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**STANDARDIZATION  
AND LEGAL REGULATION  
ECONOMIC ACTIVITY:  
in the conditions of threats to public welfare**

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In order to ensure the development of social relations in the economic and related spheres of public life in the conditions of growing threats to public well-being and the transition to a modern one that meets international requirements, this work is the first to conduct a comprehensive study of not only the evolution of the understanding of the essence of standardization, but also its functions, subjects, normative acts. Special attention is paid to standardization as a means of legal regulation of economic activity and economic relations. The importance of standardization as a means of socialization of the economy has been particularly emphasized.

The materials of this work can be used in further refinement and improvement of relevant legislation, as well as in the practical activities of economic entities: in contractual relations, in regulating internal activities through standardization requirements and in identifying violations in this area.

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## ***Introduction***

Today, the issue of regulatory policy of the state to ensure the right of public and private interests is part of the economic basis of economic activity and the state as a whole [43, p. 28–29]. In such conditions, standardization is designed to combine the interests of the community, society and the state with the interests of economic entities.

Ukraine's national standardization system has been practically in place since independence. Thus, the National System of Standardization of Ukraine was created in the transition to a market economy, in an unstable economic and financial situation. It was formed on the extensive system of standardization of the former USSR, which was carried out at all levels: state (all-Union), republican, sectoral, at the level of enterprises or institutions. Ukraine ranked second in the Union in terms of technical and economic potential, and therefore almost the entire fund of state (over 20,000) and sectoral (over 43,000) documents was used by enterprises and organizations of Ukraine. In fact, until 2001 (before the adoption of the Law of Ukraine "On Standardization" of 17.05.2001 № 2408-III) in Ukraine there was a system of standardization, inherited from the former Soviet Union. It was based on a strict centralized principle of management of the economic complex, which, in the opinion of the legislator, should ensure the stability of financing, the establishment of stable relations between producers and suppliers. Mandatory application of the norms and requirements specified in the standards was provided. That is, standardization cared only about the interests of the state (performed the functions of the main instrument of state regulation, financed only by the state), and as a tool to create a competitive market for goods and services it was not considered at all.

On February 10, 2016, the new version of the Law of Ukraine "On Technical Regulations and Conformity Assessment" came into force, which defines the legal and organizational principles of development, adoption and application of technical regulations and procedures for conformity assessment, as well as voluntary conformity assessment . based on international requirements. Today, standardization as one of the manifestations of socio-economic formation affects the development and

condition of economic entities. The development of society, high rates of scientific and technological progress, large-scale economic and social challenges determine the growing role of standardization. The main factors that directly affect the further development of national standardization are multi-vector foreign policy aimed at Ukraine's integration into the European Union, membership in the World Trade Organization, cooperation with other countries.

Ukraine's domestic policy is designed to promote the rise and economic development of the national producer, protect the rights of Ukrainian citizens to consume products safe for human life and health, as well as environmental protection. Further development of national standardization is determined by Ukraine's strategic course towards integration into the world economy. A number of issues concerning the nature and role of standardization, its significance for the legal regulation of economic activity and the peculiarities of standardization requirements will be considered below.

## ***Historical view on standardization***

The development of standardization began with the technical improvement of life in human society. People kept trying to unify measures, household items, buildings, and so on. Therefore, there is an urgent need to select and record individual (most successful) results of work in order to reuse them. This replication of the same pattern has been very convenient in the spread of technology and goods around the world. There are many different examples of the emergence of elements of standardization, which appeared in the centers of ancient civilizations (China, ancient Greece, Egypt). They were the creation of language, writing, currency, reporting systems and weights and measures, uniform and interchangeable weapons, parts of buildings and other structures. Often in various historical sources the Hittites are mentioned, who first introduced the so-called "standardized" buildings and paragraphs 229 and 232 introduced penalties for non-compliance with building codes [95, p. 41; 92, p. 14]. According to historical experience, such innovations had a solid basis, which led to the establishment of standardized construction methods and facilitate the construction of new buildings.

On the territory of Ukraine the population has traditionally been engaged in arable farming. Land was often used even before it was completely depleted. Over time, the so-called "people's laws" on the rational use of land, giving it "rest" and the use of crop rotations. At the same time, implements were improved to facilitate agriculture (first, farmers used a wooden plow, then a plow plow with an iron plow, which increased the plowing depth to 10-15 cm to turn the pruned layer, and later harvested with small sickles). Along with agriculture, other branches of the economy developed, where standardized dimensions were used (blacksmithing, pottery, flour production, wood, stone, leather, carpentry, construction) [74, p. 31]. In the ancient territory of Ukraine, in particular on the Crimean Peninsula, in the VI-I centuries. BC BC there were various systems of units of measurement. For example, in Chersonesos, Bosphorus, Kerkinitida there were their own systems of units of measurement, which were associated with the corresponding systems of ancient Greek cities and towns [45, p. 105–106].

In Ukraine, elements of standardization developed in the Middle Ages. Thus, in Kievan Rus, the first of the written evidence known to historians about the unification of weights and measures contains the Statute of St. Prince Vladimir, who baptized the land, about church judges (996) [92, p. 35–36]. In it, among the duties of the bishop, in particular, is reflected: "15. The holy bishops were entrusted with city and trade scales and spuds, weights, set to guard without malice, neither to diminish, nor to multiply ". In essence, this Charter is a documentary proof that domestic standardization and metrology have existed for over 1000 years. For many years, monasteries and churches were the "standardizers" of trade measures and scales. Church elders and elected officials from the guilds (shops) of the merchants monitored the correctness of measurements, the preservation and correctness of measures. The names of princes and names of cities were marked on the 74, p. 30–32; 83, p. 40].

With the arrival of the Lithuanian state on the territory of Kievan Rus, the rules "we do not move the old, and do not introduce the new" were followed. However, later the union of Lithuania with Poland radically changed the history of the development of Ukrainian land law, which led to the decline of its own legal system, and thus to the leveling of achievements in the field of standardization. Although the Decision of the Lublin Sejm on the unification of Poland and Lithuania into one state - the Commonwealth (1569) said that the coin should be uniform , the same weight and sample, division and inscription [92, p. 71] , i.e. standardized.

In the first half of the XV century. feudal lords developed various directions of economic activity (arranged in their estates handicraft workshops, manufactories, mills, developed other industries), but the protectionist policy of the state on the nobility had negative consequences: inhibited urban development, subsistence farming prevented the formation of a single national market. centralization and, accordingly, there were no uniform rules and requirements for products and services. The main categories of the urban population were united in workshops: builders, shoemakers, doctors, gunsmiths, goldsmiths and more. At the top of the guild hierarchy were guild masters, who *for opportunities* monitored compliance with

standards and requirements, quality and quantity of products [37, p. 68–70].

From the end of the 15th to the beginning of the 16th century, the tendency of joining the Ukrainian lands to the Moscow state, which later became the Russian Empire, begins. As you know, it ends in the late eighteenth century, a completely new geopolitical configuration: the vast majority of ethnic Ukrainian lands (up to 80%) became part of the Russian Empire. All the socio-economic transformations characteristic of Russia are gradually spreading in these Ukrainian lands. Including elements of standardization are introduced [37, p. 106–110; 74, p. 30–32]. In the territories that were not part of Muscovy at that time, the development of standardization took place in accordance with the legislation of the country that ruled these lands. Thus, in 1764 the Constitution of Poland on the Right Bank of Ukraine and Galicia introduced national units of length, mass and volume. On March 31, 1875, the Austrian Emperor Franz Joseph issued a decree on the organization of institutions of weights and measures. This decree undertook to establish state institutions of weights and measures in all lands of the Austro-Hungarian monarchy. To implement it, on September 15 of the same year, an order was issued by the Ministry of Internal Affairs and the Ministry of Finance to establish 10 districts in the crown lands of supervision over weights and measures [32]. Thus, we can say that the main focus of European countries was on the weight and size of goods, and the question of quality was not raised at the general level (only the name and reputation of the master could testify to quality and give the manufacturer a competitive advantage in the market).

With the creation of a centralized Moscow state, the Grand Dukes tried to establish national measures that were mandatory for use throughout the. As in Europe, in the territory of the Moscow state the main legally established measure of production is weight and size, and quality is an elective that exists only in economic practice as a good name [74, p. 32].

With the advent of new methods of processing materials and production of goods using machines (mechanisms) in the world begins the industrial revolution. Since the reign of Peter I began large-scale industrial standardization in Russia. Standardization was used in the standardization of the production of military

equipment, agricultural raw materials, food, construction of buildings, as well as in the construction of the fleet [23, p. 54–55]. The development of industry and transport in the Russian Empire led to the expansion of standardization work in the XIX century. The implementation of standards and uniform requirements for product quality in the Russian Empire was complicated by the large number of foreign concessions, the owners of which, as a rule, introduced their own standards. In particular, such The state of affairs led to the spread of three measurement systems in the country: yardstick, inch and metric. This, of course, complicated not only the production, but also the control of its ether parameters [23, p. 56].

After the revolution of 1917, the new state began to unify and standardize everything in its own way. The formation of the science of standardization began after the Soviet authorities realized that without the established order it would be impossible to carry out quality production in a planned economy. During the Second World War, a new surge in the science and practice of standardization began with the aim of manufacturing military equipment in many types of weapons. Suffice it to say that at the beginning of the Great Patriotic War in the USSR there were more than 6,000 standards, of which 35% belonged to the machine-building and metallurgical industries (the main industries of the USSR before the war). During the war, about 2,000 new standards were approved and more than 1,000 standards were changed [109, p. 6–8]. This was due to wartime conditions and the need to save material resources, replacing scarce materials with less scarce ones, and introducing new technologies and production methods.

In the postwar years in the USSR the world experience of standardization was carefully studied. Books and articles were translated, annotations of foreign publications were published in magazines, and their bibliographies were published. The number of popular publications and the availability of material on both general standardization issues and special purpose standards are impressive. In 1947, the country joined the International Organization for Standardization, but for the USSR and its standardization system, this accession was not so important. Joining this organization and using its standards was conditioned only by the need to export goods



outside the USSR. Usually, even the exported goods were subject to regulatory and technical documents of the USSR, as the main consumers were the "countries of the socialist camp."

In the following years, the management system of state standardization underwent some changes. The role of standardization as a means of accelerating technical progress, improving product quality and creating a basis for widespread specialization of production is growing. Unified systems of normative and technical, design and technological documentation, intersectoral systems, the State system of standardization, etc. are being developed. The development of scientific thought about standardization and the need for its legal regulation began in the 1960s. [25, p. 50–51; 47, p. 132–138; 62, p. 55–65]. The period of the 1970s and 1980s is characterized by a close connection between standardization work and the solution of important tasks in the development of the national economy. For the first time we are talking about the application of economic sanctions for the production that does not meet the requirements of standards and specifications [106, p. 83–84; 72, p. 85]. There is a transformation of experience in the field of standardization in practice, improving the State Standardization System, which determines the rules of standardization work in the country and progressive requirements for product quality [12, p. 3-8; 57, p. 92–96].

With the further development of the economy, the legal framework in this area is changing. In 1988, sectoral regulatory and technical documents were abolished and two levels of regulatory and technical documentation were established: state (republican) standards and technical conditions. At the same time, the need to ensure in practice the right of enterprises to independently approve after agreement with the consumer technical conditions, technical descriptions, samples, standards and other similar documentation required for production [14, p. 50–53; 100, p. 50–51; 28; 39, p. 10–13; 61, p. 4 8–52; 64, p. 44–48; 66; 70; 76, p. 55–56; 96, p. 66–80]. In the late 1980s and early 1990s, during the transition to market relations, the work on improving the legal framework for standardization, adoption of new and revised

scientific and technical documents of Ukraine, harmonization of domestic standards with international ones became especially important. etc. [4, p. 6].

It is important to follow the stages of creating national legislation on standardization, because to date in Ukraine activities in this area are regulated by about 100 laws and decrees of Ukraine, resolutions and orders of the President of Ukraine and the Cabinet of Ministers of Ukraine. If we analyze the stages of legal development of Ukrainian standardization, we can say with certainty that the legal basis of domestic standardization was laid in 1993 by the Decree of the Cabinet of Ministers of Ukraine "On Standardization and Certification" from 10.05.93 № 46-93 with subsequent approval of the complex basic standards of the State Standardization System of Ukraine (DSTU 1-93), which referred to a system of normative documents addressed to all users, regardless of their form of ownership. For the first time, two categories of standardized provisions were established (mandatory and recommended), and the gradual replacement of existing Soviet normative and technical documents of all levels by national ones with the possible use of international standards was envisaged. The development of normative and technical documents was entrusted to the first established technical committees for standardization (as non-profit organizations), which introduced bilingual presentation of the text of normative and technical documents - in Ukrainian and Russian.

The next step in improving the legal basis for standardization was the Law of Ukraine "On Standardization" of 17.05.2001 № 2408-III. Since then, the situation has changed significantly, the system and general principles of national standardization have been actively restructured in accordance with the principles adopted in developed market economies, although the shortcomings of the former planning system have remained largely ineradicable. and techniques in production, as well as making changes to regulatory and technical documents based on them).

The Law of Ukraine "On Standardization" clarified the functions of the State Standard and introduced the Standardization Council as an advisory body to the Government . Later (when making changes) in accordance with the practice of European legislation (EU directives) the emphasis was placed on the voluntary

application of standards, as well as the distinction between the provisions of standards and legislation (technical regulations). In other words, the legally regulated and unregulated spheres of use of normative documents were regulated and the regulation of the first of these spheres by documents of a new type - technical regulations - was introduced. Technical regulations are defined as a normative legal act adopted by a public authority that establishes technical requirements for products, processes and services. The national standards of Ukraine were aimed at increasing the competitiveness and safety of products, works and services on a voluntary basis. In the case of harmonization of national standards and / or other regulatory and technical requirements with the requirements of EU documents, they could become evidence of compliance with mandatory requirements of technical regulations, ie to implement the "presumption of compliance" with basic (essential) requirements of technical regulations. . Simultaneously with the Law of Ukraine "On Standardization", the Law of Ukraine "On Confirmation of Conformity" (dated May 17, 2001 № 2406 – III) was adopted. A new type of normative and technical documents (technical regulations) appeared in it, which received the status of a government normative legal act. It was established that this normative and technical document should contain: a description of the types of products that are subject to mandatory confirmation of conformity; requirements for such products, which must protect people, animals, plants, property and the environment; procedures for verifying compliance with such requirements.

On the basis of new implementations in the system of standardization requirements in the Decree of the President of Ukraine "On the State Committee of Ukraine for Technical Regulation and Consumer Policy" dated 01.10.2002 № 887/2002 a new concept of "technical regulation" was introduced (albeit without specifying the content) ». Later, the Resolution of the Cabinet of Ministers of Ukraine "On Delegation of Powers to Derzhspozhyvstandart to Approve Regulations" of December 26, 2003 № 2022, which will create an opportunity for free discussion of their stakeholders. Since then, the mandatory presentation of regulatory and technical documents has been clearly established only in the national language (in case of urgent need - in the language of international and regional organizations). The requirement

to take into account the specific risks to consumers, the environment and natural resources that give rise to the real need for the adoption of regulatory and technical documents was legalized, to establish conformity assessment procedures that previously existed in the system of long-established certification, but were ignored.

In 2005, the existing legal framework was supplemented by the Law of Ukraine "On Standards, Technical Regulations and Conformity Assessment Procedures" of 01.12.2005 № 3164-IV (updated version adopted in 2007), which finally defines the concept of technical-night regulation "as legal regulation of relations in the field of establishment, application and fulfillment of mandatory requirements for products or related processes, systems and services, personnel and bodies, as well as verification of their compliance by conformity assessment and / or market surveillance . In order not to create or create unnecessary barriers to trade, regulatory and technical documents and conformity assessment procedures are developed on the basis of:

1) international and regional standards, if they have already been adopted or are in the final stages of development, unless they are ineffective or inadequate due to insufficient level of protection or basic climatic, geographical, technological or state problems, conditions and significant technical issues (if international standards are not taken as a basis for the regulatory and technical document, a written explanation is provided at the request of the interested party);

2) standards, technical regulations and conformity assessment procedures, or relevant parts of states that are members of relevant international or regional organizations, or with which relevant international agreements of Ukraine (agreements on mutual recognition, development and application of standards, technical regulations and assessment procedures) compliance);

3) scientific achievements, knowledge and practice.

