

ARTICLES

Implementation of the International Law Norms on Customs Transit in the Legal System of the Kyrgyz Republic

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This article examines the implementation mechanisms and the degree of implementation of international transit agreements in the Eurasian Economic Union (EAEU) and Kyrgyz Republic laws. The stages and features of such implementation have also been characterised. The degree of implementation of international agreements and conventions adopted within the framework of the World Trade Organization (WTO) and the World Customs Organization (WCO) into EAEU law, as well as other agreements, is analysed. The legal foundations of implementing international law norms into the Kyrgyz Republic law are considered, as are the features of the implementation of the EAEU law norms into Kyrgyz Republic law. The imperfections of Kyrgyz Republic law in determining the place of international treaties in the system of normative legal acts of the Kyrgyz Republic have been identified, and recommendations for improvement have been proposed.

1. Introduction

In the context of globalisation and the expansion of economic relations between countries, international regulation of international trade and customs relations, aimed at establishing common global policies and processes, has been and remains a high priority topic for international politics, national states, international organisations, business and the scientific community. In turn, globalisation in all its forms has led to states becoming more interdependent, because freedom of movement of capital, labour and active international trade requires joint action. In recent years, this has been most clearly manifested in the consolidation of a single ‘world economy’ due to technological advances such as the information technology revolution (Geller, 1997). International cooperation between countries at the global and regional levels has intensified, and international organisations have been established at the global and regional levels, creating platforms for international cooperation, harmonisation of economic and legal systems, and coordination of activities to solve global and regional problems. One of the important dynamic areas of international cooperation is customs cooperation, which is closely linked to international trade relations.

Customs transit, being one of the components of international trade and customs affairs, remains on the agenda of international legal cooperation and national regulation. The Kyrgyz Republic, which has geographical transit

potential, does not, however, have access to the open sea. Using international legal mechanisms, the Kyrgyz Republic is trying to raise its transit potential on the one hand, and the possibility of access to the sea on the other. International legal cooperation and effective implementation of the international law norms on transit play an important role in the development of the transit system and therefore is of scientific interest.

2. Methodology

Here, the Kyrgyz Republic is studied within the framework of implementing international law norms in its national legislation to identify the status, features and disadvantages of such implementation, and to develop proposals for its improvement. To achieve these goals, general methods of deduction and induction (Saenko, 2021), and comparative legal analysis (Ponomarenko, 2006) were used. Using deduction methods, theoretical concepts on implementation were examined to clarify the understanding of international transit norms in Eurasian Economic Union (EAEU) law and Kyrgyz legislation. The method of induction helped to identify flaws in certain provisions of EAEU and Kyrgyz legislation aimed at improving regulation and procedures related to customs transit.

Using comparative legal analysis, the EAEU and Kyrgyz laws on customs transit were assessed in terms of their compliance and consistency with the provisions of Article V of the *General Agreement on Tariffs and Trade* of 1994 (*GATT 1994*) (WTO, 1994), Specific Annex E of the *International Convention on Simplification and Harmonization of Customs Procedures* 1999 (*RKC*) (WCO, 2006) and Article 11 of the *Trade Facilitation Agreement* (*TFA*) (WTO, 2014).

3. The implementation of international treaties into EAEU law

In legal doctrine and in international law, the term ‘implementation’ is used to reflect the norms of international legal acts at the national level. The etymological meaning of the term implementation lies in the Latin word *implere*, which means ‘to fill in’ or ‘to fulfill’ (Glare, 1982, p. 847). In the *Oxford English Dictionary*, implementation means ‘the process of putting a decision or plan into action’ (Stevenson, 2010, p. 873). According to the *Oxford Dictionary of Law*, the term implementation is ‘the process of bringing any piece of legislation into force’ (Martin, 2003, p. 242). Theoretical developments of the concept of implementation are widely represented in the science of international law. Gaverdovsky (1980, p. 63) understands implementation to be ‘purposeful organisational and legal activities of states undertaken individually, collectively or within the framework of international organisations to timely and fully implement their obligations in accordance with international law’. Raustiala and Slaughter (2002, p. 539) defined implementation as ‘the process of putting international commitments into practice’. According to Jacobson and Brown Weiss (1998), implementation refers to measures that states take to incorporate international agreements into their domestic legislation.

