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UNDERSTANDING AND SIGNS OF A STANDARD AGREEMENT IN THE FIELD OF ECONOMIC ACTIVITY

Abstract. Purpose. The purpose of the article is to analyze the concept and components of a standard agreement in the field of economic activity with a proposal to clarify the understanding of a standard agreement, to determine the directions of development of the theoretical provisions of a standard agreement and their practical application. **Research methods.** The purpose of the article can be achieved through the use of methods that are usually applied when conducting scientific research in legal sciences. In particular, the following methods and their groups were applied: general scientific dialectical method, comparative-legal, systemic-structural, analytical-synthetic, epistemological, formal-legal method, and others. **Results.** The article compares the standard agreement in the field of economic activity with the agreement following the criteria for determining their content, named in the fourth part of Article 179 of the Economic Code of Ukraine – agreements based on the free will of the parties, exemplary agreements, typical agreements, accession agreements. The concept of “standard” in the sense of the Law of Ukraine “On Standardization” made it possible to identify and characterize certain features of the standard agreement, and the analysis of the standard agreement provisions on opening and maintaining a bitcoin wallet and the currently defunct Standard Agreement for the insurance of areas of winter cereals with state support against agricultural risks for the overwintering period (insurance product 2) made it possible to justify the conclusions and proposals. **Conclusions.** It is proposed to develop standard agreement for most cases of the beginning of economic relations between two or more participants with the definition of all possible essential conditions. It is recognized that standard agreements, according to the criterion for determining the content of the agreement, can most often be standard and accession agreements, and can be symbiotic derivatives of the named agreement. The proposed theoretical provisions of the standard agreement will have a doctrinal status for a certain time, and after approval of some of them by acts of the CMU or other central executive bodies, they will receive a legitimate status. The form of a standard agreement based on the criterion of performance periods can be applied to general (framework) and, less often, current agreement. It is proposed to spread standard agreement by industries and spheres of the economy with the predominant conclusion of such agreements using the Internet and other digital technologies.

Key words: agreement, standard agreement, typical agreement, accession agreement, standardization, Cabinet of Ministers of Ukraine, general (framework) agreement, essential terms of the agreement, branches of economy, central body of executive power, legislation, legitimation.

1. Introduction

The rights and obligations of participants in economic relations arise from the law, an act of the economic management body, and an economic agreement. The content of the agreement (its essential conditions) can be determined based on: – the free will of the parties; – an exemplary agreement; – a typical agreement; – an accession agreement, as indicated in the fourth part of Article 179 of the Economic Code of Ukraine (Economic code of Ukraine, 2003). In other words, in most cases, agreement rela-

tions in the field of economic activity are established between counterparties on the basis of an agreement concluded as a result of face-to-face or absentee negotiations, classic exchange of draft agreements and their coordination, etc. In certain cases, the state, represented by certain bodies, determines mandatory or recommended essential conditions for certain types of economic agreements. This can be done with a recommendation to simplify and unify agreement relations between the participants, or with the purpose of promoting the conditions

needed by the state through economic agreements. Amidst the development of the economy digitalization, a significant number of economic and other agreements, in particular agreements in the field of economic and commercial activity, are concluded via the Internet or through the mediation of vending machines. More complex agreements still require a certain attention of the parties' representatives and the agreement of at least some conditions by the participants' representatives. Despite all the possibilities of choosing the method of agreement conclusion, judicial and extrajudicial disputes between counterparties in economic agreements in Ukraine, just like in most other countries of the world, do not decrease. It is obvious that there is a need to develop certain standard conditions for certain agreements with normative or simply bilateral confirmation of them in order to simplify the procedure for concluding them, save time for this and, most importantly, prevent non-fulfillment, improper fulfillment of agreement obligations by the parties, and in the event of this is saving time in settling the dispute between them.

It cannot be said that the problems of concluding, changing, terminating economic, administrative, civil law agreements, settling disputes between their participants, as well as the typology of economic agreements are poorly researched. Many Ukrainian scientists and practitioners conducted the relevant research. We can name such scientists as: Belianevych (Belianevych, 2004), Cherkashyn and Milash (Cherkashyn and Milash, 2016), Derevianko (Derevianko, 2010), Kossak (Kossak, 2002), Kytsyk (Kytsyk, 2014), Lekhkar (Lekhkar, 2007), Milash (Milash, 2011), Rieznikova (Rieznikova, 2013), Yavorska (Yavorska, 2009), Zavalna (Zavalna, 2009), and others. However, not all types of agreements in terms of the conclusion method, the method of reaching an agreement between the counterparties, and the agreement of essential conditions are widely represented in the scientific and informational space of Ukraine. To a large extent, what has been said is typical of standard agreements in the field of economic activity. And therefore, the above points to the relevance of the study of the problems outlined in the article title.

