

Legal aspects of mining in Ukraine: European integration vector

Roman Kirin^{1*} , Andrii Yevstihnieiev² , Andrii Vyprytskyi³ , Stanislav Sieriebriak⁴ 

¹ State Organization "V. Mamutov Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine", Kyiv, Ukraine

² Taras Shevchenko National University of Kyiv, Kyiv, Ukraine

³ Dnipro University of Technology, Dnipro, Ukraine

⁴ Volodymyr Dahl East Ukrainian National University, Kyiv, Ukraine

*Corresponding author: e-mail kirinrs62@gmail.com

Abstract

Purpose is analysis of the current legal tools and acts in the field of mining in the European Union to identify and substantiate their potential consideration while reforming Ukrainian legislation in the context of European integration, energy transformation, and postwar recovery.

Methods. The study is a sequential analysis of the European sources for legal support of mining. The analysis is aimed at determination of tendencies, their necessity and implementation expediency while reforming the national legislation on subsoil as well as mining legislation.

Findings. Elements of the current legal mechanism from the viewpoint of subsoil use in the EU have been reviewed. Moreover, they have been systemized according to following types: tools and institutions; messages (communications) and reports; and directives, instructions, procedural rules, and the EU decisions. Reformation tendencies of legal mining support have been substantiated. The tendencies depend upon the fact that Ukraine selected the Eurointegration vector as well as upon the necessity to decarbonize power sector and postwar recovery specificity. The regulations, relevant for reforming provisions of mining legislation of the certain EU member states required for legal mining support in the field of investment, institutional, permissive, and contractual relations, have been defined.

Originality is substantiation of expedient use of sustainable European practices in the legal regulation of Ukrainian mining sector based upon the achievement of symbiosis of preserving the national interests as well as fulfillment of integration obligations in the process of energy transformation and postwar recovery.

Practical implications are expedient implementation of the findings in the process of legislative activities; law enforcement actions by officers of the authorized state bodies and economic entities in the field of mining; and research connected with further development of mining law theory; and academic activities related to teaching of topics concerning the current legal aspects of mining.

Keywords: *subsoil, mining, subsoil legislation, European acts, systematization*

1. Introduction

1.1. Statement of the problem

Ukraine is among the countries having significant mineral resource base in addition to powerful mining industry. Despite negative influence by the armed aggression on the part of the Russian Federation (hereinafter referred to as the RF), the projected State Budget revenue in 2023 is UAH 93.36 billion [1] being more than 40% to compare with 2022 budget, and approaching 8% of the total budget fund of 2023. It is an extremely important component for postwar economic recovery. Nevertheless, its achievement should rely upon relevant mine engineering, geological and mineralogical, social and labour, innovative-investment, financial and economic and other factors as well as upon adequate legal support of each mining stage and schedule. In this context, general reform of the national legislation on subsoil and in particular its component being mining law should provide

solution of the topical problem, i.e. achieving of symbiosis of preserving the national interests as well as focusing on the advanced European practices in the field.

1.2. Analysis of the recent studies and publications

It should be mentioned that generally national scientists and researchers ignore thorough the approach to highlighting the problems of legal support as for subsoil use; instead, they concentrate on certain sources in definite spheres.

In such a way, among other things, a multi-author book considers problems of cooperation between Ukraine and the European Union (hereinafter referred to as the EU) in the field of subsoil use in the context of the sustainable development of raw-materials base (hereinafter referred to as RMB). However, authors refer only to 2012/18/EC Directive, Seveso-III-Directive [2] assuming it as the most efficient legislative tool in the field of accident prevention. They believe that despite restrictions of the Directive imple-

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mentation in mining, it plays a prominent role for the sphere of risk management connected with waste inclusive of operation of tailings [3].

Hardly the study may be considered as such favouring the reform of subsoil use in Ukraine. Moreover, statements by the authors that agreements on the distribution of products (hereinafter referred to as ADPs) as well as concession contracts are administrative contracts [3] can be seen as false ones.

First, relying upon part 1 of Article 27 of a law on ADPs [4], subsoil use upon the ADPs terms is economic activity concerning exploration, prospecting, and mining of minerals (hereinafter referred to as MMs). Properly speaking, the law is intersectoral act; in terms of Parliamentary classification, it belongs to subsoil legislation and concerns general foundations of regulatory management of economic growth inclusive of economic contracts. Second, in terms of the mentioned classification, the law on concessions is absolutely a source of civil (among other things, mandatory) law; and according to part 6 of Article 2, its force cannot involve projects providing exploration, prospecting, and MMs [5].

Having analyzed corresponding sources in “EU Directives in the field of subsoil use” chapter (i.e. EU Directive 2011/92/EC; EU Directive 2006/21/EC; EU Directive 94/22/EC; and EU Directive 2006/118/EC), I.B. Machulska gives the evidence that norms of the EU Directive 94/22/EC become of particular importance in the context of Ukrainian legislation adapting to the EU legislation. The matter is that the Directive specifies both basic and principal requirements to the procedure of transfer of subsoil to be used. According to provisions of the EU 94/22/EC Directive, the researcher has proposed to make additions to the Subsoil Code of Ukraine (hereinafter referred to as SC) [6] to introduce transfer from the current system of receiving special permits to conclusion of contracts on subsoil use [7]. However, she does not mention that the Directive [8] concerns provision of subsoil use to explore, prospect, and mine only hydrocarbons. The national legislation considers the latter as crude oil, natural gas (inclusive of the associated petroleum gas), and gas condensate [9].

The EU Directive 94/22/EC is also mentioned by the Ministry of environmental protection and natural resources of Ukraine in view of its implementation in the revised SC version [10] which development is provided by the Decree of President #874/2019 [11]. Team of “New Subsoil Code of Ukraine” Project joined its development. The team is financed by the EU and implemented by Consortium; it consists of Projekt-Consult experts from Germany; MinPol experts from Austria; and Better Regulation Delivery Office (BRDO) experts from Ukraine. Nevertheless, both objective and subjective reasons prevented from its submission to the Ukrainian Parliament early in 2023.

