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REFORMATION OF MECHANISMS FOR ECONOMIC AND LEGAL REGULATION OF DIFFERENT BRANCHES AND SECTORS OF THE NATIONAL ECONOMY¹

The article examines incremental reformation of a mechanism for economic and legal support of market relations. The author determines necessary institutional changes and processes of reformation of particular economic institutions and highlights important aspects in reformation of the economic and legal mechanism.

Key words: economic legislation of Ukraine, economic and legal institution, codification of economic legislation.

Problem setting. Under a system of social transformations of Ukraine, an issue of formation of the economic and legal mechanism for providing market economic relations is of considerable importance. Despite all the institutional changes, privatization processes, formation of certain instruments for organizational and economic influence, there are many issues related to formation of a contemporary developed model of economic activity in Ukraine. Particularly, unsatisfactory rates of growth of the Ukrainian economy affirm the above-mentioned statement (Rudiaha, 2017).

Obviously, legislative embodiment of a new model of economic activity and certain structural economic and legal reforms within various economic sectors is

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an integral system. This system encompasses innovative measures, new approaches to institutional and structural transformations, and corresponding reformation of implementation mechanisms (stimulation, regulation, and control through corresponding institutions of a government and a market) aimed at attainment strategic and tactic goals of development of sectors and complexes in the national economy. These goals are as follows: the increase of output; evolvement of production processes; the increase of competitiveness of all the sectors of the national economy; support of mechanisms of market self-regulation of economic entity activity, etc.

Simultaneously, the influence of international competition, issues concerned with internal transformations of units of the national economy, providing sustainable innovative development of corresponding production assets require a legislator as well as the economic and legal science to focus on a level of sectoral and even cluster mechanisms of the organizational and economic influence on economic relations rather than on a level of general issues. Such approach needs the thorough analysis of specificity of corresponding economic and production relations, ascertainment of their contemporary economic context, tendencies of development, and, subsequently, goals of a governmental strategy regarding these relations for the purpose of formation of corresponding methodology for the economic and legal influence (Cherepovskyi, 2017).

Development of the theoretical model of such universal sectoral mechanism of the organizational and economic influence is of significant importance for evolvement of an economic and legal doctrine as well as for a qualified process based on own methodological instruments, which aims at formation of governmental programs for development of the industry and certain sectors, formation of particular segments of economic legislation, et al.

Analysis of recent researches and publications. Legal institutionalization of a juridical aspect of providing economic development in certain branches and sectors of the national economy has significantly encouraged organizing scientific economic and legal researches. Scientific papers of domestic economists such as O. M. Vinnyk, R. V. Vaksman, D. V. Zadykhailo, H. L. Znamenskyi, V. K. Mamutov, Yu. I. Ostapenko, K. V. Plavshuda, K. O. Stadnik, A. V. Semenyshyn, I. M. Rudiaha, Ye. V. Cherepovskyi, etc. have contributed to theoretical examination of the mentioned matter in the last years.

Thus, a large amount of such scientific papers enables to form a universal theoretical matrix for research. It is important for relevant scientific and theoretical results as well as for enhancement of quality of legislative reformation of all the spheres of economic activity.

Formulation of aims. An article purpose is to improve a legal mechanism for regulation of economic processes and establishment of principal outcome

frameworks, basic modelling of legislation with respect to each separate operating complex.

The main material presentation. Formation of principles of democratic nationhood based on the rule of law in Ukraine constitutes strengthening requirements to quality and systematization of the legislation, because almost all social relations exist in the system format. Therefore, a subject to legal regulation, which reproduces this systematization to a greater extent, should consist of all the hierarchically structured elements of such system in accordance with their role in functioning and fulfillment of its mission. Otherwise, it is complicated to provide harmony of the social interests, which are an aim of legal regulation. It is worth mentioning that regulation of ways of meeting individual interests may not be equal to ways of meeting public interests (Zadykhailo, 2012).