At the same time, amendments were made to the Law of Ukraine "On Standardization" from May 17 , 2001 № 2408-111, the purpose of standardization in Ukraine was specified, to which was added the support of development and international competitiveness of products in the process of trade in goods and services. A new norm on the adoption and application by the standardization bodies on the

territory of Ukraine of the Code of Good Practice for the Development, Adoption and Application of Standards in Accordance with the WTO Agreement on Technical Barriers to Trade has also appeared. At the same time, the remnants of the previously amended Decree of the Cabinet of Ministers of Ukraine “On Standardization and Certification” of May 10, 1993 № 46-93, which lost its value in the field of standardization, were not repealed.

In 2003, with the adoption of the Commercial Code of Ukraine (Article 15), economic legislation was officially enriched with new standards on standardization. It provided a list of regulatory and technical documents used in economic activities, these are: state standards of Ukraine; codes of good practice; classifiers; specifications; international, regional and national standards of other countries (applied in Ukraine in accordance with current international treaties of Ukraine).

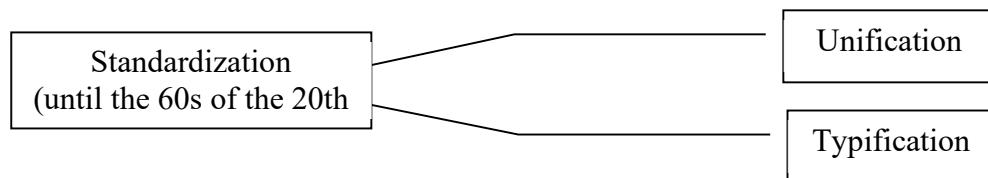
The Economic Code of Ukraine also established the range of subjects of standardization, which included: 1) economic entities, if the standards are referenced in regulations; 2) participants in an agreement (contract) for the development, manufacture or supply of products, if it (it) contains references to certain standards; 3) manufacturer or supplier of products, if he has made a declaration of conformity of products to certain standards or used the designation of these standards in its labeling; 4) manufacturer or supplier, if its products are certified according to the requirements of the standards.

Taking into account the prospects of Ukraine's accession to the WTO, the following provisions have been made in the Commercial Code of Ukraine: (contract), if they do not contradict the legislation of Ukraine in terms of requirements for the process of manufacturing, storage and transportation in Ukraine; 2) in order to prevent the provision of services and sales of products dangerous to life, health and property of citizens and the environment, assisting consumers in choosing products, creating conditions for the participation of economic entities in international economic, scientific and technical cooperation and international trade is certified, i.e. confirmation of compliance of quality of products and services with the requirements of standards.

At the present stage, the legal framework for standardization in Ukraine is determined by the laws of Ukraine "On Standardization", "On Technical Regulations and Conformity Assessment", "On State Market Supervision and Control of Non-Food Products" and others. The policy in the field of technical regulation is also reflected in the legal norms on product quality, which are contained in regulations on a wide range of issues (Commercial Code of Ukraine, laws of Ukraine: "On Environmental Protection", "On Consumer Protection", "On sleddingtarny and epidemic well-being of the population ", " On the basic principles and requirements for food safety and quality ", " On the state system of biosafety in the creation, testing, transportation and use of genetically modified organisms ", etc.).

## ***Evolution of content and basic principles of standardization***

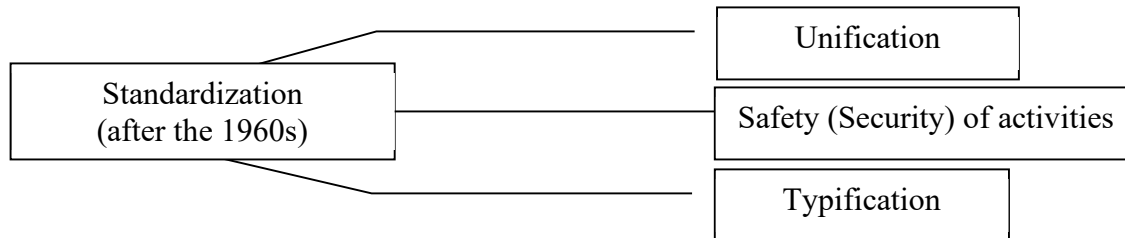
Standardization plays a significant role in economic management to increase the efficiency and productivity of social production and improve product quality [114, p. 4] . It accumulates the latest achievements of science and technology, organically combines fundamental and applied fields of science, promotes rapid implementation of scientific achievements in practice, helps to identify the most economical and promising areas of scientific and technological progress and various sectors of the economy [6, p. 8; 12, p. 3; 55, p. 67; 59, p. 14; 94, p. 43] . From a technical point of view, standardization has been and is perceived as a complex process that includes elements such as typification and unification. Typification is understood as the embodiment of typical features in some individualized subject that belongs to one or another species or genus group [16, p. 117]. Unification is perceived as a reduction to a single form, system, criteria or standards [16, p. 451]. On the other hand, typification and unification are standardization methods that can be carried out as independent types of work and are prerequisites for standardization.



We believe that today the understanding of standardization as a process greatly narrows its essence, and therefore can not reflect the essence of its regulatory impact. Back in the 60-70s of the twentieth century. There is a scientific opinion that the essence of standardization is to establish rules, general principles and characteristics for general and repeated use to protect human life, health and property, protect the environment and eliminate threats to national security [17, with. 98, 105; 118, p. 207, 224; 111, p. 56].

At one time in GOST 1.0-68 (currently not in force) standardization was defined as the process of establishing and applying rules to streamline activities in a

particular area for the benefit and with the participation of all stakeholders to achieve overall optimal savings in compliance with operating conditions (use) and safety requirements.



The rules and requirements were contained in the standard, which meant the sample, standard, model, taken as a weekend to compare with them other similar objects. The standard, as a normative and technical document, established a set of norms, rules, requirements for the object of standardization and was approved by the competent authority. Earlier in 1952, the International Organization for Standardization (ISO) established the Committee for the Study of Scientific Principles of Standardization (STACO), which develops and revises the definition of key terms in the field of standardization. Since 1962, when ISO adopted the first definition of the term "standardization", it has been periodically refined to reflect the development of standardization due to the level of scientific and technological progress. The modern term in the interpretation of ISO has the following definition: "standardization is an activity aimed at achieving the optimal degree of regulation in a particular area by establishing provisions for the general and reusability of actual or possible tasks" [56]. The security purpose of standardization is not explicitly stated in official international and national documents, but when a separate type of document is developed, it necessarily states the need to take into account security factors.

Today, the role of standardization as an important link in the field of technical regulation is growing rapidly - from research and development to operation and disposal of products. Standardization combines science, technology and production, contributes to a unified technical policy in various sectors of the economy, technical re-equipment of production, widespread introduction of modern technology and processes, mechanization and automation of production processes, improving product



quality [118, p. 194; 114, p. 6; 13, p. 9; 90, p. 13] . All this creates conditions for the development of the country's economy. A characteristic feature of standardization is that its scope and application, the level of development have a wide range. There is no sphere of human activity in which standardization is not involved [17, p. 100–101]. After all, with the spread and deepening of knowledge, the development of science and technology, the improvement of production, the scale of work is growing significantly and the scope of the use of the principles of standardization is expanding.

The purpose of standardization is to establish provisions that ensure the conformity of standardization objects to their purpose and their safety for life, health, property, conservation of animals, plants and the environment, creating conditions for the rational use of all national resources, eliminate technical barriers to trade and increasing the competitiveness of products to the level of development of science, technology and technology and the development of international economic, scientific and technical cooperation. This goal is achieved through the development, implementation and application of regulatory and technical documents.

Standardization according to purpose has different tasks. Scholars, lawyers and specialists in related fields differently formulate the main tasks. Summarizing and selecting the most necessary, in our opinion, we can outline the following:

- creation of normative documentation that establishes optimal requirements for products manufactured for the needs of the economy, population, state defense and exports [61, p. 48];

- safety of products, processes and services for life, health and property of people, conservation of animals and plants and protection of the natural environment [57, p. 93];

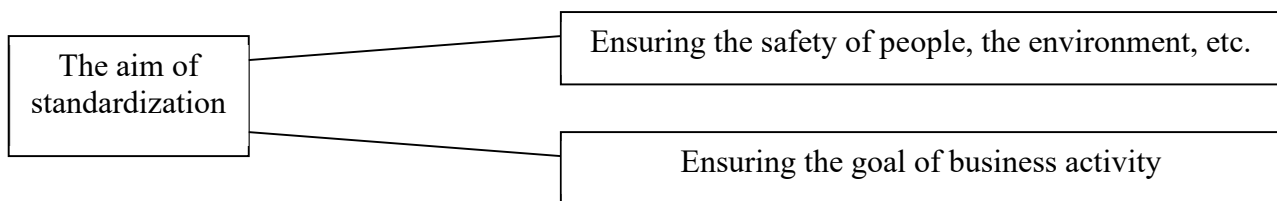
- quality of products, processes and services in accordance with the level of development of science, technology and human needs [57, p. 92];

- introduction of new technologies, renewal of production and increase of its productivity [57, p. 93; 109, p. 10].

Analysis of the provisions of regulations in the field of standardization allows us to add: the implementation of consumer rights; compliance of standardization

objects with their purpose; technical and information compatibility and interchangeability; convergence and reproducibility of control and test results; safety of economic facilities, complex technical systems, taking into account the allowable risk of natural and man-made disasters and other emergencies; development of international and regional cooperation; removal of technical barriers to trade.

Analyzing the purpose of standardization, we conclude that it is the organizational and technical basis of all activities at both national and international levels. Strengthening scientific, technical and economic ties draws attention to the standardization of all developed countries and developing countries, as well as technical, economic, international, regional and national organizations, firms and enterprises. This is a consequence of the objective need for standardization and technical regulation in the management of economic and production processes.

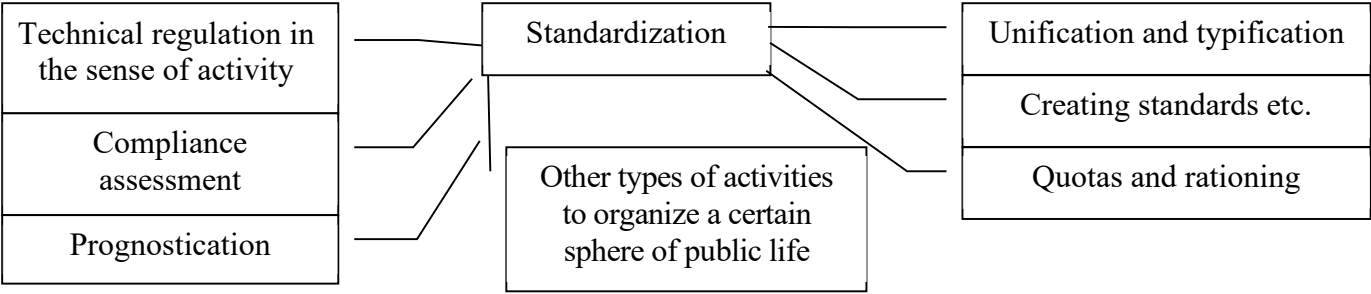


Legislatively in Ukraine standardization is defined as the activity of establishing provisions for general and repeated application of existing or possible tasks in order to achieve the optimal degree of regulation in a particular area (Part 1 of Article 1 of the Law of Ukraine "On Standardization" of 15.01.2015 № 124 – VIII). To date, the last part has been excluded from the legal definition, the result of standardization is to increase the degree of conformity of products, processes and services to their functional purpose, eliminate barriers to trade and promote scientific and technical cooperation. This, in our opinion, was not appropriate and indicates a neglect of the purpose of such activities.

This is the definition of standardization as an activity. At the same time, in Ukraine the approach to understanding standardization as a process of quality assurance is sometimes used, when the legislation on standardization creates a legal basis for determining the quality of goods, services, etc. [17, p. 102]. Recently, one of

the key problems of scientific, technical and economic development of countries is product quality. Improving the quality of products (products, processes, works, services) is a problem not only consumer or technical, but also economic, social and political [88, p. 398–399]. In our opinion, only after the appearance of legislation on standardization can we talk about the emergence of legislation on quality. Standardization has always existed due to economic activity, but even today the subject of legal relations, which are essentially regulated by standardization, is usually called food security, food safety, product quality [105, p. 90– 91]. Standardization is one of the tools for managing economic activity. Thus, in the Commercial Code of Ukraine, it finds its place among the main means of regulatory influence of the state on the activities of economic entities [114, p. 5; 49, p. 24; 63, p. 293]. Some scholars believe that standardization and other means of regulatory influence of the state will be able to balance public and private interests, which will allow businesses to focus on improving economic performance [81, p. 180].

In our opinion, the modern understanding of standardization as a regulator of economic activity should be broader and read as follows: *“standardization is an activity that consists in establishing and applying provisions for general and repeated use of existing or potential tasks and a certain sphere of public life to ensure its purpose.*



*We believe that in the modern sense of standardization there are two components: technical and security. Technical is a classic, one that has historically developed and defines technical requirements. Security arose in the middle of the twentieth century when it came to the realization that improving the standard of living*

*of our society, which is a key sign of scientific and technological progress, should not conflict with society's need to preserve the environment and promote human health as a key indicator in determining the level of development of society.*

To optimally achieve the goal, standardization should be based on the principles defined by law (Part 2, Article 4 of the Law of Ukraine "On Standardization"): 1) ensuring the participation of individuals and legal entities in the development of national standards and codes of practice; 2) openness and transparency of procedures for the development and adoption of national standards and codes of good practice, taking into account the interests of all parties; 3) impartial adoption of national standards and codes of good practice by consensus; 4) voluntary application of national standards and codes of good practice, unless otherwise provided by regulations; 5) compliance of national standards and codes of good practice with legislation; 6) adaptation to modern achievements of science and technology, assistance in introduction of innovations and increase of competitiveness of production of domestic manufacturers; 7) availability of national standards and codes of good practice, as well as information about them for users; 8) priority of adoption in Ukraine of international and regional standards and codes of established practice as national; 9) compliance with international and regional rules and procedures of standardization; 10) participation in international and regional standardization; 11) adoption and observance by the subjects of standardization of the Code of Charitable Practice for the Development, Adoption and Application of Standards in Accordance with the World Trade Organization Agreement on Technical Barriers to Trade , annexed to the Marrakesh Agreement Establishing the World Trade Organization of 15.04 . 1994.

Some scholars suggest supplementing the legislative principles with the following: 1. Maximum consideration of the legitimate interests of all persons in the development of standards. 2. The advantage of applying the international standard in the development of national. 3. Inadmissibility of creating obstacles to production, turnover. 4. Compliance of standards with technical regulations. 5. The same application of standards [17, p. 106]. We believe that these principles only clarify the

above, do not supplement their content, and therefore are not taken into account by us. In our opinion, it is necessary to unify the principles of standardization and set out in a slightly different form and order:

1. Voluntary application of standards and provision of conditions for their uniform application. The national standard is applied on a voluntary basis in an equal and equal manner, regardless of the country or place of origin of products, works and services.

2. Application of the international standard as a basis of development of the national standard. Exceptions may be cases where compliance with the requirements of international standards is not possible due to non-compliance of their requirements with the climatic, geographical or technical characteristics of the country.

3. Balance the interests of the parties that develop, manufacture and consume products. Participants in standardization work, based on the capabilities of the manufacturer and service provider, on the one hand, and consumer requirements, on the other, must find consensus, which is understood as the absence of objections on significant issues in most stakeholders.

4. Dynamics and advanced development of the standard. The scientific and technical process makes constant changes in people's activities and in the products and services produced. Standards must be adapted to the changes that are taking place, moreover, to be proactive, so as not to hinder the economic development of the country.

5. The effectiveness of standardization. The application of regulations should have an economic and / or social effect. The direct economic effect is given by the standards leading to economy of resources, technical and information compatibility, increase of reliability. And the social effect is given by the standards directed on safety of life and health of people, environment. The highest level of effectiveness is when both effects are present and they contradict each other.

6. The principle of harmonization. This principle implies the inadmissibility of such standards, which would be contrary to technical regulations. In order to remove barriers to international trade, it is necessary to create identical documents designed

for the same object.

7. Clarity of wording of the provisions of the standard. The possibility of ambiguous interpretation can lead to serious violations and consequences, including the loss of regulatory influence.

