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LEGAL ASPECTS OF THE ACCESSION OF THIRD COUNTRIES TO THE SCHENGEN AREA

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SUMMARY

The article is devoted to the legal analysis of the Schengen area and the accession of third countries thereto. The scientific research defines the main directions of cooperation between the Schengen area Member States and determines the necessary conditions of accession of third countries to the Schengen area. The particular attention is paid to the application of the Schengen acquis by third countries.

Key words: Schengen Area, Third Countries, Schengen acquis, EU Legislation, Common Directions.

ЮРИДИЧЕСКИЕ АСПЕКТЫ ВСТУПЛЕНИЯ ТРЕТЬИХ СТРАН В ШЕНГЕНСКОЕ ПРОСТРАНСТВО

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АННОТАЦИЯ

Статья посвящена правовому анализу Шенгенского пространства и присоединению к нему третьих стран. Научное исследование определяет основные направления сотрудничества между государствами-членами Шенгенского пространства и определяет необходимые условия присоединения третьих стран к Шенгенскому пространству. Особое внимание уделяется применению третьими странами Шенгенского acquis.

Ключевые слова: Шенгенское пространство, третьи страны, Шенгенское acquis, законодательство ЕС, общие направления.

Research problem and its significance. Today the Schengen area is an area which is formed by 22 States – the EU Member States and 4 third countries (Switzerland, Liechtenstein, Norway and Iceland). The key directions of cooperation of Schengen area states is the common EU immigration policy, common visa policy of the EU, the scope of cross-border cooperation, asylum policy, protection of personal data, cooperation in the framework of Schengen and Visa information system, police cooperation and cooperation of the courts in criminal cases. In turn, all legal norms regulating the cooperation in the above areas are part of the Schengen acquis.

It is worth noting that in the law of the European Union there are some difficulties in the delimitation of the Schengen area and the area of freedom, security and justice. This complexity primarily lies in the fact that such questions of the Schengen acquis that are associated with the abolition of controls at the external borders, asylum, visa policy, procedure, of crossing by persons of external borders of the member States of the EU, cooperation of judicial and police authorities of the member States of the EU under the Lisbon Treaty, constitute a common immigration policy of the European Union within the area of freedom, security and justice (hereinafter – AFSJ).

The Article aims to the research of the legal grounds of the accession of third countries to the Schengen area and determination of all the necessary conditions

and requirements of third countries compliance to the Schengen acquis.

Materials used. The issue of legal analysis and research of the cooperation between EU Member States in the frameworks of the Schengen acquis is highlighted in the scientific contributions of V. Muraviov, Z. Makarukha, R. Petrov, O. Strelzova etc.

Key statements of the Research. AFSJ is an area without internal borders in which freedom of movement of persons, together with appropriate measures to control external borders, asylum, immigration and prevention and combating of crime are provided (article 3, clause 2 TEU) . These issues are governed by Section V TFEU (articles 67-89) [1].

That is, given the presence of adjacent spheres of legal regulation, primarily dealing with asylum, immigration and visa policy, police cooperation of the EU Member States, the Schengen area and the area of freedom, security and justice are closely related legal categories. This is evidenced by the provisions of the Schengen Protocol, according to which the Schengen acquis should contribute to the realization of the goal, which is to create an area of freedom, security and justice without internal borders to the EU citizens (p. 2).

However, despite the abovementioned areas that are common to the Schengen space and AFSJ, such legal categories have a number of differences. In particular, comparing the Schengen areas to PSBU, it covers more areas of legal regulation. So, in addition to the abolition of controls at the external borders, asylum policy, a common immigration, visa policy, police cooperation, cooperation of courts of Member States of the EU in criminal matters, Schengen States cooperate closely in the framework of Schengen and Visa information systems, in the field of personal data protection and in the harmonization of their national legislation with the Schengen acquis through the implementation, application and further development.

In addition in comparison with the sources of AFSJ and the system of sources of the Schengen acquis, the last is characterized by a more complex structure, due to the peculiarities of the dynamic development of integration processes of European countries within the Schengen area. In particular, in the system of sources of the Schengen acquis, besides general principles of EU law, an important place is given to the special principles of the Schengen acquis. These include the principle of openness of internal borders, the principle of ensuring national security and public order of the Member States of the Schengen area, the principle of transparency in providing access to a database of personal data contained in the database of the Schengen information system. In fact, the sources of the Schengen acquis not only are the components of the acquis of the European Union, but also promote their implementation and ensure proper functioning of the area of freedom, security and justice as a whole [2].