1.3. Singling out of the previously unsolved tasks of a general problem

Despite sufficient representative number of the studies pursued by the national researchers from different specialism areas, concerning legal aspects of mining, the sphere is still extremely topical. Such a situation results from numerous important circumstances not considered from theoretical and applied viewpoint as for the right to use subsoil, i.e.:

– granting Ukraine the status of a candidate for accession to the European Union in accordance with the decision by the leaders of the EU member states made in a panel session of

the European Council which took place on the 23rd of June 2022 [12];

– accession of Ukraine to the implementation of “The European Green Deal” initiative by the European Commission [13];

– armed RF aggression against Ukraine which caused enormous damage and losses to RMB as well as to mining enterprises.

1.4. Formulation of the paper objective and statement of the problem

Thus, the paper idea is to study the current legal tools and acts in the context of the EU mining sphere to identify and substantiate potential of their consideration while Ukrainian legislation reforming in the context of European integration, energy transformation, and postwar recovery. For the purpose, following tasks should be performed:

– review of the current tools and legal acts, applied by EU in the field of subsoil use, and their systematization;

– substantiation of the tendencies to reform legal support of mining stipulated by the necessity of European integration, energy (“green”) transformation, and postwar recovery;

– analysis of mining-and-geological legislation content of certain EU member states and determination of provisions being actual for Ukraine.

The study sequence depends upon logic correlation with the tasks, formulated earlier, and content and form of regulations by the national and European legislation in the field of mining, mineral raw materials, environment, and its implementation practices.

2. Research methods

The research methods are based upon general scientific and specific cognitive approaches applied by jurisprudence. Deduction and induction, analysis and synthesis, abstraction and generalization have been applied.

Specific scientific research procedures have been used while analyzing publications on the selected topics, legal acts, legal facts, and phenomena as well as while presenting author’s position. Formal-logical, system-structural and system-functional method have made it possible to demonstrate and systemize the current tools and legal acts in the field of mining.

Dialectical method of scientific knowledge has helped analyze current national and foreign legislation controlling mining legal relations arising on the entities using subsoil. Contradictory scientific positions, concerning explanation of theoretical and applied ideas, and legislative regulations, disagreeing periodically with the current European standards, have been studied based upon critical legal approach.

Comparative legal procedure has been applied to analyze sources of European and national laws. A formal-legal method has made it possible to review connections between the internal content and external expression of legal tools as well as spheres of legal regulation.

3. Results and discussion

3.1. Current tools and legal acts in the field of subsoil use in the EU and their systematization

As a candidate for EU membership, Ukraine has to implement a number of reforms, and adopt the national legislation to European criteria. Among other things, it concerns provision of reliable and unobstructed access to raw materials being important for the EU. The matter is that depending

upon feedstock availability, the EU member states have at least 30 million jobs [14]. Tools of the European Commission (hereinafter referred to as EC) as for the stable provision of the materials may be divided into two interdependent components: the raw materials initiative (RMI) [15] and the European innovation partnership (EIP) on raw materials [16].

The former, approved for 2021-2022, involved the use of the European Raw Materials Alliance (ERMA) and the European Battery Alliance (EBA) platforms to finance projects and investment; cooperate and progress for the development of a strategy with low carbon content and Roadmap for decarbonization of feedstock mining, preparation, and processing in Ukraine; promote both stable and responsible delivery and treatment of raw materials and batteries in Ukraine; digitalize and intensify control of data concerning Ukrainian mineral resources (reserves); improve the use of the Earth Observation Programmes as well as remote sensing of resource prospecting; operate mining industry facilities and control of the environment (hereinafter referred to as E) after their shutdown; and identify and implement projects of joint ventures for industrial and investment participants from the EU and Ukraine.

Content analysis of the European tools gave reasons to single out their key characteristics:

1. RMI, adopted by EC in 2008, involves a strategy to solve problems of access to raw materials in the EU aimed at provision of the three main tendencies: fair and stable feedstock delivery from the global markets; stable raw materials delivery to the EU; and efficient use of resources as well as secondary raw materials delivery at the expense of processing. An expert EC group, being a team engaged in feedstock delivery and consisting of the EU representatives, member countries of the European economic zone, candidates for EU membership, and bodies representing the concerned parties (i.e. industry, research institutions, and civil society), gives an advisory opinion to the EC and controls the initiative implementation. The EC publishes regularly lists of critical raw materials (hereinafter referred to as CRMs). During 2021 high-level conference concerning strategic partnership between the EU and Ukraine in the field of CRMs, the parties concluded a Memorandum on the strategic partnership in the area of raw materials and developed corresponding roadmap of measures [17]. Such a strategic partnership will involve following key tendencies: integration of value-added chains; cooperation in the field of research and innovation; coordination of environmental and social procedures and approaches; and data exchange.

2. Sustainable Development Goals (hereinafter referred to as SDGs), adopted by the UNO on the 25th of September 2015, are also connected with RMI. In November 2016, a report on mining and SDGs was published; the report has demonstrated how extraction of minerals may favour each SDG achievement. The EC helps implement SDGs in non-energy primary sectors through its policy resulting from RMI as well as through a policy, programmes, and actions related to trade, environment, research and innovations, development, fiscal transparency etc. In the context of Ukraine, following SDGs have been identified by 2030 [18]:

- access provision to cheap, stable, and modern energy sources for all;
- promotion of gradual, comprehensive, and sustainable economic growth;

– taking urgent measures to combat climate change and its impacts etc.

3. EIP is the main EU initiative implementing a platform of the concerned parties as for the raw materials, uniting the EU countries, researchers, and non-governmental organizations to advance innovation in the feedstock sector. The partnership is also important to achieve goals of the key EC initiatives, being “Innovation Union” and “Resource Efficient Europe”, while providing European economy with stable raw materials as well as maximizing benefits for the whole community.