A system of legal and economic regulation with unbalanced internal relations between its key elements does not functionally confirm with that system of real social relations, for regulation of which it is created (Zadykhailo, 2011). A reverse interconnection between a system of legal regulation and an economic system is useful, when a functional and regulatory mission of the former turns out to be inadequate, inefficient, and distorted compared to that result, which should have been anticipated. Thus, there are specific circumstances in the economic sphere of Ukraine due to several large-scale reformations of the latter caused by insufficient attention of the legislator or implementation of reformations, which do not take into account public interests, including the interests of next generations. Adoption of a majority of economic primary and secondary legislation leads to the following collisions: coincidence, ambiguous regulation of the same matter; counteractions between norms. As a result, there is an extreme need to dismantle an entire system of economic and legal regulation.

Although a problem of modernization of the national economic system may not be brought into consonance with a level of optimization of its economic mechanism, the latter will be its key module. Thus, there is a primary goal to form an economic model being adequate to modern realities. This model will be implemented through reformation of systematization regarding primary and secondary legislation.

The Ukrainian Codification Commission (1995–2000), which was formed by the Decree of the President of Ukraine, launched a systematization process. This Commission was obliged to determine scientific frameworks of codification of the Ukrainian legislation and the sequence of adoption of the Codes. On 16 January 2003, the Verkhovna Rada of Ukraine approved the Economic Code of Ukraine prepared in accordance with a judiciary and legal reform. Developing the Economic Code of Ukraine, the legislator took into consideration the necessity of providing interaction of governmental regulation of the economy and market self-regulation, establishment of more stable and a clear playing field within the system

of legal regulation of economic activity (Mamutov, 2014). It is useful to highlight that one of the most considerable distinctions of the continental legislative tradition consists in a conscious desire for systematization and putting the legislation into order through its codification. For instance, this tradition has been a basis for formation of codes that regulate economic relations (trade, commercial) in France, Germany, Austria, Czech Republic, Poland, and in a dozen of other countries. There is a legislative requirement in France, which states that new norms of legislation had to fit into existing ones in those sectors, where legislation is codified. Nevertheless, it is impossible to apply the mentioned traditional legislative requirements to the national economic dimension because of several reasons. Firstly, the Economic Code of Ukraine entered into force on 1 January 2004 and a large amount of the legislation (especially sectoral) has been adopted recently on the basis of the Model Legislation developed during the period of the Union of Soviet Socialistic Republics. That is to say, current legislative norms had to be coordinated with norms of corresponding laws. However, existence of collisions in the economic norms demonstrates absence of such methodological actions on the part of developers. Secondly, dynamicity of economic processes requires permanent amendment of the legislative norms (especially in some economic sectors, where a rapid chaotic scientific and technological revolution occurs, e.g. telecommunications). Thirdly, the content of newly formed legislative acts does not always adhere to the content of the Economic Code of Ukraine due to prevailing of numerous private and commercial interests. Regardless of the previously mentioned reasons, there is a need to agree with one of key research views of Mamutov (2014), who states that a legislative economic dimension should be hierarchically harmonized with its basis (p. 5), i.e. with the Economic Code of Ukraine.

Thus, there should be methodology for formation and modernization of an existing economic process. In other words, there is a need for improvement of legislative technique using a system of special legal measures, which belong to a category of economic and legal guarantees and acquire such meaning among various legal measures because of their instrumental function within a mechanism of legal regulation. In order to form such mechanism, the author proposes to apply legal measures such as principles, cautions, special legislative techniques for formation of rights and obligations, establishment of single reasons and means of legal responsibility, support a subjective right through the additional legal force owing to fixation of the right in texts of the Constitution of Ukraine or international treatments. Therefore, the legislator should take into account a concept of guarantee legal means (Kharkivska, 2017).

The author thinks that such configuration of legislative support for contemporary economic relations is able to provide comprehensive application of a multidimen-

sional complex of the private and public interests in the single legal mechanism. This complex should aim at implementation of an integral national strategy of economic development, a corresponding governmental economic policy within a paradigm of market economic relations. Unfortunately, there is no core national economic strategy encompassing the following criteria, which should be subjects to a determined economic policy: maximum compliance with social needs; maximum legal force of legislative enshrinement; a maximum real period of development (Zadykhailo, 2006).

