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ПОНЯТТЯ ТА СПОСОБИ ГАРМОНІЗАЦІЇ ПРИВАТНОПРАВОВОГО ЗАКОНОДАВСТВА УКРАЇНИ В СФЕРІ НАДАННЯ ТРАНСПОРТНИХ ПОСЛУГ ІЗ ЗАКОНОДАВСТВОМ ЄВРОПЕЙСЬКОГО СОЮЗУ

Анотація. Стаття присвячена гармонізації приватноправового законодавства України в сфері надання транспортних послуг із законодавством Європейського Союзу. Метою дослідження є формулювання поняття та визначення основних способів гармонізації приватноправового законодавства України в сфері надання транспортних послуг із законодавством Європейського Союзу. Основним методом наукової роботи є метод правового аналізу, використання якого дало змогу визначити можливі шляхи гармонізації національного законодавства в окресленій сфері до європейських стандартів. На підставі аналізу норм національного законодавства та законодавства Європейського Союзу розмежовано терміни «гармонізація», «адаптація» та «наближення». Запропоновано під гармонізацією приватноправового законодавства в сфері надання транспортних послуг із законодавством Європейського Союзу розуміти процес коригування законодавства України на підставі правових актів ЄС, зокрема, директив та регламентів, з метою приведення національного законодавства у відповідність до їх положень. За результатами проведеного дослідження встановлено, що гармонізація приватноправового законодавства України в сфері надання транспортних послуг із законодавством ЄС відбувається трьома способами, а саме: 1) приєднання України до міжнародних нормативно-правових актів, які діють на території ЄС, чи підписання двосторонніх договорів про співпрацю у сфері надання транспортних послуг з країнами ЄС; 2) розроблення та прийняття нормативно-правових актів України у сфері надання транспортних послуг, які враховують положення права ЄС; 3) імплементація в національне законодавство положень регламентів та директив ЄС шляхом внесення змін та доповнень до чинних нормативно-правових актів України. Практичне значення результатів дослідження полягає у тому, що теоретичні положення та висновки можуть стати основою для подальших наукових досліджень правового регулювання договірних відносин з надання транспортних послуг в умовах євроінтеграційних процесів. Матеріали статті можуть бути використані в навчальному процесі для підготовки навчально-методичного забезпечення і викладання відповідних тем у розрізі навчальних курсів цивільного, договірного та зобов'язального права, а також спеціальних цивілістичних дисциплін.

Ключові слова: гармонізація, адаптація, наближення, договірні відносини, надання транспортних послуг, європейські стандарти.

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THE CONCEPT AND METHODS OF HARMONISATION OF THE PRIVATE LAW LEGISLATION OF UKRAINE IN THE FIELD OF PROVISION OF TRANSPORT SERVICES WITH THE LEGISLATION OF THE EUROPEAN UNION

Abstract. *The article is devoted to the harmonisation of private law legislation of Ukraine in the field of transport services with the legislation of the European Union. The purpose of the study is to formulate the concept and determine the main ways to harmonise the private law of Ukraine in the field of transport services with the legislation of the European Union. The main method of scientific work is the method of legal analysis, the use of which made it possible to identify possible ways to harmonise national legislation in this area to European standards. Based on the analysis of the norms of national legislation and the legislation of the European Union, the terms “harmonisation”, “adaptation” and “approximation” were distinguished. It was proposed to understand the harmonisation of private legislation in the field of transport services with the legislation of the European Union as the process of adjusting Ukrainian legislation on the basis of EU legislation, in particular directives and regulations, in order to bring national legislation in line with their provisions. According to the results of the study, the harmonisation of private law of Ukraine in the field of transport services with EU law occurs in three ways, namely: 1) Ukraine's accession to international regulations in force in the EU, or the signing of bilateral agreements on cooperation in the field of providing transport services with EU countries; 2) development and adoption of regulatory legal acts of Ukraine in the field of transport services, which take into account the provisions of EU law; 3) implementation into national legislation of the provisions of EU regulations and directives by making changes and additions to the current regulations of Ukraine. The practical significance of the research results is that the theoretical provisions and conclusions can become the basis for further research on the legal regulation of contractual relations for the provision of transport services in the context of European integration processes. The materials of the article can be used in the educational process for the preparation of educational and methodological support and teaching of relevant topics in terms of training courses in civil, contract and contract law, as well as special civil disciplines.*

Keywords: harmonisation, adaptation, approximation, contractual relations, provision of transport services, European standards.

