

# PECULIARITIES OF STATE POLICY FORMATION IN THE FIELD OF SPECIAL REGIMES OF ECONOMIC ACTIVITY

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**Abstract.** The main *purpose* is to consider the national experience of changing the specifics of economic activity, the main approaches to the legal regulation of relations in the sphere of economic activity are highlighted in historical retrospect. The article is devoted to the analysis of the procedure of formation and development of the mechanism of state regulation of economic activity in special conditions (preferential principles of economic activity, restrictions on economic activity and mixed legal regimes). *Research methodology.* Special attention is paid to the possibility of applying the method of legal modeling and introducing a special regime of management in the conditions of martial law. It is emphasized that most countries of the world, including Ukraine, are not ready for "war" and "post-war" economy. There is no adequate economic and legal basis for creating appropriate conditions for economic activity. Important aspects of legal regulation of special economic regimes have been studied. The basic legal documents regulating the principles of state policy in the sphere of economy were analyzed. Different stages of economic development of the country are highlighted. The legal basis of economic activity in the conditions of the martial law regime was studied. The main means of stabilization of the economic system of Ukraine are also indicated. *Conclusions.* The current stage of development of the Ukrainian economy is characterized by a period of profound transformation of approaches to economic activity. The problem of introducing a system of legal regulation of economic relations is quite acute in the conditions of the urgent need to "restart" the national economic system of Ukraine. It is obvious that there is a need to create effective mechanisms for regulating the creation and functioning of special regimes of economic activity in the context of anti-crisis regulation. *Practical implications.* Since today there is an urgent need to update the legislation, joint legal and economic research will contribute to the modernization of legislation in this area. *Value/originality.* The conducted research allows to determine the basic directions of modernization of the system of legal regulation of economic activity.

**Key words:** special regime, regional policy of the state, territorial development strategies, territories of recovery, regional growth poles, territories with special conditions for development, territories of sustainable development.

**JEL Classification:** K22, Z18, R13

## 1. Introduction

It is well known that the basis for the prosperity of any state is the state of its economic system. The stronger this sphere is, the stronger the country itself is, more adapted to various challenges. A vivid example of this is the activity of the "Big Seven" countries, whose members are the highly developed countries of the world – the USA, Japan, Germany, Great Britain, France, Italy and Canada. In the conditions of the period of almost three years of quarantine restrictions in Ukraine, a full-scale war, reorientation and restart of the entire economic system is necessary. The main challenge today is to find means to restore the state, to find investors

(both domestic and foreign) and to support entrepreneurship in the country. All this is possible with the creation of effective special forms of economic activity.

The current state of legal regulation of the functioning of legal regimes of economic activity in Ukraine is extremely unsatisfactory. At least due to the fact that the mechanism of legal regulation is imperfect and, accordingly, the goal of regulatory influence is not achieved. Therefore, the main goal of this scientific work is to determine the main directions of modernization of state policy in the field of special economic regimes at the current stage of functioning of the Ukrainian state.

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## 2. History of special economic regimes

The question of determination of certain special conditions for realization of economic activity has been of interest to scientists of various branches of science for a long time. In various studies, special attention is paid to the formation of an effective policy to support the development of entrepreneurial activity. At the same time, the issue of stabilization of the state economic system in conditions of various negative factors is always important. For example, a global pandemic, armed conflicts or full-scale war. As some scientists rightly point out, the military conditions of economic activity make it necessary to apply special methods, tools and approaches to the development of the economy of the country destroyed by war. The set of these special methods, tools and approaches is based on the definition of the most effective forms, fiscal methods and tools of support to producers and the population through the provision of subsidies, state aid, financial support, budget support, protection of commodity producers, and so forth (Zablodska, Rohozian, Sieriebriak, Plietnov, Vakhlakova, 2022).

At the same time, it should be emphasized that the problem of reformatting the economic system, adjusting the economy and the conceptual bases of its construction to real conditions is not a new situation for Ukraine. Indeed, there is already experience of transition to a different model of economic organization of Ukrainian society. The state went through the following stages of such restructuring (Modernization of the system of state support of business entities in Ukraine, 2013). First of all, this is the period when the principles of the administrative-command system of building the economy prevailed in the legislation of Ukraine. It was the first decade of the formation of the independent Ukrainian state, i.e., 1991–2000. At that time the emphasis in the regulation of economic relations was put on direct budgetary support of business entities.

