**Resume**

**Thesis contains** 76 pages, references including 40 titles.

**The aim of the thesis** is a comprehensive theoretical development of problems related to the formation of holistic ideas about the specifics and features of the implementation of EU law in the national legal systems of the Member States.

**Object of this research** is the European Union External Relations Law on private law of member states.

**The subject of research** is the European Union law, law of particular member states in the field of European union external competence, and the role of European law in making of international private law, relevant provisions of legal doctrine, case law.

**The resulting conclusions and novelty** are the ability to use the obtained research results to improve the European union external relations of private law of member states in the future of general studies.

**Keywords:** European Union, Private law, External competence, relations, dimensions.

**Annotation**

Dontoh M. E. The European Union external relations law on private law of member states – It is manuscript.

Research on education and qualification of "Master” in the specialty 293 – International law, educational and professional program – International law (with teaching in English) – West Ukrainian National University, Ternopil, 2021.

In the research paper comparative legal research of legal nature of the European union external relations law on private law of member states is conducted. Genesis of the European Union of their issue and circulation is found. The concept and basic features of share securities are defined. Comparative legal description of types is conducted. Private law of its member states is analyzed.

**Introduction**………………………………………………………………………………..5

**Chapter 1 EU law and the law of the member states: theoretical aspects of the relationship**

1.1. International and national law of member states and the law of the European Union - the theory of relations…........................................................................................................8

1.2. The role of the principle of direct action for the implementation of EU law in the legal systems of the Member States…………………………………………..…………......….17

Conclusions to Chapter 1………………………………………………………...………..27

**Chapter 2 The process of implementation of EU private law: features of the mechanism**

2.1. The concept of the mechanism of implementation of private EU law…………………………………………………………………..………......……..…..29

2.2. Implementation of European Union regulations and decisions to the national law of the Member States…………………………………………………………………….………37

2.3. Implementation of European Union directives to the of the Member States national law ……………………………………………………………………………………………45

Conclusions to Chapter 2…………………………………………………………………53

**Chapter 3 Role of The European Union in Making of International Private Regulation**

3.1. The External Dimension of European union Consumer Law………………………………………………………………………..………………54

3.2. The external competence of European Union in the field of family Law……………..62

Conclusions to Chapter 3……………………………………………………………….....70

**Conclusion**…………………………………………………………………..……………71

**References……………………………………………………………………………….74**

**Introduction**

**The actuality of the topic.** In the European Union, private international law has almost exclusively been developed through the adoption of internal acts particularly EU Regulations in the pursuit of internal goals principally, enhancing the efficient functioning of the internal market, and more recently and broadly the construction of an area of freedom, security and justice. Private Law in the External Relations of the EU is an innovative study of the interactions between EU external relations law and private law, two unrelated fields of law, inverted if private law is understood as regulatory private law - the space where regulatory law intersects with private economic activity.

The active development of integration processes taking place within the European Union leads to further convergence and closer cooperation between the national legal systems of the Member States, which expands the range of legal relations governed by EU law. A specific role in the proper functioning and implementation of these norms (EU law) is played by the specific procedure for their implementation in the national legal systems of the Member States. It is through this procedure that the timely and effective operation of EU law in the national law of the Member States is ensured. It should be noted that the legal order of each EU member state is unique and unique, which in turn determines the individual approach in the implementation of EU law. At the same time, the mechanism of implementation of EU law, which was formed as a result of the development of this supranational international organization, is specific and more effective than classical international mechanisms of implementation of international law in national legal systems. Thus, the study of the process of implementation of EU law in the national legal systems of member states is a particularly relevant topic in the theory of modern international law.

As integration and membership in the EU are a priority of Ukraine’s foreign policy, research conducted to determine the legal forms and mechanisms of Ukraine’s integration into the EU should play an important role. This, in turn, requires studying and researching the mechanisms of implementation of EU law in the national legal systems of member states in order to develop recommendations and proposals for optimal implementation of EU law in the legal order of Ukraine in the event of our EU membership. Thus, the study of this issue becomes especially relevant in the context of the need to bring Ukrainian legislation in line with European Union law.

**The purpose and objectives** of the research. The aim of the study is a comprehensive theoretical development of problems related to the formation of holistic ideas about the specifics and features of the implementation of EU law in the national legal systems of the Member States.

In accordance with the goal of the study, the following tasks are solved:

- to find out the interaction of EU law with the international and national law of the EU member states;

- identify the basic principles on the basis of which the implementation of EU law in the national legal systems of the Member States;

- to reveal such legal categories as "implementation of EU law" and "mechanism for implementation of EU law" and identify its features and specifics;

- identify the specifics of the implementation of legal acts of EU bodies, especially regulations, directives and decisions, as well as explore their features;

- to analyze the constitutional and legal mechanisms of interaction of EU law and national law of member states;

- to clarify the role of national constitutional courts in the process of implementation of EU law in the national legal systems of the Member States;

- to analyze the decisions of the Court of Justice of the EU, which, in fact, formed a specific mechanism for the implementation of EU law.

**The object of the research** is the legal relations that arise as a result of the implementation of EU law in the national legal systems of the Member States.

**The subject of the research** is the mechanisms of implementation of EU law in the national legal systems of member states and their functioning within the European Union.

**The theoretical basis** for writing the work were the works of scholars as: **Frederick F. Schmitt*,*** Nelson Rolihlahla Mandela, Taboo Mbeki, Chris Alden, Maxi Schoeman, Pierre-Paul Dika, Adam Habib, and Scarlett Cornislenn etc.

These scientific writings have been worked out on different **methods** among which the following are historical method, content analysis, event analysis, system method, comparative method, statistical method and others.

**The information and analytical base** is based on the case law of the EU Court.

**The scientific novelty of the obtained results** is the conduct of a comprehensive study, which analyzes a range of interrelated theoretical and practical issues related to the implementation of EU law in the national legal systems of the Member States.

The novelty of the obtained results is specified in the following scientific and theoretical provisions, conclusions and proposals:

- the definition of the concept of "mechanism of implementation of EU law" is proposed, which means a set of legal and institutional tools used within the European Union to implement EU law in the national legal order of member states, and studied the specifics of this mechanism;

- based on the analysis of the judgments of the Court of Justice, the cases of the possibility of direct effect of the Directive as a source of European Union law are systematized, namely if the obligations arising from it are clear, precise and unconditional and when the deadline for implementation of this directive;

- substantiates the concept of indirect (indirect) directives in the process of their application by national courts of EU member states, which is that EU law, even if they do not have direct effect, must be taken into account by national courts when applying national law of EU member states and studied its functioning within the EU;

- the key role of the constitutional courts of the EU member states in ensuring the implementation of EU law in their national legal systems has been established.

**The practical signifiсanсе of the work** the result is that the conclusions and suggestions can be used for research purposes for further research on issues related to the implementation of EU law; in law-making activity in the process of preparation of projects of new and improvement of existing normative-legal acts aimed at adaptation of the legislation of Ukraine to the EU legal standards;

**The structure of the work.** This research work consists of introduction, three chapters, conclusions and list of references, the general sum of pages of the research 76.

**CHAPTER 1**

**EUROPEAN UNION LAW AND THE LAW OF THE MEMBER STATES: THEORETICAL ASPECTS OF THE RELATIONSHIP**

**1.1. International and national law of member states and the law of the European Union – the theory of relations**

The active development of integration processes taking place in certain regions of the world is characterized by the emergence and emergence of new forms and types of integration, the study of which has not received due attention. Under the influence of globalization processes, the regional integration of the legal systems of countries located in certain parts of the world is becoming more and more developed. The term "integration" means "unification of any individual parts into a whole unification and coordination of actions of different parts of a holistic system process of ordering, coordination and unification of structures and functions in the whole organism". Thus, integration covers not only the external but also the internal aspect of convergence of certain phenomena. When it comes to the integration of legal systems, we do not only mean the study of external mechanisms and processes that led to this integration, but we also pay attention to the internal side of this issue, namely - the analysis and identification of features of the functioning and interaction of internal components (structure) of the legal system - institutional, functional and regulatory part [27].

A striking example of such the most developed regional integration association today is the European Union. The uniqueness of this supranational international organization is that it unites countries that belong to different legal systems, namely the Anglo-Saxon and continental. This led to peculiarities in the construction and structuring of the system of sources of European Union law, its institutional mechanism, the creation and functioning of the judiciary of the European Union, and so on. We must agree with the position of Professor Yumashev, who notes that "The Community is an example of how in the new environment Member States are investing more and more meaning in the concept of interstate cooperation, which dictates the model of their behavior and determines the nature of their relationship with them organization".

Quite interesting and unusual is the position of A. Moravchik, who analyzing the integration that takes place within the EU, comes to the conclusion that it should be seen as a consequence of international negotiations, in which the main actors are governments with access to information and ideas. These governments act as intermediaries, initiating and conducting negotiations that are naturally efficient and cost-effective. In this context, the position of A. Haverdovsky, who noted that "in international legal relations there can be no supranational will, because by virtue of state sovereignty participants in international legal relations are independent of each other" has lost some relevance [11].

Thus, it completely excluded the possibility of the existence of supranational organizations and supranational bodies, the decisions of which are binding on the countries that are members of this organization. It should be noted that this opinion was defended by other (primarily Soviet) scholars who, studying the specifics of the operation and functioning of international law, emphasized that "in international law there are no signs of supranational power". This view was shared by some Western scholars, who believed that in the then conditions of the emergence and emergence of any supranational government was impossible.

The opposite view of a number of researchers is more moderate, according to which at a certain stage it is necessary to take a big step towards supranationalism, to the transfer of national sovereignty to supranational bodies with current power and means of coercion. In this context, it is interesting to note that in the middle of the last century on the European continent "international tensions eased, which, in turn, stimulated the emergence and development of projects of a united Europe, including among statesmen [18].

Nowadays, the European Union is a clear expression of these ideas. After all, its member states voluntarily limited some of their sovereignty and transferred it to the supranational bodies of the organization, through which it exercises its powers, this was confirmed in one of the first cases of Van Gend en Loos, in which the EU Court of Justice the existence of a new legal order in favor of which states had to limit their sovereign rights in certain areas.

Thus, today it is unrealistic to consider the legal order of the Member States of the European Union only from the point of view of their national sovereignty, as the exercise of power in the EU Member States is currently concentrated not only at the national level. Despite the fact that some scholars do not recognize the existence of international supranational organizations and call the EU an international organization with certain specific features, the vast majority of scholars consider the European Union a new generational intergovernmental organization [40].

Groups of authors agree that the EU is not a state, because there are no specific elements, such as: the ability to control the political process, its own army, or the exclusive right to use force. However, it is believed that since all international treaties that make up the EU legal system are in force by ratification by national parliaments, the European Union thus becomes a union of states.

In general, analyzing the current integration processes within the EU, one cannot ignore the assumption of some researchers that EU member states are still the most important participants in these processes, and the Union remains one of the tools to achieve individual goals. At the same time, the formal structure and informal behavior create a non-standard hybrid system. The European Union is a new type of international organization that is emerging and undergoing a period of becoming a potential future state [17].

As for the formation and development of the EU legal order, it should be noted that it was created on the basis of international treaties and in the process of its development acquired certain features that are to some extent characteristic of national legal systems. Thus, this supranational international organization combines elements of both international and national legal orders, which led to the emergence of a set of norms (sometimes called the "Community paradox") of EU law, with the help of which regulate legal relations within the organization.

It should be noted that the EU legal order is a rather complex legal phenomenon that is constantly in the process of its development. It is based on such basic legal principles as direct action and the rule of law, recognition of the jurisdiction of the Court of Justice and mandatory enforcement of its decisions by all subjects of EU law, especially the national courts of the Member States. Given these principles, the EU legal order is characterized by specificity and efficiency, in contrast to traditional international organizations. In general, the EU legal order is understood as a system of legal relations established and established as a result of the norms of EU law. In essence, this legal order is an external form of implementation of EU law [18].

As a result of the formation and development of the EU legal order, there have been more and more discussions and opinions about its place primarily in the international legal order and interaction with it. It should be noted that even scholars who believe that EU law is closely linked to and derived from international law have differing views on its place and role in international law. Thus, some researchers are of the opinion that international law is the foundation of the functioning of EU law, and therefore the primary competence should always belong to the Member States. According to this view, states should ensure the right to self-interpret the EU’s founding treaties, and EU law should not be seen as giving the Court of Justice some legal competence. The basic idea of the concept is that the EU cannot have a court with legal jurisdiction without legislative competence [1].

Thus, the Court of Justice is mistaken in considering itself the primary authority within the competence of the EU. In this case, proponents of this view question not only the case law of the European Court of Justice, but also, in fact, question the legal basis for the functioning of this international organization in the form in which we have today.

Opponents of this position as a whole, recognizing that the EU is an international organization based on international law, point out that an analysis of the EU’s founding treaties suggests that it is the EU’s "primary law" that addresses the issue. jurisdiction of the Court of Justice. Therefore, there is no reason why an international organization, without a clear legislative competence, should not have a court with legal jurisdiction, which would be the primary arbiter in disputes concerning the extension of this limited competence. This view seems to more accurately reflect the place of EU law in the international legal order.

In fact, the vast majority of domestic scholars are of the opinion that due to the deepening of integration within the EU, the interaction between the norms of international law and EU law is becoming more dynamic and comprehensive. Thus, V. Muravyov notes that the main forms of implementation of international law in the legal order of the European Union are incorporation and reference. Incorporation involves the incorporation of provisions of international law into EU law. In this way of incorporation into the law of the European Union was included the basic principles of international law [3].

And by referring to the legal order of the European Union includes important provisions of international law. In particular, the implementation of international law in the field of human rights protection "Thus, international law significantly affects the functioning and development of EU law and, in fact, determines the further directions of its development. International law has been transformed into EU law and has become an integral part of it. Moreover, with the deepening of European integration, the level of interaction between the rules of European Union law and international law is becoming more complex and dynamic. This is due to the further expansion of cooperation between the EU and other actors in international law, and the EU must ensure the proper implementation of its international obligations through the implementation of international legal acts both at the international level and at the EU level. Which is an expression of the growing influence of international law on EU law.

Examining the relationship between international law and EU law, another group of scholars, in turn, concludes that "EU law is by nature a special, third legal system that occupies its own niche and operates alongside international law. and the national law of the Member States. First of all, this is due to the fact that law (EU - ed.) Is a kind of combination of elements of the legal system, characteristic on the one hand for an international organization, and on the other for the state. In this case, the point is that EU law has created a separate legal order, which must coexist with international and national. This position is supported by a number of Western researchers who consider EU law as an autonomous legal order, endowed with special, specific features, due to which it differs from international law. However, it should be noted that this view is criticized by scholars who do not recognize the existence of any legal order other than international and national, and argue that EU law must be clearly defined in one or another legal order [2].

