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UKRAINIAN CUSTOMS LEGISLATION APPROXIMATION TO EU STANDARDS

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Summary

In the article, the European customs relations regulation standards are considered. The author considers Ukraine's modern customs legislation development trends and issues in the context of approximations standards for the European Union. The article reveals the structure and the legal nature of the European customs standards, and provides assistance in drawing the conclusions and recommendations aimed at improving the national customs legislation. The customs legislation approximation to the EU standards is particularly important and urgent for Ukraine, since this process is crucial not only for creating a legal basis for the country's possible entry into the EU, but for achieving the according economic goals, as well.

Key words: customs law of EU, customs law of Ukraine, international customs law, approximation of legislation, adaptation of legislation, harmonization of legislation, European integration.

Аннотация

Статья посвящена анализу европейских стандартов регулирования таможенных отношений. В статье исследованы актуальные тенденции и проблемы развития современного таможенного законодательства Украины в контексте приближения к стандартам Европейского Союза. Статья раскрывает структуру и правовую природу европейских таможенных стандартов, а также способствует формированию выводов и предложений, направленных на совершенствование национального таможенного законодательства. Для Украины приближение государственного таможенного законодательства к стандартам ЕС имеет особую значимость и актуальность, поскольку с этим процессом связано не только создание правовой базы для возможного будущего вступления страны в ЕС, а и достижение соответствующих экономических целей.

Ключевые слова: таможенное право ЕС, таможенное право Украины, международное таможенное право, приближение законодательства, адаптация законодательства, гармонизация законодательства, европейская интеграция.

Introduction. Modern European customs relations regulation standards are reflected daily, and the European Customs Union's functioning is enough of a proof to demonstrate these standards' effectiveness. Researching the trends and the problems of the European Union modern customs legislation development, as well as acquiring a deep understanding of its nature stipulates for drawing the conclusions and proposals aimed at improving the national customs legislation.

The purpose of the article is a detailed analysis of the European customs relations regulation standards and the current trends in the modern EU customs legislation development. The analysis of the European customs standards' structure and legal nature stipulates for drawing the conclusions and proposals aimed at improving the national customs legislation.

Researched topic's relevance. The European customs relations regulation standards question itself, as well as these standards' implementation in Ukraine needs to be optimized, and has

to meet the current economic and legal realities necessitating a consideration of certain issues in the context of the signing the Association Agreement between Ukraine and the European Union.

Recent research analysis. It should be duly noted that some particular aspects of the topic have been highlighted in the works of the following scientists: Andriyчук V., Vysotsky A. Goncharuk A., Denisova V., Dodina E., Dubinina A., Egorova O., Karabash N., Kivalov S., Kolyada S., Kormich B., Mazur A., Nastyuk V., Perepelkina S., Primachenko D., Sandrovsky K., Sidenko V., Mazur A., Mokia A., Fedotova I., Filatova V. and others.

Basic material. European integration is the foreground direction of Ukraine's modern foreign policy. One of the problems in this aspect is the one of the customs legislation approximation. The national customs legislation approximation to the EU standards is not only the basis for closer cooperation between the EU and Ukraine, but also a mean to create the necessary prerequisites for the

transition to the next integration stages, including Ukraine's membership in the EU. Until recently, the issue of the customs legislation approximation to the EU standards has been viewed as its adaptation or harmonization with the EU *acquis*. But, in our opinion, considering the signing of the Association Agreement with the EU, it is appropriate to mention the national customs legislation approximation to the EU customs standards, as established in Art. 84 of the Association Agreement [8].

As it is emphasized by A.G. Turchenko, there are several terms used in the international law regarding the processes of legal legislation integration: «convergence», «harmonization», «unification», «adaptation» [7, p. 8–9].

We deem it essential that neither the national nor the international normative legal acts, which operate with these concepts, contain precise definitions of these phenomena, so it results in a lack of a common opinion on the legal content of the concepts having been mentioned.



Ukraine's legislation adaptation to the European Union's one lies within the rapprochement with the modern European legal system, and thus will ensure the development of political, entrepreneurial, social, cultural activity of Ukraine's citizens, the state's economic development within the EU, and will also contribute to the gradual growth of the citizens' well-being, bringing it on par with that of the EU member states

The way we see it, at the present stage of the customs legislation standardization, the very «customs legislation adaptation» concept development in the national doctrine has been narrowed down solely to the customs legislation adaptation to the EU standards.

Therefore, we agree with M. Perepelkin's opinion on the need to carry out the customs legislation adaptation in three basic directions, being: a) international customs law norms and standards, b) EU regulation's standards and practices, c) European states' domestic norms and regulation standards [5, p. 94–95].

As it is highlighted by I. Kravchuk, the important component of the adaptation process is the preliminary law-making process monitoring carried out in order not to enact a legislation which would contradict the EU one [3, c. 75].

