

INTERNATIONAL EXPERIENCE IN REGULATING JOINT VENTURE RELATIONS: SEARCH FOR EFFECTIVE INSTRUMENTS FOR THE POST-WAR RECONSTRUCTION OF UKRAINE

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Abstract. The *subject* of the study is the conceptual, legislative and theoretical provisions in the field of legal regulation of contractual relations in the implementation of joint activities in Ukraine and some European countries, as well as in the field of using the structure of joint activities as a special type of economic relations in the conduct of business. *Methodology.* General scientific methods were used in the research process. The comparative method was used to compare the legislative approaches to the legal regulation of contractual relations in the joint activities of Germany, France, Poland, Moldova and Ukraine. The analysis was used to determine the specifics of legislative approaches to the legal regulation of contractual relations for the implementation of joint activities in these countries, to identify their advantages and disadvantages. Synthesis was used to determine the methodological principles of legal regulation of joint activities. Induction and deduction were used to determine the basic principles of the functioning of civil legal partnerships with the aim of carrying out joint activities by their participants. The *aim* of the article is to propose concrete ways of improving the Ukrainian legal mechanism of contractual regulation of joint activity relations in order to ensure prompt and efficient post-war reconstruction of destroyed infrastructure facilities, the success of the process of recodification of the civil legislation of Ukraine and its harmonisation with the legislation of the EU countries. The *results* of the study have shown that, in general, the Ukrainian legislative approach to the legal regulation of relations on the implementation of joint activities is the most liberal and dispositive in comparison with the corresponding approaches of the European countries, which confirms the opinion that it is necessary to understand the agreement on joint activities as an effective legal and economic instrument for the post-war reconstruction of Ukraine, based on the consolidation of human efforts and resources (capital) for the achievement of a common goal. *Conclusion.* In order to improve the national legislative approach to the legal regulation of relations on joint activities on a contractual basis and to harmonise it with the provisions of European legislation, it is advisable to enshrine the following provisions by way of borrowing: 1) the prohibition of participants to engage in any activity that may be detrimental to the company, including the prohibition of competition; 2) the possibility of depriving a participant of the right to manage the company by a court decision if there is a valid reason, in particular as a result of a gross breach of duty; 3) the right of a participant to withdraw from a limited partnership if there are valid reasons and the invalidity of the objection to this effect; 4) the establishment of a basic list of the essential terms of a simple partnership agreement. This will undoubtedly have a direct impact on improving the institution of joint ventures as an important tool for the development of Ukraine's economic system in the post-war environment, especially in the context of investing in Ukrainian business and rebuilding the destroyed infrastructure.

Keywords: joint venture, economic system, human capital, human resources, consolidation of resources, post-war reconstruction, capital investments, assets, direct losses, economic losses, joint venture agreement, civil law partnership, property contribution, joint ownership, legal entity, legal capacity, economic relations.

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1. Introduction

For many years now, Ukrainian society has been functioning under extremely difficult economic, social and political conditions caused by the armed aggression of the Russian Federation against Ukraine, including almost two years of large-scale military invasion. In addition to the enormous civilian casualties, the war has caused unprecedented infrastructure damage since the Second World War: as of 1 September 2023, the total amount of direct documented damage to Ukraine's infrastructure caused by Russia's full-scale invasion has increased to 151.2 billion USD, according to the Kyiv School of Economics. Compared with June 2023, the amount of direct losses increased by more than 700 million USD – from 150.5 billion USD to 151.2 billion USD. At the start of autumn 2023, the largest share of total direct losses was the loss of housing stock – 55.9 billion USD. A total of 167,200 dwellings were destroyed or damaged as a result of the hostilities, of which 147,800 were private houses, 19,100 were apartment buildings and another 0.35,000 were dormitories. Donetsk, Kyiv, Luhansk, Kharkiv, Mykolaiv, Chernihiv, Kherson and Zaporizhzhia oblasts suffered the most from the destruction of housing. Infrastructure and industry are the second and third most damaged sectors, with losses of 36.6 billion USD and 11.4 billion USD respectively. Since the start of the hostilities in Ukraine, 18 airports and civilian airfields, at least 344 bridges and bridge crossings, and more than 25,000 kilometres of state and local roads and municipal roads have been damaged. Industrial and business losses include at least 426 large and medium-sized private enterprises and state-owned companies that were damaged or destroyed as a result of the war (The total amount of direct damage to Ukraine's infrastructure caused by the war is estimated at \$151.2 billion as of 1 September 2023).

