

LEGAL NATURE OF ENHANCED COOPERATION ACTS AND THEIR PLACE IN THE SYSTEM OF EUROPEAN LAW

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ABSTRACT

The article defines the legal nature of enhanced cooperation acts, their main characteristics and the place in the system of European law. Acts of enhanced cooperation are the agreements concluded using the European Union institutions in the form of international treaties, binding only for several (at least nine) participating European Union Member States. Enhanced cooperation acts serve the major objectives of the European Union, foster its integration process. The authors substantiate the conclusion that acts of enhanced cooperation are not a part of the system of European law, but if all or the majority of EU Member States join the specific policy of enhanced cooperation, such acts can be incorporated into European Union law and, therefore, become a part of European law.

Keywords: *acts of enhanced cooperation, the system of European law, European Union, the European Union law.*

1.INTRODUCTION

The problem of advanced cooperation of the states isn't new in science of the European law. The general questions of the legal concept of advanced cooperation, such as concept, models, signs and functions of advanced cooperation, have found reflection in works of both foreign, and domestic scientists. [1] Value and need of studying of institute of advanced cooperation for the European law are in detail proved. [2] The present article is devoted to studying of separate aspect of the concept, namely the legal nature of acts of advanced cooperation of the states and their places in system of the European law. Relevance of a research of these questions is caused by the cardinal changes made by the Treaty of Lisbon about reform to structure of the European law. And value of the formulation of the question and his consideration through a prism of practice of implementation of advanced cooperation of the states increases in connection with the beginning of use of this mechanism within the European Union. He defines the correct understanding of a coverage of such acts, legal obligation of their provisions, a possibility of the appeal in a judicial proceeding, etc.

2.DATA AND METHODS.

The analysis of sources has allowed to carry out use of a general scientific method of a research of deduction. Structural components of cooperation of the states are as a result defined. Legal methods of a research provide an opportunity to estimate practice of legal regulation of the contractual relations and legal interaction of the states of partners. Philosophical methods have allowed to formulate conclusions on the basis of the available doctrinal doctrines.

3.RESULTS

It is important to note that we don't find a specification of a legal form of acts of advanced cooperation in foundation agreements of the European Union though norms on advanced cooperation are present at the specified texts, since 1997. For the first time acts of advanced cooperation are mentioned in the Amsterdam contract of 1997 which in paragraph 2 of the article K.15 spoke about acts and decisions made for implementation of close cooperation [3].

The Nizzsky contract provided in paragraph 1 of article 44 that for adoption of the acts and decisions necessary for implementation of advanced cooperation, the relevant institutional provisions of the present contract and the Contract establishing the European Community [4] will be applied. Such acts and decisions didn't make a part of *acquis communautaire* of the Union.

The contract establishing the Constitution for Europe told nothing about legal character of acts of advanced cooperation. Only in paragraph 4 of the article I-44 it was emphasized that the acts adopted in the sphere of advanced cooperation will be obligatory only for the member states participating in advanced cooperation [5]. They weren't considered as a part of *acquis* which has to be accepted by the candidate states on accession to the Union.

The contract on the European Union and the Contract on functioning of the European Union (in edition of the Treaty of Lisbon) also don't define the legal nature of acts of advanced cooperation. A form, an order of adoption of such acts contracts are held back. The contract on the European Union in article 20 only confirms that the acts adopted within advanced cooperation have binding force only for the member states participating in it. They aren't considered as achievements which have to be apprehended by the candidate states on accession to the Union [6]. The contract on functioning of the European Union provides that the Commission of the European Union takes the necessary transitional measures concerning application of acts which have been already issued within advanced cooperation (article 331) [7].

Resolving an issue of the legal nature of acts of advanced cooperation, we will rely on practice of advanced cooperation in the European Union. She demonstrates establishment of the relations of advanced cooperation between member states of the European Union even long before legal regulation of those in foundation agreements. These are the Schengen agreements, regulations on the economic and currency union, contracts on accession of the new states to the European Union, etc.

The Schengen law is, first of all, Schengen agreement of 1985 and the Convention of 1990 on application of the Schengen agreement of June 14, 1985, and also regulations adopted by the Schengen executive committee.

