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# Harmonization with EU Customs Regulations (Acquis) on the Way to Accession: Prospects and Challenges for Ukraine

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## ABSTRACT

*This article examines the relationship between the 'DCFTA acquis' and the 'accession acquis' within customs law, with a specific focus on Ukraine's compliance with these concepts. It analyzes recent legislative amendments, EU Commission reports, and other sources to identify potential challenges Ukraine and other candidate countries may face in implementing the accession acquis. In the first part, the article outlines the theoretical framework, highlighting the interconnectedness of the DCFTA and accession acquis. Despite differing scopes and requirements, both concepts are dynamic and flexible, allowing for simultaneous implementation. In the second part, the article assesses Ukraine's progress in aligning its customs legislation with EU standards, highlighting discrepancies between the defined notion of the accession acquis and the actual situation. It underscores contradictions between the current external definition and the notion of flexibility. Finally, the article identifies key areas where challenges may arise in applying EU requirements and offers recommendations to address these issues, particularly concerning customs infringements and Authorized Economic Operators. It also discusses the implications of adopting a new customs code alongside ongoing EU reforms.*

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## KEYWORDS

*EU, Ukraine, customs, acquis communautaire, DCFTA, Association Agreement, EU Accession, Customs Reform, harmonization, approximation, Authorized Economic Operator*



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## Introduction

The EU is Ukraine's largest trade partner, with more than a 50 % share in the trade of goods as of 2024 (Ministry of Economy of Ukraine, 2025). This, especially amid a full-scale invasion of Ukraine, makes European integration a strategic aim. The inevitability of European integration is even fixed in Ukraine's Constitution. As an EU candidate, Ukraine has a set of obligations to approximate its legislation to EU Regulations to obtain membership. The sphere of the customs union is no exception. Simultaneously, being the party to the Deep and Comprehensive Free Trade Agreement (further – DCFTA) with the EU as well implies a set of obligations.

This raises the question of whether the obligations foreseen by the DCFTA are a precondition to fulfil Ukraine's candidacy obligations and to what extent. Can Ukraine fulfil both sets of obligations simultaneously, and, finally, shall DCFTA still be useful as a means of accession, or maybe it is worth concentrating on the accession obligations instead?

To address these questions, we need to clarify the current state of Ukraine's fulfilment of DCFTA and accession obligations. Ukraine has already substantially aligned its customs regulations to fulfil the DFTA obligations. For instance, quite recently, Ukraine has incorporated a list of EU-based customs regulations, including the law (Verkhovna Rada of Ukraine, 2024) implementing specific parts of the Union Customs Code (further – UCC) and its Implementing and Delegated regulations. The explanatory note to the draft of the mentioned law clearly defines it as a precondition to further EU accession. However,

the incorporated provisions were already foreseen by the DCFTA (European Commission, 2016). Thus, this research seeks to understand what, in fact, constitutes the accession obligations – in theory and in practice.

Finally, the situation is further complicated by the recent developments in the EU customs legislation – namely, the EU Customs Reform Proposal. The implementation of both sets of requirements shall also consider the potential Reform and practical challenges for traders in the changing regulatory environment. We will try to figure out if the practical definition of accession obligations considers these challenges and, where possible, provide our recommendations.

### **Methodology**

This research aims to (1) clarify the relations between the DCFTA and accession obligations in the sphere of customs, (2) define the role of the DCFTA in the approximation with the mentioned accession acquis and features of the practical definition of the accession acquis elements (3) identify practical problems in the approximation process, using examples of problematic elements within the EU Customs Union and potential upcoming customs reform.

It combines general scientific and specific methodologies characteristic of all legal studies. Synthesis is used to characterize notions of DCFTA acquis and accession acquis, as well as legal modelling, to formulate the factors to consider while aligning the customs legislation with the EU requirements. Comparative legal analysis is used to research the obligations based on both the DCFTA and accession process, and to define the factual level of implementation of these obligations into Ukrainian legislation. It is used to compare the theoretical characteristics of notions of DCFTA acquis and accession acquis to their practical (external) definition.

The research utilizes primarily sources – international agreements, legislation of the EU and Ukraine, the binding and non-binding acts of the EU bodies and Ukrainian authorities, as well as secondary sources – analytical conclusions and scientific research in the field of international law, customs law both in Ukraine and the EU. This article is limited to the sphere of the customs union and other customs issues in the meaning of Art.1 of the Union Customs Code (general rules and procedures applicable to goods brought into or taken out of the customs territory of the Union).

Methodologically, the study is also limited to only a surface-level analysis when it comes to statistical results on the levels of DCFTA acquis implementation, just for illustrative purposes, with no aim to define the precise level of approximation. It avoids the discussion about the theoretical problems of the notion ‘acquis’. It is also limited in the analysis of the potential problematic sphere of the accession acquis in the customs sphere to the most illustrative examples – prospects of the reform, customs penalties, and authorized economic operators.

### **1. Accession Obligations in the Sphere of Customs: Where to Find and How to Harmonize With?**

Ukraine will need fully accept and comply with the ‘entire body of EU law or EU acquis, as it stands at the time of accession’ – that how the substance of the membership of the negotiations is defined in the Report of the Ministerial meeting opening the Intergovernmental Conference on the Accession of Ukraine to the EU (Luxembourg, June 25, 2024) (further – Negotiating framework) (Conference on Accession to the European Union, 2024, p. 6).

The notion of ‘acquis’ is also directly used by the Annex XV of the DCFTA regarding regulations to be implemented by Ukraine in the field of customs legislation and related sources of EU law into the Agreement.