The above-mentioned economic losses suffered by Ukraine as a result of the full-scale military invasion of the Russian Federation are unprecedented and the largest since the Second World War. Unfortunately, this amount is not final, because in the context of the ongoing armed conflict, the constant missile attacks by the aggressor country on peaceful Ukrainian cities and villages, the damage caused by the war is rapidly increasing every day. That is why the most important legislative task today is to find the most effective legal mechanism that is economically viable and capable of ensuring the rapid restoration of Ukraine's destroyed infrastructure and contributing to the stabilisation of the economic system.

In the authors' view, the priority in the context of eliminating the devastating consequences of hostilities and post-war reconstruction should be given to the

principle of pooling efforts and resources (capital), which is natural given the huge unprecedented scale of such destruction and the impossibility of overcoming it alone, without external assistance. One of the most striking examples in the world history of global consolidation of efforts and economic resources for post-war reconstruction is the Marshall Plan, which once became a widely known programme for the restoration and development of Europe after World War II through American economic assistance. The practical implementation of the Marshall Plan began on 4 April 1948 with the adoption by the US Congress of the Economic Cooperation Act, which provided for a four-year programme of economic assistance to Europe in achieving real independence and ensuring integration and cooperation of European countries to solve common problems. The plan should focus on the following main tasks: modernisation of infrastructure; increase in production (especially in key industries – metallurgy and energy); rationalisation of production in agriculture and light industry; monetary and financial stabilisation in Europe (Zapatrina, Shatkovska, 2023). Today, in the context of the Ukrainian-Russian war, there is an equally large-scale consolidation of efforts and economic resources, both at the international and national levels, aimed at the speedy elimination of the catastrophic consequences of the inhuman missile attacks on domestic infrastructure by the aggressor country. From a legal point of view, such consolidation is usually based on civil law obligations arising from a joint activity agreement, the subject matter of which is the performance of a joint economic activity by the partners, usually on the basis of contributions, which are considered to be everything that each partner contributes to the joint activity (joint assets), including cash, other property, professional and other knowledge, skills and abilities, as well as business reputation and business relations.

2. Joint Activities as an Effective Legal Mechanism for the Post-War Reconstruction of Ukraine

Undoubtedly, there are many legal mechanisms for the organisation and implementation of measures to overcome the negative consequences of military operations or natural disasters, which are embodied in the legal structures of various agreements, but each of them is based on the ideas of joint efforts, coordination, solidarity and common purpose, which in turn form the basis for understanding the nature and purpose of a joint activity agreement in the mechanism of civil law regulation and give it priority in the matter of choosing an effective tool for mutual coordination of interests and streamlining activities

