

## **INFLUENCE OF THE STATE ON THE DEVELOPMENT OF THE UKRAINIAN ECONOMY**

The article analyzes the influence of the state on the development of the Ukrainian economy. It is stressed that the existence of the Commercial Code of Ukraine is necessary, since it provides the basis for the implementation of economic activity, which cannot be defined in separate normative legal acts (the integrity of legal regulation will be lost). It is emphasized that the influence of the state on the economy exists in each country. The magnitude of this influence may be different, however, it is not possible to abandon the participation of the state in the development of the economy. It is determined that the role of the state in the economic life of the country is manifested in two directions: 1) as the sole regulator of economic life; 2) as the owner of state-owned enterprises.

*Keywords: state, economy, state regulation, economic law, state sector of economy.*

## **ВПЛИВ ДЕРЖАВИ НА РОЗВИТОК ЕКОНОМІКИ УКРАЇНИ**

У статті проаналізовано вплив держави на розвиток економіки України. Наголошено, що існування Господарського кодексу України є необхідним, оскільки саме в ньому закладено основи здійснення господарської діяльності, які неможливо визначити в окремих нормативно-правових актах (буде втрачена цілісність правового регулювання). Наголошено, що вплив держави на економіку існує у кожній країні. Величина цього впливу може бути різною, проте відмовитись від участі держави в розвитку економіки неможливо. Визначено, що роль держави в економічному житті країни проявляється у двох напрямках: 1) як єдиного регулятора економічного життя; 2) як власника державних підприємств.

*Ключові слова: держава, економіка, державне регулювання, господарське право, державний сектор економіки.*

The state's influence on the economy exists in each country. The magnitude of this influence may be different but it is not possible to abandon the participation of the state in the development of the economy. In the Soviet Union the state's influence on the economy was total, the state controlled all spheres of life, dominated the state form of ownership, and so on.

However, as history has shown, this path of development turned out to be false, as a result of which broad discussions are continuing in Ukraine on the appropriate level of state influence on the economy.

The Commercial Code Ukraine, which came into force on January 1, 2004, is the normative legal act defining the basic principles of business in Ukraine and regulating economic relations that arise in the process of organization and implementation of economic activity between economic entities, as well as between these entities and other parties in the field of economic relations.

At present discussions on the expediency of the existence of the Commercial Code of Ukraine are ongoing in Ukraine. Thus, the Minister of Justice of Ukraine P. Petrenko believes that the system of Ukrainian law does not need a Commercial Code, since it largely duplicates the Civil Code and leads to legal conflicts<sup>1</sup>. P. Pylypenko adheres to this point of view, which notes that in the world there are two models of regulation of private relations – monistic and dualistic. The first implies only the existence of a civil code, and the second – even corporate. Our model is a typical soviet one, which was introduced by “Donetsk” and imposed by the legislator in addition to the Civil Code<sup>2</sup>. Contrary to these judgments, V. Shcherbyna notes that the only way to create the proper legal conditions for conducting business in Ukraine, both Ukrainian and foreign business entities, is to modernize the economic legislation with the preservation of its codified form<sup>3</sup>. In her turn, V. Reznikova points out that the first days of active discussions on thematic subgroups proved that it is impossible without exception of the norm of the Civil Code of Ukraine without any problem to be excluded from its content or transferred to other normative legal acts<sup>4</sup>.

In our opinion, the existence of the Commercial Code of Ukraine is necessary, since it provides the basis for the implementation of economic activities, which cannot be defined in separate normative legal acts (the integrity of legal regulation will be lost). In addition, it is equally important that in the Commercial Code of Ukraine, institutions that are inherent in commercial law (bankruptcy, antimonopoly regulation, etc.) have found their expression.

<sup>1</sup> Petrenko P. Systemi ukrainskoho prava ne potriben Hospodarskyi kodeks [The Ukrainian law system does not require a Commercial Code]. URL: <http://www.unn.com.ua/uk/news/1418631-sistemi-ukrayinskogo-prava-ne-potriben-gospodarskiy-kodeks-p-petrenko> (accessed: 15.10.2018) (in Ukrainian).

