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## **TRANSPARENT MONITORING OF THE NOVEL STRATEGY FOR REFORMING CUSTOMS AUTHORITIES OF THE STATE FISCAL SERVICE OF UKRAINE**

The article deals with current issues of the novel strategy for reforming customs authorities of the State Fiscal Service of Ukraine. Also, the author analyzes actual questions of functioning of the customs bodies of the State Fiscal Service, the creation of which was the result of effective constructive process of reforming the national customs bodies in the course of administrative reform in Ukraine in 2014–2015. Author points out that in current situation there is a real possibility that our country may lose its political positions at the international and political arena which, in its turn, undermines the trust in the national government on the part of the Ukrainian population and the processes aimed at creation of the favourable investment climate in Ukrainian regions as well as development and implementation of measures to attract investment resources will suffer. Unfortunately, assuming that the SFS reformation concept and the appropriate plan of its accomplishment was developed by the Government of Ukraine (partially these developments were put together in Draft Law № 2177a) and agreed with the representatives of IMF and other international financial institutions, it is most regrettable that there are, until now, no results of these conceptual novelties whatsoever.

**Key words:** state customs procedures, State Fiscal Service of Ukraine, customs house, renovation, customs authorities of the State Fiscal Service of Ukraine, customs clearance office, reformation, reformation strategy, territorial administrations of the SFS, legal entity.

Comprehensive and fundamental reformation of the State of Ukraine and its society is being effected under the slogans of «decentralization (accomplishment of the administrative and budget reform which should not, as envisioned, result in fragmentation of political influences in the regions), deregulation (based on the principle of subsidiarity when distributing local powers), deoligarchization, demonopolization, depolitization of judges (elimination of political influences appointing professional judges) and rise in social standards in Ukraine». In this extremely sensitive and very important sphere it is not advisable to suspend the on-going development of the state customs procedures which should proceed down the trunk highway of international standards, advanced innovations and democratic values aimed at unhampered conduct and development of business.

Qualitatively novel definition of strategy and tactics of the state customs procedure development is of global nature because the importance of integration into the world trade and global development trends every day set up new tasks and requirements to the structural reconstruction and reformation of the system of entities that form and accomplish the state customs procedures and develop the customs policy basics and the mechanism of their accomplishment. Therefore, during the entire period of the customs procedures development in the sovereign Ukraine the scientists and practitioners of the customs industry searched for the optimal performance model for the system of customs bodies which can not only properly protect the economic interests of Ukraine but also meet the international customs standards. This paper deals with a study of the aspects of practical accomplishment of the novel strategy for reformation of the customs authorities of the State Fiscal Service of Ukraine (hereinafter «SFS»).

**Thematic justification** is based on an absence of the comprehensive analysis of the novel strategy for reformation of the customs authorities of the State Fiscal Service of Ukraine. Indeed, the comprehensive studies of said issue remain important and topical under conditions of reformation of the functional structure and renovation of the customs authorities' activities of the SFS of Ukraine as it is quite often that the reformation strategy of the executive branch bodies has not been properly developed and implemented so that it fails in practice and becomes, in the customs procedures sphere, a certain lever which triggers almost annual changes in the system of entities that form and accomplish the state customs policy and in the

structure of the bodies in charge of direct exercise of the state customs procedures.

**Novelty of the study** follows from the fact that though nowadays the fiscal authorities became an administrative regulator, the dynamic and mobile nature as well as multistructure of the system of the state customs procedures necessitate a complex renovation of the system of entities that form and accomplish which is founded upon systemic legal transformations. In doing so, an important role in these processes is played by theoretical basics of such system transition to qualitatively new stages of development and clear definition of the preconditions and consequences of such transition. In parallel, some attention of this study was drawn to analysis of the SFS institutional reformation and demilitarization of the SFS Tax Militia which were envisaged by the Draft Law on amending the Customs Code of Ukraine as regards optimization of the territorial bodies of the State Fiscal Service № 2177a (hereinafter «Draft Law № 2177a») that is of key significance when forecasting efficiency of the practical accomplishment of the novel strategy for reforming the customs authorities of the SFS of Ukraine.

**The task of this study** is to analyse the regulatory and legal enactments that provide for reformation of the state customs procedures concept and propose how to improve the legal base and orient it at building-up a coordinated and meaningful concept of organization of the customs house performance as the territorial bodies of the SFS of Ukraine, and analyse the problematic aspects of the state customs procedures' reformation at the current stage of the theory and practice development.

While writing this paper, scientific works of Bayazytov L., Dodin Ye.V., Yegorov O., Kivalov S.V., Kormych B.A., Mazur A., Marokha V., Naumenko V., Platonov O., Polonskyi O., Prymachenko D.V., Skomarovskyi V., Tereschenko C., Chorny V. and others were used.

**Presentation of the main text.** The latest governmental initiatives in the state customs procedures sphere are aimed at active reformation of the concept of said sphere, system and structure of the SFS customs authorities. Hence, on June 24, 2015 a draft concept of the SFS reformation was placed on the official website of the Ministry of Finance of Ukraine (hereinafter «the Ministry») which key paradigm envisages the institutional reformation of the SFS and demilitarization of the Tax Militia of the SFS<sup>1</sup>. Later, by way of a legislative initiative, several deputies brought a Draft Resolution of the Verkhovna Rada of Ukraine «On improvement of activities of the authorities of the State Fiscal Service of Ukraine» for a consideration of the Verkhovna Rada which envisaged further development of the state tax and customs branches. As a result, all indicated legislative initiatives were taken into consideration in a single, so to say, «governmental» draft law – Draft Law № 2177a which was submitted by the Cabinet of Ministers of Ukraine to the parliament on June 30, 2015. Draft Law № 2177a has been developed on the basis of the guidelines of the International Monetary Fund Mission (hereinafter «IMF») concerning improvement of the work of the SFS authorities<sup>2</sup>.