The second stage is the stage of development of the system of state support for economic entities in 2001–2005. This period was characterized by the introduction of a program-targeted method of the budget process, and a certain modernization of forms of state support took place. Thus, in particular, in 2004, the Law of Ukraine "On State Targeted Programs" was adopted. This happened after the adoption of the Civil and Economic Codes in 2003. This normative legal act determined the main mechanisms for the development, approval procedure and the procedure for the implementation of state target programs, as well as their types (The Law of Ukraine "On State Targeted Programs", 2004).

In 2003, a very important regulatory and legal document was adopted – the Law of Ukraine "On the

Fundamentals of State Regulatory Policy in the Field of Economic Activity". This document introduced a mechanism for publishing draft regulatory legal acts for the purpose of receiving comments and suggestions, which is a component of ensuring the implementation of state regulatory policy.

In 2005–2010 there was a stage in the regulation of economic relations when the focus was on integration into the international economic system. At that time the main reduction of state support programs for economic entities was carried out. In fact, it is a matter of "devaluation" of special regimes of economic activity. As analysts rightly point out, it is precisely the incompleteness of modernization that has a negative impact both on the potential for structural restructuring of the economy, and on the formation of appropriate political and managerial experience of all interested parties in the matter of state support: authorities, industrial associations, lobbyists, enterprises (Modernization of the system of state support sub of economic entities in Ukraine, 2013: 6).

The adoption of the Tax Code of Ukraine in 2011 marked the beginning of a new stage of changes in the legal regulation of economic relations in Ukraine. And this stage lasted until 2020. During this period there were positive developments in the field of legal regulation of economic activity, as the grounds for granting state support to economic entities were systematized (though not completely). The Law of Ukraine "On Stimulation of Investment Activity in Priority Sectors of the Economy with the Aim of Creating New Jobs" and the State Program for Enhancing Economic Development for 2013–2014 played an important role.

In 2014, part of the territory of the Ukrainian state was annexed by the Russian Federation. Therefore, the planning of measures to support business entities had to be carried out without taking into account the Autonomous Republic of Crimea and the temporarily occupied parts of Luhansk and Donetsk oblasts. It was during this period that the first "glimpses" of legal regulation of the economy began, taking into account a number of anti-crisis phenomena.

In 2020, completely radical changes have taken place in the regulation of the procedure for carrying out economic activities. This was due to quarantine restrictions throughout the country, which were introduced by the Law of Ukraine "On Prevention of the Spread of Acute Respiratory Disease COVID-19 Caused by the Coronavirus SARS-CoV-2" of March 11, 2020, and a resolution of the Cabinet of Ministers of Ukraine.

"On the Establishment of Quarantine and the Introduction of Restrictive Anti-Epidemic Measures

to Prevent the Spread of Acute Respiratory Disease COVID-19 Caused by the SARS-CoV-2 Coronavirus in Ukraine" of 09.12.2020 No. 1236.

This is the fifth stage of regulation of economic activity. Today, it has changed somewhat: in addition to the challenges faced by the legislator in connection with the need to introduce quarantine restrictions, there are also challenges related to the full-scale invasion of Ukraine, the destruction of infrastructure, energy supply, logistics routes, etc. A number of legal acts have been adopted that make it impossible for special economic regimes to operate. In particular, this is the Decree of the President of Ukraine "On the Introduction of Martial Law in Ukraine" No. 64/2022 dated February 24, 2022. It was enacted by the Law of Ukraine "On Approval of the Decree of the President of Ukraine 'On the Introduction of Martial Law in Ukraine'" of February 24, 2022, No. 2102-IX.

### **3. Effectiveness of state policy in the field of economic activity**

For the past 3 years, the Ukrainian state has been facing challenges that are difficult to "reconcile" with the introduction of special forms of economic activity. Therefore, it is necessary to reformat Ukrainian legislation in such a way as to create an effective system of legal regulation of economic activity in special conditions. Although such types of legal regimes were introduced by the Economic Code of Ukraine (when it was adopted in 2003), real mechanisms were never developed.