INTRODUCTION

Having chosen the European integration course, Ukraine has embarked on the path of social, economic and legal reforms. The success of the implementation of the tasks set before the state largely depends on the extent to which national legislation meets the standards of European law. After the entry into force 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 hand¹, one of the priority areas of Ukrainian legislation, including in the field of transport services, has become its maximum approximation to the norms of the *acquis communautaire*. This seems important not only from the standpoint of law-making and law enforcement – to improve the mechanism of regulation of contractual relations for the provision of transport services, but also from an economic point of view, as the provision of such services provides about 8% of Ukraine's gross domestic product. However, the process of harmonisation of Ukrainian legislation in the field of transport services is complicated by the presence of a large number of different legal acts, some of which are outdated and do not correspond to modern dynamics of contractual relations, as well as different legislative approaches to consolidate contractual structures that mediate transport services in codified acts of private law. At the same time, it can be stated that in the mechanism of legal regulation of contractual relations for the provision of transport services still remains a priority to ensure the legal protection of the transport service provider, rather than its customer, including natural person – consumer. Whereas Art. 3 of the Constitution of Ukraine stipulates that a person, his life and health, honour and dignity, inviolability and security are recognised as the highest social value. In addition, a conceptual revision requires a legislative approach to the balance of the application of dispositive and imperative methods of legal regulation of private law relations in the field of transport services [1]. The above gives grounds to assert that the civil doctrine requires scientific and theoretical study of ways to harmonise the private law of Ukraine in the field of transport services with the legislation of the European Union and the effectiveness of their application.

Contractual relations for the provision of transport services have repeatedly been the subject of research in the works of Ukrainian and foreign civilians, including I.O. Bezliudko [2], M.I. Brahinskii, V.V. Vitrianskii [3], I.V. Bulhakova [4], T.V. Hriniaak [5], U.P. Hrishko [6], I.A. Dikovska [7], O.V. Klepikova [8], T.O. Koliankovska [9] and many others. However, such scientific developments usually concerned certain types of contracts that mediate the obligation to provide transport services, or only certain aspects of such contractual relations. At the same time, despite such a large number of scientific works, there is no study in the civil doctrine of the concept and methods of harmonisation of private law of Ukraine in the field of transport services with the legislation of the European Union [10-12]. In this regard, there is no doubt about the necessity to determine the theoretical basis for the process of approximation of national legislation in the field of transport services to European standards. Therefore, such research is aimed at meeting the current needs of science and practice [13; 14]. The purpose of this research is to formulate the concept and determine the main ways to harmonise the private law of Ukraine in the field of transport services with the legislation of the European Union [15-17].

1. MATERIALS AND METHODS

The materials for writing this scientific article were regulations, scientific works of Ukrainian civilians in the field of contract law and researches in the field of European

¹ The Association Agreement between Ukraine, on one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand. (2014, June). Retrieved from https://zakon.rada.gov.ua/laws/show/984_011.

integration processes. The regulatory framework used in the research includes: 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; Consolidated versions of the Treaty on European Union¹; regulations and directives of the European Union in the field of transport services, in particular Regulation (EU) of the European Parliament and the Council 392/2009 on the liability of carriers of passengers by sea in the event of accidents², Regulation (EC) of the European Parliament and of the Council 261/2004 Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing³, Council Regulation 2027/97 on air carrier liability in the event of accidents⁴, Regulation (EC) of the European Parliament and of the Council 1371/2007 on rights and obligations of rail passengers⁵, Regulation of the European Parliament and the Council (EU) 181/2011 concerning the rights of passengers in bus and coach transport⁶, Directive 2008/68/EC of the European Parliament and the Council on the inland transport of dangerous goods⁷, Council Directive 92/106/EEC on the establishment of common rules for certain types of combined transport of goods between Member States⁸, Directive 2002/6/EU amending Directive 97/67/EU on the completion of the internal market for postal services⁹, Directive 2002/39/EU amending Directive 97/67/EU concerning the further opening of postal services of Communities for competition¹⁰; The Civil Code of Ukraine¹¹; Economic Code of Ukraine¹²; National Transport Strategy of Ukraine till 2030¹³; Methodology for determining the criteria of the European integration component

¹ Consolidated versions of the Treaty on European Union (1992, February) and of the Treaty on the Functioning of the European Union (1957, March); (2010, March). Retrieved from https://zakon.rada.gov.ua/laws/show/994_b06.

² Regulation (EC) of the European Parliament and the Council No. 392/2009. (2009, April). Retrieved from <https://eur-lex.europa.eu/legal-content/BG/TXT/?uri=CELEX:32009R0392>.

³ Regulation (EU) of the European Parliament and the Council No. 261/2004. (2004, February). Retrieved from https://zakon.rada.gov.ua/laws/show/994_912.

⁴ EU Council Regulation No. 2027/97. (1997, October). Retrieved from https://zakon.rada.gov.ua/laws/show/994_a93.

⁵ Regulation (EU) of the European Parliament and of the Council No. 1371/2007. (2007, October). Retrieved from <http://doszt.gov.ua/content/media/Reglament-1371-UA.pdf>.

