ЕС**

**EUROPEAN
INTEGRATION AS A
BASIS FOR CONVERGING
POLITICAL AND LEGAL
SYSTEMS OF UKRAINE
AND THE EUROPEAN
UNION**

Аннотация:

Статья посвящена освещению сущности и особенностей развития разных научных теорий и направлений исследования интеграции в рамках европейских интеграционных объединений. Проанализированы теоретические подходы и концепции разнообразных школ учёных относительно определения понятия «интеграция», предпосылок возникновения и причин развития европейской интеграции и, в частности, сущность и содержание теории европейской правовой интеграции. Автор акцентирует внимание на раскрытии содержания теории правовой интеграции в рамках европейских интеграционных объединений.

Ключевые слова:

интеграция, теории европейской интеграции, федерализм, функционализм, трансакционализм, интергouverнментализм, реализм, конструктивизм, институционализм, правовая интеграция

Abstract:

The article deals with the essence and peculiarities of various theories and approaches to the study of integration within European integration Communities. It provides the analysis of theoretical approaches and concepts by various schools on the definition of "integration", preconditions for the emergence and development of the European integration placing special emphasis on the essence and content of the European legal integration theory. The author focuses on describing legal integration theory within the European integration Communities.

Key words:

integration, European integration theories, federalism functionalism, transactionalism, intergovernmentalism, realism, constructivism, institutionalism, legal integration

Nowadays globalization contributes to the rapid development of integration processes and the process of legal integration in particular. Integration is an objective and inevitable process that covers almost all spheres of social life. Ukraine has declared the accession to European integration Communities as its main task. Thus the study of European integration theories as well as the presentation of perspectives developed by various scientific and theoretical approaches and schools with the focus on the analysis of European legal integration is necessary with regard to current social and state developments in Ukraine and has considerable scientific interest and importance. This theoretical field has been developed and analyzed by researchers from European and Western scientific schools and approaches within modern European Legal and Political Sciences, Sociology, Economics etc.

The study along with the scientific and theoretical analysis of European integration, the activity of the European interstate organizations (e.g. The Council of Europe and the EU), European law, the correlation between international law and national law have been carried out by researchers both in Ukraine and abroad, among them Mykola Hnatovskyi, Mykhailo Mykiiievych, Yevhen Kharytonov, Walter Kernz, Ihor Lukashuk, Yurii Tykhomyrov, Borys Topornin, Volodymyr Zabihailo, Serhii Kashkin, Viktor Muraviov, Mykhailo Marchenko and others. A significant contribution to the development of the European integration theory has been made by Western researchers and scholars, such as Mauro Cappelletti, Monica Seccombe, Ernst Haas, Amitai Etzioni, Karl Deutsch, Altiero Spinelli, Ben Rosamond, Donald Puchala, Antje Wiener, Thomas Diez and others. We believe that no modern research on integration methodology can be adequate enough without taking into account and analytical consideration of their contributions.

Still it should be noted that research papers in Ukraine, and especially during the Soviet period, are to a certain extent one-sided and in our opinion they do not present that pluralism of ideas and perspectives on European integration that is characteristic of Western research. In addition, nowadays researchers in Ukraine have differing opinions on the integration process and legal integration in particular, and the research into theories and concepts of European legal integration is mostly fragmented and partial. That is why the aim of the paper is to provide a comprehensive scientific and theoretical research into and thorough analysis of preconditions for formation and development of various European integration theories and European legal integration in particular with regard to their essence, content and theoretical foundations.

The study and analysis of European integration theories is a complex task. The analysis of works by Western researchers should be started with the book *European Integration Theory* by Antje Wiener and Thomas Diez that was presented at the European Union Studies Association (EUSA) 8th Biennial International Conference in Nashville in the form of a paper for presentation *Introducing the Mosaic of Integration Theory: Its Past, Present and Future* [1]. The book analyses various European integration theories, their formation and development. For example, Ernst Haas, one of the most influential integration theorists in the field of neofunctionalism, defined integration as the process whereby political actors in several, distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new center, whose institutions possess or demand jurisdiction over the pre-existing national states [1, p. 2]. This broad definition includes both a social process (the shifting of loyalties) and a political process (negotiation and decision-making about the construction of new political institutions above the participating member states with a direct say in at least a part of the member states' affairs) [1, p. 2].

Western researchers underscore that integration is above all a process, and the main emphasis should be placed on the integration process proper, and

not on the political system formed in the integration process. However, nowadays researchers have focused specifically on the shape of, in their terms, “a new governance system” emerging in the EU, that is, they are more concerned with the outcome rather than the process of European integration [1, p. 3].

Antje Wiener and Thomas Diez state that the 1970s were a “stagnation” period for the integration process. While the latter half of the 1980s has seen the revival and acceleration of the integration processes. Furthermore, outside Political Science, legal scholars have advanced the argument of “integration through law”, focusing on increasing legal interdependencies and corresponding shifts in the meaning of sovereignty [1, p. 5].

