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## SOME ASPECTS OF THE LEGAL REGULATION OF FOREIGN ECONOMIC ACTIVITIES ON THE BASIS OF THE ASSOCIATION AGREEMENT WITH THE EUROPEAN UNION

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**Abstract.** The article highlights the relevance and necessity of reforms in the field of foreign economic activity, which is closely related to the legal regulation of services. The article analyzes in detail the existing concepts of legal regulation of services and emphasizes the differences between tangible and intangible services, their legal classification and specificity in the context of foreign economic activity. The study is aimed at identifying gaps and shortcomings in the national legislation regulating foreign economic activity, with the aim of developing proposals for their elimination and the introduction of more effective regulatory mechanisms. The impact of the association agreement with the European Union on the development of the service sector of foreign economic activity in Ukraine and the development of recommendations to increase the competitiveness of Ukrainian companies in the international arena are evaluated. The definition and features of services as contractual obligations are presented, especially with an emphasis on their intangible result.

The article discusses the impact of the Association Agreement with the EU on the improvement of the legal framework for foreign economic services in Ukraine, as such modernization opens the door to mutual liberalization of services and expansion of international cooperation. In particular, the importance of consistent implementation of changes to national legislation in order to adapt to EU requirements and standards regarding various types of services, including financial, banking and insurance services, was considered.

The authors single out key aspects affecting the effectiveness of service provision in the field of foreign economic activity, such as regulation of contractual relations, currency regulation and international financial transactions. It was also emphasized the need to remove administrative barriers to attract foreign investors and support domestic producers of services.

In general, the article offers a comprehensive view of the processes and possibilities of modernization of the legal field of Ukraine in the sphere of providing services of foreign economic activity with the aim of integration into the European economic space.

**Keywords:** foreign economic activity, services, legal regime, harmonization, modernization.

**Formulation of the problem.** Foreign economic activity has become one of the main priorities for the development of Ukraine in the 21st century. Relations with international partners have become an

important catalyst for economic changes in the country. They significantly influence the formation of market structures and mechanisms, contribute to the accumulation of capital, the creation of a competitive environment and stimulate the development of domestic business, drawing attention to the international experience of entrepreneurship.

The transition to an open market economy and the termination of the state monopoly on foreign economic activity make the domestic market more accessible to the competition of foreign goods and capital. This opens up new opportunities for the development of the Ukrainian economy and its integration into the world economy.

Currently, more than 100,000 commercial organizations are engaged in foreign economic activity in one form or another in Ukraine, and their number is increasing every year. At the same time, it is necessary to note the fact that in the activities of such firms there are constantly difficulties that are directly related to their implementation of foreign trade. This indicates the urgent need for a comprehensive study of the legal status and timeliness of the specifics of the provision of foreign economic services by business entities.

**Analysis of studies of the problem.** The relevance of the researched topic explains a certain interest of scientific circles in the field of activity under consideration. General issues of administrative and legal regulation, based on legal and economic research, occupy a large part of theoretical research. The works of such authors as: I. I. Dakhno, O. O. Yehorova, O. R. Zeldina, I. I. Kononov, L.V. Krupa, O. B. Morgulets, Y. V. Ostafiichuk, V. Poedynok, N. V. Fedorchenko, Yu. Chirychenko and others.

**The purpose of the article** is to analyze the current legal framework in the field of foreign economic activity in Ukraine, determine the main directions and potential for its reform in accordance with the standards and norms of the European Union. The study is aimed at identifying gaps and shortcomings in the national legislation governing FEA, in order to develop proposals for their elimination and the implementation of more effective regulatory mechanisms. The goal also includes assessing the impact of the Association Agreement with the EU on the development of the FEA services sector in Ukraine and developing recommendations for increasing the competitiveness of Ukrainian companies in the international arena.