In our opinion, standardization is manifested in both statics and dynamics. In the static state, standardization establishes regulations, standards, regulations and other requirements. In dynamics, standardization works in the form of a comparison of documented requirements and existing standardization objects. Such procedures are called conformity assessment, which results in the issuance of a document of conformity, which is based on the decision made after a critical examination that compliance with certain requirements has been proven (Article 1 of the Law of Ukraine "On Technical Regulations and Conformity Assessment"). Standardization in its classical (technical) sense was considered only in statics, which did not allow and does not allow to assess the achievement of the goal of standardization and to compare the results with the aim of economic activity. That is why, realizing its humanistic and social function, Ukraine has introduced procedures to confirm the compliance of goods and services with the requirements of standardization . Such confirmation is an integral part of standardization as a process and at the same time is used as an additional tool for regulating economic activity. Conformity assessment is mandatory only in the case of a clear indication in the technical regulations (Article 14 of the Law of Ukraine "On Technical Regulations and Conformity Assessment") . This procedure confirms compliance with certain requirements relating to the product, process, service, system, person or body. Ukrainian legislation calls voluntary conformity assessment outside the requirements of technical regulations, as it is carried out on a voluntary basis, in any form, including testing, declaration of conformity, certification and inspection, and compliance with any stated requirements (Article 24 of the Law of Ukraine "On technical regulations and conformity assessment").

In our opinion, an assessment can be considered voluntary, which is carried out on the basis of internal requirements of the enterprise or other business entity. We

believe that the documentary indication of the need for conformity assessment (in contracts, in determining the tender, tender conditions, etc.) should be considered mandatory. Confirmation of conformity of goods and services has a dual nature and can become both an imperative used in the static consolidation of requirements and a dispositive used by economic entities. It can be an organic combination of imperative and dispositive. Then the state implements its functions to protect human life and health and the environment, and the business entity provides itself with a more favorable position in the market, access to other markets and so on.

There are separate procedures for confirming the conformity of goods (services), the use or use of which may endanger human life and health or even the environment. Such goods and services are usually referred by the legislation of Ukraine to the specially regulated sphere and included in the special register. Confirmation of conformity of goods and services contained in such lists is carried out by applying mandatory or voluntary procedures for compliance of the presented products with the standards and / or requirements of other regulatory and technical documents. Mandatory are those set out in specific technical regulations and are ensured through the application of national standards and / or technical specifications, the references to which are contained in the relevant technical regulations. At obligatory confirmation of conformity in technical regulations ways of conformity are clearly specified: 1) conformity to normative and technical documents is the only way or 2) such conformity is one of ways of satisfaction of the corresponding requirements of technical regulation (item 11 of the Law of Ukraine "About technical regulations and conformity assessment "). That is, the presumption of conformity of the objects of assessment to the national standards, the list of which is approved by the relevant central executive body, may be applied. The objects of conformity assessment may be not only the specific material, product, installation, process and / or service, but also the system, person or body to which the conformity assessment is applied.

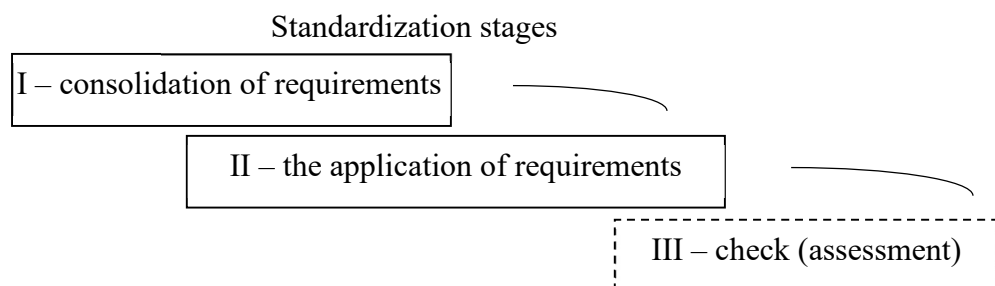
Voluntary conformity assessment is not established by technical regulations. Such attestation of conformity shall be made on a voluntary and / or contractual basis, in any form, including testing, declaration of conformity, certification and inspection,

as well as attestation of conformity to any stated requirements. Voluntary confirmation of compliance provides the business entity attractiveness of products for consumers, increasing the competitiveness of products, provides benefits when participating in tenders, the confidence of the manufacturer or supplier of products in its quality.

The legislation of Ukraine stipulates that the documents on conformity are a declaration (including a declaration of conformity), a protocol (including a test report), a report, an opinion, a certificate, a certificate (including a certificate of conformity) or any another document confirming the fulfillment of certain requirements relating to the object of conformity assessment (Article 1 of the Law of Ukraine "On Technical Regulations and Conformity Assessment"). All these documents play a huge role in bringing goods and services to market, including in the decision of the Ukrainian customs to allow a product to enter the country. Certificates of compliance are often required by honest business entities, as internal quality control can only accept tested goods and services, which is part of a successful and safe business and avoids (prevent) unforeseen costs.

In order to obtain competitive advantages, business entities that have received a document of conformity have the right to use mark of conformity. This is a special information label, by which the manufacturer indicates that the product meets the requirements applicable to these products and defined in the technical regulations.

Confirmation of conformity through the assessment procedure is often an optional (additional) stage of standardization, which can complete the enforcement process or create the preconditions for both positive and negative consequences for business entities.





*In conclusion, it should be noted that standardization is manifested in both statics and dynamics. In the static state, standardization establishes regulations, standards, regulations and other requirements. In dynamics, standardization works in the form of a comparison of documented requirements and existing standardization objects. Standardization in its classical (technical) sense was considered and is considered only in statics, which did not allow and does not allow to assess the achievement of the goal of standardization and to compare the result with the purpose of economic activity. We propose a new definition of standardization as an activity that consists in establishing and applying provisions for general and repeated use of existing or potential tasks and aims to achieve the optimal degree of order in a particular area of public life to ensure the goal of standardization. Standardization includes technical regulation and conformity assessment.*

## ***Subjects of standardization***

Scientists propose to distinguish the concept of "economic relations" from the concept of "relations in the field of management" due to the list of participants that are correlated as a share and a whole [102, p. 28–29; 24, p. 5]. Accordingly, the circle of participants in "economic relations" is wider than the circle of participants in economic relations. That is why the sphere of economic activity includes relations that regulate the standardization of goods, services, processes in order to comply with the principles of economic activity and the implementation of tasks assigned to participants in economic relations. We believe that the *subjects of standardization as a means of regulating economic activity can be called individuals and / or legal entities engaged in the establishment and / or application of standardization requirements, including technical regulation and conformity assessment.*

We believe that this is what is said in Part 3 of Art. 3 of the Commercial Code of Ukraine: "relations in the field of management also include those that are formed during the material support of the entities - legal entities, which by virtue of their activities can not obtain the status of a business entity." These include institutions (authorities, local governments, etc.) and other legal entities that are specifically defined by the Commercial Code of Ukraine as non-economic (Article 52 of the Commercial Code of Ukraine), but their activities aimed at creating and -maintenance of the necessary material and technical conditions for their operation and is carried out with or without the participation of economic entities (not an economic activity, but only the economic support of the activities of these entities). Entering into legal relations on the basis of certain legal norms, subjects acquire subjective rights and legal obligations at their own request (active form of realization of subjective rights and legal obligations) or on the basis of a law enforcement act ( complex form of realization of subjective rights and legal obligations). According to A. Vitchenko and Y. Tolstoy, the rule of law begins to regulate the behavior of subjects not from the moment of issuance of the rule of law, but from the time of occurrence of legal facts provided by this rule. This is the main and most important stage of legal regulation. Business entities exercise their rights and responsibilities in the field of

standardization both in simple (active) form and in complex. Usually, these forms are combined. In particular, economic entities have the right in the relevant areas of activity and taking into account their economic and professional needs to organize and perform standardization work (Article 16 of the Law of Ukraine "On Standardization"). The powers of the subjects of standardization as a means of regulating economic activity are:

1) develop, adopt, verify, review and repeal standards, codes of practice, technical conditions and changes to them, establish procedures for their development, adoption, verification, revision, repeal and application;

2) apply the standards, technical conditions adopted by them, etc.;

3) participate in the work of specialized international and regional standardization organizations in accordance with the provisions of such organizations;

4) create and maintain funds of normative documents and publish catalogs of normative documents to ensure their activities and information exchange;

5) issue and disseminate standards, codes of practice and technical conditions adopted by them, documents of relevant specialized international standardization organizations, members of which they are or with which they cooperate on the basis of provisions on such organizations or relevant agreements. In this case, the use of authority creates a complex form of implementation.

Normative and technical documents (standards, codes of practice, technical conditions, etc.) adopted by the subjects of standardization are applied by them on a voluntary basis. Adoption of such normative and technical documents, as well as catalogs with their list create a new competence for business entities - the right of ownership of these documents. According to the Law of Ukraine "On Technical Regulations and Conformity Assessment", the implementation of the powers of standardization entities is also carried out by assigning responsibilities. For example, it is the responsibility of the manufacturer, supplier or other business entity to comply with all goods or services placed on the market or put into operation in Ukraine to the requirements of all applicable technical regulations applicable to such products. , except for the cases specified in these technical regulations and Art. 12 of the Law of

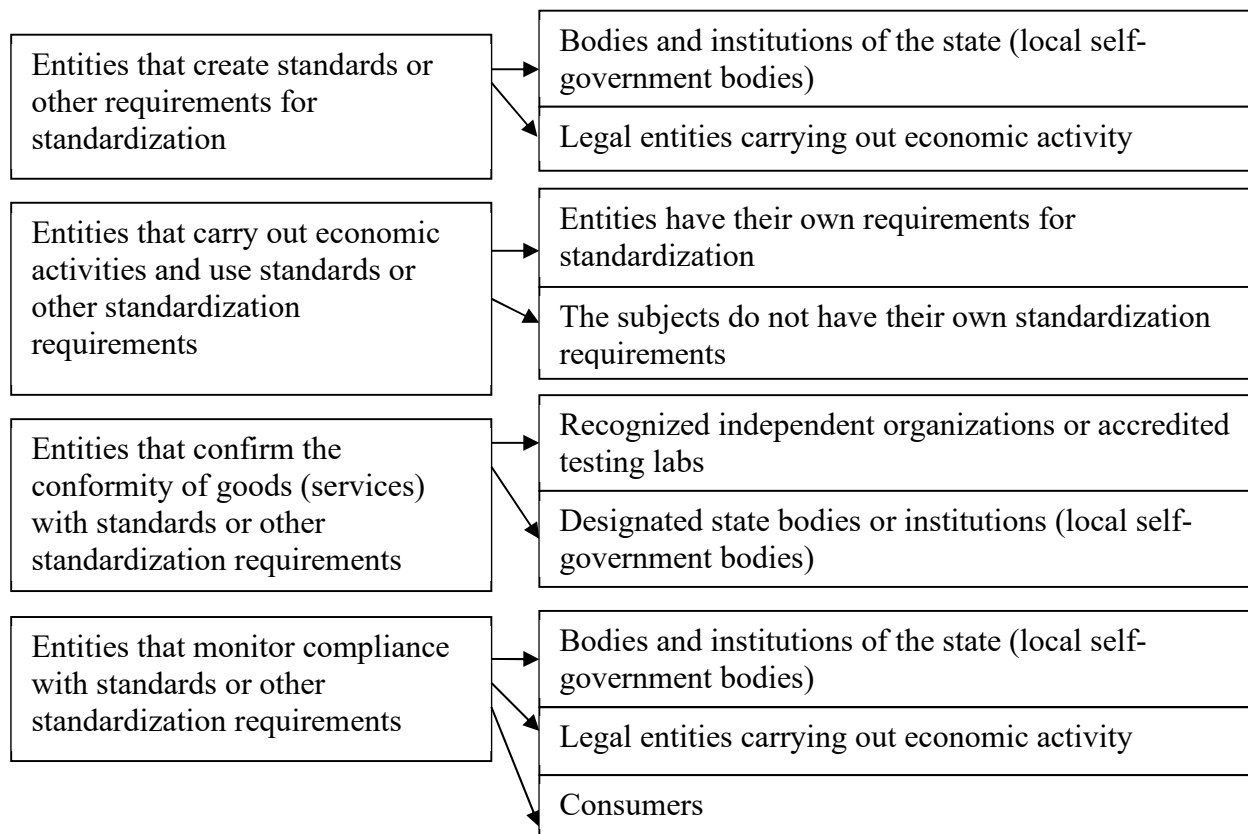
Ukraine "On technical regulations and conformity assessment". For the fullest realization of rights, the subjects of standardization are given freedom of action in the production (supply, etc.) of goods and services. This position follows from the presumption of conformity.

All relations, which according to the definition of the Commercial Code of Ukraine belong to the economic ones, are directly or indirectly related to the implementation of economic activities by their participants. For Art. 2 of the Commercial Code of Ukraine to the participants in economic relations include business entities, including entrepreneurs, consumers, public authorities and local governments endowed with economic competence, as well as citizens, public and other organizations that are the founder's business entities or exercise organizational and economic powers over them on the basis of property relations.

In the field of standardization there is no single approach to the classification of subjects. Thus, N. Ya. Lepish refers to the subjects in the field of standardization, product quality, metrology and certification of the following subjects: 1) standardization; 2) certification; 3) metrological service. K. B. Pochynok speaks purely about the three-level structure, ie the presence of subjects of higher, central and local level [65, p. 266–267]. V. Yu. Volkov divides subjects by specialization (areas of control) [104, p. 148]. D. I. Sakoyan is based only on the list of standardization bodies with indication of their competence [73, p. 184]. In our opinion, the subject composition in the field of standardization should be considered from the standpoint of their participation in standardization processes or activities, regardless of their form of ownership and belonging to different categories (types) of legal entities (individuals).

Bodies and institutions of the state (local self-government bodies) that create standards or other requirements for standardization are divided into:

- 1) authorities that formulate policy in the field of standardization;
- 2) authorities implementing policy in the field of standardization;
- 3) national standardization body with organizational functions.



Public authorities exercise the following powers in certain areas:

- 1) ensuring regulatory and legal regulation in the field of standardization;
- 2) determination of priority directions of development in the field of standardization;
- 3) informing and providing explanations on the implementation of state policy in the field of standardization;
- 4) generalization of the practice of application of legislation in the field of standardization, development of proposals for its improvement and submission for consideration in the prescribed manner a number of draft legislative acts, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine;
- 5) approval of the program of work on national standardization;
- 6) other powers in accordance with the law.

Local self-government bodies, within their own powers, resolve the following issues in the field of standardization (Article 26 of the Law of Ukraine "On Local Self-Government in Ukraine"):

- 1) approval in the established order of local town-planning programs, general plans of building of the corresponding settlements, other town-planning documen-

tation;

2) establishment in accordance with the legislation of rules on landscaping of the settlement, ensuring cleanliness and order, trade in the markets, keeping quiet in public places, for violation of which there is administrative liability;

3) approval in accordance with the law of the Regulations on the content, description and procedure for the use of symbols of the territorial community;

4) resolving issues in the field of hazardous waste management in accordance with the legislation;

5) adoption of regulatory acts with the exception of:

- standards, codes of good practice, technical conditions, except when the provisions of standards, codes of good practice, technical conditions adopted by public authorities and local governments, being mandatory in cases provided by law, set requirements for entities management of mandatory approvals, analyzes, examinations, surveys, tests, etc. with the help of third parties;

- sanitary norms, state norms and rules in the field of urban planning, including state building norms, state norms and rules of fire safety, including national, intersectoral, sectoral regulations on fire safety, state intersectoral and sectoral regulations on labor protection , norms, rules and standards on nuclear and radiation safety, normative documents on metrology approved by central executive bodies, pharmacopoeial articles, the State Pharmacopoeia of Ukraine, technological regulations for the manufacture of medicinal products, except when the provisions of these documents contain requirements for economic entities to conduct mandatory approvals, analyzes, examinations, surveys, tests, etc. with the help of third parties.

As we can see, local governments are usually the ones that implement the standardization policy, but they can be delegated other powers of public authorities to formulate such a policy.

The next entity in the field of standardization is the National Standardization Body. Until January 3, 2015, the national standardization body was the Ministry of Economic Development, but today the functions of the national standardization body are performed by a state enterprise not subject to privatization, established by the

central executive body implementing state policy in the field of standardization. standardization”, Order of the Cabinet of Ministers of Ukraine“ On the definition of a state-owned enterprise that performs the functions of a national standardization body ” of 26.11.2014 № 1163-r). This institution has the following features of formation and functioning:

- 1) the charter and amendments to it are approved by the central body of executive power, which implements the state policy in the field of standardization;
- 2) may not aim to make a profit from its activities;
- 3) may act as the secretariat of technical committees of standardization;
- 4) has a Governing Board, which is an advisory and supervisory body of the national standardization body and is formed on a parity basis from representatives working on a voluntary basis;
- 5) decisions are not final and may be challenged in the Appeals Commission, the composition and procedure for consideration of appeals which is also approved by the central executive body, which ensures the formation of state policy in the field of standardization.