<sup>2</sup> Pylypenko P. Hospodarskyi kodeks u takomu varianti nam ne potriben [The economic code in this version we do not need]. URL: <https://blogs.korrespondent.net/blog/events/3597409/> (accessed: 15.10.2018) (in Ukrainian).

<sup>3</sup> Shcherbyna V.S. Kodyfikatsiia chy dekodefikatsiia hospodarskoho zakonodavstva Ukrainy: yakyi shliakh obraty? [Codification or Decodification of Ukrainian Commercial Legislation: Which Way to Choose?] *Reformuvannia hospodarskoho zakonodavstva Ukrainy. Zbirnyk tez i materialiv uchasyukiv kruhlobo stolu, provedenoho za uchastiu Vysshchoho hospodarskoho sudu Ukrainy, Kyivskoho natsionalnogo universytetu imeni Tarasa Shevchenka, Instytutu ekonomiko-pravovykh doslidzhen NAN Ukrainy*, 31 bereznia 2016 roku, m. Kyiv K.: Vyd-vo Lira-K, 2016. S. 136 (in Ukrainian).

<sup>4</sup> Rieznikova V. Skasuvannia Hospodarskoho kodeksu Ukrainy: sposib efektyvnoi modernizatsii pravovoho rehulivannia hospodarskoi diialnosti chy destabilizuiuchy faktor dlia sfery hospodariuvannia? [Cancellation of the Commercial Code of Ukraine: the way of effective modernization of legal regulation of economic activity or destabilizing factor for the sphere of management?] *Reformuvannia hospodarskoho zakonodavstva Ukrainy. Zbirnyk tez i materialiv uchasyukiv kruhlobo stolu, provedenoho za uchastiu Vysshchoho hospodarskoho sudu Ukrainy, Kyivskoho natsionalnogo universytetu imeni Tarasa Shevchenka, Instytutu ekonomiko-pravovykh doslidzhen NAN Ukrainy*, 31 bereznia 2016 roku, m. Kyiv K.: Vyd-vo Lira-K, 2016. 144 s., S. 103 (in Ukrainian).

It is stated in the Commercial Code of Ukraine (article 12) that the state uses various means and mechanisms of regulation of economic activity for the implementation of economic policy, the implementation of targeted economic and other programs and programs of economic and social development. The main means of regulating the state's influence on the activities of economic entities are:

- government order;
- licensing, patenting and quota;
- technical regulation;
- application of norms and limits;
- regulation of prices and tariffs;
- granting of investment, tax and other privileges;
- granting subsidies, compensation, targeted innovations and subsidies<sup>5</sup>.

The role of the state in the economic life of the country is manifested in two directions: 1) as the sole regulator of economic life; 2) as the owner of state-owned enterprises. If in the first case the state defines the basic rules of conduct in the field of economics, then in the second one it must itself play according to these rules. And here there is a certain imbalance, since formally all forms of ownership in Ukraine are equal, but the state form of ownership differs from among others and is under the special supervision of the state, while they are learning certain preferences. These are state contracts that provide state-owned enterprises and the legal prohibition of bankruptcy of state-owned enterprises and much more.

Let's consider in more detail each direction of the state's role in the Ukrainian economy.

First of all, the state determines how the country's economy will go, for which there is a state economic policy. The latter should be understood as the objectives and tasks set by the state in the economic and legal documents set by the state, providing a comprehensive solution to a dual task: the combination in economic life of market principles of economic management and social orientation of the economy, based on optimal coordination of the interests of business entities, consumers, society as a whole and its different layers.

As a carrier of political power and as the owner of a certain part of the means of production, the state implements economic and social policies in the field of economic activity in two forms – in the form of long-term (strategic) policy and in the form of current (tactical) policies aimed at realization and optimal coordination of the interests of the subjects of state-building and consumers, various social strata and population in general.

The economic strategy is defined as the state-selected economic policy, designed for a long-term perspective and aimed at solving large-scale economic and social tasks, tasks of cultural development, ensuring economic security of the state, preserving and increasing its economic

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<sup>5</sup> *Hospodarskyi kodeks Ukrainy* [Economic Code of Ukraine]: Zakon vid 16.01.2003 № 436-IV. URL: <https://zakon.rada.gov.ua/laws/show/436-15> (accessed: 18.10.2018) (in Ukrainian).

potential and national wealth, improving people's welfare. The economic strategy includes identifying the priority objectives of the national economy, ways and means of their implementation, based on the content of objective processes and trends taking place in the national and world economy, and taking into account the legitimate interests of economic entities.

