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THE CONCEPT OF SELF-REGULATION OF ECONOMIC AND TRADE ACTIVITIES

Abstract. The *purpose* of the article is to define the concept of self-regulation of economic and trade activities.

Research methods. The work is based on general scientific and special methods of scientific knowledge.

Result. The author has studied theoretical principles of self-regulation of economic and trade activity, i.e., concept, signs, types, and means.

It is established that self-regulation of economic and trade activities is a unique, complex, and isolated system of rules under which the parties themselves choose and enforce conduct rules by relying on mutual good faith and integrity. During the analysis of the essence of “self-regulation”, the following types are distinguished: by the nature of interaction with the state (delegated, voluntary, and mixed), by means (contractual, corporate, and institutional), by consolidation forms (regulatory, organizational, and/or institutional).

The research marks that most European countries, such as Poland, France, Italy, Germany, and others, legislatively settled the activities of self-regulatory organizations and the issue of self-regulation as a whole. The effectiveness of the functioning of self-regulation and the activities of self-regulatory organizations has been proved based on the legislative practice of the European Union countries. The author has studied contractual self-regulation and emphasized that the parties themselves can act as a kind of “legislators”, but within the limits determined by law. It is specified that the contract of delivery and the sale of goods are means of self-regulation, because they implement the principle of free will and allow the parties to determine convenient rules of conduct in contractual relations.

Conclusions. It is stated that a systematic regulatory legal act which would clearly regulate social relations related to self-regulation as a whole has not yet been adopted. It is proposed to amend and/or supplement the Commercial Code of Ukraine and/or adopt the Law of Ukraine “On Trade” which would enshrine the term “self-regulation”, “self-regulation of economic and trade activities” and determine the principles of state regulation and self-regulation, as well as other issues of organization and implementation of economic and trade activities.

Key words: self-regulation, economic and trade activities, state self-regulation, self-regulatory organization, contractual self-regulation, contractual obligation.

1. Introduction

The self-regulation of economic and trade activity is an important aspect of state development, given the European integration vector and commitments to build good governance. The legal support of economic and trade activities in Ukraine is far from perfect. Many issues are solved through self-regulatory means, the use of which is also poorly managed. In addition, the balance of state regulation and self-regulation deserves particular attention. There is still no systematic normative legal act that would expressly govern social relations related to self-regulation as a whole.

The idea that the best way to allow eco-

nomical and trade activities to function properly is to allow entities to create their own rules, which establish additional responsibility, has been increasingly used. It will result in reduced state intervention and contribute to the effective development of some economic sectors. In this context, such concepts as regulation, self-regulation, and co-regulation of economic activity have become the hot-bottom issues for discussion among scientists and practitioners: O. Belianevych [2], O. Vinnyk [4], O. Honcharenko [5, 6], V. Dobrovolska [10], V. Milash [16], et al.

The purpose of the article is to define the concept of self-regulation of economic and trade activity.

2. Theoretical basis of the concept of self-regulation of economic and trade activities

The self-regulation of economic and trade activity is a unique, complex, and relatively separate system of rules under which the parties undependably choose (create, agree) conduct rules and adhere to them by relying on mutual good faith and integrity.

In general, self-regulation is a way of governance that implies minimum state intervention, and participants (at their discretion) determine rules for relevant activities, monitor compliance with the rules, and use specific methods to affect violators. State regulation is not excluded – on the contrary, it may manifest itself in various forms, depending on the applied means of self-regulation and other approaches.

Part 1 of Art. 5 of the Commercial Code of Ukraine (the CC of Ukraine) establishes that legal economic order in Ukraine is based on the optimal combination of the market self-regulation of economic relations of business entities and state regulation of macroeconomic processes (Commercial Code of Ukraine, 2003). O. Goncharenko, in his monographic research, considers the concept and essence of self-regulation of economic activity but, first of all, it is worthwhile to set the ratio and interaction of state regulation and self-regulation of economic and trade activity (Goncharenko O.M., 2019).

O. Goncharenko holds that “the state regulation of economic activity uses the particularities of self-regulation of economic activity, its internal and external manifestations and effects – to achieve the public goal – ensuring legal economic order within the state” (Goncharenko O.M., 2018, p. 42). It is worth agreeing with the above opinion because effective self-regulation should maintain the progress of various types of economic activity, which will increase the confidence of civil society in the state.

