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Economic activity of legal entities: Elimination of the dualism of legal regulation in the context of convergence with European private law

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The paper investigates the correlation of private law and business and legal regulation of Economic activity of legal entities as key subjects of market relations in the conditions of codification processes in Ukraine. Within these relations, the civil status of individuals should be outlined as an attribute that enables the individual to participate in relations, as well as to determine the scope of rights and obligations that these individuals may exercise. It is proposed to eliminate dualism in the legal regulation of Economic activity of legal entities through a proper understanding of foundations (principles) of private law, which are used by legally equal participants in the process of shaping relations regarding the organization of a legal entity, its introduction to legal relations in view of state regulation of business (economic) operations. The latter involves the imposition of requirements for public entities to regulate the legal economic order, factoring in, above all, public interests. An example is the special statuses of a legal entity, which are not always correlated with its legal form, and the limits of freedom of contract. All this creates a rather complex system of private-public and public-private relations regarding the organization and operations of legal entities – corporate law.

Keywords: entrepreneurship, non-entrepreneurial activities, legal interpretation, corporate law, adaptation of law

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INTRODUCTION

Scholarly discussions between representatives of civil and business law schools take place not only within the framework of scientific research, but also, due to the relevant authoritative influence, have moved into the field of statutory regulation. The diversity of approaches, principles, and vectors of development in both law and legislation finds common ground for research, the results of which are dramatically different. Such cornerstones undoubtedly include the institution of legal entity, which by virtue of its specificity in Ukraine did not stand out as a corporate law that has become commonplace for both Anglo-Saxon and continental legal doctrine.

The main problematic lies in the dualism of legal regulation of interrelated elements, in particular, the status (as a static component) and the operations of legal entities (as a dynamic component). The first part is complicated by the need to participate in the economic relations of organizations created by public law entities (territorial communities and the state), which in turn, given the legal Ukrainian tradition and understanding of the unity of legal ties, does not give the opportunity to fully "privatize" public participation relations entities in economic relations. This does not merely refer to the possibility of the power subjects being forced to acquire the status of “equal participant”, but also to the necessity of participating in entrepreneurial and non-entrepreneurial relations without consideration of public policy. The second part of the legal regulation is reduced to discrepancies in the interpretation of the freedom of entrepreneurship and the domination of the corresponding regulators.

Such situation instigates the need to regulate rather specific relations (for example, relations of business and operational management) so as to preserve public ownership, to solve the problems of monopoly position in the market, including to find optimal models of management for both the economy at large and individual subjects of economic relations in particular. The result of such scientific proposals was the draft Law of Ukraine "On Amendments to Certain Laws of Ukraine to Improve the Civil Legislation of Ukraine" No. 2635 of December 19, 2019 (Draft Law… 2019), which is intended to declare the Commercial Code of Ukraine invalid, which is the key act of business legislation. In this regard, scientific issues are completely correlated with law-making and law-enforcement practices. Therefore, we aim to consider the relationship between the private law and business and legal regulation of the Economic activity of legal entities as key subjects of market relations in the context of codification processes in Ukraine.

CHARACTERISTICS OF THE FOUNDATIONS (PRINCIPLES) OF THE SCIENCE OF PRIVATE LAW AND CIVIL LEGISLATION

Understanding of civil law in Europe is based on the codification of Justinian (*Corpus Juris Civilic*), which until the 19th century was the basis for the regulation of private relations, and further changed in accordance with the "romantic search" of the French codification, imbued with a unique national spirit, as well as the German doctrine based on universal natural law, reflected in the positive law, that has a social orientation (Merrymann et al. 2010). Private law in Europe is currently being explored in accordance with the Roman tradition of private law, so as to ensure the fundamental freedoms and human rights enshrined in the ECHR, including economic principles such as the free movement of goods and persons; free movement of employees; freedom to create legal entities; free movement of services, including free movement of capital and payments (Remien 2012). Thus, the place of a legal entity is determined mainly by the fundamental freedom of its creation (establishment), and operations – by the free movement of services, capital, and payments.

