DOI 10.26886/2524-101X.7.5.2021.4

ISSN 2524-101X
eISSN 2617-541X

# AEOs' Institution Development in the EU and Ukraine: Common Standards in Different Perceptions

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Ostrikova, T. (2021). AEOs' Institution Development in the EU and Ukraine: Common Standards in Different Perceptions. *Lex Portus*, *7(5)*, 69–87. https://doi.org/10.26886/2524-101X.7.5.2021.4

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**ABSTRACT**

*The article presents a comparative study of the AEO institution's development in the legislation of the EU and Ukraine. It focused on differences in perceptions of the role and functions of AEO and related differences in ways and means of introducing this institution. Development of partnerships between customs authorities and businesses incorporated a concept of trusted trader. The said concept had developed through the whole international framework of standards in the field starting from the Revised Kyoto Convention and even earlier at the national level in the number of countries. However, current senses of AEO status were introduced into the EU legal space only after entering into force the Union Customs Code of 2016, supplemented by the comprehensive*

*development of international bilateral and regional agreements in the study area. Besides, the research emphasized problems associated with the formation and development of the AEO institution in Ukraine. The European integration aspirations led to the emergence of provisions in the legislation of Ukraine on the provision of benefits and simplifications by customs authorities to economic entities in the course of customs control. However, considerable problems associated with introducing the national system of customs regulation and the practical implementation of the AEO arose from the lack of confidence in businesses and somewhat misunderstanding the core of relations between AEO and customs authorities. Several legislation gaps and differences with respective EU legislation made become obstacles for study reform and practical implementation of the AEO institution in Ukraine.*

***The key words:*** *authorized economic operator, AEO, trade facilitation, customs legislation, EU, Ukraine, supply chain security.*

## Introduction

Today, the institute of the Authorized Economic Operator (hereinafter AEO) is integrated into the national model of customs procedures of many countries, while in Ukraine, this issue is relatively new. It is worth recalling that the legislation defining the legal status of AEO and creating legal preconditions for the functioning of this institute was adopted only in 2019-2020, and on March 18, 2021, the first company acquired AEO status and received the appropriate AEO authorization in Ukraine following EU practice and standards (Issues of functioning of authorized economic operators).

The importance of partnership between customs authorities and businesses in the context of simplifying customs procedures became a subject of discussion in the European scientific space only in the last quarter of the twentieth century. Technological advances and new trends in the growth of international trade caused by globalization have pushed the international community to significantly transform approaches to customs formalities, technologies, and controls. In the 1980th some countries, like Sweden or Netherlands, started to develop Trusted Trader Programs, that included most features of current AEO concept, such as: voluntary entrance based on specific

criteria, a partnership approach, self-assessment by the company, validation of systems, risk mapping, generous benefit programs, certification (Karlsson, 2017).

The new ideas were reflected in the wording of the Brussels Protocol of 1999 to the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention). Said act provided a status of authorized persons, provided for special procedures for authorized persons, and provided for several special procedures (special simplifications). Initially, the Kyoto Convention, as amended in 1999, created the legal basis and became the starting point for the further development of the institute of an authorized economic operator in European customs legislation.

A qualitatively new round of partnership development between customs authorities and businesses emerged with the September 11, 2001, attacks in the United States. The terrorist attack revealed the vulnerability of the existing logistics infrastructure administration system and served as an incentive to expand international cooperation to increase security, which significantly increased the dependence of customs administrations in different countries on supply chain control. The US-initiated response was threefold including the so-called Container Security Initiative (CSI), the International Ship and Port Facility Security Code (ISPS), which became a separate chapter in the UN Safety of Life At Sea (SOLAS) convention, and finally the Customs-Trade Partnership Against Terrorism (C-TPAT) (Veenstra, 2019).