**Presentation main material.** Before moving on to the direct consideration of the issue, we consider it expedient to outline the essence of the concept of “service”, which is key in this context. Thus, the concept of “service”, possessing many shades of meaning in national law, has blurred boundaries. Scientists and practitioners also did not reach a consensus, so three main concepts about the concept of “service” and the legal regulation of relations arising in connection with its provision were highlighted:

- “differential”, provided for the issuance of special laws in certain branches of the service sphere;
- “integral”, proposed to concentrate all protection of the rights of “citizen-consumers” in one law;
- “specialized bases”, the authors of this concept, proposed to include the “Services” chapter in the Basics of Civil Legislation of the Union Republics [1, p. 185].

According to Part 1 of Article 901 of the Civil Code of Ukraine, in a contract for the provision of services, one party (the contractor) undertakes to perform certain actions or activities at the request of the other party (the customer), who will receive these services as a result. In turn, the customer is obliged to pay the executor for these services, except when other conditions are stipulated by the contract. [2]. That is, the “integral concept” prevailed and was adopted by the legislator, and implemented in the Civil Code and the Law of Ukraine “On Protection of Consumer Rights”.

In scientific circles, depending on the understanding of the essence of the service itself, its definitions were proposed. According to D. A. Zhmulina, the most widespread definition of “service” is the definition of a service as an activity that has an intangible result. O.D. Sheshenin noted that providing a service does not imply a material result. According to O. S. Ioffe, the service contract refers to activities aimed at achieving various other effects. According to M.I. Braginsky, the concept of services in civil literature remained in its former form even after the adoption of civil legislation, which separated the contract for the provision of services into a separate chapter. At the same time, the legal literature criticizes the use of the absence of a material result as a key feature of the service [3, p. 36–37].

Current legislation distinguishes services that are the object of contractual obligations (tangible) from intangible services that are the subject of obligations to provide them. However, there are services that are directed not only to the process of activity, such as education, treatment, etc., but also to the achievement of a specific desired materialized result, which is usually individualized.

Therefore, “service” can be considered as a phenomenon with two aspects: some services lead to an intangible result, while others are aimed at achieving a specific material result. Some services are included in the category of household services and are intended to achieve a certain material effect, which can be completely separated from the personality of the provider. In the process of providing the service, the emphasis is on creating the desired material result. So, when it comes to a material result, the service has a number of characteristics and properties that are specific to this result. Thus, a service contains elements of a result, which can be tangible or intangible. At that time, it should be noted that the intangible service is inseparable from the person providing the service, that is, the very activity of the person providing the service, as it is consumed by the customer in the process of providing it.

Now we can analyze the services of foreign economic activity. The Law on Foreign Economic Activity interprets services as goods, including products, works, intellectual property and other non-property rights that are intended for sale or paid transfer [4].

Yu. Chichirenko rightly emphasizes that the sale and production of services are closely related, and the key aspect in the trade of services is the purchase and sale. This process involves both Ukrainian and foreign business entities (residents and non-residents) and is based on their interaction, which takes place both inside the economic territory of Ukraine and outside its borders [5, p. 65].

However, this is a purely economic approach, and in the framework of our study, it is not sufficient, as it does not contribute to the proper legal provision of services in the field of foreign exchange. Since the execution of the contract for the provision of services is accompanied by many stages – obtaining permits, using property, movement of capital and labor both within the country and crossing the border, etc. The above requires a legal characterization of the services of the foreign trade union.

For example, the provision of Art. 57 (formerly 50) of the Federal Treaty, according to which “services within the meaning of this Agreement are services that are usually provided for remuneration, to the extent that they are not subject to the provisions on the free movement of goods, capital and persons. Such services, in particular, include: a) activities of an industrial nature; b) commercial activity; c) handicraft activity; d) activities of liberal professions” [6]. That is, it emphasizes the fact that services, being undeniably an economic good, along with goods – products, works, capitals, still require different legal regulation, due to their specificity as an object of law.

Civil law divides services into the following types: services, in the performance of which the executor applies legal actions (for example, a mandate or commission), services of a factual nature (such as storage or transportation), mixed services (trust management of property, transport forwarding) and credit services of a monetary nature (loan, credit agreement, factoring, bank account maintenance, bank deposit agreement) [7, p. 514].