Beenakker (2018) argues that implementation is an action that will be carried out by the competent authority(s) at the national level. These authorities may be part of the executive, legislative or judicial branches of government. Chernichenko (1993, p. 133) argues that the term implementation can be used to refer to 'the impact of international law norms on domestic relations through domestic law'. Suvorova (1991) notes that the term implementation has the right to exist as a synonym for the term 'realisation', that is, the embodiment of norms in the practical activities of the state and other entities. Tihomirov (2006) writes that implementation is all the legal forms and methods of adapting an international norm to domestic legislation. Kurnosova (2015) notes that in the broadest sense of the word, the implementation of the norms of international law is nothing more than a process in which the relevant subjects to whom the norm is addressed act in accordance with its provisions. In the framework of our research, we use the term implementation to mean the process of implantation of international legal norms into the national law system.

The implementation of international agreements concluded within the framework of the World Trade Organization (WTO) and the World Customs Organization (WCO) into EAEU law, as well as implementation of other relevant international agreements on customs issues into the national legislation of the Kyrgyz Republic, is a complex two-step process. This is because, according to Article 1 of the *Eurasian Economic Union Customs Code (EAEU Customs Code)*, unified customs regulations are implemented in the EAEU, which includes general principles, conditions, rules and procedures for customs administration in the customs territory of the EAEU member states.

For the purposes of this research, analysis of the implementation of the treaties mentioned above has been divided into two stages: 1), the implementation of international conventions into EAEU law, and 2), implementation of EAEU law into the law of the Kyrgyz Republic.

The study of the implementation of international agreements into EAEU law should begin with clarifying the question of how the EAEU law interacts with norms of international law, primarily with international agreements concluded within the framework of the WTO. It seems appropriate to point out that the *Agreement on the Functioning of the Customs Union within the Framework of the Multilateral Trading System (AFCUMTS)* of 19 May 2011, is an integral part of the law of the EAEU (EAEU, 2014).

The main approaches on which the *AFCUMTS* are based are the following. First, the *AFCUMTS* proclaims the *Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement)* as an integral part of the EAEU legal system (paragraphs 1 and 3 of Article 1 of the *AFCUMTS*), including the obligations of the EAEU member states, accepted by them as conditions for accession to the WTO. Second, the *AFCUMTS* establishes the priority of the *WTO Agreement* over the relevant

provisions of international treaties concluded within the framework of the EAEU and decisions taken by its authorities, including the obligations of the EAEU member states, adopted by them as conditions for accession to the WTO. This is because the EAEU members have committed to ensuring that the EAEU legal system and decisions of its bodies comply with the *WTO Agreement* (Article 2.1 of the *AFCUMTS*). Third, the *AFCUMTS* is based on the need to establish a coordinated policy of the EAEU member states and the EAEU authorities in their relations with the WTO (paragraphs 3, 4 and 5 of Article 1 of the *AFCUMTS*). Finally, the *AFCUMTS* does not prevent a more liberal regulation of international trade within the EAEU compared to that required under the *WTO Agreement* (paragraph 3 of Article 3 of the *AFCUMTS*) (Institute of Trade Policy, n.d.-b).