4. The European raw materials alliance is the measure to develop European raw material cost system diversifying delivery for achieving open strategic autonomy in the chain of value creation for rare-metal and rare-earth elements. At the later stage, it may spread to other types of CRMs and base metals.

5. Strategic feedstock partnership. In September 2020, EC adopted an action plan concerning CRMs; it represented ten specific measures to eliminate vulnerabilities in the chains of feedstock delivery. The action plan declares that the EU should participate in strategic partnerships with the resource-rich third countries applying all tools of external policy and respecting own international obligations. Action 9 involves development of strategic international partnership as well as adequate financing intended to provide both diversified and stable CRMs delivery inclusive of through incorrupt trade and investment terms. In 2021, pilot partnership was initiated with Canada, the concerned African countries, and countries in the EU neighbourhood.

6. Strategic EU-Canada partnership received political approval at the EU-Canada summit of 14-15.06.2021. The partnership is aimed at maximization of value, safety, and constancy of trade and investment in stable raw materials as well as in value chains in Canada and the EU. The following has been identified as the cooperation areas:

- integration of the Canada-EU feedstock value chains;
- science, techniques and innovations;
- environmental, social, governance (ESG) criteria and standards.

7. Structure of strategic EU-Canada partnership concerning raw materials is to:

- ensure safety of delivery chains for minerals and metals required to move towards climate neutral and digitized economy being priority-oriented for Canada and the EU;
- reduce risks in the system of delivery and promotion of competitive value chain between Canada and the EU;
- maximize value, safety, and stability for trade and investment in raw materials and elements of value creation in Canada and EU to support the environmental and digital transition.

The partnership was established as a part of the EU-Canada Comprehensive Economic and Trade Agreement (CETA); among other things, it concerns bilateral dialogue on raw materials [19].

Documentarily and chronologically, RMI and EIP are shown in following messages and reports [14]:

- Staff working document accompanying communication – SEC (2008) 2741;
- Communication: raw materials initiative “Meeting critical needs for growth and jobs in Europe” – COM (2008) 699;
- Communication: commodity markets and raw materials – COM (2011) 25;
- Communication: creation of the European innovation partnership on raw materials (2012);

- Report: implementation of the raw materials initiative (2013);
- Strategic implementation plan: European innovation partnership on raw materials (2013);
- Communication: critical list and implementation of the raw materials initiative – COM (2014) 297;
- Report: implementation of the raw materials initiative (2014).

3.2. Reformation tendencies of legal support of mining: European integration, energy decarbonization, and postwar recovery

The Association Agreement between Ukraine on the one part and the EU, European Atomic Energy Community, and their members on the other part [20] as well as further granting Ukraine the status of a candidate for accession to the European Union raised to a new Eurointegration level fulfilment of commitments to legislation implementation inclusive of mining.

Review of the current national mining legislation as well as subsoil legislation has testified that now following spheres of the relationships should be considered as the most relevant tendencies of legislative support of mining from the viewpoint of European integration: waste burial; subsoil use monitoring; evaluation of mining subjects on the results of previous activities; and establishment of the differentiated legal regulations for various types of geological information [21]-[26].

As a part of “The European Green Deal” initiative (hereinafter referred to as EGD) [27], put forth by the EC, Ukraine also is permitted to visualize its goals and principles in the internal documents. Namely, in the context of mining, the following should be considered as the major interdependent tendencies:

- 1) energy sector decarbonization:
 - shutdown of fossil fuels;
 - progress of energetics based upon hydrogen and other synthetic power resources;
- 2) coal industry reforming:
 - transformation of mining regions and monofunctional settlements;
 - innovations of after coal use of underground, complex of surface facilities, and waste rock dumps;
- 3) green transition of mining to extraction, treatment, and production of “the metals of the future”.

Partially, the national legislation has already started implement EGD ideas. Namely, a list of metallic ores and non-metallic minerals, being strategic for sustainable economic growth and national defence capability [28]; Concept of the state target programme for fair transformation of mining Ukrainian regions for 2030 [29]; the revised nationally agreed contribution of Ukraine to the Paris Agreement [30] and others were approved.

Scientifically, in terms of coalbed methane as an object of international, European, and constitutional legal relations, authors have demonstrated its specific features stipulated by natural dichotomy: harmful substance (i.e. gas), on the one hand, and material and/or power resource (i.e. mineral of the national significance), on the other hand [31].

It is a potentially promising tendency to use wholistically methane (i.e. coalbed methane, CBM; coal seam gas, CSG; or coal-mine methane, CMM) and mine water as the integrated chain of green hydrogen formation where mine methane will act as a power resource and water will act as a material resource.

Following tendencies may exemplify Life After Coal [32]:

- complex development of new coal power stations and mines;

- available coal infrastructure emission reduction, and promotion of phasing out coal;
- fair transition to sustainable energy systems for population.

Tendencies of legal support of postwar mining recovery in Ukraine should be based upon such a recovery plan as “Ukraine Recovery Vision: Strong European Ukraine is a “magnet” for international investment”. Its principles involve the following: build back better including transition to green economy; stimulation of private investment and entrepreneurial business etc. [33]. In turn, national programmes of the plan contain such ones relating directly to the mining sector:

1. “Restoring clean and protected environment”:
 - ecological restoration of saltworks in Solotvyno;
 - RMB expansion in Ukraine;
 - restoring, upgrading, and optimizing of network of the observation and data entry on risky geological processes as well as on underground water condition;
 - mining of technogenic deposits;
 - monitoring of reclamation measures to mitigate negative environmental impact after mining;
 - deregulation and simplification of access to subsoil.
2. “Energy Independence and Green Course”:
 - gas production from dense rocks;
 - gas production from traditional deposits.

In addition to the tendencies, others should be also considered since they are equally important for postwar Ukraine. First of all, it is required to implement stable, stimulating, and incentive legal regulations for the investment and innovative activities based upon:

- digitalization of transparency relations in subsoil use and mines inspectorate; circulation of permits and geological information;
- liberalization of rent, customs, currency, land, and infrastructure relations;
- implementation of risk insurance of mining reconversion; variability of forms of foreign investment attraction.