The study of any legal phenomena is closely linked to legal regulation, including the real social relations that arise between the subjects. With that, the investigated legal matter may not always correspond to the regulatory framework that is the source of law. The general principles of civil legislation are: 1) inadmissibility of arbitrary interference with the personal life of a human; 2) inadmissibility of deprivation of property right, except in cases established by the Constitution of Ukraine and the law; 3) freedom of contract; 4) freedom of business, which is not prohibited by law; 5) judicial protection of civil law and interest; 6) justice, good faith, and reasonableness (Article 3 of the Civil Code of Ukraine).

The rules of civil law that have a dispositive nature, enable their participants to choose the model of their rights and obligations, with the exception of certain imperative provisions for the protection of the public interest. However, even in cases of abandoning the "imperative" rules of civil legislation, the constructs for recognizing such actions are legitimate. As a result, self-regulation of civil relations occurs as follows. Legally equal participants or participant take actions to establish, change, or terminate civil relations, based on the legislative model of legal regulation of public relations. These relations may be fully in conformity with the legislative provision or, being based on the freedom of contract, be expressed in accordance with the requirements of the legislation, the customs of business turnover, the requirements of reasonableness and fairness.

Thus, the founders of the legal entity of the proposed regulatory models have the opportunity to choose the legal form that most suits their interests,

including on the basis of self-regulation to determine the content of personal non-property, property and organizational (corporate or membership) relations within such an organization. With that, we shall draw attention to the fact that the essence of such relations will depend on their subject and nature, in particular, it is necessary to distinguish the relations between legally equal and legally dependent relations, which in their totality make up the cross-sectoral subject – the corporate law.

In its turn, normativism provides an opportunity to properly organize the law into the appropriate system, to ensure the appropriate hierarchy of regulation, which should be considered as the basis of law and order. Consequently, albeit of the doctrine nature, the law must be devoid of social preconditions, i.e. it should be filled only with legal (regulatory) content. In Hans Kelsen's view, it is impossible to equate law with social facts, because provisions are not facts, therefore the ontological distinction between "is" and "shall be" should be taken seriously. The starting point of law should be a legislative rule, since the theory or concept of law may change, but it must be consistent with the legislative rule (Langford et al. 2017).

Furthermore, the scope of organizations, which are legal entities, is legislated precisely in accordance with the views of normativists, for the sake of legal certainty for both the private counterparty and the public order at large. According to Hans Kelsen, the difference is based on the fact that herein, the concept of legal entity is used by the legislator in a narrow meaning, that is, a legal entity is referred to only when the rule of law contains the appropriate definition. Therefore, the construction of a legal entity in the scientist's view is an auxiliary concept that may, but not necessarily, be used in the process of describing law (Kelsen 2015). A legal entity in European law has long been regarded as a legal entity. Most commonly used is the concept of company, which is understood as the association of persons who have united together for the purpose of a joint operations, commerce, or other purpose and is endowed with a personality, unlike a contractual form of partnership (civil partnership) (Hopt & von Hippel 2010).

An equally important theoretical and practical problem is the essence of such a phenomenon as an enterprise which, from the standpoint of civil law, is the object of relations (a unified property complex), but instead, within the limits of business law, it is a party to economic relations. The solution to this problem is complicated by the related business and legal phenomenon of entrepreneurship, which is the activity of a person that should be provided with a corresponding unified form, for both an individual and public entities. That is, the characteristic of property detachment is inherent in both private and public entrepreneurial initiative, but the risk of loss for the public formation of relevant property is substantially higher, given the public

interest of such activity. It should be separately emphasized that freedom of establishment also applies to the non-entrepreneurial sector, which in many aspects is not inferior to entrepreneurship in modern economic conditions. According to Piero Verrucoli, the necessity of delimitation between non-entrepreneurial and entrepreneurial legal entities in civil law is conditioned upon the differentiation of the economic behaviour of the founders (participants) of these legal entities, different economic and political influences on their operations, unequal ability to adapt to market conditions, as well as the various reasons for their occurrence in law (Verrucoli 1985).

Summarizing the principles of private law, we shall emphasize that they are aimed at the behaviour of individuals and legal entities of private law. Instead, the general principles of management, defined in Article 6 of the Commercial Code of Ukraine, are directed at the subjects of power, which are obliged to ensure the legal economic order. Such an understanding should guide both research and prospective legislative activity. The convergence of Ukrainian legislation with the EU acquis communautaire is a vector of legislative change, as well as a priority area for research. However, some risk is present in the low awareness as to EU law, including some speculation of this on this vector for the sake of drastic changes, which often have nothing to do with it.