Economic tactics is a set of closest goals, tasks, means and means of their achievement for the implementation of the strategic course of economic policy in the specific conditions that are formed in the immediate period of development of the national economy.

The legal consolidation of economic policy is carried out by defining the principles of internal and external politics, in the forecasts and programs of economic and social development of Ukraine and its individual regions, programs of activity of the Cabinet of Ministers of Ukraine, targeted programs of economic, scientific, technical and social development, as well as relevant legislative acts.

In addition, the state manages the economy. Legal forms of state management by economics are regulated by the norms of law the types of activities of state bodies in the field of economics, which are distinct goals and mechanism of implementation. There are four legal forms of state management of the economy:

1. programming;
2. normative regulation;
3. control;
4. management.

Programming is the definition by the competent governmental authorities of the main goals, directions, priorities and indicators of economic and social development of the state in the whole, its regions, branches of the economy, and in cases provided for by law, of separate economic entities, in the manner established by law.

Normative regulation is the establishment by the competent authorities of the rules governing business activities. With the help of normative regulation, the legal status of all economic entities is determined; establishes the procedure for conducting business operations and procedures; the procedure for resolving business disputes (jurisdictional regulation) is determined; the formation of a mechanism for the protection of rights and legitimate interests of economic entities (security regulation).

Normative-legal regulation is a universal form of state regulation of the economy.

Control is the implementation by the competent governmental authorities of the verification of the degree of compliance with the direction and results of the business entities with the requirements of the legislation and other mandatory requirements for the implementation of economic activities (observance of the statutes, regulations, norms, minima, etc.).

Control as a form of economic management implies:

1. identification of violations in economic activity;

2. taking measures to eliminate these violations, including through the application of economic sanctions in the manner prescribed by law.

Management – as a legal form of state regulation of the economy – means the adoption by the competent authority of legally significant decisions for business entities on operational issues of economic life (state registration of economic entities, licensing of certain types of economic activity, establishment of limits on the use of natural resources, etc.). As G. Pronska correctly notes, the management is strictly limited to normative acts<sup>6</sup>.

From the forms of state governance to the economy, it is necessary to distinguish between methods of state management of economics – these are the methods prescribed by the current legislation for the state to influence the behavior of economic entities in order to obtain the result necessary to the state.

There are two main methods of state management of the economy:

1. administrative;
2. economic.

Administrative methods are ways to influence the behavior of business entities, when the result, which is necessary for the state, is achieved by direct order of the competent state body, which is subject to mandatory unambiguous execution.

Economic methods are the ways of influencing the behavior of state-building actors provided by the current legislation, when the result required is achieved through the economic interest of the executor (tax benefits to those economic entities engaged in activities in which the state is interested; state lending of certain types of activities).

Regarding the above, R. Dzhabrailov notes that the above methods and means of state regulation of economic activity form the economic and legal mechanism of such regulation<sup>7</sup>.

Entrepreneurs have the right to carry out state-commissioned activities independently without restrictions, which does not contradict the legislation. Illegal interference with, and obstruction of, the business activities of business entities on the part of state authorities and their officials in the course of their implementation of state control and supervision is prohibited.

At the same time, the state exercises control over economic entities that have different manifestations. Thus, all business entities are subject to state registration in accordance with the Law of Ukraine “On State Registration of Legal Entities, Individuals-Entrepreneurs and Public Associations”. By registering, the state keeps records of subjects of entrepreneurship, regulates the issue of establishment of economic entities and determines the peculiarities of the beginning of their activity. According to this Law, state registration consists in certifying the fact of creation

<sup>6</sup> Pronska H.V. Vybrane [Selected]. K.: Osvita Ukrainy, 2013. S. 493 (in Ukrainian).

<sup>7</sup> Dzhabrailov R. Poniattia ta zmist derzhavnogo rehuliuвання hospodarskoi diialnosti [Concept and content of state regulation of economic activity]. *Problemy rozvytku nauky hospodarskoho prava i vdoskonalennia hospodarskoho zakonodavstva*. Materialy kruhloho stolu (m. Kyiv, 4 hrudnia 2015 r.) K.: Vyd-vo Lira K., 2015. S. 83. (in Ukrainian).

or termination of a legal entity, certifying the fact of acquiring or depriving an entrepreneur of an individual's identity by entering the corresponding records in the Uniform State Register.