The National Standardization Body has a wide range of powers (Part 2 of Article 11 of the Law of Ukraine "On Standardization") , in particular:

- 1) organization and coordination of activities related to the development, adoption, verification, revision, repeal and restoration of national standards, codes of practice and amendments to them in accordance with the legislation of Ukraine;
- 2) adoption, repeal and restoration of national standards, codes of practice and changes to them in accordance with the legislation of Ukraine;
- 3) taking measures to harmonize national standards and codes of good practice with relevant international, regional standards and codes of good practice;
- 4) development, in coordination with the central executive body implementing state policy in the field of standardization, of national standards and amendments to them regarding:
  - procedures for developing, adopting, reviewing, revising, repealing and restoring national standards, codes of practice and amendments thereto;

- criteria, forms and procedures for consideration of proposals for national standardization;

- procedures for the establishment, operation and termination of technical committees of standardization;

5) ensuring compliance of national standards and codes of good practice with legislation;

6) ensuring the adaptation of national standards and codes of practice to modern achievements of science and technology;

7) preparation and approval of the program of works on national standardization;

8) making decisions on the establishment and termination of technical committees of standardization, determining the scope of their activities;

9) coordination of the activities of technical committees of standardization;

10) participation in the preparation of international, regional standards and codes of practice developed by relevant international and regional standardization organizations, a member of which is a national standardization body or with which it cooperates in accordance with the provisions of such organizations or relevant treaties, as well as - ensuring that the interests of Ukraine are taken into account during the implementation of these activities;

11) ensuring and promoting cooperation in the field of standardization between producers, suppliers, consumers of products and relevant government agencies;

12) encouraging small and medium-sized enterprises to participate in the development of national standards and codes of good practice, ensuring access of these entities to the texts of such documents;

13) preparation of the annual report on its activities, its submission after approval by the Board of Directors for consideration in the central executive body, which ensures the formation of state policy in the field of standardization, and publication on the official website no later than five working days the date of approval of this report by the Board of Directors, but not later than April 1 of the year following the reporting year.



Institutions that perform applied work on standardization are technical committees on standardization. Such committees are a form of cooperation of interested legal entities and individuals in order to organize and perform work on international, regional, national standardization in certain areas of activity on the fixed objects of standardization. In essence, these institutions fall into the category of non-profit organizations without acquiring the status of a legal entity. At the beginning of 2016, there were 159 committees (in addition, 54 committees at the end of 2015 did not provide answers about their activities or liquidation). By May 16, 2016, the committees had been provided (see information from the official website of the Ukrainian Agency for Standardization [99]).

The basis of the technical committees in the field of standardization are:

1) professionalism of the participants (employees) of the committee in the field, which is responsible for the committee. That is why authorized representatives of executive bodies, other state bodies, local self-government bodies, business entities and their public associations, employers' organizations and their associations, scientific institutions and educational establishments are involved in the work of technical committees of standardization. scientific and technical and engineering societies (unions), public consumer organizations (consumer associations ), other public associations, trade unions, leading scientists and specialists;

2) voluntary membership;

3) formation on the principle of taking into account the interests of all persons (parties), which does not preclude the existence of the vast majority of members of an entity that is interested in making a profitable decision;

4) application of the principle of dissemination of knowledge (commenting and clarifying the provisions of national standards, codes of practice, etc.);

5) non-profitability of activity;

6) the applied nature of the activities and performance of the following powers:  
- participation in the work of relevant technical committees of standardization of international and regional standardization organizations;

- development and harmonization of national standards, codes of practice and

changes to them;

- participation in the formation of the program of work on national standardization;

- review and revision of national standards and codes of good practice, the developers of which they are;

- approval and submission of proposals for the abolition and restoration of national standards, codes of practice and changes to them.

The absence of a technical committee for standardization, the scope of which extends to certain objects of standardization or the sphere of production (provision of services) is not an obstacle to streamlining and regulating activities in a particular area. Such a gap is filled by working groups set up by the national standardization body, which includes representatives of stakeholders. For example, the Order of the Ministry of Health of Ukraine dated 12.05.2016 № 437 approved the personnel of multidisciplinary working groups for the development of medical standards (unified clinical protocols) of medical care on the basis of evidence-based medicine, Order of SE "UkrNDNC" dated 17.04.2015 № 31 working groups were set up to develop draft national standards of the national standardization system, Order of the Ministry of Education of 11.10.2007 № 897 working groups were set up to develop sectoral standards of higher education. It is the working group that develops international, regional, national standards and codes of practice for relevant standardization objects, and the national standardization body in such a situation only approves, verifies, reviews, develops changes to national standards and codes of practice, and makes decisions regarding their cancellation or resumption of action.

Technical committees (and working groups) in some areas of standardization are, on the one hand, representatives of legal entities interested in creating national (regional, sectoral) standardization requirements, and on the other - are part of the system of state standardization bodies, as their activities a national standardization body, which often acts as the secretariat of such a committee or performs other organizational functions.

Another form of work on the creation of standardization requirements and their

formalization in regulatory and technical documents is the own activities of legal entities without the participation of the state. The legislation of Ukraine allows legal entities in the relevant fields of activity and taking into account their economic and professional needs to organize and perform standardization work (Article 16 of the Law of Ukraine "On Standardization"), in particular:

- 1) develop, adopt, verify, review and repeal standards, codes of practice, technical conditions and changes to them, establish procedures for their development, adoption, verification, revision, repeal and application;
- 2) apply the standards, technical conditions adopted by them, etc.;
- 3) participate in the work of specialized international and regional standardization organizations in accordance with the provisions of such organizations;
- 4) create and maintain funds of normative documents and publish catalogs of normative documents to ensure their activities and information exchange;
- 5) issue and disseminate standards, codes of practice and technical conditions adopted by them, documents of relevant specialized international standardization organizations, members of which they are or with which they cooperate on the basis of provisions on such organizations or relevant agreements.

Legal entities that have created standards, codes of practice and technical conditions, catalogs issued by them acquire ownership of them (Part 3 of Article 16 of the Law of Ukraine "On Standardization"), including intellectual property rights. In our opinion, these rights can (in some cases should) be transferred together with other similar rights. For example, the sale of industrial design rights also sells the rights to use standards or other regulatory and technical documents of the enterprise that apply to this type of product, which must be explicitly stated in the contract.

Depending on the level and importance of the legal entity in the chosen field of production of goods (services) of the subjects of standardization of legal entities, we can divide into:

- 1) main (main, leading) organizations;
- 2) basic (separate) organizations;
- 3) departments (bureaus, departments, sectors) within the legal entity.

The main organizations are independent research or design, technological organizations that perform the most important work on standardization of products, processes, services, which corresponds to their profile [91, p. 28]. These institutions provide scientific and methodological guidance and coordination of the work of departmental basic standardization organizations, prepare an examination of draft regulatory and technical documents for approval. Their functions may include studying the scientific and technical level of products and services produced and provided in Ukraine and abroad, checking and reviewing existing regulatory and technical documents. Internal (independent) control over the implementation and use of normative and technical documents can be assigned to the main organizations separately.

Basic organizations are working to standardize a certain group of goods and services. It can also be research, design organizations (unions), factories and plants, but less important than the main [74, p. 35–36]. They can be part of the main organizations. Basic organizations develop the main directions of development of standardization of the group of products and services assigned to them, projects of normative and technical documents for a specific type of product, process or services, re-check technological developments, examination of new goods and services to determine the level of unification and interchangeability. etc. For example, in 2010 the Cabinet of Ministers of Ukraine approved the Regulations on the basic organization of scientific and technical activities in construction (Resolution of 14.07.2010 № 589). To obtain the status of a basic organization, a research or scientific-technical (project) organization submits an application to the Ministry of Regional Development in the prescribed form and must meet the following requirements:

- 1) be certified in accordance with the Regulations on state certification of research (scientific and technical) institutions, approved by the resolution of the Cabinet of Ministers of Ukraine of 07.04.1998 № 469;

- 2) have scientific, technical and human resources, research base;

- 3) develop regulations within ten years;

4) have a technical committee (subcommittee) on standardization in accordance with the Law of Ukraine "On Standardization".

Usually, individual legal entities have standardization departments (special bureaus, sectors, etc.), the main task of which is scientific and technical and organizational and methodological management of standardization work at the enterprise, as well as direct participation in these works. For example, from 1993 to 2015 in the structure of Ukrgeodeskartografiya there was a department of standardization of geographical names.

Standardization departments are independent divisions that report directly to the management of the enterprise. The head of such a department, along with the head of the enterprise is responsible for compliance with standardization requirements, their feasibility study, quality and compliance of regulatory and technical documents to the current level of science and technology, as well as for their timely review to comply with growing requirements of the economy and consumers. The main functional responsibilities of standardization departments at enterprises usually include: 1) systematic control over the implementation and compliance with regulatory and technical documents ; providing departments, shops, laboratories, etc. with the necessary regulatory and technical documents and information on changes in them; 2) product quality control; 3) ensuring the unity and accuracy of measurements, etc. [35].

In our opinion, it is necessary to remove restrictions on the types of standardization requirements that can be developed by legal entities and give them the opportunity to call regulatory and technical documents in the field of standardization not only standards, codes of practice and technical conditions, especially since their application is voluntary.

*Entities engaged in economic activity and using standard art or other standardization requirements.* The application of standardization requirements by legal entities that produce goods (provide services) may be carried out on a mandatory and voluntary basis. The Economic Code of Ukraine clearly defines those entities (and certain conditions) that must use standards, codes of good practice or their individual

provisions in a mandatory manner:

1) subjects of economic activity operating in those spheres of activity where the obligation to apply standards or codes of established practice is established by normative legal acts;

2) participants in an agreement (contract) for the development, manufacture or supply of products, if it (it) contains references to certain standards or codes of practice;

3) manufacturer or supplier of products, if he has made a declaration of conformity of products to certain standards or used the designation of these standards in its labeling;

4) manufacturer or supplier of products for export, if the agreement (contract) defines requirements other than those established by the technical regulations of Ukraine, but mandatory. At the same time, such provisions of the agreement (contract) are checked for compliance with the legislation of Ukraine in terms of requirements for the process of manufacturing, storage and transportation in Ukraine.

Other economic entities must comply with the general requirements for the production of goods (services), carry out statutory activities and not violate the restrictions imposed by the state in carrying out certain economic activities that require licensing, etc.

Failure to comply with standardization requirements or their non-compliance causes negative consequences for the business entity, which may be illegal (loss of markets, reputation, reduced consumption of goods or services, reduced income). In our opinion, the rules on mandatory compliance of goods (services) with the declared standards, codes of good practice or their individual provisions, which are fixed in para. 3 h. 2 st. 15 of the Commercial Code of Ukraine, should apply to the requirements of other regulatory and technical documents. That is, any declared standardization requirements become mandatory (mandatory), which entails the corresponding consequences.

*Entities certifying the conformity of goods (services) to standards or other standardization requirements.* Conformity assessment can be carried out using

voluntary or mandatory regulatory and technical documents. In the case of voluntary application of standardization requirements by a business entity, the conformity assessment body (including a designated body or a recognized independent organization) is involved in the implementation of voluntary confirmation of conformity on contractual terms.

Irrespective of the subject of the application and the obligatory (voluntary) requirements of standardization, the subjects of assessment and confirmation of conformity (Part 4 of Article 25 of the Law of Ukraine "On Technical Regulations and Conformity Assessment") are:

- 1) recognized independent organizations or accredited testing laboratories;
- 2) appointed bodies or institutions of the state (local self-government bodies).

Recognized independent organizations must meet the following criteria (Part 2 of Article 26 of the Law of Ukraine "On Technical Regulations and Conformity Assessment"):

1. Existence of the status of a legal entity - resident of Ukraine, regardless of the form of ownership.

2. Personnel of this business entity that performs non-removable joints, and / or personnel that perform non-destructive testing, must have experience in the last three years to perform work on conformity assessment (certification) of technology for non-permanent joints .

3. The business entity must enter into a contract of compulsory professional liability insurance for damage that may be caused to third parties.

4. Compliance with special requirements for recognized independent organizations defined in the technical regulations for pressure equipment, and if such requirements are not defined in these technical regulations - special requirements for designated bodies established by the Cabinet of Ministers of Ukraine.

Along with the features of recognized independent organizations have the following features:

(a) the granting of status shall be effected by the appointing authority deciding on the designation of recognized independent organizations to assess the conformity

of non-removable joints, non-permanent personnel and / or non-destructive testing personnel in accordance with the specified technical regulations;

- b) they are not assigned identification numbers;
- c) may acquire the status of a designated body.

Unlike recognized independent organizations, a credited testing laboratory is usually an integral part of a business entity that manufactures goods or provides services and cannot acquire the status of a designated body (Part 2, Article 27 of the Law of Ukraine “On technical regulations and conformity assessment”). It is used to carry out conformity assessment activities for the enterprise of which it is a part, in order to perform certain conformity assessment procedures defined in the relevant technical regulations.

Features of testing laboratories are:

1) Separation and relative autonomy in management (test laboratory and its staff must have a place in the organizational structure and use such reporting methods within the enterprise of which the test laboratory is a part, which ensure their impartiality and demonstrate this impartiality to the relevant national authority accreditation);

2) its staff should not be involved in the development, production, supply, installation, use or maintenance of the products being evaluated ( the testing laboratory and its staff should not engage in any activity that could conflict with the independence of their judgments or their integrity). in relation to their conformity assessment activities);

3) availability of accreditation in Ukraine (granting accreditation by a national accreditation body of Ukraine or a national accreditation body of another state);

4) provision of services exclusively to a business entity that produces goods or provides services and of which it is an integral part.

*Designated bodies* or institutions of the state (local self-government bodies) are subjects of economic activity as a third party, which proves that the necessary certainty is provided that properly identified products, processes or services comply



with a specific regulatory and technical document (Article 32 of the Law of Ukraine "On Technical Regulations and Conformity Assessment"). In this procedure, the designated authorities are independent of the manufacturer (seller, performer) and consumer (buyer) of the business entity, which certifies in writing that the product meets the established requirements.

Peculiarities of the activity of such bodies are: 1) independent participation in the procedures of assessment and confirmation of compliance of third parties; 2) the existence of a clear and strict procedure in the legislation of Ukraine or other states; 3) a wide range of procedures and activities of such bodies.

Appointed bodies are divided into three categories:

- on certification in the state certification system (as of August 11, 2016, there are 133 bodies) [69];

- on certification of management systems in the state certification system (as of 11.08.2016 there are 66 bodies) [2];

- to assess compliance with the requirements of technical regulations (as of 11.08.2016, 110 bodies are in force) [5].

Requirements for designated bodies are:

1. Independence from the person providing the object of conformity assessment and from the person interested in such object as a consumer or user.

2. He must not be the designer, manufacturer, importer, distributor, installer, buyer, owner, user or responsible for the maintenance of the products he assesses, or the representative of any of these persons. This requirement does not preclude the possibility of using the assessed product, which is necessary for the work of the conformity assessment body, or the use of such products for their own needs;

3. He must not be directly involved in the design, manufacture, sale, installation, use or maintenance of the products he assesses, or represent the parties involved in such activities. Such a body shall not engage in any activity that may affect the independence of its judgments or its integrity in relation to the conformity assessment activities for which it is appointed or assigned. This requirement applies in particular to counseling services.

4. Supervision of compliance by subcontractors or subsidiaries involved in the performance of conformity assessment work, requirements for confidentiality of information, objectivity and impartiality of conformity assessment activities of such body.

5. Conduct conformity assessment activities in an appropriate manner and with technical competence, not be subject to any pressure or motivation, in particular of a financial nature, which may affect its judgment or the results of its conformity assessment activities, especially by individuals or groups of persons interested in the results of such activities.

6. Ability to perform all conformity assessment tasks assigned to it in accordance with the relevant technical regulations and for which it is or has been assigned, regardless of whether such tasks are performed directly by the conformity assessment body or by such body.

7. Subject to independence and the absence of any conflict of interest, a third-party conformity assessment body that is a member of an association of entrepreneurs representing legal entities and / or natural persons-entrepreneurs involved in the design, manufacture, sales, installation, use or maintenance of the products he evaluates.