Since the early 2000s, suggestions from various Western scholars have spread to apply the concept of "EU-ization" instead of the concept of "Europeanization" as a process of integrating the European Union's influence in other countries (Schimmelfennig & Sedelmeier 2005). However, the overly optimistic and over-construed interpretation of "Europeanization" as a process of rapprochement between the EU Member States alone, initiated by the authoritative civil scientist Ole Lando, won (Lando 2000). "Europeanization" is increasingly complemented by the terms "EU Harmonization" (Jessel-Holst 2019), and more commonly referred to as "convergence", "coherence" and "consistency", which are key to describing the concept of a sustainable development society.

O. Lando, through an alternative model of pan-European private law codification, made a rather appropriate proposal to divide European lawyers into two camps: codifiers and cultivators (Lando 1998). The former seek to achieve, from the standpoint of legal technology, the excellence of the draft European Civil Code and ultimately "sell" it to the acquis communautaire in the form of an act of direct action – the relevant EU regulation. Cultivators see the main prospect of private law convergence through the formation of a common pan-European type of legal thinking in all Member States.

In the camp of cultivators, two models of doctrinal convergence of national private law systems have emerged: (1) harmonization of national

systems of law based on the reception of the idea of common law (*ius commune*), which originated in ancient times, partly implemented in the Middle Ages and was revived in the EU during the last 25 years (Carozza 2003), with the aim of creating a new universal doctrine of common European law; (2) convergence of already existing legislation, not on the basis of standard-setting procedures for unification and harmonization, but through its uniform interpretation (Zweigert & Kötz 2000).

THE SYSTEM OF LEGAL ENTITIES AS A BASIS FOR LEGAL REGULATION OF THEIR STATUS AND ECONOMIC ACTIVITY

The search for the optimal classification of legal entities is caused by the fact that the Civil Code and the Commercial Code of Ukraine have adopted different approaches to the system of legal entities (business entities), and special legislative regulation sometimes only adds new elements, ignoring the existing principles of construction of these two systems alone, which sometimes creates bizarre legal forms of legal entities. The statutory basis for the classification of legal entities is Part 2 of Article 16 of the Law of Ukraine "On State Registration of Legal Entities, Individuals – Entrepreneurs and Public Formations", which defines the legal form of a legal entity in accordance with the classification of legal forms of business, approved by the central body of executive power, which ensures the formation and implementation of national policy in technical regulation. Thus, according to the Classifier of Legal Forms of Business (DK 002: 2004) of May 28, 2004 No. 97 the legal form of Economic activity is a form of carrying out economic (in particular entrepreneurial) operations with an appropriate legal basis that determines the nature of the relations between the founders (participants), the regime of property liability under the obligations of the enterprise (organization), the order of creation, reorganization, liquidation, management, distribution of the received profits, possible sources of financing of operations, etc. Thus, the law identifies a form of organization and a form of operations, which is incorrect from the methodological standpoint.

Thus, upon justifying the classification criterion laid down in the division, we shall distinguish the following taxa of legal entities under private law: 1) subtype – according to the substrate (basis) of the creation of a legal entity under private law; 2) genus – according to the purpose of creation and legal share of the profit (income); 3) group – in accordance with the economic interests pursued by the legal entities; 4) subgroup – according to the detail of the interests that are being achieved and the presence of power (the possibility of self-regulation of relations within and outside the organization); 5) form – according to the legal form of legal entities under private law

enshrined in the legislation; 6) supporting form – according to the specifics of the relations that arise in accordance with the legal form. Thus, natural taxa allow to distinguish between civil and legal relations regarding the formation of a legal entity as an organization (subtype), participation in entrepreneurial and non-entrepreneurial relations (genus), the way of managing the organization (form, supporting form) and the distinction between corporate, membership, and other organizational relations. Synthetic taxa act as a fiction to harmonize private and public relations with the participation of legal entities.