The C-TRAT Program emphasized the need to focus customs controls on foreign economic operators whose activities are not certified and therefore cannot be trusted. Also, the Program emphasized a voluntary certification of traders' internal procedures as the most critical challenge on improving supply chains security (The Authorised Economic Operator (AEO) concept. Blessing or curse?). As an equivalent to the US system in the European Community, at the initiative of the World Customs Organization (WCO), the AEO

institute was introduced. On June 23, 2005, the WCO adopted the Framework Standards for Security and Facilitation of World Trade (SAFE) that provisions introduced principles creating conditions for enhancing international trade security and promoting the continuous movement of goods throughout the secure international supply chain. The SAFE Standards have defined partnerships between customs administrations and commercial organizations as one of the main pillars. The main emphasis within this "support" was placed on creating an international system for identifying those private companies that provide a high degree of security guarantees in terms of their role in the supply chain. It was found that such business partners should receive tangible benefits from the partnership to speed up registration and other activities. The SAFE Standards marked the beginning of applying a new "end-to-end" regime of world trade management, the beginning of the formation of qualitatively new relations in the system of "customs-entrepreneurship".

**Methodology**

The paper utilizes a comparative analysis of the EU and Ukrainian legislation on AEOs. The review of AEOs legal status includes its initial stages and current state concerning major approaches to goals and functions of implementing this institution. The research hypothesis is that different perceptions of AEOs' functions may lead to different implementation outcomes of the same international standards. The specific case of Ukraine's efforts of approximation to the EU legislation is considered amid its potential to address specific Ukrainian issues in the field.

**1. The European Union Approach to AEO Statues**

The legal framework for the introduction of AEO in the EU was created by the Regulation (EC) № 1875/2006, adopted in 2006, which amended the Commission Regulation (EU) № 2454/93 of 2 July 1993 laying down provisions for the implementation of

Council Regulation (EEC) № 2913/92 on the establishment of the Community Customs Code. In addition, the decision to establish a single Risk Management System in the EU was made in 2007 (Laszuk & Ryciuk, 2016). 2007 was also remarkable for adopting a new version of the International Trade Security Framework Standards (SAFE), supplemented by the rules on the conditions and requirements for obtaining the status of AEO, initially developed as a separate document. In addition, the new version of the document wrote a list of special simplifications and benefits of obtaining authorization. The applied approach to forming provisions for the regulation of activities related to the AEO based on a single act immediately showed positive results in practice. Thus, after entering all provisions in 2008, 565 AEO certificates were issued in the EU (Perekhod, 2012).

It is worth noting, despite high expectations from the AEO institution in the European Community, the initial years of implementing a new model of the relationship between the customs administration and business have often led to disappointments. Also, before the adoption in 2005 of the SAFE Framework and further elaboration of the provisions on authorized economic operators in 2007, there were many simplifications for traders, which, according to some research, contributed to the perception of entrepreneurs of the benefits of obtaining the status of AEO as minimal ones (The Authorised Economic Operator (AEO) concept. Blessing or curse?). Such a trend, in turn, required constant updating of incentives for AEO status by states.

European AEO concept, as well as C-TRAT, is based on concept of "trusted trader" which considers the entire system of internal controls and releases the focus on individual transactions and includes a dialogue between companies demonstrating that they are in control and regulatory agencies assessing the effectiveness and adequacy of the controls and reusing commercially motivated controls for their own control and supervision purposes (Zommer, 2019, p. 587).

However, the very concept of a partnership based on "trust" between the customs administration (which is a public administration body and operates within limits set by law) on the one hand and their commercial counterparts on the other (with their private interests) proved to be not natural, and a notion of trust was overregulated. Thus, customs authorities continued to carry out general control procedures towards AEOs. Moreover, although this was not explicitly provided for in EU customs legislation, the customs administration tended to link new partnerships to the expectation of active reports of violations, which often did not meet the commercial interests of authorized economic operators.

The difference in the methodology used by different customs administrations to assess AEO applicants became another obstacle to the development of the institution of an authorized economic operator. This has undoubtedly complicated the process for economic operators with business units scattered throughout the EU. From a practical point of view, the trading community has also faced different procedures for applying for AEO status in each of the Member States, subject to individual requirements. Although the European Commission envisaged in 2010 a harmonized list of self-assessment questions (SAQs) to ensure a uniform approach across the EU, there were still the Member States whose rules and requirements differed. For example, in the Netherlands, the AEO application consisted of a short form of self-assessment carried out by the applicant with scores from 0 to 5, without requiring any documentation confirming the validity of the score. Easiness of obtaining the AEO authorization later led to re-evaluations of AEOs wishing to maintain their status (The Authorised Economic Operator (AEO) concept. Blessing or curse?).

