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HARMONIZATION OF UKRAINIAN COMMERCIAL LAW TO EU STANDARDS: SOME ISSUES

Preface

Nowadays one of the main tasks in the field of improving the current commercial legislation is the doctrinal understanding of the process of its harmonization. It is obvious that the moment has come when the whole conglomeration of commercial legal institutions, legal principles and separate legal norms needs to be systematized and their expediency clarified.

Problems also arise in connection with the «artificial origin» of a significant part of the norms of Ukrainian commercial law. If the modern commercial law of some European countries can be considered as the embodiment of years of experience in commercial relations regulating and generalized case law, the provisions of the Ukrainian Commercial Code, the Law «On Business Associations», the Law of Ukraine «On Joint Stock Companies» were borrowed largely from foreign sources. At the same time, there was no detailed comprehensive analysis of the models of legal regulation used in to some extent copied regulations, the means of regulation typical of radically opposite models were mixed, and the needs of practice were hardly analyzed.

The legal literature has repeatedly emphasized the strengthening of trends in the interaction of legal systems in the formation of private law in the recent years [1, c. 5-6; 2, c. 59-60; 3]. Along with the process of adaptation of national legislation to European Union legislation as a normative stage, the national legal system converges with the European Union legal system [4, c. 6].

Preconditions of harmonization process

Harmonization and approximation allow to unify the commercial law of Ukraine with the principles of EU law, to prepare a system of legal regulation of business entities to the requirements of European investors, to ensure better functioning of Ukrainian businesses for the EU market conditions. But should we focus solely on the European market and integration into the European Union? The latter's policy towards Ukraine is quite cautious and it is not yet time to hope for Ukraine's rapid accession and EU membership. The capital

market outside Ukraine is not only the EU market, but also a powerful stock market of other G7 members (USA, Canada, Japan), which together account for more than 58% of world wealth [5]. China's dynamically growing market and the economic potential of the Russian Federation should also be taken into account.

Of course, priority should be given to the development of national law, taking into account their own socio-economic conditions of management and the peculiarities of legal consciousness. No foreign legal model will function as effectively as it does in the law of the state to which it is borrowed. However, if we turn to foreign experience, it is advisable to focus not only on the individual law of the EU, Britain, the United States, Germany or the Russian Federation.

The current stage of development of law is characterized as its transformation from national to global, when all national systems of law become identical. This explains that «the problem of uniformity in law is usually seen as a problem of world law» [6, c. 215].

Due to globalization, the legal space is expanding [7, c. 81-88], which is gradually being transformed from national to regional and global [4, c. 6]. This is especially evident in the rapprochement of the Anglo-Saxon and Romano-Germanic legal families. It is not only about the unification of norms in the formation of private international law and the use of foreign law by national courts, but also about changing the system of sources of law. On the one hand, the importance of the statutes is increasing in the United Kingdom and the United States. The statutes are increasingly used in regulating not only public but also private relations [9; 10]. On the other hand, the use of court decisions is expanding in Germany, France and other leading countries of continental Europe as an additional source of law [11].

Due to the processes of convergence of legal systems, research in the field of comparative law is intensifying. E. Lambert, a participant in the Congress of Comparative Jurisprudence in 1900, noted: "Performing a number of practical functions, comparative jurisprudence is at the same time designed to promote the development of general legislative law. A comparison of laws and legal institutions should show that, despite the various formulations, some rules of positive law are repeated in different systems, respectively, they create the rules of general law [12, c. 93].

V. Muravyov notes that in pursuing industrial and entrepreneurial policy, our state must take into account recognized international principles and standards relating, in particular, to the activities of small and medium enterprises. In this area, Ukraine should implement good practice on regulatory methods, which will include EU principles (Articles 378, 379). At each of these levels, there

are several ways to harmonize legislation. At first, it is Ukraine's accession to legal acts that establish international standards in a particular area. The second method involves the harmonization of the provisions of the national regulatory framework with the provisions of the EU regulations, mutual recognition of national standards of Ukraine and the EU [13, p. 12].