V. Dobrovolska analyses state regulation and self-regulation from the entrepreneurship perspective. She believes that state regulation and self-regulation should not exclude each other, and their cohesion is one of the manifestations of combined public and private interests in entrepreneurship and is a necessity” (Dobrovolska V.V., 2005, p. 305).

In turn, M. Sibilov notes that the concept of legal regulation and its mechanism is grounded on such principles as recognition of the exclusive state nature of legal regulation, that is, in practice, legal regulation is realized from one center, which is the state power; recognition of the internal unity of legal regulation and its mechanism conditioned by unity of the economic basis of society, social relations subject to legal regulation, and the entire sys-

tem of law. The author also states that slogans in the totalitarian regime created obstacles even for promoting the idea of the probable existence, in addition to external, of internal legal regulation (self-regulation) of social relations; in fact, recognition of the legal norm is the only regulator of social relations (Sibilov M., 2014, p. 38-40). Developing the opinion, the scientist points out that the concept of self-regulation is inherent in private contractual relations, which conduct decentralized regulation within the scope of the dispositive principles of civil relations based on legal equality, free expression of will, and property independence of subjects (Sibilov M., 2014, p. 40).

O. Zaliyev believes that “the concept of self-regulation, as an alternative to state regulation, allows minimizing public spending for regulating and ensuring maximum flexibility to market participants and respecting their interests....thus, the effective development of the economy requires a well-developed system of interaction between the institutions of self-regulation and state regulation of the economy in general and the relevant industry, in particular, given its specifics” (Zaliyev O.M., 2013, p. 238-239). One should agree with the above statement, extrapolating the following to the self-regulation of economic and trade activity: the effective development of economic and trade activity (hereinafter – “ETA”) requires a developed system of interaction between the institutions of self-regulation and state regulation, given the specific structure of ETA, peculiarities of its implementation, and the legal status of subjects.

Yu. Ostapenko holds that “although self-regulation is understood as the establishment of certain rules by subjects (at their discretion), creation and control over their implementation, the state keeps setting the limits for actions of business entities” (Ostapenko Y.I., 2018, p.9).

O. Goncharenko, in his monographic study, considers the concept and essence of self-regulation of economic activity. Therefore, the author interprets the concept of self-regulation of economic activity as an independent organization by economic entities (by their organizational associations) of relations in public production, manufacturing, and sale of products, the performance of works, or provision of services of a cost nature, which have price determinacy, using elaborated and established rules in order to meet economic and social needs (Goncharenko O.M., 2019, p.66). O. Belyanovich assures the following: “...self-regulation may be deemed to be taking of managerial decisions by an individual entity/entities of economic (business) activity on its own economic activity, which is conducted independently and at its own risk

following available regulatory information (in the form of legal rules)" (Belyanovich O.A., 2016, p. 40).

When analyzing the essence of "self-regulation", it is expedient to distinguish its types depending on specific criteria:

by the nature of interaction with the state (delegated, voluntary, and mixed) (Zeidel M.I., 2011, p. 160);

by means (contractual, corporate, and institutional) (Goncharenko O.M., 2016, p.69);

according to the forms of consolidation (regulatory, organizational, and/or institutional) (Goncharenko O.M., 2016, p.69).

Under the first criterion, each type of self-regulation is linked with the format of interaction with the state. For example, voluntary self-regulation allows subjects to establish rules and control their implementation without state intervention, while delegated one allows self-regulatory organizations to control specific sectors by delegating functions determined by law from the state.

Thus, with the help of self-regulation of economic activity, a range of statutorily unregulated social relations can be well-arranged and settled, or it can be implemented relations that have not been fixed, proceeding from the principle "everything which is not forbidden is allowed". The studied contributions pay key attention to the self-regulation of economic activity in general or sectors other than economic and trade activity despite the essential and accessible nature of ETA to meet the economic and social needs of citizens of Ukraine. However, the self-regulation of the industry concerned is a poorly studied problem.