Finally, it is proposed separately to pay attention to protection of the national economic interests in the field of mining art while manufacturing value-added products in Ukraine. Concession of proper priorities while accessing mining entities to the use of certain subjects and subsoil resources is one of legal mechanisms of its implementation.

3.3. Actual practices of mining-and-geological legislation in certain EU countries

From the viewpoint of the European legislation use in the national codified subsoil act, Polish practices are quite interesting. In 2011, the country adopted a new charter called “Geological and mining law” [34]. Currently, several EU directives, rules, regulations and decisions have been implemented in the document or harmonized. Analysis of the abovementioned helps differentiate them in the contexts of certain groups of subsoil legal relations and those ones associated with them regulated by the acts, i.e.:

- relations in the field of industrial safety and labour protection [35]-[37];
- permissive, geological, safety-related, and ecological oils-gas relations [38]-[42];
- relations in the field of greenhouse gas emissions [43];
- relations in the field of waste burial [44], [45].

Moreover, the groups should also involve relations, regulated by the abovementioned EU Directives, i.e.:

- relations in the field of environmental impact [46];
- relations in the field of mining industry waste [47];
- relations in the field of underground water protection [48].

It should be also mentioned that Law on subsoil in Poland contains sufficient number of representative regulations concerning investment relations in the field of subsoil use. However, they mostly concern hydrocarbons. For instance, Article 49z constitutes that the initial mining stage needs investment decision making issued by a concession body (i.e. licensing authority) upon application. The latter includes:

- right to real estate under which hydrocarbon material will be extracted from a deposit;
- mining initiation date;
- hydrocarbon deposit or its share to be developed;
- amount of the hydrocarbon material and its mining technique; and a degree of permitted use of the resources inclusive of jointly occurred as well as associated minerals;
- the proposed location of the mining area (subsoil operations) defined on the basis of geological and investment documentation of the hydrocarbon material deposit, and represented relying upon mining maps indicating boundaries of territorial division of the area;
- geological and hydrogeological terms of the hydrocarbon material mining; if it is necessary, the terms are supplemented by conditions of water injection into the rock mass specified in the hydrogeological documentation.

The application shall be attached by the evidence of the right to use the geological information in the amount required for the activity implementation [34].

In Germany, Federal mining law involves concessions, permits, and agreements to mine mineral resources. The State Authority for Mining, Energy and Geology (Landesamt für Bergbau, Energie und Geologie, LBEG in German) render administrative services for granting of permits to extract minerals, and functions of mines inspectorate in the field of mining of minerals; their transportation; and storage [49].

In France, maximum initial term for exclusive prospecting licenses is five years (with possible twice for five years prolongation every time). Maximum initial MMs concession period is fifty years (with possible several times prolongation; however, each time may last twenty-five years maximally). Law of France “On hydrocarbons” imposes certain restrictions on the granting and continuation of exclusive prospecting licenses as well as mining of coal; liquid or gaseous hydrocarbons (with the exception of mine gas being methane stipulated by L.111-5 Article of Mining Code of France). Except for special cases, granting of the exclusive licenses for prospecting and new mining concessions terminates; the current mining concessions up to 2040 [50].

3.4. Discussion

Near the end of 2022, a law was adopted supporting development of the national subsoil use sectors [21]; it is required to provide implementation of certain regulations of the European legal system in the domestic subsoil legislation, land legislation, mining legislation, oil-and-gas legislation, and urban planning legislation.

The law makers believe the act will favour subsoil use reformation in the context of following fields [22]:

- protection of national interests;
- development of economic passport;

- illegal extraction counteracting;
- solving the problem of “sleeping” licenses;
- facilitating access to land plots;
- free circulation of special permits for subsoil use;
- international standards to evaluate reserves;
- digitalization and simplification of access to geological information;
- simplification of permissive procedures;
- termination and annulations of special permissions.

At the same time, compliance with the Eurointegration course, harmonization of Ukrainian laws with the European ones, and implementation of the best world practices, experience, and expertise were not displayed in the declared aims of the law. Among those normative acts, which should guide lawmakers, one can remind the rules concerning such spheres as: access of population to information of subsoil use [23]; waste burial [24]; and European networks of environmental information and monitoring [25].

Moreover, the law contains regulations either being inconsistent with the European requirements or ignoring their actual state. First, exclusion of a provision, according to which the permission to use hydrocarbon subsoil may be temporarily stopped, cannot meet the provisions of Directive 94/22/EC [8] since they give no way to take into consideration cases of inefficient and/or irresponsible subsoil use identified in the course of mining by applicants on the basis of prior permissions.

Second, Regulation of the European Parliament and Council (EC) #2018/1999 of 11.12.2018 [26] made amendments in Directive 94/22/EC according to which Article 9 of the Directive was deleted. Consequently, currently Ukraine is not obliged to publish annual report containing information on: subsoil areas open for mineral exploring, prospecting, and mining; special permissions and organizations which obtained them; and reserves of hydrocarbon resources assessed geologically and economically. In addition, Ukraine is not obliged to publish data, belonging, in terms of information and civil legislation, to statistics having restricted access or being intellectual property objects.

The review and analysis of tools and regulations, controlling mining in the EU and Ukraine, provided grounds to represent author’s vision of the Eurointegration vector concerning their consideration and implementation. Among other things, Figures 1-3 demonstrate both available and actual tools to be implemented in the national legislation and provisions of regulations as well as tendencies to reform legal support of mining. According to the author’s attitude, they have been differentiated in terms of time criterion, and importance of Ukrainian legal system adaptation to the EU legislation.

We believe that future research should be first focused on the formation of sustainable and transparent economic and legal mechanism improving both innovation and investment attractiveness of mining in postwar Ukraine. Possessing valuable mineral resources, the country should use them with the maximum advantage to accelerate its economic recovery and solve problems of getting through the recession basing upon establishment of mining, processing, and associated production facilities with high value-added degree.