That's why, while defining the obligations Ukraine has fulfilled or not yet fulfilled on the way to the EU in the customs sphere, we will inevitably involve the notion of *acquis* into the discussion. However, it is unclear if such a notion has the same meaning regarding obligations under the DCFTA and within the accession process. Are these a subsequent set of obligations or interconnected notions – also needs to be clarified to find the approach to harmonize the customs regulations efficiently.

First of all, different approaches to '*acquis*' can change the course of the discussion, as there is no common approach to defining this term in the EU law doctrine (Petrov, 2012). That's why we will assume that *acquis* is a dynamic concept (Petrov, 2012) and it must be comprehended within the circumstances of EU external action towards third countries (Petrov, 2006). For instance, regarding Ukraine, we should take into account the peculiarities of our customs legislation.

Based on these assumptions, we can also define a notion of '*accession acquis*' that is based on the '*acquis communautaire*' as to the obligations arising from the potential membership being a wider concept (Petrov, 2012) than '*acquis communautaire*' itself.

The '*accession acquis*' is defined in the Negotiating framework and includes a wide and non-exclusive list<sup>1</sup> (p. 17) of elements that comply with. In addition, the Commission hints that '*progress in addressing the key areas identified in the Commission's reports and relevant Council conclusions*' constitutes an additional requirement to comply within the Negotiating framework. In other words, the EU will be able to identify aspects and elements of *accession acquis* in the Reports and Conclusions during the negotiations, as an external and particular definition of *accession acquis* elements, Ukraine's practical obligations within the accession process.

Using the same approach, we can also diversify the notion of '*customs acquis under DCFTA*' or '*DCFTA acquis*' regarding the obligations to implement '*acquis communautaire*' foreseen by the DCFTA.

We can also conclude that the *accession acquis* is different in scope compared to the DCFTA *acquis*. The first is specific to possible Ukrainian membership and a lot more comprehensive, as it must include almost the whole set of *acquis* at the time of accession. The second relates to a specific number of obligations aimed only at the association of the parties.

In addition, these notions differ in terms of the level of flexibility to possible derogations. *Accession acquis* leaves Ukraine with much less space for negotiations (Rabinovych & Pintsch, 2025).

Nevertheless, the DCFTA can still play a crucial role in Ukraine's path to membership (Van Elsuwege, 2025, p. 73) as the DCFTA with Ukraine has sophisticated mechanisms for legal approximation built on the conditionality and progress assessment (Petrov et al., 2015; Van Elsuwege, 2025).

The Annex XV to the Agreement foresees a few types of approximation mechanisms regarding DCFTA customs *acquis* in the customs sphere. These are: (1) a binding list with defined deadlines for approximation, (2) a list of obligations to be implemented based on the '*best endeavor*' principle, (3) a list of possibilities for mutual recognition, and (4) general principles. All can be considered as a means of EU *acquis* 'export' to Ukraine's legal system (Petrov, 2008).

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<sup>1</sup> The content, principles, values and political objectives of the Treaties on which the Union is founded; the acts adopted by the institutions pursuant to the Treaties, as well as the case law of the Court of Justice of the European Union; any other acts, legally binding or not, adopted within the Union framework, such as inter-institutional agreements, resolutions, statements, recommendations, guidelines; international agreements concluded by the Union, by the Union jointly with its Member States, and those concluded by the Member States among themselves with regard to Union activities.

These norms are foreseen to ensure dynamic compliance of Ukrainian legislation with the EU customs acquis. These mechanisms cause the constantly evolving race to implement the EU customs acquis to the maximum possible extent (taking the timely updates from the parties regarding binding obligations with the deadlines).

Even in matters that exceed the scope of the DCFTA regarding the approximation – the mechanisms foreseen by it can still be useful in accession purposes – for instance, regarding further trade liberalization (Van Elsuwege, 2024, p. 68).

All this, in turn, is fully in line with the accession process, so at the time of the accession, Ukraine will fully comply with the EU customs acquis ‘as it stands at the time of accession’ (Conference on Accession to the European Union, 2024, p. 6).

Finally, the EU itself has interlinked the accession progress to fulfilling Ukraine’s obligations under the DCFTA (implementation of the DCFTA acquis) in the Negotiating framework, making the first a structural part of the second in the accession process.

All this makes it possible to conclude that DCFTA may be a primary ‘vehicle’ for the accession process. Instead of defining the particular obligations for Ukraine with each Report, the DCFTA mechanisms can serve the ongoing obligation to keep up with the EU acquis – more harmoniously and in a planned manner.

Based on the above considerations, we can also conclude that the accession process in part of customs shall not look like a consecutive achievement of a certain level of compliance with the first DCFTA acquis and afterwards, with accession requirements. Both interrelate, and one is heavily built on the other.

In addition, taken some inflexibilities with binding obligations (for instance – non-relevant deadlines for cases where the approximation deadline was strictly defined in the DCFTA Annex) and the dynamic development of EU customs law – one should avoid fixing binding obligations on certain elements of the EU customs law in a particular moment (implement a certain article by a certain date). Instead, the general picture should be kept in mind.

As the Negotiating framework defines, accession implies, in particular, the timely and effective implementation of the acquis. It means that the practical application is as important as the legislative compliance itself. Ukrainian specifics also shall be considered as implementation shall reflect ‘Ukraine’s own merits and specific characteristics’ (p. 6). Furthermore, it is foreseen that negotiations and acquis alignment shall happen with a view to entry into force on the date of accession (p. 19). Finally, specific adaptation to the acquis is potentially foreseen (and, as an exception, transitional measures) (p. 18).