The specificity of the Schengen area is also determined by the membership. In addition to the 22 member States of the EU the Schengen area includes Switzerland, Liechtenstein, Norway and Iceland. Within this space there is a special legal mechanism for the involvement of States in implementing the Schengen acquis.

Here we are considering Iceland and Norway, who, not being members of the European Union, applied in their legal system, the Schengen acquis. The legal feature of the mechanism is to conclude a separate agreement by the Council of the EU with those countries that it is approved by the appropriate decision based on the unanimity of the other States of the Schengen area. In particular, on May 18, 1999 between the Council of the EU, on the one hand, and the Republic of Iceland and the Kingdom of Norway, on the other, was concluded the Association Agreement concerning the letters' association with the implementation, application and development of the Schengen acquis. Guided by article 1 of Iceland and Norway participate in: a) the Schengen Convention of 1990, except article 2(4), article 4, article 10 (2), article 19(2), 28-38 article, article 60, article 70, article 74, article 74, article 77-91, article 120-125, 131-133, article, article 134, article 139-142.

Concerning the other States that are not members of the European Union, namely Switzerland and Liechtenstein, those countries became parties to the Schengen area in 2008 and 2011 respectively. The agreement between the European Union and the Swiss Confederation on the accession of the Swiss Confederation in the implementation, application and development of the Schengen acquis was signed on February 27, 2008.

On February 28, 2008, was signed an agreement on the accession of Liechtenstein to the Schengen Convention of 1990. However, the abolition of border controls was postponed several times of objections of Germany and Sweden, as the governments of these countries declared the ineffective struggle of the Principality with tax evasion and, therefore, the unwillingness of countries to comply with Schengen standards. In addition, the holders of visas issued by any state party to the Schengen Convention of 1990, had the opportunity of entry into the country, whereas holders of national visa of Liechtenstein had no right to enter the territory of Schengen area. Thus, only from 19 December 2011, since the application of the provisions of the Schengen Convention of 1990, in the country specified obstacle has been cancelled.

Generally, despite the fact that Switzerland, Liechtenstein, Iceland and Norway are not EU Member States, they are members of the Schengen area, collaborating with the other 22 members in all areas of the Schengen acquis.

The originality of the Schengen area is caused due to the presence of a special legal status in a number of States. This refers to the participation of Great Britain and Northern Ireland to the Schengen area. The UK position regarding the reluctance to join the Schengen area and apply on its territory Schengen acquis is reduced primarily to an influx of migrants and other foreigners whose stay in the country that is impossible to control [3].

Guided by the principle of distinction (opt-out), enshrined in the Schengen Protocol No. 19, Protocol No. 21 and the number of decisions of EU Council and EU Commission, UK and Northern Ireland are free to decide which provisions of the Schengen acquis participate fully or partially. The main areas that countries must implement in their national legislation, are connected with the cooperation of judicial and police authorities in the Schengen information system and the protection of personal data. The UK and Northern Ireland continue to be monitored at the external borders to prevent in their territory illegal migrants.

Definitely the immigration sphere along with economic and social issues led to the referendum in June 23, 2016 in the UK regarding the country's withdrawal from the European Union (Brexit). In particular, by the results of the referendum 52% of voters voted for secession from the EU against 48% of the supporters who expressed a desire to stay.

On April 29, 2017 in Brussels was held a special EU summit devoted to the issue of a British exit from the EU , guided by the

relevant legal basis, namely article 50 TEU. The results of the summit was the adoption of a number of directives for negotiations on Brexit. In particular, in the UK for two years it is necessary to radically revise the EU legislation, which has already become part of the legal system of the country. And it's almost 100 thousand pages of all legal acts of the European Union.

Except the UK and Northern Ireland, under the Schengen Protocol, certain reservations regarding the measures taken in the framework of the Schengen acquis, has made Denmark, together with Sweden and Finland. Denmark signed the Schengen Convention in 1996, thereby joining other States of the Schengen area. In particular, the flexible approach of Denmark to participate in the Schengen acquis reflects the concept of a la carte. According to this concept Denmark selects only those provisions of the Schengen acquis which will be implemented in their national legislation and apply them.