⁶ Regulation of the European Parliament and of the Council (EU) No. 181/2011 amending Regulation (EU) No. 2006/2004. (2011, February). Retrieved from https://minjust.gov.ua/m/str_45893.

⁷ Directive of the European Parliament and the Council No. 2008/68/EC. (2008, September). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008L0068>.

⁸ Council Directive No. 92/106/EEC. (1992, December). Retrieved from https://minjust.gov.ua/m/str_45893.

⁹ Directive No. 2008/6/EC of the European Parliament and of the Council supplementing Directive No. 97/67/EC. (2008, February). Retrieved from https://minjust.gov.ua/m/str_45879.

¹⁰ Directive No. 2002/39 / EC amending Directive No. 97/67/EC. (2002, June). Retrieved from https://minjust.gov.ua/m/str_45879.

¹¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.

¹² The Commercial Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/436-15#Text>.

¹³ National Transport Strategy of Ukraine for the period up to 2030: Order of the Cabinet of Ministers of Ukraine No. 430-r. (2018, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/430-2018-%D1%80>.

of state target programs¹; Action plan for 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 hand²; Strategic plan for the development of river transport for the period up to 2020³; Rules for the carriage of goods in direct mixed rail-water service⁴; Rules for transportation of dangerous goods by inland waterways of Ukraine⁵; Aviation rules of Ukraine “Rules of air transportation and service of passengers and luggage”⁶ and other regulations. Draft laws of Ukraine “On Railway Transport”⁷, “On Inland Water Transport”⁸, “On Multimodal Transportation”⁹, “On Amendments to the Law of Ukraine “On Postal Services””¹⁰, “On Amendments to Certain Laws of Ukraine Concerning Compulsory Liability Insurance of carrier for Damage Caused to Life, Health of Passengers and Third Parties”¹¹ etc.

The methodological basis of this scientific article was general scientific and special legal methods of scientific knowledge. In particular, the use of the method of legal analysis made it possible to determine in 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 hand¹², the main directions of approximation of Ukrainian private legislation in transport services to European standards. The modelling method was

¹ Methodology for determining the criteria of the European integration component of the state target programs: Order No. 62 of the Ministry of Economy and European Integration of Ukraine. (2005, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0438-05>.

² Action plan for 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: Resolution No. 1106 of the Cabinet of Ministers of Ukraine. (2017, October). Retrieved from <https://www.kmu.gov.ua/ua/npas/pro-vikonannya-ugodi-pro-asociaciyu-mizh-ukrayinoyu-z-odniyeyi-storoni-ta-yevropejskim-soyuzom-yevropejskim-spivtovaristvom-z-atomnoyi-energiyi-i-yihnimi-derzhavami-chlenami-z-inshoyi>.

³ Strategic plan for the development of river transport for the period up to 2020: Order No. 543 of the Ministry of Infrastructure of Ukraine. (2015, December). Retrieved from <https://mtu.gov.ua/documents/446.html>.

⁴ Rules for the carriage of goods in direct mixed rail-water service: Order No. 334 of the Ministry of Transport of Ukraine. (2002, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0566-02>.

⁵ Rules of transportation of dangerous goods by inland waterways of Ukraine: Order of the Ministry of Infrastructure of Ukraine No. 126. (2017, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0556-17>.

⁶ Aviation rules of Ukraine: Order of the State Aviation Service of Ukraine No. 1239. (2018, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0141-19>.

⁷ Draft Law of Ukraine No. 7316 on Railway Transport of Ukraine. (2017, November). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=62929.

⁸ Draft Law of Ukraine No. 1182-1 on Inland Water Transport. (2020, September). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66739.

⁹ Draft Law of Ukraine No. 2685 on Multimodal Transportation. (2019, December). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67796.

¹⁰ On Amendments to the Law of Ukraine No. 2984-VI “On Postal Services”. (2011, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2984-17#Text>.

¹¹ On Amendments to Certain Laws of Ukraine Concerning Compulsory Liability Insurance of carrier for Damage Caused to Life, Health of Passengers and Third Parties: Draft Law of Ukraine (2016, May). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59039.

¹² The Association Agreement between Ukraine, on one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand. (2014, June). Retrieved from https://zakon.rada.gov.ua/laws/show/984_011.

used as a universal for scientific argumentation of a number of conclusions and proposals in the development of recommendations aimed at improving the current legislation in the field of regulation of contractual relations for the provision of transport services. The concept of harmonisation of private law of Ukraine in the field of transport services with EU law was clarified using the methods of analysis and synthesis. The dialectical method of research provided an opportunity to highlight the dynamics of amendments to the legislation of Ukraine in the field of transport services. The systematic method was used to systematise the ways of approximation of national legislation in the outlined area to European standards. The use of the method of legal forecasting made it possible to identify possible areas for harmonisation of private law of Ukraine in the field of transport services with the legislation of the European Union. The comparative legal method was used when comparing the norms of individual legislative acts of Ukraine with each other, as well as the provisions of acts of the European Union and national legislation.