In general, the place of a legal entity in the European legal system over the last century is beyond doubt. Theories of a legal entity (or legal personality) are summarized as follows: 1) Savigny's theory of fiction; 2) Friedman's concession theory; 3) the theories of Ihering and Hohfeld as philosophical refinements of the theory of fiction; 4) realistic or organic theory (Maitland, Ganado, Friedman); 5) theory of social organization (Ganado) (Muscat 2007). As of now, the directions of unification of corporate law and company law at the supranational level are relevant. The basic ideas are to establish common rules and mechanisms for implementing the principle of freedom of creation and cross-border restructuring; building investment confidence in the safety of markets; the introduction of modern technologies and the principles of legal certainty based on these principles in communication operations; as well as restructuring investment confidence and the discipline of self-interested managers (Curtin et al. 2006).

The EU Acquis on Companies (hereinafter referred to as the corporate law) or European Company Law was formed with a view to a broader and more functional transition to the harmonization of law, not only with the aim of unifying the law of EU Member States which governs relations regarding the creation and operation of organizations (including capital market relations), but also, proceeding from economic theory, with aim to develop regulatory principles to avoid the gaps in law and legislation. The purpose of the introduction of the corporate law was to broaden the prospects for economic development, technical progress, patent regulation and goodwill, as well as to resolve potential conflicts of interest and to outline the functions of corporate law regarding affiliated groups (Immenga 1998).

The corporate law regulates: 1) the relations of the organization concerning, in particular: b) the existence of the organization (management, representation, distribution of economic results and responsibilities to third parties); c) significant changes in the organization (restructuring), namely the authority for such changes and protection of the rights of third parties; d) liquidation and termination of the organization; 2) capital relations, i.e. relations between investors and managers; 3) relationships for the protection

of third parties, including creditors and employees of the organization (Grundmann 2012).

Proceeding from such understanding of corporate law, the first part of the first level consists of fourteen directives that have been adopted: the first seven Directives (First Council Directive… 1968, Fourth Council Directive… 1978, Second Council Directive… 1976, Seventh Council Directive… 1983, Sixth Council Directive… 1982, Third Council Directive… 1978) (with the exception of the Fifth), the Eleventh (Eleventh Council Directive… 1989) and the Twelfth (Twelfth Council Company… 1989) Directives, and the revised Thirteenth Directive (Directive 2004/25/EC… 2004). The second part of corporate law consists of market capital and corporate governance relations. The third part covers taxation and insolvency procedures. The fourth – company conflicts (including the international element) and fundamental freedoms.

In general, corporate law has two levels: corporate law formed at EU level and corporate law under national legislation. Thus, EU law is formed from the Treaty Law, which puts fundamental freedom first, namely freedom of creation (Articles 49, 54): form and structural changes; freedom of movement of capital (p. 63). With that, there is an issue of national legislation preventing the application of these two principles, therefore they have a potentially deregulatory effect on national legislation. Secondary EU legislation consists of directives that ensure the harmonization of national law (without the intention of its uniform unification). In addition, the General Principles of the Little Importance are also highlighted, which are not aimed at universal unification (unlike European contract law) (Grundmann 2012).

Harmoniously, corporate law also applies to non-entrepreneurial entities, which are gradually gaining economic and legal "weight" in public relations. Thus, a general understanding of non-entrepreneurial partnerships and institutions in Europe, including the relationships that exist in them, is formed in accordance with the understanding of the right to freedom of association, including the right to create a legal entity and exercise the rights of the owner of the property transferred to the organization. As a result, there are two groups of organizations: 1) civil society groups/interest groups; 2) civil society organizations, which are created in accordance with the need to participate in legal relations as a full value participant, for example in the event of rendering public services (Ruzza 2011).

REGULATION OF ECONOMIC ACTIVITY OF LEGAL ENTITIES

Economic relations means the totality of relations between people in the process of production of material and spiritual goods and their appropriation in all spheres of social reproduction (direct production,

distribution, exchange, and consumption) and consist of: 1) appropriation of objects of nature through the process of labour; 2) relations of specialization, cooperation, combination of production, etc. within an individual enterprise, association, organization and between enterprises; 3) organizational and economic relations that are formed and developed in the process of managing the enterprise, conducting marketing research, etc.; 4) relations between people regarding the appropriation of labour, means of production, property management in this field, production control, etc. In general, these relations can be systematized into techno-economic, organizational and economic, and socio-economic (Mochenyy 2000).