The researchers distinguish three phases in the integration theory [2, p. 7].

Phase	When?	Main themes
Explaining Integration	1960s onwards	How can integration outcomes be explained? Why does European integration take place?
Analysing Governance	1980s onwards	What kind of political system is the EU? How can the political processes within the EU be described? How does the EU regulatory policy work?
Constructing the EU	1990s onwards	How and with which social and political consequences does integration develop? How are integration and governance conceptualised? How should they be?

Such theoretical approach to European integrations as federalism emerged in the 1950s and was based on the idea of the states’ common historical, economic and political interests. Main representatives of this approach include Altiero Spinelli, Sergio Pistone, Kenneth Clinton Wheare and others. They maintain that there has emerged a special (federal) institutional order, that determines the character of relationship among integrating units as well as the division of powers among them on the one hand, and the emerging “single center” on the other hand [3, p. 5]. The scholars of this approach considered the existence of a decision-making center to be a criterion of the integration level, analyzed institutional transformations, power distribution, transparent and open legal mechanisms [4, c. 15]. Ernest Wistrich states that “the essence of federalism lies in the decentralization of power where it is necessary...” [5, p. 2]. The representatives of the federalism approach believe that European integration cannot be a revolutionary process, but rather an evolutionary, gradual development [6, p. 48]. Jean Monnet says that “the political union of Europe must be built step by step like its economic integration. One day this process will then lead us to a European Federation” [7, p. 211]. The normative aim of federalists lies in establishing a Federation of European states instead of competing nation states [8, c. 5].

Functionalism is "a classical theory of regional integration that holds that a common need for technocratic management of economic and social policy leads to the formation of international agencies. Such agencies promote economic welfare, thus eventually gaining legitimacy, overcoming ideological opposition to strong international institutions, and in the long-run evolving into a sort of international government" [9, p. 245].

The emergence of neofunctionalism was connected with the so called "euroenthusiasm" period of the 1960s and 70s and the realization that the further integration of European states was inevitable. The biggest contribution to the development of this theory was made by Ernst Haas, Leon Lindberg, Amitai Etsioni [11, p. 5]. This approach states that the order and structure of the integration process require the creation of powerful central institutions and gradual transference of the sovereignty by the member-states to the Community level. At the same time both the member-states and their governments have a very passive role in this process. On the contrary, the European Commission is an active organizer of the integration process and the organized groups, parties and political elites act as a kind of an integration "catalyst" [12, p. 256]. This stance of neofunctionalists became a challenge to the traditional international relations theory: replacement of power politics of states by supranational consensus politics. Introduction of the "Community method" (Robert Schumann, Jean Monnet). Spillover as the most important guiding process of integration: it is expected that deepening of integration in one sector will create necessary pressures for further economic integration within this particular sector and outside it leading to functional needs for European authority [8, c. 7].

Karl Deutsch (1957) had a different perspective on the integration process, he considered the emerging integration as a consequence of growing cross-border communications and transactions, that is why his theoretical approach is called transactionalism [1, p. 7-8]. Transactionalists refer to communication/transactions as a means of trust/loyalty, as a means for unification/mutual capacity to rapid reaction as a precondition of peace [8, c. 6].

The representatives of the intergovernmentalism approach referred to the formation of national institutional entities as a result of rational decision-taking within the historical context that favored the creation of stable and clearly stated interests of the various member state governments (Stanley Hoffman, 1966) [1, p. 8].

The realism theory maintains that national states are "eternal" elements of the international relations system and they are guided by their own interests. The "survival" is of the highest priority. That is why the security problem is the main foundation of their foreign policy. Aiming to solve this problem the states begin to cooperate [4, c. 19].

The representatives of the neorealism theory – Kenneth Waltz, Andrew Moravcsik, John Mearsheimer, Stanley Hoffmann, Hans Morgenthau – believe that the basis for interstate anarchy is the distribution of power potential among the states. The states behavior changes depending on the redistribution of the power potential. Thus, anarchy may bring order but it cannot result in the effective and lasting cooperation because the states are still competing and each of them is guided by the rules of competition. Both realists and neorealists considered integration as a kind of anomaly of the Cold War [4, c. 19]. The point is that until 1990 European integration was seen as a reaction to the Cold War and that is why neorealists predicted for the European Union a period of conflict rather than cooperation after 1990 [8, c. 8].

Whereas constructivists (Antje Wiener, Thomas Diez, Thomas Risse, Alexander Wendt, Peter Katzenstein, Friedrich Kratochwil) claim that the interest in European integration had a relatively recent start. Diez (1999) differentiates two types of constructivist approaches: 1) social constructivism studies the character or quality of social reality (Anthony Giddens, Peter Katzenstein); 2) theoretical constructivism studies the conditions and the state of our knowledge about reality [8, c. 9].

