

УДК 346.44

DOI: 10.37635/jnalsu.27(1).2020.100-131

Наталія Семенівна Кузнецова

*Національна академія правових наук України
Харків, Україна*

*Київський регіональний центр
Національної академії правових наук України
Київ, Україна*

Олексій Олександрович Кот, Андрій Богданович Гриняк

*Відділ проблем приватного права
Науково-дослідний інститут приватного права і підприємництва імені
академіка Ф.Г. Бурчака Національної академії правових наук України
Київ, Україна*

Мар'яна Дмитрівна Пленюк

*Сектор проблем договірної права
Науково-дослідний інститут приватного права і підприємництва імені
академіка Ф.Г. Бурчака Національної академії правових наук України
Київ, Україна*

СКАСУВАННЯ ГОСПОДАРСЬКОГО КОДЕКСУ УКРАЇНИ: ПОТЕНЦІЙНІ НАСЛІДКИ ТА НЕОБХІДНІ ПЕРЕДУМОВИ

Анотація. У статті здійснено аналіз положень Господарського кодексу України, співставлення їх з окремими положеннями Цивільного кодексу України та окремими законами, іншими нормативно-правовими актами. Враховуючи потребу у приведенні до відповідності українського законодавства до законодавства країн Європейського Союзу у сферах законодавства щодо заснування та діяльності компаній, корпоративного управління, з питань захисту прав акціонерів, кредиторів та інших заінтересованих сторін, з питань подальшого розвитку політики корпоративного управління відповідно до міжнародних стандартів, а також поступового наближення до правил та рекомендацій Європейського Союзу у цій сфері, зроблено висновок про доцільність скасування Господарського кодексу України шляхом ухвалення відповідного закону, в якому передбачити усі необхідні заходи із забезпечення належного правового регулювання відносин на період підготовки відповідних системних змін до Цивільного кодексу України. Доведено, що більшість норм ГК України є відсилочними або бланкетними, а відтак мають мінімальний регуляторний вплив та здебільшого дублюють положення, закріплені в інших нормативно-правових актах. На підставі аналізу положень Господарського кодексу України зроблено висновок, що його норми з огляду на їх мінімальний

регуляторний вплив на підприємницькі відносини та з урахуванням детальної регламентації цих відносин у Цивільному кодексі України можуть скасовуватися без жодних застережень. За таких умов та з метою спрощення правового регулювання підприємницької діяльності, а також з огляду на обов'язки нашої держави (зокрема, привести у відповідність українське законодавство до законодавства країн ЄС у сферах законодавства щодо заснування та діяльності компаній, корпоративного управління, з питань захисту прав акціонерів, кредиторів та інших заінтересованих сторін, з питань подальшого розвитку політики корпоративного управління відповідно до міжнародних стандартів, а також поступового наближення до правил та рекомендацій ЄС у цій сфері) доцільність скасування Господарського кодексу України не викликає жодних сумнів.

Ключові слова: Цивільний кодекс України, правові принципи, приватноправові відносини, кодифікація, рекодифікація, підприємницькі відносини.

Nataliia S. Kuznietsova

*National Academy of Legal Sciences of Ukraine
Kharkiv, Ukraine*

*Kyiv Regional Center of the
National Academy of Legal Sciences of Ukraine
Kyiv, Ukraine*

Oleksii O. Kot, Andrii B. Hryniak

*Department of Private Law Issues
Research Institute of Private Law and Entrepreneurship named after
Academician F.G. Burchak of the National Academy of Legal Sciences of Ukraine
Kyiv, Ukraine*

Mariana D. Pleniuk

*Sector of Contract Law Issues
Research Institute of Private Law and Entrepreneurship named after
Academician F.G. Burchak of the National Academy of Legal Sciences of Ukraine
Kyiv, Ukraine*

ABOLITION OF THE COMMERCIAL CODE OF UKRAINE: POTENTIAL CONSEQUENCES AND NECESSARY PREREQUISITES

Abstract. *The paper analyses the provisions of the Commercial Code of Ukraine, comparing them with certain provisions of the Civil Code of Ukraine and separate laws and other regulations. Considering the need to align Ukrainian legislation with the legislation of the European Union countries in legislation regarding the establishment and operation of partnerships, corporate governance, protection of shareholders, creditors and other interested parties, regarding the*