In this context, we note that some scholars, studying the relationship between EU law and international law, take the position that international law and EU law operate and develop in different areas. However, in contrast to international law, the subjects of EU law can be not only states, but also legal entities and individuals, as the latter regulates legal relations not only between Member States but also citizens. Such a position certainly has a right to exist, as individuals and legal entities are usually the addressees of EU "secondary law".

It should be noted that the interaction of international law and EU law may lead to certain conflicts, as a result of which EU member states will find themselves in an awkward position. If they respect EU law, they will violate an international treaty, and then there is a possibility of legal action by the judiciary. However, if a state adheres to an international treaty, it may be in a situation where it violates European Union law, and the EU Commission may initiate proceedings in this regard.

Conflicts arising from the interaction of these legal orders are usually always resolved by EU member states. It is noteworthy that "conflicts are a natural and normal phenomenon and they are resolved by states by resorting to the relevant legal techniques developed by the theory and practice of application of international law for a long time". Resolving these conflicts contributes to the development of these two legal orders and to the maintenance of the functioning of democratic governments under both international and EU law.

If we talk about the relationship between international and national norms, it should be noted that this interaction plays a key role in the integration processes taking place in the EU. Yu. Tikhomirov quite aptly notes that "the function of international legal principles and norms as an integrator plays an important role in the development of national norms. Because on the one hand they create conditions for more active use of so-called "Legal models" of other countries, and, on the other hand, contribute to the harmonization of national legislation and the close intertwining of national and external norms. Thus, in the process of lawmaking and law enforcement must fully and correctly take into account relevant principles and norms of international law" [5].

It seems that the above position is relevant in the context of the interaction of the EU and national legal systems of the Member States. In this context, first of all, attention should be paid to new approaches and ideas that would take into account the specifics of this interaction. Noteworthy is the view of McCormick, who, studying the relationship between national law and EU law, notes that the starting point in this relationship is legal pluralism, the idea that within the EU can coexist different, but normative, law and order. Examining this question, the scientist emphasizes that law as a normative order is present both in the EU and in the member states. Both legal systems contain norms that establish and authorize their systemic institutions. Given the existence of pluralism of normative legal orders, each of them, together with the current constitution, recognizes the legitimacy of the other within its own sphere, as long as none of them imposes constitutional seniority over the other. In general, it can be argued that the key to the effective functioning of EU law is its uniform application in all EU Member States and giving it supremacy in the event of a conflict with national law. On the other hand, EU law is limited by national law in the pursuit of certain objectives and the implementation of certain policies, which accordingly does not jeopardize the validity of national legislation and the basic principles of national consumer law.

Analyzing this concept, we can conclude that not every problem can be solved by ordinary court decisions. According to the scholar, the EU Court should conduct law-interpreting activities, but in no case should it be endowed with rule-making competence. The position of a number of Western researchers is also quite interesting and extraordinary. At the same time, scholars identify separate segments in which they clearly try to differentiate between the competence and jurisdiction of the EU and the Member States. The leading representative of this position is J. Cooper, so, first of all, he identifies a supranational area that is outside the national jurisdiction of the Member States, and in which the competence of EU law is direct. In this area, the subjects of international law are sovereign states, and EU law is a separate set of legal norms, with its own special features, within the broader field of international law. The main subjects of EU law within the supranational zone are the EU member states. Judicial proceedings within this zone are subject to the direct jurisdiction of the Court of Justice. If EU law were limited to a supranational area, it would be similar to traditional international law, but with very strong respect for authority [7].

In the second, partly contiguous, area, the internal jurisdiction of the Member States intersects with the EU’s sphere of competence. As this area is governed by two legal orders at the same time, it is where disputes between the Court of Justice and national courts over the ultimate source of EU law fall within the jurisdiction of the Member States. While the Court of Justice assumes that it (the source) derives directly from the competence of the Treaty (primarily "primary" EU law), some national constitutional courts take the view that EU law is limited by the consumer law in this area. Member States. In other words, national constitutional courts argue that the force of EU law within domestic jurisdiction does not follow from the treaty itself, but from an article of the national constitution or the Accession Treaty that allows the transfer of powers to international organizations.

Finally, the third, the internal area, is the area of jurisdiction of the EU member states, which is beyond the reach of EU law: it is the area of "pure" national legislation and the "core" of national constitutional powers. The internal zone is the area of competence of the Member States within their national jurisdiction. The historical trend in the development of EU law makes some worry that this area is narrowing, and may even disappear altogether or be limited to local issues. Thus, as we can see, these legal orders are really tangible and sometimes intertwined, which in turn creates obstacles to a clear demarcation between the jurisdiction of the EU and the Member States. In general, it can be argued that within the EU, the rules of international and national law work closely together [10].

Scholars are trying to fill in the position that EU law should in all cases prevail over the national law of the Member States, and in turn emphasize that the rule of effectiveness and the recognition of the supremacy of Community law in the Constitution not the same ".

We fully share the point of view of V. Margiev, who, studying the interaction of EU law and national law of member states, quite aptly states that "the theory of international law recognizes the existence of two legal orders: international and national. And this suggests that any new legal phenomenon must find its place within these legal orders as a rule, institution, subsector, subsystem, and so on. The emergence of any other system of law that differed from the above in the history of law was doomed to failure. A similar situation may befall EU law, as it cannot be fully independent of international and national law. This legal phenomenon (EU law) must take its place in one of the two legal orders until the final definition of its legal nature ". In turn, the effective process of implementing EU law into the national law of the Member States will depend on the place of EU law in the "pyramids" of national norms. Moreover, this place in each country is different primarily in accordance with their understanding and position on the concepts of the relationship between international and national law (issues of monism and dualism) [16].

It should be noted that there is a view that the processes of globalization, the active development of international law and constitutional justice (consolidation of additional constitutional provisions on the role of international law in national legal systems) make today unacceptable both the theory of monism and and the theory of dualism. As the arguments of their supporters are rather vague, the main statements are underdeveloped, the opposing views are completely illogical and unrelated to modern theoretical discussions, and in no way help in resolving a range of legal issues, unlike the time when they arose. Therefore, according to the above position, these concepts should be rejected or "modified", and the understanding of the relationship between international law and national law should be based on a different conceptual basis. At the same time, these theories should be replaced by the concept of legal pluralism, which will be based on the close relationship between the EU legal order and the national legal order of member states and will contribute to the formation of a new concept of direct action in international law. But in the context of the same interpretation in the light of its constitutional role, which will take into account the peculiarities of domestic constitutional law and will be expressed in different constitutional legal orders. This modified direct action (at the moment a clear example of this is the direct effect of EU law in the national law of the Member States) will give a powerful impetus to the development of international law. The concept of legal (and constitutional) pluralism will be analyzed and studied in more detail in the third section of this monographic study.

In general, it can be argued that EU law has passed a long time of its formation and, in fact, has led to the emergence of a "special legal order", which is characterized as sui generis. It should be emphasized that the EU legal order itself is constantly changing due to its formation and development. Which in turn causes constant changes in the legal system of this supranational international organization. Thus, the EU legal order cannot be fully separated from either the international or national legal order, and European Union law promotes the effective observance of international law, including at national level, as far as possible and appropriate [19].

**1.2. The role of the principle of direct action for the implementation of** European **Union law in the legal systems of the Member States**

In the process of development of EU law, the basic principles on the basis of which the regulation of legal relations that arise within the framework of this supranational international organization were formed. An important role was played by the Court of Justice of the EU, as a result of the legal interpretation of which the basic principles of the functioning of the European Union were formed. These are, first of all, the principles of direct action and the rule of EU law, which are crucial in the legal regulation of conflict situations arising primarily from "conflicts" between national norms of EU member states on the one hand and EU law on the other. They have ensured an effective process for the operation and functioning of EU law in the national law of the Member States. These principles, formed through the case law of the Court of Justice, are essentially elements of the *acquis communautaire*. Some researchers hold the view that the principle of direct action is directly related to implementation, and the principle of the rule of law, the entry into force of EU law [8].

Before exploring the essence of the principle of direct action, it seems necessary to pay attention to the analysis of such legal concepts as "direct action" and "direct application" in the context of implementation of EU law in the national law of the Member States. First of all, it should be noted that there is no consensus among scholars on the understanding and delimitation of such terms as "direct effect of EU law" and "direct application of EU law".

Therefore, both of these terms are used interchangeably. However, in Western science, these two terms are sometimes distinguished and have different meanings. It is emphasized that the term "direct application" is usually applied to the norms of EU law, which do not require the use of any national legal measures for their implementation in the national law of the EU member states. However, it is possible that such implementation of EU law may require additional measures to ensure their proper or full application [21].

A clear example of such legal acts in the EU are the regulations, the provisions of which are directly applicable, and there is even a ban on the use of certain mechanisms for their implementation. Thus, a rule of EU law will be considered to be directly applicable within a national legal order if it becomes part of that legal order, without any implementation in the national law of an EU Member State. At the same time, Article 288 TFEU (formerly Article 249 TEU) defines a rule of EU law as binding and directly applicable in all Member States, which in turn entails the obligation of Member States’ authorities to act in accordance with the rules and principles provided by EU law. However, in foreign science, some authors consider these two concepts, if not theoretical, then almost identical. A clear distinction between direct action and direct action is not a major issue in their research, nor in the case law of the European Court of Justice, which often uses the terms "direct action" and "direct application" as a substitute for each other. Thus, it can be concluded that the direct application of EU law is a necessary (but insufficient) condition for direct action, as it is difficult to imagine that the rule has legal consequences in the case, but at the same time it does not apply to this particular case. However, some researchers take the opposite view, according to which direct application is a sufficient but not a necessary condition for direct action [20].

With regard to the term "direct action", the key case was Van Gend en Loos, in which the Court of Justice noted that EU law will have direct effect when it creates not just obligations for Member States but rights for individuals, which where necessary, they will be able to use them to defend against Member States in their national courts. Thus, the rules of EU law have a predominantly vertical "direct effect", ie they create "rights" that directly concern citizens and "obligations" that Member States must ensure. However, it should be emphasized that since the Court of Justice has ruled that directives may have direct effect in certain cases, the distinction between these concepts is no longer so fundamental.

In this context, the case of Defrenne v Sabena is noteworthy, in which the Court of Justice found that there are two types of direct action of EU law: vertical direct action and horizontal direct action. In particular, vertical direct action concerns the obligation of an EU Member State to ensure compliance with EU law in its national law. Thus, vertical direct action gives citizens the right to sue the state in defense of their rights based on EU law. At the same time, horizontal direct action arises between individuals, its essence is that when the rules of EU law are endowed with such action, citizens have the right to refer to them in disputes with each other. Analyzing this decision of the Court of Justice, we come to the conclusion that the provisions of the EU founding treaties have both vertical and horizontal direct effect. EU legal acts such as regulations are also endowed with horizontal and vertical direct effect, and directives are, under certain conditions, vertical and never have direct direct effect [32].

Thus, a provision of an EU legal act may be directly applicable, but not necessarily directly, and vice versa. In general, we share the view that "direct application" mainly concerns the question of whether the provisions of international treaties are part of national law without implementation, and "direct action" concerns more the question of whether individuals can invoke these provisions in national courts. A. Tatam quite aptly notes that "such a characteristic feature as the possibility of litigation distinguishes the concept of direct action from direct application. The latter describes how regulations become laws at the national level. However, the problem of what the law is and whether it provides for the right to recover in court for individuals and legal entities is not at all equivalent. The notion of direct action applies to individual rights to be protected by national courts".

In turn, in terms of terminology, domestic and foreign scholars are almost unanimous in defining the nature and content of the principle of direct action of EU law. It means the direct effect and mandatory application of EU law, which gives individuals and legal entities rights and responsibilities in all Member States of the European Union. Although this principle has not been legally enshrined in EU law, it has been further developed by the Court of Justice [40].

It is thanks to the case law of the Court of Justice that the foundations were laid for the functioning and development of EU law and its implementation in the national law of the Member States. In particular, the Court of Justice has found that the newly created Community would be largely ineffective if it were to be governed by traditional rules of public international law, in which case Member States could easily circumvent or even ignore rules and obligations. imposed on them by the Community. In this case, he (the Court of Justice) was faced with the question of the need to create an effective mechanism for implementing and enforcing EU law and ensuring their implementation, as the formation of the EEC did not in itself determine the relationship between EU law and national law. and the place of individuals in the EU legal order [22].

The crucial role was played by the Van Gend en Loos case, in which the Court of Justice essentially formulated the principle of direct action and answered questions concerning the procedure for the application of EU law in the national law of the Member States. In particular, in the present case, a Dutch court asked the European Court of Justice whether individuals and legal entities in the country relied on the EU’s right to bring an action for infringement of an individual right which the courts were required to protect. The Court of Justice has ruled that the provisions of the Treaty can have direct effect and that individuals and legal entities can invoke them in national courts. In particular, the Court concluded that since Article 12 was "clear", "did not contain additional conditions" and did not require further action by a Member State, it had direct effect. In support of its conclusion, the Court of Justice has stated that "the Community is a newly created legal order in international law, for which states limit their sovereign rights in certain areas and, regardless of the law of the Member States, EU law not only imposes obligations on individuals. language, which gives them rights that become part of their legal inheritance. Moreover, the Court considered that to deny the direct effect of Article 2, relying solely on law enforcement mechanisms, would run the risk of rendering Article 12 "ineffective". Thus, in this case, the Court of Justice laid the foundations for the direct effect of EU law, which in turn led to the effective development and adoption not only of this principle, but also of EU law as a whole.

In this context, the point of view of D. Weiler is noteworthy, who noted that "the Court of Justice has reversed the usual notion in public international law that international legal obligations are result-oriented and addressed to states. The most important contribution of this doctrine was not just the conceptual change it has introduced. In practice, direct action meant that Member States in breach of their community obligations could not move the epicenter of the dispute to the intergovernmental or community level. They were forced to face litigation in their own courts at the request of individuals within their own legal order. Thus, individuals in real lawsuits and disputes (usually against the authorities) became the main "guardians" of the legal integrity of law. EU within Europe". In other words, the citizens of the EU Member States, using in their national court’s certain provisions of EU law in order to protect themselves, thus ensure its effective operation and essentially lay the foundations for the development not only of the principle of direct action but also the rule of law in general [35].