to achieve a unified goal of the participants of social relations. Such priority of a joint activity agreement can be further justified by a number of its advantages, including 1) the universality of the mechanism of contractual regulation of joint activity relations, i.e., the possibility of concluding a joint activity agreement to regulate relations in various spheres of public life, ranging from joint implementation of social, economic, infrastructural and industrial projects to joint scientific, technical and innovative research with the possibility of further distribution of its results between the parties to the agreement; 2) the implementation of joint activities both on the basis of pooling the material contributions of the participants and without such pooling; 3) the absence of the need for participants in joint activities to take a number of additional actions related to the registration of a legal entity; 4) the stimulation of the proper performance of obligations by the parties to the agreement by establishing the proportionality of the distribution of risks from joint activities between them depending on the amount of their contributions; 5) the possibility of implementing large and expensive projects requiring significant financial costs on the basis of an agreement on joint activities by attracting investors as parties to the agreement. Thus, there is every reason to conclude that a joint venture agreement is exceptionally functional in the context of post-war reconstruction of Ukraine in terms of its perception as an effective regulator of civil legal relations involving entities that, while maintaining their legal independence, coordinate joint efforts and consolidate various resources to achieve a common goal for all participants that does not contradict the law. A number of economic advantages of joint ventures are also worth noting, including the flexibility of the joint venture mechanism, the ability to jointly manage the company's affairs, and joint ownership of assets. In addition, the procedure for conducting joint activities does not require the drafting of any constituent documents, and is not complicated by the requirement of state registration of a new business entity and licensing if one of the parties to the agreement has a licence to carry out certain types of business activities.

The basis for the legal regulation of relations on joint activities on a contractual basis in Ukraine are the provisions of Chapter 77 of the Civil Code of Ukraine "Joint Activities", the systematic analysis of which allows to state that domestic civil law has created a sufficient legal basis for the possibility of joint activities of subjects of civil legal relations aimed at achieving a certain goal not prohibited by law. The legal regulation of joint venture relations in the Ukrainian legal system allows for flexibility and the combination of private and public interests. The terms of partnership are determined through a joint

venture agreement, which employs a broad dispositive approach. Participants can benefit from both property and non-property assets, such as experience, knowledge, and business reputation. indicate the high efficiency and effectiveness of a joint activity agreement as an instrument of operational post-war reconstruction of infrastructure destroyed or damaged as a result of the military aggression of the Russian Federation against Ukraine (Hutsuliak, 2022). At the same time, in order to implement the idea of recodification of the civil legislation of Ukraine in terms of its modernisation and harmonisation with the standards of the EU countries, it is advisable to analyse European legislative approaches to the legal regulation of relations on joint activities on a contractual basis and draw a number of conclusions as to the expediency or in expediency of their adoption.

3. Study of Approaches to Legal Regulation of Joint Venture Relations in Germany and France

Starting with the comparative legal analysis, it should be noted that a joint venture agreement has a rather long history of its formation and development, which dates back to Roman law. Researchers note that in Roman law, the 'societas' agreement was interpreted as a type of informal joint venture in which two or more parties agreed to cooperate and pool resources to achieve a common goal... Commercial partnerships flourished during the Roman Empire, probably because more complex business organisations were not available at the time (A Casebook on the Roman Law of Contracts). Today, when economic relations in the world have reached their highest level of development and the organisational and legal forms of entrepreneurship are characterised by a great variety, the legal structure of a joint activity agreement is still in demand among the subjects of private law relations. The above indicates that the applicability of a joint venture agreement as a regulator of social relations is not due to the lack of alternatives to the methods of business organisation, but rather to the efficiency and effectiveness of the contractual regulation mechanism on which it is based. Obviously, this explains the fact that today the construction of a joint activity agreement finds its legal consolidation in almost all legislations of civilised countries.

German civil law, as well as the laws of other European countries, does not provide for the possibility of entering into a joint venture agreement in this formulation of its name. Instead, the contractual structure under study is enshrined in the German legal system as a civil law partnership (Gesellschaft bürgerlichen Rechts). The relations of a company are regulated by § 705-740 of the German

Civil Code (Bürgerliches Gesetzbuch vom 18, August 1896), but the legislative approach reflected therein has recently undergone significant changes. Thus, until recently, § 705 provided that the partners mutually undertook to contribute to the achievement of the common goal in the manner specified in the agreement, including making agreed contributions and acting without the establishment of a legal entity. In other words, similar to the domestic approach, joint activity under German law was based on the emergence of a contractual obligation of two or more persons to achieve a common goal for the participants. As for the purpose, it could be both non-property (e.g., assistance to victims of natural disasters or military operations) and property related to the profit of the joint venture participants, and the only requirement for the purpose of such activities set out in the German Civil Code was that it comply with the provisions of the applicable law. § 706 established the obligation to make contributions to the company's activities, which could be either tangible assets or services. In order to achieve a common goal, the partners were endowed with a general obligation to support the interests of the partnership or at least not to contradict them, subject to the duty of loyalty. Therefore, in view of the foregoing, it can be concluded that the German legislative approach to determining the legal nature of a civil law partnership, as well as the agreement that mediated its creation, was characterised by maximum similarity with the domestic legislative approach, which significantly related the said civil law institutions.

