

# **INTERNATIONAL SECURITY**



# MILITARY COOPERATION BETWEEN UKRAINE AND THE EUROPEAN UNION UNDER THE ASSOCIATION AGREEMENT AND AN ISSUE OF STATE SOVEREIGNTY

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## **Abstract**

*The article deals with the complex investigation of the content of the draft Association Agreement with the European Union in the context of military collaboration proceeding from the theory of International Law. Special attention is focused on the issues regarding its influence on the military aspects of the state sovereignty of Ukraine. Four main questions are investigated: Does Ukraine have the obligations of an EU member state in the military sphere under the Agreement? What is the nature of Ukraine's obligations in the military sphere under the Agreement? Does Ukraine have any legal guarantees that protect its own strategic interests in the military sphere in coordinating its defence policy with that of the EU? Are the sovereign rights of Ukraine in the military sphere taken into account in the institutional framework of cooperation under the Association Agreement?*

*The author comes to the conclusion that the deepening cooperation with the EU under this international agreement does not lead to a limitation of the state sovereignty of Ukraine in the military sphere.*

**Key words:** military cooperation, association agreement, EU-Ukraine relations, state sovereignty.

## Introduction

Ukraine, as a non-aligned European state, realises its open external policy and aims to cooperate with all existing states on the basis of the general recognised principles of international law. According to part 2 of article 11 of the Law of Ukraine “On the fundamental principles of the domestic and foreign policy of Ukraine” of 1 July 2010<sup>1</sup>, one of the fundamental principles of Ukraine’s external policy is the integration of Ukraine into the European political, economic, humanitarian and legal environment in order to acquire membership of the European Union, as well as the priority of participating in improvement and development of the European system of collective security, and continuing a constructive partnership with military-political blocs in all areas of mutual interest. Thus, military partnership with the European Union, which has great experience in this sphere, is the main direction of Ukraine’s current diplomacy.

Since 1993, membership in the European Union has been recognised at the level of legislation as a priority of Ukraine’s foreign policy<sup>2</sup>. The invariability of Ukraine’s European choice is determined by its being part of the community of European nations in a civilisational sense. In the political dimension, cooperation with the European Union generally strengthens democracy in a political system and its institutions, contributes to the modernisation of economics and the development of legislation on the basis of European values. In the military sphere, European integration should raise the level of Ukraine’s defence capacity and strengthen the security of the state and its citizens, as it is based on the principle of relinquishing use of force and threats to use force against the territorial integrity or political independence of any state, which contributes to stability in relations between European countries.

At the present time, EU-Ukraine relations are based on the Partnership and Cooperation Agreement of 14 July 1994 between the European Communities and

<sup>1</sup> Law of Ukraine “On the fundamental principles of the domestic and foreign policy of Ukraine” of 1 July 2010 // <http://zakon.nau.ua/eng/doc/?code=2411-17>.

<sup>2</sup> The first legal act which recognised the European integration as a core priority of the foreign policy of Ukraine was the Resolution “On the Main Directions of the Foreign policy of Ukraine” of 2 July 1993 № 3360-XII // <http://zakon4.rada.gov.ua/laws/show/3360-12>.

their Member States, on the one side, and Ukraine, on the other<sup>3</sup> (hereinafter – PCA), which is a basic bilateral international treaty, as well as many other international agreements, in particular, the Agreement on Establishing a General Framework for the Participation of Ukraine in the European Union Crisis Management Operations of 13 June 2005, the Agreement on the Security Procedures for the Exchange of Classified Information of 2005, the Agreement renewing the Agreement on Cooperation in Science and Technology of 2003 etc.

At the present stage of the international cooperation between Ukraine and the European Union, an urgent issue is the negotiation process for signing the Association Agreement between the European Union and its member states, on the one side, and Ukraine, on the other,<sup>4</sup> (hereinafter – Association Agreement) – a new fundamental international treaty that is to replace the PCA and deepen the cooperation between the parties. The treaty pays special attention to the focus on the military cooperation between the parties.