All this defines the accession acquis as flexible to candidate characteristics and oriented on the correct practical implementation in a particular country. If we regard this notion as a ‘snapshot’ of the situation at the time of accession (Petrov, 2007, pp. 9–10) – this ‘snapshot’ for the Ukrainian customs sphere is (or at least should be) individual.

To summarize, Ukraine, as a candidate country and a party to DCFTA with the EU, has obligations to implement (a) DCFTA acquis and (b) accession acquis in the sphere of customs.

Both notions are (1) interrelated (the first being a part of the second) as (2) the latter is a wider concept. In addition, even though primarily (3) these two notions have different objectives and levels of conformity requirements from the EU, both (4) serve accession purposes.

The accession acquis shall not be implemented after the full implementation of the DCFTA acquis, as both should be logically aligned during the accession process in defining the elements of accession acquis (its external form – particular obligations), as it is (5) flexible and dynamic. (6) It is recommended that obligations be formulated not to implement particular

norms of the EU customs legislation but with a more generic approach, where possible, using existing DCFTA mechanisms. The latter two qualities (as well as the Negotiating framework) require accession *acquis* to (7) consider the candidate characteristics and (8) be oriented on the correct practical implementation in the particular country.

In addition, it is quite realistic that (9) part of *acquis* implementation will happen at the time of accession and is not required during the negotiations.

With this conclusion, we will further analyze existing compliance with the DCFTA *acquis* and the practical (external) definition of accession *acquis* elements, detecting what is already implemented and the remaining parts. While doing so, we also analyze if the practical (external) definition of the *acquis* in the customs sphere – Ukraine's particular obligations in the Commission Reports corresponds to the characteristics summarized above.

## **2. DCFTA and Accession Acquis in the Customs Sphere – the Level of Approximation**

To define the scope of the non-approximated EU *acquis* in the customs sphere on the Ukrainian road to the EU, let's first analyze the unfulfilled obligations under the DCFTA. After going through the comparative analysis of the DCFTA, Ukrainian Customs Legislation (namely – Customs Code of Ukraine), and UCC, we can conclude that the vast majority of customs *acquis* foreseen by the DCFTA (norms of UCC, Implemented and Delegated acts) is already implemented in the customs legislation of Ukraine. This conclusion is generally confirmed by the European Commission, stating that DCFTA has already captured a substantial part of the EU *acquis* (European Commission, 2022, p. 16). Just for illustrative purposes, even before the adoption of the substantial amendments to the Ukrainian Customs Code in 2024 (Verkhovna Rada of Ukraine, 2024), the Report of the Ukrainian Government as of 2023 assessed the ratio of the implemented provisions of the DCFTA as 62 % (Government Office for Coordination of European and Euro-Atlantic Integration, 2023, p. 5).

The 2023 Commission Report states that 'the Customs Code (amendments to it), adopted at the end of 2019, is aligned with the Union Customs Code in many of its provisions.' (European Commission, 2023b, pp. 43–44).

In November 2023, the Commission stated that Ukraine has a good level of preparation in the area of customs union. Despite the ongoing military aggression, Ukraine has made good progress in the customs union area in the reporting period, especially in alignment with the EU *acquis* (European Commission, 2023e, p. 116).

As said, in 2024, a lot more norms of the UCC and respective Implementing (European Commission, 2015b) and Delegated Acts (European Commission, 2015a) were adopted to fulfill the remaining obligations based on the DCFTA.

It is considered by the Enlargement Report 2024 as an acknowledgment of a good level of preparation with regard to the customs union as well as good progress (European Commission, 2024).

The analysis shows that the remaining part is not significant. These are mainly norms regarding the possibility of issuing delegated and implemented acts (the foreseen content of the delegated and implemented regulations is largely implemented). Here, these procedural norms cannot be approximated before EU membership. The rest is mainly related to EU electronic systems (that cannot be fully implemented before the membership; however, the work is ongoing on the technical level).

The same applies to other acts foreseen in the DCFTA as part of the customs legislation. Only the Council Regulation (EC) No. 1186/2009 seems not fully implemented.

Even though we do not aim to assess the non-harmonized parts of the DCFTA *acquis* in the closest details, we can conclude that what remains is a minor part of the

DCFTA acquis. Of course, as the Negotiating framework (pp. 20–22) foresees, the official acquis implementation screening was already conducted in April 2025. It is said that EU representatives ‘acknowledged the significant progress of Ukrainian customs in European integration’ (Ministry of Finance of Ukraine, 2025b). However, even without its results, based on the above analysis and conclusions, the DCFTA acquis in the customs sphere is majorly implemented with some very procedural or technical norms remaining. This conclusion is sufficient for further consideration.

Logically, the parts of the acquis in the customs sphere that were not subject to approximation according to the DCFTA and those that were not approximated despite the DCFTA obligations (or technically impossible to implement prior to the membership) are the core of the accession acquis. After analyzing the respective Annex to the DCFTA (EU–Ukraine Association Committee in Trade Configuration, 2022) and the general scope of UCC with respective Implementing and Delegated Regulations, we can conclude that what is left out of DCFTA acquis – are mainly norms that are not technically possible to be fully implemented before joining the EU. Such are particularly characteristic of the EU membership. For instance, regulations relating to EU customs territory, the validity of the customs decisions, common risks definition, specific intra-union regulations regarding origin and customs debt, union currency regulations, etc.

If we simply mathematically compare the scope of all UCC articles foreseen for implementation (within a certain timeframe and on a best endeavor basis) in the respective Annex to the DCFTA (EU–Ukraine Association Committee in Trade Configuration, 2022) to the general scope of the UCC articles, the result would be that approximately 10 % of the articles remain unaddressed (of course it is a purely statistical result).