Also, the state controls and oversees the economic activities of business entities in the following areas:

- sphere of saving and spending of funds and property values by subjects of economic relations – that is control over the status and reliability of accounting and reporting;
- the sphere of financial, credit relations, currency regulation and tax relations – that is control over the compliance of economic entities with credit obligations to the state and accounting discipline, compliance with the requirements of currency legislation, tax discipline;
- the sphere of prices and pricing – control over compliance with the subjects of management of state prices for products and services;
- sphere of monopoly and competition – control over observance of antimonopoly-competitive legislation;
- sphere of land relations – that is control over the use and protection of land;
- sphere of water relations and forestry – control over the use and protection of water and forests, reproduction of water resources and forests.
- sphere of production and labor – control over: safety of production and labor, observance of labor legislation; for fire, ecological, sanitary-hygienic safety; in accordance with the standards, norms and rules, which established the mandatory requirements for the conditions of economic activity.
- sphere of consumption – control over the quality and safety of products and services.
- sphere of foreign economic activity – control over technological, economic, ecological and social security.

With regard to the participation of the state as the owner of state-owned enterprises, the following should be noted. The state carries out the management of the state sector of the economy in accordance with the principles of domestic and foreign policy.

The peculiarity of the state sector of the economy lies in the fact that the subjects of management in it are:

- subjects acting on the basis of state ownership only
- subjects, the state share in the statutory fund of which exceeds fifty percent,
- subjects, the state share in the authorized capital of which amounts to the amount that provides the state with the right of decisive influence on the economic activity of these entities.

The subjects of governance in the public sector of the economy are the Cabinet of Ministers of Ukraine, ministries, other bodies of government and organizations. their powers regarding the subjects of economic activity (economic competence) are determined by law.

The state realizes the right of state property in the state sector of the economy through the system of state and government authorities of the relevant governing bodies in respect of economic entities belonging to this sector and exercising their activities on the basis of the right of economic management or the right of operational control.

The legal status of a separate entity in the public sector of the economy is determined by the authorities in accordance with the requirements of the Economic Code and other laws. The relations of management bodies with the named economic entities in cases stipulated by law may be exercised on a contractual basis.

The state applies to economic entities in the state economic sector all means of state regulation of economic activity, provided by the Economic Code, taking into account the peculiarities of the legal status of these entities.

Management bodies that carry out organizational and economic powers regarding economic entities of the state sector of the economy shall not be allowed to delegate to other entities the powers regarding the disposal of state property and the authority to manage the activities of economic entities, with the exception of deleting mentioned authorities in accordance with the law to local self-government bodies and other cases, foreseen by the Economic Code and other laws.

Summarizing the above, we arrive at the following conclusions. The state's influence on the economy exists in each country. The magnitude of this influence may be different, however, it is not possible to abandon the participation of the state in the development of the economy. The role of the state in the economic life of the country is manifested in two directions: 1) as the sole regulator of economic life; 2) as the owner of state-owned enterprises.

#### **Список джерел:**

1. Петренко П. Системі українського права не потрібен Господарський кодекс. URL: <http://www.unn.com.ua/uk/news/1418631-sistemi-ukrayinskogo-prava-ne-potriben-gospodarskiy-kodeks-p-petrenko> (дата звернення: 15.10.2018).
2. Пилипенко П. Господарський кодекс у такому варіанті нам не потрібен. URL: <https://blogs.korrespondent.net/blog/events/3597409/> (дата звернення: 15.10.2018).
3. Щербина В.С. Кодифікація чи декодифікація господарського законодавства України: який шлях обрати? *Реформування господарського законодавства України*. Збірник тез і матеріалів учасників круглого столу, проведеного за участю Вищого господарського суду України, Київського національного університету імені Тараса Шевченка, Інституту економіко-правових досліджень НАН України, 31 березня 2016 року, м. Київ К.: Вид-во Ліра-К, 2016. С.134–136.
4. Резнікова В. Скасування Господарського кодексу України: спосіб ефективної модернізації правового регулювання господарської діяльності чи дестабілізуючий фактор для сфери господарювання? *Реформування господарського законодавства України*. Збірник тез і матеріалів