The institutional approach studies the formation of a new system, its structure, integrative properties, elements and their interactions. This new system is referred to as "Single Europe". This approach places a specific emphasis on the law, its role in and influence on the European integration process. It considers new aspects of the integration process: presents peculiarities of interstate interactions both at the formal and informal levels, the decision-making procedures, and analyses of the institutionalization results. It's believed that the interaction of legal, political and economic systems stimulates the development of the integration process and determines its directions [13, p. 62].

For a new generation of integration theorists institutions were not just mere instruments in the hands of their creators, they had an important effect on both the integration process and the European governance development. As neoinstitutionalists showed institutions, that make the process of institution-building almost irreversible, may have some "unintended consequences" (Douglass North, 1990) [1, p. 8]. During this phase of the integration theory development some scholars defined the EU as a "multi-level" system (Gary Marks, Liesbet Hooghe, Kermit Blank, 1996) or "network governance" (Beate Kohler-Koch and Markus Jachtenfuchs, 1996), or as a "multi-perspectival polity" (John Ruggie, 1993). The key process being analyzed was "Europeanization" of governance rules, institutions and practices across the EU (Maria Green Cowles, 2001). The issues that were addressed by them included institutional adaptation, "misfit" and "good governance" as well as legitimacy, democracy and transparency [1, p. 8].

The Western science started to pay attention to the issues of legal integration mostly in the 1970s -80s. But these were rather "practical efforts than a certain theory" [14, c. 35]. It should be noted that particular attention is paid to integration through law (Mauro Cappelletti, 1986) that had to account for the integration process in the European Economic Community based on the rulings of the European Court of Justice. The development of European integration is considered from the perspective of legal studies that were often neglected in theoretical debates of European Studies but had a key role in the assessment of the progress and scale of the integration process and starting from the 1980s they shifted from explanatory to more normative analysis (Jo Shaw and Gillian More, 1995, Richard Bellamy and Dario Castiglione, 1996, Joseph Weiler, Ulrich Haltern and Franz Mayer, 1996) [2, p. 10]. The representatives of the legal approach in the study of European integration (Federico Mancini, Koen Lenaerts, Joseph Weiler, Hjalte Rasmussen, Mauro Cappelletti and others) placed great importance on the role of law in the development of European integration processes. Mauro Cappelletti, Monica Seccombe and Joseph Weiler claim that it is the law which determines the status and the field of activity for the main actors in the integration process, it controls and, if necessary, limits their activity, and serves a function of a certain normative regulator in the relationships among the participants of the integration process [15, p. 4]. One of the most characteristic features of European Communities, in the opinion of the representatives of this approach, is the unique character of their legal status: on the one hand the Communities are created by the states and function on the basis of international legal norms, and on the other hand, the European Union has formed its own specific autonomous legal order that significantly differs from national legal orders of any of its member states. The representatives of this approach study and analyze important and critical issues such as the role and impact of the EU fundamental institutions in the process of European integration, their mutual influence and interaction, the EU legal perspectives, the place of the Union in Europe and in the system of the world community, peculiarities of the autonomous EU legal order, its role in strengthening integration processes and relations among individual states, the importance and influence of the European Community legal principles and the role of the European Union Court of Justice in their development and normative establishment, the correlation between the laws of European Communities and national legal systems of the member-states. The scholars also note that the obvious and undeniable achievement of the European Court of Justice is the creation of a system with legal norms at its center serving as a clear illustration of how effective the activity of an international court body can be in the establishment and implementation legal norms that regulate interactions among sovereign in-

dependent states. Taking that into account the representatives of this approach consider the European Court of Justice as one of the main actors on the integration scene [11]. The scholars underscore that the Court of Justice shares some characteristic features with international, constitutional, administrative and criminal courts at the same time [16, p. 197–198].

Most integration theories emerged and developed within the Western academia and though their origins may differ, and consequently their ontological and epistemological foundations and principles differ, they share quite a lot of common ground [1, p. 14]. As far back as 1972 Donald Puchala stated that “different schools of researchers have exalted different parts of the integration “elephant”. They claimed either that their parts were in fact whole beasts, or that their parts were the most important ones, the others being of marginal interest” [1, p. 15].

At the early phase of the integration process development the integration theory has such scientific schools as federalism, functionalism and transactionalism. These approaches try to produce an answer to the question: How to avoid a new war? The further development phase in this field of knowledge tried to explain the European integration process that had already started. The main approaches in this period were represented by neofunctionalists, intergovernmentalists and constructivists. At the current phase of the European integration process development the scholars try to find an answer to how the EU system functions. There are also approaches that consider the EU as a political system of multi-level governance. These issues are also addressed by such approaches as institutionalism, neoinstitutionalism, consocialism and others. Having analyzed Western approaches to European integration we may conclude that they are of a pluralistic nature because there is no single, right “general theory” of European integration. Thus, we may single out theories of economic, political, sociological, legal and other types of European integration. We believe that it is the theory of legal integration that presents the biggest interest for Ukraine, as it can be a means of converging Ukrainian law and the EU law, that is why it requires further research and theoretical analysis.

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