However, it seems it includes more than what was mentioned. Let’s discuss the practical (external) scope of accession acquis in detail.

The precise analysis of Ukraine’s accession process is a bit different from the conclusions about the accession acquis we have previously reached in this article. As said in its Reports, the Commission reflects on the state of implementation of the accession acquis during the negotiation process. The analysis of such can help define outstanding obligations for acquis implementation.

Even before the launch of the formal accession process, the Commission analyzed Ukraine’s compliance with EU acquis (including customs) in the number of the mentioned Reports. Even then, the requirements were much broader than pure compliance with the DCFTA acquis.

We will highlight only a few – illustrative examples for further analysis. Already as of February 2023, Ukraine (in regards to Chapter 29 of the negotiations ‘Customs union’) (European Commission, 2023b, p. 44) had to, among other things, fully align its Customs Code with the Union Customs Code (new Customs Code to be adopted in 2023 and implement other EU customs rules (free zones, forms of handling and inward processing, pre-departure information, entry summary declaration (pre-arrival information) and the right to be heard), enforcement of intellectual property rights. In other words, the EU put forward very specific requirements.

Of course, the Report also specifically mentions a need for adjustments to current procedures and working methods to ensure the aligned legislation works the same. Thus, the specific requirements are combined with the stress on their efficient adaptation.

Interestingly, while evaluating the yearly progress in the Report on Ukraine in 2023 (European Commission, 2023e, pp. 116–117), the Commission acknowledges a series of improvements but, at the same time, widens the scope of the legal obligations. Indeed,

it demonstrates that accession *acquis* is evolving and dynamic, but it is very particular in its external dimension – a list of obligations for further approximation. A bright example of this approach is the issue of cross-border corruption and criminalization of smuggling (especially regarding tobacco).

The 2024 Report (European Commission, 2024, p. 7), the first one within the negotiation process, mentions progress in the field of justice, freedom, and security (Chapter 24), notably through the adoption of legislation criminalizing large-scale smuggling. The conclusions on Customs (Chapter 29) also highlight it as a successful step toward EU alignment. Thus, interestingly, the criminalization of large-scale smuggling was included in the scope of accession *acquis* after the preliminary assessment of compliance with the EU *acquis*. It is even more fascinating – taken that criminalization of large smuggling is not, in fact, a part of common EU *acquis* in the customs sphere.

EU customs legislation has only a few common denominators regarding customs sanctions, and obligatory criminalization of large-scale smuggling isn't one of these. In addition, among the EU countries, there are countries with no criminal responsibility for customs infringements (European Commission, 2023a, p. 2). This issue will also be addressed in more detail further in this article.

As can be seen, the 2024 Report (p. 74) mentions that the State Customs Service has to be granted the right to be 'directly engaged in intelligence gathering activities and contribute to pre-trial investigation in cases of smuggling of goods,' defining a very particular approach to the issues relating to criminal procedure, not only to the customs legislation. At the same time, as said, it is not a common approach within the EU countries.

This means that the request to criminalize large-scale smuggling becomes a part of the accession *acquis* clearly based on political or economic merits while not, in fact, being EU law. In addition, throughout other chapters of negotiations according to the Negotiating Framework (pp. 29–30), above Chapter 29, we can find more customs-related issues (in the meaning of Art. 1 UCC and Art. 28–32 of Treaty on the Functioning of the European Union) to be implemented. For instance, the EU VAT Directive or EU legislation on duties and tax warehousing systems for alcohol and alcoholic beverages, tobacco, and energy products.

Thus, while the *acquis* is technically separated into chapters, with one specifically devoted to customs, the elements of the EU customs *acquis* can be found within others. In this regard, it is also interesting to mention the recent switch of customs issues as a responsibility from DG TAXUD (Directorate-General for Taxation and Customs Union) to DG Trade (Directorate-General for Trade). It shows customs issues in a broader picture related to common trade and foreign policy.

This way, conclusions in reports like the 'good level of preparation' cannot be considered isolated. This requires a more holistic approach towards the definition of accession *acquis* in the customs sphere.

At the same time, such a detailed approach is not directed toward the efficient application of customs legislation. For instance, Ukrainian law-enforcement practices in customs matters are generally a subject of criticism by the European Court of Human Rights (that, in turn, also influences EU customs *acquis*) (Kyryievskyyi, 2025). However, these practices are not mentioned at all. Proving a lack of a general approach to the definition of accession *acquis*. Even from the media reports of the Chapter 29 screening between Ukraine and the EU, we can draw examples of such a particular formulation. For instance: 'effectiveness of a model where the customs service has law enforcement status' (Ministry of Finance of Ukraine, 2025b).

This article does not aim to substitute the official screening process, so we will not try to define all possible discrepancies between the EU and Ukraine in the realm of customs

legislation. However, we will analyze a few more elements of customs acquis (their practical side) to draw more useful conclusions. Thus, below are some cherry-picked requirements (at the moment the article is being sent into publication) regarding accession acquis reflected in the 2024 Report (with relation to the field of customs but not limited to Chapter 29):

- a new Customs Code aligned with the UCC;
- more effective measures in fighting corruption at the border despite the criminalization of smuggling;
- development of the new national customs declaration clearance and risk management IT systems based on the EU acquis;
- aligning legislation on VAT incentives, the structure of excise duties, and rates;
- alignment with the EU acquis in terms of protecting the EU's financial interests;
- the indirect call to enlarge the number of operators with AEO Security and Safety (AEOS) status (can be found in the conclusions of Chapter 29).