The economic and currency union has been founded in 1992 by the Maastricht Treaty about the European Union (paragraph 2 of article 4). The protocol to it contains special provisions in the relation of Great Britain, Denmark and Sweden. Later regulations of Council and decisions of the European Council in this area have been made.

Contracts on accession of the new states to the European Union are contracts between the member states of the European Union and the states entering into Alliance.

Since 2010 advanced cooperation is established according to the mechanism provided by foundation agreements of the European Union. It is about standards of the procedure of a divorce in international marriages and system of the European patent. [8]

Thus, acts of advanced cooperation are international legal agreements of member states of the European Union. The Amsterdam and Nizzsky contracts didn't consider them as a part of *acquis communautaire* (the communitarian law of the EU) which had to be accepted by the candidate states on the accession to

the European Union. After the reforms undertaken by the Treaty of Lisbon as a result of which the law of the EU has completely replaced the communitarian law [9, with. 21], it is important to define how acts of advanced cooperation correspond to the law of the EU. And whether they will become ever his part?

That acts of advanced cooperation aren't considered as a part of the law of the EU, that is the main component of the European law it is possible to assume that the specified acts will appear as a specific part of the European law. It is represented that the specified acts will be acts of the international public law as make out the relations between subjects of the international public law – sovereign member states of the European Union, the laws and obligations for them arise for the states accepting them, but not directly for legal entities and citizens of these states [10, with. 192].

Let's define the place of acts of advanced cooperation in the structure of the European law offered by domestic lawyers [11].

So, it is possible to proceed from the concept of the European law of professor L. M. Entin who considers it in a vertical and horizontal cut. By consideration of the European law in a vertical section professor L. M. Entin subdivides it into norms primary (standards of foundation agreements of Communities and the Union), secondary (legally obligatory instructions published by institutes of the European Union) and the tertiary law (the "complementary", that is additional law which source are the agreements and conventions signed by member states) [12, with. 93-97]. So, in our opinion, acts of advanced cooperation can't be referred to standards of primary law as they aren't standards of foundation agreements. They can't be also referred to the secondary law as the last unites legally obligatory instructions published by institutes of the European Union. Hardly it is possible to refer acts of advanced cooperation to the tertiary law, the agreements and conventions adopted within the tertiary law are obligatory for all member states and are subject to unanimous ratification by the last.

It is more difficult to define the place of acts of advanced cooperation by consideration of a horizontal cut of the European law. That, according to professor L. M. Entin, consists of (1) law of the European Union and (2) provisions of the European system of protection of human rights [13, with. 97-98]. It is obvious that acts of advanced cooperation don't belong to one of the specified components.

4.CONCLUSIONS.

Thus, acts of advanced cooperation are formed along with the law of the European Union. They contain necessary potential to become subsequently a part of the law of the Union.

In our opinion, acts of advanced cooperation aren't a part of the system the European law, and make the potential European law.

In favor of our statement we will adduce a number of arguments:

1. According to the article 43(1)(j) of the Nizzsky contract advanced cooperation "is open for all member states" the European Union. This situation had to be interpreted in total with the provision of article 43. In the Nizzsky contract which regulated the specified situation in more detail, namely: advanced cooperation at his establishment is opened for all member states of the European Union and remains open for them according to articles 27 at any time. E and 40. In real contracts and article 11. And Constitutive treaty of the European Community. And, the Commission of the European Union and member states participating in advanced cooperation tried to encourage participation as it is possible bigger number of member states in the advanced directions of cooperation.

According to the Contract on the EU and the Contract on functioning of the EU, it is expected that all member states of the European Union will become participants of advanced cooperation sooner or later.

So, paragraph 1 of article 20 of the Contract on the EU says that "advanced cooperation is open for all member states according to article 328 of the Contract on functioning of the European Union at any time". The last specifies that advanced cooperation at his establishment is open for all member states with the reservation on need of observance of the possible conditions for participation recorded by the decision on authorization. Advanced cooperation equally is open for them in any other timepoint with the reservation on need of observance of above-mentioned possible conditions, and also the acts which are already issued in this framework.