Unlike civil law, which categorizes services by the nature of actions, Article 4 of the Law on Foreign Trade does not make such a division, but lists a wide range of services without limiting their number. Among them are production, transport and forwarding, insurance, consulting, marketing, export, mediation, brokerage, agency, consignment, management, accounting, auditing, legal, tourist and other types of services that are not directly and exclusively prohibited by the legislation of Ukraine [4]. This list is quite general, and can be clarified by referring to the provisions of the State Classifier of Products and Services.

It should also be noted that Article 4 of the Law on Foreign Trade includes such points as: international financial transactions and transactions with securities in cases established by the legislation of Ukraine; credit and settlement operations between participants in foreign economic activity and foreign economic entities, as well as transactions involving the purchase, sale and exchange of currency at currency auctions, stock exchanges and the interbank currency market. These types of activities are also

considered services and are subject to the norms regulating the provision of services in the field of foreign economic activity [4].

According to the Law of Ukraine “On Financial Services and State Regulation of Financial Services Markets”, a financial service is defined as transactions with financial assets that are carried out for the benefit of third parties at their own expense or at the expense of these persons, and in certain cases provided for by law, also for account of funds raised from other persons. These operations are aimed at earning profit or preserving the real value of financial assets. [8].

Article 47 of the Law “On Banks and Banking Activities” describes that financial services include banking operations related to:

- attracting money and bank metals into deposits (deposits) from a wide range of legal entities and individuals;
- opening and management of clients' current (correspondent) accounts, including accounts in bank metals, as well as escrow accounts;
- placement of funds involved in deposits, including on current accounts, as well as bank metals, which occurs on behalf of the bank, on its own terms and at its own risk. [9].

Therefore, in the relevant legislative acts, the concept of financial services is explained using the term “financial transaction”, which has a broad meaning. However, this may cause some confusion of terms, since the word “transaction” can also be used to refer to a specific action that takes place within the framework of an agreement to provide a financial service and is an element of the service itself that is often repeated (narrow understanding).

The terminological distinction between separate concepts is specified in Directive No. 2002/65/EC of the European Parliament and the Council, which concerns distance marketing of consumer financial services and amends Council Directive No. 90/619/EEC and Directives No. 97/7/EC and 98/27 /EU (updated on 03/20/2014).

According to paragraph 17 of this Directive, opening a bank account, issuing a credit card, or concluding an agreement on the management of a portfolio of assets can be considered as an example of a “primary contract for the provision of services”. Examples of “operations” include depositing funds, withdrawing them from an account, making credit card payments, and conducting transactions within the framework of an asset portfolio management agreement. The introduction of additional elements to the primary contract for the provision of services, such as the possibility of using electronic payment instruments within the existing bank account of the consumer, is not classified as a “transaction”, but is interpreted as an additional contract covered by the regulation of this Directive. Subscription to new shares of the same mutual investment fund is considered as a series of “consecutive transactions of a similar nature” [10].

The classification list of WTO service sectors covers more than 160 different types of services, divided into 12 main categories: “business services; communication and audiovisual services; construction and engineering services related to construction; distribution services; educational services; services in the field of environmental protection; financial services; services in the field of health care and social security; tourist and travel services, leisure organization services, cultural and sports events (except audiovisual services); transport services; and other services” [11].

It should be emphasized that the list of services in the field of foreign economic activity is actually not limited and may include various new types of services that are constantly appearing. For example, the Association Agreement introduces the concept of “new financial service”, which refers to services related to existing and new financial instruments or methods of providing them, which are not offered by any financial service provider in the territory of one of the parties, but are available in the territory the other side [12]. We believe that this formulation is correct, because it can be used for a large number of new services that are emerging in various fields in our modern times. Thus, it is possible to generalize that foreign economic activity in the provision of services has its own characteristic features, which are determined by the specificity of the service as an object.

