

Customs Guarantee in European Union and Eurasian Economic Union law

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The paper presents the issue of customs guarantee in the law of the European Union and the Eurasian Economic Union (in addition to the provisions of Russian law) from a comparative perspective. The issue of customs debt in EU customs law and the corresponding obligation to pay customs duties and taxes in EAEU customs law was also raised, which is inextricably linked to the essence of customs guarantee. The study presents the conditions for customs guarantee, its types and forms, a catalogue of persons obliged to submit it and selected practical problems with the use of guarantee. In the case of Russia, statistics on the customs guarantee structure were also presented to illustrate the popularity of selected solutions, as well as the issue of export duties not applicable in the case of the EU.

Keywords: customs guarantee, customs debt, guarantor, mandatory security, optional security, EU customs law, EAUG customs law, export duty

JEL Classification: F13, G18, K34, K39

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Introduction

The institution of guaranteeing customs debt under the provisions of customs law serves as a guardian, providing at the same time a guarantee and legal protection of the obligation to settle customs duties in the import or export of goods (customs debt)¹ by the debtor, i.e. any person re-

¹ 'Customs debt' means the obligation of a person to pay the amount of import or export duty which applies to specific goods under the customs legislation in force (Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9.10.2013 laying down the Union Cus-

sponsible for the customs debt.² International trade in goods generates various customs risks related to lower customs rates, failure to fulfill various customs obligations, or even customs smuggling. Therefore, preventive measures are justified in such cases. In order to strengthen the position of the customs authority acting on behalf of the creditor (state), the customs legislation provides for the institution of a customs security (Sharo-

toms Code (Recast) (OJ EU L 269, p. 1, as amended, hereinafter: 'UCC'), art. 5 pkt 18) UCC).

² Art. 5 pkt 19) UCC.

schenko, Simonchik, 2014). This is a commonly used solution to ensure that the amount of customs duties will be paid, if not by the customs debtor themselves, then by the guarantor he/she has used to secure the customs debt that has arisen (real) or the potential customs debt that would have arisen. The purpose of a customs guarantee is thus to ensure coverage of the amount of a customs debt in the event that the risk of the debtor's insolvency or other inability to recover that amount (e.g. as a result of deliberate avoidance of payment) materializes, by at the same time placing an obligation of a potential conditional nature on the customs guarantor.

The issue of customs security is present in both the customs laws of the European Union (hereinafter: 'EU') and the Eurasian Economic Union (hereinafter: 'EEU'), and the solutions adopted in both legal systems are similar, although not identical. The purpose of this paper is a comparative analysis of the most important regulatory principles in the context of the institution of customs guarantee in both legal orders, although due to volume limitations, procedural and technical aspects will be omitted.

The grounds for customs guarantee under EU law

There is no legal definition of the concept of customs guarantee in both EU and Polish law; therefore, direct reference should be made to the provisions of the UCC (Gwardzińska, 2020a). Pursuant to Article 89 of the UCC, the provisions of Chapter II of Title III of the UCC (*Guarantee for a potential or existing customs debt*) apply both to a customs debt already incurred and to a debt that may be incurred, hence the potential one. This means that the entity obliged to provide customs guarantee will be both the customs debtor and the person who hypothetically may become one. Furthermore, Article 89(3) of the UCC allows the customs authorities to permit the provision of a customs guarantee by a third party, and thus a person other than the one from whom it is due, but in this

case this person cannot be considered a debtor or potential debtor under the customs provisions relating to customs debt.

It shall be underlined that the customs authorities may require only one guarantee to be provided in respect of the goods or declaration in question; it should be considered that such a customs guarantee provided by a third party will discharge the obligation arising from the analyzed provisions of the UCC, although it will not make such a person a customs debtor (Gwardzińska, 2020a), a situation will, therefore, arise of separating the person being a customs debtor from the person providing the customs security who is the addressee of potential claims from the customs authority as to the coverage of someone else's customs debt. Both entities will thus be able to bear the economic burden of the customs debt, but only one of them is formally liable for the customs debt. Possible subsequent settlements between these entities as well as the realization of recourse claims from the guarantor are a circumstance outside the scope of customs law.