In its case-law on the above and subsequent cases, the Court of Justice has developed and established certain criteria that EU law must meet in order to be directly applicable in the Member States. He thus defined the basic requirements for a rule of EU law, due to which this rule will have direct effect and will be implemented in national legislation without any additional means. Yes, the rule of EU law must be clear and understandable. In this case, the point is that the obligation under EU law must be clear and comprehensible, first and foremost to the EU Member States. This requirement does not allow the direct effect of EU law, the interpretation of which causes certain difficulties. If a norm enshrined in an EU legal act is not clearly defined and highlights a common goal, and its implementation requires certain actions by EU member states, it will not have direct effect, which in turn makes it impossible. direct use in the national courts of the EU member states. A similar position is held by S. Prechal, who notes that the rule of EU law is considered to be insufficiently precise and clear if it is vaguely worded and the national courts of EU member states can not apply it without considering matters beyond their competence [37].

A clear example of the above allegations is the SpA Salgoil case, in which the Court of Justice noted the need to clarify the concepts ("national products" and "total value") used in the relevant article of the treaty, as the treaty itself does not provide any guidelines for the interpretation of these terms. From this we can conclude that the provisions of the agreement are unclear and therefore will not have direct effect. Thus, the criterion of clarity and comprehensibility is common and fundamental to all rules of EU law that have direct effect and are used by the national courts of the Member States. It should be noted that the rules of EU law, which impose certain obligations on individuals, must achieve a higher level of accuracy than the rules that give rights to these persons. In another case, the Court of Justice stated that when the relevant article of the founding treaty outlines the EU’s tasks, it cannot in itself provide for legal obligations of the Member States or confer rights on individuals, which in turn in fact, it makes its direct action impossible, because it is descriptive. It should be noted that this criterion is mandatory for all rules of EU law. Its role is manifested primarily in the fact that any legal norm must be designed so that it can be effectively applied ("effect utile"). In this case, the position of P. Pescatore is noteworthy, who notes that direct action "is a normal state of health of the law and only the absence of direct action is a cause for concern and needs the attention of doctors of law".

The next criterion of direct action is the unconditionality of the rule of EU law. First of all, the essence of this criterion is that the rules of EU law should not depend on something that is beyond the control of an independent body, such as an EU institution or an individual Member State. These rules should not depend on court conclusions and the interpretative practice of national courts. The above-mentioned Van Gend en Loos case, in which the Court of Justice noted that the implementation of the relevant article of the Treaty does not require any legislative intervention by Member States, was again important for the development of this criterion. Moreover, the obligations arising from this article are not subject to any restrictions on the part of the Member States, as otherwise their fulfillment would be conditional. It should be noted that an obstacle to the entry into force of EU law may be their dependence on any factors or events, because in this case, EU law will not have direct effect [27].

In its subsequent cases, the Court of Justice has repeatedly confirmed the importance of this criterion for the direct effect of EU law. For example, in the van Duyn case, the European Court of Justice has found that the rules provide for clear obligations for Member States that do not require any additional action by one of the Community institutions and that it does so in connection with their implementation, such that apply without reservation. These provisions will therefore have direct effect on EU Member States. To some extent, this criterion was confirmed during the consideration of the Court of Justice and other cases, which emphasized the importance of the indisputability of EU law as a necessary condition for their direct action. However, P. Captain notes that it is theoretically more appropriate to speak of "uncertainty of legal concepts if there are several points of view on a possible interpretation, but only one of them is correct. On the other hand, there is freedom of choice if it is possible to choose a certain point of view, and it is perfectly legal to use one of them. In this case, the pluralism of positions and the choice of one of them will not indicate a violation of this criterion of direct effect of EU law [28].

Another important criterion is the independence of the EU rule of law, which has direct effect, primarily from further action by Member States or the European Union. In order for this or that norm of EU law to have direct effect, it must directly regulate legal relations in the EU member states. At the same time, the need for a mechanism for implementing these norms disappears, because in this case they will not be endowed with direct action. If a rule of EU law provides that it will enter into force only after certain legislative or executive measures have been taken by the EU or the Member States, this rule will not have direct effect. However, the Court of Justice has somewhat narrowed the requirement for this criterion, noting that if a Community rule provides for a limited period for its implementation, it may become directly effective if it is not implemented by the deadline. Here we fully agree with the position of T. Hartley, who notes that in practice the narrowing of this criterion to such an extent reduces it to zero, as most EU law that requires further action contains a certain time frame, and thus, it is a matter of postponing the direct effect of EU law until this or that deadline has come [29].

Analyzing the above criteria for the direct effect of EU law, it should be noted that it is important that there is no right of Member States or EU institutions to take certain actions regarding the implementation or application of EU law. This criterion is closely related and intertwined with other criteria of direct action of EU law. In general, rules of EU law that are clear, precise and unconditional and do not allow European Union bodies and Member States to influence their application or implementation are directly applicable by national courts in the EU Member States. Thus, the principle of direct effect in its effect and application by the national courts of the EU Member States essentially comes down to verifying by them (courts) whether this or that norm of EU law is sufficiently effective and meets all criteria of direct action to be used by them (national courts). ) when considering cases for the purpose of effective legal protection of citizens’ rights and equal application of EU law. If a rule of EU law meets these criteria, it has direct effect in the national law of the Member States and will, in essence, be self-governing. In this context, A. Kurashvili’s point of view deserves attention. direct application by all subjects of domestic law ". In this case, we share the point of view of the author, who includes such norms of the EU founding treaties and adopted in accordance with them the provisions of acts of EU institutions (primarily regulations; rarely directives), which have direct, direct effect in members of the EU, which in turn indicates some changes and efforts in the doctrine of international law to make room not only for the doctrine of direct action (interpreting it through the prism of international law) but also EU law as a whole [38].

Another important case that filled the gaps in the principle of direct action of EU law was the case of Brasserie du Pecheur, where the Court of Justice had to determine whether individuals can sue Member States in cases involving direct action or not. on the contrary, reimbursements are limited to cases involving rules that do not have direct effect. In its case, the Court of Justice essentially acknowledged a gap in legal regulation and noted that "the right of individuals to rely on the Treaty’s direct rules in national courts is only a minimum guarantee, insufficient to ensure full and comprehensive implementation of the Treaty. ..It cannot in all cases preserve the individual privileges provided for by EU law, and in particular, it cannot prevent the damage caused to such rights and privileges as a result of the violation of Community law by the state. Therefore, the individual right to demand from the state compensation for damages is a necessary consequence of the direct effect of EU law, the violation of which caused the infliction of damages ". The Court therefore gave a clear answer to the question of the claim of private individuals in the EU Member States in order to obtain compensation for damages. In general, in this case the Court of Justice has stated that the direct effect of EU law is that they have the right to refer directly to the rules of EU law that confer rights on individuals in national courts and that violating such rules may lead to compensation [26].

These decisions of the Court of Justice not only strengthened the principle of direct action, but also essentially led to some changes in the legal system of EU member states. Thus, analyzing the impact of the Factortame judgment on the UK legal system, O’Neill rightly points out that "it has led to significant constitutional changes, weakening the presumption of the legality of Parliament’s act on EU law; enshrining the primary obligation of national courts of the United Kingdom to review national legislation in court for compliance with EU law ".

Another important case that contributed to the development of the doctrine of direct action was the Simmenthal case, in which the Court of Justice, referring to the principle of direct action, ruled that "Member States must fully and equally apply EU law their validity and for the period of their validity, as well as to reject any provisions of national law that may contradict it. "An important role here is played by the fact that the law of the European Union must have the same meaning and influence in all legal systems of the EU member states. In this case, the possibility of uneven influence of EU law or its selective, partial application in EU member states is completely excluded. It should be noted that the issue of EU law and its application mainly falls within the competence of national authorities and courts of the Member States, which in turn necessitates the equal extension of jurisdiction of the Court of Justice throughout the European Union. In this case, direct action can be conditionally defined as the possibility of applying EU law in the proceedings of national courts.

However, it should be noted that there are still differences in the implementation and enforcement of this principle by national courts in their national law. First of all, because the way in which EU rules of direct effect are applied in national legal systems is determined mainly by national law. This leads to some differences in the operation of EU law depending on the national legal features of the legal system of EU member states, which in turn may threaten that these differences may violate the basic essence of the principle of direct action, namely the provision of effective legal protection and uniform application of EU law [31].

In general, the case law formed by the Court of Justice has shown that the rules of "primary" EU law (and sometimes even the provisions of regulations or directives submitted for implementation) penetrate the internal legal order of the Member States without any mechanism for their implementation. As for the interpretation of the principle of direct action by the courts, it boils down to their examination of the rules of EU law as to whether they are sufficiently effective in themselves to be applicable in court proceedings. Therefore, we cannot assume that the national courts of the EU member states refuse to apply the norms of EU law and adhere to the principle of direct effect of EU law [16].

However, it should be noted that the principle of direct action can be applied in cases where EU law does not have direct effect, but assumes it, and citizens want to use them (EU law) in their cases in national courts. In this case, the rules of EU law will at least have an "indirect effect", as all national authorities are obliged to interpret national legislation and other measures in the light of the provisions and objectives of EU law as far as possible. At the same time, in such an interpretation, the national courts of the EU member states are obliged to take into account the recommendations (optional rules of EU law) when considering their cases. Note that this "indirect action" occurs as a result of conflicts between the rule of EU law and the national law of a Member State. A rather interesting point of view is the position of foreign researchers of EU law, who, while recognizing the importance and impact of EU law on the national legal systems of Member States, note that these rules are not always directly applicable because national courts of Member States can use them when considering certain cases [31].

Analyzing the role and importance of the principle of direct action, it should be noted that thanks to the decisions of the Court of Justice, it has become the main core in the mechanism of implementation of EU law in the national law of Member States and the interaction of these legal orders. We fully share the position of M. Ross, who notes that "The Court has in many cases defended the introduction and extension of the doctrine of direct action, which has become a necessary and natural response to giving the individual a central position in many areas of the Treaty. Article 5 TEU can be considered as a model or mechanism for the protection of the most important constitutional values ".

It should be noted that the Court of Justice has used the norms (primarily of "primary") EU law not only to interpret the interaction of EU law and the national law of the Member States in certain areas, but also to expand its own powers. He therefore interpreted them in many cases and in situations where it was necessary to expand the EU’s competence in certain areas. However, the limits of the Court’s application of this method are certainly not unlimited, as using it too widely and in situations where it is not necessary, the Court of Justice would exceed its powers and undermine the credibility of national courts, who could refuse to comply with and abide by his decisions. In this context, the opinion of F. Snyder is relevant, who notes that "some room for maneuver by member states is simply necessary. It can be assumed that if one means of preserving the political space is denied, states will find another". It is for these reasons that the Court of Justice has never significantly exceeded its powers in cases in which the principle of direct application of EU law has developed, as such actions would undermine confidence in the legitimacy of EU Court decisions [21].

However, despite some discussions about the principle of direct action by national authorities in the early stages of its formation, in general, they did not affect the effectiveness of its development. The very postulate that EU law has direct effect in the national law of the Member States is irrefutable and unquestionable. In general, the concept of direct action in EU law implies that EU law is an important element of the national legal order, as it creates rights and obligations for individuals. Prerequisites for the application of direct action are clarity of the wording of the provision, clarity (according to the judge), the negative nature of the obligations and absoluteness (lack of time frame), as well as the inability of states to determine the implementation of these rules. Thus, due to the case law of the Court of Justice of the EU, there is a smooth and effective process of action of EU law in the national law of the Member States.

**Conclusions to Chapter 1**

1. The EU external relations is a complex legal phenomenon, which is constantly in the process of its development, which in turn causes constant changes in it. It is based on such basic legal principles as direct action and the rule of EU law; recognition of the jurisdiction of the Court of Justice and the mandatory enforcement of its decisions by all bodies (primarily national courts) of the Member States. It is thanks to these components that the EU legal order is characterized by specificity and efficiency, which is equally uncharacteristic of any classical international organization.

2. EU legal order we understand as system of legal relations established as a result of the implementation and operation of EU law. It interacts closely with the international and national legal orders of the EU member states and essentially influences their further development, in particular through the procedure of implementation of its norms.

3. The fundamental role in establishing and developing the effective implementation of EU law into the national law of the Member States is played by the case law of the Court of Justice of the EU, which is reflected in its decisions. Based on the analysis of which it was possible to identify the main criteria that must meet the rules of EU law to have direct effect in the national law of the Member States (in the context of the principle of direct action of EU law). This is first and foremost clarity and clarity - the obligation of EU law must be clear and understandable first and foremost to EU Member States. This requirement does not allow the direct impact of EU law, the interpretation of which causes certain difficulties. The next criterion of direct action is the unconditionality of the rule of EU law, the essence of which is that the rules of EU law must be complied with in all cases, especially by EU member states. Another important criterion is the independence of EU law from further action by Member States or the European Union. When EU law meets these criteria, they are directly applicable in the national law of the Member States and at the same time there is no need for a mechanism for their implementation.

**CHAPTER 2**

**THE PROCESS OF IMPLEMENTATION OF EU PRIVATE LAW: FEATURES OF THE MECHANISM**

**2.1. The concept of the mechanism of implementation of private EU law**

In the early stages of its functioning, even before the Communities, the question arose as to what action EU law should have in the national law of the Member States. In this case, it was necessary to answer whether the EU legal order is part of the national legal order of the Member States without any additional conditions that would require implementation, or vice versa - the provisions of the EU founding treaties and legal acts of EU institutions can be referred to in national courts only after the incorporation of their provisions into the national law of the Member States. Considering this issue, we note that first of all the effect of international treaties is determined, as a rule, in accordance with the provisions of the consumer law of the states in which the concept of interaction of international and national law is enshrined and expressed. Thus, for example, the right of citizens of EU Member States to invoke EU founding treaties and other EU legal acts in order to protect their rights and interests in national courts could be significantly restricted in EU Member States that adhere to, for example, dualistic approach to the validity of international agreements. Which in turn could cause a number of problems in the implementation and enforcement of EU law in these countries. Thus, there is a need to study the mechanism of implementation of EU law, through which the rules of EU law find their expression and operate effectively in the national law of EU member states [26].

Before delving into the analysis of the mechanism of implementation of EU law, it is advisable to establish the essence of such a legal term as "implementation". Thus, in the explanatory dictionary under it means the implementation, implementation of international legal norms. The actual implementation of international obligations at the domestic level by transforming international law into national laws and regulations. The process of transposing acts of European Union law, including the establishment of procedures and procedures for their implementation (implementation in the narrow sense); it also includes the interpretation, application, enforcement and enforcement of EU law in accordance with EU law by public authorities (implementation in the broadest sense); implementation, implementation by the state of international legal norms1. It should also be noted that mostly researchers use the term "implementation" (performance, implementation) in both broad and narrow sense. In the first case, it means the whole set of measures to implement the rules of international law, in the second case - the implementation of international law in the domestic sphere. In general, the procedure of implementation of international law combines law-making and organizational-executive activities.

In this regard, I. Kiyanytsia quite aptly states that "as a process of implementation of international legal obligations, the implementation of international law in the national legal system is carried out through a national mechanism that includes subjects and their powers concerning the implementation of the norms of international law, certain measures (methods and forms) by means of which the fulfillment of international legal obligations is achieved”[27].