2. RESULTS AND DISCUSSION

Ukraine's implementation of the Association Agreement with the EU has led to the frequent use of the terms “harmonisation”, “adaptation” and “approximation” in national legislation, which gives rise to theoretical discussions in scientific doctrine on the relationship between these concepts [18; 19]. Definitions of these terms are enshrined in law. Thus, in accordance with the Methodology for Determining the criteria of the European integration component of state target programs, approved by the Order of the Ministry of Economy and European Integration of Ukraine of March 16, 2005¹, the term “legislative adaptation” is used as a synonym for approximation and is understood as process of bringing the laws of Ukraine and other regulations into line with the *acquis communautaire*. At the same time, the *acquis communautaire* is the EU legal system, which includes (but is not limited to) EU legislation adopted within the EU, the common foreign and security policy, cooperation in the field of justice and home affairs [20]. And harmonisation is the process of bringing national standards into line with EU standards². Thus, the meaning of the terms “harmonisation”, “adaptation” and “approximation” indicates that they are synonymous [21; 22].

The norms of the Association Agreement between Ukraine and the EU on the regulation of transport services use all three of these terms (in particular, in Article 114 – “adaptation”, in Article 138 – “approximation”, in Article 368 – “harmonisation”). Whereas in the founding treaties of the EU the term “harmonisation” is most often used (Part 5 of Article 2, Part 2 of Article 19, Part 4 of Article 79, Part 2 of Article 83, Article 84, Article 113 of the Treaty on functioning of the EU on March 25, 1957³). An analysis of the Consolidated Version of the EU Treaty and the Treaty on the Functioning of the EU with protocols and declarations⁴ makes it possible to conclude that the concept of

¹ Methodology for determining the criteria of the European integration component of the state target programs No. 62. (2005, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0438-05>.

² *Ibidem*, 2005.

³ Consolidated versions of the Treaty on European Union (1992, February) and of the Treaty on the Functioning of the European Union (1957, March); (2010, March). Retrieved from https://zakon.rada.gov.ua/laws/show/994_b06.

⁴ *Ibidem*, 2010.

“harmonisation” characterises the process of bringing legislation in line with EU law within the EU and is a statutory obligation of Member States. Therefore, in the future the authors propose to understand the harmonisation of private law of Ukraine in the field of transport services with EU law, the process of adjusting Ukrainian law on the basis of EU legislation, in particular directives and regulations, in order to bring national legislation in line with their provisions. The directives and regulations of the European Parliament and the Council in the field of transport, to the content of which Ukraine undertakes to gradually approximate its legislation, set out in Annexes XXXII¹ and XXXIII² to Chapter 7 “Transport”, Section V “Economic and Sectoral Cooperation” of the Association Agreement. In total, the annexes indicate 49 EU directives and regulations and schedules for their implementation in Ukrainian legislation. Thus, “civil law must comply with trends in the development of contract law of the European Union” [23; 24].

It is worth agreeing with the position expressed in the legal literature that the provisions of the Association Agreement with the EU on harmonisation are framework in nature, and their implementation requires the adoption of relevant regulations, creation of necessary institutional mechanisms and implementation of certain actions at the international level. and the Union [25]. After all, as noted by A.A. Hryniak, O. Kot and M.D. Pleniuk, the essence and meaning of law become apparent through the regulation of a particular phenomenon [26]. Such a legal act, which determines the principles of approximation of national legislation to European standards, is the National Transport Strategy of Ukraine for the period up to 2030³, approved by the Cabinet of Ministers of Ukraine from May 30, 2018. According to the provisions of this strategy, the priorities of the executive authorities of Ukraine are: 1) ensuring the implementation of the requirements of EU legislation in the field of transportation and harmonisation of Ukrainian legislation with EU legislation by improving the regulatory framework; 2) ensuring the creation of equal and transparent conditions in the market for the provision of transport services, namely: the adoption of regulations on the liberalisation of the transport market and non-discriminatory open competition in accordance with EU legislation; guaranteeing equal, open and transparent access of operators to the transport infrastructure; development of a transparent national market for freight forwarding services, etc.

In addition, the National Transport Strategy of Ukraine⁴ has formed areas for ensuring the development of certain modes of transport, in particular:

–railway transport (liberalisation of the railway transport market on the basis of equal access to railway infrastructure and fair competition between carriers; regulatory and legal support of the railway transport market by adopting a new Law of Ukraine “On Railway Transport”⁵ and relevant bylaws; reforming public administration in the transport sector in accordance with EU standards, introduction of a mechanism for admission to the

¹ Appendix XXXII to Chapter 7 “Transport”. Retrieved from https://www.kmu.gov.ua/storage/app/media/ugoda-pro-asociaciyu/32_Annex.pdf.