However, the legislative approach established in the German legal system has been significantly updated in connection with the adoption of the Modernisation of Company Law (the so-called MoPeG) (Modernisierung des Personengesellschaftsrechts durch das MoPeG), which came into force on 1 January 2024 and introduced fundamental changes to the German Civil Code. Its purpose was to reform the institution of a limited partnership in order to adapt the relevant legal regulation to the needs of modern economic life. In the most general terms, the Law is aimed at transforming a simple partnership into a long-term partnership with its own rights and obligations, i.e., granting it civil legal personality. It should be noted that in accordance with the provisions of § 705-739 of the Civil Code, the legal basis for the establishment of a civil law partnership remains the partnership agreement, in which the partners undertake to promote the achievement of a common goal in the manner specified in the agreement, but the legal status of the company changes: 1) as a result of its registration in a specially created register, it acquires legal personality, i.e., the ability to acquire rights and obligations on its own behalf, to enter into transactions in accordance with

the joint will of the partners and to act in its own name in court; 2) all contributions made by the partners for the purpose of carrying out joint activities become the property of the company; 3) the amount of the partners' profit depends on the size of their shares; 4) the death of a partner, his withdrawal or expulsion from the company, bankruptcy no longer entail the termination of the company's activities. Consequently, it can be stated that from now on, the consequence of entering into a simple partnership agreement by partners aimed at carrying out joint activities is the creation of a quasi-legal entity and granting the partnership independence in external private law relations.

At the same time, it is important to note that under Part 2 of § 705 of the Civil Code, not every civil law partnership acquires the status of a legal person. According to researchers, the new law on civil law partnerships is fundamental to the distinction between external civil law partnerships on the one hand and so-called internal partnerships without legal capacity on the other. Such a distinction is in line with the relevant case law of the Federal Court of Justice and is to be welcomed (Mayer, Rombach, 2021). According to Part 2 of § 705, an alternative to an external civil law partnership is the establishment of an internal inactive partnership by concluding a partnership agreement, the purpose of which is merely to organise and structure the legal relations between its participants. It is believed that the basis for distinguishing between these two civil law institutions is: a) the presence or absence of an intention to participate in external market relations, in particular, to enter into transactions on their own behalf; b) the presence or absence of a goal to carry out commercial activities on a small scale. In the absence of such signs, the conclusion of a simple partnership agreement leads to the creation of an incapable company, the Ukrainian equivalent of which is a simple partnership. The relations regarding its establishment and operation are now regulated by § 740-740C of the Civil Code, which stipulate that 1) an unincorporated partnership has no assets of its own; 2) the termination of its activities is linked to the expiry of the period for which it was formed, the death of a partner and his bankruptcy, as well as to the achievement of the common purpose for which it was formed; 3) the provisions on external civil law partnerships are mainly applied to regulate the relations arising from unincorporated partnerships (in particular, provisions on contributions, management of the partnership, liability, etc.).