In general, since adopting the SAFE Framework to improve the AEOs regulation in the 2000s, the EU has issued many acts governing various aspects of the institute. For example, Regulation № 197/2010 of 9 March 2010 established new deadlines for issuing

AEO certificates. To uniformly interpret and apply the provisions related to the AEO concept, the Directorate-General for Taxation and Customs Union (TAXUD) Recommendations on the practical application of AEO status were developed in 2007 (Perekhod, 2012). Although these Recommendations were not legally binding but possessed explanatory nature, they became an essential supporting tool for participants in foreign economic activity in obtaining the status of AEO.

The decisive AEO institute development in the EU began with adopting the Union Customs Code (UCC) on October 9, 2013, which came into force on May 1, 2016, and combined the provisions of most previously adopted acts AEO regulation. At the same time, the provisions of the Union Customs Code have introduced some changes in the institute's functioning under study, especially in the direction of expanding the criteria for granting the status of AEO. In particular, the criteria included the absence of violations of customs and tax legislation, high standards of control and audit of the company's flows of goods, and confirmation of financial solvency (Regulation (EU) of laying down the Union Customs Code (recast). The thorough elaborating of errors revealed by implementing the AEO institute occurred while UCC drafting. That has been reflected in the increasing interest in obtaining the status of AEO by business entities. Thus, as of May 1, 2016, 14042 business entities received the status of AEO in the European Union. Moreover, almost 42 % of all AEO certificates were issued by the German customs administration, while the Netherlands and France, which rank second and third in the number of certificates issued, respectively, together account for only 20 % of the total number of AEOs (Authorised Economic Operators – Query page).

With the significant spread of authorized economic operators in the EU, the problem of concluding agreements on mutual recognition of AEO statuses at the bilateral and regional levels has become significantly relevant. Highlighting the general trends

in the practice of mutual recognition of EU AEOs with other countries, one should emphasize that the EU seeks to conclude agreements with all its strategic partners, which will provide competitive advantages to national businesses. Over the last decade, agreements on the mutual recognition of AEO status have been concluded with Norway (2009), Switzerland (2009), Japan (2010), Andorra and the United States (2012), and other countries (Laszuk & Ryciuk, 2016).

## 2. Ukrainian Pass to the AEO: Where Distrust Prevails

Given the European integration aspirations in Ukraine, providing customs authorities possess somewhat practice of granting simplifications to traders, traceable back to the late 1990th. In particular, the Resolution of the Cabinet of Ministers of Ukraine "On Assistance to Foreign Economic Activity" No. 593 adopted on April 14, 1999, entitled the State Customs Service of Ukraine to suspend the application of specific non-tariff regulations and other restrictive procedures towards selected declarants during customs control and customs clearance. In pursuance of the Resolution of the Cabinet of Ministers of Ukraine No. 593, the joint order of the State Customs Service, the Ministry of Economy, the State Tax Administration "On approval of evaluation criteria and procedure for determining resident enterprises of Ukraine which foreign economic activity is liable to the application of facilitation regime" of 07.07.1999 No. 411/488/357 was adopted, and further amended in 2004 (Medvid, 2016). Nevertheless, in this context, the relevant simplifications were perceived primarily as a tool to reduce administrative pressure on businesses rather than the generally accepted concept of partnership. As a result, the security issues in this aspect were mainly declarative. Similar contradictions were revealed during the attempts to implement AEO in Ukraine.

However, the development of the AEO institution o in Ukraine began with the introduction of respective provisions in the Customs

Code of Ukraine, adopted on March 13, 2012. However, business entities' low level of interest in obtaining the simplifications and benefits proposed by the legislator in the Customs Code of 2012, combined with the unwillingness of public authorities to promote the introduction of AEO effectively, made it impossible to implement the reform in that period.

The reform was practically launched only on October 2, 2019, due to the adoption of the Law of Ukraine "On Amendments to the Customs Code of Ukraine on Certain Issues of Functioning of Authorized Economic Operators", which completely rebooted the domestic institute of authorized economic operator. Changes concerned numerous aspects of the legal regulation of AEO, including the change of the name, the procedure for obtaining the status of AEO, and the benefits and simplifications. Paragraph 1 of Art. 12 of the Customs Code of Ukraine entitled any resident enterprise that performs any role in the international supply chain (manufacturer, exporter, importer, customs representative, carrier, freight forwarder, warehouse keeper) and has received authorization following the requirements set to acquires the AEO status.