² Appendix XXXIII to Chapter 7 “Transport”. Retrieved from https://www.kmu.gov.ua/storage/app/media/ugoda-pro-asociaciyu/33_Annex.pdf.

³ National Transport Strategy of Ukraine for the period up to 2030: Order of the Cabinet of Ministers of Ukraine No. 430-r. (2018, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/430-2018-%D1%80>.

⁴ *Ibidem*, 2018.

⁵ Draft Law of Ukraine No. 7316 on Railway Transport of Ukraine. (2017, November). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=62929.

railway market of carriers of various types of property (licensing, safety certification), structural reform of PJSC “Ukrzaliznytsia” – financial and organisational separation of the infrastructure operator and the carrier);

– road transport (gradual liberalisation of international road haulage; introduction of a new approach to the licensing of road hauliers, including, in particular, requirements for business reputation, financial capacity, professional competence of staff and ensuring the procedure for access to the road transport market in accordance with EU legislation);

– water transport (simplification of formalities for registration of cargo and vessels in commercial ports; institutional and legislative support for Ukraine to fulfil its obligations as a flag state, port state and coastal state in accordance with international treaties of Ukraine and EU legislation; introduction of simplified conditions for registration of vessels under the State flag of Ukraine, the creation of an international register of vessels, the gradual liberalisation of freight transport by inland waterways, the opening of inland waterways for foreign vessels);

– air transport (liberalisation of air traffic by removing restrictions on a parity basis on the number of designated airlines, points and frequencies during flights between Ukraine and the world; signing and implementation of the Common Aviation Area Agreement with the EU while holding bilateral talks on air traffic liberalisation) and other.

To implement these areas, the Cabinet of Ministers of Ukraine approved the Action Plan for 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, dated October 25, 2017, Resolution No. 1106¹. In 2018, in cooperation with the EU, the Cabinet of Ministers of Ukraine developed a draft action plan for 2019-2021 for the implementation of the National Transport Strategy of Ukraine², which is at the stage of public discussion on the website of the Ministry of Infrastructure of Ukraine. The pages of the legal literature identify various ways to harmonise national legislation with EU law, including: 1) accession to legal acts that establish international standards in a given area; 2) harmonisation of the provisions of the national regulatory framework with the provisions of the resolutions of the institutions of the European Union; 3) mutual recognition of national standards of Ukraine and the EU; 4) adoption of national legal acts that take into account to some extent the provisions of EU law; 5) incorporation of EU legal acts into national law; 6) parallel adoption by countries of regulations that are identical or similar in content to EU acts, etc. [27]. The authors will try to identify ways to harmonise the national legislation of Ukraine with the legislation of the EU in the field of transport services. One of the ways to harmonise national legislation is for Ukraine to accede to international regulations in force in the EU, or to sign bilateral agreements on cooperation in the provision of transport services with EU countries. Thus, in accordance

¹ Action plan for 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: Resolution of the Cabinet of Ministers of Ukraine No. 1106. (2017, October). Retrieved from <https://www.kmu.gov.ua/ua/npas/pro-vikonannya-ugodi-pro-asociaciyu-mizh-ukrayinoyu-z-odniyeyi-storoni-ta-yevropejskim-soyuzom-yevropejskim-spivtovaristvom-z-atomnoyi-energiyi-i-yihnimi-derzhavami-chlenami-z-inshoyi>.

² On approval of the action plan during 2019–2021 for the implementation of the National Transport Strategy of Ukraine for the period up to 2030. Retrieved from <https://mtu.gov.ua/projects/view.php?P=193>.

with the Resolution of the Cabinet of Ministers of Ukraine of November 21, 2018, No. 991, Ukraine acceded to the Protocol of 1988 to the International Convention on Trademarks of 1966, with the amendments in 2003, 2004, 2006, 2008, 2012, 2013 and 2014 to it¹.

Annex XXXII to the Association Agreement declares the conclusion and implementation of a large-scale Common Aviation Area Agreement and, regardless of the conclusion of the said Agreement, to ensure the implementation and coordinated development of bilateral air services agreements between Ukraine and EU Member States. According to paragraph 1788 of the Government's Action Plan for the implementation of the Association Agreement, the conclusion of the Common Aviation Area Agreement was scheduled for December 31, 2018. However, according to the website of the State Aviation Service of Ukraine, the negotiation process is still ongoing. The signing of the Agreement was twice postponed at the initiative of the EU. In order to find a compromise and agree on the content of the Common Aviation Area Agreement, consultations are continuing at various levels with the involvement of all stakeholders in the negotiation process. The second way to harmonise the private law of Ukraine in the field of transport services with EU law is the adoption of national regulations of Ukraine, which take into account the provisions of EU law.

