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Adaptation of National Legislation to the EU Acquis in the Field of Alternative Resolution of Environmental Legal Disputes

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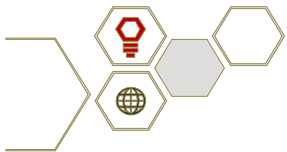
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Abstract. *The article presents a legal analysis of the specific features of harmonising Ukrainian legislation with the EU acquis, as well as an exploration of the prospects for resolving environmental legal disputes through the introduction of alternative dispute resolution (ADR) mechanisms into environmental law enforcement practice.*

It is argued that aligning Ukrainian legislation with the EU acquis in the field of alternative resolution of environmental legal disputes should be considered along two key dimensions: on the one hand, by taking into account the developments within the European community regarding the expansion of access to justice, including

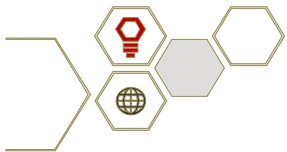


through alternative means; and on the other hand, by examining the adaptation of Ukraine's environmental legislation to the EU acquis.

It is demonstrated that Ukraine has adequately established the necessary conditions for the implementation of an alternative mechanism for resolving environmental legal disputes, i.e. an effective transposition of the UNECE Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (the Aarhus Convention) into national legal practice has significantly contributed to this process. The Convention promotes the development of mechanisms for compromise-based interaction among various actors in environmental legal relations, aiming to harmonise their interests, resolve existing environmental disputes, and prevent the emergence of new ones.

The article concludes that Ukraine's further steps should involve a comprehensive approach that combines targeted legislative reforms, institutional development, and effective law enforcement practices in the field of alternative environmental dispute resolution. Only such an integrated approach will enable Ukraine to fully align its national legislation with the EU acquis and ensure the effective, transparent, and equitable resolution of environmental legal disputes, thereby supporting sustainable development and deeper integration into the European legal system.

Keywords: *EU acquis, environmental legislation, legal dispute, legal conflict, environmental dispute, mediation.*



**Адаптація національного законодавства до *acquis* ЄС з питань
альтернативного врегулювання еколого-правових конфліктів**

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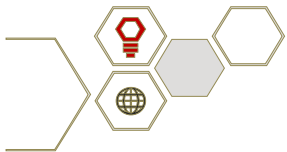
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***Анотація.** У статті проведено правовий аналіз особливостей гармонізації українського законодавства з *acquis* ЄС, а також здійснено дослідження перспектив врегулювання правових спорів екологічного характеру у зв'язку з запровадженням в еколого правозастосовну практику механізмів альтернативного врегулювання конфліктів.*

*Обґрунтовано, що питання приведення у відповідність українського законодавства до *acquis* ЄС у сфері альтернативного врегулювання еколого-правових конфліктів доцільно розглядати у двох площинах: з одного боку, брати до уваги напрацювання європейської спільноти у сфері розширення можливостей щодо доступу до правосуддя, в тому числі і на умовах альтернативності, з іншого – досліджувати питання адаптації до *acquis* ЄС довікілєвого законодавства України.*

Доведено, що в Україні належним чином створені умови для запровадження альтернативного механізму врегулювання еколого-правових конфліктів, а саме: ефективно транспоновано у національну правозастосовну практику Конвенції ООН про доступ до інформації, участь громадськості в



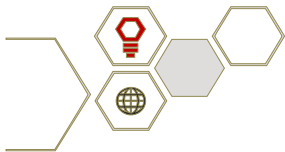
процесі прийняття рішень та доступ до правосуддя з питань, що стосуються довкілля (Орхуська конвенція), яка сприяє розвитку механізму компромісної взаємодії різних суб'єктів екологічних правовідносин з метою гармонізації їх інтересів та подолання діючих й запобігання виникненню нових екологічних конфліктів.

*Зроблено висновок, що подальші кроки для України повинні включати комплексний підхід, що поєднує цілеспрямовані законодавчі зміни, інституційний розвиток та дієву правозастосовну практику у сфері альтернативного врегулювання еколого-правових конфліктів. Лише такий підхід дозволить Україні повною мірою адаптувати національне законодавство до *acquis* ЄС та забезпечити ефективне, прозоре та справедливе врегулювання еколого-правових конфліктів, сприяючи сталому розвитку та інтеграції в європейську правову систему.*

Ключові слова: *acquis ЄС, довкілляве законодавство, спір, правовий конфлікт, екологічний конфлікт, медіація.*

Problem Statement. The challenges arising from the armed aggression of the Russian Federation against Ukraine – including large-scale environmental damage and restricted access to information – underscore the urgent need to implement effective, flexible, and multilateral mechanisms for alternative resolution of environmental disputes. These mechanisms serve not only as tools for dispute resolution but also as critical components in ensuring environmental justice and promoting sustainable development.