It is known that the conclusion of the contract is a prerequisite for the provision of services. According to Article 6 of the Law on Foreign Trade, a foreign economic agreement (contract) may be concluded by a subject of foreign economic activity or its representative in a simple written form or electronically, except when an international agreement of Ukraine or legislation requires otherwise. [4]. However, with the introduction of changes to some laws of Ukraine through the Law “On Amendments to Some Laws of Ukraine Regarding the Elimination of Administrative Barriers to the Export of Services”, the definition of the form of a foreign economic agreement (contract) during the export of services (except for transport) was liberalized. Such a contract can now be concluded by accepting a public offer (offer), exchanging electronic messages, or by other means, including issuing an invoice (invoice), also in electronic form, for the services provided. [13], which generally corresponds to world trade practice.

Provisions of currency and tax legislation constitute an equally important part of the legal regulation of the regime of provision of services in the field of foreign exchange. Currently, the rules of currency regulation and supervision (control) are established by the Law of Ukraine “On Currency and Currency Transactions”.

All settlements under foreign economic contracts are subject to currency control. As part 2 of Article 13 of the Law of Ukraine “On Currency and Currency Transactions” indicates, the National Bank of Ukraine can set a deadline for payments for exported goods. In accordance with this, the funds must be credited to the accounts of residents in banks of Ukraine within the terms established by the contract, but no later than the term established by the National Bank. The term of payment of the debt begins to be calculated from the date of customs clearance of products for export. For exported works, services, intellectual property rights or other non-property rights, it is determined from the moment of formal execution of the act, account (invoice) or other document confirming their provision. [14].

An important step to support the export of services was the cancellation of the requirement for the mandatory sale of foreign exchange earnings by business entities, in accordance with the Resolution of the Board of the National Bank No. 78 of June 18, 2019 “On Amending the Regulation on Protection Measures and Defining the Procedure for Carrying Out Certain Operations in foreign currency” [15]

The State Classifier of Products and Services (SCP) has a significant role in the field of trade in services. This classifier was created in accordance with the Decree of the Cabinet of Ministers of Ukraine dated 04.05.93 No. 326, which concerns the concept of development of national statistics of Ukraine and the State program of transition to the international system of accounting and statistics. The use of DCP is mandatory for central and local executive authorities, financial institutions, statistical institutions, as well as for all business entities, including legal entities and individuals in Ukraine [16].

It should be noted that the DCP is consistent with the State Classifier of Ukraine DK 009–96 “Classification of Types of Economic Activity” (KVED), but provides a more detailed specification of classification groups of products and services. Such detailing is the result of the harmonization of the DCP with the Statistical Classification of Products and Services by Activities (CPA) and with the list of products of the European Union (PRODCOM). [16]. This, in turn, provides a positive basis for Ukraine's transition to the international system of accounting and statistics.

Within the framework of the EU, the basis of the legal regime for the provision of services is Art. 56–62 (49–55) of Chapter 3 “Services” of the FSEU. Thus, Article 56 (formerly 49) of the TFEU prohibits limiting the freedom to provide services within the Union in relation to citizens of Member States who conduct business in a Member State other than the one for whose citizens the services are intended. The European Parliament and the Council, by decision, may extend the benefits arising from the provisions of this chapter to service providers who are nationals of third countries and have established their own business within the Union. The FSEU fully supports the efforts of Member States to liberalize services, if their economic situation and the situation in the sector concerned allows them to do so [6].

At the same time, the issue of free movement of services in the transport sector does not fall within the scope of Chapter 3, and reforms in the banking and insurance sectors related to the movement of capital should be carried out in conjunction with the process of liberalization of the movement of capital.

Due to the specifics of these types of services, the main aspect of the freedom to provide services in foreign economic activity is the possibility of free movement of services, in particular the persons who provide or receive them. In this context, the words of V. Muravyov are considered appropriate. It indicates that the freedom of movement of services has a cross-border nature and may include situations where the provider and the recipient of services remain on the territory of their countries, and the service is provided across the border; when the provider or recipient of the service moves to the territory of another member state for the purpose of providing or receiving the service; when the provider and recipient of services move to the territory of another member state in order to receive the service, etc. [17]. Thus, the provisions of the Treaty on the Functioning of the European Union regarding services are supplemented by EU Directive 2004/38 of April 29, 2004 [18].