Thus, according to the Association Agreement, within 8 years from the date of its entry into force, the provisions of Council Directive 92/106/EEC of 7 December 1992 establishing common rules for certain types of combined transport of goods between Member States must be enshrined in Ukrainian law². Today, the carriage of goods in direct mixed traffic (combined or mixed carriage of goods) are governed by Art. 913 of the Civil Code of Ukraine³ and Art. 312 of the Economic Code of Ukraine⁴, the Rules of carriage of goods in direct mixed rail-water service, approved by the order of the Ministry of Transport of Ukraine dated May 28, 2002⁵. Transportation of goods in direct mixed rail-water service by other modes of transport has not received proper legal regulation. Therefore, in order to eliminate the legislative gap and harmonise domestic norms with the provisions of this directive, the Ministry of Infrastructure of Ukraine has developed a draft Law of Ukraine "On Multimodal Transportation", which is posted on the website of the Ministry for public discussion. The latter defines the legal and organisational principles of multimodal transportation in Ukraine and aims to create conditions for their development and improvement. The lion's share of the articles of this draft legal act is devoted to the regulation of contractual relations for the provision of transport services, in particular, defines the concept of multimodal contract, outlines its essential conditions, establishes the rights and obligations of the parties, their responsibilities (Articles 8-15) and others⁶.

¹ On accession to the Protocol of 1988 to the International Convention on Trademarks of 1966, with the amendments: Resolution of the Cabinet of Ministers of Ukraine. (2018, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/991-2018-%D0%BF>.

² Council Directive No. 92/106/EEC. (1992, December). Retrieved from https://minjust.gov.ua/m/str_45893.

³ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.

⁴ The Commercial Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/436-15#Text>.

⁵ Rules for the carriage of goods in direct mixed rail-water service: Order of the Ministry of Transport of Ukraine No. 334. (2002, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0566-02>.

⁶ Draft Law of Ukraine No. 2685 on Multimodal Transportation. (2019, December). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67796.

In the field of railway transport, a draft Law of Ukraine “On Railway Transport of Ukraine” (Reg. No. 7316 of November 17, 2017)¹ has been developed to implement seven Directives and four Regulations at once. This draft law provides for a comprehensive reform of railway transport management and de-monopolisation of the railway transportation market. By the way, in the Verkhovna Rada of Ukraine, in addition to this bill, several other draft Laws of Ukraine “On Railway Transport of Ukraine” were registered (in particular, No. 3650 of December 14, 2015, No. 4593 of May 5, 2016, No. 9512 of January 30, 2019, No. 1196-1 of September 6, 2019)². The development of draft acts on licensing conditions, determination of fees for access to railway infrastructure, recommendations for the development of safety management systems by railway enterprises, rules of equal access to railway infrastructure³ are underway. According to Regulation (EU) No 1371/2007 of the European Parliament and the Council on the rights and obligations of rail passengers, the rights of passengers⁴ to become national law include: 1) the right to cancel a trip if a passenger receives information that a train arrives at the destination station with a delay of at least 1 hour; 2) the right to demand a return to a station of departure if it is impossible to reach the final destination due to the delay; 3) the right to food, drinks and a place in the hotel in case of long waits; 4) the right to compensation for lost luggage (up to 1300 or up to 330 euros, depending on whether a passenger can or cannot prove the value of things); 5) the right of persons with disabilities to access stations, platforms, train rolling stock and other equipment of persons with disabilities or mobility impairments; 6) the right to information and others.

To comply with Art. 369 of the Association Agreement by the order of the Ministry of Infrastructure of Ukraine dated December 18, 2015, No. 543, the Strategic Plan for the development of river transport for the period up to 2020⁵ was approved. In accordance with this strategy in the short term (up to 3 years, i.e. until 2018) it was planned to adopt the Law of Ukraine “On Inland Water Transport of Ukraine”⁶. However, as of today, the draft law has not been adopted. At the same time, it should be noted that the Verkhovna Rada of Ukraine registered a total of several draft laws on inland water transport of Ukraine⁷ (No. 2475a of August 4, 2015, No. 2475a-d of July 9, 2018, No. 2475a-1 of

¹ Draft Law of Ukraine No. 7316 on Railway Transport of Ukraine. (2017, November). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=62929.

² Draft laws of Ukraine about railway transport of Ukraine: Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc2_5_1_J?ses=10009&num_s=2&num=&date1=&date2=&name_zp=%EF%F0%EE+%E7%E0%EB%B3%E7%ED%E8%F7%ED%E8%E9+%F2%F0%E0%ED%F1%EF%EE%F0%F2&out_type=&id=

³ Report on the implementation of the Association Agreement between Ukraine and the EU for 2019: Results and plans. Retrieved from <https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/ar-aa-implementation-2019-4.pdf>.