Certainly, comparison of legislative techniques of execution applied by the current Code and the laws is not a reason for cancelation of the former. They become a challenge for a more enhanced approach to application of legislative technique regarding reformation of the legislation in the economic sphere. In the first place, current horizontal economic relations, which include contractual, economic, and production relations between business entities, contractual relations between business entities, contractual relations between business entities and consumers, etc., need the revision. Current systems of agreements in the model business may be an example of the above-mentioned statement, because the latter is regulated at the contractual law level rather than at the legislative level. As for the vertical format, the author suggests to diagnose norms regulating, firstly, the main sectors of the economy (importance of formation of a policy and its development strategy are enshrined in Article 10 of the Economic Code of Ukraine) and, secondly, the main methodological system institutions such as the national institution of the competitive law.

Dynamics of development of systematization processes, extension of economic spheres, and, subsequently, an economic law subject and legislation will require organizing permanent analyzing the content of the latter for the purpose of rapid amendment of legislative regulation and striking the balance between the dispositive principle and the imperative principle of a legal effect on economic behavior of economic entities. Such aim can be achieved in the process of further extension and intensification of codification work in the economic legislation through development and adoption of sub-sectoral and institutional codes being subordinated to the Economic code of Ukraine and aimed at putting into order process of specialization and consolidation in various segments of the economic legislation. Obviously, a level of optimization of amendment and harmonization of the legislation with realities in the context of regulation of certain economic relations will be important depending on development of an economic segment (a market, a complex), because dynamics of development of vital requests of a particular product (a service) objectively differs due to spontaneous or passive development in some processes. The author observes the same situation in the eco-

conomic legislation. Nevertheless, active legislative development is not always inherent to a more dynamic market. This is primarily related to the real interest of the political elite rather than a social request.

Therefore, a mechanism for juridical and technical implementation of economic reforms in the future requires the attention to general components of the economic sphere as well as stipulates a prompt need of juridical support for each segment of the economy as a whole. As a result, legal frameworks of development of each sector should be examined, above all, in the economic and legal context and be considered from the perspective of economic and legal measures.

However, the structural and sectoral economic policy disclosed in Article 10 of the Economic Code of Ukraine does not explain the content of essential economic infrastructure at all. There is a need to include a list of all the economic sectors, in which the government needs a special complex approach to legislative technique and the content of a corresponding legislative complex, in the content of the mentioned norm. This procedure may be performed owing to granting the special legal status to these spheres.

Simultaneously, a branch (sectoral) legal mechanism of the organizational and economic influence on economic sphere relations is an obligatory and determinative complex instrument of implementation of a structural and sectoral policy of the government. This policy is formed depending on estimation of contemporary and anticipated competitiveness of such sector. It consists of program algorithms of sectoral development determined by the government, formation of politically responsible parties, organizational and economic authorities with the adequate burden of competencies, and a legislatively determined set of necessary and sufficient economic and legal means of governmental regulation for implementation of program figures (Cherepovskyi, 2015).

Formation of gradual legislative regulation of a transport system and ensuring an appropriate level of economic and legal regulation of infrastructural processes in the transport sector, especially a railway sector, is a striking example in a system of providing the mechanism of economic transformations. It is worth mentioning that stable and effective functioning of the rail transport is a necessary condition for providing defense capability, national security, integrity of the country, and the increase of living standards of the population. Absence of strict modelling of legislative infrastructure for regulation and establishment of necessary methods of the organizational and economic influence on relations in this sphere will lead to a one-sided government policy and insufficient effectiveness in reformation. A view of Rudiaha (2015) may be a scientific example of effective reformation of the rail industry. Rudiaha (2015) states, "Legislation on rail transport comprises a large amount of interrelated normative and legal acts with various degrees of the legal

force, which regulate these relations. Therefore, it requires systematization according to a method of codification and reform in order to provide the real supremacy of law in regulation of such relations, bringing legal norms of the rail industry into line with requirements of the EU legislation, and elimination of gaps, collisions, and contradictions in current legal norms” (p. 222).