In 2025, the Ministry of Justice of Ukraine initiated the development of the National Programme for the Adaptation of Ukrainian Legislation to European Union Law, a key instrument for managing reforms and monitoring Ukraine's preparedness for EU membership. Consequently, the adaptation of Ukraine's national legislation to the European Union *acquis* in the area of alternative resolution of environmental disputes represents a significant step toward European integration.

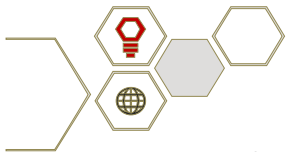


Literature Review. Understanding the concept of alternative dispute resolution (ADR) is not uniform and is the subject of ongoing scholarly inquiry across various branches of legal science. Similarly, the issues of EU law implementation and the adaptation of national legislation to the EU acquis in the field of alternative dispute resolution have been and continue to be actively explored by numerous scholars, including N. Hrabar [17], K. Hurtova [7], I. Zdrenyk [17], Z. Krasilovska [2], I. Machuska [21], S. Nedilchenko [21], V. Parasiuk [17], R. A. Petrov [5], O. V. Shumylo [25], O.M. Spektor [4], V. Sydor [8], O. Chyryk [21], among others.

Identification of unresolved parts of the general problem. Given that the process of aligning national legislation with EU law is ongoing, the issues addressed in this study remain highly relevant and retain their academic novelty. The problem raised lies both in the plane of procedural branches of law and is related to an expanded interpretation of the content of the right to access to justice, including on the basis of alternatives, and within the framework of environmental law research and reflects the peculiarities of environmental legal disputes. With this in mind, this publication proposes to examine the EU legal framework on alternative dispute resolution for its relevant application to the settlement of environmental conflicts and to outline the prospects for integrating alternative dispute resolution to further harmonize and ensure effective resolution of complex environmental legal disputes.

The aim of this article is to examine the key challenges associated with the adaptation of Ukrainian environmental legislation to the EU acquis in the field of alternative resolution of environmental legal disputes, as well as to explore the opportunities that may arise from the introduction of alternative dispute resolution mechanisms into environmental law enforcement practices.

Presentation of the main research material. Today, there is an intensification of the practice of using alternative procedures as an innovative approach to ending legal disputes. At the same time, historical and legal traditions, social and economic conditions have a significant impact on the current state and prospects for the development of this direction in each individual country. In particular, one of the



main factors that directly affect the introduction of conciliation procedures in Ukraine and public trust in them are national characteristics, as well as legal traditions, which include the traditions of dispute resolution. First of all, it is worth paying attention to the fact that the legal system of Ukraine was formed under the influence of the Romano-Germanic legal tradition. This influence is due to the widespread approach to dispute resolution in society, giving preference to judicial dispute resolution as the most reliable and effective [1, p. 207].

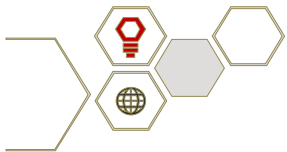
The impetus for introducing a non-jurisdictional form of legal conflict resolution in Ukraine was our state's desire for full membership in international institutions, in particular, the European Union. Such a position requires following modern legal trends, including ensuring the protection of the rights and legally protected interests of individuals and legal entities, expanding the possibilities of such protection and granting the right to choose the method of protection, including on the conditions of alternative [2, p. 159].

Thus, Article 49 of the Treaty establishing the European Community of February 7, 1992 [3] defines two groups of membership requirements: 1) the state must be European, which includes not so much geographical location as culture, political and legal traditions; 2) respecting democratic principles.