The provisions of the new Law detailed the criteria for obtaining the status of AEO, the mechanism of inspections by regulatory authorities for compliance of economic entities with such criteria, expanded the list of special simplifications and benefits provided for an enterprise that received one of the types of AEO authorization. Although, the new round of development of the AEO is undoubtedly a positive step towards building effective legal regulation of partnership between customs administration and business, there are significant contradictions with the EU legislation in the field. Basically, the introduction of AEO on Ukraine revealed existence of significant gaps between the way standards are conceived at the international level, and their practical application at the national level, due to the peculiarities of its understanding by decision

makers, national constraints and concerns, and national governance principles (Gayk et al., 2021).

In terms of supply chain security, we can draw two different approaches, companies centered, and state centered.

For companies, supply chain security is managed in two ways, as supply chain risk management, which is driven by commercial interests, and as compliance management that is driven by requirements set by governments or authorities (Zomer, 2019, p. 576).

From states' point of view, the role of the AEO in the mechanism of state customs security is possible to consider dualistically: in terms of direct enhancing of customs procedures' effectiveness due to the voluntary compliance management and at the same time in terms of facilitation of international trade and increasing the competitiveness of national subjects with a high degree of confidence. Which means trading compliance for benefits that can be divided into four different categories: speed, greater predictability, lower cost, better service (Karlsson, 2017). Furthermore, the future recognition of Ukrainian AEOs by the EU customs authorities, provided for in Article 80 of the EU – Ukraine Association Agreement, will ensure their participation in the formation of safer supply chains and increase their competitiveness in both foreign and domestic markets.

However, in Ukrainian realities, said approaches appeared to be somewhat distorted. On the one side, businesses in Ukraine are significantly concerned with the administrative pressure and corruption risks in customs procedures, and such considerations possess an important place in their evaluations of the pros and cons of acquiring AEO status. On the Government side, amending the AEO regulation was primarily motivated by the need to align it with the EU legislation, whilst the focus of internal concerns shifted from trust to possible abuse of the law and the protection of the State's fiscal interests (Gayk et al., 2021).

In addition, Ukrainian customs legislation and practice provide an unreasonably broad perception of "security," which basically

can justify un-proportional interference in businesses. For example, according to Article 6 of the Customs Code of Ukraine (CCU), customs security is a state of protection of customs interests of Ukraine, and customs interests of Ukraine are national interests of Ukraine, the provision and implementation of which is achieved through customs affairs. Such wording makes it possible to squeeze under the notion of "security" rather extensive range of issues, whilst the WTO practice demands that states have an obligation to identify notions of security interests in every particular case clearly (Boklan & Bahri, 2020, p.134). Besides, there is still an open question of whether AOE "trusted" status extends towards relations with other controlling and law enforcing authorities involved. For example, there is the very questionable practice of imposing personal special economic and other restrictive measures (sanctions) to a number of individuals and legal entities in the course of the fight against smuggling by National Security and Defense Council decisions that ground upon information of different law enforcement agencies (The NSDC of Ukraine considered a number of topical issues of state security at its meeting on Friday). However, the general trend of current AEO developments is a transition to a Single Government AEO Status, where all the sub-processes of AEO, including – application, validation, certification, and management, monitoring and re-validation, must also reflect the criteria, requirements, and risks of the other agencies (Karlsson, 2017, p. 30). Thus, a recipient of AEO status is supposed to be trusted by all state authorities involved. Besides, a mutual trust may have more impact than different regulative restrictions in terms of voluntary compliance. For example, a like effect can be traced upon corporate social responsibility, where legal factors do not significantly influence the issue, contrary ethical factors and trust factors do (Imran et al., 2020).