At the current stage of Ukraine's development, the structural and sectoral restructuring of the entire economy of Ukraine is becoming increasingly important. This is due to the challenges caused by the seizure of a number of territories by the aggressor state in 2014 and the continuation of a full-scale war. In addition, the introduction of restrictive measures in all spheres of the economic system of Ukraine caused a number of problems for the effective functioning of the economic system of Ukraine due to the quarantine on the entire territory of Ukraine to prevent the spread of the acute respiratory disease COVID-19, caused by the coronavirus SARS-CoV-2, on the territory of Ukraine. Later, questions arose about overcoming the consequences of the pandemic and stabilizing the economy, which was emphasized by a number of analysts and scientists (the Ukrainian economy fell by 6.5% in six months. In the second quarter of 2022).

Naturally, the war period of 2022–2023 revealed a number of gaps in the regulation of the state economy. In particular, the basis of legal regulation of the procedure of restoration of territories, reconstruction of entire housing estates, cities

and towns, as well as compensation for damage caused not only to individuals, but also to legal entities, is unclear. According to a report prepared by the World Bank, the European Commission, and the Ukrainian government, the cost of rebuilding Ukraine and its economy as of June 1, 2022, is already about \$349 billion (Sullivan, Rzhetska, 2022).

It should be noted that every economic system sooner or later comes under the influence of various negative phenomena. This is a normal process of development of any system.

The crisis is an integral part of the continuous process of social development and the engine of evolutionary and revolutionary changes in the social, scientific and technical, economic and spiritual life of mankind.

Depending on the variety, type, nature of origin, scale and characteristics of the course, the crisis has a certain degree of controllability. This requires the introduction of an effective anti-crisis regulatory mechanism (Oleshko, 2012).

Now the question is to find ways to work effectively under all conditions. Unfortunately, today it is difficult to predict realistically when exactly this terrible war will end. It is even more difficult to predict when exactly the Ukrainian economic system will be able to overcome its consequences. However, it is clearly necessary to focus on the fact that an important component of sovereignty (including) – the economic system – can work as a clear mechanism in any conditions. For this purpose, it is necessary to formulate the main goals, the main factors influencing the state of the system and the way out of such a situation with the help of legal means. This is possible by choosing the most optimal directions of state policy in this area.

Speaking about the mechanism of anti-crisis regulation of the national economy, it is possible to distinguish 2 groups of principles of economic regulation that form its basis. There are general and special principles. General principles of economic regulation are relevant at any stage of development of a given state. In particular, it is the principle of efficiency, fairness, stability, etc. Special principles are the basis of anti-crisis regulation in situations such as those observed in the current economic system. They should include:

- 1) the principle of orientation of regulation to the achievement of strategic goals of economic development, which provides for the priority of ensuring long-term sustainable economic development over the situational advantages of short-term influence;
- 2) the principle of subordination to the strategic goals of social development – follows from the definition of anti-crisis regulation as a component of strategic state regulation of the national economy;

3) the principle of transparency and openness in the adoption and implementation of anti-crisis measures, which provides for the clarity of public, general "rules of the game" for all economic entities;

4) the principle of timeliness of the adoption of anti-crisis measures – involves forecasting, diagnosis and prompt response to crisis symptoms in order to prevent the cumulative accumulation of crisis potential;

5) the principle of consistency and coordination with intergovernmental anti-crisis programs – involves taking into account the influence of anti-crisis policies of countries – foreign economic partners and supranational structures when developing a national anti-crisis strategy (Oleshko, 2012).

It is worth noting that it is during the crisis that the state policy in the sphere of regulating the activities of business entities, granting certain preferences, introducing restrictions, etc. should be the most transparent and balanced. This will minimize the consequences of the crisis, as well as shorten the period of "being" in it.

The organization and management of interaction between public authorities and business entities have a great influence on the formation of state policy. At the same time, the essence (which is the basis of this process) of cooperation between state authorities and business representatives is an urgent issue, since the interaction of the public and private sectors in the conditions of a market economy can become one of the most effective mechanisms capable of ensuring the comprehensive economic development of the country as a whole and achieving the goals of business entities. It is generally believed that partnership relations between public authorities and business entities are one of the ways of economic development of the country.

The modern mechanism of interaction of the public and private sectors is based on a formal approach, which does not create a motivational basis for cooperation. In order to increase the efficiency of partnership relations, achieve a balance of interests of participants of partnership relations and as a result of increasing the rate of growth of the socio-economic potential of the country, increase the activity of authorities in ensuring the availability of infrastructure services and the development of private sector activities, stimulating business and investment activity, it is important to form a management mechanism the development of partnership relations in the conditions of organizational and institutional environment.