The concept of customs debt has been defined as the obligation imposed on a specific person to pay the applicable amount of import or export duty determined for the goods in question under the applicable customs legislation.³ Customs debt is thus a specification of an abstractly defined obligation to pay customs duties in connection with the import or export of goods, by individualizing the person of the debtor and the amount of customs duties, the place and the time limit for their payment (Sawicka, 2013, p. 419). Customs duties are understood to be duties resulting from the application of the customs tariff and charges with an equivalent effect, i.e. monetary obligations resulting from the application of protective measures against excessive imports into the customs territory of the EU or imports of goods at dumped or subsidized prices, as well as countervailing charges relating to agricultural products. However, these duties will not be customs levies or value added tax or excise duties on imports (Sawicka, 2013, p.

³ Art. 5 pt. 18) UCC.

418). Currently, export duties do not apply in the EU, so the export customs debt provisions are dead ones and of no practical use, providing a kind of normative base in case the EU customs policy changes. A customs debt may arise once, and the legal basis for its emergence may be the provision of customs law whose hypothesis is fulfilled at the earliest (Reiwer-Kaliszewska, 2018, p. 393). The detailed prerequisites for the incurrance of a customs debt are set out in the provisions of the UCC,⁴ which will not be analyzed further in this paper. However, it should be stated that a customs debt on importation may arise as a result of two categories of circumstances (Gwardzińska, 2020b, p. 68):

- the due performance of legal obligations as a result of placing non-Union goods subject to import duties under a procedure for release for free circulation or temporary admission with partial relief from import duties;
- infringements of customs legislation by, for example, failing to comply with the conditions for bringing non-EU goods into the EU customs territory, failing to comply with the conditions required for placing non-EU goods under a particular customs procedure, or smuggling goods into the EU customs territory.

As already mentioned, the institution of customs guarantee is used to cover customs debts already incurred as well as debts that may be incurred. Pursuant to the provisions of the UCC,⁵ the provision of a customs guarantee in cases where a customs debt or other debts may arise in relation to goods placed under a special procedure is one of the mandatory conditions for obtaining an authorization for the use of the procedures: inward processing, outward processing, temporary admission, end-use and the operation of storage facilities for the customs warehousing of goods. In addition, a customs guarantee is required: for the operation of a temporary storage facility and

a recognized place, for the operation of a customs warehouse, for the deferment of customs duties (for a maximum period of 31 days), and as a condition for the release of goods under the release for free circulation procedure if the customs duties have not been paid (Gwardzińska, Laszuk, Masłowska, Michalski, pp. 330–331).

The literature (Gwardzińska E., Gwardzińska Ż., 2021) distinguishes 7 basic principles of customs security, which include:

- the principle of requesting only one customs guarantee per customs debt in respect of the goods or declaration concerned;
- the principle of fixing the amount of the customs security at an amount equivalent to the customs debt and other charges (customs duties, value added tax and excise duty on importation) which have been or may be incurred, or, if this amount cannot be ascertained at the time when the customs guarantee must be provided, then the amount of the guarantee shall be set at the maximum amount (in the opinion of the customs authorities) of the customs debt and other charges which have been or may be incurred;
- the principle of the type of duties subject to customs guarantee and its validity in the EU customs territory;
- the principle of monitoring customs guarantee;
- the principle of the discretion of the customs authority (where the customs legislation does not impose a mandatory obligation on the obliged person to provide a guarantee, the customs authorities may require it to be provided if they consider that it is not certain that the amount of duty corresponding to the customs debt and other charges will be paid within the prescribed period);
- the principle of free choice of the form of customs guarantee;
- the principle of free choice of customs guarantee – general (for several customs operations) or individual (for one customs operation);

⁴ Art. 77 et seq. UCC.

⁵ Art. 211(3)(c) UCC.

- the principle of the non-binding nature of the determination of the customs guarantee for the subsequent calculation of the customs debt.

Methods of securing customs guarantee under European Union law

Within the issue of the manner of customs security, it is necessary to distinguish the types of guarantee and their forms. With regard to the first category, the UCC provisions indicate three types of customs guarantee: obligatory, optional, and not required. Mandatory guarantee is used in the following cases (Ministry of Finance Department of Customs, 2020, pp. 3–4):

- use of the EU transit procedure using the NCTS system;
- operating a customs warehouse;
- use of other special procedures;
- running a temporary storage facility;
- running an approved place;
- release for a free circulation – as a condition for releasing goods for the procedure in lieu of payment (including deferred payment of customs duties for up to 31 days).