As the EU is seeking an increasingly close relationship with Ukraine that goes beyond ordinary bilateral cooperation through developing relations of political association and integration, various aspects of EU-Ukraine cooperation are traditionally of high interest in the legal doctrine. In Ukrainian legal literature, the problems of cooperation between Ukraine and the European Union have become the object of research by such scholars as M.M. Gnatovsky, Y.M. Kostuchenko, L.A. Luts, M.M. Mykievich, V.I. Muraviov, U.V. Movchan, R.A. Petrov, O.M. Shpakovych, N.V. Sur, O.Y. Tragniuk, U.O. Voloshin, I.V. Yakoviuk and others. The fundamental theoretical works on EU relations with third party countries are provided by Russian and Western European professors: K. Arnul, G. de Búrca, T.K. Hartley, M. Herdegen, L.M. Entin, P. Eekhout, A.Y. Kapustin, S.U. Kushkin, A.O. Moiseev, T.N. Neshataeva, B.M. Topornin, N.B. Shelenkova, V.G. Shemyatenko etc.

<sup>3</sup> Partnership and Cooperation Agreement between the European Communities and their Member States, on the one side, and Ukraine, on the other, of 14 June 1994 // *Official Journal*. – 1998. – Serie L 49. – P. 1.

<sup>4</sup> Draft Association agreement between the European Union and its member states, on the one side, and Ukraine, on the other // [http://www.europarl.europa.eu/RegData/docs\\_autres\\_institutions/commission\\_europeenne/com/2013/0290/COM\\_COM\(2013\)0290\(PAR2\)\\_EN.pdf](http://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne/com/2013/0290/COM_COM(2013)0290(PAR2)_EN.pdf).

However, as the Association Agreement is a new experience in the foreign policy of Ukraine, as well as for the European Union, and its text was made public a relatively short time ago, its contents have been little researched in the doctrine of European Law. It is necessary to note that several Ukrainian scientists have examined separate issues of this international treaty. They are I.A. Berezovska, U.S. Hobbi, I.A. Kravchuk, V.I. Muraviov, E.U. Perelygin, N.M. Rylach, O.V. Streltsova, I.V. Vlyalko. At the same time, neither Ukrainian nor foreign scholars have yet analysed the peculiarities of military cooperation between Ukraine and the EU under the Association Agreement and the effect of the latter on Ukraine's sovereignty. That is why the aim of this article is to carry out complex research into the contents of the draft Association Agreement with the European Union in the context of military cooperation, proceeding from the theory of International Law. It is also necessary to determine whether this international agreement can lead to a limitation of the state sovereignty of Ukraine in the military sphere.

## **A Brief Historical Background**

The draft text of the Association Agreement with the text of the Treaty on the Deep and Comprehensive Free Trade Area, which is its integral part, was negotiated in 2007-2011 and initialled in 2012. Thus, in accordance with article 10 of the Vienna Convention of the Law of Treaties of 1969<sup>5</sup>, the final version of this international treaty was agreed upon (authenticity was determined) by way of putting the initials of authorised persons on each of its pages. In this connection, L. L. Lukashuk notes that although initialling is not an obligatory stage in the conclusion of international treaties, this makes it possible to avoid disputes and misunderstandings as to their texts in the future, as it is an indubitable proof that authorised persons have come to an agreement<sup>6</sup>. The signing of the Treaty was

<sup>5</sup> Vienna Convention of the Law of Treaties of 23 May 1969 // <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf>.

<sup>6</sup> Лукашук И. И. Современное право международных договоров. В 2 т.: Т. 1. Заключение международных договоров / И. И. Лукашук; Рос. Акад. наук, Ин-т гос-ва и права. – М.: Волтерс Клавер, 2004. – С. 392.

scheduled to take place at the Vilnius EU-Ukraine Summit in November 2013. After that, the Treaty requires Ukraine, the European Union and its 28 member states to express consent as to its obligatory nature in accordance with their legislative requirements, which has no requirements as to time limits. However, on 21 November, 2013, the Cabinet of Ministers of Ukraine took a decision to suspend preparations to sign the Association Agreement and at the same time did not refuse to sign it in the future. The position of the EU on this matter was declared by Štefan Füle, Commissioner for Enlargement and European Neighbourhood Policy: “The Association Agreement, including DCFTA, is our offer to Ukraine and its people. This offer is still on the table. The European Union remains ready to sign it, as soon as Ukrainian authorities are ready, and prove their commitment by deeds”<sup>7</sup>.

Recently, the Ukrainian Government has resumed the process of European Integration and both parties agreed to sign this Agreement, foremost its political part dealing with military cooperation.

## **General Legal Analysis of the Association Agreement in the Field of Military Cooperation**

Starting a legal analysis, we should take into account that article 2 of the Association Agreement proclaims “respect for democratic principles, human rights and fundamental freedoms, as defined, in particular, in the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and the Charter of Paris for a New Europe of 1990, and other relevant human rights instruments, among them the UN Universal Declaration on Human Rights of 1948 and the European Convention on Human Rights and Fundamental Freedoms of 1950, and respect for the principle of the rule of law shall form the basis of the domestic and external policies of the Parties and constitute essential elements of the Agreement.