The direction of legal regulation and legal impact on economic relations in Ukraine should be consistent with the principles of a market economy, which has been observed since the Concept of transition of the Ukrainian SSR to a market economy (01.11.1990) and to Ukraine's obligations to build a stable democracy and market economy, in accordance with the Agreement on association with the EU (06/27/2014). At the same time, there is no unified regulation that would provide the legal basis for governing economic relations. In the theory of law, economic regulation is divided into regulation with general and specific goals, i.e. such general goals as antitrust measures, prevention of concentration of economic power in one hand, prevention of fraudulent trade transactions, etc., as well as specific tasks, such as support for priority sectors of the economy , participation in unprofitable production, support for small businesses, protection of agricultural production, fisheries, the development of new technologies, etc. (Marchenko 2002).

As a result, the subject of scholarly discussion is still the methods of legal regulation and the means of influence of the state on the economy of Ukraine. Thus, representatives of the school of business law celebrate the success of the concept of business law and order, which is formed on the basis of the optimal combination of market self-regulation of economic relations of business entities and state regulation of macroeconomic processes, based on the constitutional requirement of responsibility of the state before the person for their activities and the definition of Ukraine as a sovereign and independent, democratic, social, and law-governed state (Part 1, Article 5 of the Commercial Code of Ukraine) (Shchebrina 2003). Instead, representatives of the civilistic school address the need for so-called "double" regulation and the expediency of the perception of the private law concept of civil and commercial law (Kuznetsova 2003).

A "pure" market economy ("pure" capitalism) involves the implementation of principles such as private property, freedom of choice and entrepreneurship, personal economic interest, competition, economic risks,

pricing as the main coordination mechanism, and in general the absence of a special governing body that would determine what to produce and where to take resources, that is, a minimum of state intervention (Mamaluy et al. 2005). The lack of public influence leads to the necessity of seeking the corresponding regulator that would fill the gap in regulation of real social relations. Civil society (the "third" sector) is currently such a regulator, a phenomenon that has moved from an antique provisions on civilized organization to a fairly real indicator of the social effectiveness of law at large.

The importance of the "third sector" in the opinion of Cristiana Cicoria is conditioned by the need for civil society development, democratization and European cohesion, enhancing economic prosperity through the rapid promotion of goods and services of social importance (Cicoria 2006). In accordance with the regulatory framework, the economic system in Ukraine is viewed from the standpoint of its institutional sectors, that is, economic entities that are able to own assets, make commitments, participate in economic activities, and engage in transactions with other entities. As a result, the economy of Ukraine distinguishes the following sectors: 1) non-financial corporations sector; 2) financial corporations sector; 3) general government sector; 4) household sector; 5) non-profit organizations sector (Classification of institutional… 2016).

Delineation of legal regulation of economic relations is being performed in a somewhat another dimension, in particular, on the basis of isolation of civil and entrepreneurial (commercial) relations, which in modern conditions quite often have a complex private and public legal character. The European approach to the legal regulation of economic relations boils down to ensuring such fundamental freedoms as: 1) the free movement of goods and services; 2) freedom of movement for workers; 3) freedom of establishment; 4) freedom of movement for services; 5) freedom of capital and payments (Remien 2012). EU Member States, upon exercising their own sovereignty in matters of public and private law in accordance with the fundamental provisions of the EU acquis, make the distinction between "civil and commercial matters". Thus, the European Court of Justice does not accept the delimitation based on parties involved, but instead addresses the substance of the disputed relationship by reflecting Ulpian's theory of interest (D. 1.1.1.2) (Dutta 2012).

We shall separately turn to the part of civil society in regulating the economic relations of an entrepreneurial (commercial) nature. Jürgen Basedow states that, in English-speaking countries, the term "regulation" is used in formal or technical terms to identify the boundaries of a general governmental, as opposed to parliamentary, executive power, influence on

general or special groups through issuing corresponding acts (Basedow 2013). With reference to this position, Luke Nottage considers economic regulation as a restriction of competition and stabilization of markets in banking, transport, telecommunications or similar fields (Nottage 2012).