As for Ukraine, when solving the issue of its membership in the European Union, one must also bear in mind the additional criteria for membership in the EU, which were formulated for the countries of Central and Eastern Europe at the Copenhagen meeting of the European Council in June 1993 – the “Copenhagen criteria”, and exactly:

1) achieving the stability of institutions that guarantee democracy, the rule of law, human rights, the observance and protection of minority rights (“political criterion”);

2) the existence of a functioning market economy, as well as the ability to withstand competitive pressure and the action of market forces within the EU (“economic criterion”);



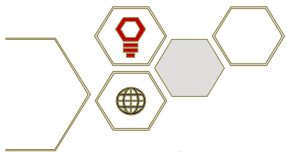
3) the ability to assume obligations arising from membership, including compliance with the goals of the political, economic and monetary union by bringing the national legal system into compliance with the *acquis communautaire* (“legal criterion”).

It is in the context of compliance with the legal criterion that the issue of introducing a system of alternative dispute resolution in Ukraine should be considered [4, p. 100].

The alignment of Ukraine’s national legal system with the *acquis communautaire* primarily concerns the adaptation of national legislation to the legal framework of the European Union. Before identifying the key issues of the topic under discussion, it is essential to clarify and reconcile the terminology used, as “there is always a problem of accurately employing foreign legal terms and constructs in accordance with their meaning and purpose in the Ukrainian language and domestic legal technique” [5, p. 145].

The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community, and their Member States, on the other (hereinafter referred to as the Association Agreement) [6], uses a variety of terms such as “implementation” (Art. 255), “approximation of legislation” (Art. 256), and “adaptation” (Arts. 152, 153). Contemporary legal doctrine regarding adaptation activities in the field of law identifies three potential levels of the approximation of Ukrainian legislation to that of the EU: “minimum adaptation,” “moderate adaptation,” and “maximum adaptation” [7, p. 167]. V. Sydor employs the term “approximation,” defining it as encompassing the transposition, implementation, and enforcement of the EU *acquis* [8, p. 30]. At the same time, one of the state’s primary priorities on the path to EU integration remains the quality of national legal acts implementing the provisions of EU law, along with the effectiveness of their enforcement in legal practice.

The National Programme for the Adaptation of the Legislation of Ukraine to the Legislation of the European Union, approved by the Law of Ukraine dated March 18, 2004 [9], defines the adaptation of legislation as the process of bringing the laws

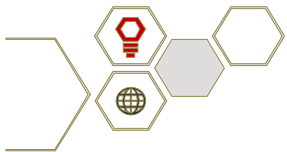


of Ukraine and other regulatory legal acts into conformity with the *acquis communautaire*. The *acquis communautaire* (or *acquis*) is understood as the legal system of the European Union, which includes, but is not limited to, EU legislative acts adopted within the framework of the European Community, the Common Foreign and Security Policy, and Cooperation in the Fields of Justice and Home Affairs (Section II). Moreover, compliance with the *acquis communautaire* requires not only the modification of a Member State's national legislation but also the establishment or reform of the necessary administrative or judicial institutions responsible for the supervision and enforcement of that legislation [10].

At the same time, contemporary scholarship differentiates between the categories of *acquis communautaire* and the EU *acquis*. The *acquis communautaire* is defined as the body of laws of the European Community, encompassing objectives, fundamental principles, policies, and, in particular, primary and secondary legislation as well as case law, predominantly used prior to 2009. In contrast, the EU *acquis* is a legal term denoting the concept of EU law as a whole, comprising the set of rights and obligations established in the acts adopted by the relevant institutions of the European Union. As noted, “since 1 December 2009, we refer exclusively to the EU *acquis*, and not to the *acquis communautaire*” [11, pp. 30–31].

Returning to the stated topic, namely the approximation of Ukrainian legislation to the EU *acquis* in the field of alternative resolution of environmental legal disputes, it is worth noting that this issue should be considered on two levels. On the one hand, attention should be paid to the developments within the European community concerning the expansion of access to justice, including on alternative grounds; on the other hand, the adaptation of Ukraine's environmental legislation to the EU *acquis*.

The EU's legal framework regarding alternative dispute resolution is based on an evolutionary interpretation of the international standard of access to justice, which is currently interpreted not only as the availability of courts of the classic type, but also as the availability of alternative ways of resolving disputes, if the latter are



provided for by national legislation. This was repeatedly emphasized by the Committee of Ministers of the Council of Europe. Thus, in Recommendation No. R(81)7 dated 14.05.1981 [12] on measures to facilitate access to justice, it is stated that the courts should take measures to promote conciliation or, where possible, encourage the parties to conciliation or amicable settlement of the dispute to commencement of court proceedings or during it. Recommendation No. R(86)12 dated 16.09.1986 [13] on measures to prevent and reduce excessive workload in courts proposes separate measures to achieve this goal, in particular:

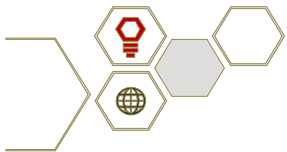
a) provide, along with appropriate incentives, conciliation procedures before court proceedings or other methods of settling disputes outside the framework of court proceedings;

b) assign judges, as one of their main tasks, the duty to facilitate the amicable settlement of disputes by all possible methods and on all relevant issues before the start of court proceedings in the case or at any stage of such proceedings;

c) consider it an ethical duty of lawyers or propose to the competent authorities to recognize as such a duty to facilitate reconciliation with the other party before the start of legal proceedings in the case or at any stage of such proceedings.

The constitutional amendments of Art. 124 of the Constitution of Ukraine [14], which is the basic constitutional norm, is devoted to issues of justice, and the provisions of part 3 of which establish that “a mandatory pre-trial dispute settlement procedure may be determined by law”. It is believed that the establishment of this norm at the constitutional level is aimed at creating specific conditions for the settlement of conflicts outside the boundaries of the judicial process.

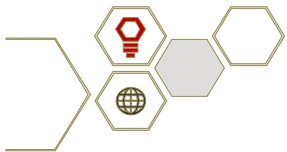
In essence, it refers to the introduction of the idea of «compromise justice», at the constitutional level, according to which the primary task is the reconciliation of the parties, and not the resolution of the dispute. In the event that reconciliation is not achieved, the Constitution of Ukraine establishes the extension of the jurisdiction of the courts to any dispute and any criminal accusation. Therefore, the right to judicial protection is not lost, but, on the contrary, is optimized by time and property limits through the introduction of alternative methods of dispute settlement.



Within the European Union, three primary instruments are employed for dispute resolution: 1) Directive 2008/52/EC of the European Parliament and of the Council (2008) [15]; 2) Directive 2013/11/EU of the European Parliament and of the Council (2013) [16]; 3) Regulation (EU) No 524/2013 of the European Parliament and of the Council (2013) [16]. These instruments aim to support the internal functioning of the market and to ensure access to fast, simple, low-cost, and effective procedures for dispute resolution [17, p. 339]. However, their scope and applicability remain limited when it comes to resolving environmental legal disputes.

Directive 2013/11/EU on consumer alternative dispute resolution [16] establishes a voluntary framework for resolving disputes between consumers and traders out of court. It applies to extrajudicial resolution of both domestic and cross-border disputes concerning contractual obligations arising from sales or service contracts between a trader established in the Union and a consumer residing in the Union, through the intervention of an ADR entity that proposes or imposes a solution, or brings the parties together to facilitate an amicable settlement of the dispute. In June 2025, the Council of the EU and the European Parliament reached a provisional agreement on the modernisation of the consumer ADR system in the EU [18], expanding its scope to include disputes involving traders from third countries (with the parties' consent) and introducing new deadlines for traders to respond to ADR requests. The Directive includes a limitation clause regarding its scope of application, namely that it does not apply to non-economic services of general interest (i.e., services provided by or on behalf of the state without remuneration, regardless of the legal form of their provision). In view of the above, it can be concluded that the applicability of this Directive to the resolution of environmental disputes is limited, as such disputes often arise from non-contractual relationships or pertain to regulatory issues.

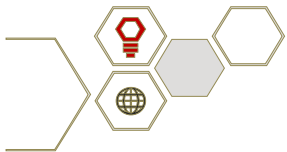
Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters [15] aims to facilitate access to alternative dispute resolution mechanisms and to promote amicable settlements by encouraging the use of mediation. It applies



to cross-border disputes in civil and commercial matters. The Directive allows Member States to make mediation mandatory, provided that such a requirement does not restrict access to the courts. However, despite the general encouragement of mediation, its use within the EU remains extremely low, indicating a need for further regulatory reform to enhance its effectiveness [19].