8. Participation in relevant standardization activities. If the conformity assessment body does not take part in such activities, it shall ensure that its personnel responsible for carrying out conformity assessment tasks are informed of such activities.

9. Participation in the relevant activities of the sectoral or intersectoral group (groups) of designated conformity assessment bodies formed (formed) in accordance with the relevant technical regulations (in case of formation), to ensure informing its personnel responsible for conformity assessment tasks about such activities, and should also use the documents prepared as a result of the work of the specified group (groups) as general guidelines.

In our opinion, in modern conditions in Ukraine it is very difficult to provide an objective assessment of compliance and to trace the lack (presence) of links with

stakeholders. Therefore, we reiterate that the regulation of such relations should include extrajudicial mechanisms.

*Entities that monitor compliance with standards or other standardization requirements* ensure the cessation and prevention of violations of standards, technical requirements, other regulatory and technical documents, production of products in violation of standards, increase the level of legality in the field of standardization. Business entities are liable for violation of mandatory standardization requirements in accordance with current legislation of Ukraine (Articles 10, 12 of the Law of Ukraine "On Standardization", Articles 46, 47 of the Law of Ukraine "On Technical Regulations and Conformity Assessment"). Section 5, Article 44 of the Law of Ukraine "On State Market Supervision and Control of Non-Food Products") or on its own obligations arising from contracts or non-contractual relations, as mentioned above. The control is based on the compliance of the products, goods, services being tested, all parameters, standards, characteristics, requirements set out in regulatory and technical documents at the stage of production or circulation, ie at different stages of the life cycle (Art. 4 of the Law of Ukraine "On State Market Supervision and Control of Non-Food Products"). To assess the quality and compliance of control objects use the types and methods provided by standards, specifications, other regulatory and technical documents.

Control can be divided into (by entities that exercise it):

- own (carried out or initiated by business entities themselves in their own production or in the place of services);
- state (carried out or initiated by public authorities and / or local self-government);
- external (at the initiative of third parties, including natural persons - consumers, carried out by public authorities and / or local governments or economic entities).

The subjects of economic activity carry out their own control at their own production or in the place of providing services with the help of accredited laboratories and / or other internal control units. It is carried out on the basis of

normative and technical documents and / or local acts, which were discussed in subsection 2.2 of this work (on internal economic relations and their regulation through standardization requirements).

State control of conformity of products to the requirements of technical regulations is carried out by state market supervision and control of non-food products, and if certain types of products covered by technical regulations are not subject to state market supervision and control of non-food products - by other types of state supervision (control) in accordance with the legislation of Ukraine (Article 46 of the Law of Ukraine "On Technical Regulations and Conformity Assessment", Article 8 of the Law of Ukraine "On State Market Supervision and Control of Non-Food Products", Article 11 of the Law of Ukraine "On general safety of non-food products " ). Such activities are usually a type of administrative activity of public authorities and / or local self-government.

On the other hand, the state provides its citizens with protection of their interests as consumers, provides free choice of goods (works, services), acquisition of knowledge and qualifications necessary for making independent decisions when purchasing and using goods (works, services) in accordance with their needs, and guarantees the purchase or receipt by other lawful means of goods (works, services) in amounts that ensure a level of consumption sufficient to maintain health and livelihoods (Articles 3, 16, 42, 50 of the Constitution of Ukraine, Art. 5 of the Law of Ukraine "On Consumer Protection"). This gives consumers the right to control the quality and compliance of goods (services) with the requirements of standardization (Article 25 of the Law of Ukraine "On Consumer Protection"), as well as other rights to:

- state protection of their rights;
- guaranteed level of consumption;
- proper quality of goods (works, services);
- safety of goods (works, services);
- necessary, accessible and reliable information about the quantity, quality and range of goods (works, services);

- compensation for damages caused by goods (works, services) of improper quality, as well as damage caused by dangerous to human life and health goods (works, services), in cases provided by law;

- appeal to the court and other authorized authorities to protect violated rights or legitimate interests.

- association on a voluntary basis in public consumer organizations (consumer associations).

In our opinion, the most effective today is external independent control. All you have to do is analyze the TV content that offers conformity assessment and / or control over compliance with standardization requirements. For example, TV shows "Quality Mark", "Life without Deception", "Good Sign" are successful because they assess the quality of products and things that ordinary consumers buy (all programs say that they are created solely in the interests of consumers) . That is, when there is a demand for "independent" external control, there is such a proposal.

In general, consumer rights, the mechanism of protection of these rights and the relationship between consumers of goods (works, services) and producers (performers, sellers) are regulated by the Law of Ukraine "On Consumer Protection" and other legislation. In our opinion, the consumer in the sense of the Law of Ukraine "On Consumer Protection" as a participant in economic relations related to standardization and compliance with its requirements is a weakness. His rights are widely violated by:

I. Inaccurate labeling. For example, today in Ukraine the requirements for food labeling are set out in the Law of Ukraine "On Food Safety and Quality" and the Technical Regulation on Food Labeling Rules. The information part of the label must comply with the "Three Principles" (reliability, availability, sufficiency) and must not be misleading as to the characteristics of the product, in particular its nature, identity, properties, condition, composition, quantity, temporal characteristics etc. Sometimes the label identifies information about the properties of the product, which it does not have.

II. Non-compliance with the requirements for the manufacture of goods (pro-

vision of services). Nowadays, the opportunities of the food industry are huge. You can give some properties of the product without using the necessary raw materials, only by replacing it, such as flavors, dyes, complex additives etc. However, the name sometimes does not reflect the real picture that this is a completely different product. And only if the manufacturer still stated this information in the product, it can be seen [9]. This can be seen as misleading the consumer about the characteristics of the food product.

III. Hidden deception. For example, DSTU 4427: 2005 clearly stipulates that in order to prevent falsification of traditional sausages, it is prohibited to assign new types of sausages traditional names, as well as to use their names with the addition of individual words (eg, "New", "Extra", "Prima" ", "Luxury ", etc.) [20]. The traditional range includes well-known names of sausages, which were made according to state and interstate standards of the USSR.

## ***Acts of regulation in standardization***

Business entities and other participants in standardization relations carry out their economic activities within the established legal order, which is based on the Constitution of Ukraine, determined by the Commercial Code of Ukraine and other regulations of economic legislation. The current system of economic legislation is usually divided, based on the division of the subject of regulation, into general rules and for certain types of products or services. There are also general rules of economic legislation governing standardization, and special legislation governing the standardization of certain goods, services or economic activities in a particular area. According to the legal force of regulations, the system of economic and legal acts regulating standardization consists of:

- 1) provisions of the Constitution of Ukraine;
- 2) laws of Ukraine regulating economic relations, the leading place among which are codified acts: the Economic Code of Ukraine (defines the basic principles of management and features of legal regulation in the field of standardization), the provisions of the Civil Code to be applied on a subsidiary basis standardization), special laws "On standardization", "On technical regulations and conformity assessment", "On state market supervision and control of non-food products", etc .;
- 3) decrees of the President of Ukraine "On strengthening the responsibility for violating the rules, norms and standards relating to road safety";
- 4) acts of the Government of Ukraine (for example, the resolution of the Cabinet of Ministers of Ukraine "On approval of the national standard DSTU B B.2.3-8-2003" Transport facilities. Road surfaces. Methods of measuring traction ");
- 5) departmental regulations issued by the competent ministries and agencies to regulate a particular sector of the economy or a particular sector of the economy (for example, the Order "On approval of national standards of Ukraine, adoption of national standards of Ukraine harmonized with international and European standards, and abolition of national standards of Ukraine and regulatory documents in Ukraine");
- 6) regional regulations adopted by local governments in accordance with the powers delegated by the state and the established procedure (regional rules of

development of settlements and territories of the region, the approval of which is within the competence of the regional council of deputies in accordance with Article 11 of the Law of Ukraine; regional building codes and regulations);

7) local regulations adopted (concluded) directly by business entities or their founders (constituent and internal legal documents of business entities). The same memorandum of association may contain requirements for compliance with regulatory and technical documents in the economic activities of business entities.

International treaties of Ukraine (universal, international organizations, bilateral), ratified by the Verkhovna Rada of Ukraine or concluded with its consent, and other international documents may also be a source of economic law.

A peculiar source of law in the field of standardization is the customs of business, including international trade customs (according to Article 2 of the Law of Ukraine "On Foreign Investment Regime", the assessment of certain types of foreign investment can be carried out according to international trade customs; Article 7 Civil of the Code of Ukraine establishes the principle of application of customs of business turnover concerning the sphere of business, i.e. commercial economic activity). The Economic Code of Ukraine allows such regulation in Art. 38 defines the basic principles of application of the rules of professional ethics in competition, which can be used in concluding contracts, developing constituent and other documents of economic entities (i.e. are customs that apply only with the consent of economic entities).

Regulation of relations in the field of management can be carried out with the help of rules of professional ethics in the field of competition, adopted by self-regulatory interested organizations in consultation with the Antimonopoly Committee of Ukraine (Part 1 of Article 38 of the Commercial Code of Ukraine). However, such rules, as well as the rules of professional ethics in the field of competition, belong to the custom and are applied subject to reference in the contract, constituent and other legal documents of economic entities (Part 2 of Article 38 of the Commercial Code of Ukraine).

Norms and requirements of standardization are formed objectively and can not



be moved by law to another legal institution, which does not deny the existence of reference rules of commercial law, which indicates the need or mandatory application of specific requirements of standardization. Standardization in economic law has its own specific design and common principles for the application of all its requirements:

1) norms and requirements of standardization provide all spheres of economic activity, establishing equal requirements for the manufacture of certain types or kinds of goods, the provision of standard services;

2) freedom of entrepreneurial activity may be limited by requirements for the safety of goods (services) for humans or the environment, and may be ensured by conscientious compliance with the requirements;

3) adaptation of national standardization requirements to world standards of technical regulation

ensuring the free movement of goods (services) in domestic and foreign markets;

4) State intervention is allowed as the optimal state regulation, as the degree of state regulation depends on the state of the economy, internal and external situation of the country (more significant in a crisis, economic disaster and other troubles, and weakening regulation - in the case of stable economy) ;

5) protection of the national producer is achieved by introducing the latest norms and requirements in the shortest possible time or by adapting the requirements of international standards, directives, etc.;

6) State intervention is expedient, justified and lawful only if economic activity threatens the life and health of citizens, the environment or national security.

Standardization has the opportunity to form general concepts and general principles within the limits of acts governing economic activities in the field of standardization. These are the system-forming DSTU 1.1: 2015 National Standardization. Standardization and related activities. Glossary of terms; DSTU 1.2: 2015 National standardization. Rules for conducting national standardization work; DSTU 1.7: 2015 National standardization. Rules and methods of adopting international and regional regulations.

Usually, acts of economic legislation are complex, ie consist of legal norms of

different branches of law, united by one subject (economic contracts of a certain type, business entity of a certain economic form, economic management body, etc.). This is due to the fact that economic activity covers, as a rule, several types (spheres) of activity that cause the emergence of legal relations in almost all areas of law. Common features include:

1) establishment of economic and legal norms by competent subjects (depending on the legal force and type of normative legal acts, which contain norms). Such bodies are: the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, central bodies of state executive power, regional councils of people's deputies and regional state administrations, city (Kyiv and Sevastopol) councils and state administrations), business associations and entities management;

2) official, or legal (established by law), the procedure for adopting such rules (depending on the legal force and type of regulations that contain the rules);

3) fixation of such norms in special legal documents (their name depends on the legal force of the document and, accordingly, on the body that adopts it: law, decree, resolution, decree, order, regulations, statute, contract, rules, decisions, regulations, dressing, etc.);

4) addressing such norms to a predetermined circle of persons - all potential or registered business entities or certain organizational and legal forms, such as companies, their founders, participants, officials of management bodies (ie these rules are not inherent in individual personification - addressing a particular person) .

Economic and legal norms are characterized by such a specific feature that distinguishes them from the norms of other branches of law, as the content: they contain rules in the field of management (on the direct implementation of economic activity and / or organization, management of such activities). We agree with the generally accepted definition that economic and legal norms are officially established by the competent authorities and individually unpersonalized rules in the field of management are recorded in special legal documents. The variety of economic and legal norms determines the appropriateness of their classification:

I. According to the structure of norms: 1) norms with a traditional structure (hypothesis, disposition and sanction); 2) norms with incomplete structure, which are the majority among economic and legal norms (including in the field of standardization).

II. According to the content: 1) norms-prohibitions (for example, prohibition of entrepreneurial activity in violation of general requirements, including standardization (Part 4 of Article 43 of the Commercial Code of Ukraine ); 2) norms-principles (for example, the principle of freedom of entrepreneurial activity) (Article 44 of the Commercial Code of Ukraine ), which in combination with the requirements of standardization provides proper order and the possibility of functioning of economic entities); 3) norms-definitions (most adopted laws have a special article "Definition of terms", which reveals the content of the main terms used. Similarly, Article 1 of the Law of Ukraine "On Standardization" discloses all definitions used in this law); 4) competence norms (for example, on the competence of a state body in the field of standardization); 5) technical and economic norms (determine the procedure for carrying out certain technological processes, parameters and initial values of economic activity, norms of depreciation deductions, state standards, state building norms and rules, technical conditions and other standardization requirements); 6) norms-recommendations (not being legally obligatory for business entities, orienting them and desirable for society (state) behavior in the field of management): standard statutes or agreements, voluntary standardization requirements.

Given the above features of modern economic legislation of Ukraine, we can conclude that it contains many outdated, conflicting rules, as well as gaps, due to the introduction of new market relations in the economy of Ukraine, which have not yet undergone appropriate legislation. . These circumstances necessitate the improvement of economic legislation. In particular, harmonization (adaptation) of Ukrainian legislation with international standards for regulating economic relations, legislation of international economic unions, which include or plan to include Ukraine (including the European Union). Thus, the Law of Ukraine "On the National Program of

Adaptation of Ukrainian Legislation to the Legislation of the European Union" of 16.03.2004 № 1629-IV and bylaws (Decree of the President of Ukraine "On the organization of the Law of Ukraine" On the National Program of Adaptation of Ukrainian to the legislation of the European Union "of 21.08.2004 № 965/2004, Regulations on the Center for European and Comparative Law, approved by the order of the Ministry of Justice of Ukraine of 28.10.2004 № 126/5 and others) provided a number of measures to ensure the implementation of this direction improvement of national legislation.

Returning to the process of creating standardization requirements in modern Ukraine, it should be noted that it corresponds to the process of rulemaking (lawmaking), which is an element of legal regulation of any branch of Ukrainian law and without which we cannot talk about the existence of certain relations.). Lawmaking is the result of objective development of social relations, directly aimed at their settlement, based on the principles of scientificity, professionalism, legality, democracy, transparency, efficiency, humanism and planning [3, p. 67; 42, p. 296–297; 70, p. 29; 72, p. 5]. Rulemaking in the field of standardization is based on similar principles.

The result of rule-making activities in the field of standardization is the creation of normative and technical documents. Through normative documents, standardization affects the spheres of human activity, development of the country's economy, acceleration of scientific and technological progress, economy and rational use of raw materials, energy resources to improve product quality (processes, works, services). The current level of development of Ukraine's economy, the need for radical changes in material and social living conditions of the people bring to the fore the problem of quality. Improving the quality of goods (processes, works, services) is possible only on the basis of standardization. It is possible to control and improve quality only on the basis of normative and technical documents that establish requirements for quality and reliability, methods of control and testing of products, create the necessary unity, without which further development of technical level is impossible [17, p. 98; 90, p. 30]. Standards are a criterion in determining the quality

[15, p. 6-7 ; 117, p. 489; 118, p. 196–198].

Normative and technical documents contain indicators that can be characterized quantitatively and qualitatively. They are called indicators of standards and provide such a category as quality [100, p. 51; 26, p. 96–97]. Indicators of normative and technical documents are the characteristics of standardization objects, which are expressed by means of conventional units, symbols or concepts. Such indicators include: information on product size, chemical composition, physical properties, weight, performance, economy, reliability, safety, safety, etc.

All normative and technical documents contain both general and technical norms, ie the rules of people's attitude to tools and objects of labor, to technology and forces of nature. These rules indicate environmental and economic methods, techniques and ways of influencing people on the material world, interaction with technical and natural objects [40, p. 78].