On 11 and 12 December 1992 in Edinburgh (Scotland) at the European Council meeting of heads of States and governments of member States of the European Union was adopted a Decision on the position of Denmark (hereinafter – the decision Edinburg 1992). According to the annexes to document Denmark's warning was taken into account. With regard to the participation of the country in the field of justice and internal affairs, the position of Denmark has been clearly and unambiguously defined in Annex D to the document. Accordingly to it Denmark fully participates in the cooperation in the field of justice and home affairs under title VI TEU. This section covers the issue of asylum, controls at external borders, immigration policy, co-operation of authorities in civil and criminal cases.

On 1 December 2000 the EU Council adopted a Decision 2000/777/EC, according to which starting from 25 March 2001 the Schengen acquis will be covering the five countries of Nordic Passport Union, namely: Denmark, Finland, Sweden, Iceland and Norway . The only requirement for these countries was the proper implementation of the Schengen information system (hereinafter – SIS), which began to operate on the territory of States from 1 January 2000. To verify the compliance of States with their obligations was created the evaluation team (Evaluation Groups), whose main task was to conduct regular visits to each of the States of the Northern passport Union. Separate reports for each country in relation to the operation and development of SIS had to be submited to the EU Council before 1 March 2001.

Given the positive results of the SIS action in Denmark, Finland, Sweden, Iceland, Norway, and their compliance with the requirements of checks at the external borders (especially airports and ports), on 26 February 2001 the EU Council adopted a Decision on the Schengen acquis in these States [4].

A special legal status in relations with the countries of the Schengen area has Bulgaria, Romania, Cyprus and Croatia. Countries, though are members of the European Union and are subject to the provisions of the area of freedom, security and justice, however, they are not part of the Schengen area. Most fully the specific character of the relations of Bulgaria, Romania, Cyprus and Croatia with Schengen space is primarily manifested in the visa sphere.

In particular, on 27 May 2014, the European Parliament and the EU Council adopted Decision No. 565/2014/EC, which introduced a simplified regime for control of third country nationals at the external borders based on unilateral recognition by Bulgaria, Croatia, Cyprus and Romania with their national visas for transit and stays on their territory that are not to exceed the period of 90 days within 180 days. This decision was reversed a previous Decision No. 895/2006 /EC and No. 582/2008/EC respectively.

Each of these countries has its special relations with the countries of the Schengen area. The specificity of these relations is manifested through the adoption at the national level, each country's respective legal acts promoting the implementation of the adopted by the institutions of the European Union documents. As a rule, in the form of legal acts are represented the decisions and resolutions of the state authorities of Bulgaria, Romania, Cyprus and Croatia, respectively.

One of the first States to implement Decision No. 565/2014/EU became Bulgaria. In accordance with the decision of Council of Ministers of Bulgaria Republic № 459 from 03 July 2014, it was established that nationals of third countries can enter the territory of Bulgaria with a period of stay up to 90 days within 180 days without opening national visas of Bulgaria in certain cases. They are associated usually with the presence of a valid two – or multiple entry Schengen visa

Persons who have not open a valid Schengen visa, can obtain a national visa of Bulgaria. However, the presence of the latter gives the right to citizens of third countries to visit Schengen States. At the same time national visa has its advantages. Such a visa will be able to take full advantage of those tourists who choose tours to Europe by car and, for example, plan to visit not only Bulgaria, but also Croatia and Montenegro. In addition, to obtain a national visa of Bulgaria is not difficult, even for those who have never traveled to Europe.

After Bulgaria, the next country that has implemented a Directive 565/2014/EU of the European Parliament and of the Council of the EU was Romania. The government of Romania in its ruling adopted a decision according to which from 1 February 2014, nationals of third countries with two - term and long-term visas or residence certificates issued by the States of the Schengen area may enter the Romanian territory for a period whose duration will not exceed 90 days within 180 days without a short-term Romanian visa, if the presented documents are still valid and the number of entries and duration of authorized stay had not been exhausted. Thus, even though the presence of multiple or double entry visas, there is the possibility of obtaining the Romanian visa. For example, citizens of Ukraine, who are studying in Romania, it is mandatory to obtain a national visa of this state.

In turn, the decision of the Government of the Republic of Croatia from July 22 2014 also approved the Decision No. 565/2014/EU. According to the decision of the Government of Croatia all foreign nationals who are holders of valid Schengen visas and holders of visas and residence permits on the territory of Bulgaria, Cyprus and Romania do not require an additional (Croatian) visa to enter the territory of Croatia.