<sup>7</sup> EU-Ukraine: Association Agreement is an offer to the country and its people // European Commission - MEMO/13/1146 12 December 2013. [http://europa.eu/rapid/press-release\\_MEMO-13-1146\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-1146_en.htm).

Promotion of respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence, as well as countering the proliferation of weapons of mass destruction, related materials and their means of delivery also constitute essential elements of this Agreement”. The Constitution of Ukraine of 1996<sup>8</sup> fully corresponds with these principles and states that “all foreign political activity of Ukraine is aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial co-operation with members of the international community, according to generally acknowledged principles and the norms of international law” (art. 18).

Proceeding from the theory of international law, the Association Agreement is a bilateral international public treaty which determines the conditions of cooperation between Ukraine and the EU and its 28 member states in a wide range of legal relations, the majority of which are economically directed. At the same time, as distinct from other fields of cooperation, defence and security matters are the first to be determined in the Association Agreement. It proves that this sphere is extremely important for both parties. In particular, the rights and obligations of Ukraine and the EU in the military sphere are systematised in Chapter II of the Agreement (“Political Dialogue and Reform, Political Association, Cooperation and Convergence in the field of Foreign and Security Policy”, art. 4-13). Separate articles of the Agreement also complete this list (art. 143, 472), as well as those dealing with the institutional framework (art. 460-470).

As distinct from the PCA, the Association Agreement considerably widens and deepens relations between the parties in the military sphere. As it is determined in article 4 of the Agreement, “political dialogue on all areas of mutual interest [including the military sphere] shall be further developed and strengthened between the Parties. This will promote gradual convergence on foreign and security matters with the aim of Ukraine’s deeper involvement in the European security area”. The aims of political dialogue concerning military cooperation are : “to deepen political association and increase political and security policy convergence and effectiveness; to promote international stability and security based on effective multilateralism; to strengthen cooperation and dialogue

<sup>8</sup> Constitution of Ukraine of 28 June 1996 // <http://www.president.gov.ua/en/content/chapter01.html>.



between the Parties on international security and crisis management, notably in order to address global and regional challenges and key threats; to foster result-oriented and practical cooperation between the Parties for achieving peace, security and stability on the European continent; to develop dialogue and to deepen cooperation between the Parties in the field of security and defence; to promote the principles of independence, sovereignty, territorial integrity and inviolability of borders”.

According to article 10 of the Association Agreement “the Parties shall enhance practical cooperation in conflict prevention and crisis management, in particular with a view to the increased participation of Ukraine in EU-led civilian and military crisis management operations as well as relevant exercises and training activities, including those in the framework of the Common Security and Defence Policy (CSDP). Cooperation in this field will be based on modalities and arrangements between the EU and Ukraine on consultation and cooperation on crisis management. The Parties shall explore the potential of military and technological cooperation. Ukraine and the European Defence Agency (EDA) will establish close contacts to discuss military capability improvement, including technological issues”.

## **Deep Cooperation in the Military Sphere and the Risk of State Sovereignty Limitation**

As has been mentioned above, a number of articles of the Association Agreement fix the numerous rights and obligations of the parties in the military sphere. Some of them are quite close to those which relate to the member states of the EU. Thus, deep cooperation between the parties in accordance with the Agreement should enhance their interaction and to a certain extent prepare Ukraine for obtaining membership of the European Union.

The deep cooperation between the parties under the Association Agreement raises a lot of practical issues. Among the key questions, the most important one is whether there is a potential threat to the state sovereignty of Ukraine in the event of such close interaction and whether Ukraine is able to protect its state

interests if they mismatch with the general strategy of the EU concerning security priorities and measures for their implementation? To make a well-grounded conclusion, we should investigate four aspects.

Firstly, are member states of the EU significantly limited in the military sphere and does Ukraine have the relevant obligations of the EU member states?