It should be noted that some researchers believe it is necessary to distinguish between the terms "implementation" and "application". Thus, in particular, S. Chernychenko, researching the implementation of international law, notes that although in general the term implementation "can be used to describe the effect of international law in domestic relations through national law, but still it is necessary to point out the undesirable approach. , because in this case it is easy to confuse it with the term "application”, which may give the false impression that the rules of international law can be directly applied in the domestic sphere ”[31].

In turn, A. Dmitriev does not distinguish between the terms "implementation" and "implementation" and uses them as synonyms, considering the implementation of international law through the prism of the concept of "implementation" of international law. At the same time, some authors rightly point out that "the implementation of international law should and should be considered as an independent purposeful systemic activity that activates the entire system of international law. This ensures the international legal regulation of relations and compliance with the obligations of states under an international agreement as the achievement of the end result ”1. In general, we come to the conclusion that implementation is a process, the results of which are expressed in various forms and are enshrined in regulations.

It should also be noted that sometimes in the science of European law there is no clear distinction between the terms "harmonization" and "implementation". The term "harmonization” is used to denote all the processes of creating a homogeneous legal system within a given integration organization. As a result, the implementation of new rules for the law of EU member states, which takes place overwhelmingly through the adoption of directives, in the science of European law has been called - "models of full harmonization". In turn, domestic authors understand harmonization as "bringing the norms of national law of the member states of European integration organizations in line with the requirements of EU law" [15].

In turn, the key point in the implementation of EU law is the actual operation and application of its rules in the national law of the Member States. In fact, the main emphasis in EU law is on avoiding a situation where its rule for one reason or another could not regulate certain legal relations within the union. It should be emphasized that this is typical of all legal norms. Because any system of legal norms, no matter how perfect, developed and thought out it may be, if it does not really affect the legal relationship, in fact, is dead and has no right to exist. In this case, we agree with the position of D. Kerimov that "the realization of law achieves the result that the creators of the rule of law are trying to reach and which, in their opinion, should lead to a certain goal set by this rule" 1.

Therefore, in order to fully investigate and analyze the process of application of EU law in the national law of the Member States, it is first necessary to clarify the concept of the mechanism of implementation of these rules. At the same time, it is necessary to distinguish between the norms of EU law that apply automatically after the accession of states to the EU and become part of their legislation, and legal norms that are not endowed with direct effect and need to be implemented [21].

First of all, we note that the term "mechanism" in the Ukrainian language is interpreted differently: 1) a device that transmits motion; 2) internal structure, system of something; system; 3) the set of states and processes that make up a particular phenomenon. If we are talking about the mechanism of implementation of norms, then, first of all, it embodies the interaction of legal and institutional means that will be used in the process of implementation of these norms. In turn, in the doctrine of the science of international law in this context, first of all, there are international, international organizational and legal, domestic organizational and legal mechanisms of implementation.

In the "Great Encyclopedic Dictionary” we read that the mechanism of implementation of international legal norms is a set of legal and institutional means used by subjects of international law at the international and national levels1. This statement is shared by A. Haverdovsky, who emphasizes that the international mechanism of implementation is a set of means of implementing international law, which are created by the joint efforts of states. It includes a set of legal and institutional means used by subjects of international law at the international and national levels in order to implement the rules of international law. A similar view is held by other authors, who understand the above mechanism as "a system of legal and organizational means, both created by joint efforts of states and used individually for the comprehensive, timely and full implementation of international law. "yazan”. There is also the concept of international organizational and legal mechanism of implementation, which means a set of international legal instruments that regulate the process of implementation and creation of interstate institutions. The notion of domestic organizational and legal mechanism is quite common, which means "a set of national legal means that ensure the implementation of international law in domestic law, and state institutions that directly implement state regulations on the implementation of international obligations ”[15].

Analyzing the essence of the mechanism of implementation of international law into the national law of states, we generally share the view that the vast majority of international law contained in international treaties is implemented through the national implementation mechanism. In the international legal literature, the term "implementation” is used to denote the relationship between international and domestic law, this term can also be used to describe the impact of international law on domestic relations through domestic law without its broad interpretation. On the other hand, the term "national legal implementation of international law”, which is often found in Western legal doctrine, is usually not synonymous with the broad concept of "implementation”, primarily because "legal” adoption of national law is necessary to comply with international law. , does not mean "actual” fulfillment of international legal obligations.

At the same time, analyzing the process of implementation of EU law and the measures taken by Member States to implement its rules in their national legal systems, we conclude that "national legal implementation of EU law" should be understood as a set of legal means and measures which ensure the implementation of European Union law in the domestic law of the Member States. At the same time, the effectiveness of EU law is directly dependent on the comprehensiveness of EU member states to ensure their implementation and enforcement at the national level, which in turn requires EU member states to adopt a set of legal and law enforcement tools. (which are expressed in the above-mentioned acts) in order to implement the rules of EU law in their national legal systems. It is also necessary to constantly improve the implementation mechanism, which stimulates the efficiency of this process. Thus, national legal implementation will be an integral part of the mechanism of implementation of EU law and will ensure the effectiveness of the functioning of EU law in the national law of the Member States. In this context, S. Chernychenko quite aptly notes that "the effectiveness of the rule of law should be understood as the social effectiveness of its implementation, ie achieving the most close to the norm of socially useful regulatory impact on certain social relations with minimal negative consequences" [16].

n turn, analyzing the features and specifics of the process of implementation of EU law in national law, as well as examining the ways and means used by Member States to ensure the effective operation of these rules, in general, we can conclude that the mechanism The implementation of EU law as a set of legal and institutional means used within the European Union to implement the rules of EU law in the national law of the Member States ensures their effective operation and enforcement.

In general, in the process of implementation, the rule of EU law must go through certain stages in order to be reflected in the national law of the EU member states and essentially become part of it. In this context, the position of is quite interesting. Popova, who identifies three stages in the mechanism of implementation of EU law in the national law of member states. Thus, the first stage is called transposition, its essence is to move the rules of the legal act of the EU, which by its nature has a higher legal force, in the national legal act, which has less legal force. This process is essentially identified with the incorporation of EU law into the national law of the Member States. As a rule, this procedure applies to such an EU legal act as directives, as their provisions are usually not directly applicable and have no direct effect. In order to achieve the purpose set out in the directive, this act must be implemented within the period specified in the directive.

The second stage is to ensure the effective implementation of EU law (realization). It includes a variety of practical actions taken by national authorities to ensure the effective functioning of EU law, as in many cases practical steps are needed to ensure that EU law reaches its recipients. In this process, the Member State ensures compliance, not only on the basis of the letter of the law as a whole, but also in the spirit of a specific legal norm.

Finally, at the last stage, enforcement takes place, as the act of implementation alone is not enough for EU law to work effectively in national law. This refers to its implementation and reporting on the application of the acquis in certain areas of the Member States1. Thus, it is at these stages that the process of implementation of EU law into national law takes place, which ensures the effective operation of EU law [16].

However, unlike international law, which "cannot directly regulate domestic relations, and therefore the implementation of its principles and norms requires their implementation in the domestic legal sphere" 1, EU law due to the principle of direct action and the rule of law regulates these relations. in turn, it gives some specificity to the mechanism of implementation of EU law in comparison with similar mechanisms in international law. Thus, this legal mechanism of the EU is quite simple due to the unification of its legal norms, so it is mostly enough "in the process of national law-making to fix the relevant provisions in the constitution or legislation. At the same time, the technical and legal methods of implementing Community law into domestic law are undergoing appropriate changes, in particular, the power to implement the rules is transferred to the level of state law enforcement agencies. This is due to the fact that the European Union does not have its own system of "local” law enforcement agencies, and therefore regulations are enforced by the relevant authorities of the Member States”.

A similar view is supported by A. Moiseev, who notes that "unlike traditional international organizations, the implementation of EU legal norms does not require the issuance of a special state transformation act. Legal acts of the Communities are implemented in national legal systems only by means of domestic acts.

The rules issued by the Community bodies are enforced by the authorities of the Member States, as the European Communities do not have their own law enforcement structures to exercise their right "on the ground” 1. Thus, it is an internal national legal mechanism for the implementation of EU law, in which the implementation of EU law is primarily the responsibility of national institutions that will ensure the implementation of these rules in their national law.

The peculiarity of the norms of EU law enshrined (primarily in "primary law”) in the sources is that "ratification or other form of recognition by an EU member state is not required for the entry into force of EU legal acts”. This, in turn, distinguishes the mechanism of their implementation in the national law of member states from the international legal mechanism of implementation of legal norms in any national legal system. Thus, we can conclude that the procedure of implementation of EU law in the national law of member states is special and specific in comparison with other international organizations, primarily due to the principles of supremacy and direct effect of European Union law. Thus, the principle of direct action of EU law plays a crucial role in understanding the mechanism of implementation of EU law in the national law of the Member States [26].

In general, it can be argued that the law of the European Union is a system of norms that binds each state, and which through the legal mechanism have been transformed into the national legal systems of these countries1. Obviously, in order for the European Union to function and develop effectively, European Union law must be adopted equally in all Member States, which will eliminate the uneven impact of EU law in the domestic law of its member states. At the same time, some scholars emphasize the important role of EU law as an instrument of integration of states on the European continent, giving it a special place in the international legal order, because it plays a crucial role in the integration process.

It should be noted that the mechanism of implementation of EU law in the national law of the Member States is not uniform and uniform. As noted, the specifics of the action of a rule of EU law depends on the source of law in which it is expressed and enshrined. In this context, analyzing Art. 291 TFEU, which states that "Member States shall take all measures in the field of their domestic law which are necessary for the implementation of legally binding EU acts conclude that EU Member States are obliged to take appropriate legal measures. in order to implement the provisions of EU legal acts in their national legal systems. At the same time, the actions taken by Member States will always be aimed at ensuring the effective application of EU law in their national law.

Thus, the norms of EU law are enshrined and expressed in certain sources. The system of sources of EU law has an internal hierarchical structure with a division into "primary” and "secondary” law. The third group occupies a somewhat isolated place in this system - sources of case law and international agreements concluded between the EU and third countries, as well as between the EU and Member States1. Each source of these groups has its own specific action in the EU member states and a special mechanism of implementation and application in national law. It seems appropriate to analyze the mechanism of implementation of EU law in the national law of the Member States, depending on the source to which they (the rules) belong [36].

Thus, the sources of "primary law" of the EU are endowed with direct action, it should be noted that direct action is not endowed with all the rules of the founding treaties, but only those that have a "clear and unconditional" nature. If the norm meets these requirements, it will operate in the national law of the EU member states without any means of implementation. However, if the norm is vague, contains some general purpose and requires further measures to concretize and clarify it, then it is extremely difficult and almost impossible to apply direct action to it. It should also be emphasized that the acts of ratification of the EU’s founding treaties by the Member States are essentially implementing acts. However, the procedure and features of this process in general do not differ from a similar mechanism in international law. That is why it seems appropriate to focus more in the future on the study of the mechanism of implementation of legal acts that belong to the "secondary" EU law and which clearly show the specifics of the mechanism of implementation of its rules.

As for the "secondary law" of the EU, the situation is more complicated. Some researchers, studying the phenomenon of "secondary law” of the EU and the action of its norms in national law call it the administrative law of the EU. First of all, because it is endowed with supremacy over the national law of the member states and due to it legal relations between subjects (citizens) within the framework of national legal systems arise. At the same time, this "secondary law” of the EU is an autonomous legal order and it is not fully inherent in international law1. We will consider in more detail the features and specifics of the implementation of the provisions of EU regulations, decisions and directives in the national law of the Member States in the following subsections of our monographic study.

In general, it should be noted that the European Union has a specific mechanism that provides for an effective procedure for the implementation of EU law, which is more typical for national legal systems than for international organizations. This mechanism contains a set of ways and means to eliminate the shortcomings that occur in the implementation of traditional international legal implementation. First of all, it is a rather long procedure for the implementation of international treaties, high financial costs, the possibility of not adopting international treaties during their ratification in national parliaments. The European Union is essentially a complex regional integration association that goes beyond the classical understanding of an international organization [37].

Thus, the elements of international and national lawmaking are reflected in EU law, which in turn has led to the uniqueness of the EU legal system itself, which is based on the rules of "primary" law, according to which the rules of "secondary" law are formed and function. And this, in turn, determines the specifics of EU law, which is a special system that can not be unambiguously attributed to international or national law1. Which, in turn, led to the formation within the European Union of a unique and specific mechanism for implementing its rules in the national law of the Member States, which differs significantly from the classic international implementation mechanisms.

**2.2. Implementation of European Union regulations and decisions to the national law of the Member States**

Among the sources of "secondary” EU law, the fundamental and key place is occupied by regulations, which introduce the same rules of conduct for all subjects of legal relations in the EU through their legal regulation. It should be noted that the issue of the legal nature of the sources of "secondary" EU law is one of the most controversial in the doctrine of international law. First of all, because these acts by their nature are more related to national legislation than to international ones, as they are adopted by EU institutions and mostly have a direct effect in the national law of the Member States. And since these acts of "secondary" law are addressed to individuals and legal entities, as well as Member States as a whole, this in turn makes it impossible to classify the rules contained in these legal acts to the rules of international law. In this context, we share the view of Margiyev, who, examining the legal nature of the sources of "secondary" EU law, notes that excessive conservatism of international law often leads to situations where scholars can not clearly define the place of the legal phenomenon. which, having an international character, does not fit into public international law. Such a phenomenon is the "secondary” EU law, which cannot be an integral part of public law, as it is the result of unilateral "legislative” activity of this international organization and, as a rule, endowed with direct action subjects can be legal entities and individual”

Therefore, regulations by their legal nature will not apply to the rules of international law. Yu. Tikhomirov aptly remarks that "regulations and general decisions differ from the norms of international law in that they have the same legal force throughout the Communities and are fully applied. At the same time, they are not transformed into national laws, but directly create rights and responsibilities for all EU citizens”. In addition, regulations are sometimes equated with EU law, as they allow EU bodies to directly influence the national law of the Member States.

In general, we share the view that "in their normative features, regulations correspond to the concept of" normative legal act law "in domestic law, but by their legal nature, they remain unilateral acts of the EU". Thus, regulations operate directly and in conjunction with the national legislation of the EU Member States and are legally equivalent to laws, becoming acts of unification [24].