The provided list and previous examples of approximation obligations prove that EU accession acquis in the customs field (in its external dimension) is (a) wider than the respective chapter of the accession negotiations, and in some points, foresees requirements that are not based on the existing EU regulations – rather political or economic merits. In addition, it's (b) flexible and dynamic. However, (c) its practical definition is often set to narrow and very specific recommendations (contradictory to the idea of flexibility and dynamism).

These factual characteristics of the accession acquis in the customs sphere and, especially, its contradictory features might create major practical complications.

### **3. Practical Challenges to Harmonize with Accession Acquis for Ukraine**

With the conclusions from the previous chapter, we can define a few examples of the substantial challenges to the process of harmonization with EU accession acquis in the customs sphere.

#### **3.1. EU Customs Reform – Challenge of a Particular versus Flexible**

As known, in 2023, the Commission put forward a proposal: 'for the most ambitious and comprehensive Reform of the EU Customs Union since its establishment in 1968' (European Commission, 2023c).

In March 2024, the European Parliament, at first reading, adopted its position regarding the Reform, offering even more ambitious deadlines to implement the Reform (in 2026 on certain issues).

The Reform plans are now massively discussed throughout the EU, with calls that it is 'critical to finalize Customs Union Reform and possibly frontload it to 2026' (European Commission, 2025, p. 1).

Reform will introduce significant changes to the existing customs regulations – i.e., EU Data Hub, EU customs authority, harmonization of customs sanctions, etc.

At the same time, the EU expects Ukraine to adopt a new Customs Code based on the UCC (in the current edition) as soon as possible. Ukraine is already working on it. As reported, the draft law is 50 % ready and shall include three pillars: UCC and related acts (State Customs Service of Ukraine, 2024). Ukrainian authorities inform that it is planned to be adopted in 2026 (Ministry of Finance of Ukraine, 2024a; State Customs Service of Ukraine, 2025a).

The provided timeline means that EU Customs Reform quite realistically can happen simultaneously with Ukraine's adoption of the regulations based on the current edition of UCC.

As discussed in this article, the level of approximation of Ukrainian customs legislation with UCC as part of the DCFTA acquis is high. DCFTA acquis constitutes a major part of the

accession acquis, and a part of the accession acquis is set to be implemented at the time of accession. All it leaves unharmonized is only a fraction of customs legislation. Some norms are not regulated by the UCC and are out of the respective chapter of the negotiations. Some requirements stem from political and economic objectives rather than from the norms of the EU legislation.

In addition, as this article sums up and the Negotiating framework directly foresees – accession acquis is a flexible category and shall provide for no detailed adaptations of the acquis as a general rule. The approximation of acquis shall also foresee the Ukrainian realities, including the administrative capacity to effectively apply and implement the acquis (p. 24).

Thus, first, based on the existing level of implementation – further approximation and implementation of accession acquis in the customs sphere does not necessarily require the blind copying of the UCC and respective implemented and delegated regulations and exclusively in the form of introducing the new code. Of course, as far as proper attention is paid to administrative capacities and best practices to unify the application of laws by the customs authorities.

Otherwise, this kind of requirement practically makes the accession acquis implementation blind to realities, which is contradictory to the whole concept and definition in the negotiation framework.

Secondly, it raises a practical question of whether this approach is at all enforceable – from the standpoint of administrative capacities and effective implementation.

The current state of the play, in practical terms, means that after implementing substantial amendments to its customs legislation in recent years, Ukraine will adopt more amendments to the Customs Code in 2024–25 (finalizing a DCFTA acquis implementation). Only these transitions in a quite short timeframe are challenging. Nevertheless, in 2026, Ukraine will further implement a full Customs Code reboot to, in fact, align with the outstanding fracture of EU regulations. This approach has already raised some criticism. The simultaneous development of an entirely new Customs Code raises concerns as ‘completely overhauling the Customs Code and related regulations twice within a short time frame appears questionable from a practical standpoint’ (Kormych et al., 2024, p. 27).

However, it can be even more practically problematic if followed by a third substantial reboot of the Customs code caused by EU Customs Reform in 2026. It can look even more complicated regarding IT infrastructure and procedures.

For instance, after the adoption of the UCC, the EU Member States planned to enforce the respective IT solutions by December 31, 2025 (Art. 278 of the UCC). This is related to guarantees, customs debt, risk analysis, and several other important institutes.

At the same time, one of the requirements for Ukraine as a part of accession acquis is the deployment of IT systems based on the EU acquis (the UCC Work Programme, the Multiannual Strategic Plan for Electronic Customs (MACP-C)) (European Commission, 2024, p. 74).

The EU is implementing the respective IT solutions based on MACP-C starting from the adoption of UCC in 2013, and the process risks not being finished until December 2025 (EuroCommerce, 2024, p. 1).

In turn, Ukraine has to be aligned with a number of IT systems as a part of the practical implementation of accession acquis in a lot shorter terms. Still, with the help of EU institutions, it is a possible but challenging task.

But let’s imagine what it would mean to introduce new obligations on the IT infrastructure after the EU customs Reform, straight after the new Customs Code is adopted in Ukraine (with the following related IT solutions).

As a practical example, Poland has been continuously updating customs legislation with EU acquis within the accession process. After at-the-time Polish Customs Code was adopted in January 1998, further work on administrative capacities was required (Czyżowicz, 2001, pp. 150–153). Poland became a member of the EU in 2003, of course, with the obligatory implementation of the EU acquis – Poland did not request transition periods or derogations in the area of ‘Customs Union’ during the negotiations (Czyżowicz, 2001, p. 154). However, a new Customs Code (Sejm) was adopted only in 2004 with reference to the Regulation 1992/2913 – EC Customs Code (in force at the time). This example just underlines that the technical adaptation of a new Customs Code is not strictly necessary at the time of accession – the meaningful adaptation of acquis, ensuring its efficient application, is crucial.