The concept of economic and trade activity provided for in Article 263 of the Commercial Code of Ukraine, which states that economic and trade activity is the activity carried out by business entities in the turnover of commodities and focused on selling industrial products and consumer goods, as well as supporting activities that ensure their sale by providing appropriate services (Commercial Code of Ukraine, 2003). In other words, economic and trade activity is an independent, voluntary activity of business entities, the prime objective of which is to make a profit through buying and selling goods and providing services related to commodity turnover.

According to K. Khrimli: "... economic and trade activity is an independent type of economic activity, which has its subject composition, object, subject matter, and procedure of implementation. Economic and trade activity involves the sale of industrial products and consumer goods and the implementation of supporting activities that ensure their sale by pro-

viding appropriate services (Hrymly K.O., 2014, p.220). The regulation of economic and trade activity should be based on an organic combination of market self-regulation and public administration to keep the social focus of the economy using economic and legal levers.

Considering the essence of economic and trade activity, it is worth referring to the features of economic activity proposed by V. Shcherbyna, as follows: economic activity involves manufacturing products, performing works, providing services not only for the private needs of a manufacturer but also of other persons; economic activity is carried out professionally, and the result should be achieved for a fee; economic activity combines both the manufacturer's private interests and public interests (state, society, large segments of the population, etc.)" (Shcherbina V.S., Pronskaya G.V., & Vinnyk O.M., 2003).

O.M. Vinnyk discusses economic activity through the prism of entrepreneurial activity, noting that its objective is manufacturing, the performance of works, the provision of services for their sale for a fee (as a product). Therefore, it is possible to distinguish such characteristics of economic activity as social utility, professionalism, and social orientation (Vinnyk O.M., 2004).

Extrapolating the general features of economic activity to the specification of the ETA features, one can draw the following conclusions: 1) economic and trade activity is an independent type of economic activity, which has its subject composition, object, subject matter, and procedure of implementation; 2) during the implementation of ETA, it is covered private interests of business entities, public interests of society and the state, consumer interests, which generates self-regulation and the need for its legal support.

The development of self-regulation is now chaotic enough. Self-regulatory organizations basically exist only in some markets: the market of appraisers, the securities market, and the financial services market. However, even in the mentioned areas, self-regulation is carried out under different rules.

The current legislation does not enshrine the definition of the terms "self-regulation" and "self-regulation of economic and trade activity". The Commercial Code of Ukraine uses "regulation of economic activity", "state regulation of economic activity", "market self-regulation", etc. Therefore, it is relevant to supplement the economic laws of Ukraine with modern approaches to maintaining economic activity in general and ETA, in particular. That sort of adequate legal regulation can take place through extending the Commercial Code of Ukraine by

provisions on the further development of self-regulation of economic activity and self-regulation of economic and trade activity.

Compared to Ukraine, the vast majority of European states, such as Poland, France, Italy, Germany, and others, legislated the activities of self-regulatory organizations and the issue of self-regulation as a whole. Self-regulation and self-regulatory associations have taken their proper place and play an important role in controlling professional activities, entrepreneurship, creating activity standards for particular professions, industries, or businesses, etc. At the same time, their activity is transparent and predicted (Zaletov O.M., 2013, p. 236).

Thus, the current legislation of the Member States of the European Union prioritizes the idea of the effectiveness of self-regulation. Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising establishes does not exclude the voluntary control, which Member States may encourage, of misleading or comparative advertising by self-regulatory bodies and recourse to such bodies is additional measure of pre-trial or administrative proceedings (Directive EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising, 2006). One can conclude that the legislative practice of the EU countries demonstrates the effectiveness of the functioning of self-regulation and activities of self-regulatory organizations since they are treated as bodies that provide additional support for pre-trial or administrative proceedings.

3. The importance of negotiated self-regulation to the development of economic and trade activities

According to part 1 Art. 263 of the Commercial Code of Ukraine, economic and trade activity is mediated by economic contracts of supply, purchase and sale, lease, barter, leasing, etc., contracting for delivering agricultural products and energy supply (Commercial Code of Ukraine, 2003).