Moreover, it is required to pay attention to the well-timed correction of legal coverage of transformation of coal enterprises under the scheduled (despite Declaration on the Support of Green Technologies) increase in coal mining amount as well as focus on a reverse policy of mine shutdowns.

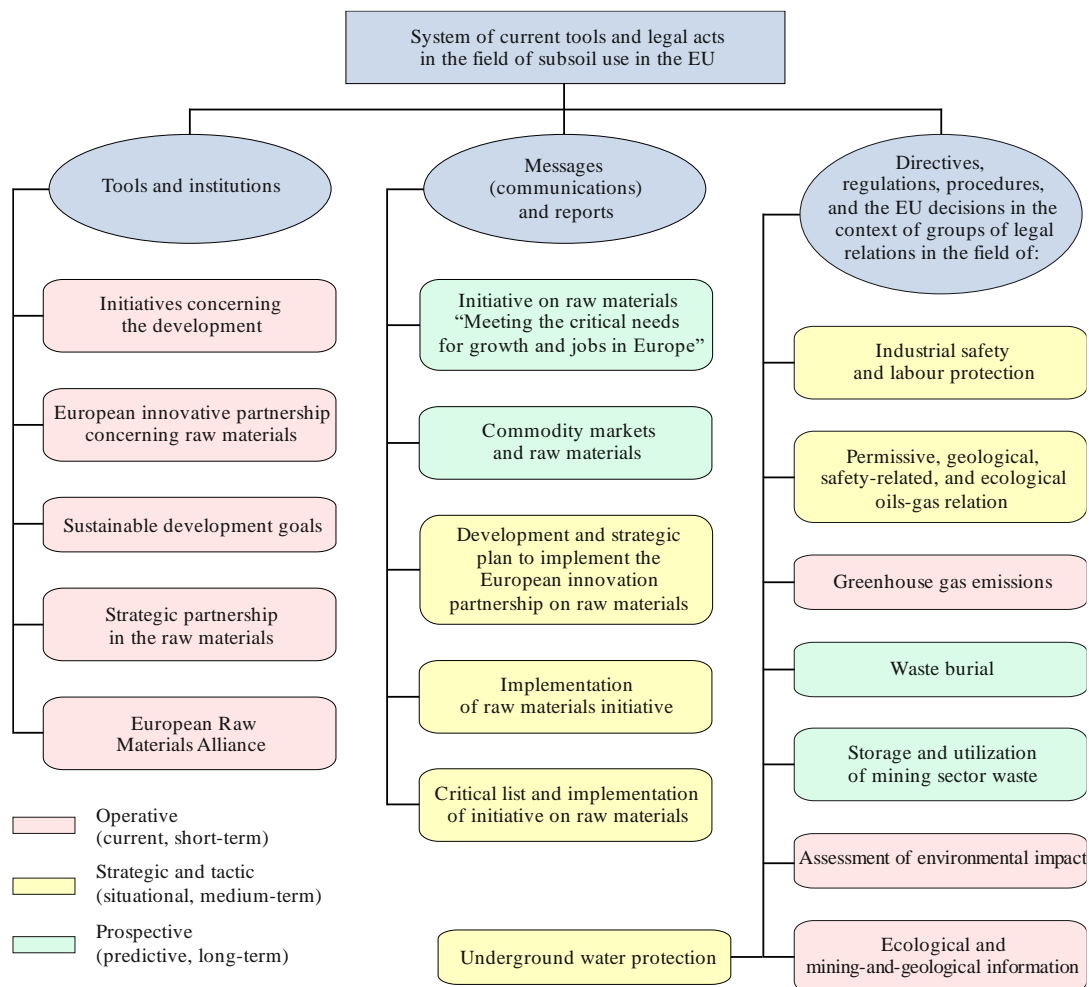


Figure 1. System of current tools and legal acts in the field of subsoil use in the EU