E.V. Dodin identifies two following adaptation benchmarks: adaptation to world customs standards and adaptation to EU customs legislation, emphasizing that the adaptation to the EU legislation is just the initial adaptation of Ukraine's current legal system to EU law, the preparatory stage of legal integration as such. It is characterized by only a one-way process of «approximation», identifying the inconsistencies and the unilateral withdrawal of conflicting provisions [2, c. 185].

Besides, he states that, in order to acquire the EU membership, our country has to bring our legislation to meet EU requirements, and then switch completely to its customs laws, as well as its customs policy [2, c. 186]. In our opinion, such a scenario would be

the best one for Ukraine in the nearest future, but the EU customs legislation complexity has to be taken into account during its implementation, since just as the national customs legislation, the EU's one is dynamic enough.

In our opinion, the national customs legislation adaptation to the EU customs legislation could be defined as, a) the first stage of the national customs legislation approximation to the EU customs standards procedure, and, b) the primary process of bringing the national customs legislation into accordance with the norms and standards of the EU customs legislation via improving the national customs standards, including the changes and additions implementation into the current regulations, adopting and adhering to the international treaties on customs issues.

Considering the facts having been mentioned above, we believe that the national customs legislation adaptation to the EU standards is a prerequisite for Ukraine's and EU's the customs legislation harmonization.

Construction of a single legal space to regulate the customs relations between Ukraine and the EU is not possible without the legal regulations harmonization.

V.I. Muravyov emphasizes that the very plight concerning the state's internal law harmonization with that of the European Union only exists in certain types of international agreements having been concluded between the EU and third countries and not aiming at creating an association [4, p. 91].

It is crucial that the associated countries' national legislation harmonization with the EU law is carried out within the legal framework of the EU. However, it's not a given that all the associated states deal with the same acts of the European Union while implementing the harmonization implementation. All intents and purposes, a selective approach exists, when the particular associated countries or groups of countries, depending on the specific objectives defined by the agreement and the cooperation spheres, are provided with

the selected acts to be implemented in order to ensure that the parties fulfill their obligations. [6, p. 153].

In our opinion, the national customs legislation harmonization with the EU customs standards could be defined as an integral element of Ukraine's national customs legislation approximation to the EU standards process, which consists of developing and adopting the national regulations on customs matters to consider the EU customs legislation provisions, incorporating the EU customs legislation acts into the national customs legislation, and adjoining the regional and international agreements on customs issues partaken by the EU member states.

Many researchers have been utilizing the «unification» term along with the concept of 'harmonization'. Thus, A.S. Dovgert believes that harmonization is the law-making process aimed at establishing the legal standards for a number of national legal systems [1, p. 21]. G.S. Fedinyak defined unification as a law-making process aimed at creating (changing, terminating) the legal norms which are identical to the other legal system [9, p. 32].

The way we see it, within the law convergence concept, harmonization and adaptation are the influence methods as the integration process ones. On this basis, they have a common essence, which is to build the legal norms to a unified basis. So, we are faced with a discussion having formed in modern doctrine regarding which term to use: approximation, unification, simplification, harmonization, adaptation or something entirely different.

Thus, we believe that adaptation, harmonization and unification of the national customs legislation with the EU one are a natural evolutionary stages of Ukraine's customs legislation approximation to the EU standards.

It is crucial to comprehend the important trends in the national customs legislation standardization tendency, i.e. compliance with a certain standard, which, in the context of our work, is the European standard



of the customs legislation as the quality characteristics measure.

Thereby, the Ukraine's national customs legislation European standardization is both the process and the result of the increase of the national customs legislation compliance degree with the European one. As a result of the of customs legislation standardization introduction, a standard is being created. Suchwise, the customs legislation standard is a generally accepted and repeated rule, the principle and characteristics of work, aimed at reaching the optimal level of the parties' cooperation, while the national customs legislation is the object of standardization.

Based on the above, Ukraine's customs legislation approximation to the EU standards and Ukraine's the customs legislation standardization with the EU one are synonymous phenomena. Although, we do emphasize that the national customs legislation standardization could also commence according to the international customs legislation in the form of approximation of the national customs legislation to international customs standards.

Hereby, in our opinion, the national customs legislation approximation to the EU standards is a targeted coordinated, integrated, step-by-step process that includes adaptation, simplification, harmonization and unification of the national customs legislation with respect to the EU legislation, and aims at bringing the national customs legislation in compliance with the EU one, with a gradual transition to the EU customs legislation.

So, we believe that the process of Ukraine's customs legislation approximation to the EU customs standards would have been finalized by the moment when Ukraine completely switches to the European legislation regarding its customs relations regulation. Thus, European national law standardization should result in a joint system of customs relations regulation between Ukraine and the EU, and it's possible to achieve that either with full membership of Ukraine in the EU, or with a bilateral cooperation and relevant joint arrangements.

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