Certainly, adoption of a considerable amount of primary and secondary legislation in the sphere of rail transport lead to coincidence of approved norms, ambiguous regulation of the same matter, and contradictions between them. As a result, there is an urgent problem of codification of the entire current legislation of the respective economic sector. Rudiaha (2015) suggests a legislative model of reformation of the rail industry, which will not undermine a single property and managerial complex. It consists of the two following steps. The first step consists in systematization of the Ukrainian legislation on rail transport in the form of codification in accordance with international legal treatments, normative acts of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, and the Ministry of Infrastructure of Ukraine. The second step implies a systematization complex of orders of rail industry managers, which are adopted for organizing activity directly within railways, are obligatory for staff, and establish norms, rules of activity in general and in the process of transportation in particular (p. 166).

It is worth mentioning that economic law and, subsequently, economic legislation constitutes a peculiar “range” for deployment of certain systematization modules across economic sectors in terms of complexity of a subject of regulating relations, system and synthetic nature, and extraordinary dynamics of development. At the practical level, the government, enterprise associations, scientific institutions, etc. initiate development of projects concerned with codification of legislation, namely on electricity, trade, international economic investment, and innovative sectors. Obviously, the content and the order of composing legal means of a mechanism for the industrial (sectoral) organizational and economic influence comprise a variety of elements depending on peculiarities of achievement goals of sectoral development. Nevertheless, the main elements of the sectoral mechanism should become an obligatory component of the contemporary legal economic order.

The author suggests substantiating the mentioned statement through defining a defense industry policy, analyzing and systematization of legislative support of the defense industry, and legal description of the latter. Firstly, the defense industry as a very important segment for Ukraine does not propose a definition of the concept “defense industry policy”. Scientists, namely Semynshyn (2015), suggest to consider it as a component of economic policy, which constitutes a system of legal and organizational measures undertaken by the government in the sphere of development, implementation in production, repair, modernization, utilization of arming, military

and special equipment for the purpose of development of production assets in order to maintain a necessary level of defense capability of the country and competitiveness of domestic arming in the world market. This policy is undertaken in conformity with state industrial policy principles. The state program of defense industry development comprises the defense industry policy. Scientists propose to include this policy to legislation, namely to Article 10 of the Economic Code of Ukraine (p. 159). Semy-nyshyn (2011) thinks that scientists should analyze and systematize reformation of legislative frameworks of the defense industry using a special codified normative act on matters of the defense industry, which is called the Law of Ukraine “On Functioning of the Defense Industry of Ukraine” (p. 166). Thus, the codification process in a certain economic and property complex does not have to be based on a normative act in the form of a code. However, the latter should be methodologically implemented through a system of legal and organizational measures oriented towards the main structural elements of a respective market, influencing the increase of system effectiveness of the entire national economic complex.

It is useful to highlight that economic legislation aims to achieve a super objective, i.e. to organically combine all the sectors of the economy in a single legal mechanism, to indicate general properties and peculiarities of each infrastructure units, and to establish the single economic order for them at the expense of various legal means, which enable to meet various social interests. Such interests include private and public, corporate and long-term, internal economic and international economic interests, economic development and ecological safety interests, et al.

This complex of requests for establishment of the single economic order encourages scientists to develop new sectoral module mechanisms of reformation for several sectors. Nevertheless, there is an obligatory list of elements of the legal mechanism exercising sectoral organizational and economic influence on the economic sphere, which should encompass: a) a formed sectoral economic policy of the government, which has been enshrined in legislation; b) the State Program of Sectoral Development of the National Economy developed and approved according to the established procedure; c) the Law of Ukraine, which is subordinated to the Economic Code of Ukraine and has been adopted in the basic variant; it regulates legal frameworks of economic activity in the sector as well as the legal mechanism of organizational and economic influence of the state on respective economic activity; d) formation and ensuring functioning of a public authorities body (an entity entitled with organizational, economic authorities, special competencies), which is politically responsible for undertaken of corresponding program statements; e) determination, legislative enshrinement, and implementation of a set of respective measures for the organizational and economic influence on a sector of economic activity in an instrumental component of the legal mechanism; f) integration of the

mentioned elements into an integral sectoral legal mechanism of the organizational and economic influence for the purpose of gaining a synergetic managerial effect. In addition, the sectoral mechanism of the organizational and economic influence may include a set of optional elements to provide target configuration of private and public interests of all participators of economic relations. These elements are as follows: an opportunity or necessity of formation of a self-regulating organization joining economic sector entities as an independent and subsidiary unit of organizational and economic authorities; existence of current legal forms of contractual relation implementation in the format of public and private partnership in order to put into practice important sectoral investment and innovative projects; implementation of means and measures of governmental support of sectoral economic entities, which do not counteract WTO requirements; application of special regimes of sectoral economic activity determined in the legislation; implementation of restricting means regarding access of sectoral economic entities to economic activity as well as regarding the rate of turnover of particular goods and services; implementation of state monopoly in a certain sphere of economic activity.