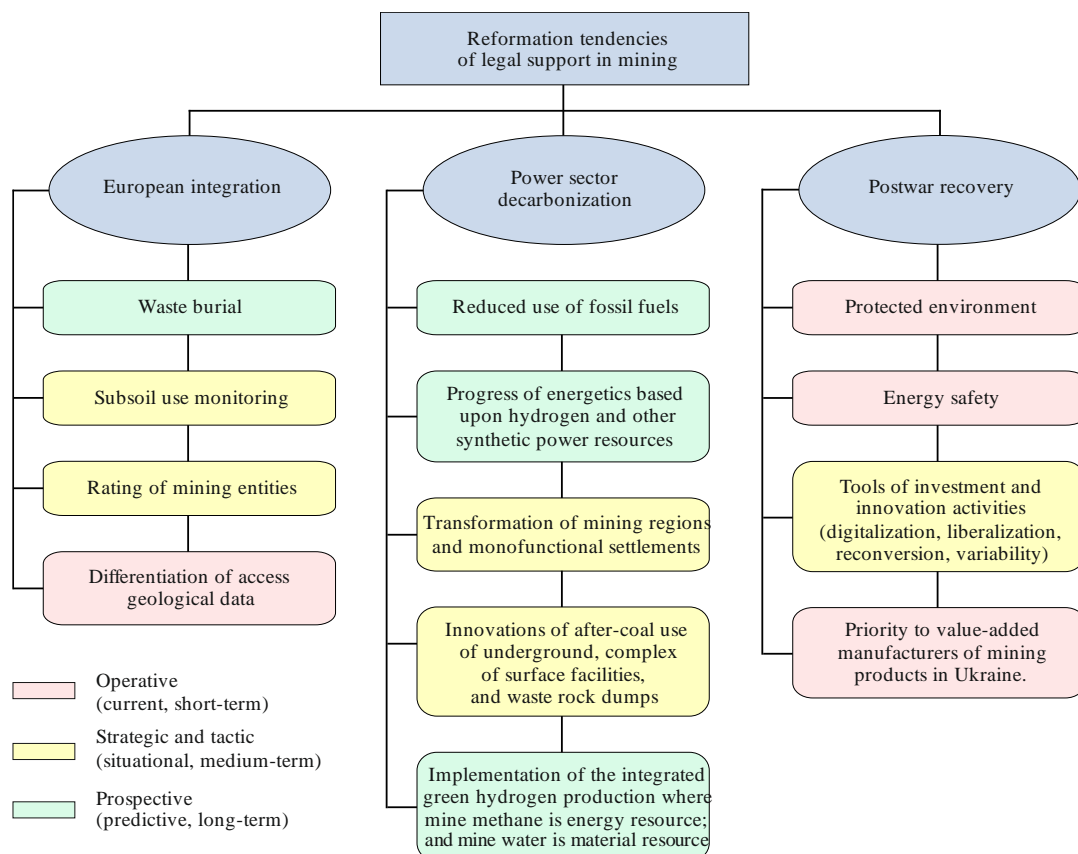


Figure 2. Reformation tendencies of legal support in mining

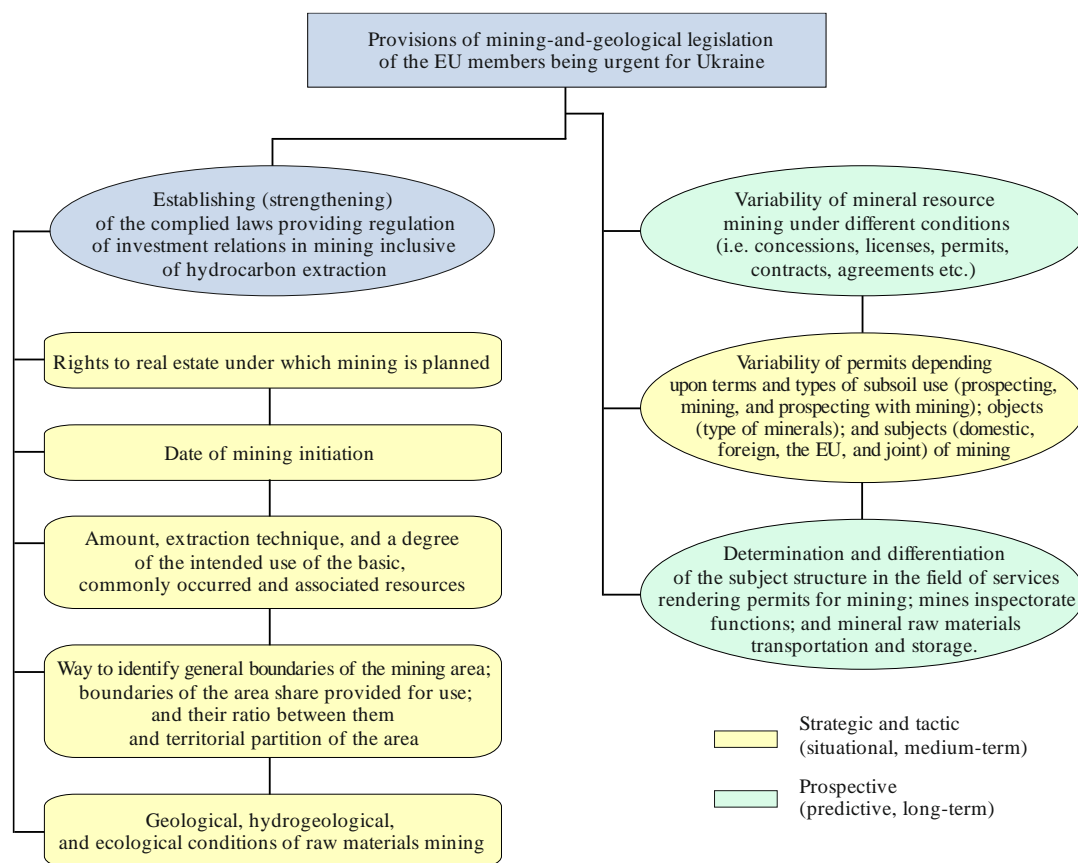


Figure 3. Provisions of mining-and-geological legislation of the EU members being urgent for Ukraine

It seems that such steps will be of temporary nature stipulated by the necessity to stabilize condition of socioeconomic and energy safety of the state for afterwar period.

In addition, it is extremely important and topical idea for future research (inclusive of a legal aspect) to solve a problem concerning assessment, identification, and expertise of harm and damage caused by the armed aggression to objects of subsoil use and environment, development of legal structures intended to minimize both available and potential environmental impact by the ruined, damaged, and flooded mines as well as concerning tendencies of reconversion use of their surface, underground, and technogenic property components.

4. Conclusions

The review study of tools, and regulations, controlling mining in the EU and Ukraine, gives reason to formulate following conclusions.

1. The review of current tools and legal acts in the field of subsoil use in the EU has helped systemize them according to the types: tools and institutions; messages (communications) and reports; directives, instructions; regulations, and decisions made by the EU as well as according to groups of legal relations being the regulation subjects.

2. The necessity has been substantiated to reform legal support of mining stipulated by the selection of the European vector of economic growth of Ukraine as well as by challenges in dealing with negative consequences of the armed aggression in the areas of the European integration, energy decarbonization, and postwar recovery.

3. There have been identified relevant to reform legal support of mining in Ukraine provisions of mining-and-geological legislation of certain EU member countries depending upon the spheres of legal relations as well as their

basic elements being investment, property, geological, mining, and environmental if hydrocarbons are extracted; permissible and contractual; financial and economic, transport and mineral; and organizational-managerial and supervisory.

The authors consider that implementation of the obtained results is both possible and expedient in the law-making process of mining law and subsoil law improvement; in the law-enforcement practices of public entities and private entities in the field of mining; in the research concerning the development of mining law theory; and in the academic process in the field of legislation, natural sciences, production, and technologies.