The process of formation of state policy in any sphere plays an important role in the life of society, as it is the answer to its practical problems, i.e., it consists in the analysis of existing problems, the causes of their occurrence and the search for ways to solve them under the influence of social, economic,

political environment. Analyzing the process of development of state policy, the authors distinguish several stages: policy initiation (consists in definition and analysis of social problems, formulation of goals and priorities of state policy); policy formation (development of state policy and coordination of interests, goals and means of their achievement); policy adoption (legitimization and financing of state policy, i.e., consolidation of the developed policy in a set of decisions and programs); policy implementation (policy implementation and monitoring); policy evaluation (checking its effectiveness and quality) (Kasmin, Mordovets, 2017).

#### **4. Update of the state policy in the field of special economic regimes**

Today, the priority of Ukraine is to preserve its sovereignty. This is possible if the territories are returned. The military is showing great capabilities. However, the economic component is and will be important. Because war is a rather expensive phenomenon for all participants.

One of the fundamental national interests of Ukraine is the sustainable development of the national economy. Such development is possible in the presence of an effective mechanism of legal regulation aimed at creating favorable conditions for economic activity and meeting the economic needs of society, which requires the existence of a system-forming, complex, modern codified act. For this purpose, it is necessary to develop a system of legal regulation, firstly, to get out of a deep rut, and secondly, to determine the priorities of economic development today.

The current state of legal regulation, organization and direct implementation of economic activity is characterized by a number of problems, including:

- insufficient consideration of development trends and achievements of world economic science in the legal support of the Ukrainian economy;
- low efficiency of modern methods and means of economic and legal influence on the economy in the face of constant external threats caused by biological (COVID-19 pandemic), military (occupation of part of Ukraine's territory) and other factors;
- insufficient integration of the Sustainable Development Goals into the mechanism of economic and legal regulation of economic relations;
- unregulated and inconsistent approaches to defining organizational and legal forms of business, types of business (economic) entities, contradictions and gaps in defining their legal status, lack of incentives for corporate social responsibility of such entities;
- inequalities in determining the degree and limits of participation of state authorities and local self-

government in economic (business) relations, inefficiency of management of enterprises of the state and municipal sectors of the economy, insufficient economic and legal incentives for implementation of large-scale infrastructure projects on the basis of public-private partnerships, imperfection of approaches to provision of state aid to economic entities, application of separate means of state regulation and implementation of state control and supervision in the sphere of economic (business) activity;

- inadequacy of the procedure for consideration by the Antimonopoly Committee of Ukraine of cases of violation of the legislation on protection of economic competition, incomplete conformity of the system of control over the admissibility of state aid to competition with the legal acts of the European Union;

- insufficient level of legal support for the use of property in the organization and implementation of economic (business) activities;

- lack of clear, systematic legal regulations on methods and legal forms of commercialization of intellectual property rights in the field of business;

- insufficient legal regulation of the conclusion, execution and termination of contracts in the field of economic activity;

- the lag of legal regulation from existing practices and trends in the digitalization of business (economic) activities, the use of the latest electronic and other technologies in these activities, the spread of e-commerce, cryptocurrency circulation, the introduction of smart contracts, and so forth;

- low level of protection of the rights and legitimate interests of participants in business (economic) relations;

- imperfection of the provisions on liability for certain types of offenses by business entities, the list of grounds for such liability and sanctions for offenses in the field of business partially does not meet the needs of today;

- excessive overregulation and, at the same time, gaps and contradictions in the regulation of activities in certain industries and sectors of the economy;

- unfavorable legal conditions for carrying out innovative, investment, foreign economic activities, integration of Ukraine into the global economic space;

- controversial definition of special economic regimes (economic activity in the Armed Forces of Ukraine, economic activity in a state of emergency, the Joint Forces Operation, etc.).

The mentioned problems in the legal sphere, together with other factors, have a negative impact on the state of the Ukrainian economy, which is manifested, in particular, in a high level of its "shadowing", limitation of entrepreneurial initiative, reduction of industrial production, low attractiveness

of Ukraine for foreign investors (Concept of Modernization of Economic Legislation of Ukraine, 2021). It is worth noting that the legislator is taking separate steps to modernize legislation in the field of regulation of economic activity, both in general and in relation to specific problems of implementation mechanisms. Thus, a number of normative legal acts have been adopted, filling the legislative gaps in this difficult period for the state.