Thus, it can be stated that the institution of civil law partnership has undergone significant transformations in the German legal system, the quintessence of which is the official recognition of it as a legally capable company capable of occupying

its own niche in the economic market and carrying out activities specified in the partnership agreement on behalf of the partners. The key aspects that make it possible to understand the significance of this reform include the following: 1) the modernisation of legislative approaches was the result of the influence of court practice on granting legal personality to civil law companies in the absence of relevant regulatory provisions; 2) the purpose of the reform is to make the activities of civil law companies public, transparent and legally defined by creating a special register; 3) the essence of the reform is to distinguish between two types of civil law companies established on the basis of a memorandum of association, the status of which depends not so much on the purpose of joint activity set out in the agreement as on the intention of the participants in such activity to provide the company with a long-term perspective and to give it the right to participate independently in relations with third parties; 4) the reforms resulted in significant restrictions on the discretion of private law entities in joint activities, in particular, the impossibility of conducting small commercial activities in the form of an insolvent company, the impossibility of forming a joint fund of participants' assets when establishing an insolvent company, the obligation of participants to register a civil society in legally established cases, etc. It is important to note that no restrictions on the principle of freedom of contract were introduced in the course of reforming the legal regulation of joint venture relations: German law does not impose any requirements on the form of a limited partnership agreement or its essential terms.

Obviously, the modern German model of the organisation of contractual relations in joint activities differs significantly from the national one because, as Yu. Dmytriieva rightly notes, it is the result of the formation of the "collectivist theory", according to which a simple partnership structured as a "community" is considered a separate special subject of law, and a simple partnership agreement has the features of duality and at the same time becomes the "charter" of the partnership, which determines the relations of its members among themselves and with the partnership itself. At the same time, the German Federal Court of Justice played an important role in recognising the dominance of the "collectivist theory", according to which the legal capacity of a simple partnership is manifested in the ability to participate in legal transactions, acquire rights and obligations, sue and be sued in court (Dmytriieva, 2008). Instead, the domestic legal system is characterised by the approach that a simple partnership is not considered as an independent subject of civil law relations, but as one of the simplest contractual instruments for several subjects to achieve a common goal, not prohibited by law, by consolidating their efforts and

resources. In the authors' opinion, by providing the mechanism of legal regulation of contractual relations on joint activity with maximum flexibility and fixing a minimum list of requirements for its organisation, the legislator has thereby given this form of partnership versatility and made it a rather attractive alternative form of joint activity without establishing a legal entity capable of meeting the needs of subjects of private law relations. This approach is especially important for Ukraine today, under martial law, when there is an urgent need to organise a rapid consolidated restoration of damaged and destroyed infrastructure without unnecessary formalities and functional restrictions, and a simple partnership agreement can be an effective tool for this.

In France, joint ventures can also be carried out in the form of civil partnerships, which are governed by Articles 1845-1870-1 of the French Civil Code (Code civil). The legislation does not provide a legal definition of a civil partnership, but according to Article 1845 of the French Civil Code, it is any partnership that carries out a civil activity, i.e., one that is not otherwise defined by law because of its form or purpose. In this context, it is about contrasting civil society with commercial companies, which are defined in Article L 210-1 of the French Commercial Code (Code de commerce) as general partnerships, limited liability companies, limited partnerships and joint stock companies (Code de commerce). In other words, any partnership that is not established in one of the above legal forms is presumed to be a civil partnership. The key feature of a civil partnership is the non-commercial nature of its main activity, but commercial activity is not prohibited as an additional activity. As noted in the literature, the most common areas of activity of civil societies in France are: agricultural activities; mining activities; intellectual activities; free professions; real estate transactions; and activities of cooperative groups (Sociétés civiles de droit commun). The main aspects of joint activity in the form of a civil partnership include the following: 1) a civil partnership in France has the status of a legal entity and must be registered in accordance with the procedure established by law; 2) the legal basis for its establishment is a civil partnership agreement, which is subject to strict requirements compared to other European countries, in particular: a) mandatory written form; b) a clear list of essential terms: the amount of each partner's contribution, the form of partnership, the purpose of the activity, the name, head office, share capital, the term for which the partnership is established and the methods of its activity; 3) contributions by each shareholder may consist of cash, goods or equipment, which, upon contribution, become the property of the company; 4) shareholders' liability to third parties is unlimited; 5) unless otherwise provided