In general, the theory of regulation comes down to the realization of public interests, in particular, with regard to economic relations – the formation of commercial law, then entrepreneurial law and entrepreneurial regulation. As a result, the mechanisms of non-market and market-based institutional implementation of the rules are applied. They were thoroughly considered by Buthe Tim and Mattli Walter in the following examples: 1) public non-market regulation – Kyoto Protocol and International Labour Organization rules; 2) private non-market regulation – standardization rules of ISO, IEC, IASB; 3) public market regulation – anti-trust legislation; 4) private economic regulation – standards applied by companies (such as Windows) or transnational companies (e.g., CRS – Common Reporting Standard). The current stage of economic regulation is the transition from commercial regulation to corporate governance (Nottage 2012).

The analysis of recent studies evidences a gradual decrease in the role of state administration of economy, which in fact is implied by its market model. Therefore, three legal regimes of regulation of economic relations are distinguished: 1) public regulation; 2) self-regulation; 3) private regulation. Thus, the relevant sector of the economy can be subjected exclusively to private law regulation (private household sector), purely commercial law regulation (financial corporations sector), administrative law regulation (general government sector), or mixed legal regulation, provided that both public and private interests are implemented in other sectors. However, the key issue of division is the ability to properly differentiate regulatory powers and justice, which may apply corresponding legal regimes. In this aspect, Fabrizio Cafaggi views self-regulation as a consequence of the freedom of contract and delegated self-organization, so he singles out co-regulation, in which private regulators are involved in order to formalize a formal regulatory act. The consequence of such interaction is "ex-post-recognized regulation" – private regulation in the form of self-regulation, created by independent private actors in economic relations and recognized by the state as a hard or soft right, that is, a private person acquires "public functions" (Cafaggi 2006).

Similar processes are not devoid of their own problems, in particular, with regard to the statutory and institutional pluralism of sources of legal regulation, fragmentation of the choice of the subject of regulation, as well as conflicts and choices in the event of simultaneous existence of different models of regulation in the state (Svetiev 2014). In particular, this refers to

the so-called privatization of public relations, according to which the state as a regulator loses influence on certain spheres of public relations, transferring them to other participants – subjects of entrepreneurship or to civil society.

The Commercial Code of Ukraine should not be interpreted solely as a public law regulation, and the Civil Code of Ukraine should not be regarded solely as a private law regulation. In particular, a case can be made of the specifics of consumer protection, because this refers to the protection of an individual participant in private relations, which generally allows the protection of the so-called "public goods"; or vice versa, one person's action to protect their subjective civil rights gives rise to the so-called “endowment effect”, i.e. the accumulation of good practice for others (Leitzel 2015). Only with a reservation that purely "private" relations are a somewhat narrower group formed with regard to personal non-property and property rights and interests, which in the classical meaning are a separate group of economic relations unrelated to entrepreneurship by nature. Thus, market economic relations should be provided with appropriate legal regulation regarding the possibility of free realization of private property relations, freedom of choice and business, personal economic interest, competition, economic risks, and pricing as the main coordination mechanism. It should be noted that the principle of coordination is important both for a market economy, in particular for determining the possible market equilibrium (Kirzner 1992), and for civil society, which ensures the interaction of the government and the private sectors.

In view of this, we propose to turn to the analysis of the freedom of entrepreneurial activity, which is not prohibited by law – the rule-principle, which is an imperative requirement that is a concentrated expression of the most important essence of private law regulation of business relations. This principle follows from the constitutional right to business (Article 42 of the Constitution of Ukraine) and is reflected in paragraph 4 of Part 1 of Article 3 of the Civil Code of Ukraine and paragraph 2 of Part 1 of Article 6 of the Commercial Code of Ukraine. Its specificity lies in that it is further revealed through the concept of freedom of entrepreneurial activity (Article 43 of the Civil Code of Ukraine), on the basis of the principles enshrined in Article 44 of the Commercial Code of Ukraine, which is nothing short of a list of subjective rights.

In particular: free choice of types of entrepreneurial activity by the entrepreneur; independent formation of the program of operations by the entrepreneur, choice of suppliers and consumers of the produced products, attraction of material, technical, financial and other types of resources, the use of which is not limited by law, setting prices for products and services in accordance with the law; free hiring of workers by the entrepreneur; business

accounting and personal business risk; free disposal of the profit, which remains with the entrepreneur after payment of taxes, fees, and other payments stipulated by law; independent implementation of foreign economic activity by the entrepreneur, the use of a share of foreign exchange proceeds at the discretion of the entrepreneur.