Based on the above, we conclude that an implementation mechanism must be involved to bring the EAEU law into line with the *WTO Agreement*, as the EAEU law must comply with WTO law. However, the implementation of international law norms into the law of regional international organisations, such as the EAEU, has its own peculiarities. First, there is no clear implementation mechanism. Second, implementation is of an intermediate nature, since the final stages are implementation in national states. Third, it is implemented in international treaties within the framework of the EAEU. Finally, an internal coordination procedure is required. The implementation of international law norms in EAEU law is carried out through harmonisation. 'Harmonisation is a process of ascertaining the admitted limits of international unification but does not necessarily amount to a vision of total uniformity' (Menski, 2006, p. 39). There are problems bound to the harmonisation of EAEU law with the norms of international law, however, expressed in the definition of terminology, the participation of the EAEU member states in international conventions and agreements, and the interpretation of specific norms (Goshin, 2014).

4. International transit agreements and their implementation into EAEU law

Currently, the issues of transit of goods and vehicles through customs territory are regulated at the international level within the framework of the WTO, Article V of the *GATT 1994* and Article 11 of the *TFA*, and within the framework of the WCO, Specific Annex E of the *RKC*. Also, transit is a regulation object of the *Convention on Transit Trade of Land-locked States* of 8 July 1965, the *Customs Convention on the International Transport of Goods under cover of TIR¹ Carnets 1975 (TIR Convention)* and the *Agreement on Transit through the Territories of the Member States of the Commonwealth of*

¹ TIR is the acronym for Transports Internationaux Routiers, or International Road Transport.

Independent States of 4 June 1999. Of these agreements, Article V of the *GATT 1994*, the *RKC* and the *TFA* play an important role in the formation of EAEU law on customs transit.

Article V of the *GATT 1994* (freedom of transit) is of conceptual importance for transit in international trade.² It defines the concept of transit transportation and the important components of free transit as:

unhindered passage through the territory of a contracting country; providing a regime no less favourable than the regime that would be provided to goods if they were transported from the place of origin to the destination without passing through the territory of such another contracting party; not being subjected to any unnecessary delays or restrictions; exemption from customs duties and from all transit or other charges imposed on transit, with the exception of transportation fees or charges commensurate with the administrative costs caused by transit or with the cost of services provided. (WTO, 1994)

These conceptual provisions of transit are laid down in the regulation of transit in the *EAEU Customs Code*. Specific Annex E of the *RKC* contains detailed provisions on transit regulation at the international level.³ The main issues of harmonisation of the *EAEU Customs Code* with the *RKC* are with the different scope of obligations assumed by the EAEU member states upon accession to the *RKC*, as well as with the problem of unification of customs terminology used in the *RKC* with the terminology of EAEU law (Shokhin & Kojankov, 2019). All EAEU member states are Contracting Parties to the *RKC*. However, only the Republic of Belarus has fully acceded to Specific Annex E and the Republic of Kazakhstan has partially acceded to Specific Annex E, without accepting Chapter 3. Specific Annex E of the *RKC* includes the definition of concepts, principles, scope, formalities at the customs authority of departure, customs seals, formalities en route, completion of customs transit, international agreements related to customs transit, and an annex that defines the minimum requirements for customs seals and fasteners. The *RKC* consists of Standards, Transitional Standards and Recommended Practices. A Standard means a provision, the implementation of which is recognised as necessary to achieve harmonisation and simplification of customs procedures and practices (*RKC*, Art 1(a)) and it defines Recommended Practice as ‘a provision of a Specific Annex recognised as an advance in the harmonisation and simplification of Customs procedures and practices, the widest possible application of which is considered desirable’ (*RKC*, Art 1(c)).

² Four EAEU member states acceded to the agreement under consideration: Kyrgyzstan on 20 December 1998, Armenia on 5 February 2003, Russia on 22 August 2012 and Kazakhstan on 30 November 2015.

³ Kazakhstan acceded to the *RKC* on 19 June 2009; the Republic of Belarus on 10 January 2011, Russia on 4 April 2011, Armenia on 19 July 2013 and Kyrgyzstan on 28 July 2021.