The procedure for regulating the provision of services in the countries that are part of the Union is detailed in the acts of “secondary legislation” of the EU, the main of which is Directive 2006/123/EU “On services in the internal market”. This Directive defines services as “any economic activity that is not wage labor, which is usually carried out for remuneration (Article 4), its provisions apply only to services provided in exchange for an economic equivalent (Article 17)” [19].

According to point 5 of the Directive of the European Parliament and of the Council “On services in the internal market”, it is important to remove obstacles to the freedom of establishment of providers in member states and the free movement of services between these states, providing legal clarity for recipients and providers to effectively exercise these fundamental freedoms. Since obstacles in the internal market for services affect both entities wishing to start a business in other Member States and those providing services in another Member State without establishing their enterprise in its territory, it is important to ensure that suppliers can develop their activities in the internal market for services by establishing their company in a member state or using the free movement of services. Suppliers should be able to choose between these two freedoms depending on their development strategy in each Member State [19].

We draw attention to the fact that the Directive does not accidentally distinguish between these two freedoms, since the practice of the Court of Justice of the EU provides for the parallel effect of Articles 49 and 56 of the TFEU.

Directive 2006/123/EC also notes that various obstacles in the internal market make it difficult for suppliers, in particular small and medium-sized enterprises, to expand beyond national borders and take full advantage of the internal market. This negatively affects the competitiveness of suppliers from the European Union on the world stage. A free market involving Member States removing obstacles to the cross-border provision of services while strengthening transparency and consumer information could give consumers more choice and better quality services at more affordable prices. [19].

As for the analysis of the impact of the provisions of the Directive on services under consideration by us on the legal regime of their provision for Ukraine, first of all, they should be examined in the context of the introduced requirements of the UEU, because the text of the Association Agreement contains a provision regarding the organizational and economic provision of the order of service provision in the field ZED, in its content it is similar to the provisions of Directive 2006/123/EC.

Chapter 6 of the Association Agreement is devoted directly to services, which specifies the measures necessary for the mutual liberalization of trade in services. These measures include the following:

1. Gradual mutual liberalization of the establishment of entrepreneurial activity.
2. Cross-border provision of services.
3. Cooperation on electronic commerce.
4. Basics of trade in other types of services, such as computer, postal, courier, telecommunication, financial, transport and others.
5. Liberalization of measures of the parties regarding the entry and temporary stay in their territory of service providers, such as key personnel, business visitors, managers, specialists, graduates-trainees, sellers of business services, contractual service providers and independent specialists [20].

It is worth paying attention to clause 3 of Chapter 6 of the Agreement entitled “Cross-border provision of services”. According to the Association Agreement, “cross-border provision of services” means the provision of services:

- from the territory of one Party to the territory of another;
- on the territory of one Party to the consumer of services of another Party, which generally have signs of foreign economic activity [12].

According to Article 93 of the Agreement on market access through the cross-border provision of services, each Party shall apply to the services and service providers of the other Party a treatment no less favorable than that provided for in the special obligations contained in Annexes XVI- B and XVI-E to this Agreement.

Therefore, in view of the assumed obligations to ensure the national regime for enterprises that will provide cross-border/foreign economic services, Ukraine should modernize its national economic legislation to such an extent that it would be possible to introduce conditions for the implementation of activities that economic entities The EU could count on the territory of any other member state, the conditions to which they are accustomed and which they are ready to fulfill. This commitment is extremely important for Ukraine, since we are a country that has been losing foreign investors for years due to complex, bureaucratized business procedures, lack of real and effective guarantees of investment protection.

**Conclusion.** Thus, it can be noted that foreign economic activity in the field of service provision has its own characteristics, which arise from the unique nature of services, in particular:

- 1) movement of services across the border, unlike goods, cannot be physically recorded. Export and import of services can have an exclusively formal basis and be based on legal requirements.
- 2) services are not subject to customs control, and unlike goods, they are not issued by a cargo customs declaration. However, appropriate documents may be drawn up regarding the property used to provide the service.