A contract is a central element of the system of self-regulation at the doctrinal level, and the right of the parties to recede from the current legislation is one of the manifestations of self-regulation in the contractual sphere. Following V. Milash, “a range of legal rules directly provides for the possibility of self-regulation in the specification form – “...unless otherwise provided in the contract” (Milash V., 2014, p.64-65). The choice of conduct rules during the contractual self-regulation

in economic and trade relations is expressed in such forms as the parties’ choice of such conditions as: the form of the contract, subject-matter, term, and responsibility for its violation. Consequently, the parties are not allowed to recede from the mandatory rules enshrined in legislative acts hereby ensuring self-regulation in contractual relations within relevant limits (Babadzhanian H.B., 2021, p. 57). A contract may be considered a means of self-regulation in economic and trade relations if the rules enshrined by the state “allow” the parties to be self-regulated, that is, establish that they have the right to do so (Vasilev, V.V. 2018. p. 13–14).

Thus, a contract acts as a set of legal means, both of a dispositive and imperative nature, designed to achieve an optimal outcome that should meet the interests of the parties to the contract and society.

The parties to the economic contract, entering into contractual relations, voluntarily incur obligations and responsibilities before counterparties and third parties not only for the result but also the entire contract performance. The process of concluding an economic contract, under specific conditions, is an opportunity for the parties to influence each other’s economic activities.

The contracts of supply and purchase and sale, as means of self-regulation, adhere to the principle of free will and allow the parties to outline convenient rules of conduct in the contractual relationship. At the same time, the above contracts may be concluded both orally and in writing, that is also a manifestation of self-regulation of the parties to the relationship.

4. Conclusions

Having analyzed the legal nature of self-regulation of economic and trade activity, the author defines it as follows: the self-regulation of economic and trade activity is an independent arrangement of behavior by economic entities, given their commercial interests, using developed and established rules to improve the organization and performance of economic and trade activity.

Nowadays, the current legislation has not yet enshrined the concepts of “self-regulation of economic activity” and “self-regulation of economic and trade activity”. Therefore, the author considers it essential to supplement modern commercial legislation or adopt a new, comprehensive regulatory act – the Law of Ukraine “On Trade” – which would fix the mentioned concepts and determine the principles of state regulation and self-regulation, as well as the organization and performance of economic and trade activities.

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ПОНЯТТЯ САМОРЕГУЛЮВАННЯ ГОСПОДАРСЬКО-ТОРГОВЕЛЬНОЇ ДІЯЛЬНОСТІ

Анотація. Мета – визначення поняття саморегулювання господарсько-торговельної діяльності.

Методи дослідження. Робота виконана на підставі загальнонаукових та спеціальних методів наукового пізнання.

Результати. Досліджено теоретичні засади саморегулювання господарсько-торговельної діяльності, зокрема поняття, ознаки, види, засоби. Встановлено, що саморегулювання господарсько-торговельної діяльності – це унікальна, складна та виокремлена система правил, в якій самі сторони обирають для себе правила поведінки та виконують їх, покладаючись на взаємну добросовісність та добросовісність. Під час аналізу сутності «саморегулювання» виділено такі види: за характером взаємодії з державою (делеговане, добровільне та змішане), за засобами (договірне, корпоративне та інституційне), за формами закріплення (нормативне, організаційне та/або інституційне).

Зазначено, що переважна більшість європейських держав, таких як Польща, Франція, Італія, Німеччина та інші, законодавчо врегулювали діяльність саморегулювних організацій та питання саморегулювання в цілому. Доведена ефективність функціонування саморегулювання та діяльності саморегулювних організацій на базі законодавчої практики країн Європейського Союзу. Досліджене договірне саморегулювання, акцентовано, що сторони самі можуть виступати своєрідними «законодавцями», проте у визначених правових межах. Зазначено, що договір поставки та купівлі-продажу товарів є засобами саморегулювання, адже реалізують принцип свободи волі та дають змогу сторонам визначити для себе зручні правила поведінки у договірних відносинах.

Висновки. Зазначено, що досі не прийнято системного нормативно-правового акта, який би чітко врегулював суспільні відносини, пов'язані із саморегулюванням загалом. Запропоновано внесення змін та/або доповнень до Господарського кодексу України та/або прийняття Закону України «Про торгівлю», котрий закріпив би термін «саморегулювання», «саморегулювання господарсько-торговельної діяльності», визначив би засади державного регулювання та саморегулювання та інші питання організації та здійснення господарсько-торговельної діяльності.

Ключові слова: саморегулювання, господарсько-торговельна діяльність, державне саморегулювання, саморегулювальна організація договірне саморегулювання, договірне зобов'язання.

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