An analysis of compliance of the *EAEU Customs Code* with Specific Annex E of the *RKC* shows that the provisions of the *EAEU Customs Code* regarding transit do not fully correspond to Specific Annex E. The provision of Standard 6, which states that any commercial or transport document containing detailed information is accepted as the descriptive part of the goods declaration for customs transit, is reflected in paragraph 5 of Article 105 of the *EAEU Customs Code*. The types of information to be submitted to the customs authority are defined in paragraph 1 of Article 107 of the *EAEU Customs Code*. However, the application of paragraph 6 of Article 105 is difficult in practice, as the mechanism for its implementation is imperfect. Many declarants are not informed about the possibility of declaring goods using commercial and transport documents. Meanwhile, the transit declaration approved by the *Decision of the Customs Union Commission No. 289 of 18 June 2010*, edited 21 May 2019 (Customs Union Commission [CUC], 2010) is widely used, which contains more detailed information on transit than provided for in paragraph 1 of Article 107 of the *EAEU Customs Code*.

This issue was not solved by the new decision of the Eurasian Economic Commission (EEC) of 30 May 2023 that will come into force as of 1 April 2025. The structure and content of the information to be described in the declaration under consideration are quite complex and require individuals transporting goods in transit to use the services of customs representatives. This creates a financial burden, which is also exploited by the legal practice that uses an expanded interpretation of certain provisions. For example, paragraph 1 of Article 107 of the *EAEU Customs Code* requires the goods code to be identified in accordance with the Foreign Economic Activity Commodity Nomenclature (FEACN) at a level of no less than the first six digits. According to this Article, identification of the goods code at a level of 10 digits is required only for goods in unassembled or incomplete form. However, application of Article 1 of the *EAEU Customs Code* means that some customs authorities of the EAEU require identification of the goods code at a level of 10 digits, which is difficult for individuals lacking special knowledge of FEACN goods classification.

The possibility of changing the destination without prior notification, as defined in Standard 19 of the Specific Provision E of the *RKC*, is determined in the *EAEU Customs Code* and has a permissive character. Article 145(7) states:

If the destination is changed during the transportation of goods in accordance with the customs transit procedure, the place of delivery of the goods may be changed with the permission of the customs authority in accordance with the legislation of the member states in the field of transport. (EAEU, 2017c)

We believe that the permissive nature of regulating this issue does not contribute to the development of transit but creates bureaucratic barriers. Therefore, we consider it expedient to switch to a notification procedure when changing the destination, using information technology.

The Recommended Practice of Specific Provision E of the *RKC* (WCO, 2006), discussed above, is that failure to comply with the established travel plan or violation of the established deadlines should not lead to the imposition of any potentially payable duties and taxes, provided that the customs service has ensured compliance with all other requirements established in the *EAEU Customs Code* in such a way that practical application will not result in a favourable outcome for the person carrying out customs transit.

Article 153(5) of the *EAEU Customs Code* determines that there is an obligation to pay import customs duties, taxes, specific duties, anti-dumping duties and compensation duties in the event that the goods are not delivered to their delivery location within the customs transit period established by the customs authority and the customs procedure is not completed. However, this Article does not address circumstances in which it is not possible to deliver the goods to the place of delivery within the prescribed time limit. This situation is, however, addressed in paragraph 2 of the *Procedure for Carrying out Customs Operations Related to the Completion and Termination of the Customs Procedure for Customs Transit*, approved by EAEU decision No. 170 of 13 December 2017 (EAEU, 2017b), which states that failure to comply with the established deadline for the customs transit procedure in the EAEU is the basis for the collection of customs duties, taxes, specific duties, anti-dumping and countervailing duties. This is considered to be a legal obstacle to the development of customs transit.