Visa for transit or stay in Croatia do not need foreigners who are owners of: two - or multiple Schengen visa type C, valid for all Schengen countries; two - or multiple-entry visas with limited territorial validity (LTV) issued by the owner of the passport, which is recognized by one or more States of the Schengen area, but not all States of the Schengen area, and which is valid for entry to the territory of countries that recognise the passport; long-term visa type D is permitted for a period not exceeding 90 days, issued by one of the Schengen countries. In General, the period of stay on the territory of Croatia may not exceed 90 days within 180 days.

In accordance with the relevant provisions of Decision No. 565/2014/EU of the European Parliament and of the Council of the EU the same visa rules and procedures are applied to third-country nationals when entering the territory of Cyprus [5]. That is, if the third-country nationals possessing a valid two - or multiple entry visa (tourist), they can enter the territory of Cyprus, without executing a national visa. A prerequisite is the validity of such a visa for period of stay in Cyprus.

In the absence of third-country nationals Schengen visa for entry to Cyprus, they need to have one of two types of visas. We are talking about e-Pro-visa and a national visa of the Republic of Cyprus. E-Pro-visas offer the opportunity to apply for an entry visa in electronic format, i.e. using email. It should be noted that such a system can be used to obtain a free single entry visa (tourist) for a period of stay not exceeding 90 days within 180 days. As for national visas of the Republic of Cyprus, then you will need to adhere to standard procedures, that is, submit the appropriate documents to the Embassy or Consulate of the Republic of Cyprus.

Regarding cooperation Bulgaria, Romania, Cyprus and Croatia with Schengen space in other areas of the Schengen acquis, such integration, compared to the visa area is gradual. In particular, Bulgaria and Romania today brought to the functioning of the Schengen information system, usually with the goal of cooperation in law enforcement with other law enforcement institutions of the States of the Schengen area. As to the use SIS in full, in particular in the field of external border control, this will happen with the accession of the countries in the Schengen area and abolition of internal border checks. In turn, Cyprus and Croatia are currently undertaking preparatory measures for their integration into the Schengen information system.

The main obstacle to the accession of Bulgaria, Romania, Cyprus and Croatia to the Schengen area is their inability for various reasons to implement fully a number of legal norms and actions in the framework of the Schengen acquis. In particular, among the main reasons for the unwillingness of Bulgaria and Romania become members of the Schengen area there are problems associated primarily with the fight against corruption and organized crime.

In particular on14 January 2017 in Romania according to the published data of the chief Prosecutor of the National anti-corruption Laura Codruta Kovesi only for 2016 in the country was transferred to the court of 1,300 criminal cases on corruption, on the dock there were three Ministers, 18 members of Parliament, mayors and 47 of the 21 Director of large commercial companies. As a rule, one third of criminal cases investigated by prosecutors of the National office for the fight against corruption in 2016, was linked with abuse of office. The total loss caused to the state are estimated at 260 million euros .

In addition, 25 January, 2017 in the city of Brussels held a meeting of the EU Commission, which discussed the issue of preparedness of Bulgaria and Romania to join the Schengen area. Following the meeting agreed that countries need to take additional measures for the implementation of reforms and requirements in the framework of the mechanism for cooperation and verification (hereinafter - MCVs). This mechanism, which was launched in 2007, sets out the requirements for reforms in the justice sector, fight against corruption and organized crime in both countries and is a monitoring tool for the national implementation of such requirements. In the press release of the EU Commission noted that, despite substantial progress, the authorities of both countries need to take a number of measures. In particular, Bulgaria needs to implement judicial reform, to conduct a more effective fight against corruption and organized crime. In turn, Romania is required to intensify the fight against corruption and ensure the independence of the judiciary. Following a report on the readiness of Bulgaria and Romania to join the Schengen area will be presented in late 2017.

However, we would like to stress that this is not enough for countries to provide positive reports on their national reform. The fact that the final decision about the country's accession to the Schengen area must take all States without exception of the Schengen area. For example, in 2011 and 2013, the EU Council rejected the initiative of the European Parliament considering the complaints of representatives of the Netherlands and Finland about the poor activities of the governments of Bulgaria and Romania on combating corruption and organized crime. Also concerns were expressed about the potential increase in volumes of illegal immigrants from Turkey through Bulgaria and Romania to the European countries. Therefore, countries will have to prove themselves more radical reforms and approaches with respect to their compliance with European values.