Optional (non-compulsory) customs guarantee is involved when the obligation to provide it may be waived by the customs authority. The first category of cases of this type are situations where the amount of customs duties to be secured does not exceed EUR 1,000.⁶ The second case is where the provision of a customs guarantee is not compulsory, but the customs authorities are entitled to require it if they consider that it is not certain that

the amount of import duties corresponding to the customs debt or other duties will be paid within the prescribed period.⁷ Therefore, it is a discretionary decision of the customs authority based on the vague premise that the customs debtor is not certain to pay the duty. The last situation in which the institution of an optional customs guarantee occurs is the possibility for the customs authorities to demand a customs guarantee (the form and amount of which are to be determined by the authorities themselves) in the case of the transport of displaced property (Gwardzińska, 2020a, p. 278). The last type is the so-called non-required security, a situation in which there is an exemption from the obligation to provide it. The guarantee may not be required (Ministry of Finance Department of Customs, 2020, p. 4) for: public authorities, goods transported on the Rhine and Danube and their tributaries, goods sent by fixed transit transport, in special cases of temporary admission, for EU sea and air transit.⁸

The customs legislation distinguishes between two types of customs guarantee: single and comprehensive. The former covers a single operation or customs declaration and should cover the amount of import or export duties corresponding to the potential customs debt incurred, calculated on the basis of the highest customs rates applicable to goods of the same type.⁹ The latter category, the general security, is lodged for a number of operations, declarations, customs procedures; it covers the amount of customs debt incurred and potential customs debt and other charges (Ministry of Finance Department of Customs, 2020, p. 6). The amount of the comprehensive guarantee should be set at 100% of the incurred or potential customs debt (the reference amount set by the customs authority competent for the securi-

⁶ Article 89(9) UCC. More precisely, the amount may not exceed the statistical value threshold for the declaration as laid down in Article 3(4) of Regulation (EC) No 471/2009 of the European Parliament and of the Council of 6 May 2009 on Community statistics relating to external trade with non-member countries (OJ L 152, p. 23, as amended), which is set at EUR 1,000 or a net weight of 1,000 kg, or in the absence of commercial character.

⁷ Art. 91 UCC.

⁸ Art. 89(7-8) UCC.

⁹ Article 148 of Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for the implementation of certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code (OJ EU L 343, p. 558 as amended, hereinafter: 'UCC IR').

ty). However, it is possible to reduce the reference amount to 50%, 30%, or even 0%, hence *de facto* exemption from the obligation to provide customs guarantee (Gwardzińska et al., 2017, p. 331), provided that certain financial conditions are met.¹⁰ In this context, it is worth mentioning (Ministry of Finance Department of Customs, 2020 p. 5) that when a customs guarantee is provided by a third party based on the provision of Article 89(3) of the UCC, in principle it is not possible to reduce the reference amount of the customs security – one of the conditions mentioned in Article 84 UCC SR are in fact the prerequisites of being in a financial position to meet the obligations of the person providing the guarantee in respect of the part of the reference amount not covered by the guarantee and of meeting the financial obligations relating to the payment of customs duties and any other duties, taxes, or charges levied in connection with the import or export of goods during the three years prior to the application. While the third party could potentially have itself made customs declarations and paid the related duties in its own name in the past, building up this kind of positive history of timely payment of customs debts, since the third party in the particular situation in question is not a customs debtor, and is, therefore, also not in a position to give evidence of payment of the obligation incumbent on him/her or of someone else's customs debt; all the more so since the customs authority has no correlative power to require payment of the amount of the customs debt from that third party to the extent that it is not covered by customs guarantee.

Pursuant to the provisions of Article 92 of the UCC, a customs guarantee may be provided in the form of:

- a cash deposit or any other means of payment recognized by the customs authorities

¹⁰ Article 158 of the UCC IR in conjunction with Article 84 of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards the detailed rules laying down certain provisions of the Union Customs Code (OJ EU L 343, p. 1, hereinafter: 'UCC SR').

as being equivalent to a cash deposit, in the euro or in the currency of the member state in which the guarantee is required;

- in the form of an undertaking given by the guarantor;
- by another form of guarantee which provides equivalent assurance that the amount of duty corresponding to the customs debt and other charges will be paid.