The *TFA* is an agreement that creates a mechanism for implementing many of the provisions of the *GATT 1994*. By building on specific requirements out of the *GATT 1994*, Section 1 of the *TFA* made a revisionary agenda with the aim of clarifying and improving on existing, relevant commitments. Some of these provisions were made with broader, thematic links in the image of the *GATT 1994* (Articles V, VIII and X), such as the publication and availability of information; the ability to appeal or review procedures; opportunities to comment, information before entry into force, and consultations; release and clearance of goods; formalities connected with importation, exportation and transit, and freedom of transit (Fu et al., 2023). The *TFA* is a promising international agreement. According to calculations by the Peterson Institute of World Economics, the effect of signing the *TFA* will amount to approximately USD117 billion (Isachenko, 2014). A study by the Organisation for Economic Cooperation and Development (OECD) states that the costs of foreign trade operations in OECD member countries should decrease by 10 per cent (OECD, 2015). The most important cost reduction will be due to simplification of procedures, reduction of fees and payments, as well as increased transparency

of trade processes (OECD, 2015). The *TFA* was adopted at the 9th WTO Ministerial Conference, which was held in Bali, Indonesia, on 3–6 December 2013.⁴

The main purpose of the *TFA* is to accelerate movement, release and customs clearance of goods, including transit goods. The *TFA* clarifies and improves the provisions of Articles V, VIII and X of the GATT. Article 11 of the *TFA* regulates freedom of transit and details Article V of the *GATT 1994* (WTO, 2014), which also deals with freedom of transit. It should be noted that some provisions of the *TFA* related to transit are reflected in the *EAEU Customs Code* and the customs legislation of the Kyrgyz Republic. Thus, the provision of paragraph two of Article 11 of the *TFA*, providing that transit transportation should not be subject to the collection of any fees or payments in connection with transit, except for transportation fees or those fees or payments that are commensurate with the administrative costs caused by transit or the cost of services rendered, are implemented in paragraph 1 of Article 142 of the *EAEU Customs Code*. At the same time, the *TFA* contains provisions that qualitatively raise the freedom of transit to a new level and require implementation into the law of the EAEU and the customs legislation of the Kyrgyz Republic. These provisions are:

- the physical separation of transit and imported goods (for example, using separate lanes for transport, or parking lots)
- the minimisation of procedures, documentation requirements and customs control of transit goods
- the non-application of additional customs control, technical regulations or conformity assessment if the destination of the transit cargo is not the territory of the participating country
- the possibility of pre-filing and processing documents for transit cargo.

Such obligations should significantly simplify the rules applicable to transit goods. At the same time, trade entities should monitor the efficiency of transport corridors and inform government authorities of any violations of the above obligations on the ground. The revealed violations are being reviewed by a new WTO authority, the Committee on Trade Facilitation (Institute of Trade Policy, n.d.-a).

⁴ Kyrgyzstan, which has been a WTO member since 1998, ratified the *TFA* on 22 November 2016. EAEU member states that acceded to the *TFA* are Armenia on 20 March 2017, Kazakhstan on 26 May 2016 and Russia on 22 April 2016.

We believe that the implementation of the TFAs, carried out through amendments and additions to the Customs Code of the EAEU, is proceeding too slowly, failing deadlines established by the WTO. It appears necessary to take steps to accelerate the implementation process.

5. Implementation of EAEU law in the customs legislation of the Kyrgyz Republic

The implementation of EAEU law into the customs legislation of the Kyrgyz Republic is a crucial step in unifying legislation among member states. However, if we look at the implementation of the EAEU norms, everything seems a little more complicated, since it is not so much about the norms of international law as about the implementation of the norms of the independent legal system of the EAEU countries, which differs from both the international legal system and the systems of the EAEU member states (Karasev et al., 2021).

In Kyrgyz Republic law, the mechanism for implementing the norms of EAEU law is provided for by the *Constitution of the Kyrgyz Republic of 5 May 2021*, the *Law on International Treaties of 24 April 2014*, the *Agreement on the EAEU of 29 May 2014 (Agreement on the EAEU)*, and the *Law on the Accession to the Agreement on the EAEU of 21 May 2015*.