⁴ Regulation (EU) of the European Parliament and of the Council on the rights and obligations of rail passengers No. 1371/2007. (2007, October). Retrieved from <http://doszt.gov.ua/content/media/Reglament-1371-UA.pdf>.

⁵ Strategic plan for the development of river transport for the period up to 2020: Order of the Ministry of Infrastructure of Ukraine No. 543. (2015, December). Retrieved from <https://mtu.gov.ua/documents/446.html>.

⁶ Draft Law of Ukraine on Inland Water Transport No. 1182-1. (2019, September). Retrieved from https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66739.

⁷ *Ibidem*, 2019.

August 19, 2015, No. 2475a-2 of August 20, 2015, No. 2475a-3 of June 16, 2017, No. 2475a-4 of March 7, 2018, 1182-1-d of January 17, 2020). Undoubtedly, the adoption of a special legal act that would regulate contractual relations for the provision of transport services in the field of river transport is extremely important. Because, as noted above, the Charter of Inland Water Transport of the USSR of 1955, the rules of which are much outdated, still remains in force on the territory of Ukraine. Certain regulations aimed at improving the legal regulation in the field of transportation have been adopted. For example, pursuant to Directive No. 2008/68/EU of the European Parliament and the Council of September 24, 2008 on the transport of dangerous goods by inland waterway¹, the order of Ministry of Infrastructure of Ukraine of April 4, 2017 approved the Rules for the Transport of Dangerous Goods by Inland Waterways of Ukraine². Pursuant to Regulation (EU) No. 261/2004 of the European Parliament and the Council on the establishment of general rules on compensation and assistance to passengers in the event of refusal and cancellation or long delay of flights of February 11, 2004³ and Council Regulation No. 2027/97 on the liability of air carriers in connection with the carriage of passengers and luggage from October 9, 1997⁴ by the order of the State Aviation Service of Ukraine adopted on November 26, 2018. Aviation rules of Ukraine “Rules of air transportation and service of passengers and luggage”⁵.

The third way to harmonise national legislation in the field of transport services is the implementation in the legislation of Ukraine of the provisions of EU Regulations and Directives by amending existing regulations. Thus, in order to harmonise national legislation with EU legislation in the field of postal services, a draft Law of Ukraine “On Amendments to the Law of Ukraine “On Postal Services”⁶ was developed. It implements the provisions of Directive 97/67/EU of December 15, 1997⁷, as amended by Directive 2002/39/EU of June 10, 2002⁸ and Directive 2008/6/EU of February 20, 2008⁹, which

¹ Directive of the European Parliament and the Council on the inland transport of dangerous goods No. 2008/68/EC. (2008, September). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32008L0068>.

² Rules of transportation of dangerous goods by inland waterways of Ukraine: Order of the Ministry of Infrastructure of Ukraine No. 126. (2017, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0556-17>.

³ Regulation (EU) of the European Parliament and the Council No. 261/2004. (2004, February). Retrieved from https://zakon.rada.gov.ua/laws/show/994_912.

⁴ Council Regulation of the EU No. 2027/97. (1997, October). Retrieved from https://zakon.rada.gov.ua/laws/show/994_a93.

⁵ Aviation rules of Ukraine: Order of the State Aviation Service of Ukraine No. 1239. (2018, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0141-19>.

⁶ On Amendments to the Law of Ukraine “On Postal Services”: Draft Law of Ukraine, developed by the Ministry of Infrastructure of Ukraine. Retrieved from <https://mtu.gov.ua/projects/view.php?P=192>.

⁷ Order of the Cabinet of Ministers of Ukraine No. 222-2015-r on approval of the plan developed by the Ministry of Infrastructure for the implementation of Directive No. 97/67/EC of the European Parliament and of the Council of 15 December 1997 (2015, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/222-2015-%D1%80#Text>.

⁸ Directive No. 2002/39/EC amending Directive No. 97/67/EC concerning the further opening-up of Community postal services to competition. (2002, June). Retrieved from https://minjust.gov.ua/m/str_45879.

⁹ Directive 2008/6 / EC of the European Parliament and of the Council supplementing Directive 97/67/EC on the complete completion of the internal market of Community postal services (2008, February). Retrieved from https://minjust.gov.ua/m/str_45879.

establish common rules for the development of the internal market of the Community postal services and improving the quality of services, including: the provision of universal postal services; financing of universal postal services on the terms that guarantee the provision of services on a permanent basis; tariff principles and transparency of accounts for the provision of universal postal services; setting quality standards for the provision of universal postal services and implementing a system to ensure compliance with these standards and others. The draft law proposes a new concept of a designated postal operator that means the operator or postal operators, which in accordance with the law are intended to provide universal postal services throughout the territory of Ukraine. At the same time, universal postal services are postal services of the established quality level, which are provided to users on a permanent basis throughout Ukraine at prices (tariffs) regulated by the state. Universal postal services include most postal services: postal items weighing up to 2 kg; parcels weighing up to 10 kg; cecograms weighing up to 7 kg; registered and with declared value postal items¹. However, the public was shocked by the information that the draft law does not define the procedure for appointing a new entity – a designated postal operator, which may create the ground for the formation of a new monopoly in the market of postal services, including mail transportation [28].