Purpose. The above allows us to determine the article purpose as an analysis of the concept and components of a standard agreement in the field of economic activity with a proposal to clarify the understanding of a standard agreement, to determine the directions of development of the theoretical provisions of a standard agreement and their practical application.

Research methods. The purpose of the article can be achieved through the use of methods

that are usually used when conducting scientific research in legal sciences. In particular, the following methods and their groups were applied: general scientific dialectical method, comparative-legal, systemic-structural, analytical-synthetic, epistemological, formal-legal method and others.

2. Theoretical aspects of standard agreements

As it is shown in the article's introduction, there is no reference to a standard agreement in the fourth part of Article 179 of the Civil Code of Ukraine. Obviously, its definition, purpose and features can be deduced through comparison with other types of agreements, systematized according to various criteria, as well as from one's own concept of a standard, from the functional application of such an agreement, etc.

The peculiarity of the present study is that the agreements named in Article 179 of the Civil Code of Ukraine are legal, i.e., those that are regulated by law, and the standard agreement, after deriving its concept, will initially have a doctrinal character. That is, at the first stages, it will mainly have a theoretical application, and will acquire a practical one over time. It should be noted that in the period from October 30, 2012 to November 20, 2021, the Standard agreement for the insurance of areas of winter grain agricultural crops with state support against agricultural risks for the overwintering period, approved by the Order of the National Commission that carries out state regulation in the sphere of financial services markets and the Order of the Ministry of Agrarian Policy and Food of Ukraine (Standard insurance agreement for the area of winter grain agricultural crops with state support against agricultural risks for the overwintering period (insurance product 2), 2012). However, it lasted for a relatively short time, and secondly, this agreement can be considered both typical and not just standard.

Back in Soviet times, a standard was understood as a sample, model, accepted as a source for comparison with other similar objects. And the standard as a regulatory and technical document established a set of norms, rules, requirements for the object of standardization and was approved by a competent body (Popovych, 2018, p. 54). Nowadays, paragraph 20 of the first part of Article 1 "Definition of terms" of the Law of Ukraine "On Standardization" contains a definition of the term of a standard as: "a normative document based on consensus, adopted by a recognized body, which establishes for general and repeated use rules, guidelines or characteristics regarding activity or its results, and aimed at achieving the optimal degree of orderliness in a certain

area" (On Standardization, 2014). Based on this definition, the standard generally provides for the establishment of certain rules for general and repeated use and is aimed at achieving the optimal degree of orderliness in a certain area. Usually, the requirements of the standard apply to goods, works, and services; less often – to processes (in particular, various production, technological, etc.). However, like processes, agreements can also be standard, that is, agreed, balanced, generalized, of the same type, to a certain extent ideal in their kind.

Depending on the adoption subject of the standard and the scope of the mentioned norm, the European standard is separately highlighted – in paragraph 1; international standard – in paragraph 10; national standard – in paragraph 13; regional standard – in paragraph 19 (On Standardization, 2014).

The category "standard" may well be applied to an economic or any other sectoral or inter-sectoral agreement. The characteristic of general and repeated use is inherent in exemplary, typical agreements and accession agreements. A standard agreement by analogy with a standard must be accepted by a recognized body. This means that it has a significant similarity with the normatively defined typical agreement, which is approved by the Cabinet of Ministers of Ukraine (hereinafter referred to as the CBU) or another state body or body of state power and has an established content, from which the parties cannot deviate, but can specify it. If the standard agreement allows the same, then it will lose its identity and turn into a regulated typical agreement. Therefore, it is possible to express a preliminary opinion that a standard agreement should not allow its participants to specify its content. However, in this case, this agreement will be similar to the accession agreement, which is offered by one of the parties to an indefinite circle of potential counterparties without the possibility of changing its content. Only the accession agreement is not approved by the state body, but by the party that proposes it. That is, here we can talk about a certain "individual" standard, which, unlike the above-mentioned European, international, national and regional standards, is not legitimized by legislation, and it is obvious that it cannot and should not be legitimized. However, the standard agreement, as we see it and offer it for use, can be approved not by the CMU or another state body, but by the economic entity itself, which is the initiator of agreement relations. In this case, it bears even greater resemblance to an accession agreement. Therefore, either defining a standard agreement using the term "standard" is not entirely correct, or a standard agreement is similar or, in certain

cases, can simultaneously be considered another agreement according to the criterion of determining the content of the agreement upon conclusion. On the other hand, one does not contradict the other.

The term "standard agreement" should be a broad integration category. Therefore, this category may be defined on the basis of the term "standard", and in certain cases may go beyond this term. Here the priority should be "standard" in the semantic sense as a sample, example, etalon, etc. That is, the standard agreement should act as a standard or sample of a certain economic agreement, which can be filled out and signed and which does not need to be changed or supplemented in any way. On the other hand, a standard agreement may overlap with other economic agreements, as well as civil law or administrative agreements, the specifics of which are defined in legislation, theoretical sources, formed by practice based on various criteria.