A person is granted the right to engage in entrepreneurship in a special order – by registering as a subject of entrepreneurship (Part 2 of Article 50, Part 4 of Article 87 of the Civil Code of Ukraine). The exception to this right are non-entrepreneurial partnerships and institutions that do not constitute subjects of entrepreneurship, but are entitled to engage in entrepreneurship, unless otherwise provided by law and if those activities are consistent with the purpose for which they were created and contribute to its achievement (Article 86 of the Civil Code of Ukraine). Thus, the implementation of the principle of freedom of entrepreneurship necessitates legislative regulation of the status of subjects of entrepreneurship.

The impact of private regulation is: limited only with regard to participants in these relationships; covered by private regulators that perform regulatory functions for the realization of public interests; characterized by co-regulation or delegated self-regulation, according to which private regulators interact with public entities, law-making bodies, enabling them to extend legal influence to an indefinite scope of persons (Cafaggi 2006). As a result, non-state regulation can be implemented in the form of statutory regulation applicable in the field of professional regulation, contractual regulation inherent in multilateral and bilateral treaties, including the "unforeseen" form applicable in the case of informal recognition of "rules" of non-governmental organizations (Scott 2006).

The main difference between private regulation and state regulation of economic relations is the fact that there is no public coercion to enforce "rules", which results in the concept of private ordering, which can be applied in all types of economic relations, including foreign economic relations. That is why state regulation can be reduced to compulsory regulation (which is generally based on the principles of private law that are elevated to the rule of law) in certain areas of public relations, such as transport policy or competition law, or optional (selective) regulation, which guarantees only framework rules regarding the choice of subjective law, which has not undergone detailed public regulation (Basedow 2013).

The specificity of regulating economic relations in market conditions is the possibility of implementation of objective economic laws in public life which is provided for by the legislation. Particularly popular in economic research is game theory, which allows the parties to properly analyse and find a solution to the conflict situation. Given its content, it is quite effective in

civil society as it envisages models of "coordination" and "cooperation". The realization of private interest with aim to avoid conflict affects the stability of all economic relations, creating a form of Nash equilibrium, and therefore the corresponding public interest is realized. Nicolas L. Georgakopoulos, having translated the aforementioned economic theory into the legal dimension, argues that the proper exercise of subjective rights by the participants of private relations and the proper performance of their duties leads to a general social order, for example, the proper realization of property rights in natural resources causes improvement of the entire environment, and state guarantee of the private insurance system reduces social costs (Georgakopoulos 2005).

To summarize, we shall note that a market economy and civil society have common principles that allow them to complement each other so as to ensure proper exercise of subjective private rights and the performance of obligations, with a view to achieving appropriate economic stability as a general public interest. With that, public interest is considered as the aggregate interest of the state or territorial community as an organization of society, since in the mechanical aspect, public entities are only the institutional spectrum of the economy.

Institutional sectors should be structured in accordance with administrative regulation (government sector that performs political functions, regulates the economy and provides economic services on a non-market basis), entrepreneurial regulation (sectors of financial and non-financial corporations created for the purpose of entrepreneurship) and civil regulation (sectors of private households and non-profit organizations aiming to enjoy personal non-property and property rights and interests without the purpose of division of profits).

Considering entrepreneurial economic relations, it is advisable to distinguish their main foundation of legal regulation – freedom of entrepreneurship, which is considered as a set of private law opportunities to exercise rights and perform duties for profit and its subsequent distribution, as well as economic and legal order, which should be reduced to public constraints or benefits through the use of state regulation and private law boundaries of self-regulation and coordination within civil society. In turn, non-entrepreneurial economic relations are regulated on the basis of civil law, that is, they are deprived of public influence (absence of a regulator), as well as in cases established by the rule of law, the state may supplement state regulation in the field of entrepreneurship.

Thus, civil society, having a private law nature, enables the realization of economic rights, while the state, gradually losing the role of the total regulator of these relations, is considered as a tool for protecting the stability of a market economy. In this interaction, in our opinion, proper

implementation of private property, gradual departure from its inefficient forms, development of proper ways of managing objects of public interest, self-regulation of relations and legitimation of private regulators, possibility of economic competition based on freedom of choice, combination of price mechanisms and state social support, corporate governance expansion in a broad meaning, and the ability to coordinate economic sectors are possible.