The lack of trust in potential applicants for the AEO status from the Ukrainian authorities reflects in many legislation provisions making it disproportionally tricky for traders to comply with all

criteria. The first year of the AEO program has revealed several issues, the harshest of which are criteria of financial solvency. With this respect, Ukrainian legislation proved to be much more demanding than the EU one. For example, Article 14 CCU provides that a company meets the criteria if it, in particular, "has no negative net assets according to the annual (interim) financial statements." Whereas the requirements of the respective Article 26 of Commission Implementing Regulation are more flexible, expecting applicants to demonstrate a "sufficient financial standing to meet his obligations and fulfill his commitments having regard to the type and volume of the business activity, including having no negative net assets, unless where they can be covered". Such a formal and straightforward approach to the evaluation AEO applicants' solvency adopted by Ukrainian legislation can be hardly explained mere economical concerns. Furthermore, said approach cannot display real financial state of a company in question, for example, many research suggest that solvency (measured by interest coverage ratio) has no statistically significant effect on profitability (Maha et al., 2021).

Hence, practically, even international companies with offices in Ukraine and other countries cannot boast of positive indicators, which are somewhat affected by the overall economic situation in Ukraine. Prospects of Ukrainian logistical companies are even poorer, especially considering that respective simplifications will become available in Ukraine for European AEO companies after signing a mutual recognition agreement with the EU (Miroshnychenko, 2021). The only company that acquired the AEO status after its launching in Ukraine is more than indicative of the issue.

### 3. AEOs' Effect on Trade Facilitation and Decreasing Corruption

Reforms in the customs sphere of Ukraine are considered by politicians and business in the first place from the point of view of reducing corruption risks and increasing transparency in the

relationship between authorities and non-state actors. There is a common perception that an effective implementation of an AEO program and a single-window program can lead to the aforementioned results. Drawing on the data about the bribe payers' actual experiences also claims that the trade facilitation would help to reduce corruption and improve efficiency in many customs agencies.

Due to the research of Asian companies, firms that experience difficulties with customs and other trade regulatory constraints are likely to pay more bribes amounting to 6.4% of their annual total sales, than other firms. In particular, the factors decreasing corruption include trust in judiciary systems, high productivity levels of companies, customs' administrative inefficiencies, and minimized trade regulatory constraints (Kumanayake, 2021). It is plain to see that three of the four abovementioned factors are directly connected with trade facilitation in the minimalization of administrative burden on traders and increasing their competitiveness. Effective implementation of an AEO program can potentially have a positive impact upon all that factors.

Furthermore, keeping in mind traditional fiscal considerations of Ukrainian customs authorities, it is worth noting that some research determines the dependence of public finances on the current level of corruption and transparency based on the indexes of economic freedom, doing business, and corruption perception. Furthermore, the level of changes in these indicators directly correlates with the trend of changes in Ukraine's consolidated budget (Shkolnyk et al., 2020, p. 292). With that respect, an AEO program increases the transparency of the operators' internal procedures and brings better transparency in relations between AEOs and customs authorities.

Hence it is possible to say that the implementation of the AEO program possesses both trade facilitation, and anticorruption effects, which is basically supported by the gravity equation and the empirical model evaluation. For example, due to the recent OECD

findings there are two major links between trade facilitation and border integrity that are described as following:

– countries with higher integrity at the border are found to also have more efficient border processes, while controlling for other factors such as level of development, tariff policy or broader good governance characteristics.

– specific trade facilitation policies, focusing on transparency, predictability and streamlining of formalities also matter for supporting integrity at the border. Those policies include measures on simplification of documents, more automation of processes at different levels of complexity, or improved procedures along the border transaction chain and coordinated border management (Exploring the role of trade facilitation in supporting integrity in trade).

Indicatively, AEO programs and Single Window programs show the most noticeable effect upon trade facilitation and correlated improvement of trade performance (de Sá Porto et al., 2015, p. 12).

However, due to (Michael & Popov, 2012, p. 40) customs agencies, particularly those belonging to a corruption and inefficiency "red zone," typically experience difficulties with trade facilitation reforms because of two significant factors. Corruption and inefficiency feedback on each other and the statistical work suggests that tackling corruption without tackling inefficiency will likely lead to few results. Trade facilitation reduces corruption and increases customs officials' efficiency, but only if anti-corruption and efficiency enhancement programs help increase the revenue which trade facilitation provides. The issues that AEO's concept of "trusted" trader can perfectly address.