Obviously, prompt evolvement of the scientific and technological progress together with legislative modelling of the economy and its particular components will permanently develop at different rates (sometimes in a structured way, sometimes in a chaotic way). The Economic Code of Ukraine as a higher economic and legal module maintains the same conceptual state for all the sub-system blocks. The Economic Code of Ukraine forms a higher hierarchical link in the economic legislation system. However, qualitative legal regulation needs further development of codification processes.

Certainly, there is a need to accentuate that the economic sphere consist of both industries (spheres) and complexes (various configuration of simultaneously several industries). A telecommunication complex may be an example of legislative regulation of the latter. The author has proposed a three-level legal system for regulation of a certain type of economic relations: a) general frameworks of functioning of the national telecommunication systems of Ukraine, which may be enshrined and regulated through systematization of respective legislation of Ukraine owing to development and adoption of the Telecommunication Code of Ukraine; b) certain types of telecommunication services through formation of a system of laws regulating special subjects that are coordinated with respective statements of the Telecommunication Code of Ukraine; c) detailing of regulation of certain telecommunication services or their peculiarities being under impact of the most active dynamics of telecommunication development (Ostapenko, 2014). In other words, content requirements to formation of special laws of Ukraine or codes concerned with implementation of a sectoral economic and legal policy of the government in

a respective sector or a segment of the national economy may encompass: subordination to the Constitution of Ukraine and the Economic Code of Ukraine; determination of peculiarities of sectoral economic activity as a subject of regulation; determination of the main objectives of a sectoral economic policy of the government and, respectively, orientation of legal regulation towards stimulation, support, monitoring, and restriction of economic activity; strict division of the content of legislative regulation into blocks of economic and production, organizational and economic relations in conformity with institutional structure of a certain industry or a complex; full fixation of functions, goals, and powers of an entity of organizational and economic authorities (executive bodies of state authority); determination of the place and the functional burden of existence of natural monopolies, foreign capital in the public sector; determination of legal forms of state support for investment and innovative activity in industries of capital and commodity export; fixation of the legal status of sectoral market infrastructure entities; peculiarities of functioning of the sector in terms of imposing extraordinary legal regimes; legal preconditions of formation, an organizational form, and the order of functioning of sectoral self-regulating organization.

Conclusions. 1. The author has determined the necessity of improvement of legislative process methodology across various spheres of an economic system, taking into account an immediate necessity for detailed regulation of economic relations at the sectoral level as well as norms regulating a format of “horizontal” or contractual relations as well as “vertical” or sectoral and institutional relations.

2. A law-making process should proceed along the road of harmonization of systematization processes and be based on a single codified act – the Economic Code of Ukraine – and also codified acts across corresponding sectors and segments of an economic sphere brought into line with the Economic Code of Ukraine.

3. An algorithm of sectoral law-making process in the economic legislation should comprise: a) a substantiated sectoral governmental policy in the corresponding juridical form; b) a corresponding state program for sectoral development; c) a law of Ukraine or a sectoral code (depending on infrastructure of the economic industry) brought into consonance with the Economic Code of Ukraine, which regulates legal frameworks of economic activity and a legal mechanism of the organizational and economic influence on respective economic activity; d) formation of program statements regarding a government entity with organizational and economic authorities across particular industries; e) legislative enshrinement, enforcement, and implementation of a set of respective means of organizational and economic influence of an economic sector in an instrumental component of a legal mechanism; f) integration of the mentioned elements into an integral sectoral legal mechanism of the organizational and economic influence in order to gain a synergetic managerial effect.

