

Міжнародна науково-практична конференція

«Угода про асоціацію з ЄС як інструмент забезпечення стійкості економіки України»

INSTITUTE OF INTERNATIONAL RELATIONS
Taras Shevchenko National University of Kyiv

International Law - 4 course, Bachelor Program in English

Zgyrbach Victoria 26.11.2021

INTELLECTUAL PROPERTY PROTECTION IN THE FRAMEWORK OF THE EU ASSOCIATION AGREEMENTS WITH THIRD COUNTRIES

THE ASSOCIATION AGREEMENT

Three core pillars of the Association Agreement:

- ▶ political dialogue
- ▶ cooperation
- ▶ trade.



- not simply a trade agreement but a comprehensive tool that provides all the necessary means needed for an integrated relation.
- the most essential and traditional instrument of the EU's external policy to foster a close relationship between interested countries.

THE ASSOCIATION AGREEMENT BETWEEN THE EU AND UKRAINE

- ▶ entered into force on 1st September 2017
- ▶ to deepen the political and economic relations between Ukraine and the EU



The Agreement is the main international legal document in the history of Ukraine and the biggest international agreement with a third country ever concluded by the European Union which not only define the political association and economic integration but serves as a guideline for the **efficient socio-economic reform in Ukraine.**

DEEP AND COMPREHENSIVE FREE TRADE AREA (DCFTA)

MAIN OBJECTIVE

integral part of the Association Agreement

- ▶ promote liberalization of the bilateral trade and elimination of tariffs and quotas
- ▶ leads to Ukraine's gradual integration in the EU single market without actually to become EU Member State.

The core elements:

- ▶ mutual abolition of import duties,
- ▶ the introduction of rules of origin of goods,
- ▶ adjusting Ukraine's technical regulations, procedures, sanitary and phytosanitary measures and food safety measures under the EU rules,
- ▶ the establishment of the most favorable conditions of access to the services markets of Ukraine and the EU,
- ▶ the introduction of EU rules in the field of public procurement by Ukraine,
- ▶ simplification of customs procedures,
- ▶ prevention of fraud and various offenses,
- ▶ strengthening protection of intellectual property rights in Ukraine.

SUCH A DEVELOPMENT TIED UKRAINE TO SOME EXTENT TO NORMATIVE CONCERNS OVER ITS DEMOCRATIC DEVELOPMENT AND EU ECONOMIC INTEREST (SMITH, 2014).

INTELLECTUAL PROPERTY RIGHTS

Intellectual property - creations of the mind, such as:

inventions, artistic works, symbols, names and images used in commerce.

- ▶ intangible, unlike traditional goods,
- ▶ can be reproduced easily,
- ▶ used by an unlimited number of people.

If creators' rights of the IP are not protected:

- ▶ unfair on the creators work
- ▶ damaging to society and the economy as a whole

THE INTRODUCTION OF HARMONIZED STANDARDS AIMS TO CREATE A SINGLE LEGAL FRAMEWORK TO ENSURE THE PROTECTION OF THE LEGITIMATE INTERESTS OF OWNERS OF INTELLECTUAL PROPERTY RIGHTS IN UKRAINE AND THE EUROPEAN UNION.

Ukraine is a party to the following international and European treaties and conventions in the sphere of IPRs:

- ▶ Paris Convention
- ▶ Berne Convention
- ▶ WIPO Copyright Treaty
- ▶ Patent Cooperation Treaty
- ▶ the Madrid system
- ▶ the Hague system
- ▶ WIPO-administered treaties on classification
- ▶ TRIPS Agreement

Chapter 9 of the Association Agreement, Section “Trade and Trade-related Issues” (Article 157):

- ▶ the simplification of the procedure for the creation and commercial use of innovative products and products of creative activity in the territory of the Parties,
- ▶ the achievement of an appropriate and effective level of security
- ▶ protection of intellectual property rights

Article 158 of the AA:

the parties have to ensure the implementation of such treaties

through complementing and specifying the rights and obligations under the treaties the States are parties.

In the fields of IPRs such as:

- ▶ copyright (right to computer programs and databases),
- ▶ patents, (comprising patents for inventions in the field of biotechnology),
- ▶ trademarks and trademarks names, in case they are protected as exclusive intellectual property rights by the national legislation,
- ▶ industrial designs,
- ▶ topographies of integrated circuits,
- ▶ geographical indications and indications of origin,
- ▶ indications of source,
- ▶ plant varieties,
- ▶ protection of confidential information
- ▶ protection against unfair competition (Article 10 bis of the Paris Convention for the Protection of Industrial Property).