by the agreement, the death of a shareholder or his withdrawal from the company is not a ground for termination of the company. The above analysis shows that the concept of joint activity in France is placed by the legislator in a rather narrow regulatory framework compared to other European countries, which does not contribute to the establishment of discretion as a priority method of private law regulation. Restrictions on the discretion of civil law subjects permeate almost all aspects of organising and carrying out joint activities, from the conclusion of a civil partnership agreement to the purpose of its activities, which should be mainly social or professional in nature, not to mention the need to carry out a series of acts relating to the creation of a civil partnership, the procedure for which is virtually identical to that for the creation of corporate entities. In the light of the above, it is clear that the national legislative approach to the legal regulation of joint activity relations has a number of advantages over the French approach, in terms of the relative simplicity of its organisation, the absence of restrictions on the purpose of the joint activity and the requirements for its registration, which undoubtedly contribute to the initiative of private law entities to consolidate their efforts to jointly implement projects of different content and scale. On the other hand, it is advisable to legislate a basic list of essential terms of a joint venture agreement, which, on the one hand, will facilitate the implementation of the principle of legal certainty, which has been repeatedly updated by the practice of the European Court of Human Rights, and, on the other hand, will outline the range of the most important aspects on which the parties must agree.

4. Study of Approaches to Legal Regulation of Joint Venture Relations in Central and Eastern Europe

In connection with the research topic, it is also advisable to consider the peculiarities of the legal regulation of joint activity relations in Ukraine's neighbouring countries. For example, in Poland, as well as in other European countries, the concept of joint activity is not defined at the legislative level, while joint activity relations are traditionally referred to as a civil law partnership. The legal regulation of relations concerning the establishment and operation of a civil law partnership is provided for in Articles 860-875 of the Civil Code of the Republic of Poland (Kodeks cywilny). Pursuant to Article 860 of the Polish Civil Code, a partnership agreement requires the partners to undertake certain actions, including contributions, in order to achieve a common business objective. The partnership agreement must be confirmed in writing. Thus, a partnership in

Poland is also established on the basis of a bilateral or multilateral agreement, but the main difference is that the common objective of the partnership must be exclusively economic, although it is not always a matter of making a profit. It is considered that the economic purpose of a civil partnership is a necessary element of the agreement (*essentialia negotii*), without which a civil partnership agreement cannot exist, otherwise it will be considered void or unenforceable. Similar to a domestic simple partnership agreement, the partners who agree to carry out joint activities undertake to make contributions in the form of transfer of property or provision of services.

With regard to the legal status of a partnership, it should be noted that the Polish legal system does not consider a partnership to be a legal entity with its own civil legal personality, which in turn determines the following features of the legal regime of its operation: 1) the parties to the partnership agreement are all the partners of the partnership, not the partnership itself; 2) the subjects of rights and obligations arising in connection with the establishment of the partnership are its partners; 3) the partners, not the partnership, are parties to litigation; 4) the partnership does not have its own property, but the contributions made by the participants to achieve a common goal are their common property, and the creditors of the participants cannot enforce their share in the common property against the personal obligations of the participants; 5) the participants are jointly and severally liable for their obligations.

The rules for participation in the distribution of profits and losses of a partnership are set out in Article 867 of the Polish Civil Code, which stipulates that each partner is entitled to an equal share in profits and a share in losses in the same proportion, regardless of the nature and value of the contribution. However, the agreement may provide for a different ratio of partners' shares in profits and losses. In addition, some partners may be excluded from sharing in losses, but in no case may a partner be excluded from sharing in profits.