In accordance with paragraph one of Article 6 of the *Agreement on the EAEU*, the law of the EAEU consists of: the *Agreement on the EAEU*; international treaties within the framework of the EAEU; international treaties of the EAEU with a third party; decisions and orders of the Supreme Eurasian Economic Council (SEEC), the Eurasian Intergovernmental Council (EIC) and the EEC adopted within their powers provided for by the *Agreement on the EAEU* and international treaties within the framework of the EAEU (EAEU, 2014).

Participation in these agreements by the Kyrgyz Republic was carried out using accession (e.g., the *Law on the Accession to the Agreement on the EAEU*), or signing (e.g., the *Agreement on the EAEU Customs Code of 11 April 2017*). International agreements within the framework of the EAEU, to which the Kyrgyz Republic has acceded or that have been signed by the Kyrgyz Republic, are subject to ratification based on paragraphs 9 and 13 of Article 11 of the *Law on International Treaties*. It should be noted that Article 11 of this law defines the international agreements subject to ratification. According to the content of Article 11, the criterion for determining international agreements requiring ratification is their subject matter of regulation. Paragraph 9 of Article 11 establishes that international agreements on the participation of the Kyrgyz Republic in intergovernmental unions, international organisations, and other intergovernmental associations are subject to ratification if such agreements provide for the transfer of part of the Kyrgyz Republic's powers or establish legal obligations of their bodies for the Kyrgyz Republic. Paragraph 13 of Article 11 specifies that international agreements involving financial

obligations from the Kyrgyz Republic, which entail an increase in expenses covered by the republican budget, or a reduction of its revenue, must also be ratified (*Law of the Kyrgyz Republic about International Treaties of the Kyrgyz Republic No 62, 2014*).

The mechanism for implementing international agreements in the Kyrgyz Republic includes a constitutional provision authorising the Constitutional Court of the Kyrgyz Republic to provide a conclusion on the constitutionality of international agreements that have not entered into force, to which the Kyrgyz Republic is a party. Based on Article 22 and Paragraph 1 of Article 19 of the *Constitutional Law of the Kyrgyz Republic on the Constitutional Court of the Kyrgyz Republic (Constitutional Law on the Constitutional Court)*, the President, Jogorku Kenesh⁵, factions, parliamentary groups of Jogorku Kenesh, and the Cabinet of Ministers of the Kyrgyz Republic have the right to request a conclusion on the constitutionality of international agreements that have not entered into force for the Kyrgyz Republic. However, it remains unclear under what circumstances these entities would request a conclusion from the Constitutional Court. There is no defined basis in the legislation for requesting a conclusion from the Constitutional Court on this matter. Presumably, due to the ambiguity of the implementation mechanism of the request to the Constitutional Court, this provision has not found practical application. Despite the existence of this provision for over 10 years, the Constitutional Court has never exercised its authority on the issues mentioned.

The implementation of acts of the EAEU bodies is specific. They are included in the law of the EAEU and their hierarchy is defined by the treaties: decisions of the SEEC take precedence over decisions of the EIC and the EEC; decisions of the EIC take precedence over decisions of the EEC. At the same time, the decisions of the SEEC and the EIC are subject to execution by the member states under the procedure provided for by their national legislation (paragraph 2 of Article 6 of the *Agreement on the EAEU*), while the decisions of the EEC are regulatory and are subject to direct application in the territories of the member states (paragraph 13 of the Regulation on the EEC, Appendix No. 1 to the Treaty on the EAEU). Here, attention should be paid to the fact that acts of greater legal force (the SEEC and the EIC) require implementation under national legislation, and that the timing and procedure for implementing acts of the SEEC and EIC differ between the member states, while acts of lesser legal force act directly (Nazarova, 2018). In our opinion, the decision and order of the SEEC is of a strategic or organisational nature. These are detailed in the international treaties of the EAEU and the decisions of the EEC. In this regard, we

⁵ Jogorku Kenesh is the Parliament of the Kyrgyz Republic.

believe that there was no need to give the acts in question the force of direct action. The decisions of the EEC are directly applicable to the territory of the Kyrgyz Republic.