Ukraine has the right to establish its regime for the exhaustion of intellectual property rights, under the provisions of the TRIPS Agreement (**Article 160**).

State parties to the Agreement have **to comply** with relevant obligations,

cooperate in order to support the implementation of the commitments undertaken

by means of not only **exchange of information** relating to the intellectual property rights and relevant rules of its protection and enforcement,

but also **exchange of experiences** in the EU Party and Ukraine concerning legislative progress and enforcement of intellectual property rights, central and sub-central enforcement by customs, police, administrative and judiciary bodies,

and **co-ordination** to prevent exports of counterfeit goods.

Apart from providing the information, promotion and dissemination of information and awareness of the education of the general public,

the capacity-building and exchange and training of personnel, enhancement of institutional co-operation are equally significant (**Article 252**).

- ▶ entered into force **the Law of Ukraine "On efficient management of property right holders copyrights and/or related rights"** as a guarantor that holders have rights to equitable remuneration and transparent activities of collective management organizations in conformity with international standards prescribed by the Directive 2014/26/EU of the European Parliament and the Council on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.
- ▶ **Resolution No. 912** of the Cabinet of Ministers of Ukraine "On approval of criteria for assessment of risk degree posed by business in the field of intellectual property and determination of the frequency of routine state supervision by Ministry of Economic Development and Trade of Ukraine"

initiated the implementation of:

1. the Law "On Copyright and Related Rights",
2. the Law "On the distribution of copies of audio-visual works, phonograms, video-grams, computer programs, databases"
3. the Law "On peculiarities of state regulation of business entities' activities related to production, export and import of disks for laser reading systems".



The introduction of such laws instituted **clear, transparent and predictable conditions** for checks of intellectual property business companies; particularly defined **the high, medium and low risk** of such business entities and not less important increased the efficiency of state supervision.

National Intellectual Property Office,

as the State Organization was founded in May 2018 in order to guarantee that the automated system of author remuneration collection and sharing are developed.

The protection of the geographical indication rights, and its adaptation to the European Standards the Draft Law of Ukraine "On amendments to certain legislative acts of Ukraine concerning the improvement of the legal protection of geographical indications" (**Reg. No. 6023**) was issued in order to implement Articles 204 to 207 of the Association Agreement, Annex XXII-B and Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 for agricultural products and foodstuffs.

Patent - the new Patent Law instituted new patentability criteria which reject protection for certain substances such as salts, ethers, polymorphs, metabolites and for new uses of known medicines in case there was no sufficient evidence guaranteeing enhanced efficacy of the substance.

In this way, it's more likely that stable forms of compounds are introduced which are unquestionably safer.

Trademarks - the new trademark law and reports by the stakeholders since the proprietors of registered trademarks were not well informed about applications disputed with their trademarks and did not have a clear deadline after the review by the National Intellectual Property Office to file an opposition against the applications.

Ukraine's advancement in complying with its intellectual property commitments is a positive outcome to meet its obligations by 2023 as set by the Association Agreement.

In fact, in 2019 and 2020 several new laws were adopted: on trademarks and designs (815/2020), on patents (816/2020), on GIs (123/2019) and IPR border measures (202/2019).

Additionally, there is an ongoing reform regarding the Ukrainian copyright regime.

CONCLUSION

Ukraine is certainly compelled to follow the Association Agreement requirements.

However, the Agreement is quite an essential instrument for both sides to exchange related information on national Intellectual property legislation and practices,
to make proposals for improvement, through organizing meetings
such for instance, an **IPR Dialogue** to discuss and analyze relevant issues,
or the annual meetings of the **GIs Sub-Committee** to discuss legislative developments, adaptation
and enforcement issues.

The European Patent Office started cooperation with Ukraine on patents and
a Memorandum of Understanding on trademarks and designs was signed between the National
Intellectual Property Office and the EUIPO.

Accordingly, the adoption of the laws, the ongoing reform and the new cooperation activities with the EPO and the EUIPO significantly encourage Ukraine to comply with international and European standards.



THANK YOU FOR YOUR ATTENTION!