Polish law is quite restrained when it comes to winding up a company. Article 873 of the Polish Civil Code contains a presumption of partnership existence, according to which, if, despite the existence of contractual grounds for liquidation, the partnership continues to exist with the consent of all partners, its activities are deemed to be continued for an indefinite period. Instead, Art. 874 provides for the right of a partner to demand the liquidation of the partnership through the court for good cause. The partnership is terminated on the day one of the partners is declared bankrupt. Scholars cite the following possible reasons for the termination of a partnership: 1) the occurrence of an event specified in the agreement (e.g., the expiry of the period for

which the agreement was concluded); 2) the decision of the partners to dissolve the partnership; 3) the achievement of a common goal; 4) the withdrawal of all but one partner; 5) a court decision; 6) the declaration of bankruptcy of a partner (Herbet, 2008). The legal consequence of the termination of a civil partnership is the transformation of joint ownership into partial ownership and the return of the contributions to the participants. In this case, the surplus of the joint property is divided among the participants in the same proportion as they participated in the profits of the partnership.

Hence, it can be stated that the Polish and Ukrainian legislative approaches to the legal regulation of joint venture relations are very similar, which is manifested, in particular, in: 1) the legal requirement for a written form of a simple partnership agreement and non-specification of its essential terms; 2) a discretionary approach to determining the contributions of the partners and the presumption of their equality; 3) joint and several liability of the partners for obligations arising from joint business activities; 4) proportionality of profit distribution. The approaches to allowing participants to withdraw from a partnership established for an indefinite period by giving at least three months' notice to other participants are also identical. At the same time, the approach of Polish law, which provides for the right of a shareholder to withdraw from the company for a limited period of time if there are valid reasons, as well as the invalidation of an objection to this, is quite appropriate in this context and should be adopted by the Ukrainian legislator, which will undoubtedly contribute to the establishment of the principle of discretion, in particular, the elimination of situations in which a person is actually forced to participate in the company and perform its duties when significant subjective circumstances make it impossible.

Finally, consider the peculiarities of legal regulation of joint venture relations in the Republic of Moldova. Pursuant to Article 1926 of the Civil Code of Moldova, under a simple partnership agreement, two or more persons (partners) undertake by mutual agreement, without establishing a legal entity, to act together to make a profit or achieve another goal, sharing in the joint activity on an equal basis with other persons in profits and losses¹. As for the form of the contract, it should be noted that it does not necessarily have to be in writing, however, if the law requires a certain form for the sale of a thing under the threat of its nullity, the same form requirement applies to the simple partnership agreement, the subject of which is such a thing. At the same time, the

law provides for a rather extensive list of essential terms and conditions on which the parties must agree. Pursuant to Article 1928(2) of the Civil Code of Moldova, these are: the name or names, place of residence or location of the partners; rights and obligations of each partner; the procedure for establishing management bodies and their functions; distribution of profits and losses among the partners; the procedure for excluding one or more partners; the term for which the partnership is established; the procedure for terminating the partnership and distributing property. As noted above, the consolidation of the essential terms of a simple partnership agreement has a number of advantages, but in the authors' opinion, in the context of the relevant legislative approach of Moldovan legislation, it is inappropriate to consolidate such an extended list of them, since most of these issues are regulated by the provisions of the Civil Code of Moldova and are of a general nature. Instead, it is surprising that the list of material terms does not include the purpose of the joint venture, since it is the purpose that is decisive in the context of consolidated performance of obligations by the parties to a simple partnership agreement.

As for other important aspects of carrying out joint activities in the form of a simple partnership under Moldovan civil law, the following may be highlighted: 1) each of the participants must make a contribution to the joint activity, which can only be in the form of things and property rights; 2) unless otherwise provided for in the agreement, the contributions of the shareholders turn into their joint property; 3) a shareholder's delay in making a contribution entails an obligation to pay interest; 4) the management of the company's activities may be carried out both jointly and by individual shareholders, and the possibility of revoking such powers in case of non-fulfilment by the shareholders is provided for; 5) unless otherwise provided for in the agreement, the distribution of profits and losses of the partners in proportion to their contributions; 6) the partners are jointly and severally liable for the obligations of the simple partnership; 7) a partner may withdraw from both a fixed-term and an unlimited partnership, and in the former case, withdrawal is possible only for valid reasons, such as the failure of the other partner to perform the agreement, intentional or gross negligence, inability to continue to fulfil the obligations assumed, and so forth; 8) as a general rule, the refusal of one of the partners to continue to participate in the agreement entails the termination of the partnership, but the agreement may provide that the partnership is not terminated as a result of the withdrawal of one of the partners from the