In general, it can be argued that in the EU unification occurs through the adoption of regulations that are considered "the most effective means of integration construction". It should be noted that the effect of the regulation is always direct, which in turn "does not require the adoption of a special normative act (national - author) of the legislation of the EU member states, which reproduced its rules. This greatly distinguishes them from other EU legal acts. However, there are significant differences in the unification of EU law by regulations and directives. First of all, because the directives allow for certain differences. And the regulations exclude such a possibility. A similar view is held by S. Kashkin, who, examining the legal nature of this EU legal act and its effect in the national law of the member states, notes that "in Western doctrine regulations are considered as an instrument of unification of law, and the introduction of completely identical (unified) rules of conduct for participants in public relations within the European Union ”1.

In turn, we note that the regulation should not be confused as a legal act of EU institutions with regulations that are acts of domestic law, which essentially determine the procedure for the functioning of state bodies. Thus, in particular, in the explanatory dictionary, the regulations are understood as a set of rules, regulations governing the work of the institution, state or public organization. It should be noted that some scholars (in the context of international law) identify regulations with acts of international organizations and see them as a kind of international treaties, thus classifying them as a kind of treaty. Other scholars point out that, by their legal force, regulations can be both recommendations and legally binding. At the same time, the authority of international organizations to adopt one or another type of these acts depends entirely on the provisions of their founding treaties signed and ratified by member states on the basis of their will, other regulatory obligations, which thus constitute a "rule of organization".

Of course, the understanding of the essence of the regulation as an EU legal act is completely different. Thus, Article 288 (ex 249) TFEU states that "the regulation has direct effect. It is binding in its entirety and directly applicable in all Member States”. In this case, we share the view that "regulations immediately become part of the domestic law of the Member States and can be referred to by individuals in their national courts, which in fact means their direct use by the courts in making decisions". A similar position is taken by domestic researchers, who, studying the legal nature of this act, note that depending on the content of the regulations are mandatory not only for Member States but also for individuals and legal entities. It is emphasized that it is through regulations that the supranational nature of EU law is revealed, and in the event of a conflict between it and any national norm, it is the regulation that will have absolute primacy, which in turn precludes the adoption of any national laws may contradict the rules of regulation.

Therefore, the adopted regulation does not require implementation by the Member States and any other action to bring it into force. Its main function is to create a level playing field within the EU. The specificity of this legal act is that it has a general normative character. It is due to this feature that it differs from the solution. In this case, the Court of Justice adheres to the position that this legal act applies to subjects to objectively defined situations that are provided in general and abstract forms [17].

In other cases, when an act entitled "Rules of Procedure” was intended for individual application, the Court of Justice refused to recognize it as a Regulation, defining it as a decision. Thus, by regulations we mean "direct legal acts of the EU, which have binding legal force for all Member States and are applied directly by them, without transposing their norms into national legal systems”. A similar view is held by other researchers of EU law, noting that the regulation should be understood as "a normative legal act of a general nature, which in all its elements is binding on all subjects of EU law and is an act of direct action, in other words, it to be applied by bodies, judicial institutions of all member states, regardless of whether the given state (EU member state) is in favor of their adoption or not”.

It should also be noted that the Court of Justice has repeatedly not only confirmed the direct effect of regulations, but also stressed the inadmissibility of adopting any national legal acts to clarify and implement the provisions of the regulation, as in this case these measures of national implementation should be considered. as illegal. Thus, the Commission v Italy is particularly telling in this context, where the Court of Justice has stated that "regulations as such apply directly to all Member States and enter into force only after their publication in the Official Journal of the Community from which is indicated in it, or, if such a date does not exist - in accordance with the date provided for in the regulations. Therefore, any means of implementation in this case contradict the contract, as a result of creating obstacles to the direct effect of regulations and their simultaneous and uniform application throughout the Community [17].

As a result, it cannot be recognized that Member States may apply Community rules selectively, thereby undermining certain provisions of Community law which are contrary to their national interests”. In this case, the Court of Justice has confirmed the direct effect of the regulations and criticized any attempt by Member States to change or reduce their requirements. Therefore, if an EU Member State tries to take any measures (for example, to adopt a law) in order to implement the provisions of the regulation in its national law, they must be repealed, as they thus create obstacles to the effective operation of EU law. The Regulation is binding in its entirety, which in turn makes it impossible for EU Member States to adopt any amendments or changes to it or to apply them in part, as such actions would change the content of this legal act, which is completely unacceptable from the point of view of view of its direct and direct action.

The case of the Court of Justice of the EU Politi is also significant in this case, in which it confirmed the direct effect of regulations and stressed the inadmissibility for any EU member state to take certain implementing measures to implement them in its national law. Thus, in particular, the Court of Justice has stated that "by their nature, in the sources of Community law, regulations have direct effect and are capable of creating rights for individuals that national courts are obliged to protect. in turn, direct regulation does not allow ensures the implementation of any legislative measures, even if they have ever been applied, if they are incompatible with its provisions”.

However, although there should be no problems with Member States’ compliance with the provisions of the EU Regulation and their action in national law, some Member States still either misuse legislation or sometimes obstruct it due to lack of action. on the way to the proper application of its provisions. In this case, we fully share the view that regulations are not only "self-enforcing” but "independent and self-sufficient”, and that Member States cannot in any way hinder or discourage the application of regulations by taking any implementing measures. It should be emphasized that the rules of the regulation may not have direct effect if they are not accurate, clear, unconditional, or depend on further action of EU member states. In this case, we share the view of O. Golovko that the "doctrine of the direct and immediate effect of regulations in EU law is based on three considerations: the regulations contain a clear and direct obligation; this commitment is unequivocal and unconditional; and in implementing the rules of regulation, Member States are not given any right to choose the forms and methods of its implementation. According to the interpretation of the Court of Justice, only regulations have the properties defined above. It follows that other EU legal acts do not have direct and indirect effect in the national law of the Member States, except in cases clearly provided for in the system of EU precedents”[16].

Thus, one of the most important features of the regulation is its uniform application in all EU member states, which in turn excludes the possibility of its replacement by national legal acts. However, it should be emphasized that not in all cases national implementing measures taken to give effect to regulations are invalid. In this case, there may be exceptions, and the regulation itself may require, directly or indirectly, permission for Member States to take certain measures to implement it. Here we share the view that the legal force of the regulation, as one of the types of "secondary" sources of EU law excludes the application of any national act that contradicts the provisions of the regulation. Measures to implement them are necessary only when provided the regulation itself ”.

In essence, this allegation (with exceptions) was reflected in the judgment of the Court of Justice in Bussone, in which the Court of Justice stated that "regulations require direct action in order for them to enter into force and be used for or against , regardless of any measures that would be taken in accordance with national law. Proper implementation of this decision does not preclude the application of any other legislative measures, even those that will be adopted later, if they do not contradict these rules. .. This prohibition does not apply to cases where Member States are allowed to take the necessary legislative, regulatory, administrative and financial measures to ensure the effective application of the provisions of these rules ”. In this context, T. Hartley’s position is noteworthy. , in order to avoid confusion when the Regulation enters into force, it must be applied on the same day by all Member States; secondly, in order to maintain uniformity, it is necessary to prevent Member States from amending national legislation when enshrining the relevant regulation. Finally, thirdly, the possibility of its implementation at national level may prevent the Court of Justice from deciding on the interpretation and validity of measures taken under the preliminary ruling procedure.

It should be noted that the above view is based on the judgment of the Court of Justice in the Fratelli case, which he noted that "Member States are obliged not to take any measures that could affect the jurisdiction of the Court to decide on any - any issues related to the interpretation of Community law or the validity of acts of its institutions, and that no procedure is permissible when applying the provisions of Community regulations. In particular, the court does not have jurisdiction over provisions of national law aimed at transposing Community law into supreme national law ”. Thus, the Court of Justice has clearly declared that it is impossible (unless provided for in the regulations themselves) for Member States to take any action in order to avoid the direct, direct effect of this legal act. In the above-mentioned Commission v Italian Republic, the Court of Justice stated that "in order for regulations to apply equally to all citizens of the Member States of the Community, they must become part of the legal system applicable in national territory, which must be permitted directly. the action set out in Article 249 (now 288 TFEU) to apply them in such a way as not to prejudice the provisions of domestic law or procedural rules governing the protection of citizens’ rights”. Thus, regulations, which by their legal nature are acts of EU institutions (they are developed and adopted) have a huge impact on the development and functioning of the legal system of EU member states. At the same time, the regulations have the same legal force throughout the EU and are adopted in full without any changes in all member states of the organization. Thus, these legal acts are not transformed into national laws, but directly establish rights and obligations for all EU citizens and legal entities, which in turn confirms their direct effect. Regulations are also binding on EU Member States and must be complied with as national laws. Thus, if this legal act does not specify any requirements for the need to take certain means to enter into force in the national law of the Member States, the rules of regulation will have direct effect and directly create rights and obligations for entities to which they are addressed [12].

However, it should be noted that in practice, EU Member States sometimes take action to establish certain conditions, even for the implementation of regulations in certain areas of legal relations in which the EU lacks competence. In this case, EU regulations that can effectively regulate these legal relations in these areas will de facto be subject to implementation by Member States by adopting a legal act incorporating the rules of the regulation. In this case, not only the effective settlement of a particular range of legal relations will be ensured, but also the proper interaction of these two legal systems will be expressed.

It should be noted that the adoption of such national laws is quite effective in the process of accession to the EU, which will adapt its legislation to the standards of EU law. At the same time, there is always a "discussion of the state of implementation of legal norms in the national legal systems of the candidate countries”. In general, thanks to the laws used by the candidate country for accession to the EU, it essentially implements the provisions of EU regulations into its national law, which must enter into force before the accession of the country to the EU. When drafting such acts, a reference to the conditions of their implementation should be included, namely that the act implementing the provisions of the regulations will enter into force within the timeframes provided by another separate act. Thus, when a candidate country joins a supranational international organization, a number of laws will come into force through a single legal act. In general, it can be argued that even if regulations by their nature and place in the system of sources of EU law "generally operate directly in national legal systems and do not require national authorities to take measures to implement them, some of these provisions (regulations) may however, in order to implement the adoption of special measures by Member States”. However, these cases are rather exceptions and in no way can serve as a basis for arguing that the implementation of this EU legal act in national law requires the adoption of any implementing measures, as in the case of directives. Therefore, in general, there are no requirements for the implementation of any implementation mechanisms that would ensure their operation in the law of the EU Member States.

It should be noted that another legal act of "secondary" EU law, the provisions of which are endowed

direct action, there is a solution. However, this legal act is characterized by the fact that, unlike regulations, the decision has a narrower application and is somewhat limited in the subject addressing. Thus, it is binding on the subjects to whom it is addressed, which in turn emphasizes its individual nature and narrow focus. However, after the adoption of the Lisbon Treaty, decisions "may lead to legally binding actions (including normative ones) that are not aimed at unification or harmonization of national law”. It is important to note that, unlike the norms of regulations, which clearly provide for their possibility of direct effect, a similar effect of the decision does not provide for any EU legal act. On this basis, it can be concluded that this possibility was created by the case law of the Court of Justice, as reflected in the Franz Grad case, in which the Court of Justice stated: "where the Community authorities oblige a Member State to act to some extent, the effectiveness of such a measure would be less if the citizens of that state were not able to refer to it in the courts and the national courts could not consider it as part of Community law” [19]. Thus, the legal nature of this legal act is that it is usually an executive act, and the rights and obligations provided for in it are rarely used in practice in national courts. However, some decisions may require Member States to take certain actions to comply with its provisions.

Thus, both regulations and decisions are "legislative" acts of the EU, they are endowed with direct action and, as a rule, their implementation and enforcement is carried out without implementation measures by Member States. However, unlike decisions addressed to a specific group of actors, regulations are binding on all EU Member States and have higher legal force.

**2.3. Implementation of European Union directives to the of the Member States national law**

It should be noted that, as in other legal systems, the rules of EU law were created by enshrining them in certain sources. The sources of EU law themselves are unique and specific, this is primarily due to the uniqueness of EU law itself, which has developed as a result of the interaction of international and national law. One of the main forms of lawmaking and a specific source of EU law are directives, which harmonize (approximate) the national law of member states with EU law by introducing general rules of legal regulation in specific areas of public life.

As for the term "directive", there are different approaches to defining its meaning. In particular, the legal encyclopedia states that the term "directive” should be understood as an order of a general nature or a decision of a higher body, which is issued in writing and is binding. From this we can conclude that the directive is an instruction to perform certain actions. At the same time, B. Topornin believes that the directive can be compared with the basics of legislation in a federal state.

Regarding EU law, according to Art. 288 (ex 249) TFEU, a directive is an EU act which, although binding on the Member States, has no direct effect, leaving the forms and methods of implementation to the Member States. At the same time, Member States are obliged to determine, in accordance with their constitutional procedures, the manner in which a directive is to be incorporated into national law, and to establish a body to carry out this procedure. The methods of inclusion in this case will be a combination of certain efforts on the part of the EU member states, through which they will implement the directives in their national legislation. The forms will be the relevant regulations, government orders, in which the rules of these directives will be enshrined in law. The implementation of EU directives into national law is revealed in the concept of a two-stage law-making process. Initially, the relevant EU body issues a "regulatory program” (directive) binding on Member States. The next step is to ensure that Member States properly implement the content of the Directive into their national legal systems through the issuance of relevant domestic legal acts. Thus, the main role here is played by the internal national legal mechanism of implementation, due to which the provisions of the directives are implemented in national law. The result is the adoption of a relevant legal, regulatory or administrative act which fully or partially reflects the provisions of this Directive in the territory of a Member State. In this case, it can be noted that the directive is a subsidiary legal instrument [23].

S. Kashkin takes an almost similar position, noting that "depending on the subject of the directive and the specifics of the legal system of a particular state, the implementation of directives in national law is carried out by amending or repealing existing laws and regulations”. Thus, the directive will be valid only when the relevant normative legal act of the national law of the EU member state is adopted, which fully or partially reproduces its provisions.

However, in this context, M. Herdegen quite aptly notes that "the implementation of directives in national law through the issuance of only bylaws is problematic. This practice of implementation is insufficiently effective, especially when the state does not ensure the general binding nature of such provisions for national courts and individuals ”. Thus, the adoption of a law, rather than a bylaw, seems more appropriate for the effective implementation of directives. It should be noted that the legislatures of the Member States are often so enthusiastic about the process of harmonization that they adopt artificial laws designed only to implement directives, forgetting about the specifics of a national legal system. For example, several laws are being adopted instead of one, which, in essence, confuses the legislation of an EU Member State, making it more difficult because each of them implements the same directive. This process is more specific to directives, as in this case the question often arises as to whether to adopt a single comprehensive act containing general and specific conditions, or to divide specific conditions into different national acts.