In connection therewith, we should pay attention to the most important specifics of the military cooperation among the member states of this integrative organisation. From the analysis of the Treaty on European Union of 1992<sup>9</sup> (hereinafter – TEU) – one of the founding treaties – we can come to the conclusion that the member states (except members with neutral status) have a wide range of obligations in the military sphere in the field of common defence and security policy. They should act together and coordinate their actions in this area of competence with the European Union. In particular, as the EU has no standing army, its member states are to provide civilian and military assets for the needs of the EU; take part in missions outside the Union for peacekeeping, conflict prevention and strengthening international security; make civilian and military capabilities available to the Union for the implementation of a common security and defence policy, and thus contribute to the objectives defined by the Council; undertake progressively to improve their military capabilities. «Those Member States which together establish multinational forces may also make them available to the common security and defence policy» (parts 1-3 of article 42). Furthermore, as the European Union was created as a collective security organisation in accordance with part 7 of article 42 TEU “if a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power, in accordance with Article 51 of the United Nations Charter”.

In spite of these fundamental obligations, decision-making in this area continues to be more intergovernmental rather than supranational, if compared with other competences of the Union<sup>10</sup>. As it is stated in part 4 of article 42 TEU, decisions

<sup>9</sup> Treaty on European Union of 7 February 1992 // *Official Journal*. – 2012. – Serie C 326. – Vol. 55. – P. 13-46.

<sup>10</sup> Graig P., de Burca G. *EC Law: Text, Cases, Materials*. – 5<sup>th</sup> ed. – Oxford: Clarendon Press, 2011. – P. 89.

relating to the common security and defence policy, including those initiating a mission in accordance with this Article, shall be adopted by the Council acting unanimously. Thus, no decision can be made without the consent of the representatives of all member states and, consequently, they have the right to veto all decisions in this area. Accordingly, the sovereign rights of the member states in the military sphere are strongly protected by the TEU.

As for Ukraine, the Association Agreement lays on Ukraine no obligations to acquire membership of the EU and none of the duties of a member state in this sphere. It is emphasised in the preamble: “This Agreement shall not prejudice and leaves open future developments in EU-Ukraine relations”. Thus, according to this Agreement, Ukraine shall not enter into the commitments of an EU member state in the field of common security and defence policy.

Secondly, what is the nature of Ukraine’s obligations in the military sphere under the Agreement?

The Association Agreement does not contain clear-cut obligations for the parties in the military sphere. Nor does it determine their precise line of behaviour in the process of cooperation in an imperative manner. The obligations of the parties in the field of security and defence can be determined as “soft-law” obligations<sup>11</sup>. Provisions of the Agreement do not stipulate any specific legal obligations to be carried out by the parties. Thus, the parties have a wide range of means for their realisation with due regard to the specifics of their national interests and internal security policy priorities.

For example, according to part 1 of article 7 of the Agreement, “the Parties shall intensify their dialogue and cooperation and promote gradual convergence in the area of foreign and security policy, including the Common Security and Defence Policy (CSDP), and shall address, in particular, issues of conflict prevention and crisis management, regional stability, disarmament, non-proliferation, arms control and arms export control, as well as enhanced, mutually beneficial dialogue in the field of space. Cooperation will be based on common values and mutual interests, and shall aim at increasing policy convergence and effectiveness,

**11** Kenneth W. Abbott, Duncan Snidal. *Hard and Soft Law in International Governance* // Kenneth W. Abbott, Duncan Snidal // *International Organization*, Vol. 54, p. 421, 2000.

and promoting joint policy planning. To this end, the Parties shall make use of bilateral, international and regional fora”. So it is not clearly apprehensible what these provisions mean and what the parties are to do to carry them out.

General non-specific obligations are also in part 1 of article 11 of the Agreement under which “the Parties agree to cooperate and to contribute to countering the proliferation of weapons of mass destruction, related materials and their means of delivery through full compliance with, and national implementation of, their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations”. Besides this, article 12 only states in general terms that “the Parties shall develop further cooperation on disarmament, including in the reduction of their stockpiles of redundant small arms, and light weapons as well as dealing with the impact on the population and the environment caused by abandoned and unexploded ordnance. Cooperation on disarmament shall also include arms controls, arms export controls and the fight against illicit trafficking of arms, including small arms and light weapons. The Parties shall promote universal adherence and compliance with relevant international instruments and shall aim to ensure their effectiveness, including through implementation of the relevant United Nations Security Council Resolutions”.

Thirdly, shall Ukraine have the legal right to hold its own position and protect its own strategic interests in the military sphere while coordinating its defence policy with that of the EU? Are there any guarantees?