All of it questions the necessity to formally require implementing the new Customs Code as a part of the accession acquis. For instance, current EU customs legislation norms can be implemented into the existing Code (as their outstanding scope is not critical), with a new Customs Code to be implemented simultaneously with or after the EU Customs Reform.

If the adoption of the new Customs Code in Ukraine is still required, and it will indeed happen simultaneously with EU Customs Reform, Ukraine might require possible transitional periods or derogations regarding the implementation of the Reform results.

### **3.2. Other Problematic Aspects of Accession Acquis Implementation**

The analysis of the accession acquis elements in its external dimension shows more aspects that can become problematic to approximate. That’s why just copying the EU legislation might not work – as generally acknowledged practices or Union legislation might not be in place. We will briefly analyze two bright examples of such a situation – Authorized Economic Operators and customs infringements.

Of course, there can be other irregularities in sight of the approximation with the EU customs acquis based on the conclusions provided above. They deserve additional attention and research outside of this article (for instance – the application of tariff nomenclature and customs procedures (Valantiejus & Katuoka, 2019; Limbach, 2015; Tymoshchuk, 2024)).

#### **3.2.1. Authorized Economic Operators**

Authorized Economic Operator (AEO) is a status granted by the customs authorities providing the holder with customs simplifications or/and facilitations (based on the Art. 38, UCC), or as defined by World Customs Organization – ‘a key driver for a solid Customs-Business Partnership’ (2020, p. 6). The AEO Program was first launched in the Union back in 2008. It is now regulated by the Union Customs Code (UCC) and its implementing provisions, with most of the provisions applied since 2016.

Ukraine adopted the AEO program in 2019 as a part of the DCFTA acquis. Of course, the full-scale invasion influenced the traction, but still, it is considered a successful example of EU customs acquis approximation in the Commission Reports (European Commission, 2023b, p. 44). Indeed, Ukraine has majorly implemented the related EU regulations. Statistically, as of 2021, there was only one company with the AEO status. The second one followed in mid-2023, with the dynamics rising throughout 2023 – 2025 (as of June 2025, there were 95 AEOs in Ukraine (State Customs Service of Ukraine, n.d.)). Ukrainian Customs Service states that the dynamics raised due to further positive legislative amendments and negative enforcement – prohibition of import/export operations without obligatory presentation of the goods to customs authorities (it was allowed until November 2023) (State Customs Service, 2025b).

Indeed, while EU regulations on authorizations remained unchanged, Ukraine implemented a number of amendments to its Customs Code and bylaws governing AEO regulations and

procedures. Despite the stable and positive feedback from the Commission within a few recent years on the AEOs implementation, Ukraine has changed the related regulations – the regulations on AEO and simplifications in the Ukrainian Customs Code were amended 4 times within the period of only two years, 2022–2024 (and sometimes quite substantially).

The situation is even more dynamic when discussing the related bylaws. For instance, the regulation providing necessary procedures for the process of obtaining the AEO was adopted in 2020 (Cabinet of Ministers of Ukraine, 2020), then fully replaced in 2022 (Cabinet of Ministers of Ukraine, 2022) and afterwards amended (sometimes quite substantially – 3 times in 3 years). The regulation regarding the process of practical implementation of the status by the traders was adopted in 2023 (Ministry of Finance of Ukraine, 2023), amended once (Ministry of Finance of Ukraine, 2024b), and is undergoing an amendment in 2025 (Ministry of Finance of Ukraine, 2025a).

Of course, some of the amendments are natural and expected – as a way to embrace practice and correct the procedures. However, taking the unchanged regulations and recommendations on the subject in the EU, this quantity of amendments looks a bit of a paradox, given the positive accession of this field by the Commission.

It raises potential concerns about the accuracy of the implementation or/and efficient assessment of the efficiency of harmonization efforts by the EU. As said above, the practical side and efficient application are the key to the implementation of *acquis*.

But there is even more troublesome factor – in the EU itself, there are numerous discussions about the uneven practical application of related benefits and simplifications between Members. This makes further practical assessment of a candidate State's compliance with EU regulations – a problematic issue.

Furthermore, when it comes to Ukraine and other potential members, it is the first time countries with existing AEO programs are on their way to being accepted into the Union.

The problems around EU AEO programs were sufficiently summarized in the European Court of Auditors Report in 2023. It highlighted the insufficient monitoring of the AEO program implementation (European Court of Auditors, 2023, p. 28). It has also stated that there is no reliable common EU framework to measure the program's performance. In some states, the indicators used by customs are voluntary and unreliable (European Court of Auditors, 2023, p. 5). In addition, the guidance on applying the program in the EU is provided only by non-binding Guidelines (World Customs Organization, 2020, p. 7).

Even though we do not plan to analyze the drawbacks of the existing AEO regulations in this article, this summary shows complicated prospects for the approximation with the EU regulations. Even more, these problems became a rationale for the EU customs Reform. The Reform proposal mentions that the AEO scheme suffers from divergent national practices and challenges regarding compliance monitoring and urges the introduction of the Trust and Check traders with simultaneous reassessment of the existing AEOs during a certain transitional period (European Commission, 2023d).

At the same time when the Reform was proposed, the 2023 Report providing an assessment of DCFTA *acquis* compliance by Ukraine called for 'further efforts to raise the usage of the national AEO programmed and finalize the related IT system for mutual recognition with the EU AEO programmed' (European Commission, 2023e, p. 117). The 2024 Report acknowledged progress in this regard. It also mentioned the ongoing negotiations regarding the mutual recognition agreement on AEO between the EU and Ukraine and the limitations to this process caused by the small number of AEO-S in Ukraine (p. 80).