The Profile Law on Foreign Trade in general does not establish any special rules regarding the import/export of services – the relevant conditions, requirements and restrictions are contained in economic, tax, customs, currency and other legislation. At the same time, similar regimes regarding the implementation of foreign economic activities for the provision of services have been introduced in the EU.

The backwardness of Ukraine in the sphere of export of services compared to the leading countries of the world is one of the main problems of its economic development at the current stage. These problems can be identified and clearly defined in order to focus on overcoming them and ensure effective external economic activity of enterprises. In our opinion, the key is to review the institutional environment, in particular, the formation of a stimulating and effective regulatory and legal environment for enterprises engaged in foreign economic activities. The institutional component plays a significant role in the formation of an attractive investment climate, the development of innovations and technology transfer.

It is necessary to review the foreign economic policy of the state in order to support national producers, increase their export potential, avoid the effect of import substitution and optimize the commodity and geographical structure of foreign trade.

The analysis of the current regulation in general shows a tendency of approximation of the current legislation of Ukraine, which regulates the provision of services in the field of foreign economic activity, to the legislation of the European Union, which is enshrined in the Association Agreement. This trend involves the simplification of conditions for starting a business, the abolition of administrative, currency-financial and other barriers in the provision of services, including foreign trade services. However, it is important to pay attention to the need for further work on regulatory support aimed at improving and harmonizing provisions in the fields of economic, currency, customs and tax legislation. This will create conditions for strengthening the competitive advantages of domestic business entities in many areas of service provision.

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#### **ДЕЯКІ АСПЕКТИ ПРАВОВОГО РЕГУЛЮВАННЯ ЗДІЙСНЕННЯ ЗОВНІШНЬОЕКОНОМІЧНОЇ ДІЯЛЬНОСТІ НА ПІДСТАВІ УГОДИ ПРО АСОЦІАЦІЮ З ЄВРОПЕЙСЬКИМ СОЮЗОМ**

**Анотація.** Стаття висвітлює актуальність та необхідність реформ у сфері зовнішньоекономічної діяльності, яка тісно пов'язана з правовим регулюванням послуг. Стаття детально аналізує існуючі концепції правового регулювання послуг та акцентує увагу на відмінностях між матеріальними та нематеріальними послугами, їх правовою класифікацією та специфікою в контексті зовнішньоекономічної діяльності. Дослідження спрямоване на виявлення прогалин і недоліків у національному законодавстві, що регулює зовнішньоекономічна діяльність, з метою розробки пропозицій щодо їх усунення та

впровадження ефективніших механізмів регулювання. Оцінюється вплив угоди про асоціацію з Європейським Союзом на розвиток сектору послуг зовнішньоекономічної діяльності в Україні і розробку рекомендацій для підвищення конкурентоспроможності українських компаній на міжнародній арені. Подано визначення та особливості послуг як договірних зобов'язань, особливо з акцентом на їх нематеріальний результат.

У статті обговорюється вплив Угоди про асоціацію з ЄС на удосконалення правових рамок для послуг зовнішньоекономічної діяльності в Україні, оскільки така модернізація відкриває двері для взаємної лібералізації послуг та розширення міжнародної співпраці. Зокрема, розглянуто важливість послідовного впровадження змін до національного законодавства з метою адаптації до вимог і стандартів ЄС, що стосується різних типів послуг, включаючи фінансові, банківські та страхові послуги.

Автори виокремлює ключові аспекти, що впливають на ефективність надання послуг у сфері зовнішньоекономічної діяльності, такі як регулювання договірних відносин, валютне регулювання та міжнародні фінансові операції. Також підкреслено необхідність усунення адміністративних бар'єрів для залучення іноземних інвесторів та підтримки вітчизняних виробників послуг.

Загалом, стаття пропонує всебічний погляд на процеси і можливості модернізації правового поля України у сфері надання послуг зовнішньоекономічної діяльності з метою інтеграції до європейського економічного простору.

Ключові слова: зовнішньоекономічна діяльність; послуги; правовий режим; гармонізація; модернізація.