3. Applied aspects of standard agreements

As it is shown above, the content of a standard agreement can be approved by the CMU or another central executive body. In this, it will be similar to a typical agreement. Approval of standard agreement content by its potential participant makes it similar to most other agreements. The impossibility of other participants to make changes or additions, to provide a proposal to specify its conditions, makes it identical to the accession agreement.

Depending on the periods of performance, economic agreements can be general and current. We believe that both of them can be developed and proposed as general agreements. Milash gives examples of general (framework) agreements. In particular, the nature of such an agreement is an agreement to open a credit line. It defines the basic principles of lending and imposes direct detailing of the specific conditions for granting individual loans on current credit agreements (Milash, 2011, p. 136). Such an agreement can be standard, developed, for example, by the National Bank of Ukraine, the National Commission for Securities and the Stock Market, the commercial bank itself or a financial and credit institution.

The framework (general), also according to Milash, is the transport forwarding agreement, which defines the mode and general volumes of future transports, the general rules for their implementation during the entire period of parties' cooperation. The same obligations regarding transportation arise under current agreements, where the freight forwarder undertakes for a fee and at the expense of the client to perform or organize the performance of the services specified in the agreement related to the trans-

portation of cargo (Milash, 2011, p. 136). Such a general standard agreement can be developed by the Ministry of Development of Communities, Territories and Infrastructure of Ukraine, its structural subdivisions responsible for regulating and coordinating activities related to transportation by various modes of transport, and offered to potential participants for its conclusion. However, a standard transport forwarding agreement can also be developed and proposed by the forwarder.

The above fully refers to the distribution agreement, which determines the terms and conditions of cooperation between the manufacturer (supplier) and the distributor, establishes the list of goods that the distributor will sell, and the sales territory (Milash, 2011, p. 136).

The conclusion of a framework (general) agreement actually simplifies the further cooperation of business partners through the typification of general essential conditions of future economic agreements. This means that the terms of the framework agreement extend their effect to current agreements, the conclusion of which is planned on its basis during the cooperation of the parties (Milash, 2011, p. 139), and therefore the terms of the standard general agreement will be extended to current agreements, which may also to be determined most likely by one of the parties to the agreement rather than by a state executive body within current standard agreements.

We consider it expedient to develop standard agreements in most sectors of the economy, digitize and offer them to potential participants of these agreements. Analogues have already been proposed by foreign owners of electronic resources, on which an undefined circle of individuals and companies can open a bitcoin wallet. Thus, the owners of an electronic resource, as a rule, from a certain offshore zone of the world openly indicate their address and other details and offer a potential owner of a bitcoin wallet a standard agreement for opening and maintaining his electronic account (wallet). This standard agreement is an accession agreement, usually drawn up on several pages in English. Among other things, the terms of the agreement provide that the owner of the bitcoin wallet agrees that the company providing services for the placement of the wallet is not responsible for the loss of the password by the wallet owner, the conclusion of any agreements and the conduct of any operations, information protection, damage to the computer by third parties wallet owner's computer programs and equipment, etc. The agreement offered by the company-owner of the Internet resource contains all its essential terms, which are clearly and unambiguously prescribed, and even provides for the right of the company-provider of bitcoin account

opening services to unilaterally change the terms of the agreement (Derevianko, 2017, p. 35–36). And even under such conditions, individuals and companies, including from Ukraine, open bitcoin wallets on the Internet platforms of foreign companies, concluding the proposed standard agreements, which are also accession agreements, the terms of which are approved and proposed by the owner company of (tenant, manager, etc.) internet platforms. It is clear that the standard agreements that will be developed in Ukraine, the effect of which will be limited to the territory of Ukraine, the participants of which will be economic entities and citizens of Ukraine, must have clear and unambiguous conditions without the possibility of their change.

Due to the lack of a legitimized standard agreement in Ukraine today, we think it is logical to analyze the conditions of the currently invalid standard agreement. This standard agreement is typical, since the parties cannot change the terms, but can only specify them. Thus, the parties must first enter their details in the text of the agreement. The heading "Agreement Subject" actually provides for the description of the agreement subject and the definition of one more mandatory condition – the agreement price: it provides for the possibility of entering data on the agricultural crop, the geographical place of crop cultivation, the insurance value, the insurance amount per unit of area, the agreement place, the insurance amount, the insurance rate in percentage, the amount of the insurance payment, the date of drawing up the Inspection Act and the term or payment term. Some other elements of the subject and the price of the agreement are already defined in it. The section "Insured events" does not provide for the possibility of making changes or additions by the parties. In the section "Conditions for insurance payment", the parties can only contribute the amount of the loss in the event of the death of the insured crop area, calculated as the product of the insured crop area (ha) and the weighted average costs, and is determined in hryvnias per hectare. It is the received number that is entered by the parties. In the "Rights and obligations of the parties" section, the parties can fill in the "Other rights" and "Other obligations" headings, since the main rights and obligations of the insurer and the insured under the agreement cannot be determined and adjusted. The analyzed standard agreement does not provide for changes or additions to the headings "Liability of the Parties for non-fulfillment or improper fulfillment of the terms of the Agreement", "Other terms", "Procedure for changing the terms and termination of the Agreement". In the heading "Term of validity of the Agreement" it is possible to