## Conclusions

Although the international standards on trade facilitation provide the overall framework for AEO institution implementation, peculiarities of its perception at national levels occur. Such perception

may cover both aims and procedures of the introduction of AEO institution into national legislation. In particular, Ukrainian practice shows the unpreparedness of rule-makers and customs authorities to share the concept of "trusted" traders, whilst the primary driver of AEOs' introduction has become international obligations within frameworks of the EU – Ukraine association agreement. Nevertheless, different perceptions of AEO's role and functions within the supply chain led to the significant differences between Ukrainian and EU legislation in the field. This resulted in artificial procedural obstacles to acquiring AEO status and thus a lack of enthusiasm among traders. The issue can be addressed by raising awareness for both authorities and businesses combined with lowering the respective criteria threshold. In addition, the practical introduction of AEO in Ukrainian practice may impact enhancing integrity in customs and other border agencies while raising the competitiveness of Ukrainian trade and logistics at the EU market.

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***Острікова Т. Розвиток інститутів АЕО в ЄС та Україні: спільні стандарти у різних сприйняттях. – Стаття.***

У статті представлено порівняльне дослідження розвитку інституту АЕО у законодавстві ЄС та України. Статтю сфокусовано на відмінностях у сприйнятті ролі та функцій АЕО та пов'язаних з ними відмінностях у способах і засобах впровадження цього інституту. Розвиток партнерських відносин між митними органами та бізнесом закладено у концепції довіреного трейдера. Зазначена концепція розвивалася через усю міжнародну структуру стандартів у цій галузі, починаючи від переглянутої Кіотської конвенції і навіть раніше – на національному рівні у ряді країн. Однак сучасне розуміння статусу АЕО був запроваджений до правового простору ЄС лише після набуття чинності Митним кодексом Союзу 2016 року, доповненим комплексним розвитком міжнародних двосторонніх та регіональних угод у досліджуваній сфері. Крім того, у статті акцентовано увагу на проблемах, пов'язаних із становленням та розвитком інституту АЕО в Україні. Євроінтеграційні прагнення зумовили появу у законодавстві України положень про надання митними органами пільг та спрощень суб'єктам господарювання під час

здійснення митного контролю. Проте значні проблеми, пов'язані із запровадженням національної системи митного регулювання та практичним впровадженням АЕО, виникли через недовіру до бізнесу та певного нерозуміння суті відносин між АЕО та митними органами. Деякі прогалини та розбіжності у законодавстві з відповідним законодавством ЄС стають перешкодами для вивчення реформ та практичної реалізації інституту АЕО в Україні.

***Ключові слова:*** авторизований економічний оператор, АЕО, сприяння торгівлі, митне законодавство, ЄС, Україна, безпека ланцюга поставок.

***Острикова Т. Развитие институтов АЭО в ЕС и Украине: общие стандарты в разных восприятиях. – Статья.***

В статье представлено сравнительное исследование развития института АЭО в законодательстве ЕС и Украины. Статья сфокусирована на различиях в восприятии роли и функций АЭО и связанных с ними различиях в способах и средствах введения этого института. Развитие партнерских отношений между таможенными органами и бизнесом заложено в концепции доверенного трейдера. Вышеупомянутая концепция получила развитие в рамках всей международной системы стандартов в данной области, начиная с пересмотренной Киотской конвенции и даже ранее – на национальном уровне в ряде стран. Однако современное понимание статуса АЭО было введено в правовое пространство ЕС только после вступления в силу Таможенного кодекса Союза 2016 года, дополненного всесторонним развитием международных двусторонних и региональных соглашений в данной области. Кроме того, в исследовании были подчеркнуты проблемы, связанные со становлением и развитием института АЭО в Украине. Стремление к европейской интеграции привело к появлению в законодательстве Украины положений о предоставлении таможенными органами льгот и упрощений хозяйствующим субъектам при прохождении таможенного контроля. Однако значительные проблемы, связанные с внедрением национальной системы таможенного регулирования и практической реализацией АЭО, возникли из-за недоверия к бизнесу и некоторого непонимания сути отношений между АЭО и таможенными органами. Некоторые пробелы в законодательстве и расхождения с соответствующим законодательством ЕС стали препятствием для изучения реформ и практического внедрения института АЭО в Украине.

***Ключевые слова:*** авторизованный экономический оператор, АЭО, содействие торговле, таможенное законодательство, ЕС, Украина, безопасность цепочки поставок.