The commission of the European Union and member states participating in advanced cooperation care for promoting participation as it is possible bigger number of member states.

Paragraph 2 of article 20 of the Contract on the EU establishes that the decision authorizing advanced cooperation is accepted by Council as a last resort when Council establishes that the purposes pursued by this cooperation can't in reasonable time be reached by the Union in general. Moreover, this point establishes quantitative a level for such cooperation, namely, "that not less than nine member states participate in it".

2. Advanced cooperation according to the article 43(1) (a) of the Nizzsky contract "has been intended to promote achievement of the objectives of the Union and Community, to protect and provide their interests and to advance their integration process".

According to paragraph 1 of article 20 of the Contract on the EU, "advanced cooperation is intended to promote achievement of the objectives of the Union, to protect his interests and to strengthen his integration process". Article 334 of the Contract on functioning of the EU provides that Council and the Commission provide the sequence of actions taken within advanced cooperation and also coherence of similar actions with policy of the Union, and cooperate for this purpose.

3. Advanced cooperation is carried out with use of institutes of the European Union. Earlier article 43 (1) of Nizzsky the contract provided that the member states of the European Union intending to carry out advanced cooperation can use the institutes, procedures and mechanisms provided by the present Contract and the Constitutive treaty of the European Community provided that the planned cooperation "respects ... the uniform institutional mechanism of the Union".

Point 1 article 20 of the Contract on the EU states that member states which wish to establish among themselves advanced cooperation within non-exclusive competence of the Union can use his institutes.

4. Spheres in which advanced cooperation is carried out, are defined in the Contract on the EU and the Contract on functioning of the EU. So, according to paragraph 1 of article 329 of the Contract on functioning of the EU, it is the spheres provided by Contracts except spheres of exclusive competence of the Union. Procedures of implementation of advanced cooperation are defined in articles 329-331 of the Contract on functioning of the EU.

The specified arguments speak well for the fact that acts of advanced cooperation aren't acts of the European law, but have certain features which will allow them to be further incorporated in the law of the European Union, so to become a part of the European law.

We can define acts of advanced cooperation as the acts formed with use of institutes of the European Union in the form of the international legal contracts and agreements obligatory only for a part (at least nine) member states of the European Union.

Thus, acts of advanced cooperation represent the special acts which are formed along with the traditional European law and obligatory only for a certain circle of member states of the European Union. Acts of advanced cooperation promote formation of vanguards within the European Union which it is possible to call "the unions in the Union".

Some acts of advanced cooperation can become a part of the law of the European Union. There is it in case of joining of all or the majority of member states of the European Union to a certain policy of advanced cooperation. Has so resulted from incorporation of the Schengen agreements and regulations on the currency union.

On the basis of the aforesaid it is possible to reveal the following features of acts of advanced cooperation. They:

1. have conventional character;
2. are obligatory only for the states participating in advanced cooperation;
3. are directly applied in territories of the participating member states;
4. get under jurisdiction of Court of the European communities.

On the basis of the analysis which is carried out by us, we have come to understanding that advanced cooperation has formed the basis of the structure of the European law.

5.SUMMARY

So, according to most of domestic scientists which we join, the European law consists of two beginnings: international beginning and supranational beginning. "Initially and by definition this legal system unites two main components. Precepts of law, acts, having the source international legal by the nature, act as them, on the one hand; on the other hand - precepts of law which source are the acts issued by institutes of the EU." [14, with. 40-41]. The international beginning materializes in such sources of the law as international legal contracts, and the supranational beginning in regulations, directives and other regulations adopted by institutes of Community and the Union. The first group can include acts of advanced cooperation.

Thus, acts of advanced cooperation are the agreements concluded with use of institutes of the European Union in the form of the international legal contracts obligatory only for a part (at least nine) member states of the European Union. Acts of advanced cooperation in case of joining of all or the majority of member states of the European Union to a certain policy of advanced cooperation can be incorporated further in the law of the European Union, so, to become a part of the European law.

CONFLICT OF INTEREST

Authors confirm that the submitted data don't contain the conflict of interests.

ACKNOWLEDGMENTS

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University

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