In practice and in the scientific literature, the problem of standardization is considered mainly in the technical and economic aspect. The importance of the legal aspect of standardization is underestimated. Only the responsibility of enterprises and employees for the release of substandard products on the market is accepted. However, the legal aspect of this problem is much broader and is not limited to issues of this responsibility. Underestimation of the legal aspect of regulatory and technical documents has led to the fact that legal means of ensuring compliance with standardization requirements are used in practice ineffectively. Established in the economy "legal nihilism", exaggeration of the role of legal prohibition and underestimation of law as a constructive, creative, regulatory factor has become a "brake" for the development of national production, when companies mostly only pay fines, do not reimburse losses supply and use of substandard goods and services.

Business entities also do not understand their economic advantages in the use (application) of standardization requirements. Considering the issues of acts of regulation of standardization in economic activity, it should be borne in mind that the role of law is not limited to the establishment and consolidation of technical requirements in regulatory and technical documents. The importance of legal

regulation also lies in influencing the behavior of individuals in society, which would ensure the implementation and compliance with technical requirements enshrined in legal norms. For this purpose, for example, the following is established: the general procedure for acceptance of raw materials and finished products of a certain level of quality; the relations arising in connection with the use of measuring equipment are regulated; liability for violation of regulatory and technical documents is provided; relations concerning the quality of goods and services are regulated. The regulatory role of normative and technical documents in this aspect is manifested in the enshrinement in legal norms of certain technical requirements and the provision of legal means, their observance in the manufacture and circulation of goods and services. In compliance with technical and other requirements, economic entities produce (supply) good quality products (goods and services) to the market. And good quality products - is the compliance of the set of product properties to the requirements of standards, other regulatory and technical documents, the terms of contracts [38, p. 170–172]. Although this is a definition of economic nature. In legal terms, this concept is important as the proper quality of goods, works or services, ie the property of products that meet the requirements established for this category of products in regulations and regulations, and the terms of the contract with the consumer ( paragraph 13 of Article 1 of the Law of Ukraine "On Consumer Protection"). This also applies to relations on the organization of labor in enterprises through internal or other requirements, compliance with sanitary and hygienic requirements for the human workplace. Even the relations on the establishment of a business entity are regulated by requirements related to standardized (established) requirements (standard requirements for the content and sections of the statute).

Today, the clear demarcation of knowledge is gradually being leveled, which allows combining and applying knowledge from other, including technical, areas of law. Often in the theory of economic law distinguish technical norms as a type of norms of economic law [84, p. 284–286; 25, p. 50; 96, p. 66]. We believe that the transition from a technical rule to a general rule of conduct, it acquires the characteristics of a legal rule, and therefore to distinguish such rules as a separate

species does not make sense. Some scholars talk about the invariability of the nature of technical standards in their transition to general rules, because their technical nature does not change. The main argument of this scientific position is the impossibility of providing sanctions and the application of direct responsibility for violations of technical standards. We do not agree with this position, because the essence may not change, but the rule has all the hallmarks of legal, including the possibility of state coercion. For example, in 2013 the specialists of the Inspectorate for Consumer Protection in Volyn Oblast conducted inspections for compliance with the legislation on consumer protection and compliance with the standards of 219 businesses that sell non-food products and fined 75 business entities for UAH 62.6 million. [86; 17, p. 107]. State coercive measures were applied to verify compliance with technical regulations.

In our opinion, the use of standardization as a means of regulating economic activity is also about the use of regulatory and technical documents as the main means of such regulation. Sometimes it is even possible to trace the superiority of technical norms over legal ones if the principle of voluntary standardization requirements is applied. The superiority of legal norms over technical ones is traced when the principle of voluntary application of standards can be eliminated, if required by technical regulations in the form of law. In this case, we are talking about the principle of clearly regulated state mandatory regulation of economic activity.

Along with this, we trace analogies in the signs of normative-legal and normative-technical act. Yes, according to para. 4 item 1.4 "Procedure for submission of regulations for state registration to the Ministry of Justice of Ukraine and their state registration" normative legal act is an official document adopted by the authorized subject of regulation in the form prescribed by law and a procedure that establishes the rules of law for an indefinite number of persons and is designed for repeated application. Signs are: 1) acceptance by the authorized subject; 2) the existence of certain procedures and procedures for adoption; 3) registration in the form of an official document; 4) reusability; 5) impersonality.

Normative and technical documents (acts) have similar features: 1) are adopted

by specially authorized entities (Verkhovna Rada of Ukraine, Cabinet of Ministers of Ukraine, central executive body, business entity, international entity, as expressly provided by the legislation of Ukraine ); 2) the legislation of Ukraine and DSTU 1.1: 2015, DSTU 1.2: 2015, DSTU 1.7: 2015 define the procedures for creating, clarifying, changing or adapting (harmonizing) the requirements of standardization; 3) acts that do not have a written form do not become the requirements that are recognized as standardization requirements; 4) the repeated application of the requirements follows from the sign of systematic use; 5) use without personification is directly provided even when it comes to individual production of goods (services), a trial (test) batch of goods, as the binding is not to the person, but to the goods (services).

From the above we can conclude that the *normative and technical document* is an official document in the field of standardization, adopted by the authorized subject of rulemaking in the form and manner prescribed by law, which establishes rules, general principles and characteristics of various activities or its results for an indefinite number of persons and is designed for repeated use . Regulatory and technical documents are developed for standardization objects, which are mandatory for use in certain areas of activity in the prescribed manner and approved by the competent authorities. Normative and technical documents include standards, technical regulations, codes of good practice (guidelines, rules, set of rules), technical conditions, regulations, state classifiers, enterprise standards, etc.



## ***Standardization as a means of legal regulation of economic activity***

The whole array of economic legislation is aimed at ensuring the implementation of economic activity. We find the concept of economic activity in various regulations, but we are guided by the definition of the Commercial Code of Ukraine, where economic activity means the activities of economic entities in the field of social production, aimed at manufacturing and selling products, works or services of value, having price certainty. The following doctrinal definition is usually given in business: economic activity is such socially useful activity of economic entities in relation to production, performance of works, provision of services for the purpose of their realization for a fee (as a commodity), based on combination of private and public interests, is carried out professionally and is subject to significant regulation in order to socialize the economy [103, p. 8–11; 26, p. 121; 116, p. 43; 80, p. 6–7]. Any economic activity is carried out on certain principles, taking into account, on the one hand, the market orientation of the national economy and, accordingly, provide significant freedom for the subjects of such activities (especially entrepreneurs), and on the other - the social direction of the economic sphere. presupposes the establishment of certain restrictions for business entities in order to take into account the public interests (society, state, territorial community / communities, typical private interests of citizens and organizations) in compliance with state public economic order, which provides compliance with various requirements for: quality of products, works, services, their safety for life and health of consumers; environmental safety of production; good conduct in the field of economic competition; civilized use of hired labor (ie in accordance with the requirements of labor law), etc.

Today, the problem of proportionality of economic activity and ensuring a healthy environment is acute. The balance of these components is achieved through legal influence. Forms and methods of this influence change depending on social needs [40, p. 72–73; 44, p. 94; 60, p. 74; 66, p. 7]. This can be ensured by timely preparation, development and implementation of a standardization system that should regulate economic activity, ensure compliance with the requirements of economic and technical documents and improve the methods and techniques of production.

In the legal literature, the problem of legal influence and legal regulation is not new. Directions have been formed in science that make it possible to study law as an effective means of social regulation. One of the main functions of the state is the organization of life in society in order to ensure normal living conditions. The state has always interfered in the activities of economic entities, acting as a market regulator and ensuring its stable operation [11, p. 3–4]. That is why they usually talk about the regulatory policy of the state as the basis of a stable and competitive market. Active market development contributes to the growth of the private sector of the economy, which begins to provide new services or produce new goods [6, p. 14; 17, p. 8, 10, 14, 18; 28, p. 8; 66, p. 9-10; 97, p. 87, 90], which in turn requires special attention to the standardization of products and services by the state.

Some scholars express the opinion about the possibility of self-regulation in the sphere of economic activity [17, p. 49, 53]. A similar position, based on the poor quality of legal regulation of economic activity and the problems of morality and justice in regulations, expresses O. Kh. Yuldashev [111, p. 50]. Agreeing with the possibility of self-regulation in economic activity V. V. Dobrovolska emphasizes that there is a real possibility of transforming the business entity into a closed monopoly (especially in regulating relations on the use, protection and restoration of natural resources) [17, p. 53, 55, 56]. In our opinion, self-regulation of economic activity through standardization is allowed, it is especially important in the case of voluntary requirements, compliance with which is controlled not only by law but also by other social regulators.

Legal regulation in society is carried out through certain mechanisms. In the theory of law, the mechanisms of legal regulation should be understood as various elements of the legal system that have a regulatory impact on society. This is a certain, taken in unity, a set of legal means, methods and forms by which the rule of law regulates social relations, meets the interests of legal entities, resolves conflicts, promotes social compromise in the legal field [6, p. 5, 7; 17, p. 4; 185, p. 247–248].

S. Bobrovnyk and N. Onishchenko, proposing to abandon the understanding of this mechanism only as the activity of the legislator, who forms the rule of law, gives

it an authorizing, binding or prohibitive nature, and only as a legal regulation, subject to prohibition by subjects the prescription applies. With a one-sided approach to the mechanism of legal regulation, the goal and objectives of legal regulation are nullified, various factors that affect the process of this regulation are not taken into account [86, p. 15]

The mechanism of legal regulation is characterized by certain features: legal regulation and its mechanism is a component of social regulation; is a certain system of interacting elements, among which there are legal means (norms, subjective rights and legal obligations, etc.), methods (permits, prohibitions and obligations) and forms (compliance, implementation and use); it provides regulation of social relations, ie is a dynamic part of the legal system; the mechanism of legal regulation is purposeful and effective.

V. Nersesyants notes that the mechanism of law is a mechanism of abstract-general legal regulation, concretized and individualized in relation to a specific case of manifestation of the legal force of existing law. In this case, the general rule becomes individual in relation to a particular case. The position of A. Zaits deserves attention, who believes that law is not only a "phenomenon in itself", but is an external manifestation, a powerful regulatory tool that motivates a person to act in accordance with the requirements of law [113, p. 20, 37–38]. A. Malko has a slightly different approach to the concept of the mechanism of legal regulation, which considers it as a system of legal means, organized consistently, aimed at overcoming obstacles that stand in the way of satisfying the interests of legal entities.

Thus, the mechanism of legal regulation substantiates the need for legal regulation in society, streamlines the phenomena of legal reality, ensures their unity, relationship and interaction, the process of transformation of legal requirements for the actual behavior of legal entities. Based on these tasks, we can formulate the following definition: legal regulation - is a purposeful influence on human behavior and social relations through legal (legal) means.

Regulation can be called only such an impact, which is quite clear goals. For example, in order to regulate land use, ensure its preservation, increase the efficiency

of land use, a law on land is issued, which contains requirements for this area of activity. And the effect of land law, as a result of which the goals are realized, can be called legal regulation.

In the narrow sense, legal regulation means the "influence of law (system of legal norms), other special legal means on the behavior of people and public relations in order to streamline them and progressive development. Law has the properties and mechanisms that ensure its implementation in society. Normativeness, universality, formal certainty, provision with the force of state and legal coercion allow to translate legal norms from the sphere of the proper to the sphere of being, in the everyday practical life of man and society. Disclosure of the essence of legal phenomena allows to approach the understanding of the regulatory role of laws and other regulations, individual decisions, other legal means in their relationship and interaction.

If under the influence of a legislative act or its norms there are consequences that are not provided by law, and in some situations contradict the goals of the legislator, then such influence can not be considered legal regulation. Similarly, the influence exercised by non-legal means cannot be considered legal regulation. Of course, in real life the spiritual, ideological, psychological influence of law is interconnected and combined with special legal regulation. Influence on social relations, on the behavior of people by special legal means and methods in turn affects the spiritual, moral, ideological aspects of human life.

Features, nature, methods and means of legal regulation depend on the nature and content of social relations that constitute the subject of legal regulation. It is quite obvious that relations on the equivalent exchange of values, such as property relations, require other legal means and methods of regulation than those used to regulate management relations. The nature and type of social relations that constitute the subject of legal regulation determine the degree of intensity of legal regulation, ie the breadth of legal influence, the degree of binding legal regulations, forms and methods of legal coercion, the degree of detail of regulations, the intensity of legal influence on public relations.

The diversity of social relations within the sphere of legal regulation creates

differences in the methods of legal influence. In the theory of legal regulation, it is accepted to allocate two methods of legal influence [81, p. 178]. Along with the methods, it should be noted about the ways of legal regulation. Methods of legal regulation are determined by the nature of the prescription, fixed in the rule of law, ways to influence the behavior of people. In the theory of law, it is accepted to allocate three basic ways of legal regulation.

With the help of legal regulation, the relations between the subjects acquire a certain legal form. Namely, through the rules of law, the state establishes the extent of possible and permissible behavior. The regulatory-static and regulatory-dynamic functions of law correspond to the methods of legal regulation. Imposing on individuals the obligation to refrain from committing certain acts contrary to the rule of law, prohibitions establish a certain degree of behavior of the subjects; permits provide social activity of subjects and a certain level of their freedom; obligations contribute to the implementation of responsibilities imposed on individuals, their implementation is guaranteed by the state in the form of legal liability. In addition to the main methods of legal regulation, there are also additional ones, such as: stimulating effect of legal norms, use of coercive means, preventive effect of legal norms [28, p. 124; 62, p. 64]. For example, encouraging are the rules, which provide incentives for the implementation of norms and requirements of standardization, inventive, innovative activities that can achieve the goal of economic activity with the lowest economic costs [6, p. 25]. The selection of these methods as additional is explained by the fact that they are considered as a certain type of duty. With the help of these means the proper use of the granted rights and fulfillment of the responsibilities assigned to the subjects is ensured, abstinence from prohibitions is carried out. Based on the ratio of general permits and prohibitions in the legal literature and in legal life, two legal formulas have emerged, based on which there are two types of legal regulation [71, p. 88–89].

Achieving the goals of legal regulation is carried out with the help of certain means, which are ways of legal influence on the behavior of subjects. The set of these tools, which are different in nature and functional purpose, and is a formal feature of

the mechanism of legal regulation [100, p. 50; 17, p. 41–42]. These remedies have the following features: they form a certain system, but are not tied to one area of public relations; designed to ensure social freedom and activity of the subjects (permits), or, conversely, to impose on persons a passive obligation to refrain from committing those acts that interfere with the interests of the person (prohibition), to provide for certain behavior, to guarantee the use of subjective rights of other subjects (obligations); these means must contain positive incentives for the subjects to exercise their subjective rights and fulfill their responsibilities; should be aimed at achieving a certain result - ensuring the effectiveness of legal regulation; related to the subjective rights of either the person (permits) or other persons (obligations, prohibitions); these means are closely interconnected not only with each other, but also with such types of legal norms as authorizing, binding and prohibiting, and determine the forms of realization of the right (observance, implementation and use).

With the help of legal regulation of relations between the subjects acquire a certain legal form, it is through the rules of law that the state establishes the degree of possible and permissible behavior.

In our opinion, standardization as a legal remedy is characterized by certain features: 1) has social value, as it ensures the achievement of goals; 2) reflects the informational qualities of law; 3) in combination with other means, creates conditions for the operation of law; 4) causes certain legal consequences; 5) is provided by the coercive force of the state.

In the legal literature, the means of legal regulation are classified according to certain criteria. Depending on the degree of complexity, there are: simple (subjective rights and legal obligations; incentives and penalties; benefits and prohibitions); complex (norm; institute). Depending on the functional purpose: regulatory (permits); security (means of protection). On the subject of legal regulation: constitutional, administrative, civil, criminal, etc. By nature: material (recommendations); procedural (claims). By time of action: permanent (permission to carry out a certain type of economic activity); temporary (setting limits for subsoil extraction by the business entity). Depending on the type of legal regulation: normative (prohibitions

established by legal norms); individual (act of law enforcement). Depending on the information and psychological orientation: stimulating (encouragement); restrictive (coercion). Economic law, as a rule, refers to the means of state regulation of economic activity (Article 12 of the Commercial Code of Ukraine): state order; licensing, patenting and quotas; technical regulation; application of standards and limits; regulation of prices and tariffs; providing investment, tax and other benefits; providing grants, compensations, targeted innovations and subsidies [36, p. 359; 75, p. 5-6; 87, p. 189; 78, p. 11–12; 108, p. 1068].

Since 2014, there is no standardization in this list, which is associated with accession to the EU, bringing national legislation to the requirements of international institutions, but it is precisely the regulator used in the application of those listed in Art. 12 of the Commercial Code of Ukraine.