The harmonization of economic law is important in this process, in particular the Commercial Code of Ukraine with EU standards. The idea of codification of norms of economic (business) law has become widespread in many countries around the world. In particular, the Western European legal tradition contains examples of the existence of commercial and civil codes. The legal community is well aware of the practice of enforcing these codes in Germany, France, Italy, Austria and other countries.

Codification processes continue. In particular, the example of the legislative work of the Belgian Parliament, can be considered obvious. On February 21, 2013 there was adopted the Economic Code (Code de économique) [14].

The experience of commercial law codification has been adopted by some countries that are part of the common law family. Of course, in this case we are talking about the Unified Commercial Code of the United States. With the emphasis on the codification of economic legislation, legal reforms have been carried out in some East Asian countries. In particular, Commercial and Economical Codes coexist harmoniously in Japan.

Legal basis of harmonization

The legal basis for the harmonization of current legislation are two basic acts: the Partnership and Cooperation Agreement (1994) as well as the Association Agreement between Ukraine and the EU member-states (2014).

The Partnership and Cooperation Agreement between Ukraine and the European Communities and their Member States laid the legal basis for the adaptation process, stating that «an important condition for strengthening economic ties between Ukraine and the Community is the approximation of existing and future Ukrainian legislation with Community law (art. 51).

In accordance with Art. 1 the objectives of the Partnership are as follows: to ensure, within the relevant framework, a political dialogue between the Parties, which will promote the development of close political relations; promoting the development of trade, investment and harmonious economic relations between the Parties and thus accelerating their sustainable development; creation of bases of mutually beneficial economic, social, financial, civil, scientific-technical and cultural cooperation; supporting Ukraine's efforts to strengthen democracy and develop its economy and complete the transition to a market economy.

In connection with the signing of the Association Agreement between Ukraine and the European Union, Ukraine has undertaken efforts for adaption the national legislation to EU standards, implementation of the provisions of EU directives in the field of commercial and corporate law.

The goal of harmonizing Ukraine's commercial law with the EU law is focused on the Association Agreement between Ukraine and EU Member States (2014). The aims of this association are:

(a) to promote gradual rapprochement between the Parties based on common values and close and privileged links, and increasing Ukraine's association with EU policies and participation in programmes and agencies;

(b) to provide an appropriate framework for enhanced political dialogue in all areas of mutual interest;

(c) to promote, preserve and strengthen peace and stability in the regional and international dimensions in accordance with the principles of the United Nations Charter, and of the Helsinki Final Act of 1975 of the Conference on Security and Cooperation in Europe and the objectives of the Charter of Paris for a New Europe of 1990;

(d) to establish conditions for enhanced economic and trade relations leading towards Ukraine's gradual integration in the EU Internal Market, including by setting up a Deep and Comprehensive Free Trade Area as stipulated in Title IV (Trade and Trade-related Matters) of this Agreement, and to support Ukrainian efforts to complete the transition into a functioning market economy by means of, inter alia, the progressive approximation of its legislation to that of the Union;

(e) to enhance cooperation in the field of Justice, Freedom and Security with the aim of reinforcing the rule of law and respect for human rights and fundamental freedoms;

(f) to establish conditions for increasingly close cooperation in other areas of mutual interest.

The Law of Ukraine "On the National Program for Adaptation of the Legislation of Ukraine to the Legislation of the European Union" of March 18, 2004 [15]. was adopted in pursuance of the above-mentioned to some extent declarative legal acts. In accordance with this Law, the Cabinet of Ministers of Ukraine annually approves an action plan for the implementation of the National Program for the Adaptation of Ukrainian Legislation to EU Legislation. In particular, the Cabinet of Ministers of Ukraine adopted the Order «On the implementation of the 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» № 847-r of September 17, 2014 The

Decree of the President of Ukraine of August 21, 2004 outlined specific issues of the organization of implementation of this Law.