Even though the discrepancies and problematic issues regarding AEO were known and became the basis for the Reform proposal, the EU Commission required the maximal

spread of AEO regulations in Ukraine and enlarging the application of AEO-S for future mutual recognition. At the same time, it is quite possible that straight after the potential MRA conclusion, the AEO program itself will be reformed, and traders will need to prepare themselves for Trust and Check authorization and revision of the existing (newly obtained) authorizations. All of this – just after they got authorized.

Taking the AEO program example, we can again conclude that the existing framework of accession *acquis* implementation (in its external dimension) does not fully reflect the dynamic nature of *acquis* itself. In practical terms, it might create a constantly changing regulatory framework for traders.

It also creates a practical problem – subjective criteria of assessment – how to adequately measure the results of the AEO program and its compliance with the EU requirements in practical terms, if there is no common ground in its practical application among Member States.

Of course, there are solutions for the practical mitigation of this problem through EU-supported programs and missions like TAIEX<sup>1</sup> and the EU Public Finance Management Support Programme for Ukraine<sup>2</sup>. However, on the basic level, this is one more example of complications relating to the strict and inflexible formulation of requirements based on the accession *acquis* in the customs sphere.

### **3.2.2. Customs Infringements**

Another example is the sphere of customs infringements. The DCFTA foresees an obligation by Ukraine to implement provisions of Article 42 of the UCC. These relate to the forms of administrative penalties and, most importantly, to principles of penalty application.

Except for this one article of UCC and two narrow regulations, the sphere of customs infringements is still a non-intra-harmonized field of the EU Customs Union. The differences between the countries are often very substantial. It is a well-acknowledged problem and one of the reasons for the EU customs Reform. This makes the principles of the customs penalties foreseen by the DCFTA one of the few elements of accession *acquis*.

At the same time, it will possibly be problematic to objectively evaluate compliance with the principles in Art. 42 of the EU Customs Code, considering that best practices in this regard are mentioned neither in the DCFTA nor within the membership negotiations. The implementation of the wording of the principles will not lead to efficient harmonization with the EU *acquis*. This is undoubtedly another problematic issue in the face of harmonization with accession *acquis*.

The only possible solution to efficiently approximate such seems to use common factors and denominators through their gradual approximation, including the procedural aspects via exchange of best practices. These factors and denominators can be found in (1) the successful intra-EU harmonization examples in the field of customs penalties (EU regulations on the most severe customs offenses and breaches of restrictive measures) and (2) CJEU case law with some additional signposts from (3) ECtHR rulings (Kyryievskyi, 2025).

For instance, recently, the Ukrainian parliament has passed the Law on amendments to the Customs Code of Ukraine regarding some issues of administrative liability for violations of customs rules (Verkhovna Rada of Ukraine, 2025). The law has been amended to include

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<sup>1</sup> TAIEX (Technical Assistance and Information Exchange) is the EU instrument for institutional development that engages public sector experts from EU Member States (European Commission, n.d.).

<sup>2</sup> The Public Finance Management Support Programme for Ukraine (EU4PFM) is a European Union-funded initiative that supports tax and customs Reforms in Ukraine, as well as builds capacity for public finance management, particularly in IT and human resources (Ministry of Finance of Ukraine, 2019).

new provisions on penalties for specific customs infringements, introducing a more individualized approach to sanctions and, in some cases, reduced penalties. The explanatory notes to the draft of this Law stated that the law is directed to 'Implementation of modern European practices in combating customs violations' and mentioned that this law is related to the EU integration. However, despite the positive effect of the Law on individualization via adding discretion in determining the penalty, the Law lacks an explanation of what European practices are, in fact, implemented, without mentioning the introduction of the principles of customs penalties from the UCC.

The interpretation of the principles mentioned in the art. 42 of the UCC can be found in the Court of Justice of the European Union (CJEU) case-law. For instance, the principle of proportionality is more concentrated on the procedural side of the problem, but not on the sanctions wording. This relates to the consideration of all the relevant information while imposing the sanctions, including the good faith of the declarant (*SC Zes Zollner Electronic SRL, 2023*) or the correlation of the fine size to the damages, intentions, and behavior of the offender (*J. P. Mali Kerékpárgyártó, 2023*). The mentioned law clearly lacks this perspective. The task to implement this part of the acquis will require deep expertise in the CJEU case law from Ukrainian authorities. In turn, it would be a time-consuming task for the EU authorities to assess compliance with (the deep overview of Ukrainian court practice and customs authorities' law-enforcement approaches, with a comprehensive foot-on-the-ground expertise would be required). The long-standing non-harmonization of the field of customs infringements in the EU itself is a confirmation of the difficulty of the task.

And finally, the EU Customs Reform, among other things, foresees a series of amendments in the sphere of customs infringements that shall be kept in mind. In addition to the principles mentioned in Article 42 UCC, the Proposal provides codification of extenuating, mitigating, or aggravating circumstances, limitation periods, core types of penalties, etc. It is worth considering the possible implementation of the Customs Reform already now, while implementing the accession acquis in this part. Otherwise, it might create an ongoing, turbulent regulatory environment for the traders.

The existing approach to the external definition of accession acquis might cause complications in the sphere of customs infringements. Thus, a more generic and nuanced approach to customs acquis implementation is recommended. In a way that will consider the practical definition of the customs penalty principles and the evolving nature of EU customs regulations.