The Verkhovna Rada of Ukraine is considering a draft Law of Ukraine “On Amendments to Certain Laws of Ukraine Concerning Compulsory Liability Insurance of carrier for Damage Caused to Life, Health of Passengers and Third Parties” (Reg. No. 4642 of May 11, 2016)². Adoption of this bill will ensure, inter alia, harmonised with European legislation liability and insurance regime for the carriage of passengers by sea (compliance with EU Regulation No. 392/2009 on the liability of carriers of passengers by sea in the event of accidents³). During 2019, as part of the adaptation of Ukrainian legislation to EU legislation in the field of road transport, the government developed a draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Regulation of the Road Transport Services Market in Ukraine to Comply with the European Union Act”⁴. According to the Annex to the Association Agreement with the EU, national legislation should reflect the provisions of Regulation (EU) No 181/2011 of the European Parliament and of the Council on the rights of passengers in bus and coach transport of February 16, 2011⁵. Such rights of passengers in the field of road transport include: 1) the right to purchase a ticket and transportation on non-discriminatory terms; 2) the right to receive information on request for transport services in alternative formats accessible to disabled

¹ On Amendments to the Law of Ukraine “On Postal Services”: Draft Law of Ukraine, developed by the Ministry of Infrastructure of Ukraine. Retrieved from <https://mtu.gov.ua/projects/view.php?P=192>.

² On Amendments to Certain Laws of Ukraine Concerning Compulsory Liability Insurance of carrier for Damage Caused to Life, Health of Passengers and Third Parties: Draft Law of Ukraine (2016, May). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59039.

³ Regulation (EC) of the European Parliament and the Council No. 392/2009 (2009, April). Retrieved from <https://eur-lex.europa.eu/legal-content/BG/TXT/?uri=CELEX:32009R0392>.

⁴ Report on the implementation of the Association Agreement between Ukraine and the EU for 2019: Results and plans. Retrieved from <https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/ar-aa-implementation-2019-4.pdf>.

⁵ Regulation of the European Parliament and of the Council (EU) on the rights of passengers in bus and coach transport No. 181/2011 amending Regulation (EU) No. 2006/2004 (2011, February). Retrieved from https://minjust.gov.ua/m/str_45893.

persons and persons with reduced mobility, for example, such as large font, plain language, Braille, electronic messages that can be obtained using adaptive technologies, or audio recordings; 3) the right to receive compensation and assistance in case of accidents; 4) the right of passengers to continue the trip, travel on a changed route and reimbursement of the fare in case of cancellation or long delay of the flight; 5) the right to receive assistance in case of cancellation or delay of dispatch and others. However, as noted by the Government of Ukraine in the Report on the Implementation of the Association Agreement between Ukraine and the European Union for 2019, the transport sector needs increased attention and accelerated implementation of commitments.

CONCLUSIONS

The entry into force 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, has led to the harmonisation of national legislation, including in the field of transport services, with European standards. Annexes XXXII and XXXII to Chapter 7 “Transport” of Section V “Economic and Sectoral Cooperation” of the Association Agreement define 49 directives and regulations of the European Union in the field of transport services and schedules for their implementation in the legislation of Ukraine. However, the provisions of this Agreement are framework in nature, and their implementation requires the adoption of new regulations, amendments to existing legislation, and so on. Based on the above study, the authors propose to harmonise the private legislation of Ukraine in the field of transport services with EU legislation to understand the process of adjusting Ukrainian legislation on the basis of European Union legislation, in particular directives and regulations, in order to bring national legislation in line with their provisions. Harmonisation of private law of Ukraine in the field of transport services with the legislation of the European Union is in three ways, namely: 1) Ukraine's accession to international regulations in force in the European Union, or the signing of bilateral agreements on cooperation in the provision of transport services European Union countries; 2) development and adoption of regulations of Ukraine in the field of transport services, which take into account the provisions of European Union law; 3) implementation in the legislation of Ukraine of the provisions of regulations and directives of the European Union by making changes and additions to the current regulations of Ukraine. At the same time, the process of approximation of private law of Ukraine in the field of transport services to European standards requires systemic changes in national legislation, faster pace and a thorough approach to defining regulations and directives that are implemented in current legislation. Therefore, the topic of harmonisation of private law in the field of transport services with European Union law is interesting for further research to identify conflicts between the laws of Ukraine and the provisions of regulations, directives of the European Union and ways to eliminate them.

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