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References

- [1] *On the State budget of Ukraine for 2023*. (2022). Law of Ukraine No. 2710-IX.
- [2] Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (1). (2012). *Official Journal of the European Union*, L 197(55). https://doi.org/10.3000/19770677.L_2012.197.eng

- [3] Surilova, O.O., & Ahmad, Z. (2019). Cooperation between Ukraine and the EU in the field of subsoil use in the context of sustainable development of the mineral and raw material complex. *Challenges and Prospects for the Development of Legal Systems in Ukraine and EU Countries: Comparative Analysis* (pp. 161-179). Riga, Latvia: Baltija Publishing. <https://doi.org/10.30525/978-9934-571-83-1-27>
- [4] *On production distribution agreements*. (1999). Law of Ukraine No. 1039-XIV. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1039-14#Text>
- [5] *On the concession*. (2019). Law of Ukraine No. 155-IX. Retrieved from: <https://zakon.rada.gov.ua/laws/show/155-IX#Text>
- [6] Stefanchuk, M.O. (2018). *European standards in the field of subsoil use and their implementation in Ukrainian legislation: A joint Ukrainian-Slovak project of the Prášiv University of Slovakia*. Pryshyv-Ternopil: FOP Bondarchuk, 90 p.
- [7] *Code of Ukraine on Subsoil No. 132/94-VR*. (1994). Retrieved from: <https://zakon.rada.gov.ua/laws/show/132/94-%D0%B2%D1%80#Text>
- [8] Directive 94/22/EC of the European Parliament and of the Council of 30 May 1994 on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons. *Official Journal of the European Union*, L64(37).
- [9] On the approval of the Rules for the development of oil and gas fields: Order of the Ministry of Ecology and Natural Resources of Ukraine No. 118. (2017). *Official Gazette of Ukraine*, (51).
- [10] *The Ministry has started the development of a new Code on Subsoil*. (2020). Retrieved from: <https://mepr.gov.ua/news/35678.html>
- [11] On urgent measures to ensure energy security: Presidential Decree No. 874/2019. (2019). *Official Gazette of Ukraine*, (96).
- [12] *European Parliament resolution of 23 June 2022 on the candidate status of Ukraine, the Republic of Moldova and Georgia*. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0249_EN.pdf
- [13] *On the formation of an interdepartmental working group on coordination issues of overcoming the consequences of climate change within the framework of the European Commission initiative "European Green Course"*. (2020). Resolution of the Cabinet of Ministers of Ukraine No. 33. Retrieved from: <https://zakon.rada.gov.ua/laws/show/33-2020-%D0%BF#Text>
- [14] *Policy and strategy for raw materials*. (n.d.). Retrieved from: https://single-market-economy.ec.europa.eu/sectors/raw-materials/policy-and-strategy-raw-materials_en
- [15] *The raw materials initiative – meeting our critical needs for growth and jobs in Europe*. (2008). Brussels, Belgium.
- [16] *Commission staff working paper*. (n.d.). Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social committee and the Committee of the Regions Making Raw Materials available for Europe's future well-being – proposal for a European Innovation Partnership on Raw materials. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52012SC0027>
- [17] *The Prime Minister of Ukraine and the Vice-President of the European Commission signed the Memorandum on strategic partnership in the raw materials industry*. (2021). Retrieved from: <https://www.kmu.gov.ua/news/premyer-ministr-ukrayini-ta-vice-prezident-yevrokomisyyi-pidpisali-memorandum-pro-strategichne-partnerstvo-u-sirovinnij-galuzi>
- [18] On the Sustainable Development Goals of Ukraine for the period up to 2030. (2019). Decree of the President of Ukraine No. 722/2019. *Official Gazette of Ukraine*, (79).
- [19] *CETA chapter by chapter*. (n.d.). Retrieved from: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/canada/eu-canada-agreement/ceta-chapter-chapter_en
- [20] Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand. (2014). *Official Gazette of Ukraine*, (75).
- [21] *On amendments to some legislative acts of Ukraine regarding improvement of legislation in the field of subsoil use*. (2022). Law of Ukraine No. 2805-IX.
- [22] Yakymenko, P. (2022). *Why the reform of subsoil use is important for the recovery of Ukraine*. Retrieved from: <https://www.epravda.com.ua/columns/2022/11/30/694412/>
- [23] Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC. (2003). *Official Journal of the European Union*, L 41(46).
- [24] Council Directive 1999/31/EC on the landfill of waste. (1999). *Official Journal of the European Union*, L 182(42).
- [25] Regulation (EC) No. 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (Codified version). *Official Journal of the European Union*, L 126(52).
- [26] Regulation (EU) No. 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action, amending Regulations (EC) No. 663/2009 and (EC) No. 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No. 525/2013 of the European Parliament and of the Council (Text with EEA relevance). *Official Journal of the European Union*, L 328.
- [27] *Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions*. (2019). Brussels, Belgium: The European Green Deal.
- [28] On stimulating the search, extraction and enrichment of minerals that are of strategic importance for the sustainable development of the economy and the state's defense capability. (2021). Decision of the National Security and Defense Council of Ukraine No. 306/2021. *Official Gazette of Ukraine*, (60).
- [29] On the approval of the Concept of the State target program for the fair transformation of the coal regions of Ukraine for the period until 2030. (2021). Resolution of the Cabinet of Ministers of Ukraine No. 1024. *Official Gazette of Ukraine*, (80).
- [30] On the approval of the updated nationally determined contribution of Ukraine to the Paris agreement. (2021). Order of the Cabinet of Ministers of Ukraine No. 868. *Official Gazette of Ukraine*, (62).
- [31] Kirin, R.S., Khomenko, V.L., Illarionov, O.Yu., & Koroviaka, Ye.A. (2022). Dichotomy of legal provision of ecological safety in excavation, extraction and use of coal mine methane. *Naukovyi Visnyk Natsionalnoho Hirnychoho Universytetu*, (5), 128-135. <https://doi.org/10.33271/nvngu/2022-5/128>
- [32] *Life after coal/impilo ngaphandle kwamalahle*. (n.d.). Retrieved from: <https://lifeaftercoal.org.za/>
- [33] *Outcome Document of the Ukraine Recovery Conference URC2022: "Lugano Declaration"*. (2022). Retrieved from: <https://reliefweb.int/report/ukraine/outcome-document-ukraine-recovery-conference-urc2022-lugano-declaration-lugano-4-5-july-2022>
- [34] *Prawo geologiczne i górnictwo*. (2011). Ustawa Nr. 163, Poz. 981. Available at: <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20111630981/U/D20110981Lj.pdf>
- [35] Council Directive 92/91/EEC concerning the minimum requirements for improving the safety and health protection of workers in the mineral-extracting industries through drilling (eleventh individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC). (1992). *Official Journal of the European Communities*, L 348(35).
- [36] Council Directive 92/104/EEC on the minimum requirements for improving the safety and health protection of workers in surface and underground mineral-extracting industries (twelfth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC). (1992). *Official Journal of the European Communities*, L 404.
- [37] Directive 2003/33/EC of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products. (2003). *Official Journal of the European Union*, L 152(46).
- [38] Directive 94/22/EC of the European Parliament and of the Council of on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons. (1994). *Official Journal of the European Communities*, L 164(3).
- [39] Directive 2009/31/EC of the European Parliament and of the Council on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No. 1013/2006. (2009). *Official Journal of the European Union*, L 140(52). <https://doi.org/10.3000/17252555.L.2009.140>
- [40] Directive 2013/30/EU of the European Parliament and of the Council on safety of offshore oil and gas operations and amending, Directive 2004/35/EC. (2013). *Official Journal of the European Union*, L 178(56). <https://doi.org/10.3000/19770677.L.2013.178>
- [41] Commission Decision laying down criteria and measures for the financing of commercial demonstration projects that aim at the environmentally safe capture and geological storage of CO₂ as well as demonstration projects of innovative renewable energy technologies under the scheme for greenhouse gas emission allowance trading within the Community established by Directive 2003/87/EC of the European Par-