## ***The value of standardization for the regulation of economic relations***

According to the general theory, the subject of legal regulation is social relations, which have the following features: first, it is a relationship that reflects both the individual interests of members of society and general social interests; secondly, in these relations the mutual interests of their participants are realized, each of which accepts a certain oppression of the interests for the sake of satisfaction of interests of another; thirdly, these relations are built on the basis of agreement to comply with certain rules, recognition of the binding nature of these rules; fourth, these relations require compliance with rules, the binding nature of which is supported by a fairly effective system.

fat (coercion) [98, p. 407; 112, p. 146; 115, p. 156; 40, p. 80; 54, p. 11–12; 79, p. 14].

The Economic Code of Ukraine defines public relations that are the subject of legal regulation in the field of economic activity (organizational and economic, internal economic relations and economic and production or contractual). All these relationships can be regulated through standardization. Let's consider in more detail, on the basis of which acts and how such regulation takes place.

Under *organizational and economic relations* in Part 6 of Art. 3 of the Commercial Code of Ukraine understand the relationship between business entities and entities of organizational and economic powers in the process of managing economic activity. Organizational and economic relations arise, as a rule, in the field of economic management [101, p. 214; 8, p. 10–12; 93, p. 14–15]. Also, these relationships may arise in connection with the confirmation of compliance of goods and / or services with the requirements of regulatory documents on standardization. Management needs constant monitoring of efficiency and improvement based on such an audit. There are two options (levels) of assessment in the world: 1) self-assessment using the CAF system (The Common Assessment Framework); 2) professional assessment based on a series of international standards ISO 9000, ISO 14000, ISO 22000, etc.

The main purpose of the CAF system is [27]: 1) implementation of the principles of quality management in the field of administrative management and



promote their development through the method of self-assessment. Facilitate the transition from the plan-do chain to the plan-do-check-influence cycle (PDCA cycle); 2) providing a mechanism for self-assessment of the organization in order to diagnose and improve its activities; 3) to become a connecting element between different models of quality management; 4) ensuring the exchange of experience and study of best practices. CAF was created for state institutions, but, in our opinion, it can become a regulatory and technical document to improve the effectiveness of self-regulation of management relations of economic entities both externally and internally in the management and staff, which will increase the level.

The secondary (professional) link of management systems at enterprises, institutions and organizations of economic relations is the application of ISO standards that perform a social (humanistic) function [34, p. 4–5]. In particular, the certification of enterprises, institutions and organizations according to ISO 9001 ensures that the company can produce products at a stable level of quality and constantly improve it [22]. The application of ISO 9001 guarantees the obligation of quality control in production. Certification of management systems in the field of food and food safety according to ISO 22000 is used to regulate relations that may arise with third parties (consumers) [21]. Certification according to this standard realizes the presumption of conformity and guarantees consumers the safety of raw materials, impurities and components used in production. It also provides assurance that the business entity knows and controls the risk factors that affect the production process. Another area of management provided by standardization is environmental management. The introduction of the ISO 14000 series of standards, which contain the composition and description of the elements of the environmental management system, guidelines for their application, as well as guidelines for environmental audit of the enterprise means that the business entity seeks to minimize its negative impact on the environment. In addition to the ISO 14001 standard, the International Organization for Standardization has developed a series of standards for environmental management systems, many of which are adopted in Ukraine as identical national standards (DSTU) [25]. It is recommended to use these standards as

an aid in the implementation and improvement of the environmental management system and to demonstrate its compliance with stakeholders.

We believe that when implementing an environmental management system, each business entity must determine the legal and other regulatory requirements for the environment that it undertakes to comply with, which apply to the environmental aspects of its activities, products or services. Compliance of the business entity with laws and regulations is one of the most important audit criteria during the certification of the environmental management system (Article 5 of the Law of Ukraine "On Environmental Audit"). This system is a tool that allows you to identify environmental aspects of its activities, products or services, assess their impact on the environment, develop and implement actions to prevent pollution, establish impact control and apply corrective measures, determine applicable environmental laws and regulations, ensure activities in accordance with the environmental legislation of Ukraine, to define and achieve environmental goals, improve environmental performance, balance and integrate economic and environmental interests, timely adapt to ever-changing conditions. Today, two “environmental” laws are promised by the President of Ukraine - № 2009a-d “On Environmental Impact Assessment” and № 3259 “On Strategic Environmental Assessment”. They were to provide the legal and organizational framework for environmental impact assessment and to ensure Ukraine's compliance with its international obligations under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Convention on Access to Information and Public Participation in Decision-Making and access to justice in environmental matters (the Aarhus Convention) to which Ukraine is a party, the implementation in national law of the provisions of Directives 2003/4 / EC and 2011/92 / EU, as well as the application and implementation of strategic environmental assessment according to the approach, enshrined in Directive 2001/42 / EC of the European Parliament and of the Council of 27 June 2001.

As the scale of production and technological capabilities increase, the scale of the consequences of accidents increases, as well as the danger to the health and lives

of employees, especially those who perform work with increased risk. Particularly high risk at the enterprises of the oil and gas complex, mining and chemical industries, construction industry. Today, manufacturing companies seek, on the one hand, to reduce the costs associated with health and safety, on the other hand - to increase the safety of production, effectively managing the risks to humans, and at the same time improve the corporate image. To this end, companies around the world since 1999 are implementing occupational safety and health management systems, focusing on the requirements of the international standard OHSAS 18001 [58].

*Intra* -economic relations are those that are formed between the structural units of the business entity, and its relations with its own structural units (Part 7 of Article 3 of the Commercial Code of Ukraine). Internal economic relations are the kind of economic relations that arise directly in the internal production sphere of enterprises and other economic organizations, and their subjects are the internal divisions of enterprises (shops, production, etc.). They enter into a relationship with each other, as well as with the business entity as a whole of which they are part. The rights and responsibilities of participants in internal economic relations, as a rule, are determined by local regulations of economic entities. The possibility of concluding internal economic agreements is not ruled out. Local acts are not so much a "mediator" between centralized legislation and a specific business entity, as should be a modifier that translates the general requirements into specific procedures, implementing these rules in the daily activities of business entities [41, p. 54, 57; 50, p. 197–201]. The subject of local acts is the joint activities of entities (parts of economic entities, members, participants, employees) that have entered into legal relations within a single business entity. In this regard, local rule-making is aimed at streamlining, standardization of social relations, which are formed within the local legal location. The legislator provides an opportunity for business entities to develop the terms of cooperation, to determine by agreement of the parties or unilaterally the creation of local norms. The norms adopted by them are obligatory rules of proper behavior for all parts of economic entities, members, participants, employees. Local rule-making depends on the level of legal culture and legal consciousness of those involved in the

creation of these rules [31, p. 11–12; 29, p. 24]. The importance of legal culture, legal awareness and legal education in the implementation of economic activity was rarely mentioned, but at all times [28, p. 30; 62, pp.4–5; 67, p. 385; 88, p. 400]. In our opinion, it is from the legal culture and legal consciousness of individuals who create local acts for business entities, depends on the creation of such a system of local law, which should adequately reflect the conditions of economic, industrial and technological activities of this entity. Legal regulation with the help of local norms leads to raising legal regulation to a new level, makes it adequate to the past stage of development of society and in this sense has a constructive impact on it. Advance regulation serves as a way to resolve contradictions in the development of the legal form itself. Such regulation shows the need to change the legal norms that have come into conflict with the needs of life, or their abolition, the adoption of new ones that reflect the trends of social development. Local regulation shows the shortcomings of legislative regulation, acts as a form of criticism of existing regulations

We believe that in order to achieve the goal of legal regulation of economic activity, internal economic relations of economic entities should be based on DSTU 1.4-93 "State Standardization System of Ukraine. Enterprise standards. Basic provisions "[18]. Local acts of economic entities must meet the specified standard, even if the name does not indicate that it is a standard of the enterprise.

Below we consider the requirements of regulatory and technical documents for standardization in the *contractual relations* of economic entities in Ukraine. These legal relations create a mechanism for "translating" the general rules of objective law into the plane of subjective rights and obligations, which may take the form of economic or other type of contract. The contract as a means of legal regulation was considered often and in detail. It can generate facts and regulate specific legal relationships.

Based on the position that the contract combines norms-permits, norms-prohibitions and norms-prescriptions and contains socially necessary restrictions, we are talking about standardization as a means of achieving the goal of economic activity - achieving economic and social results with or without profit [7, with. 75; 103, p.

276–277; 24, p. 170–172; 54; 8, p. 14; 93; 80, p. 366–368; 79, p. 298–300]. Contractual activity cannot do without the principle of fairness, which guarantees market balance, creates fair competition and is ensured through regulatory and technical documents on standardization. Standardization, in addition to limiting contractual relations, creates order and clarity in the formulation (definition) of the subject of the contract, predicts the probable relationship of liability for non-compliance (non-compliance) with regulatory and technical documents on standardization and is a factor in public interest. The vagueness of the wording of the subject of the contract, including the failure to specify the standardization requirements to be met by goods (services), has led to litigation. Although there are other cases. Thus, the State Enterprise Research and Production Complex of Gas Turbine Construction "Zorya" - "Mashproekt" when purchasing products in the supply contract has such clear requirements for the quality of goods (equipment or products, including warranty obligations) [89]. This makes it impossible to deviate from the requirements for the goods to be supplied under the contract.

Now there is an objective need to include directly in the text of the contract an imperative condition - a list of technical regulations, standards or other normative and technical documents, rather than references in the form of "in accordance with existing rules, regulations." This is especially true of public contracts (as interpreted in Article 633 of the Civil Code of Ukraine), when the business entity is a strong party, and the other party (consumer) can rely only on good faith and can not prevent abuse by the business entity . Similarly, in the Internet points of sale of goods (services) great confidence of consumers is the presence of certificates or other documents confirming the quality and compliance. LireOfCar online store on its website reports that they have certificates for the goods sold by this store [48]. The above-mentioned point of sale for the first year of its activity has concluded more than 5 thousand public contracts. In our opinion, this was facilitated by the presence of the seller (business entity) of the relevant regulatory and technical documents certifying the quality of goods sold.

The economic contract allows the establishment of more stringent (increased)

requirements for goods (services) than in regulatory and technical documents for standardization or the creation of "under contract" new standardization requirements, which must contain more stringent or simply other requirements. For example, in Europe today there is a need for soybeans and soy products. The main requirement for the supply of soybeans is its purity, i.e. the absence of GMOs. GMO varieties are used only for animal feed. There are two organizations, the French Soybean Association and the Danube Soybean Association, to control the supply of soybean products and to provide preferences to farmers (or farms) who grow them. These organizations are non-governmental, but provide certificates for the supply of soybeans to Switzerland, Austria, Germany, France and other Western European markets [44]. These organizations have their own standards (rules) for soybean production, including growing methods, organic productivity, growing technology and selection of the best seed. The certification is carried out by the SGS (in Ukraine - Organic Standard), which confirms compliance with the requirements of the Danube Soybean Association, which is an order of magnitude higher and stricter than those in force in Ukraine and Europe. Ukrainian producers, such as Svarog West Group [33], receive certificates of compliance with the Organic Standard for compliance with the requirements of the Danube Soybean Association. further development of own business.

In the case of economic activity in a particular area regulated by technical regulations, which provides for mandatory requirements for goods (services), failure to specify in the contract the need to comply with these requirements still causes negative consequences and does not eliminate such requirements [120]. That is, the imperatives established by technical regulations apply regardless of whether they are known to economic entities and whether they include these requirements in the contracts. At the same time, voluntary requirements of normative and technical documents on standardization in the same situation do not give rise to the obligation to fulfill them. Only a declaration of compliance with voluntary requirements translates them into an imperative field, and non-compliance (non-compliance) has negative consequences.

In our opinion, in the case of sale of goods (services), which must comply with local regulatory and technical documents on standardization, used only by this business entity, the contract should directly state the need to provide them simultaneously with the goods (services). It is also necessary to provide for the mandatory provision of enterprise standards simultaneously with the transfer of intellectual (industrial) property rights, if the goods (services) cannot be produced (provided) separately from the requirements of such regulatory and technical documents.

## ***Economic and legal liability for non-compliance (non-compliance) with the requirements of standardization in carrying out economic activities in Ukraine***

Usually, imposing rights and responsibilities on subjects through regulations allows you to get the desired behavior. In this case, they talk about a sufficient level of legal culture and legal awareness. In case of failure of these means of legal regulation, relations related to security are formed [68, p. 90]. The content of security relations is reflected through legal liability.

Legal responsibility needs to be explored in relation to social responsibility. Moreover, we add legal culture and legal awareness to the obligatory element of the mechanism of legal regulation through standardization, which is more a manifestation of morality and sociality than law. This is due to the fact that philosophers and sociologists, defining social responsibility, reflect those features that are associated with moral, political, religious responsibility, not fully reflect the signs of legal responsibility. O. Plakhotny believes that the concept of responsibility combines two forms, and therefore two different types of responsibility: 1) responsibility as a reaction of society to the behavior of the individual (social responsibility); 2) responsibility as a system of individual responses to the demands of society (personal responsibility). He emphasizes that there is a relationship between society and the individual. On the one hand, society imposes on the individual the obligation to perform socially useful acts, and on the other - it is obliged to assist the subject in exercising its rights and responsibilities and is responsible for it. At the same time, we consider the classification of social responsibility into non-legal and legal to be quite reasonable. Non-legal social responsibility has no legal character and takes the form of moral, political, corporate, religious, ethical, etc.. Legal responsibility occurs in case of violation of state-organized law and aims to protect the rights, interests of citizens, society, state [110, p. 449]. It is active because it involves active psychological influence on the offender until the use of coercive physical influence.

If we talk about liability for non-compliance with the requirements of standardization as a means of legal regulation of economic activity, it is a multifaceted



phenomenon and requires no less attention than legal liability in general [82, p. 40].

The nature of the institution of legal responsibility is legal and consists in the application to the guilty person who committed the offense, means of public law coercion, provided by the sanction of the violated norm in a clearly defined procedural order [52, p. 177–178]. It is an independent legal institution, which is the basis of protective legal relations.

It is sometimes suggested that liability in commercial law is the duty of business entities to answer for violations, which consists of three responsibilities: legislative, regulatory and contractual [42, p. 278–279; 47, p. 134–135; 30, p. 111]. We do not agree with this thesis, because it should be not only about the responsibility for the violation, but also about the restoration of rights, the possibility of stopping the activities of the business entity and so on.

Based on the above, we can give the following definition of economic responsibility for non-compliance (non-compliance) with standardization - it is the duty of the person guilty of non-compliance (non-compliance) with standardization, to suffer the legal or contractual consequences of personal or property public order and ensuring the restoration of violated rights. In addition, economic liability for non-compliance (non-compliance) with standardization requirements is an independent type of coercive measures.

This responsibility has the following features:

1. Both any social and legal responsibility is a means of guaranteeing and protecting public relations, in this case on the implementation (non-compliance) of standardization requirements. When we talk about economic activity, according to its purpose ( manufacture and sale of products, performance of works or provision of value-based services), it should be based on standardization requirements and regulated by its requirements, non -compliance (non-compliance) which entails consequences (sometimes state coercion).

2. It is established by the subjects and guaranteed by certain means. The state, along with other economic entities, determines the requirements of standardization, non-compliance (non-compliance) with which leads to the application of liability

procedures.

3. Is a means of guaranteeing the rights of individual entities and / or public interests, and the inevitability of liability becomes a guarantee of compliance (compliance) with economic entities standardization requirements to protect the environment, human life and health, etc.

4. Is an element of the superstructure of society, which depends on the level of development of economic, political and social relations, as well as evidence of openness and freedom of economic activity. This allows, applying the principle of voluntary standardization, not to apply elements of responsibility to bona fide business entities.

5. Has a dynamic nature, ie develops and transforms along with social relations, the emergence of new technologies, methods and ways of producing goods or providing services. The creation of new normative and technical documents or the renewal of existing ones entails the improvement of the mechanism of application of legal responsibility.

6. Exists in the field of standardization and is regulated by certain types of norms, including social ones. It is the economic sphere that allows the widest use for regulation not only of legal normative and technical documents, but also those provided by business codes, business practices and other non-legal documents, which still form the basis for liability for violations. Sometimes these grounds can be translated into the legal field (sometimes by enshrining in commercial contracts).

7. Pursues the achievement of a certain goal and has a functional focus. Thus, imposing legal liability for non-compliance (non-compliance) with the requirements of standardization in the conduct of economic activity stops socially dangerous actions that may lead (at least) to deceive consumers or (at most) create a threat to human life.