In general, we share the view that, initially within the EU, "harmonization was carried out through the adoption of directives,

 which enshrined the basic models of behavior developed in detail and the Member States had virtually no freedom of choice for the adoption of acts on their implementation. Such harmonization did not justify itself, because, on the one hand, the preparation of directives with detailed standards required long-term harmonization at the level of member states, and on the other hand, the process of implementing the provisions of already adopted directives by member states was very difficult”. Thus, this basic harmonization has caused delays in the implementation of the provisions of the directives in the national law of the Member States. This type of harmonization of EU law has been replaced by minimal harmonization, which allows Member States to determine the range of legal instruments by which they should achieve the goal set out in the directive. This type of harmonization of directives is clearly manifested primarily in the countries of the Anglo-Saxon legal system, which are part of the EU, because, as a rule, most of the basic provisions of certain directives are already contained in the "common law". Thus, in this case, there are two possible ways to develop the implementation of directives: either the state will go by codifying the rules of directives or apply the principle of "minimalism". In the implementation of the directive. The latter method is the most advantageous, as codification can lead to the "hardening" of the law, which will reduce its effectiveness. As you know, the main feature of "common law" is that it is not limited to a narrow framework of rules adopted by the legislator, which in turn allows courts to resolve a particular dispute based on legal principles and based on previous decisions [26].

Some researchers use the term "transposition” (rather than "implementation”) to describe the process of transposing an EU directive into the national law of the Member States. legal norms established by the directive”. From the above we conclude that the directives are primarily acts of harmonization of national law and EU law. However, as they mostly contain only certain general provisions, some criteria of direct action cannot be fully applied to them, such as clarity, accuracy and no need for further implementation. It should be noted that an important role in the implementation of directives is played by the period during which this directive must be implemented by EU member states. This term, which is mentioned in the directive itself, separates the implementation phase from the implementation phase of the directive and determines the moment from which the state is responsible for implementing its provisions in its national legal order [31].

The situation with the direct effect of the directive in horizontal and vertical planes is somewhat more complicated. First of all, the content of the principle of direct action is that "rules of direct action are provisions that directly and directly give rise to the rights and obligations of the subjects of European law; direct action also implies universal and equal application of EU law by all Member States of the European Communities”. This principle is a key achievement of the Community in the legal field, thanks to which EU law can be divided into a separate legal system. Analyzing the provisions of Article 288 TFEU (former Article 249 TEU), most scholars conclude that in the general case directives are not directly effective, as there is a need for a mechanism for implementing this legal act in a particular legal system of the Member State. Thus, the problem is that although the directive may be clear, precise and unconditional, it by its very nature requires further action by EU Member States. It should be noted that, although all EU Member States must achieve the objectives of the Directive, its implementation does not have to be the same in all Member States. However, if its provisions are outlined only in general terms, are conditional, inaccurate and leave Member States significant powers over the implementation process, such a directive will not have direct effect in any case.

In this context, P. Craig rightly points out that the reluctance to recognize that directives have direct effect is partly due to the fact that although it is stated that regulations have direct application, such terminology is not used in relation to directives. It should be noted that it is appropriate to maintain the distinction between regulations fully endowed with direct action and directives, as referred to in Article 288 TFEU.

However, in its case-law, the Court of Justice of the European Union has in some cases allowed the directives to be directly applicable, although it has limited it. The Court also noted the difference between vertical and horizontal relations. "Vertical direct action" of directives can exist when the subjects of legal relations are an individual and a Member State. The "horizontal direct effect” of the directives includes cases where one individual files a lawsuit against another individual. In general, the Court of Justice has not recognized horizontal direct action, as a result of which EU citizens can rely on a directive having direct effect in national courts only if the action is brought against a Member State. Let us first try to study and analyze the cases during which the Court of Justice of the EU established the possibility of direct action of directives in the vertical plane [34].

Thus, one of the first cases in which such direct action of the directives was laid down was the Grad case, in which the Court of Justice ruled that an individual could refer to national courts for any acts issued by the EU institutions. However, he noted that the very fact of the limited role of the directive does not prevent this decision to have direct effect. In fact, these were the Court’s first reasoned allegations concerning the possibility of giving directives direct effect.

However, the possibility of giving direct effect to the directives was fully established and enshrined in the Van Duyn case, in which the Court of Justice had to answer the question whether Article 3 (1) of Directive 64/221 had direct effect. The Court of Justice has stated that if, under Article 249, regulations are directly applicable, and

accordingly, by their nature they can have a direct effect, it does not follow that other types of acts mentioned in this article can never have a similar effect. In this case, the existence of, in addition to regulations, other legal acts, which to some extent would be characterized by direct action. In fact, the very fact of the possibility of direct effect of the directives was reflected in the actual consideration of the above cases. In them, the Court of Justice argued its position primarily that Article 288 (ex 249 - ed.) TFEU does not prevent acts other than regulations from having direct effect. In this case, we share the point of view of S. Kashkin, who, examining the legal nature of EU legal acts, notes that "if you compare the directive with the regulation, it can be equated to the" basics of law "that do not act directly but require transformation into the domestic law of the Member States. The transformation of directives is the process by which Member States bring their legislation into line with its provisions by adopting or amending national laws and regulations”.

Another important postulate concerning the direct effect of directives in this case is the recognition by the Court of Justice that a person may refer to a directive as a means of protection in national courts. The Court of Justice has stated that it would be incompatible with the binding action enshrined in the directive under Article 249 TEU, in principle to exclude the possibility of using, this binding action by the persons concerned. In particular, "if the Community, in accordance with the Directive, obliges Member States to adhere to a certain course of action, the beneficial effect of such actions will be reduced if individuals are deprived

the possibility of invoking such a duty of the State in national courts and if the latter have been deprived of the opportunity to take them into account as an element of Community law. Under EU law, national courts have the right to refer matters to the Court of Justice concerning the operation and interpretation of all acts of EU bodies without exception, and it is provided that such a right may be exercised by private individuals in national courts. It is considered appropriate to examine on a case-by-case basis whether the legal nature, general structure and wording of the directives may have a direct effect on relations between Member States and individuals”. In this way, the Court of Justice has emphasized that the effectiveness of directives will be much less when individuals are not given the opportunity to be guided and use their provisions in their national courts. Finally, the Court noted that if EU law gives national courts the power to appeal to the Court’s decisions concerning the interpretation of all acts of EU bodies, it also means that these acts can also be followed in national courts [33].

It can be argued that the main purpose of directives is to give EU Member States the right to choose to implement their provisions in their national law. Thus, the most important thing in the Van Duyn case is the Court’s desire to turn directives into an effective form of EU law and to ensure their proper application, first and foremost by the national courts of the EU Member States. And the main reason for enabling the direct effect of directives is to ensure the effective operation of EU law in the national law of the Member States.

Therefore, EU directives used by national courts to fulfill their obligations to interpret accordingly cannot be considered directly applicable, as in such disputes they serve as a means of determining the content of other legal provisions interpreted by the national court. or interprets. In such situations, the directive may be applied in cases indirectly, ie due to another (national) provision, according to the interpretation. On the other hand, the directive, by creating indirect action, is not applied on the basis of national legislation, but is applied independently and contrary to other national norms.

It is necessary to pay attention to a number of problems that may arise as a result of the implementation of directives in national law. Thus, there may be problematic situations (when national courts, taking into account "horizontal direct action” or "reverse vertical direct action” directives) as to how and whether courts will apply the doctrine of indirect action in a way that will affect the legal certainty about individuals. Taking "horizontal action” as the basis of national law, directives will not, however, create obligations "by themselves” and their provisions cannot therefore be used against the individual. In this case, the source of responsibilities will not be directives, but national law.

Having studied and analyzed the above concepts, we generally share the view on the following forms of implementation of directives in the national law of the Member States. Thus, in the first case, the provisions of the directive should be incorporated into national legal acts through the adoption of new acts. In this situation, there may be a risk of incomplete incorporation, so in most cases another method is used, the essence of which is reduced to literal implementation (copying), when the national legislation incorporates the provisions of the directive without making any changes [29].

In general, there are several levels at which a directive may have common legal consequences for Member States. Thus, at the first level, it binds the state (namely the legislature) when the directive is not applied directly or indirectly. At the second level, it binds the Member States (their legislative, executive and judicial bodies) if the directive is directly or indirectly applied but has no direct effect. Finally, at the last, third level, the directive imposes obligations on the Member States - when the state acts as a plaintiff, if the directive has direct effect. In horizontal disputes, the preventive measures provided for in the directive may be are at the second level, as their essence is that the directive does not interfere with the application of the conflicting domestic national rule, without creating rights and obligations for the party. In this case, the directive will not have direct effect, but only indirect.

Analyzing the features of direct and indirect ("indirect”) action of directives, we come to the conclusion that the concept of "indirect action” is important where the principle of direct action is not applied. Even when a directive has no direct effect, national authorities are still obliged to interpret their national provisions aimed at implementing the provisions of this directive in accordance with its content and purpose. The Court of Justice has created the concept of "indirect action" primarily to increase the effectiveness of EU law. By requiring Member States to interpret national law in line with EU law, it has managed to fill a significant gap in the effectiveness of EU law where its rules have lacked direct effect. Thus, the Court of Justice of the EU has become an extremely important mechanism in filling legal gaps, making bold and often non-standard decisions, thus ensuring its proper application and strict compliance with all subjects of European Union law. The importance of the decision of the Court of Justice, their impact on its. Development also determine the consolidation and consideration of the decisions of the Court of Justice in the adoption of EU institutions of "secondary" law "In turn, the concept of "direct action” is a key element in improving the effectiveness of EU law [18].

An important aspect of direct action is that national courts must refer to EU law and apply it in the event of a conflict between its rules and the rules of its own national law.

In general, examining the specifics and uniqueness of "secondary” EU law, we share the view that it, along with the founding treaties, has created a new legal order, which is implemented mainly by national courts through their day-to-day law enforcement activities. This is how it works: The Court of Justice interprets the law (EU - ed.), And national courts apply it as part of the legal systems of the Member States since gaining EU membership. This right is enforced by national courts as a domestic law”.

**Conclusions to Chapter 2**

1. European Union law has formed a unique and specific mechanism for implementing its rules in the national legal systems of member states, which means a set of legal and institutional tools used within the European Union to implement EU law in the national legal systems of member states. It is through this mechanism that the effective implementation of EU law in the national legal systems of the Member States is ensured. At the same time, the effectiveness of EU law will depend on the comprehensiveness of EU member states to ensure their implementation and enforcement at the national level.

2. Although regulations have direct effect and, as a rule, their implementation and enforcement is carried out without implementing measures by Member States, there are sometimes cases when EU Member States take certain actions aimed at establishing certain conditions for their implementation in relation to a certain sphere of legal relations in which the EU lacks competence. In this case, EU regulations that can effectively regulate in these areas certain legal relations, where in fact will be subject to implementation by Member States by adopting a legal act, which will include the rules of the regulation. at the same time, they will be subject to the same application in all EU Member States, which in turn excludes the possibility of their replacement by national legal acts. Therefore, not all national implementing measures taken to give effect to regulations are invalid. Namely, the regulation itself may require, directly or indirectly, the permission of the Member States to take certain measures for its implementation.

3. An EU directive can only have direct effect when the deadline for its implementation has expired. Failure to comply with the deadlines for the implementation of directives entails the possibility of their direct effect in the territory of the Member States. In other words, if the provisions contained in the directive were clear, complete and unconditional and the Member State did not implement them into its national legal order, the Court of Justice will give the individual the right to refer directly to directives in national courts.

**CHAPTER 3**

**ROLE OF THE EUROPEAN UNION IN MAKING OF INTERNATIONAL PRIVATE REGULATION**

**3.1. The External Dimension of European union Consumer Law**

In the process of its development, EU law has formed the basic principles and norms on the basis of which the whole set of processes that arise within the framework of this supranational international organization is regulated. An important role was played by the Court of Justice of the EU, as a result of the case law of which the basic principles of the functioning of the European Union were formed. These are, first of all, the principles of direct action and the rule of EU law, which are crucial for the legal regulation of legal relations arising from conflicts between national constitutional law of an EU member state on the one hand and EU law on the other.

As mentioned in previous sections of this study, the supremacy and direct effect of European Union law also applies to the constitutional norms of the Member States, regardless of whether a national law preceded a certain EU legal act or was concluded.

Constitutional and legal features of law implementation later. In this case, we share the position of M. Kles, who states that " on the principle of supremacy, priority should always be given to Community law over national legislation that conflicts with it, including national constitutional provisions.". In fact, a similar view is held by I. Yakovyuk, who notes that the founding treaties ("constitution") of the EU have the highest legal force, direct effect throughout the Union. In the European Union, due to the implementation of the requirement that Union regulations, as well as consumer law, laws and other regulations of the Member States must not contradict the EU’s founding treaties, the initial requirements of the constitutional legality regime are introduced. EU law at the top of the regulatory pyramid are the founding treaties ("constitution"). Moreover, the Court of Justice has repeatedly emphasized in its judgments that the EU’s founding treaties are an internal constitution (charter) of the Communities based on the rule of EU law. However, it should be noted that the impact of national constitutional law on EU law will always be indirect, while the impact of EU law (which is supranational), which is based on the principle of supremacy over national law, is always direct process [17; 26].

However, in this context, despite the recognition and delimitation in the founding treaties of the EU of their treaty and constitutional elements in science, there is no single approach to the consequences of their identification with the "constitution". It seems quite apt view that certain attempts to take from international law the "constitutional part" of the founding treaty and recognize it as a fundamental, independent part of a separate legal system (which was done with the EU - ed.) Will inevitably lead to far-reaching consequences. Because in this case, in essence, the thesis is denied that the constitutional law of the organization is based solely on an international treaty, which makes the existence of an international organization dependent only on the will of member states. This is reflected in the example of the EU, in particular in the interpretation of the provisions of the founding treaties where the key role was played by the EU Court (formulating in its decisions, for example, the principles of direct action and the rule of law) and not Member States.

Thus, despite the acceptance and recognition of the rule of EU law and its implementation in the national law of the Member States, EU law cannot ignore the constitutional and legal features of building the rule of law of Member States through which they interact with the EU law. Because each national legal order of the EU member states is endowed with specific features and is unique, as a result, in some countries there are fewer problematic issues regarding the rule of EU law in others - vice versa. Because it is under the influence of EU law that interference in the constitutional order of the member states takes place, as a result of which changes and additions to their consumer law are adopted. Moreover, the Court of Justice of the EU using the rule of EU law in making certain decisions together with national constitutional courts acts in the direction of development of the entire EU legal order as a whole and not only EU law or national law. V. Muravyov quite aptly notes that in order to ensure the priority of the norms of EU law in the national legal systems of the member states, national consumer law, other legislative acts, and national judicial practice have undergone significant changes. This is due to the fact that the deepening of integration within the European Union necessitates constant changes in national legislation, and this inevitably affects the interests of both the national authorities of each Member State and the subjects of European integration as a whole [19].