During summer 2015 Provisions of the Draft Law № 2177a were permanently discussed by politicians, business representatives, specialists, experts, statesmen and public officials who referred to it when making their appraisals<sup>3</sup> (the All-Ukrainian Customs Forum held in Odessa on August 11, 2015 is an example of such wide discussion<sup>4</sup>).

As indicated in the comparative table to Draft Law № 2177a, the existing 26 SFS customs houses will be a part of the organizational and staff structure of the territorial bodies of the central executive authorities which is in charge of the state tax and customs policy, i.e., to the structure of the Chief Administrations of the SFS in the regions (hereinafter «CA SFS»). It is also proposed to delete part 2 of the effective Art. 245 of the Customs Code of Ukraine (hereinafter «CCU») that describes the legal status of

<sup>1</sup> Міністерство фінансів України. Презентовано проект реформи Державної фіскальної служби.

*Офіційний сайт Міністерства фінансів України.* <<http://www.minfin.gov.ua/news/view/prezentovano-proekt-reformi-derzhavnoi-fiskalnoi-sluzhbi?category=organi-v-kompetencii-mfu&subcategory=derzhavna-fiskalna-sluzhba-ukraini-organi>> (2015, December, 04).

<sup>2</sup> *Проект закону про внесення змін до Митного кодексу України щодо оптимізації територіальних органів державної фіскальної служби 2015* (Кабінет Міністрів України). *Офіційний сайт Верховної Ради України.* <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=55747](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55747)> (2015, December, 04).

<sup>3</sup> Макаренко, А. У митників забирають автономію. *Газета «День».*

<<http://www.day.kiev.ua/uk/article/ekonomika/u-mytnyukiv-zabyrayut-avtonomiyu>> (2015, December, 04).

<sup>4</sup> *Перезавантаження української митниці: погляд зсередини. Всеукраїнський митний FORUM.*

Facebook. <<http://www.facebook.com/Всеукраїнський-Митний-FORUM-1449429402029063/>> (2015, December, 04).

the customs house<sup>1</sup>.

Besides, the Cabinet of Ministers of Ukraine proposes to reserve with the SFS customs houses just the right to implement the state customs policy while nowadays they are also in charge of its development. The comparative table to Draft Law № 2177a indicates: «As necessary, the customs houses are being established in the settlements, at railroad stations, at airports, sea and river ports and at other facilities located within the zone of activity of the territorial body of the central executive body which implements the state tax and customs policy»<sup>2</sup>.

Hence, the SFS customs houses will be adsorbed by the CA SFS and become its integral organizational and staff structure! We are of opinion that this does not mean any destruction of the SFA customs houses because the final unification of two partnership directions at the local level will, at last, take place – unification of the state tax and state customs activities. However, why did we establish so complicated, diversified and multifaceted system of the SFS (including a great number of territorial bodies of this administration in the regions)? Was it done just for withdrawal of its individual territorial bodies, such as the SFS customs houses, from the general system of administrative subordination to the vertically structured relevant administration? In such case it would have been possible not re-organise the former Ministry of Revenues and Duties of Ukraine (hereinafter «Ministry of Revenues»). In other words, there is a situation when, e.g., the officials of the SFS customs houses inspect commercial motor vehicles and the officials of the SFS territorial bodies of the regional and local levels have no right to reasonably interfere by participating in such inspection together with the officials of the SFS customs houses? Hardly so. It is very difficult to agree to that as the organizational and administrative documents of the SFS interpret quite other position than the one indicated in part 3 of Art. 546 of the CCU<sup>3</sup>.

Opponents of the SFS reformation and the proposed transformations that raised the anti-reformation rush believe that such patriarchal and conservative stronghold of the administrative and business management of the state customs procedures at the local level, i.e., the SFS customs, will be ultimately liquidated. What happens with its detached structural divisions – customs stations and customs clearance divisions (as the issue of their number and forms of functioning remains unclear)? If these are transformed into the SFS customs houses (according to the provisions of Draft Law № 2177a) their number will increase many times – reaching several hundred! Today, in each of the 26 SFS customs houses, their own customs clearance technologies and customs clearance of commodities and materials are in place. Should the number of SFS customs house increase, the interpretation of the Law and technologies will expand many times.

What is to be done with the border crossing points of Ukraine where the customs clearance departments are found? Will they be subordinated either to CA SFS (if these remain within the structure of the renovated fiscal control bodies) or will their activities be shaped by the appropriate department of the Ministry of Finance of Ukraine? Still, according to the tax reform logic presented by the Prime-Minister of Ukraine Mr. A.P. Yatseniuk in June 2015, the Cabinet of Ministers intends to operationally and functionally integrate the bodies and divisions that stay within the SFS management to the Ministry of Finance<sup>4</sup>. That is to say, the Ministry of Finance will adsorb the bodies and divisions of the tax and customs administrations of the SFS. Many questions remain... Still, the main of them reduce to what happens if the restructuring process of the SFS customs houses as the SFS territorial customs bodies takes place within the frame of Draft Law № 2177a? It is hardly possible that there would be any radical changes in the state customs procedures at the local level.