The provider of the customs guarantee is, in principle, free to choose the form of the guarantee, although the customs authorities may refuse to accept it if they consider it to be inappropriate.¹¹ The guarantor on the grounds of customs law may be a third party established in the customs territory of the EU that is approved (in the form of the presented list) by the customs authorities requiring the guarantee, i.e. banking and insurance institutions. The second type of guarantors that do not require approval from national customs authorities are financial, credit, or insurance institutions accredited in the EU,¹² but the EU customs legislation does not define these concepts, so reference should be made to the relevant provisions of banking or insurance law (for more on this topic see E. Gwardzińska, Ź. Gwardzińska, 2021). In the case of Polish law, the procedure for the approval of guarantors and the list of guarantors is regulated by Article 52 of the Customs Law,¹³ while the manner of providing security in the form of a cash deposit is defined in the regulation.¹⁴

The customs guarantee shall be released when the customs debt is extinguished or when it is already known that the customs debt will not arise. If the customs debt is partially extinguished or is not likely to arise in relation to a certain part of the secured amount, then the customs guarantee may be

¹¹ Art. 93 UCC.

¹² Art. 94 UCC.

¹³ Act of 19 March 2004, Customs Law (Journal of Laws 2023, item 1590, as amended).

¹⁴ Ordinance of the Minister of Development and Finance of 22 February 2017 on the manner of providing security in the form of a cash deposit (Journal of Laws, item 416).

partially released at the request of the person concerned (Reiwer-Kaliszewska, 2017, pp. 385–386).

Customs security in the law of the Eurasian Economic Union

The most important normative act regulating international trade in goods on the territory of the Eurasian Economic Union is the Customs Code,¹⁵ which is an annex to the international agreement¹⁶ of the states forming this union (the Republic of Armenia, the Republic of Belarus, the Republic of Kazakhstan, the Republic of Kyrgyzstan, and the Russian Federation). As in the UCC, the customs law of the Eurasian Economic Union, including the CC, also does not contain a legal definition of customs guarantee. The rules concerning customs guarantee are standardized in subchapter 9 of Chapter II of the CC Securing the performance of the obligation to pay customs duties and taxes (*Обеспечение исполнения обязанности по уплате таможенных пошлин, налогов*), whereby by taxes the CC means value added tax and excise duty due on the entry of goods into the customs territory of the EEU.¹⁷ The provisions of the CC do not use the concept of customs debt as in the case of EU customs law, but Article 54 of the CC et seq. regulate the institution of the obligation to pay customs duties and taxes, which corresponds to the institution of customs debt in EU law. The category of these duties and taxes includes:¹⁸

- import duty;
- export duty;
- value added tax levied on the importation of goods;

- excise duty levied on the importation of goods;
- customs duties.

The obligation to pay customs duties and taxes may arise in the situations provided for in Article 54 of the CC, among which, in addition to the procedure for release for internal consumption and breach of customs law (Article 56 of the CC), strictly defined cases enumerated in the CC shall be indicated, in particular with regard to selected customs procedures. It is pointed out in the doctrine that in all stages of the obligation to pay customs and tax duties, both in the case of voluntary payment of the required duties and in the case of enforcement of them, 3 principles apply: the presumption of good faith of the obliged to pay, the differentiated approach to customs, and the protection of public and private interests (Litvinova, 2014, p. 135).

EEU countries, unlike EU countries, apply export duties in practice, albeit to a very limited extent; import duties are the basis for most obligations. It should be noted, however, that while import duties stem from regulations adopted at the EEU level,¹⁹ export duties are the domain of individual member states. For example, the Russian Federation imposes export duties primarily on crude oil and certain categories of goods produced from crude oil or other goods indicated in a regulation of the Government of the Russian Federation, with the latest regulation covering most

¹⁵ Таможенный кодекс Евразийского экономического союза [Customs Code of the Eurasian Economic Union] (hereinafter: 'the CC').

¹⁶ Договор о Таможенном кодексе Евразийского экономического союза (Москва, 11 апреля 2017 года) [Agreement on the Customs Code of the Eurasian Economic Union, Moscow, 11 April 2017].

¹⁷ Art. 2 pt. 24) CC.

¹⁸ Art. 46 CC.