¹ Codul civil al Republicii Moldova. Cod Nr. 1107 din 06-06-2002. Available at: https://www.legis.md/cautare/getResults?doc_id=141503&lang=ro

partnership, and only the person who has ceased to participate in the agreement is excluded; 9) the grounds for termination of a simple partnership are: a) mandatory (expiry of the term for which it was established, except when the participants agree to continue the company's activities; decision of the participants; initiation of bankruptcy proceedings against the company's property; foreclosure by a participant's creditor on his share in the common property; achievement of the goal or impossibility of its achievement); b) dispositive (death of one of the individual shareholders or termination of activities of one of the legal entities; initiation of bankruptcy proceedings against one of the shareholders; establishment of a court measure of protection in the form of guardianship or trusteeship for one of the shareholders).

The analysis of the Moldovan legislative approach to the legal regulation of joint venture relations shows that it is conceptually similar to the approach enshrined in the civil legislation of Ukraine, except for the absence of the concept of joint venture in the Moldovan legal system, as is the case in Articles 1130-1131 of the Civil Code of Ukraine, which is surprising given the common Soviet past of Moldova and Ukraine. However, it is important to note that Moldovan legislation overregulates relations concerning the operation of a simple partnership. This is evident in the establishment of an unjustifiably broad list of essential conditions and the resolution of issues related to the participation of a participant's spouse or heirs in a simple partnership. The inclusion of provisions regarding the termination of the partnership's activities in the event of the death of one of the participants, although not relevant to the organization of relations in a simple partnership, indicates excessive detailing of the legal regulation by the legislator. This is unnecessary and unjustified in the context of private law relations.

5. Conclusion

Summarising all of the above, it is possible to draw several conceptually important conclusions regarding the peculiarities of legal regulation of joint venture relations in European countries: 1) the legislation of each of the analysed countries provides for the possibility of conducting joint activities on the basis of an agreement, but the approaches to regulating

these relations in Western European countries differ significantly from those in Central and Eastern Europe; 2) the difference between these approaches is mainly based on the following: granting or not granting legal personality to simple companies, which is due to the specifics of market relations and peculiarities of legislative traditions; special procedure for their establishment; the level of restriction of freedom of contract and discretion of the parties in the establishment and operation of simple companies; specific purpose of establishing simple companies, etc; 3) the legal prerequisite for the establishment of a simple partnership in all the analysed states without exception is a civil law contract of a simple partnership, the specifics of which also differ; 4) the legislative approaches of Eastern and Central European countries to the legal regulation of joint venture relations, which are mainly based on the dispositive principles of their regulation and minimisation of restrictions on the discretion of the parties to joint ventures, contribute to their initiative to consolidate efforts to jointly implement projects of different content and scale in many areas of public life, including the post-war reconstruction of Ukraine's infrastructure facilities.

In order to improve the national legislative approach to the legal regulation of relations in the field of joint ventures on a contractual basis and harmonise it with the provisions of European legislation, it is advisable to adopt the following provisions by borrowing them: 1) prohibition of the participants to engage in any activity that may harm the company, including the prohibition of competition; 2) possibility of depriving a participant of the authority to manage the company by a court decision if there is a valid reason, in particular as a result of a gross breach of duty; 3) provision of the right of a participant to withdraw from a limited partnership if there are valid reasons, as well as establishing the invalidity of the objection to the contrary; 4) establishment of a basic list of the essential terms of a simple partnership agreement. This will undoubtedly have a direct impact on improving the institution of joint ventures as an important tool for the development of the Ukrainian economic system in the post-war environment, especially in connection with investments in Ukrainian business and the reconstruction of the destroyed infrastructure.

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