- liament and of the Council (notified under document C (2010) 7499) (2010/670/UE). (2010). *Official Journal of the European Union*, L 290(53). https://doi.org/10.3000/17252555.L_2010.290.eng
- [42] Commission Implementing Regulation (EU) No. 1112/2014 determining a common format for sharing of information on major hazard indicators by the operators and owners of offshore oil and gas installations and a common format for the publication of the information on major hazard indicators by the Member States. (2014). *Official Journal of the European Union*, L 302(57).
- [43] Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC. (2003). *Official Journal of the European Union*, L 275(46).
- [44] Council Directive 1999/31/EC on the landfill of waste. (1999). *Official Journal of the European Communities*, L 182(42).
- [45] Council Decision 2003/33/EC establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of and Annex II to Directive 1999/31/EC. (2002). *Official Journal of the European Communities*, L 11(46).
- [46] Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment Text with EEA relevance. (2012). *Official Journal of the European Union*, L 26(55). https://doi.org/10.3000/19770677.L_2012.026.eng
- [47] Directive 2006/21/EC of the European Parliament and of the Council on the management of waste from extractive industries and amending Directive 2004/35/EC – Statement by the European Parliament, the Council and the Commission. (2006). *Official Journal of the European Union*, L 102(49).
- [48] Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration. *Official Journal of the European Union*, L 372(49).
- [49] *Bundesberggesetz (BBergG)*. Ausfertigungsdatum: 13.08.1980. Available at: <https://www.gesetze-im-internet.de/bbergg/BBergG.pdf>
- [50] Clément, J.-N., Bouillié, A., & Dufour, L. (2020). Mining in France: Overview. *Practical Law*, 1-7.

Правові аспекти гірничої справи в Україні: огляд євроінтеграційного вектору

Р. Кірін, А. Євстігнєєв, А. Виприцький, С. Сєребряк

Мета. Дослідження сучасних правових інструментів та актів у сфері гірничої справи в Європейському Союзі для встановлення та обґрунтування можливості їх врахування при реформуванні законодавства України в умовах європейської інтеграції, енергетичної трансформації та повоєнного відновлення.

Методика. Дослідження полягає у послідовному аналізі європейських джерел правового забезпечення гірничої справи, спрямованого на виявлення напрямів, необхідності та доцільності їх впровадження у процесі реформування національного законодавства про надра та гірничого законодавства.

Результати. Проведено огляд елементів сучасного правового механізму у сфері користування надрами у ЄС та їх систематизація за видами: інструменти та інституції; повідомлення (комунікації) та звіти; директиви, розпорядження, регламенти і рішення ЄС. Обґрунтовано напрями реформування правового забезпечення гірничої справи, обумовлені обранням Україною євроінтеграційного вектору, необхідністю декарбонізації енергетики та специфікою повоєнного відновлення. Виявлено актуальні для реформування правового забезпечення гірничої справи положення гірничого та геологічного законодавства окремих країн-членів ЄС у сфері інвестиційних, інституційних, дозвільних та договірних відносин.

Наукова новизна полягає в обґрунтуванні доцільності використання сталого європейського досвіду у правовому регулюванні гірничої справи в Україні, заснованого на досягненні симбіозу збереження національних інтересів та виконання інтеграційних зобов'язань в процесі енергетичної трансформації та повоєнного відновлення.

Практична значимість полягає в доцільності впровадження отриманих результатів при проведенні законотворчої діяльності, практичної правозастосовної роботи працівників уповноважених державних органів та суб'єктів господарювання у сфері гірництва, наукових досліджень, пов'язаних із подальшим розвитком теорії гірничого права, навчального процесу при викладанні розділів, присвячених сучасним правовим аспектам гірничої справи.

Ключові слова: надра, гірнича справа, законодавство про надра, європейські акти, систематизація