¹⁹ Решение Совета Евразийской экономической комиссии от 14.09.2021 N 80 (ред. от 27.12.2023) «Об утверждении единой Товарной номенклатуры внешнеэкономической деятельности Евразийского экономического союза и Единого таможенного тарифа Евразийского экономического союза, а также об изменении и признании утратившими силу некоторых решений Совета Евразийской экономической комиссии [Decision of the Council of the Eurasian Economic Commission of 14.09.2021. N 80 (as amended 27 December 2023) On the approval of the Unified Commodity Nomenclature for the Foreign Economic Activities of the Eurasian Economic Union and the Unified Customs Tariff of the Eurasian Economic Union, as well as on the amendment and recognition of the invalidity of some decisions of the Council of the Eurasian Economic Commission].

goods. Interestingly, export duty rates will depend on the exchange rate between the US dollar and the Russian rouble: the higher the exchange rate, the higher the export duty rate.²⁰

The institution of customs guarantee is regulated in the provisions of Articles 62–65 of the CC, where the CC reserves a relatively large degree of legislative freedom to the national legislation of EEU member states, thus, in order to compare the institution of customs guarantee in both legal systems (EU and EEU), it will be necessary to refer to selected national regulations of one of the states; in this study, the provisions of Russian law, the Law on Customs Regulations in the Russian Federation (hereinafter: 'l.c.r.r.f.'),²¹ will be indicated. The provisions of the l.c.r.r.f. indicate a basic group of situations in which customs security is required. These include:

- modification of the time limits for payment of customs and tax obligations (deferment or payment in instalments, Article 58 CC);

²⁰ Постановление Правительства Российской Федерации от 21.09.2023 № 1538 «О ставках вывозных таможенных пошлин на товары, вывозимые из Российской Федерации за пределы таможенной территории Евразийского экономического союза, и о внесении изменений в ставки вывозных таможенных пошлин на товары, вывозимые из Российской Федерации за пределы таможенной территории Евразийского экономического союза» [Decree of the Government of the Russian Federation of 21 September 2023. No. 1538 On the rates of export customs duties on goods exported from the Russian Federation outside the customs territory of the Eurasian Economic Union and on amendments to the rates of export customs duties on goods exported from the Russian Federation outside the customs territory of the Eurasian Economic Union] and the legal basis indicated there under the Law of the Russian Federation of 21.05.05.1993 N 5003-1 On customs tariff (Закон РФ от 21.05.1993 N 5003-1 «О таможенном тарифе»).

²¹ Федеральный закон от 03.08.2018 N 289-ФЗ (ред. от 25.12.2023) «О таможенном регулировании в Российской Федерации и о внесении изменений в отдельные законодательные акты Российской Федерации» от 03.08.2018 N 289-ФЗ [Federal Law of 03.08.2018 N 289-FZ On Customs Regulation in the Russian Federation and on Amendments to Certain Legislative Acts of the Russian Federation of 03.08.2018 N 289-FZ], hereinafter: 'l.c.r.r.f.').

- selected situations of release of goods prior to the lodging of a customs declaration, completion of a customs control or obtaining a customs expert's report (Articles 120–122 of the CC);
- placing goods under a customs procedure of transit (Article 143 of the CC) and internal transit between two EEU territories through a non-EEU territory (Article 304 of the CC);
- placing goods under the outward processing procedure (in relation to export duties, Article 177 CC).

An additional group of circumstances in which the provision of guarantee is necessary under the internal law of the Russian Federation is:²²

- conditional release of goods for internal consumption (corresponding to the end-use procedure in EU customs law);
- placing goods under the temporary import and temporary export procedure;
- placing goods under the customs warehousing procedure where their dimensions do not allow them to be stored in a customs warehouse;
- temporary storage of goods;
- obtaining approval for deferment or payment in installments of taxes (VAT and excise duties on imports);
- the filing of an application to suspend the enforcement of a decision, the purpose of which is the collection of customs duties, contested under Article 51 of the l.c.r.r.f.
- in other situations, in accordance with the provisions of laws or regulations of the Government of the Russian Federation.

In other cases, although an obligation to pay customs duties and taxes has arisen, a customs guarantee is not required;²³ therefore, the institution of an optional security existing in EU customs law is not foreseen in EEU customs law. The customs legislation further provides for situa-

²² Art. 55(1) l.c.r.r.f.

²³ Art. 55(2) l.c.r.r.f.

tions where the provision of a customs guarantee is not required. Examples include ships and aircraft, engines and their parts, scientific samples and commercial samples, technical equipment for the importation of which no VAT liability arises, or natural gas transported by pipeline to storage facilities. There are also economic grounds where the amount of the customs guarantee would be at least 10 times less than the value of the declarant's assets from the preceding year or where the declarant in question has paid customs duties of no less than RUB 7 billion²⁴ in the 3 years preceding the year in which the security would be provided.