Joining on July 1 of 2013 the European Union of Croatia, which became the second, after Slovenia, the former Yugoslav Republic of, demonstrated by the fact that Croatia fully shares the democratic principles and values of the Union. Earlier it was planned that by the end of 2015 Croatia will join the Schengen area. However, the situation has changed in connection with the legal dispute that arose immediately after the country's accession to the EU. Until 1 July 2013, Croatia has amended the law so that the European arrest warrant did not apply to citizens of Croatia who committed crimes before 2002. Such a prohibition potentially protect the participants of the Croatian war 1991-1995 from prosecution for war crimes on the territory of the European Union. Legal inconsistency arose when Brussels demanded from the Croatian government to extradite to Germany a former intelligence officer Joseph Percovich, who is accused of murder. The speaker of EU Commissioner for Justice Viviane Reding stated that violations of the law is contrary to the fundamental principles of European justice and cooperation. Accordingly, the fact of any change in legislation in anticipation of joining the European Union in the European Commission called a serious violation of European legislation. Therefore, the question of the accession of Croatia into the Schengen area is still open.

Conclusions. In order to become the Member State of the Schengen area, it is not enough to gain membership in the European Union or to sign the agreement on accession to the Schengen Convention of 1990. One of the necessary conditions of accession of third countries to the Schengen area is primarily their ability and the ability to properly apply all laws and legal measures, which together constitute the Schengen acquis. This means that the national legislation of third countries must fully comply with the basic provisions of the Schengen acquis related to the abolition of checks at internal borders and the introduction of certain rules concerning the crossing of external borders; the common visa policy; a common immigration policy; the cooperation of States

for asylum; cooperation of judicial, police authorities of the Member States of the Schengen area; the protection of personal data and the functioning of the Schengen information system.

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ТЕОРЕТИКО-ПРАВОВЫЕ ОСНОВЫ ФОРМИРОВАНИЯ ИНВЕСТИЦИОННОЙ СОСТАВЛЯЮЩЕЙ НАЛОГОВОГО ЗАКОНОДАТЕЛЬСТВА УКРАИНЫ

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АННОТАЦИЯ

В статье проводится теоретико-правовой анализ научных позиций и норм налогового законодательства на предмет выявления наличия аргументационной базы относительно инвестиционной составляющей налогообложения в современной науке финансового права. Обоснована необходимость нормативно-правового закрепления дефиниции налогового инвестирования как дополнительного элемента налогового механизма, который сможет повлиять на смягчение фискальной налоговой нагрузки. Доказана целесообразность в науке финансового права, наряду с налоговыми льготами и специальными механизмами налогообложения, внедрять такой дополнительный элемент правового механизма налогообложения, как налоговое инвестирование, и понимать его как деятельность государства в сфере налогообложения с целью создания ориентиров развития предпринимательской производительской деятельности.

Ключевые слова: законодательство, налоговое инвестирование, национальный производитель, налоговое давление, налоговая льгота, теоретико-правовой анализ, финансово-правовой механизм.

THEORETICAL AND LEGAL BASES FOR FORMATION OF THE INVESTMENT COMPOSITION OF THE TAX LEGISLATION OF UKRAINE

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SUMMARY

A theoretical and legal analysis of scientific positions and norms of the tax legislation was conducted for the purpose of revealing the existence of an argumentative basis regarding the instigation of taxed taxation in modern science of financial law. The necessity of the legal definition of the definition of tax investment as an additional element of the tax mechanism, which can influence the mitigation of fiscal tax burden, is substantiated. Proven expediency in the science of financial law, along with tax privileges and special mechanisms of taxation, to introduce such an additional element of the right mechanization of taxation, as tax investment and understand it as the activity of the state in the field of taxation with the aim of creating benchmarks for the development of entrepreneurial productive activity.

Key words: legislation, tax investment, national producer, tax pressure, tax privilege, theoretical and legal analysis, financial and legal mechanism.

Постановка проблемы. Обеспечение устойчивого развития общественных отношений в Украине возможно при условии изменения и усовершенствования правового регулирования финансово-экономических отношений. Использование субъектами предпринимательской деятельности законодательно закрепленной государством модели инвестиционного развития приведет к росту материальных и финансовых вложений в различные отрасли экономики страны. Кроме того, инвестиционные ресурсы