However, an SFS customs house, according to its organizational and structural form, will not function as a legal entity in charge of the state executive power, therefore, it will not perform certain administrative and business functions related to management of its own staff and detached structural

<sup>1</sup> Проект закону про внесення змін до Митного кодексу України щодо оптимізації територіальних органів державної фіскальної служби 2015 (Кабінет Міністрів України). Офіційний сайт Верховної Ради України. <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=55747](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55747)> (2015, December, 04).

<sup>2</sup> Проект закону про внесення змін до Митного кодексу України щодо оптимізації територіальних органів державної фіскальної служби 2015 (Кабінет Міністрів України). Офіційний сайт Верховної Ради України. <[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=55747](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55747)> (2015, December, 04).

<sup>3</sup> Митний кодекс України 2012 (Верховна Рада України). Офіційний вісник України, 32, 9.

<sup>4</sup> Бугай, А. ГФС будет подчиняться Минфину. Страна.in.ua. <<http://strana.in.ua/news/economic/13540-gfs-budet-podchinyatsya-minfinu.html>> (2015, December, 04).

divisions that make a part of the organizational and structural divisions of the organizational and staff structure of the SFS customs houses and stay in its management, as well as perform certain other functional duties (e.g., the SFS customs houses will not be obliged to accompany court cases regarding customs control and/or customs clearance of commodities and materials, including appealing the tax assessment notices about determination of the relevant pecuniary obligations amounts<sup>1</sup>).

On the contrary, all territorial customs bodies of the SFS will remain the entities of administrative jurisdiction in charge of customs control and customs clearance of commodities and materials that are moved across the customs border of Ukraine by taxpayers exercising export and import (hereinafter «E/I») as they pursue the commercial and entrepreneurial activity.

We shall not argue that not only the SFS customs houses but also the entire SFS structure necessitates yet another reformation. Exceptionally reformation! The SFS reformation means realization of the administrative, judicial, commercial and other organizational activities aimed at changing the structures (its individual part or parts) of the SFS system without changing its existing directions of functioning. So, between set-up of the novel state fiscal institution starting from zero and perfunctory («cosmetic») changes of the current SFS system, the «middle» course has been chosen which envisages preservation of the old SFS system in parallel with establishment of the new structures that are to take over a part of the functions, rights and obligations of those SFS bodies that are to be re-organised, as well as to bring new faces to the SFS (accompanied with a parallel planned 20-30 % cuts of the SFS personnel that was proposed by the cabinet of Ministers) in the course of global reformation of its organizational and staff structures<sup>2</sup>. This process will have to be completed by 31.03.2016<sup>3</sup>!

Indeed, the organizational and staff structure of the SFS, which is a successor and organizational prototype of the former Ministry of Revenues, may not exist in the form of the Ministry of Revenues as it functions today. Now the SFS organizational and staff structure is too cumbersome and inflexible as far as the issues of operational and service management of the bodies and divisions manage by the SFS. Nobody doubts the fact that the total SFS machinery is extremely bureaucratic. By way of an example it is possible to give a legal analysis of the SFS customs structures and appropriate bodies that have functioned in the re-organized Ministry of Revenues. So, in September 2014, based on a liquidated Customs Procedures Department of the Ministry of Revenues (numbering 203 employees), established were as many as four (!) customs procedures departments of the SFS (numbering 276 employees): Customs Control and Customs Clearance Department (numbering 76 employees); Customs Payments and Customs and Tariff Regulation Department (numbering 77 employees); Risk Analysis and Customs Offences Counteraction Department (numbering 72 employees); and Customs Procedures Development Department (numbering 51 employees)<sup>4</sup>. Hence, contrary to sound sense, the organizational and staff numbers of the SFS customs authorities departments were increased by 73 employees! The situation was turned out better in June-August 2015 only. So, only three SFS customs departments (numbering 184 employees) were left out of four SFS customs departments that existed in September 2014: Customs Control and Customs Clearance Department (numbering 68 employees); Customs Administration Department (numbering 68 employees); Customs Offences Counteraction Department (numbering 48 employees)<sup>5</sup>. In other words, as compared with the «archaic» organizational and staff structure of the Ministry of Revenues, the SFS customs organizational and staff structure was increased by two departments but it comprised 19 employees less. What can we say to that? The result is evident... However, the names of staff positions of the SFS

<sup>1</sup> *Наказ про організацію роботи органів ДФС під час підготовки та супроводження справ у судах і ведення претензійно-позовної роботи*, п. 2.2.4.1 (2015) (Державна фіскальна служба України).

<sup>2</sup> *Наказ про здійснення заходів щодо поліпшення ефективності роботи митниць ДФС 2015* (Державна фіскальна служба України); *Наказ про скорочення чисельності територіальних органів ДФС 2015* (Державна фіскальна служба України); *Лист про інформацію 2015* (Одеська митниця Державної фіскальної служби України); *Наказ про скорочення чисельності територіальних органів ДФС 2015* (Державна фіскальна служба України); *Лист про надання інформації 2015* (Державна фіскальна служба України).

<sup>3</sup> *Наказ про затвердження Плану заходів із скорочення штатної чисельності працівників Державної фіскальної служби 2015* (Державна фіскальна служба України).

<sup>4</sup> *Наказ про введення в дію Структури та Штатного розпису Державної фіскальної служби України*, абз. 1–2, пп. 2.2., п. 2 (2014) (Державна фіскальна служба України).