Despite the significant widening and deepening of the relations between the parties in the military sphere, a considerable number of the provisions in the Agreement clearly indicate that Ukraine remains free to develop its own policy in many areas. Thus, the Association Agreement envisages a number of provisions to protect Ukraine’s national interests in the military sphere. In particular, according to article 472 (“Measures related to essential security interests”) “nothing in this Agreement shall prevent a Party from taking any measures:

which it considers necessary to prevent the disclosure of information contrary to its essential security interests;

which relate to the production of, or trade in, arms, munitions or war materials or to research, development or production indispensable for defence purposes,

provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes;

which it considers essential to its own security, in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security”.

Furthermore, article 143 of the Association Agreement (“Security exceptions”) emphasises that “nothing in this Agreement shall be construed in such a way as:

to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:

connected with the production of or trade in arms, munitions or war material;

relating to economic activities carried out directly or indirectly for the purpose of provisioning a military establishment;

relating to fissionable and fusionable materials or the materials from which they are derived; or

taken in time of war or other emergency in international relations; or

to prevent any Party from taking any action in pursuance of obligations it has accepted for the purpose of maintaining international peace and security”.

And fourthly, are the sovereign rights of Ukraine in the military sphere protected in the institutional framework of cooperation under the Association Agreement?

The framework of military cooperation (as well as other spheres of political dialogue) is determined in article 5 and itemised in articles 460-470 of the Treaty. It is stated that the Parties shall hold regular political dialogue meetings at Summit level, which is the highest form of cooperation. At ministerial level, political dialogue shall take place within the Association Council referred to in article 460 of this Agreement and within the framework of regular meetings between representatives of the Parties at Foreign Minister level by mutual agreement. “Political dialogue shall also take place in the following formats:

- (a) regular meetings at Political Directors, Political and Security Committee and expert level, including on specific regions and issues, between representatives of the European Union, on the one hand, and representatives of Ukraine, on the other;
- (b) taking full and timely advantage of all diplomatic and military channels between the Parties, including appropriate contacts in third party countries and within the United Nations, the OSCE and other international fora;
- (c) regular meetings both at the level of high officials and of experts of the military institutions of the Parties;
- (d) any other means, including expert-level meetings, which would contribute to improving and consolidating this dialogue.

Other procedures and mechanisms for political dialogue in the military sphere, including extraordinary consultations, shall be set up by the Parties by mutual agreement. Military dialogue shall also take place at parliamentary level within the framework of the Parliamentary Association Committee referred to in article 467 of this Agreement”.

One of the most important features of the institutional model of cooperation under the Association Agreement is the exclusive power of the Association Council to make decisions binding for the Parties (part 1 of article 463 of the Agreement). It may also delegate this power to the Association Committee (part 2 of article 465 of the Agreement). It is necessary to stress that common institutions under the PCA are not empowered to make any binding decisions. They may only give recommendations to the parties. Thus, the level of freedom of action of the parties in the military sphere is very limited under the Association Agreement.

At the same time, the institutional model of cooperation under the Association Agreement takes into consideration the political interests of both parties during the decision making process. The Agreement clearly determines that either the Association Council or the Association Committee “shall be composed of representatives of members of the Council of the European Union and representatives of the European Commission, on the one hand, and of representatives of the Government of Ukraine, on the other” (part 1 of article 462 and part 2 of article 464 of the Agreement). Thus, the institution cannot consist of the representatives of one party.

However, the Association Agreement determines neither the mechanism of decision making nor the “weight” of the vote or the number of the votes of the representatives of each party. This could lead to discussions on the supranational nature of the Association Council, as well as the Association Committee, and their power to make decisions contrary to the interests of Ukraine in the military sphere, which contradicts the Ukrainian Constitution.

In our opinion, the draft Association Agreement does not allow us to come to such a conclusion. First of all, the Association Council, as an institution which supervises and monitors the application and implementation of this Agreement, shall have only these powers and no right to carry out actions not determined in the Agreement. As the Agreement has to be ratified by the Parliament of Ukraine, the Association Council shall have only those powers which are approved by the Verkhovna Rada. In this sense, the activities of the Association Council are not unique, they are similar to the activities of many other institutions supervising and monitoring international treaties ratified by the Parliament of Ukraine.

The next important provisions are in part 1 of article 463 of the Agreement under which the Association Council shall adopt its decisions and recommendations by agreement between the Parties. A similar provision is in part 3 of article 465 on the Association Committee. Thus, no decision can be passed without the consent of Ukraine.

As we have mentioned above, the Agreement doesn't detail the procedure of decision making of the Association Council and the Association Committee. However, the association agreements with other third party states, including those that have the status of applicants and candidates, do not specify it either<sup>12</sup>.