Scholars have long wondered whether EU law requires supremacy in its application as opposed to national consumer law, as more and more researchers have recently viewed consumer law not only as a legal document that establishes the foundations of the state but also as a tool. organization of society, its political agreements. It is noted that the constitution includes all instruments of influence (national, subnational and supranational) for the creation, organization and limitation of state power, including legislative, executive and judicial powers - this is the so-called post-national concept. In general, the point of view of P. Haberle is noteworthy, who notes that at present the "constitutional state" is no longer a state with a purely classical constitution, as it should be.

Thus, determining the place and role of a state in an association is crucial in the context of the relationship of its constitutional norms with the norms of this association (in our case, EU law).

In this case, the resolution of conflicts arising between EU law and the national norm of the consumer law of the member states comes to the fore. A key role in resolving these constitutional and legal conflicts was played by the EU Court of Justice, which, despite differences in its interpretation of the relationship between EU law and the constitutional law of the Member States, achieved equal recognition and application of the rule of EU law. Legal mechanisms have been used to overcome conflicts that have been an obstacle to the effective operation of EU law in the national law of the Member States [18].

In general, the doctrine of international law distinguishes a number of mechanisms through which the above conflicts are resolved, namely the constitutional and legal mechanism of interaction of international and national law and the legal mechanism of interaction of legal systems of the EU and member states. Thus, the constitutional-legal mechanism of interaction of norms of international and national law is understood as a system of constitutional-legal norms and other legal means that ensure harmonization of norms of international and national law. In turn, the legal mechanism of interaction between EU law and Member States is a system of legal means (in particular, procedures) and bodies that ensure the coherent, harmonious functioning of interstate and national law within a single legal space. Finally, the mechanism of legal regulation means a system of legal remedies that are used in a certain sequence in order to overcome obstacles that make it impossible to satisfy the subjects of law.

Thus, analyzing these mechanisms, we conclude that the constitutional and legal mechanism of interaction of EU law and national law of the Member States should be understood as a set of legal means by which the regulation and harmonization of constitutional law of the Member States with EU law and legal conflicts arising from this interaction are being overcome. It is through this mechanism that the legal systems of the Member States converge with those of the European Union, as well as their balance within the single legal space, in particular by amending the consumer law of the EU Member States.

Thus, each time the founding treaties of the European Union were amended, national consumer law were also amended. In fact, these two "constitutional levels” (national and EU) are in constant interdependence. In turn, it would be a mistake to assume that this process is one-sided. EU law also depends on the national law of the member states, in the context of general principles of law, including human rights, and in connection with the establishment by the EU Court of Justice of a precedent that is essentially borrowed from national constitutional traditions. However, in general, comparing the provisions of the consumer law of the EU member states, we come to the conclusion that in almost every state special measure and means must be applied to implement this or that rule of EU law [7].

However, it should be noted that a number of consumer law of EU member states provide for a complex procedure for amending them, which in turn makes it difficult for them to respond quickly to bring their provisions in line with the requirements.

Noteworthy is the position of A. Daisy, who notes that "when the country is governed in accordance with the constitution, the intention to change its provisions should be impossible or, in any case, such changes require special efforts. The Constitution must be a law that must be stable or unchanging and must be in writing. If we consider this issue from another angle, then any law can be legally amended with the same ease and with equal difficulty, so there is no need for a mandatory written constitution or the search for a special set of laws that would create a constitution ”. In this case, the author confirms the opinion that the use of the usual procedure for the adoption of international treaties in the EU in combination with other procedures indicates that the EU founding treaties (including the Lisbon Treaty) are not a formal written constitution. The Lisbon Treaty was primarily intended to reorganize the failed CEE referendums, which it succeeded in doing. In this case, J. Müller aptly points out: "even what becomes a constitutional failure (rejection of a treaty or agreement) can have a more positive result: failure is a prelude to further openness to hear more voices or listen to the same voice, but carefully ”.

Analyzing the (specifics) of constitutional and legal mechanisms of interaction of EU law in certain Member States, it should be noted that the rule of EU law is exercised even in spite of the constitutional norms of its member states. However, there are quite a number of conflicts that need to be resolved both by the Court of Justice and by the national (constitutional) courts of the Member States. The situation is complicated by the fact that each of the 28 EU states has its own special constitutional system, which is enshrined in the constitution and which differs significantly from each other.

The International Handelsgesellschaft, in which the European Court of Justice ruled for the first time that EU law is superior even to the consumer law (laws) of the Member States, played a fundamental role in establishing the basis for interaction between EU law and national law in the constitutional spectrum. this has not been convincing to the end to this day. Thus, in particular in this case, where there was a contradiction between the application of the EU regulation and the provisions of the German Constitution, the Court of Justice noted that "the duration of measures taken by Community institutions can only be determined by EU law. Thus, the validity of EU law or its influence within the legal systems of the Member States cannot be called into question by allegations that they Contradict fundamental rights enshrined in a country’s constitution or principles of constitutional order.”. This decision can be interpreted as the position of the Court of Justice that EU law has supremacy over all national legal acts of the Member States, regardless of the legal force of this act or its place in the system of sources of law, including national Consumer law [18].

This decision of the Court of Justice, which effectively established the rule not only of "primary law” but also of "secondary law” of the EU, led to active discussions between the Court of Justice and the national courts of the Member States. As a result, the national constitutional courts of a number of countries have ruled that the rule of EU law is limited by the fundamental constitutional principles of the EU Member States. In fact, such decisions of national courts have called into question the effectiveness of EU law, resulting in conflicts in the legal regulation of these issues. Although national courts have subsequently adjusted their position in favor of EU law, there are still a number of unresolved issues between national (constitutional) courts and the Court of Justice regarding the application of EU law in their national legal systems. We will consider in more detail the role of national constitutional courts in the implementation of EU law in the national law of the member states in the next subsection of our monographic study.

Noteworthy is the position of P. Craig, who, conducting research on the interaction of EU law and constitutional law of the Member States, identifies several key ways to overcome the conflicts arising from the interaction of these two legal orders. In the first case, the state is willing to adopt amendments to its constitutional legislation in order to bring it into line with EU law, provided that it (EU law) does not undermine the foundations of its constitutional system. In this case, the incompatibility between EU law and national (constitutional) law is considered acceptable in the sense that the provisions of the constitution in these countries were perceived as open to change without compromising their constitutional structure. This solution found its place in the decision of the Italian Constitutional Court, which found that the rules of EU law may violate in some way the national constitutional norms, provided that the fundamental values of the constitutional system are respected [4].

In the second case, the state is ready to accept certain restrictions on the application of national constitutional norms, provided that EU law effectively and at the appropriate level provides legal regulation of those areas that are recognized by the state as fundamental. The provisions contained in the national constitutional norms are considered inviolable, but the state is willing to recognize the national application, which may be suspended as long as there is adequate protection at the EU level. A relevant example of this situation is the decision of the Federal Constitutional Court of Germany in the case of Solange II, in which he decided to no longer control regulations and other EU acts on the grounds that they violate the rights enshrined in the German Constitution provided that the EU will ensure the protection of such rights.

In the third situation, the state warns against refusing to recognize the rule of EU law in case of contradictions with basic national constitutional norms. In such cases, national courts adhere to the so-called "Long stop” to ensure the inviolability of the basic constitutional traditions of the state and to ensure that the foundations of the constitutional order of the state will not be violated.

Finally, in the latter case, the state does not recognize the rule of EU law, as it is convinced that the subject of this issue is not within the competence of the EU, and legal regulation of this area is possible by the state, as it falls within its competence. At the same time, the national constitution retains this competence for the state and makes it impossible to delegate or transfer it to another institution.

Thus, in the vast majority of cases, despite the concept of absolute supremacy, according to which EU law is dominant, national constitutional courts usually recognize the rule of EU law, but only as a result of the transfer of jurisdiction under strict clear conditions established by national consumer law. States themselves are no longer the only source of constitutional power, but national consumer law still remain the primary source of power. At the same time, the process of implementation of EU law in national law is diverse, but the main obstacle here may be constitutional norms, which cause conflicts, which are resolved through constitutional and legal mechanisms of interaction of EU law and national law of member states. This is primarily because national courts seek to recognize the privileged position of EU law not because of the special nature of EU law, but in accordance with the rules of their own legal systems [8].

The position of M. Maduro is also quite interesting, as he believes that the rule of EU law over national constitutional norms is one of the manifestations of legal pluralism in the EU. He notes that "there are four main internal principles of pluralism. First, there are many legal sources (both at European and national level) that have created the EU’s "constitutional” framework and its general principles of law, which have been developed in the case law of the Court of Justice. Secondly, the recognition of the supremacy of EU law over national constitutional norms was not entirely unconditional, and these EU norms were sometimes opposed in national constitutional courts. Third, is the emergence of new forms of government that challenge the traditional distinction between private and public law and the different mechanisms of interaction between them. Such pluralism of forms of government, in turn, runs counter to the traditional legal categories on which the basic principles of EU law were based. Fourth, radical forms of political pluralism prevail in the European Union, as conflicting political demands often have relevant domestic and national interests”.

At the same time, the author characterizes constitutional pluralism itself, "as a phenomenon of the plurality of constitutional sources that create the conditions for potential constitutional conflicts between different constitutional and legal systems of states that need to be resolved only in conditions of equality ”1. This position is generally shared by M. Kamm, who argues for the importance of pluralism, examining the features and specifics of the relationship between the EU law and the national law and order of member states. Thus, in particular, examining the development of pluralism in the EU legal order, the author identifies two possible trends in its development. The first is that constitutional courts will be able to repeal EU law on the basis of their specific constitutional norms and principles. According to another trend, Member States will very rarely be able to disobey EU law, and will do so only for positive reasons. The author is of the opinion that the second scenario is more plausible and constructive, and it is thanks to him that there is an effective interaction of EU law and national law of the Member States over a long period of time. In this case, national courts will act as a driving, constructive force that will operate within the EU legal order and whose main goal will be to increase the level of democracy in the decision-making process at the level of the European Union. It is national courts that will give the Court of Justice an incentive to pay more attention to issues of legislative jurisdiction and to be more careful in analyzing its fundamental rights. It should be noted that national constitutional courts will give priority to their constitutional provisions only if such provisions are clear and genuinely specific and reflect their essential constitutional obligations. However, in any case, in order to maintain the coherence of EU law and the national law of the Member States, it is necessary to amend the provisions of national consumer law to ensure that such Member States withdraw from the EU if they refuse to do so [11].

Thus, the consumer law of the EU member states have undergone several important stages of change: in addition to their characterization as the basic laws of the states, they have become the main components of the multilevel constitutional system of the European Union. In general, considering the constitutional process that takes place within the EU and includes national consumer law and, above all, "primary" EU law, we can conclude that they are interdependent and intertwined directly affect each other, and she the concept of multilevel constitutionalism facilitates the understanding of the peculiarities of European Union law.

**3.2. The external competence of European Union in the field of family Law**

Over the last twenty years, cross-border family relationships have expanded significantly. In fact, even the term "transboundary" has long been used to denote international public relations and gradually acquired a new meaning - to note the characteristic feature of private relations, the participants of which are citizens of different countries. Significant differences in the national legislation of European states, which regulate the institution of the family, significantly complicate the process of regulating cross-border family relations. Therefore, the effective functioning of the EU is not possible without the unification and harmonization of family law.

Unification and harmonization processes of national law are constantly taking place. The most common were the documents of the intergovernmental organization - the Hague Conference on Private International Law. Since 1955, the Hague Conference on Private International Law has developed 38 international conventions and protocols that establish rules on jurisdiction, applicable law, recognition and enforcement of foreign judgments, and legal and judicial cooperation. Ukraine has joined and ratified some of them. Thus, the Conference adopted five conventions, the purpose of which was to regulate relations in the field of: maintenance of children (Convention on the Law Applicable to Child Alimony Obligations of 1956, Convention on the Recognition and Enforcement of Decisions on Child Support of 1958 p., the Convention on the Law Applicable to Maintenance Obligations 1973, the Convention on the Recognition and Enforcement of Decisions Concerning Maintenance Obligations, 1973, and the Convention on the International Recovery of Child Support and Other Family Maintenance, 2007.); adoption with a foreign element (Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993); determination of the child’s place of residence (Convention on the Civil Aspects of International Child Abduction, 2006). The norms of these conventions have become consistent and comprehensive principles for the unification of norms under the laws of different countries.

The Commission on European Family Law (CEFL) has been operating within the EU since September 2001 with the aim of harmonizing family law in Europe. The CEFL consists of approximately 26 experts in the field of family and comparative law from all EU Member States, as well as from other European countries. Unfortunately, there are no Ukrainian experts among them.

One of the tasks of the commission was to create a set of common principles in the field of family law based on the results of a study of national legislation of European countries.

Today, the Principles of European Family Law on Divorce and Maintenance between Ex-Spouses, the Principles of European Family Law on Parental Responsibility and the Principles of European Family Law on Property Relations between Spouses have been developed [1].

According to CEFL Secretary Katarina Bole-Voelki and Dieter Martin, the principles are based on a comprehensive comparative study conducted by international experts. As for the results adopted, CEFL considers it one of its main tasks to identify the criteria on which the selection is based. As a result, much attention was paid to explaining why a certain principle was adopted. These explanations serve as a guide for the political considerations underlying the choice, in a sense they are the dominant traits of the compilers, which indicates which rule is "better", more "functional" or more "effective". In this process, both general methods and an approach based on the choice of the best law were used. As a result, the principles of CEFL can serve as a guide and

a source of inspiration for the legislature in their quest to modernize their family laws [2, p. 125-126].

The general approach to the formation of the principles was that on the basis of a questionnaire that contained many questions on the legislative regulation of relevant family relations, the experts prepared national reports, which became the basis for preparing an integrated version of all reports. Appropriate principles were formulated on the basis of this comparative material.

For example, the Principles of European Family Law on Parental Responsibility define the principles of: parental responsibilities, persons who may have parental responsibilities; the rights of the child, including rules for determining the best interests of the child and avoiding conflicts of interest between the child and those with parental responsibilities; respect for the child according to the ability and need of the child to act independently; non-discrimination of the child; the child’s right to be heard; child property management, etc.

The principles of European family law on divorce and maintenance between former spouses determine the principles of civilized divorce, in particular: divorce by consent and in case of impossibility to reach an agreement; termination of marriage in administrative and judicial proceedings; the importance of the appearance of the couple’s children and their age for divorce; time for reflection, which should precede the decision on divorce; the content and form of the contract in case of divorce; maintenance of children and each other after divorce, etc.

The principles of European family law in relation to property relations between spouses, in addition to the principle of maintenance of spouses, also determine: the legal capacity of spouses; the content of the maintenance agreement, the time limits of such an agreement; the contribution of each spouse to the joint economy and the delimitation of personal needs of the spouses; the contribution of the spouses to the maintenance, upbringing and education of children; rules on coordination of actions regarding joint property of spouses, etc.