As for the legal force of international agreements in the Kyrgyz Republic, this issue requires clarification. The *Constitution of the Kyrgyz Republic* (*Constitution*) and, following it, the *Law of the Kyrgyz Republic about International Treaties of the Kyrgyz Republic. No 62* (*Law on International Treaties*), establishes that international treaties entered into force under the procedure established by law, to which the Kyrgyz Republic is a party, as well as generally recognised principles and norms of international law, are an integral part of the legal system of the Kyrgyz Republic (*Constitution*, 2021; *Law on International Treaties*, 2014). At the same time, both the *Constitution* and the *Law on International Treaties* are silent about the legal force of international treaties. However, based on paragraph 1 (3) of Article 97 of the *Constitution* and paragraph 1 (3) of Article 4 of the *Constitutional Law about the Constitutional Court*, which states that the Constitutional Court gives a conclusion on the constitutionality of international treaties that have not entered into force, to which the Kyrgyz Republic is a party, it can be concluded that International treaties do not take priority over the *Constitution* (*Constitution*, 2021; *Law of the Kyrgyz Republic on the Constitutional Court of the Kyrgyz Republic. No 133*, 2021).

At the same time, it is necessary to clarify the legal force of international treaties concerning other legal acts of the Kyrgyz Republic. Thus, paragraph 4 of Article 1 of the *Law of the Kyrgyz Republic on Customs Regulation in the Kyrgyz Republic* (2019) contains a provision stating that if international treaties of the Kyrgyz Republic establish rules other than those contained in this Law, then the rules (norms) of international treaties of the Kyrgyz Republic apply. It remains unclear here what the legislator understands in the context of this law under the international treaties of the Kyrgyz Republic. Does it mean by this the international treaties of the Kyrgyz Republic within the framework of the EAEU, or all the international treaties of the Kyrgyz Republic on customs regulation? Also, this provision of the *Law of the Kyrgyz Republic on Customs Regulation in the Kyrgyz Republic* defines the priority of international treaties on customs regulation over the customs legislation of the Kyrgyz Republic and requires the definition of the place of international acts in the customs legislation of the Kyrgyz Republic.

As mentioned above, although the legislation of the Kyrgyz Republic recognises international treaties as part of the legal system of the Kyrgyz Republic, it does not include or define their place in the legislation of the Kyrgyz Republic. This condition can make it difficult to enforce and resolve conflicts. For example, if the *EAEU Customs Code* has all the characteristics inherent in a normative legal act and has a direct effect on the territory of the Kyrgyz Republic, we believe that it could be in the hierarchy of normative legal acts of the Kyrgyz Republic under Article 6 of the *Law of*

the Kyrgyz Republic on the Normative Legal Acts of the Kyrgyz Republic (Law on Normative Legal Acts) like all codes of the Kyrgyz Republic (*Law on Normative Legal Acts*, 2009). In connection with the above, it seems necessary to determine the place of international acts in the *Law on Normative Legal Acts*.

Regarding the international agreements of the EAEU and acts of the EEC on the customs transit procedure implemented in the legislation of the Kyrgyz Republic, it should be noted that:

- Concerning the *Agreement of the EAEU Customs Code*, ratified by the *Law of the Kyrgyz Republic of 30 December 2017*, as mentioned earlier, the *EAEU Customs Code* applies directly and immediately in the territory of the Kyrgyz Republic, which is why incorporation into the customs legislation of the Kyrgyz Republic is not required.
- Decisions of the EEC on the application of the customs transit procedure also apply directly and immediately in the customs territory. These are adopted on the basis and for the application of the provisions of the *EAEU Customs Code* on the customs procedure. Currently in force are *Decision of the Board of the EEC of 7 November 2017* (EAEU, 2017a), *Decision of the EEC Board of 13 December 2017* (EAEU, 2017b), *Decision of the CUC of 12 June 2010, edited 21 May 2019* (CUC, 2010) and *Decision of the EEC Board of 30 May 2023* (EAEU, 2023).