8. Provides for the occurrence of certain consequences for the violator, even when applying the voluntary requirements of standardization, as compliance with these requirements is the responsibility of the business entity, non-compliance with which leads to legal liability.

9. Ensures the systematic development of society as a social entity, as standardi-

zation requirements are set to meet the requirements and needs of society. Liability for non-compliance (non-compliance) with these requirements is a manifestation of systematic and consistent.

10. Produces respect for human rights and freedoms and is a manifestation of the culture of society. When a business entity faithfully complies with the requirements of standardization, bearing in mind the inevitability of liability, it shows respect for the right of the consumer or other interested person to quality and compliant goods and services.

Economic and legal liability for non-compliance (non-compliance) with standardization requirements arises only if there are appropriate grounds. There are legal and factual grounds of economic and legal liability. Legal grounds - the legal document that characterizes a certain behavior of the business entity as illegal and provides for it the form and amount of liability: such grounds in commercial law are the law and the contract. Actual grounds are those life situations that are characterized by law or contract as illegal. Such situations are called the composition of the economic offense [103, p. 387–388]. We distinguish two types of economic offenses in the field of standardization: 1) non-compliance (antagonist of compliance, ie the need to accurately, without deviations to perform, do something promised, ordered, necessary, etc.; it is imperative to comply with regulatory and technical documents on standardization, and any violation or non-compliance with one of such requirements shall result in non-compliance); 2) non-fulfillment (non-implementation of something, i.e. it is about dispositiveness, freedom of choice and the availability of options for behavior in compliance with the requirements of regulatory and technical documents for standardization). non-compliance or non-compliance with the requirements of regulatory and technical documents on standardization equally have negative consequences, and the ability to distinguish between these two concepts only makes it possible to determine the set of tools that will prove (or not) the need for legal liability. Similarly, the nature of the requirements of regulatory and technical documents for standardization (voluntary or mandatory) depends on the evidence base, which allows to prove the presence (absence) of current and consequential

relationships when applying legal liability procedures.

Principles of economic and legal liability for non-compliance (non-compliance) with standardization requirements are provisions and ideas that have a legislative basis and determine the independent and real nature of liability for non-compliance (non-compliance) with standardization requirements as a means of guaranteeing and protecting objective and subjective law. public order. Economic and legal liability for non-compliance (non-compliance) with standardization requirements is based on the principles reflected in Art. 216 of the Commercial Code of Ukraine.

Legislation may establish the limits of economic and legal liability for non-compliance (non-compliance) with standardization requirements for two reasons: 1) when it comes to the economic component of economic activity aimed at protecting the property interests of participants in economic relations; 2) when the issue of the security component of economic activity is raised it is impossible to establish whether the consequences of misconduct may occur in the future).

In our opinion, in the application of economic responsibility in the field of standardization, the exemption from such responsibility of the business entity can be applied only under state guarantees to ensure the security component. Thus, in the event of flooding of an enterprise due to floods, the state undertakes to neutralize waste or prevent it from entering water resources and to monitor the implementation of this enterprise flood control measures in the future.

## **Conclusions**

Standardization at all times (from ancient to modern) was the engine (stimulus) for the development of production (economic activity), and later became the regulator of these relations at the level of written law and / or customary unwritten rules for production and circulation of goods and services.

The accumulated scientific experience and high level of development of standardization theory in the USSR later became the basis for the successful development of the theory and methodology of national standardization and allows active participation in the development of international standards to effectively regulate economic activity in Ukraine.

In Ukraine, the transition from "Soviet" standardization to modern understanding took place in three stages:

1) the first (since 1993) was the creation of a national standardization system using "Soviet" terminology and the entire array of normative and technical documents of the USSR;

2) the second (since 2001) improves the understanding of the essence of standardization and its purpose, resulting in a security component (consumer protection, environment and market saturation with safe and quality goods and services);

3) the third stage (since 2015) is marked by the transition to standardization that meets the requirements of the world market and international requirements for quality and safety of goods and services, based on ambiguity (ensuring the functioning of the market of goods and services and compliance with safety requirements for humans, environment, etc.).

It should be noted that standardization is manifested in both statics and dynamics. In the static state, standardization establishes regulations, standards, regulations and other requirements. In dynamics, standardization works in the form of a comparison of documented requirements and existing standardization objects. Standardization in its classical (technical) sense was considered and is considered only in statics, which did not allow and does not allow to assess the achievement of the

goal of standardization and to compare the result with the purpose of economic activity. We propose a new definition of standardization as an activity that consists in establishing and applying provisions for general and repeated use of existing or potential tasks and aims to achieve the optimal degree of order in a particular area of public life to ensure the goal of standardization. Standardization includes technical regulation and conformity assessment.

The purpose of standardization is clearly described in Part 1 of Art. 4 of the Law of Ukraine "On Standardization" and we fully agree with this list of objectives of standardization and believe that it best reflects its regulatory content. To optimally achieve the goal, standardization should be based on the principles of: 1) voluntary application of standards and providing conditions for their uniform application; 2) application of the international standard as a basis for the development of the national standard; 3) balance of interests of the parties developing, manufacturing and consuming products; 4) dynamism and advanced development of the standard; 5) efficiency of standardization; 6) harmonization; 7) clarity of the wording of the provisions of the standard.

We believe that in the modern sense of standardization there are two components: technical and security. Technical is a classic, historically developed and defines the technical requirements. Security arose in the middle of the twentieth century when it came to the realization that improving the standard of living of our society, which is the main sign of scientific and technological progress, should not conflict with the public need to preserve the environment and improve human health. society.

At the present stage, the legal basis for standardization in Ukraine is determined by the Laws of Ukraine "On Standardization", "On Technical Regulations and Conformity Assessment", "On State Market Supervision and Control of Non-Food Products" and others. The policy in the field of technical regulation is also reflected in the legal norms on product quality, which are contained in regulations on a wide range of issues (Commercial Code of Ukraine, Laws of Ukraine: "On Environmental Protection", "On Consumer Protection", "On Sanitation"). and epidemic well-being

of the population "," On the basic principles and requirements for food safety and quality "," On the state biosafety system in the creation, testing, transportation and use of genetically modified organisms ", etc.).

Acts of regulation in the field of standardization are usually complex (contain rules of various branches of law), are not always the rules of law (may relate to other social norms, but acquire legal meaning if they are included in the contract). Standardization has the opportunity to form general concepts and general principles within the acts governing economic activities in the field of standardization.

The use of standardization as a regulator of economic activity is also about the use of regulatory and technical documents as the main means of such regulation. Sometimes it is even possible to trace the superiority of technical norms over legal ones if the principle of voluntary standardization requirements is applied. The superiority of legal norms over technical ones is traced when the principle of voluntary application of standards can be eliminated, if required by technical regulations in the form of law. In this case, we are talking about the principle of clearly regulated state mandatory regulation of economic activity;

Normative and technical document is an official document adopted by an authorized subject of rulemaking in the form and manner prescribed by law, which establishes rules, general principles and characteristics of various activities or their results for an indefinite number of persons and is designed for repeated use . Regulatory and technical documents are developed for standardization objects, which are mandatory for use in certain areas of activity in the prescribed manner and approved by the competent authorities. Normative and technical documents include standards, technical regulations, codes of good practice (guidelines, rules, set of rules), technical conditions, regulations, state classifiers, enterprise standards, etc.

Economic activity - is the subject of legal regulation through standardization and is characterized as socially useful activities of economic entities for production, performance of works, provision of services for their implementation both for a fee and without, based on a combination of private and public interests, is carried out professionally and is subject to significant state regulation for the purpose of social

orientation of the economy.

Any economic activity is carried out on certain principles, taking into account, on the one hand, the market orientation of the national economy and, accordingly, provide significant freedom for the subjects of such activities (especially entrepreneurs), and on the other - the social direction of the economic sphere. presupposes the establishment of certain restrictions for business entities in order to take into account the public interests (society, state, territorial community / communities, typical private interests of citizens and organizations) in compliance with state public economic order, which provides compliance with various requirements for: quality of products, works, services, their safety for life and health of consumers; environmental safety of production; good conduct in the field of economic competition; civilized use of hired labor (ie in accordance with the requirements of labor law), etc.

Different types of regulation of economic activity are investigated in the work. We concluded that state regulation is included in the legal one, which may also include some elements of self-regulation in case of their transition to normative documents (agreement, established rules of doing business, approved by the authority, etc.). Self-regulation of economic activity through standardization is allowed, and it is especially important in the case of voluntary requirements, compliance with which is controlled not only by law but also by other social regulators. At the same time, illegal regulation of economic activity (based on morals, customs, etc.) with the help of both standardization requirements and other social regulators (exhaustion of credit from the average consumer to the household producer of substandard milk, etc.) is not excluded.

Based on the ratio of general permits and prohibitions in the legal literature and legal life, two legal formulas have emerged, which distinguish two types of legal regulation used in the application of standardization as a means of regulating economic activity: 1. Everything is allowed except expressly prohibited by law. 2. Everything except the expressly permitted is forbidden. With the help of standardization, we can apply the first type of regulation on the principle of freedom



of economic entities, and the second - in the production or provision of services only within the requirements of regulatory and technical documents.

When regulating economic activity with the help of standardization, we can talk about the application of permissive type of regulation on the principle of freedom of economic entities, and imperative - in the production or provision of services only within the norms of regulatory and technical documents. In essence, as in other public-private branches of law in commercial law in the application standardization can be a mixed type of legal regulation.

According to the above, standardization can be defined as a means of regulating economic activity, which refers to the institutional complex, regulatory, economic, material, permanent, regulatory and restrictive-stimulating ways of influencing the behavior of entities.

In our opinion, standardization as a legal remedy is characterized by certain features: 1) has social value, as it ensures the achievement of goals; 2) reflects the informational qualities of law; 3) in combination with other means, creates conditions for the operation of law; 4) causes certain legal consequences; 5) is provided by the coercive force of the state.

The Economic Code of Ukraine defines public relations that are the subject of legal regulation in the field of economic activity (organizational and economic, internal economic relations and economic and production or contractual). All these relationships can be regulated through standardization. Organizational and economic relations are usually managerial, but may arise due to the need for further confirmation of compliance of goods and / or services with the requirements of regulatory documents on standardization. Analysis of scientific works and existing legal framework in the field of standardization showed that there are two options for assessing management: 1) self-assessment using CAF ( The Common Assessment Framework), which allows initial (free) assessment of management and compliance with these requirements; 2) professional assessment on the basis of a series of international standards ISO 9000, ISO 14000, ISO 22000, OHSAS 18001 and others, the application of which allows us to speak about the presumption of compliance .

Internal economic relations are the kind of economic relations that arise directly in the internal production sphere of enterprises and other economic organizations, and their subjects are the internal divisions of enterprises (shops, production, etc.). The rights and responsibilities of participants in internal economic relations, as a rule, are determined by local regulations of economic entities. The defining elements in the regulation of these relations are the legal culture and legal consciousness of individuals who create local acts for economic entities, as it depends on the creation of such a system of local law, which should adequately reflect the conditions of economic, industrial and technological activities. 'object. We believe that in order to achieve the goal of legal regulation of economic activity, internal economic relations of economic entities should be based on DSTU 1.4-93 "State Standardization System of Ukraine. Enterprise standards. Substantive provisions"

In contractual relations, economic entities apply one of the elements of the mechanism of legal regulation - acts of direct realization of rights and obligations in the mechanism of legal regulation. The contract should promote the improvement of production, distribution of goods and services, leveling market barriers, improving the quality and responsibility of the parties, and standardization (its results in the form of regulatory documents) is a condition of contracts in economic activities and to ensure its implementation. This conclusion is confirmed by the analysis of case law, when the contractual relationship is determined by the obligation of the parties to comply with special requirements for goods (services) when concluding contracts and the need for their own control over obtaining and studying the standardization requirements referenced in the contract. In addition, we believe that in the case of sale of goods (services), which must comply with local regulatory and technical documents for standardization, the contract should directly state the need to provide them simultaneously with the goods (services). Similarly, the contract should provide for the mandatory provision of enterprise standards simultaneously with the transfer of intellectual (industrial) property rights, if the goods (services) can not be produced (provided) separately from the requirements of such regulatory and technical documents.

In general, it should be noted that for organizational and economic relations standardization acts only as a means of regulation, and for domestic and contractual - in two capacities: 1) as a basis for regulation (creation of law (contract) or local law); 2) as a means of regulation. Normative and technical documents on the standardization of management systems are an external form of norms (requirements) and methods of organization and implementation of economic activity.

Subjects of standardization as a means of regulating economic activity can be called individuals and / or legal entities engaged in the establishment and / or application of standardization requirements, including technical regulation and conformity assessment. The legal personality of the subject of standardization as a regulator of economic activity is defined by us as economic competence, ie the set of rights and obligations established by law and acquired in economic relations. We have distributed the subjective composition of standardization as a regulator of economic activity from the standpoint of their participation in standardization processes or activities, regardless of their form of ownership and belonging to different categories (types) of legal entities (individuals):

1) Entities that create standards or other requirements for standardization (state bodies and institutions (local governments); legal entities engaged in economic activities).

2) Entities engaged in economic activities and using standards or other standardization requirements.

3) Entities certifying the conformity of goods (services) to standards or other standardization requirements (recognized independent organizations or accredited testing laboratories; designated bodies or institutions of the state (local self-government bodies).

4) Entities that monitor compliance with standards or other standardization requirements (state bodies and institutions (local governments); legal entities engaged in economic activities; consumers).

Standardization provides additional guarantees to participants in economic relations and helps to exercise their powers. Standardization, performing one of its

functions (advanced), allows scientists (mostly lawyers) on the basis of new knowledge and skills in applied sciences (the emergence of new technologies, products, products) to create new regulatory and technical documents or improve existing ones. Standardization in the implementation of the powers of the subjects of economic relations is the main regulator, as it is the norm for application, the criterion for assessing compliance and the method of protection of rights.

Thus, economic responsibility for non-compliance (non-compliance) with standardization requirements is the duty of a person guilty of non-compliance (non-compliance) with standardization requirements to bear the consequences of personal or property nature provided by law or contract in order to stop violation violated rights. In addition, economic liability for non-compliance (non-compliance) with standardization requirements is an independent type of coercive measures. The main functions of this responsibility should be preventive and stimulating and compensatory-restorative. They guarantee the achievement of the goal of economic responsibility for non-compliance (non-compliance) with standardization requirements.

Types of violations and grounds for imposing legal liability for non-compliance with standardization requirements are clearly described in the legislation of Ukraine or should be provided for in contractual obligations. We distinguish two types of economic offenses in the field of standardization: 1) non-compliance ( antagonist of compliance, i.e. the need to accurately, without deviations to perform, do something promised, ordered, necessary, etc.; it is imperative to comply with regulatory and technical documents on standardization, and any violation or non-compliance with one of such requirements shall result in non-compliance); 2) non-compliance (failure to do something, that is, it is about dispositiveness, freedom of choice and the availability of options for behavior in compliance with the requirements of regulatory and technical documents for standardization). non-compliance or non-compliance with the requirements of regulatory and technical documents on standardization equally have negative consequences, and the ability to distinguish between these two concepts only makes it possible to determine the set of tools that will prove (or not)

the need for legal liability. Similarly, the nature of the requirements of regulatory and technical documents on standardization (voluntary or mandatory) depends on the evidence base, which allows to prove the presence (absence) of causal links in the application of legal liability procedures.

Principles of economic and legal liability for non-compliance (non-compliance) with standardization requirements are provisions and ideas that have a legislative basis and determine the independent and real nature of liability for non-compliance (non-compliance) with standardization requirements as a means of guaranteeing and protecting objective and subjective law. public order. In our opinion, when imposing economic and legal liability for non-compliance (non-compliance) with the requirements of standardization, both general principles of legal liability and special ones provided for in commercial law should be applied.

Legislation may establish the limits of economic and legal liability for non-compliance (non-compliance) with standardization requirements for two reasons: 1) when it comes to the economic component of economic activity aimed at protecting the property interests of participants in economic relations; 2) when the question of the security component of economic activity is raised and it is a question of protection of interests of other participants of relations.

The limits set when imposing legal liability for non-compliance (non-compliance) with standardization requirements may be the amount of compensation, degree of guilt, time of liability and other limits that may be established by contracts, regulations or regulatory and technical documents. Regarding deadlines, it should be noted that, in our opinion, they should not be a limitation on liability for non-compliance (non-compliance) with standardization requirements, if violations result in or may be harmful to life, health, environment or national security.

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