<sup>5</sup> *Наказ про затвердження Переліку індексів структурних підрозділів ДФС*, ст. 10–12 (2015) (Державна фіскальна служба України).

administration and the number of employees are not the main points. The main thing is the detailed list of obligations of the customs bodies and divisions that stay in the SFS management.

At first glance it seems that behind the extended territorial network of the SFS that should look like a monolith in accordance with its central body organizational prototype there is a great functional gap. But it really should be like that because functional specifics of the SFS tax and customs bodies are still different due to diverse concepts and distribution. Complete unification of two partnership directions – the state customs and the state tax, was never achieved.

The opponents' comments touch such an issue as registration of taxpayers exercising export and import activities with the SFS bodies. As they say, a taxpayer who, besides the basic tax load, pays the customs duties as well should be registered with the SFS bodies just once, and not be made to get accreditation (registration, legalization) separately, as it is necessary with the SFS tax and customs authorities. Virtually, the tax bodies of the SFS register payers of taxes and charges<sup>1</sup>, VAT payers<sup>2</sup> and single tax payers of the state-sponsored social insurance<sup>3</sup>, and the SFS customs authorities register only those entities that make transactions with commodities<sup>4</sup>.

Regretfully, the state customs authorities have plenty of outstanding problems which, if compared with the «laboured» problem of double registration of taxpayers (entities that make transactions with commodities) by the tax and customs bodies of the SFS, are of secondary importance. Among the complicated and unsettled problems in the sphere of the state customs procedures we may enumerate the following: firstly, reluctance of each enterprise (as of 10.11.2015) to get a status of the authorized economic operator or the authorized (approved) exporter. Though these institutes of the state customs procedures are a form of the public-private partnership, they have not received any practical implementation. However, implementation of the institutes of the authorized economic operator and the authorized (approved) exporter is of utmost importance because the budget revenue is replenished not by the Ministry of Finance of Ukraine or the State Fiscal Service of Ukraine but only the domestic economy; secondly, the functions of the SFS customs houses lack the function of the customs post-audit control. A threat to the national security of Ukraine is associated with a gradual and methodical elimination of the punitive functions of the customs control and measures aimed at non-tariff restriction of export and import, as well as with implementation of the «know-how» for bad taxpayers (that concerns just Odessa Customs House of the State Fiscal Service of Ukraine). Application of the customs post-audit by the SFS customs houses will make it possible to reveal the violations accomplished by taxpayers while clearing their commodities after these commodities are released in free circulation. At that, such legal provision is fixed in the Customs Code of Ukraine and the officers of the re-organized customs houses of the State Customs Service of Ukraine have actively applied documentary audits as a form of the customs control. In the course of such audits reliable data contained in the customs declarations was verified by checking books, entries, business systems and commercial data of individuals / legal entities engaged in the international trade. Unfortunately, following the operational and functional integration of the State Customs Service of Ukraine into the organizational and staff structure of the Ministry of Revenues and Duties of Ukraine, this function became the domain of the taxation bodies and divisions that have been earlier subject to the Ministry of Revenues and Duties of Ukraine and, later, to the State Fiscal Service of Ukraine; thirdly, the State Fiscal Service of Ukraine is short of its own cargo customs terminals that could have functioned as specialized bodies of the State Fiscal Service of Ukraine and enabled the entities that make transactions with commodities the right to choose between the private companies that obtained a permit from the State Fiscal Service to exercise such kind of business activity (within the frame of the commercial infrastructure having a special customs status) and the state (not-for-profit) legal entities (public law) that could have provided free of charge services pertaining to issues that are directly connected with customs legalization of the commodities (their customs clearance, procedural

<sup>1</sup> *Наказ про затвердження Порядку обліку платників податків і зборів 2011* (Міністерство фінансів України). *Офіційний вісник України*, 43, 56.

<sup>2</sup> *Наказ про затвердження Положення про реєстрацію платників податку на додану вартість 2014* (Міністерство фінансів України). *Офіційний вісник України*, 91, 617.

<sup>3</sup> *Наказ про затвердження Порядку обліку платників єдиного внеску на загальнообов'язкове державне соціальне страхування та Положення про реєстр страхувальників 2014* (Міністерство фінансів України). *Офіційний вісник України*, 99, 381.

<sup>4</sup> *Наказ про затвердження Порядку обліку осіб, які здійснюють операції з товарами 2015* (Міністерство фінансів України). *Офіційний вісник України*, 58, 48.

supervision and storage under bond); fourthly, non-accession of Ukraine to the Convention on a Common Transit Procedure which does not allow of applying two kinds of transit procedures – «T1» and «T2».

Certainly, at the national level it is necessary to eliminate inconsistencies that contradict the rules of World Trade Organization (e.g., registration of entities that make transactions with commodities by the customs houses of the SFS. It is worthwhile to note that such registration is a latent non-tariff restriction of export and import). However, such measures should be implemented not by ignoring the long-pending and priority tasks that have been entered on the state customs procedures agenda long ago.

It is beyond doubt that reformation of the SFS and re-formatting of its territorial bodies and divisions managed by the SFS should be made, however, exclusively on the basis of the weighted and substantiated legal analysis, without superfluous chase for expected figures and spectacular last minute rush. It can happen if, for instance, such subordinated to the SFS bodies as tax and customs departments such as: Department of Special Training and Cynological Support of the SFS or Specialised Laboratory for Expert Examinations and Analyses of the SFS (hereinafter «Specialised Laboratory of the SFS»)<sup>1</sup> do not cope with the structural improvements and terminate their functioning? That will be an essential simplification of the process of reformation of the SFS tax and customs system.