However, as indicated in Section 4, some provisions of the *EAEU Customs Code* and the decision of the EEC do not fully comply with international standards for customs transit procedures and create conditions for unjustified barriers. As a result, difficulties arise, expressed in the duration of transit processing, lack of a mechanism for using transport, the use of commercial documents as a transit declaration, and difficulties in filling out the transit declaration due to the detailed information it contains. For example, the time spent on transit procedures when moving goods by rail in the Kyrgyz Republic is almost 24 hours (State Customs Service under the Ministry of Finance of the Kyrgyz Republic, 2021).

6. Conclusion

Our examination of how international law norms on transit are incorporated into the legal framework of the Kyrgyz Republic is based on theoretical concepts and legal provisions outlined in international agreements and national legislation. We categorised the integration of international law norms on transit into the legal system of the Kyrgyz

Republic into two stages: first, the integration of global treaties into the law of the EAEU, and second, the integration of EAEU law into the national legislation of the Kyrgyz Republic.

International customs regulations for transit are conducted within the framework of the WTO and the WCO. The main international treaties governing customs transit and requiring implementation in unions and national legislation are the *RKC* and *TFA*. The *EAEU Customs Code* aligns with the *RKC* on crucial points such as the customs procedure concept, scope of application, exemption from customs duties and taxes, certainty of transit dates and their possible extension, goods identification and customs declaration. However, certain provisions of EEC decisions do not comply with the *RKC*, specifically regarding simplification of customs documents and information used in declarations, altering destinations without prior notification, and not imposing customs duties or taxes in case of non-compliance with delivery plans or deadlines. Prioritising the implementation of the *TFA* into the law of the EAEU and the customs legislation of the Kyrgyz Republic is crucial in enhancing customs transit. Nevertheless, the process of implementing this international agreement regarding customs transit is experiencing delays. The delay in implementing the *TFA* into the law of the EAEU, particularly Article 11, hinders the creation of modern conditions for transit development. Full implementation of the *RKC* and the *TFA* into the law of the EAEU and the legislation of the Kyrgyz Republic would elevate the legal regulation of transit to a new qualitative level, fully aligning it with international standards.

The implementation of the EAEU transit norms into the law of the Kyrgyz Republic is based on the *Agreement on the EAEU* and the *Law on International Treaties*. The process of implementing international treaties that requires ratification involves signing the treaties, addressing internal procedural issues, obtaining a conclusion from the Constitutional Court on the treaties' compliance with the *Constitution*, and ratifying the treaties. Treaties concluded within the EAEU require ratification. However, it is unclear whether all international agreements need a conclusion from the Constitutional Court or only in certain cases, as this issue is not addressed in legal documents. The study of law enforcement practices revealed that the Constitutional Court has never made a decision on the compliance of international treaties with the Constitution. Another issue with the implementation mechanism is the uncertainty regarding the place of international treaties in the hierarchy of normative legal acts of the Kyrgyz Republic, which complicates the resolution of conflicts between laws.

Currently, the *EAEU Customs Code* has been incorporated into the legal system, directly affecting the customs territory of the Kyrgyz Republic. Additionally, the decision of the EEC, which regulates the application of the provisions of the *EAEU Customs Code* concerning the customs transit procedure, is also directly applicable. However, as mentioned earlier, some provisions of these EAEU legal acts are imperfect, leading to bureaucratic

barriers in the application of the customs procedure. These barriers are evident in the complexity of declaration, the lack of a flexible system for changing destinations, the payment of customs duties and taxes in case of delayed delivery to the destination, and the underdevelopment of customs infrastructure for transit at checkpoints across the customs border of the Kyrgyz Republic. It seems feasible to address these issues by improving the law of the EAEU and the customs legislation of the Kyrgyz Republic, ensuring their full compliance with the *RKC* and *TFA*.

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