determine the beginning date of the agreement validity, and the end date is defined as April 20 of a certain year. At the agreement end, the parties had to enter details and certify the agreement with signatures (Standard insurance agreement for the area of winter grain agricultural crops with state support against agricultural risks for the overwintering period (insurance product 2), 2012). The above, in particular the analysis of the content of individual general agreements, allows to argue the conclusions of the conducted research.

4. Conclusions

Similarly, to the two standard agreements given, standard agreements can be developed for most cases of the beginning of economic relations between two or more participants. Such agreements will contain all the material terms specified in the legislation for all agreements and agreements of a certain type. According to the criteria for determining the agreement content, they can most often be typical agreements (in the case of development, approval and proposal by the CMU or other executive power body), and accession agreements (in the case of their development, approval and proposal by one of the agreement participants); and can be symbiotic derivatives of the mentioned agreements, when approved by the CMU or another state body and do not allow the participants to change the terms and even specify them, or when approved and proposed by a business entity and allow to specify its terms. The proposed theoretical provisions of the standard agreement will have a doctrinal status for a certain time, and after approval of some of them by acts of the CMU or other central executive bodies, they will receive a legitimate status.

The form of a standard agreement based on the criterion of performance periods can be applied to general (framework) and, less often, current agreements. It is proposed to extend the form of a standard agreement to a large number of such spheres and branches of the economy, with the predominant conclusion of such agreements using the Internet and other digital technologies. Prospects for the practical application and spread of standard agreements for relations in various sectors of the economy of Ukraine outline directions for further research in the field of the studied relations.

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РОЗУМІННЯ ТА ОЗНАКИ СТАНДАРТНОГО ДОГОВОРУ У СФЕРІ ГОСПОДАРЮВАННЯ

Анотація. Мета. Метою статті є аналіз поняття і складників стандартного договору у сфері господарювання із пропозицією уточнення розуміння стандартного договору, визначення напрямів розвитку теоретичних положень стандартного договору і їх практичного застосування. **Методи дослідження.** Для досягнення мети статті було використано методи, що зазвичай застосовуються в проведенні наукових розвідок із правових наук, зокрема: загальнонауковий діалектичний метод, порівняльно-правовий, системно-структурний, аналітико-синтетичний, гносеологічний, формально-юридичний метод та інші. **Результати.** У статті порівняно стандартний договір у сфері господарювання з договорами за критерієм визначення їх змісту, названими в частині четвертій статті 179 Господарського кодексу України договорами на основі вільного волевиявлення сторін, примірними договорами, типовими договорами, договорами приєднання. Поняття «стандарт» у розумінні Закону України «Про стандартизацію» дозволило виявити і характеризувати окремі ознаки стандартного договору. Аналіз положень стандартного договору про відкриття і обслуговування гаманця біткоїнів та нині не чинного Стандартного договору страхування площ посівів озимих зернових сільськогосподарських культур з державною підтримкою від сільськогосподарських ризиків на період перезимівлі дозволило обґрунтувати висновки і пропозиції. **Висновки.** Запропоновано розроблення стандартних договорів на більшість випадків початку господарських відносин між двома або більшою кількістю учасників з визначенням усіх можливих істотних умов. Визнано, що стандартні договори за критерієм визначення змісту договору найчастіше можуть бути типовими договорами та договорами приєднання, а можуть бути симбіотичними похідними від названих договорів. Запропоновані теоретичні положення стандартного договору певний час матимуть доктринальний статус, а після затвердження окремих із них актами КМУ чи інших центральних органів виконавчої влади отримають легітимний статус. Форма стандартного договору за критерієм періодів виконання може поширюватися на генеральні (рамкові) і, рідше, поточні договори. Запропоновано поширити стандартні договори за галузями та сферами економіки з переважним укладенням таких договорів за допомогою мережі Інтернет та інших цифрових технологій.

Ключові слова: договір, стандартний договір, типовий договір, договір приєднання, стандартизація, Кабінет Міністрів України, генеральний (рамковий) договір, істотні умови договору, галузі економіки, центральний орган виконавчої влади, законодавство, легітимація.

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