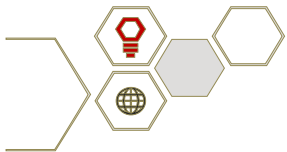
The most important international instrument in the field of environmental law dispute resolution is the UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention) [20], along with the commitments undertaken by Ukraine following its ratification. According to the Aarhus Convention, its objective is to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to their health and well-being. Each Party that has ratified the Convention is required to guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters (Article 1). As basic principles, it targets the state bodies of the Parties to the convention on a number of specific functions, the implementation of which is important in a non-conflict format. Fulfilment of tasks set before the state will be more effective if conciliation procedures and the tools they provide are applied. Thus, the participation of mediators in the process of interaction between the state and public bodies at the stages of information, discussion, and decision-making will contribute to finding a balance of interests and will perform preventive functions to prevent the occurrence of environmental conflicts in the future. In other cases, alternative settlement can be used as a technology for resolving disputes that have already arisen and various sides of environmental relations, which will also serve to implement the principles of this convention [1, p. 211].

At the same time, the Convention primarily establishes procedural rights and does not mandate the use of specific alternative dispute resolution mechanisms. While the Convention guarantees access to justice in environmental matters, it does not specify how such access should be ensured in terms of particular methods and procedures. The challenge for Ukraine lies in translating these broad procedural



rights into concrete and effective alternative dispute resolution mechanisms – such as mediation – within its national legal system, particularly for the resolution of complex environmental disputes. Academic literature has proposed amending the Law of Ukraine “On Environmental Protection” by introducing the concept of “mediation in the field of environmental relations” as an alternative means of resolving disputes in the area of environmental protection. This would entail a structured procedure involving a mediator aimed at resolving environmental conflicts [21, p. 73].

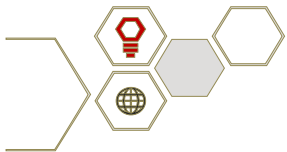
In the context of aligning environmental legislation with the EU acquis, it is important to note that one of Ukraine’s obligations under Articles 360-363, 365, 366, and Annex XXX of the Association Agreement [6] is the implementation of EU legal acts concerning access to justice in environmental matters. Among the acts that must be transposed into the national legal system and legal practice are: Directive 2003/4/EC on public access to environmental information [22]; Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in the development of certain plans and programmes relating to the environment and amending Council Directives 85/337/EEC and 96/61/EC with regard to public participation and access to justice [23]; and Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters to Community institutions and bodies [24]. It should be emphasised that the provisions of these Directives closely reflect the requirements of Article 9 of the Aarhus Convention, which elaborates on the right of access to justice. As rightly observed by O. M. Shumylo, the adaptation of Ukraine’s environmental legislation in this regard to the requirements of the EU environmental directives will facilitate the implementation of Article 9 of the Aarhus Convention [25, p. 56]. Therefore, the fulfilment of the Association Agreement would be impossible without complying with the Aarhus Convention.



Conclusions. The adaptation of Ukraine's national legislation to the EU acquis in the field of alternative resolution of environmental legal disputes is a complex but inevitable step on the path toward full membership in the European Union. At present, Ukraine has established appropriate conditions for introducing alternative mechanisms for resolving environmental legal disputes. First and foremost, the effective implementation of the Aarhus Convention into national legal practice serves as a key benchmark, ensuring the rights of access to information, public participation, and access to justice in environmental matters. Secondly, this necessity is driven by the concept of sustainable development, which calls for the fullest development of mechanisms for compromise-based interaction among various actors in environmental legal relations. The aim is to harmonise their interests, resolve existing conflicts, and prevent the emergence of new ones. Thirdly, the European integration processes place obligations on Ukraine to guarantee the protection of the rights and legitimate interests of individuals, legal entities, and the state itself. These obligations include expanding the means of protection and ensuring the right to choose methods of dispute resolution, including through alternative procedures.

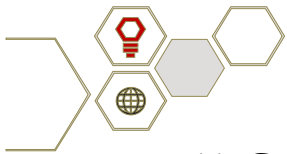
Going forward, Ukraine must adopt a comprehensive approach that combines targeted legislative reforms, institutional capacity-building, and effective implementation practices in the field of alternative resolution of environmental legal disputes. Only such an approach will enable Ukraine to fully align its national legislation with the EU acquis and ensure effective, transparent, and fair resolution of environmental legal conflicts, thereby fostering sustainable development and deeper integration into the European legal framework.

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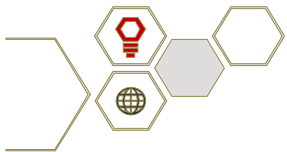
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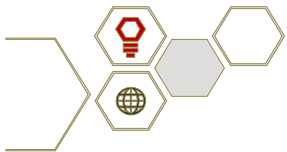
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