CONCLUSIONS

Such state of affairs suggests that the key issue of legal regulation is the correlation of legal personality of legal entities (in particular entrepreneurial ones) with Economic activity (in particular in the part of their deregulation). The subject of legal regulation of the Civil Code of Ukraine is personal non-property and property relations (civil relations), based on legal equality, free expression, property independence of their participants. Within these relationships, the civil status of individuals should be highlighted as an indication that enables the individual to participate in the relationship, as well as to determine the range of rights and obligations that these individuals may exercise. In its turn, the Commercial Code of Ukraine regulates the economic relations that arise in the process of organizing and carrying out Economic activity between business entities, as well as between these entities and other participants in the business field. Thus, a key element of legal regulation is Economic activity.

The following analysis of economic legislation provides an opportunity to determine the types of relationships covered by the concept of "Economic activity", which includes the business-production (property and other relations arising between business entities in the direct implementation of Economic activity), organizational and business (relations between business entities and entities in the process of managing economic activity), and internal business relations (relations between the structural divisions of an entity and the relationship of the entity with its structural subdivisions) (part 4–7 of Article 3 of the Commercial Code of Ukraine). Thus, the question arises as to the limits of the concept of Economic activity in the general definition and in the definitions of types of business relations.

Please note that according to Part 2 of Article 12 of the Commercial Code of Ukraine the main means of regulatory influence of the state on the operations of business entities are: public procurement; licensing, patenting, and quotas; technical regulation; application of standards and limits; regulation of prices and tariffs; provision of investment, tax, and other privileges; the provision of grants, compensation, targeted innovations, and subsidies. Thus, these funds can be applied to both entrepreneurial and non-commercial Economic activity. However, despite a sufficient number of

regulations governing entrepreneurship (even in conditions of a deregulated economy), the state impact on the so-called third sector is relatively small.

Thus, to harmonize the relationship between the types of legal entities and types of management, the provisions of the legislation are subject to reform. First, we should proceed from the following theoretical positions:

1) civil legal personality of legal entities is a qualitative property of a legal entity, which enables them to be a party to civil relations, i.e. to have an abstract ability to have civil rights and obligations (civil legal capacity), as well as to exercise their rights and obligations through their lawful actions (ability to execute civil transactions), as well as the ability to respond independently to their obligations (passive dispositive capacity). Civil legal personality lies in the dimension of civil law; therefore, it is implemented on the basis of civil legislation;

2) business legal personality of a legal entity gives it the opportunity to be a business entity, that is, to carry out activities for the achievement of economic and social results and with or without the purpose of profit, for its subsequent distribution among participants of the legal entity. In addition to the private legal foundations of business legal personality (the purpose that is set by the founders; freedom of enterprise, etc.), there are public law foundations that manifest themselves in the regulatory influence of the state on the activity of business entities (public procurement, licensing, etc.).

Secondly, the subject of the legal relations may be the person and the organization, which form the basis for the formation of the category of the participant of the legal relations with a particular interest. The legal expression of the participation of these entities are such concepts as "individual" and "legal entity", the latter is a legally recognized personable formation having universal civil personality, because it is created for the realization of civil interests. In order to exercise individual rights and obligations, a legal entity needs to obtain the appropriate status, in particular, for the implementation of the relevant type of economic activity (bank, educational institution, pawnshop, public association, etc.).

Thirdly, the Commercial Code of Ukraine is aimed at regulating the Economic activity of the business entities, that is, their operations regarding creation of an economic result that is of value nature and is aimed at ensuring the existence of a relevant market. The dichotomous division of business into entrepreneurship and non-commercial operations needs a certain revision, considering the nature of such operations as against the legal form of the business entity.

Finally, the elimination of dualism in the legal regulation of the Economic activity of legal entities is reduced to a proper understanding of the foundations (principles) of private law used by legally equal participants in

the formation of relations with the organization of a legal entity, its entry into legal relations in view of state regulation of business (economic) operations. The latter involves the imposition of requirements for public entities to regulate the legal economic order, factoring in primarily public interests. An example is the special statuses of a legal entity, which are not always correlated with its legal form and the limits of freedom of contract. All this creates a rather sophisticated system of private-public and public-private relations regarding the organization and operations of legal entities – the corporate law.

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