**12** See, for example, the **Stabilisation and Association Agreement between the European Communities and their Member States, on the one side, and the Republic of Albania, on the other, of 12 June 2006.** <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:107:0166:0502:EN:PDF>; the **Stabilisation and Association Agreement between the European Communities and their Member States, on the one side, and Bosnia and Herzegovina, on the other, of 16 June 2008** [http://ec.europa.eu/enlargement/potential-candidate-countries/bosnia\\_and\\_herzegovina/eu\\_bosnia\\_and\\_herzegovina\\_relations\\_en.htm](http://ec.europa.eu/enlargement/potential-candidate-countries/bosnia_and_herzegovina/eu_bosnia_and_herzegovina_relations_en.htm); the **Agreement on the European Economic Area of 2 May 1992 p. // Official Journal.** – 1994. – Serie L. № 1 – P. 3; the **Stabilisation and Association Agreement between the European Communities and their Member States, on the one side, and the Former Yugoslav Republic of Macedonia, on the other, of 09.04.2001** [http://ec.europa.eu/enlargement/pdf/the\\_former\\_yugoslav\\_republic\\_of\\_macedonia/saa03\\_01\\_en.pdf](http://ec.europa.eu/enlargement/pdf/the_former_yugoslav_republic_of_macedonia/saa03_01_en.pdf); the **Stabilisation and**

Article 462 of the Agreement states in general terms that the Association Council shall establish its own rules of procedure in which, apparently, the particularities of the organisational structure and decision making will be determined. The same applies to the Association Committee.

In this connection it is necessary to pay attention to the regulations dealing with the functioning of common institutions under the association agreements. Thus, under Decision № 1/2010 of the EU-Montenegro Stabilisation and Association Council of 14 October 2010 adopting its Rules of Procedure<sup>13</sup>, the Stabilisation and Association Council consists of ministers of both parties and adopts its decisions by the common agreement of the parties (article 2). Similar provisions are in the Decision of the EU-Serbia Stabilisation and Association Council of 22 July 2013 adopting its rules of procedure<sup>14</sup> (article 10).

Thus, the institutional framework under the Association Agreement between Ukraine and the EU is based on the principle of parity. It allows for the political interests of both parties to be taken into account during the decision making process. This procedure provides valuable guarantees both for Ukraine and the EU, and makes it impossible to pass a decision that is contrary to the position of one of the parties.

Association Agreement between the European Communities and their Member States, on the one side, and the Republic of Serbia, on the other, of 29 April 2008 [http://ec.europa.eu/enlargement/pdf/serbia/key\\_document/saa\\_en.pdf](http://ec.europa.eu/enlargement/pdf/serbia/key_document/saa_en.pdf); the Agreement creating an association between the European Economic Community and Turkey of 12. September 1963 <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=172>; the **Stabilisation and Association Agreement** between the European Communities and their Member States, on the one side, and the Republic of Montenegro, on the other, of 15 October 2007 <http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=7281>

**13** Decision № 1/2010 of the EU-Montenegro Stabilisation and Association Council of 14 October 2010 adopting its Rules of Procedure // **Official Journal of the European Union**. – 2010. – Serie L. – № 179. – P. 11-15.

**14** Council and Commission Decision of 22 July 2013 establishing the position to be taken on behalf of the European Union and the European Atomic Energy Community within the EU-Serbia Stabilisation and Association Council concerning a Decision of the EU-Serbia Stabilisation and Association Council adopting its rules of procedure // **Official Journal of the European Union**. – 2013. – Serie L. – № 278. – P. 1-13.



## Conclusion

Legal analysis of the draft Association Agreement between the European Union and its member states, on the one side, and Ukraine, on the other, makes it possible to conclude that the deepening of cooperation with the EU under the Agreement will not lead to a limitation of the state sovereignty of Ukraine in the military sphere. This conclusion is based on the following findings: 1) Ukraine shall not enter into the commitments of an EU member state in the field of common security and defence policy; 2) Ukraine shall have only “soft-law” obligations in the military sphere; it is entitled to have a wide range of means for their realisation with due regard for the specifics of its national interests and internal security policy priorities; 3) articles 143 and 472 of the Agreement guarantee that Ukraine has the right to uphold its own position and protect its own strategic interests in the military sphere while coordinating its defence policy with that of the EU; 4) the institutional framework under the Association Agreement is based on the principle of parity which allows the political interests of both parties during the decision making process to be taken into account and makes it impossible to pass a decision that is contrary to the position of one of the parties.

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