After studying the above-mentioned Principles of European Family Law and reports of international experts on the legislative regulation of family relations in their countries, it should be concluded that despite the differences between national family laws, there is convergence of laws, and Ukrainian legislation in general , which corresponds to almost all the stated Principles of European Family Law.

In order to contribute to the common European values in the field of family relations regulation, a report should be prepared and submitted to the European Family Law Commission on the state of legislative regulation of marital property, divorce and spousal support, parental responsibilities and, where possible, , to get rid of fundamental differences between national norms and principles, laid down by them in the Principles of European Family Law.

Some scholars point out that the division of the family, its fragmentation

This is quite contradictory and even contradicts the ideals of family life, based on mutual love and respect, rather than on constructions of subjective rights and legal obligations. Thus, Roberto Unger points out that "the very process by which" family members build their relationships in the language of formal law, leads to the disintegration of the family "[1, p. 65]. In addition to this position, Mary Ann Glendon argues that the rhetoric of what she says is overblown rights and our view of these rights through the eyes of an autonomous individual diverts our thoughts from focusing on what unites us and focuses them on because it separates from each other [2, p. 143]. Among the examples of such statements are the words of Martha Feynman, who points out that individual rights and responsibilities "hinder the development of the concept of collective responsibility for children" [3, p. 199].

Such criticism is based on the assumption that respect for and protection of individual rights undermines the collective character of the family. The valuation of individual autonomy, according to this approach, contradicts the values of the family, community and society as a whole [4, p. 25].

This critique is largely focused on the idea of "family privacy”, according to which the family should be a certain personal space, free from interference from the state [5, p. 364]. This is part of the ideology of the family, based on the division of public and private spheres of relations, when state regulation is recognized as legitimate only in the public sphere.

In addition, human rights norms are not unfriendly, hostile to family relationships, or impede the promotion of values related to family life. Savitri Gunesekere showed that international human rights norms seek to ensure a balance between individual rights and responsibilities in the family and community [6, p. 89]. For example, the Universal Declaration of Human Rights of 1948, now recognized as part of customary international law, recognizes in Article 16 (3) that "the family is the natural and fundamental group unit of society and is entitled to protection from from society and the state ". As we can see, in the international document that protects the rights of individuals, there are broader social associations, which also, from the point of view of human rights, are valuable and need respect. This is confirmed by Art. 29 (1), which states that "everyone has a duty to society in which only the free and full development of his personality is possible". This balance between individual rights and the family was confirmed in the International Covenant on Civil and Political Rights of 1966 and in the International Covenant on Economic, Social and Cultural Rights of the same year. Both Covenants require the state to provide protection and assistance to the family as "the natural and fundamental group unit of society".

In addition to the Covenants, the Convention on the Elimination of All Forms of Discrimination against Women, adopted in 1979, recognizes the role of women in families, while emphasizing the crucial importance of equality between women and men. Thus, the role of women in the family is recognized, but this should not be a reason for the family to take precedence over her individuality and potential outside the family. In addition, the preamble to the international instrument states that the traditional role of men in society and the family must change if we are to achieve full equality between women and men, and emphasizes that States must recognize "a common the responsibility of men and women for the upbringing and development of their children”.

Similar starting points are present in the United Nations Convention on the Rights of the Child: its preamble states that the family is "the core of society" and "the natural environment for the growth and well-being of all its members, including children". Thus, the concept of children’s rights does not seek to separate them from their families. It aims to ensure their individuality and protection in families. The "family", thus, in international human rights instruments, which are an integral part of the European legal tradition, is seen as "a fundamental group in society that deserves protection" [4, p. 14].

At the same time, the very concept of human rights calls for respect for human rights and autonomy. The rights conferred on the family can thus be used not only to protect the individual from the harm that may be inflicted on him or her in the family, but also to make the family itself a subject. legal regulation by the state. In addition, some researchers rightly argue that the concept of human rights is evolving in the light of social and economic rights, and requires the state to fulfill its positive obligations, which can be a useful tool for reforming family law in this area. This combination of civil, political, social and economic rights means that international human rights law challenges "the idea that the concept of human rights is based on respect for the individualistic ideology of personal autonomy, which is the antagonism of the family and a certain community "[6, p. 90].

Thus, human rights norms are not necessarily the individualistic tool they once considered. In fact, they should play a positive role in balancing the interests of society, a community, the individual family and individual interests.

Let us emphasize once again that the above provisions of international human rights treaties and their analysis in the context of general trends in the development of family law are part of European law as an integral part of it. At the same time, if we talk directly about the law of the European Union, which Ukraine should focus on in its development, it is worth pointing out such points.

One of the defining moments in the regulation of family law relations in the European Union was the adoption of the Charter of Fundamental Rights, which changed the overall landscape of the human rights system in the EU. Prior to that, the human rights regime in the EU effectively depended on the generosity of the Court of Justice and was seen as part of the general principles of Community law. Such a case-oriented system has been the subject of constant and sharp criticism, which, together with the desire to bring the EU’s human rights system closer to the citizen, led to the adoption of the Charter of Fundamental Rights in 2000.

Provisions concerning the regulation of family life are scattered throughout the text of the Charter. First of all it is a question of Art. 7 of the Charter, according to which everyone has the right to respect for his private and family life, to the inviolability of his home and to the secrecy of his correspondence. Article 9 of the Charter guarantees the right to marry and the right to start a family in accordance with national law governing the exercise of this right.

Article 33 of the Charter regulates the protection of the family at the legal, economic and social levels. In order to be able to reconcile family life and professional activities, every woman has the right to protection against dismissal on the basis of her pregnancy, as well as the right to paid maternity leave, postpartum leave or adoption leave. children.

A separate article is devoted to children’s rights. It states that children have the right to the protection and care they need for their well-being. They are free to express their opinion. Such an opinion is taken into account in cases concerning them, depending on their age and maturity (Article 24 of the Charter). In any action taken against children by both public authorities and private institutions, the best interests of the child shall be a primary consideration. Every child has the right to have regular personal relationships and direct contact with both parents, as long as this is not in his or her best interests.

Nevertheless, the Charter has been criticized for its legal uncertainty, based on "outdated formulas of the past” around which consensus has long existed, instead of addressing pressing and contentious human rights issues, particularly family issues. legal relations. At the same time, the preamble to the Charter states its focus on "strengthening the protection of fundamental rights” in the light of "changes in society” and "social progress”. This gives Western researchers reason to talk about the expected expansion of the concept of family and marriage and their broader protection in the practice of implementing the provisions of the Charter. Prerequisites for such expansion are also seen in Art. 21 of the Charter, which cites, in particular, genetic characteristics as well as sexual orientation among the grounds for non-discrimination.

At the same time, the inclusion of family provisions in the text of the Charter is an unconditional advantage. It is believed that this gives the family an independent legal status, strengthens its position in the EU legal system and guarantees that in the future the courts will not avoid resolving family law issues at Union level.

It should be noted that Ukraine faces another problem: family law is an area of relations in which the feasibility of convergence and unification of legal norms is constantly questioned due to the need to take into account established norms and traditions in each society or even at the level of his separate social group. At the same time, in our opinion, the convergence of family law should be a general trend of reforming the national legal system in light of the convergence of value approaches in the legal regulation of public relations.

It should be borne in mind that such an approximation takes place at different levels and within different institutions, among which the following can be distinguished:

- harmonization of family law in the European Union. Its activities are carried out, in particular, by a special profile body - the Commission on European Family Law (hereinafter - CESP), which brings together scholars from different European countries and whose task is to organize work to create a single family law in Europe. This Commission has developed the "Principles of European Family Law", which are of particular importance in familiarizing with current trends in the convergence of family law in Europe, interpretation of national laws, improvement of family law. These Principles exist in the form of a set of provisions and for adequate understanding and interpretation are accompanied by scientific commentary, national texts.

the laws involved in the study, as well as the conclusions of comparative scholars. The principles are not offered as a normative document or something like a model law, but serve as a guide for further rule-making in the field of family law.

In addition to the Principles themselves, the CESP has proposed a proposal for large European research centers, which is to pay more attention to comparative research, not national law systems, when conducting educational and research work. This is due, on the one hand, to the need for such research at the appropriate level and, secondly, to the lack of comparative specialists, whose work is crucial in creating a single European family law. Such a proposal should be accepted by Ukrainian research centers, as research in the field of comparative law in domestic legal science is very small, and meanwhile, such research is a very concrete step towards bringing national legislation in line with European standards. standards and finding adequate ways of cooperation with both the EU and individual European countries;

- the activities of the Hague Conference on Private International Law, which achieved the most significant results in the field of unification of conflicting rules in the field of family law (in particular, marital relations). Of particular importance are the Convention on the Law Applicable to Spousal Property of 14 October 1978, the Convention on the Law Applicable to Maintenance Obligations of 2 October 1973 and the Convention on the Recognition and execution of court decisions on alimony obligations on October 2, 1973.

The basic principles on which they are based are the protection of human rights; respect for law and order and socio-cultural traditions of states; protection of the weak side in family legal relations; neutrality in the external relations of states.

**Conclusions to Chapter 3**

1. European Union consumer law has developed enormously, especially over the last 20 years and today it remains by far the most important part of European private law. It should not be surprising, therefore, that consumer law is the area of EU private law that has most influenced non- European legal systems.

2. There is another reason for this, however: EU consumer protection represents the most developed global system of consumer protection in the world. This chapter shows that within the agreements that the EU has concluded or is negotiating with third countries there is a tension between removing obstacles to trade and maintaining a high level of consumer protection. The impact of EU consumer law is not confined to the borders of the European Union and its 28 Member States, but it is possible to observe the influence of EU consumer law on several countries which are not members of the EU. Quite naturally the question arises what is behind this broad tendency of acceptance of EU consumer law, or at least parts of it, in a legal system of a non- EU country.

3. In that sense, three main reasons that lie behind the acceptance of the consumer acquis into the national legal systems of these countries may be identified. First, countries have accepted the consumer acquis into their national legal systems as a prerequisite for their progress in the integration process towards joining the EU. Second, EU consumer law is the most advanced system of consumer law in the world. Third, the existence of different requirements of consumer protection among different countries may typically represent an obstacle for international trade among countries.

**CONCLUSION**

In concluding, the notion of private law has a long tradition and is of great importance in most EU Member States. National private law is seen as the constitution of civil society and enjoys a high degree of democratic legitimacy about social justice.

There is a need to analyse and understand the inward-looking character of European private law. However, the two areas, European private international law and European regulatory private law, follow different patterns. Private international law is international in the sense that all national legal systems are treated alike. The rules which design the reach of the jurisdiction, and the applicable law should be the same, whether in a rich or a poor country, a developed or less developed country, a democracy or an authoritarian regime.

There are, however, two challenges to overcome. The first is whether and to what extent the EU body of private international law regulations follows this path systematically and coherently. The second difficulty is less an obstacle than a consequence. Private inter- national law rules are claimed to be ‘neutral’ as they do not contain or promote a value judgment on the differences between legal orders.

We adopt a bird’s-eye view of the way that the relationships between private law, international law, the Member States, and the EU have developed over time. We can trace three evolutionary stages, each representing a different axis in the relations between the EU and its Member States, between private law and EU external relations law, and between EU law and international law. These three stages have succeeded but not replaced each other and are each part of the current multi-level structure.

In the first stage, the axis Member States–private law–international law is to the fore. Historically, the international fora for the development of traditional private international law have been the Hague Conference on private international law (founded in 1893) and the Council of Europe (founded in 1949), not the EU. In the second stage, the focus is on the dimension EU–private law–EU law. Here the EU moves more clearly into the picture, enacting private law instruments at an internal level and bringing private law firmly within the scope of EU legislative and regulatory activity. Then, in a third stage, and alongside the internal legislative activity of the EU, we see the emergence of the axis EU–external relations–international law. The EU moves into the international arena, concluding international agreements itself based on different sources of competence, both express and implied. It is hardly surprising that these connections and disconnections are made on the EU’s own terms; that EU law itself decides on what basis, to what extent, and under which conditions it takes account of its Member States’ treaty commitments.

Most external actions in the field of private law, and in regulatory fields, are directly related to and dependent on internal EU policies, more particularly those related to the internal market. If specificity exists, this might be that in some of the private law fields, particularly private international law, but also judicial cooperation on civil matters, there exists a myriad of bilateral and multilateral conventions between Member States, sometimes Member States only, sometimes also together with third countries. A particular question to be raised in this context concerns the possible application of the principles of mutual recognition and mutual trust, said to be the core principles for the realization of the AFSJ, when establishing EU treaty relationships with third countries or accepting existing treaty relationships entered by Member States.

The establishment of Regulation No 864/2007 on the Law Applicable to Non-Contractual Obligations (Rome II) is remarkable for several reasons. Firstly, the regulation of torts in the European Union has a history of forty years, starting with the preparation of the Rome Convention in 1967. Secondly, as was the case with its thorny counterpart, the Regulation on the Law Applicable to Contractual Obligations (Rome I), negotiations have been difficult. In its Explanatory Memorandum, the Commission pointed out that divergences exist primarily in relation to the boundary between strict liability and fault-based liability, compensation for indirect damage and third-party damage, compensation for non-material damage and in excess of actual damage (punitive or exemplary damages), and the liability of minor and limitation periods.

The scope of Rome II is limited to a situation involving a conflict of laws. Though private international law necessarily involves a cross-border element, the international nature of a dispute is not always self-evident. The Explanatory Memorandum states that this is a situation in which one or more elements are alien to the domestic social life of a country, and that entail applying several systems of law. It is undeniable that flexibility and the European civil law standard of legal certainty are hard to combine, and this has resulted in attempts to include ‘catch all’ correction mechanisms instead of a general and open exception.

Though the Regulation has certain flaws and lacks a clear methodology, I tend to support the optimist view. An alternative to the complex Rome II system would be to include the proplaintiff ubiquity rule for all torts and delicts. Another option would be to include a general rule: for example, in favour of the lex loci damni, accompanied by an open-ended exception, which allows a reflection on every interest – both parties’ and state interests – involved.

Experience shows that as far as private international law is concerned, most of them were raised in family matters. As a rule, established in the famous ERTA case, the EU’s external competence depends on the exercise of its internal competence. This rule has been applied to private international law by the Court of Justice in its equally famous 1/ 94 opinion about the Lugano Convention.

The Court stated that external competence in private international law should be given to the EU and not to Member States because the EU exercised its internal competence in the field by adopting, among others, the Brussels I Regulation. This issue has raised some new difficulties concerning the legal relations between Member States, the EU, and third states. A good illustration of those difficulties can be seen in the EU’s participation in the Hague Conference on private international law.

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