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**РЕФОРМИРОВАНИЕ МЕХАНИЗМОВ
ХОЗЯЙСТВЕННО-ПРАВОВОГО РЕГУЛИРОВАНИЯ
РАЗЛИЧНЫХ ОТРАСЛЕЙ И СЕКТОРОВ
НАЦИОНАЛЬНОЙ ЭКОНОМИКИ**

В статье исследуется поэтапное реформирование механизма хозяйственно-правового обеспечения рыночных отношений. Определяются необходимые институциональные изменения и процессы реформирования отдельных институтов хозяйствования, подчеркиваются важные аспекты в реформировании хозяйственно-правового механизма.

Ключевые слова: хозяйственное законодательство Украины, хозяйственно-правовой институт, кодификация законодательства.

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**РЕФОРМУВАННЯ МЕХАНІЗМІВ
ГОСПОДАРСЬКО-ПРАВОВОГО РЕГУЛЮВАННЯ
РІЗНИХ ГАЛУЗЕЙ І СЕКТОРІВ НАЦІОНАЛЬНОЇ ЕКОНОМІКИ**

Постановка проблеми. Проблема формування господарсько-правового механізму регулювання ринкових економічних відносин залишається ключовим питанням. Законодавче втілення новітньої моделі господарювання та окремих структурних господарсько-правових реформ – це цілісна система інноваційних заходів, спрямованих на реалізацію стратегічних завдань розвитку різних галузей та секторів національної економіки. Напрацювання теоретичної моделі такого універсального галузевого є важливим для розвитку господарсько-правової доктрини та кваліфікованого процесу створення державних програм розвитку промисловості та окремих її галузей.

Аналіз останніх досліджень і публікацій. Правова інституалізація забезпечення економічного розвитку створила потужний імпульс для організації відповідних наукових господарсько-правових досліджень, теоретичну базу яких за останні роки склали роботи вітчизняних вчених-господарників, таких як: О. М. Вінник, Д. В. Задахайло, Г. Л. Знаменський, В. К. Мамутов, О. П. Подцерковний, В. А. Устименко, В. С. Щербина та ін.

Формування цілей. Метою статті є удосконалення правового механізму регулювання економічних процесів та встановлення щодо нього принципових вихідних

положень, базового моделювання законодавчого забезпечення у відповідності до кожного окремого господарюючого комплексу.

Виклад основного матеріалу. В Україні склалася специфічна ситуація в економічній сфері, коли після декількох хвиль реформувань ключові економічні інститути залишилися поза увагою законодавця чи реалізація яких відбувається без урахування суспільних інтересів. Виникає гостра необхідність першочергового створення моделі господарювання, яка буде реалізовуватися шляхом реформування. Дослідження правових засад розвитку кожної галузі має здійснюватися передусім у господарсько-правовому контексті та розглядатися крізь призму господарсько-правових заходів.

До змістовних вимог до формування спеціальних законів України чи кодексів можна віднести: підпорядкованість Основному Закону та Господарському кодексу України; визначення особливостей галузевого господарювання як предмета регулювання; визначення основних завдань галузевої економічної політики держави та ін.

Висновки. 1. Встановлено необхідність удосконалення методології законотворчого процесу за різними сферами економічної системи.

2. Законотворчий процес повинен йти шляхом гармонізації систематизаційних процесів та в основі своїй мати єдиний кодифікований акт – Господарський кодекс України, а також кодифіковані акти по відповідних секторах та сегментах.

3. Алгоритм секторального законотворчого процесу має включати в себе: 1) сформовану галузеву політику держави; 2) відповідну Державну програму галузевого розвитку; 3) гармонізований з Господарським кодексом України та вичерпний Закон України чи галузевий кодекс; 4) створення програмних положень щодо державного суб'єкта організаційно-господарських повноважень; 5) законодавче закріплення, реалізація та імплементація кола відповідних засобів організаційно-господарського впливу на галузеву сферу господарювання; 6) інтеграція названих елементів до цілісного галузевого правового механізму.

Коротка анотація до статті

Анотація. У статті досліджується поетапне реформування механізму господарсько-правового забезпечення ринкових відносин. Визначаються необхідні інституційні зміни та процеси реформування окремих інститутів господарювання, підкреслюються важливі аспекти у реформуванні господарсько-правового механізму.

Ключові слова: господарське законодавство України, господарсько-правовий інститут, кодифікація господарського законодавства