Thus, the SFS Specialized Laboratory does not receive adequate funding and more extended list of powers. Still, what can be proposed, so to say, to use instead of expert, investigatory, classification, scientific and methodological activities that the SFS Specialised Laboratory conducts to achieve its tax and customs goals? Court experts in merchandizing who are certified by the Central Expert and Qualification Commission of the Ministry of Justice of Ukraine and are entitled to conduct merchandizing examination? But court expert activity is an independent professional activity of court experts who are not officers of the state specialized expert institutions and perform their expert activity on the basis of their qualification court expert certificates. Will they be able to settle all complicated issues of expert activity in the customs and tax spheres? Hardly so. At that, it is nothing to speak of a possibility to shoulder the cynological support problems associated with customs control onto the non-state institutions (in terms of the talks about possible transformation of the Department for Specialised Training and Cynological Support of the SFS to something else).

Therefore, the majority of initiatives that Draft Law № 2177a pursues are totally acceptable. The main point is that in the course of their accomplishment we do not lose the greater portion of rational kernels as it, very regrettable, happens quite often. Still, if we talk about the state customs branch, then the recipients of the state customs procedures support the new course but, at that, stress certain potential risks as well. All of such risks are reduced to the argument that the changes in the customs territorial bodies of the SFS should be planned starting from a gradual build-up of the staff potential. It is evident that all experts of the state customs branch complain on a catastrophic shortage of qualified specialists.

Nevertheless, now in this field of the SFS we witness maximalism, inextricable, incomprehensible and entirely politically and structurally inexperienced activity which brings no results and is fully politically motivated. Recollect what political battles ran wild when dismissal of the Deputy Head of the SFS who, in accordance with distribution of duties among the SFS management, managed organization, direction, coordination and control of the customs policy in the sphere of the state customs procedures (true to say, he was relieved of all his functional duties connected with accomplishment of the customs policy in the sphere of the state customs procedures even prior to his dismissal)<sup>2</sup>! And what is the worth of such organizational and administrative SFS enactments as: «Procedure of a tender for filling vacant positions referred to the nomenclature of the SFS Head» approved by the SFS order of 30.07.2015, № 558<sup>3</sup>; «Procedure of selection of candidates for filling the position of Odessa Customs House Head» approved by the SFS order of

<sup>1</sup> *Наказ про затвердження Положення про Департамент спеціалізованої підготовки та кінологічного забезпечення ДФС та Положення про Спеціалізовану лабораторію з питань експертизи та досліджень ДФС 2014* (Державна фіскальна служба України).

<sup>2</sup> *Розпорядження про звільнення Лікарчука К.І. з посади заступника Голови Державної фіскальної служби України 2015* (Кабінет Міністрів України). *Офіційний сайт Верховної Ради України*. <<http://zakon3.rada.gov.ua/laws/show/907-2015-%D1%80>> (2015, December, 04).

<sup>3</sup> *Наказ про порядок проведення конкурсу на заміщення вакантних посад, віднесених до номенклатури Голови ДФС 2015* (Державна фіскальна служба України).

01.10.2015, № 745<sup>1</sup>, etc. Every recipient of the state customs procedures knows the result of these SFS orders implementation. Such an approach to selection of candidates for the SFS higher management positions was considered unsatisfactory by the public and professional environment as the management positions are filled with persons whose level of special knowledge is unsatisfactory and their ability to make efficient management decisions is low. Ignored are the norms of SFS order of 03.11.2014, № 240 «On organization of staff recruitment in the State Fiscal Service of Ukraine» (e.g., as regards conformance of the candidates for filling the higher management positions in the bodies and divisions in the sphere of SFS management to the educational and qualification requirements)<sup>2</sup>. All that is being accomplished against the background of the non-realized system of incentives and penalties in the SFS managed bodies and divisions of the customs procedures. In other words, the SFS strategy in this domain is sufficiently imitated.

Unfortunately, such staff flip and flop policy and turbulence facilitate just one thing – unbalance and disorganization of the SFS officers when performing their duties and a loss of their motivation (it concerns, primarily, the 30% cut of the SFS employees, including the officers of the SGS customs houses proposed by the Cabinet of Ministers<sup>3</sup>). It also should be mentioned that during 2014 11,000 of the SFS customs houses provided, on the average, for 46% of revenues to the state budget in kind of taxes, duties and other payments to the State Budget of Ukraine which were controlled by the officials of the SFS customs territorial bodies in compliance with the legislation of Ukraine. In its turn, during 2014 on the average 54% of revenues to the state budget fall on 44,000 officers of the state tax inspections of the SFS – these were in kind of taxes, duties, rental payments and other revenues to the state budget which are to be controlled by the officials of the territorial bodies of the SFS in charge of taxes in compliance with the tax legislation of Ukraine<sup>4</sup>.

However, it should be recollected that the customs authorities of the EU countries are not the «fire brigades» to ensure state revenues. The amounts of deductions from customs payments that are transferred to the state budget from the customs authorities of the EU countries comprise not more than 10% accordingly. In so doing, the customs payments are not channelled to the EU countries budgets but are transferred to Brussels. Moreover, the law enforcement function of the customs authorities of the EU countries prevails considerably over their fiscal function.

In Ukraine everything happens otherwise. We should not forget about permanent correlation with the plans of budget revenues to the general and special funds of the state budget that are directed to the SFS by the Ministry of Finance so that the SFS fulfils them. It should be remembered that for the SFS the plan of budget revenues is the budget indicative for a certain period (monthly) which is planned by the Ministry of Finance and directed to the SFS tax and customs territorial bodies. In their turn these bodies organize their work so as to ensure fulfilment of the indicative figures of revenues to the general and special budget funds.