As a general rule, the customs guarantee should be lodged by the holder of the obligation. However, in the case of the transit procedure, this guarantee may be provided by the forwarding agent or other person having the right to possess, use, or dispose of the goods. In addition, the customs guarantee may be provided by a customs representative if, under the provisions of the Civil Code, he/she will be liable for the obligation to pay customs duties and taxes.²⁵

Like in EU customs law, the customs legislation of the EEU provides for a single and a comprehensive guarantee, which may be provided if the declarant makes customs declarations in the same member state whose customs authorities the customs guarantee will be provided to, or several member states, but only for the customs transit procedure.²⁶ The customs authorities shall accept a comprehensive customs guarantee where, as a result of such a comprehensive guarantee, any customs authority collecting duties and taxes can recover those duties. The amount of the customs guarantee shall be determined on the basis of the amount of duties and taxes that would be payable if the goods were placed under the customs procedure for release for domestic consumption or the customs procedure for export without benefit of tariff preferences and other advantages, with the exceptions provided for in the CC (relat-

ing to transit). If, in determining the amount of the customs guarantee, it is impossible to determine the exact amount of customs duties and taxes due to the lack of precise information about the goods (type, name, quantity, origin, and (or) customs value), such an amount of customs duties and taxes shall be determined on the basis of the cost of the goods and (or) their physical characteristics in kind (quantity, weight, volume, or other characteristics), the highest rates of customs duties and taxes that can be determined on the basis of the available information. The technical and procedural aspects of the above institutions are set out in national legislation (Articles 55–59 of the l.c.r.r.f.).

A customs security may be provided in one of the following forms:²⁷

- cash;
- bank guarantee;
- surety;
- lien of assets.

National legislation may provide for other forms of guarantee, although the Russian legislator has not made use of this possibility, merely expanding the above regulations.²⁸ The provider of the customs guarantee has the right to choose the form of this guarantee, and a combination of more than one form of guarantee may be chosen.²⁹ The guarantee should be valid for a sufficiently long period of time so that the customs authority has time to serve a demand for the performance of the security obligation on the person who has provided it (Bekyashev, Moiseev, 2015, p. 70).

The literature points to a selection of practical problems related to the application of the guarantee. It is an issue e.g. in the case of an asset lien, when it is necessary to conclude an agreement between the customs authority and the customs and tax payer or another person who has the right to use and dispose of the goods subject to the guarantee; another important condition for the use of

²⁴ Art. 55(3) l.c.r.r.f.

²⁵ Art. 62(3) CC.

²⁶ Art. 64(2) CC.

²⁷ Art. 63(1) CC.

²⁸ Articles 54(2) and 60–66 l.c.r.r.f.

²⁹ Art. 63(3) CC.

an asset lien as security is that such an agreement can only be concluded if the market value of the object of the lien exceeds the amount of the guarantee value by at least 20% (Gulyaeva, Chebotar, 2019, p. 45).

In the case of a bank guarantee, in addition to the fact that the bank providing it has to be registered in the relevant register (which is not an easy procedure and has to be renewed every three years, hence not every bank chooses to obtain registration), the maximum amounts of collateral required are too high for the capital capabilities of many Russian banks and thus banks are not able to meet the expectations of many customers. An alternative could be an insurance guarantee, but so far this option is not available under Russian law. Therefore, the most convenient form of security with a blanket security remains a surety and a cash security, which, however, cannot be reduced in relation to the amount of the potential obligation to pay customs duties and taxes, and which is possible under EU customs law (Mihaylova, 2021a, p. 168). According to the 2018 data, the total amount of customs guarantees in the Russian Federation amounted to RUB 639 billion, of which sureties comprise RUB 485 billion, bank guarantees RUB 115 billion, cash bail – RUB 30 billion, while liens of assets only RUB 0.02 billion. Similar proportions were present in 2016–2017 (Susoeva, Chuksin, 2019, p. 192). In 2020, the total amount of customs guarantees was RUB 762 billion, of which sureties amounted to RUB 578 billion, bank guarantees to RUB 147 billion, and cash bail to RUB 37 billion. No one provided security in the form of an asset lien in 2020 (Mihaylova, 2021b, p. 35).