- учасників круглого столу, проведеного за участю Вищого господарського суду України, Київського національного університету імені Тараса Шевченка, Інституту економіко-правових досліджень НАН України, 31 березня 2016 року, м. Київ – К.: Вид-во Ліра-К, 2016. С. 102–106.
5. Господарський кодекс України: Закон України від 16.01.2003 № 436-IV. URL: <https://zakon.rada.gov.ua/laws/show/436-15> (дата звернення: 18.10.2018).
  6. Пронська Г.В. Вибране. К.: Освіта України, 2013. 696 с.
  7. Джабраїлов Р. Поняття та зміст державного регулювання господарської діяльності. *Проблеми розвитку науки господарського права і вдосконалення господарського законодавства*. Матеріали круглого столу (м. Київ, 4 грудня 2015 р.) К.: Вид-во Ліра. К., 2015. С. 81–84.

### References:

1. Petrenko P. Systemi ukrainskoho prava ne potriben Hospodarskyi kodeks [The Ukrainian law system does not require a Commercial Code]. URL: <http://www.unn.com.ua/uk/news/1418631-sistemi-ukrayinskogo-prava-ne-potriben-gospodarskiy-kodeks-p-petrenko> (accessed: 15.10.2018).
2. Pylypenko P. Hospodarskyi kodeks u takomu varianti nam ne potriben [The economic code in this version we do not need]. URL: <https://blogs.korrespondent.net/blog/events/3597409/> (accessed: 15.10.2018).
3. Shcherbyna V.S. Kodyfikatsiia chy dekonyfikatsiia hospodarskoho zakonodavstva Ukrainy: yakyy shliakh obraty? [Codification or Decodification of Ukrainian Commercial Legislation: Which Way to Choose?] *Reformuvannia hospodarskoho zakonodavstva Ukrainy*. Zbirnyk tez i materialiv uchasnykiv kruhloho stolu, provedenoho za uchastiu Vyshchoho hospodarskoho sudu Ukrainy, Kyivskoho natsionalnoho universytetu imeni Tarasa Shevchenka, Instytutu ekonomiko-pravovykh doslidzhen NAN Ukrainy, 31 bereznia 2016 roku, m. Kyiv K.: Vyd-vo Lira-K, 2016. S. 136.
4. Rieznikova V. Skasuvannia Hospodarskoho kodeksu Ukrainy: sposib efektyvnoi modernizatsii pravovoho rehuliuвання hospodarskoi diialnosti chy destabilizuiuchy faktor dlia sfery hospodariuvannia? [Cancellation of the Commercial Code of Ukraine: the way of effective modernization of legal regulation of economic activity or destabilizing factor for the sphere of management?] *Reformuvannia hospodarskoho zakonodavstva Ukrainy*. Zbirnyk tez i materialiv uchasnykiv kruhloho stolu, provedenoho za uchastiu Vyshchoho hospodarskoho sudu Ukrainy, Kyivskoho natsionalnoho universytetu imeni Tarasa Shevchenka, Instytutu ekonomiko-pravovykh doslidzhen NAN Ukrainy, 31 bereznia 2016 roku, m. Kyiv K.: Vyd-vo Lira-K, 2016. 144 s., S. 103.
5. Hospodarskyi kodeks Ukrainy [Economic Code of Ukraine]: Zakon vid 16.01.2003 № 436-IV. URL: <https://zakon.rada.gov.ua/laws/show/436-15> (accessed: 18.10.2018).
6. Pronska H.V. Vybrane [Selected]. K.: Osvita Ukrainy, 2013. S. 493.
7. Dzhabrailov R. Poniattia ta zmist derzhavnoho rehuliuвання hospodarskoi diialnosti [Concept and content of state regulation of economic activity]. *Problemy rozvytku nauky hospodarskoho prava i vdoskonalennia hospodarskoho zakonodavstva*. Materialy kruhloho stolu (m. Kyiv, 4 hrudnia 2015 r.) K.: Vyd-vo Lira K., 2015. S. 83.