Barriers of harmonization process

In order to achieve these goals, it is necessary to overcome certain barriers at the level of national legislation. One of these is the problem of unification of legal terminology. It is expressed the opinion on the expediency of creating a special Center of Legal Terminology in the system of the Academy of Legal Sciences of Ukraine, involving linguists and lawyers, as well as the need to pay serious attention to training specialists in legal terminology. She notes that the unification of terminology is the starting point for harmonization of Ukrainian legislation with European law, without which it is difficult to achieve mutual understanding in the legal field, and believes that the process of adapting legislation should begin with legal terminology. In general, as for the harmonization of terminology at the national and international levels as one of the types of unification, in recent years it is becoming more widely used and now this issue is particularly acute [16, p. 403].

An important problem is not taking into account the modern experience of legal regulation, trends in global reform of commercial law, which to some extent is obvious in most of the leading countries. Moreover, this trend is observed both in economically developed states and those that are just developing.

A serious barrier is the unmotivated borrowing of foreign experience. The use of so-called legal transplants without a clear understanding of the purpose of regulation and analysis of alternative models. Borrowings in law are clearly visible when looking at the development of the post-socialist countries of the former Soviet Union and the Warsaw Pact countries. Many of them when drafting commercial and corporate legislation, turned to foreign law, which had already shown its effectiveness within the country of origin.

Ukraine, like the rest of the post-Soviet countries, faced the challenge of eliminating old and unusable economic and legal institutions based on centralized planning and preparing the legal framework for a market economy to integrate into the world market. It was clear that to achieve this goal by an autonomous evolutionary path of legal development in an extremely short period of time is quite difficult.

At the same time, despite the presence of a significant number of borrowings from foreign law, there are also significant gaps in regulation. Despite implementing many traditional market economy legal institutions in ukrainian commercial law it is visible necessity of future active legislative process. In other case an effective protection of foreign investors is impossible.

This applies to such legal institutions as the institution of class action, corporate veil's doctrine, corporate opportunities and more.

Conclusions

The progress of Ukrainian commercial law approximation to the EU standards and accordingly simplification of the interaction of Ukrainian and EU business entities depends on a quick solution of the problems outlined above.

Taking into account the globalized market economy implementation of foreign legal experience is inevitable. Nevertheless the priority should be given to the national legal traditions, considering national legal culture and mentality.

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Vasylieva V.A., Kovalyshyn O.R. Harmonization of Ukrainian commercial law to EU standards: some issues

The article is dedicated to the process of Ukrainian commercial law harmonization. It is emphasized that the main task in the field of improving the current commercial legislation is the doctrinal understanding of the process of its harmonization. The author makes a conclusion that the moment has come when the whole conglomeration of commercial legal institutions, legal principles and separate legal norms needs to be systematized and their expediency should be clarified.

Harmonization and approximation allow to unify the commercial law of Ukraine with the principles of EU law, to prepare a system of legal regulation of business entities to the requirements of European investors, to ensure better functioning of Ukrainian businesses for the EU market conditions. The EU policy towards Ukraine is quite cautious and it is not yet time to hope for Ukraine's rapid accession and the EU membership.

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The author also stresses in order to achieve these goals, it is necessary to overcome certain barriers at the level of national legislation. One of these is the problem of unification of legal terminology.

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It is emphasized that the progress of Ukrainian commercial law approximation to the EU standards and accordingly simplification of the interaction of Ukrainian and EU business entities depends on a quick solution of the problems outlined above. Taking into account the globalized market economy implementation of foreign legal experience is inevitable. Nevertheless the priority should be given to the national legal traditions, considering national legal culture and mentality.

Keywords: Ukrainian commercial law, harmonization of Ukrainian commercial law, Commercial Code of Ukraine, EU standards