By way of example it is possible to describe the status of fulfilment of the indicative revenues figures by the SFS customs houses and attraction of reserves for increasing the budget revenues in October 2015. As of 28.10.2015, the general fund of the state budget received UAH 30.1 bln or 70.4% of the task (the indicative was UAH 42.7 bln), including UAH 16 bln or 85% transferred by the customs houses (UAH 2.8 bln less than the indicative). Generally, as of 28.10.2015, the revenues of UAH 0.5 bln are not expected for the month according to the information obtained from the SFS customs houses. On the whole, the figure behind schedule is not so great.

Fulfilment of the indicative fissures is forecasted to be greatest in the customs houses of Dnipropetrovsk region – «minus» UAH 438.6 m or 74.8 % of the indicative; Zaporizhzhia region – «minus» UAH 262.6 m or 54.5 %; Odesa region – «minus» UAH 208.4 m or 83 %; Kyiv region – «minus» UAH 134.4 m or 95.6 %; Poltava region – «minus» UAH 77.8 m or 73 %; Cherkasy region – «minus» UAH 71.3 m or 63.7 %; Donetsk – «minus» UAH 65.7 m or 83.7 %; Khmelnytskyi region – «minus» UAH 30.2 m or

<sup>1</sup> *Наказ про проведення відбору кандидатів на посаду начальника Одеської митниці ДФС 2015 (Державна фіскальна служба України).*

<sup>2</sup> *Наказ про організацію добору кадрів у Державній фіскальній службі України 2014 (Державна фіскальна служба України).*

<sup>3</sup> *Наказ про затвердження Плану заходів із скорочення штатної чисельності працівників Державної фіскальної служби 2015 (Державна фіскальна служба України).*

<sup>4</sup> *Лист про виконання наказу 2015 (Державна фіскальна служба України).*

83.2 %; Kherson region – «minus» UAH 26.2 m or 78.8 %; and Chernihiv region – «minus» UAH 22.4 m or 93.8 %<sup>1</sup>.

In other words we talk about planned revenues that are transferred by the SFS customs houses (including the revenues resulting from control measures associated with determination of the customs value, control of classification of commodities and determination of the country of origin of the commodities that are moved across the state border of Ukraine as well as resulting from acceleration of customs clearance of the imported commodities that stay in the bonded warehouses and temporary storage warehouses) and state tax inspections of the SFS to the general and special funds of the budget. That is the way how fiscal payments are planned in the sphere of SFS customs houses. Still, no plans (developed both by the Ministry of Finance and the SFS) of revenues to the state budget to be transferred by the territorial tax and customs bodies of the SFS officially exist! This is just a common atavism. Though the incentive draft law on amending the Budget Code of Ukraine that provides for a transfer of a part of funds that exceeds the planned figures of the payments to the budget by Odesa customs house of the SFS to be directed to construction of «Odesa-Bolhrad-Reni» highway so as to make a true pan-European road transport corridor «Odesa-Rumania-Bulgaria» has already been developed by the Administration of the President of Ukraine, signed by the President of Ukraine (08.07.2015) and registered with the Verkhovna Rada of Ukraine. However, this draft law contradicts the legislation of Ukraine as well. Indeed, in accordance with the norms of the Budget Code of Ukraine, it is not envisaged to replenish local budgets at the expense of the budget revenues payable by the SFS customs houses and state tax inspections of the SFS (local budgets get revenues originating from taxation of incomes of individuals only<sup>2</sup>).

If 11,000 officials of the SFS customs houses (comprise one fifth part of the entire SFS) transfer one half of revenues to the State budget of Ukraine (the volume of revenues in kind of customs payments transferred to the State budget of Ukraine by the SFS customs houses amounts to UAH 17 bln (plus the «black cash» of additional UAH 4.5–7.5 bln), then why is it necessary to destroy such effective branch of the SFS structure as customs houses? Specialists and experts of the state customs branch raise this question responding to the entirely substantiated steps of the government of Ukraine aimed at reformation of the SFS, which envisaged certain restructuring of the SFS by way of setting up the tax and customs state systems of a modern pattern<sup>3</sup>.

As the matter stands, the SFS customs houses are not destroyed, it is the customs feudalism which has been formed during last decades of the state customs branch that is being destroyed. For example, for the last one year and a half ten heads of the SFS Odesa Customs House were changed. What does it tell us? Does it tell about inconsistency of the political situation which still defines appointment of one or another official of the higher management level of the SFS? Or, possibly, about certain parities that gradually appear with the officials of the higher management level of the SFS which indicates a sensitive reflection and quick understanding of the fact that transparency should highlight all dark corners of the departmental life of the shut-in «customs elite»? Answers to these opportunistic questions are ambiguous.

In this context, let us hope, assistance can come from the SFS Anti-corruption program for 2015–2017 that was approved by the SFS order of 18.08.2015, № 614 (hereinafter «SFS Anti-corruption program»)<sup>4</sup>. Surely, this SFS Anti-corruption program did not appear out of a clear sky and resulted from the «act of good will» on the part of the SFS management. It was developed in response to the provisions of the Law of Ukraine «On the principles of the state anti-corruption policy in Ukraine (Anti-corruption strategy) for 2014–2017»<sup>5</sup> and the Law of Ukraine «On counteraction of corruption»<sup>6</sup>. It is necessary to state that the SFS Anti-corruption program differs from similar conceptual postulates (as earlier there was

<sup>1</sup> *Доповідь на апаратній нараді щодо стану виконання індикативних показників доходів та залучення резервів збільшення надходжень до бюджету у жовтні 2015 року*, ст. 1–2 (2015) (Державна фіскальна служба України).