In cases where the provision of a guarantee is required, the amount of the guarantee provided should be as minimal as possible and should not exceed the amount of customs duties and taxes to be potentially recovered, which also follows from the Kyoto Convention, while the practice of using a bank guarantee in Russian practice does not always comply with these rules; there was a case when the required guarantee exceeded the amount of receivables to be paid 25 times (Mihaylova, 2021b, p. 37).

The special role of the customs guarantee can be observed in the case of the customs transit procedure. It should be underlined that goods passing through the EEU territory under the customs transit procedure are under customs control. The application of control measures during transport is this of utmost importance, as it ensures the safety of the goods and guarantees the delivery of the goods to their destination, i.e. reduces the risk of a breach of customs regulations. Therefore, the current EEU legislation establishes three measures to ensure compliance with customs transit: securing the obligation to pay customs duties and taxes, customs convoy, and routing of goods (Gulyaeva, Chebotar, 2019, p. 44).

The analysis of the practice of using customs security for the transit procedure leads to the conclusion that the most popular means of security are surety and bank guarantees (Gulyaeva, Chebotar, 2019, p. 45). In 2018, in the case of security at a transit procedure, a property surety accounted for 99.7 per cent of cases (Susoeva, Chuksin, 2019, p. 192), and in 2020 as much as 99.9 per cent. Such a high level of use of surety in a transit procedure is due to the introduction of the unified transit system in the EEU in 2016 (Mihaylova, 2021b, p. 36). However, securing customs duties and taxes in a transit procedure in the form of cash is inconvenient for the guarantor, as once the goods have been delivered, the obligation to pay customs duties and taxes should not ultimately arise in principle (Susoeva, Chuksin, 2019, pp. 191–192). Finally, it is worth mentioning that on 19 June 2023, the agreement of the EEU member states on the specifics of the application of the performance guarantee for the payment of duties and taxes, special, anti-dumping, countervailing duties when transporting goods in accordance with the customs procedure of customs transit³⁰ entered into force.

³⁰ Соглашение об особенностях применения обеспечения исполнения обязанности по уплате таможенных пошлин, налогов, специальных, антидемпинговых, компенсационных пошлин при перевозке (транспортировке) товаров в соответствии с таможенной процедурой таможенного транзита. (Совершено в городе Москве 19 апреля 2022 года).

The agreement aims to develop guarantee mechanisms in the EEU and reduce the financial burden on companies carrying out transit transport within the EUG, including in the context of the use of modern information technology and electronic document management.

Conclusion

The institution of customs guarantee is a kind of technical and secondary regulation in relation to the basic norms of customs law, however, from the point of view of the obliged parties, it has an extremely important practical significance as it gives the right to import (possibly export) goods without the necessity to engage effectively significant financial resources to cover a potential customs debt, which may (and in most cases should) not arise at all. The possibility of limiting oneself to securing a hypothetical customs debt is a way of meeting the expectations of economic operators who can benefit economically from the competitive advantages of their offer, for example by offering their services to third-country operators who can hand over their goods for processing in the customs territory or use certain goods temporarily in the customs territory without having to release them and bear the economic burden of customs debts. On the other hand, customs guarantee provides a guarantee for the satisfaction of the cus-

tom and tax creditor, represented by the competent customs authority, in the event that the goods end up in free circulation as a result of an infringement of construction rules in special procedures.

The provisions of EU and EEU law on customs guarantee directionally coincide, although important differences can be observed. The most important of these, in the opinion of the authors, is the absence (in principle) of the possibility of reducing the amount of customs guarantee in relation to the potential obligation to pay customs duties and taxes under EEU law. Some changes may be brought about by the most recent agreement of the member states, although these solutions are fragmentary and not comparable to the rules for the reduction of the amount of guarantee due in EU law.

EEU law provides for a broader catalogue of acceptable guarantees, although the very capacious definition of ‘other means of payment recognized by the customs authorities as being equivalent to a cash deposit’ means that it is in EU law that a broader range of guarantee is allowed. EU customs law also implies a broader recognition of the guarantee provided in individual member states, which is only just taking shape in EEU law. Also, the possibility for a third party to provide guarantee is much more limited in EEU legislation. There are also material and technical differences with regard to the provision of security itself, its modalities, deadlines, and procedures, although this was not analyzed in this study.

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