## Conclusions

This article defines and shows the complex relationship between Ukraine's obligations under the Deep and Comprehensive Free Trade Agreement and the EU accession process in the customs sphere. It diversifies the notion of 'DCFTA acquis', referring to the obligations based on 'acquis communautaire' foreseen by the DCFTA. It also defines a notion of an 'accession acquis', referring to the obligations arising from the potential EU membership.

It is concluded that both notions are (1) vastly interrelated (the first being a significant part of the second). Still, the (2) accession acquis is a wider concept that includes substantial sources of EU legislation other than UCC and related acts. Even though (3) primarily, these two notions have different objectives and conformity requirements, (4) both still serve accession purposes.

It is also concluded that via different approximation mechanisms (for instance, best endeavors principle applied), the DCFTA acquis is a (5) dynamic and flexible category.

Being a part and foundation for the accession acquis, it also makes the latter a dynamic and flexible category.

We also conclude that it is recommended to (6) abstain from copying and referring to 'very particular' obligations (specific elements of the EU customs law at a specific moment) while formulating the external dimension of the accession acquis in the customs sphere. Instead, we urge using existing DCFTA mechanisms.

The analysis also shows that accession acquis should be (7) flexible to Ukrainian customs regulations and enforcement realities and (8) oriented on practical implementation. In addition, some of its elements (9) can be implemented only at the moment of accession.

On a practical level, Ukraine has demonstrated substantial progress in approximating its customs legislation with the EU in part of its DCFTA obligations. The minor fraction remaining – is mainly impossible to implement before the membership or often relates to technical solutions (not legal norms). Furthermore, a significant part of the DCFTA acquis is adopted with the obligation of continuous alignment with the EU.

After analyzing the external dimension of the accession acquis reflected in the 2024 Report (and via retrospective analysis of previous Report), Ukraine still must implement a combination of a very general (i.e., more effective measures are needed in fighting corruption at the border), and a very particular requirements (i.e., new customs code, or previously – the criminalization of smuggling, etc.). The latter requirements contradict the flexible nature and other characteristics of accession acquis.

It is also noted that the external definition of accession acquis in the customs sphere is wider than the respective chapter of the accession negotiations (Chapter 29). It often relates to other fields of legislation. In some parts, it also foresees a list of requirements that are not based on the existing EU customs regulations.

Unfortunately, the practical steps taken by the Parties within the negotiation process (in the external definition of the accession acquis) contradict the conclusions and recommendations provided by this article on the DCFTA and accession acquis. These contradictions create several practical challenges for further approximation by Ukraine.

The first significant one is a recommendation to implement a completely new customs code in the nearest future. As we have shown, it would just reiterate a number of already existing provisions and add a little (that can be implemented as an amendment). And, based on the Polish example – it is not a common rule to implement a new code before the accession. Secondly, the development of the new Customs Code raises practical concerns regarding the possibility of its efficient implementation. It can become even more challenging in the face of the forthcoming EU Customs Reform.

We also mention additional potentially complicated spheres to fully harmonize with – AEO and customs infringements – areas not fully harmonized or non-harmonized at all among the EU member countries, both being the merits of the EU Reform.

The AEO regulations in the EU remain not fully homogeneous, thus, Ukrainian efforts to implement the respective obligations resulted in a continuously changing regulatory environment. The situation is even more troublesome considering the forthcoming reform and potential introduction of the Trust and Check trader status.

The customs infringements are almost fully non-harmonized field among the EU countries. The available common denominators are derived from one article of the UCC that Ukraine has to implement under the DCFTA and a few more sources. However, this task will require deep expertise in the CJEU case law (and not only) from Ukrainian authorities and a deep understanding of the Ukrainian practices and law enforcement from the EU officials (for efficient assessment).

Thus, the practical (external) definition of the accession *acquis* in the customs sphere would demand a more generic approach emphasizing the effective implementation over formal adoption of EU legislation, where DCFTA mechanisms can be extremely useful.

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**Кириєвський О. Гармонізація з митними правилами (acquis) ЄС на шляху до вступу: перспективи та виклики для України. – Стаття.**

У статті досліджується взаємозв'язок між «DCFTA acquis» та «acquis приєднання» у митному праві, з особливим акцентом на дотриманні Україною цих концепцій. Проаналізовано нещодавні законодавчі зміни, звіти Європейської Комісії та інші джерела з метою визначення потенційних викликів, що можуть постати перед Україною та іншими країнами-кандидатами на вступ до ЄС у процесі імплементації «acquis приєднання». Перша частина статті присвячена теоретичному підґрунтю, що розкриває взаємозалежність між DCFTA та «acquis приєднання». Попри відмінності у сфері застосування та нормативних вимогах, обидві концепції є динамічними та гнучкими, що відкриває можливості для їхнього паралельного впровадження. У другій частині статті оцінено прогрес України у гармонізації митного законодавства зі стандартами ЄС, зокрема виявлено розбіжності між нормативним баченням «acquis приєднання» та реальною правозастосовною практикою. Окрема увага приділена суперечностям між поточним тлумаченням зовнішніх зобов'язань і концепцією нормативної гнучкості. У статті визначено ключові сфери потенційних викликів при застосуванні норм ЄС, а також запропоновано рекомендації щодо їх подолання, зокрема у сфері боротьби з митними порушеннями та функціонування уповноважених економічних операторів. Обговорено також наслідки прийняття нового митного кодексу у контексті триваючих реформ ЄС.

**Ключові слова:** ЄС, Україна, митниця, acquis communautaire, DCFTA, Угода про асоціацію, вступ до ЄС, реформа митної системи, гармонізація, наближення, уповноважений економічний оператор.