<sup>2</sup> *Бюджетний кодекс України*, п. 1 ч. 1 ст. 64 (2010) (Верховна Рада України). Урядовий кур'єр, 151, 9.

<sup>3</sup> *Лист про виконання наказу 2015* (Державна фіскальна служба України).

<sup>4</sup> *Наказ про затвердження Антикорупційної програми ДФС на 2015–2017 роки 2015* (Державна фіскальна служба України).

<sup>5</sup> *Закон про засади державної антикорупційної політики в Україні (Антикорупційна стратегія) на 2014–2017 рр. 2014* (Верховна Рада України). *Офіційний вісник України*, 87, 134.

<sup>6</sup> *Закон про запобігання корупції*, ст. 19 (2014) (Верховна Рада України). *Офіційний вісник України*, 87, 156.

nothing similar in the re-organised state customs institutions) as this document is substantiated, balanced and is aimed at achieving a number of goals, the main of them being improvement of the SFS bodies and divisions efficiency in prevention and counteraction of corruption within the sphere of their competence as well as strengthening of the managerial supervision and interdepartmental control of proper implementation of anti-corruption measures by the bodies and divisions of the SFS<sup>1</sup>. At that, the SFS Anti-corruption program defines an exhaustive and wholly realistic list of legal, organizational and structural measures aimed at prevention and counteraction of corruption in the bodies and divisions managed by the SFS which also include coordination with law-enforcement bodies, public relations, human resourcing, material and technical, financial, scientific and information support of measures aimed at prevention and counteraction of corruption in the SFS bodies and divisions as well as international cooperation on the range of these issues<sup>2</sup>. According to the tasks defined in the SFS Anti-corruption program the SFS management dynamically and quite energetically activated the work aimed at counteraction of corruption and ensuring security in the bodies and divisions managed by the SFS<sup>3</sup>. Performance of such tasks within the SFS as implementation of the legally provided measures to counteract corruption and control of such implementation within the SFS and its territorial bodies is carried out by the SFS internal security divisions.

Still, one more issue is raised: How will the SFS Anti-corruption program correlate with the liquidation of the internal security divisions within the Chief Administration of the SFS and in Kyiv, as well as in the Interregional Chief Administration of the SFS – Central Office for servicing large payers<sup>4</sup>? As the SFS management announced, this necessary step was dictated by a cut of staff of the SFS territorial bodies, including the SFS customs houses<sup>5</sup>.

However a sound sense is wholly present in this decision of the SFS management. How is it possible for some officials at the local level to permanently implement measures to prevent corruption (while adhering to transparency, impartiality, presumption of innocence, presumption of private life, etc.) with respect of the official activities (as regards restriction to using official authority or one's official position by the officials of the SFS territorial bodies (SFS customs houses) of other officials while the first and the second officials serve in different territorial bodies that belong to one and the same organizational and staff structure of a single relevant branch? Indeed, internal (official) audits (that have certain deficiencies) made by the SFS internal security divisions have a peculiarity that one SFS officers check another SFS officers. In doing so, the competence limits of the SFS internal security divisions in this particular official matter (same as other territorial structures of the central executive branch bodies) are clearly defined by the Law of Ukraine «On prevention of corruption». In other words, prevention and counteraction of corruption offences and other offences connected with corruption in the SFS are not the main prerogative (main task in terms of the tasks conferred on the SFS) for the SFS activity as compared with other relevant state institutions.

Be as it may, but the SFS regulatory documents added transparency to this issue. For instance, in accordance with provisions of the SFS order «On amending provisions on the SFS territorial bodies in Odesa region » that was approved by the SFS on 06.10.2015, № 765<sup>6</sup>, and changes were made in the SFS order of 27.08.2014, № 81 that approved the provision on territorial bodies of the SFS in Odesa region<sup>7</sup>. Hence, the phrase «the CA SFS internal security division for Odesa region was replaced with the phrase

<sup>1</sup> *Наказ про затвердження Антикоруційної програми ДФС на 2015–2017 роки*, абз. 3–4, р. III, р. IV (2015) (Державна фіскальна служба України).

<sup>2</sup> *Бюджетний кодекс України*, р. IV (2010) (Верховна Рада України). Урядовий кур'єр, 151, 9.

<sup>3</sup> *Наказ про організацію роботи, спрямованої на запобігання корупції та забезпечення безпеки в орган Державної фіскальної служби України 2015* (Державна фіскальна служба України).

<sup>4</sup> *Наказ про скорочення чисельності територіальних органів ДФС*, п. 2 (2015) (Державна фіскальна служба України).

<sup>5</sup> *Наказ про скорочення чисельності територіальних органів ДФС*, п. 2 (2015) (Державна фіскальна служба України); *Наказ про затвердження Плану заходів із скорочення штатної чисельності працівників Державної фіскальної служби 2015* (Державна фіскальна служба України).

<sup>6</sup> *Наказ про внесення змін до положень про територіальні органи ДФС в Одеській області 2015* (Державна фіскальна служба України).

<sup>7</sup> *Наказ про затвердження положень про територіальні органи ДФС в Одеській області 2015* (Державна фіскальна служба України).