Thus, in accordance with the State Strategy of Regional Development for 2021-2027, approved by Resolution 695 of the Cabinet of Ministers of Ukraine of August 5, 2020 (State Strategy of Regional Development for 2021-2027, 2020), the priority tasks of regional policy for the new stage of development of Ukraine. Separately, it should be emphasized that such tasks as accelerating economic growth of regions and increasing their competitiveness can be performed only under certain conditions. Such conditions are recognized as: 1) effective use of internal potential of the region; 2) creation of new jobs; 3) improvement of employment of the population and 4) creation of conditions for return of migrant workers to their homeland.

All these conditions can be created in the event that a local business will work effectively or a foreign investor will "come" to a certain region. At the same time, all these conditions are rather the results of the implementation of an effective state policy in the sphere of regulation of the activities of business entities.

Another legislative act is also worth analyzing. This is the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Principles of State Regional Policy and the Policy of Restoration of Regions and Territories" of 07.09.2022 No. 2389 (On Amendments to Certain Legislative Acts of Ukraine on the Principles of State Regional Policy and the Policy of Restoration of Regions and Territories, 2022). This document introduced fundamental changes in a number of normative legal acts. In particular, Article 415, which regulates the activities of priority development areas, was removed from the Economic Code of Ukraine. On the positive side, the legislator did take a conceptual approach to regulating economic activity regimes: relevant amendments were made to the Law of Ukraine "On the Principles of State Regional Policy" and supplemented by new regulations (On the Principles of State Regional Policy, 2015). Thus, Article 11-2 "Functional types of territories" was added, which actually defines the types of functional types of territories:

- 1) reconstruction territories – micro-regions, territorial communities, on the territory of which hostilities have taken place and/or which have been

temporarily occupied, and/or on the territory of which, as a result of hostilities, critical infrastructure, social infrastructure and housing have been destroyed, and which are characterized by a sharp deterioration in the level of socio-economic development and a significant migration of the population to other regions and/or other states;

2) regional growth poles – micro-regions, territorial communities characterized by significantly better geographical, demographic, socio-economic development indicators compared to other similar territories in the region, and whose growth has a positive impact on adjacent territories, the region and/or the state as a whole;

3) territories with special conditions for development – macro-regions, micro-regions, territorial communities, the level of socio-economic development of which is low or where there are natural, demographic, international, security or other objective restrictions on the use of the territory's potential for development;

4) territories of sustainable development – self-sufficient micro-regions, territorial communities with the available socio-economic potential of the territories and capable of balanced development in the economic, social and ecological spheres.

It is emphasized that these territories are introduced "to plan the restoration and stimulate the development of regions and territories, as well as to introduce special mechanisms and instruments by executive authorities and local governments".

## 5. Findings

In essence, it is about new types of special economic regimes. And also, about new approaches to providing state support to business entities. It should be noted that such approaches are a rather positive development in the system of legislative

regulation of special economic regimes. After all, the means of state support are differentiated depending on the urgent need and the territory to which the legal regime will apply. Although such basic concepts as "micro-region" and "macro-region" are reflected in this Law, and there are definitions of them, some terms need to be clarified and explained.

## 6. Conclusions

In general, such trends in legal regulation should be recognized as positive. Of course, an important task at the moment is the development of a detailed mechanism for implementing the provisions of this regulatory act. Thus, different economic situations require an appropriate reaction of the legislator. Depending on the goal of legal regulation of economic activity, it is necessary to pay attention to a set of legal means that will help achieve appropriate results. If the goal of legal regulation is the restoration of depressed regions, then the legal means should be clearly aimed at stimulating, first of all, the development of entrepreneurial activity in this territory, the inflow of investments, etc. For example, if the goal of legal regulation is to prevent the development of entrepreneurial activity in certain strategic sectors of the economy, then strict requirements for the implementation of such types of entrepreneurial activity should be introduced.

Finally, it should be noted that today the processes of deep transformation of approaches to the introduction of the system of legal regulation of economic relations are taking place in the conditions of the urgent need to "restart" the national economic system of Ukraine. It is obvious that there is a need to create effective mechanisms for regulating the creation and functioning of special regimes of economic activity in the context of anti-crisis regulation.

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