«the SFS internal security division»<sup>1</sup> in all regulations of the SFS territorial bodies in Odesa region (the CA SFS in Odesa region, Odesa Customs House of the SFS, State tax inspections of the CA SFS in Illichivsk and Yuzhnyi, state tax inspections of the CA SFS for Odesa region, in Odesa City districts, state tax inspections of the CA SFS for Odesa region, unified state tax inspections of the CA SFS for Odesa region). The internal security divisions at the CA SFA and in Kyiv, also within the Interregional Chief Administration of the SFS – Central Office for servicing large payers, that were included in the structure of the SFS Chief Administration of internal security, were reduced in staff<sup>2</sup> and performance of the measures for corruption prevention and control of fulfillment of these measures in the SFS territorial bodies and SFS administration in accordance with the legislation was entrusted to the structures that stay in management of the internal security division of the SFS (Chief Administration of internal security of the SFS). In other words, in connection with the planned reduction of the organizational staff of the SFS internal security divisions the SFS management ordered their functions to the central internal security division of the SFS.

However, along with that, it should be stressed that other divisions of the SFS territorial bodies which are in charge of internal control and audit at the local level proceed to accomplish their activities. For instance, divisions and the administration of internal audit and control of the Chief Administration of the SFS in regions, Kyiv and Interregional Chief Administration of the SFS – Central Office for servicing large payers that are functionally subject to and report to the Internal audit and control department of the SFS (the independent division of the SFS administration) organize and perform internal audits in the SFS bodies, at subordinated enterprises, in institutions and organizations, and arrange and implement the results of such internal audits<sup>3</sup>.

So, the organizational and staff restructuring of the SFS by way of setting up novel tax and customs state system should be implemented. This is incontestable. But how? By setting up a renovated National Customs of Ukraine having a legal status of the central executive power body? By accomplishing adsorbing processes of operational and functional integration of the SFS customs divisions into the organizational and staff structure of the Ministry of Finance?

Fragmentation... Is it one of the effectual ways to upgrade and set up the state customs system of the novel type? The answers to this rather debating point which permanently «evolve» due to detailed, unprincipled and demagogic rhetoric on the part of the «progressive» public and politicians are diametrically-opposite. Does it mean that this matter is going downhill?

So, the actually non-substantiated policy aimed at establishment of new or re-organization or liquidation of the old state tax or customs institutions as well as the permanent reductions in force of the SFS employees entails just next financial losses of the state budget. The expenses connected with numerous re-organizations and liquidations and further personnel cuts of the SFS staff are made in the absence of any additional allocation of funds within the approved cost estimate (for the SFS maintenance), i.e., the funds are taken from the salary fund.

Though Art. 2 of the Law of Ukraine «On sources of finance of the state power bodies» envisages that the state authorities exercise their activities at the expense of the state budget only, which is done within the limits stipulated in the Law of Ukraine on the state budget for the appropriate year<sup>4</sup>, the cost estimate for 2015 does not provide for actual expenses aimed at the SFS maintenance<sup>5</sup>.

Apart of that, there is a catastrophic shortage of funds for administrative and technical support and the employees have to buy paper and stationery, send correspondence to taxpayers, fill cartridges, pay phone expenses, go on missions, etc. at their own expense. As there are no funds to pay for the rendered services, the pressure on the salary fund becomes greater because it is also necessary to keep, on a contractual basis, cleaners and caretakers, make current repairs, buy fuel for official vehicles, etc.

<sup>1</sup> *Наказ про внесення змін до положень про територіальні органи ДФС в Одеській області 2015* (Державна фіскальна служба України).

<sup>2</sup> *Наказ про скорочення чисельності територіальних органів ДФС*, п. 2 (2015) (Державна фіскальна служба України).

<sup>3</sup> *Наказ про поліпшення ефективності роботи підрозділів внутрішнього аудиту та контролю 2015* (Державна фіскальна служба України).

<sup>4</sup> *Закон про джерела фінансування органів державної влади*, ч. 1 ст. 2 (1999) (Верховна Рада України). *Офіційний вісник України*, 31, 9.

<sup>5</sup> *Лист щодо звернення 2015* (Всеукраїнська професійна спілка працівників органів державної фіскальної служби).

Considering all the above, there is a wholly substantiated impression that the latest initiatives of the Cabinet of Ministers concerning the SFS reformation are aimed at dismissal (reduction in force)<sup>1</sup>.

Regretfully, under the current situation there is a real possibility that our country may lose its political positions at the international and political arena which, in its turn, undermines the trust in the national government on the part of the Ukrainian population and the processes aimed at creation of the favourable investment climate in Ukrainian regions as well as development and implementation of measures to attract investment resources will suffer. And again it is worthwhile to remind that all the above contradicts the results of the first US-Ukraine Business Summit that took place on 13.07.2015 in Washington where the Ukrainian side presided by the Prime-Minister of Ukraine Mr. A.P. Yatseniuk demonstrated investment attractiveness of Ukraine to the managers of the biggest companies, including the Ukraine's successes in reforming the state tax and customs system<sup>2</sup>! However, assuming that the SFS reformation concept and the appropriate plan of its accomplishment was developed by the Government of Ukraine (partially these developments were put together in Draft Law № 2177a) and agreed with the representatives of IMF and other international financial institutions, it is most regrettable that there are, until now, no results of these conceptual novelties whatsoever.

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<sup>2</sup> Ukraine. *Open for U*. *youtube.com*. <<https://www.youtube.com/watch?v=jdSQuanI8Z8>>.

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