further development of corporate governance policy in accordance with international standards, including the gradual approximation to the rules and recommendations of the European Union in this area, it is concluded that it is advisable to abolish the Commercial Code of Ukraine by adopting the relevant law, which stipulates all necessary measures to ensure proper legal regulation of relations for the period of preparation of the relevant systemic changes to the Civil Code of Ukraine. It is proved that most of the provisions of the Civil Code of Ukraine are reference or blanket, and therefore have minimal regulatory impact and mostly duplicate the provisions enshrined in other regulations. Based on the analysis of the provisions of the Commercial Code of Ukraine, it is concluded that its provisions, given their minimal regulatory impact on business relations and considering the detailed regulation of these relations in the Civil Code of Ukraine, can be repealed without any reservations. In such settings and in order to simplify the legal regulation of business activity, as well as in view of the obligations of our country (in particular, to bring the Ukrainian legislation in conformity with the legislation of the EU countries in legislation regarding the establishment and activity of partnerships, corporate governance, protection of rights of shareholders, creditors, and other stakeholders, regarding further development of corporate governance policy in line with international standards, as well as the progressive approximation to EU rules and recommendations in this area), the expediency of abolishing the Commercial Code of Ukraine is beyond doubt.

Keywords: Civil Code of Ukraine, legal principles, private law relations, codification, recodification, entrepreneurial relations.

INTRODUCTION

The adoption of the Civil Code of Ukraine and the Commercial Code of Ukraine in 2003¹, which came into force on January 1, 2004, marked a new era of development of the national legal system under the conditions of artificially created dualism of private law. An analysis of the fifteen years of experience of applying the provisions of the Civil Code of Ukraine and the Commercial Code of Ukraine, as well as the scientific discussions that have been ongoing since the very beginning of the draft of the Civil Code of Ukraine, the judicial practice of dispute resolution, give grounds to conclude that there are systematic contradictions between the provisions of these codified acts, in particular concerning the basic principles of regulation of business activity, legal entities, substantive and binding legal relations, etc., which significantly impede the economic development of our country, in particular the development of legislation in line with the provisions of the Association Agreement between Ukraine and the European Union.

In view of its fundamental principles, the Commercial Code of Ukraine substantially limits the development and functioning of market relations in Ukraine, since the very nature and methods of regulating business law have historically been aimed at ensuring the functioning of the planned economy of the Soviet state. From a formal legal standpoint, the existence of general provisions in the Commercial Code of Ukraine makes it impossible to qualify this code, in accordance with Part 2 of Art. 4 of the Civil Code of Ukraine, as an act of civil legislation that regulates entrepreneurial (in the terminology of the Commercial Code of Ukraine – the so-called "business") relations.

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>; Economic Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/436-15>

It should be Individually noted that most of the provisions of the Commercial Code of Ukraine (as will be proved below) are blanket or referential at best, which reason to argue about the insignificant effect of the Commercial Code of Ukraine (as against the rules contained in special laws) on regulation of public relations, in particular entrepreneurial ones.

The depth and extent of the contradictions between the Civil Code of Ukraine and the Commercial Code of Ukraine suggests that these conflicts can only be eliminated by abolishing the Commercial Code of Ukraine. Under the abolition of the Commercial Code, the authors of the paper understand the recognition of it as invalid. The corresponding draft law No. 2635 was registered in the Verkhovna Rada of Ukraine on December 19, 2019.

Considering the above, the purpose of this paper is to identify potential consequences and to establish the necessary prerequisites for the abolition of the Commercial Code of Ukraine in pursuance of the Resolution of the Cabinet of Ministers of Ukraine No. 650 dated 17.07.2019 “On Creation of a Task Force on the Recodification (Updating) of the Civil Legislation of Ukraine”.

1. MATERIALS AND METHODS

The research methodology is conditioned by its purpose and lies in the analysis of the corresponding provisions of the Commercial Code of Ukraine (its structural parts – sections, chapters, paragraphs, separate articles, etc.) for the occurrence of negative consequences or legal vacuum in the regulation of entrepreneurial relations in case of abolition of the Commercial Code of Ukraine. For the purpose of writing this paper, the legal and regulatory framework included the Civil Code of Ukraine, the Commercial Code of Ukraine, the Land Code of Ukraine, the Water Code of Ukraine, the Forest Code of Ukraine, and the Subsoil Code of Ukraine, as well as other regulations, including the Law of Ukraine “On Joint Stock Companies”¹, the Law of Ukraine “On Securities and Stock Market”², the Law of Ukraine “On Environmental Protection”³ etc. The paper uses general scientific and special legal methods of scientific knowledge. The main method is comparative law, which allowed to identify and analyse the duplication of legal provisions by the Commercial Code of Ukraine, which are contained in other regulations, including the Civil Code of Ukraine.

The historical law method allowed to investigate the stages of the establishment, adoption, and development of regulations. Philosophical and functional methods allowed to outline the prerequisites for developing an effective mechanism for the legal regulation of relations and to identify the interrelation between the preconditions for their emergence. The dialectical method of cognition accompanied the entire process of scientific research and allowed to consider the tendencies of development and improvement of the Ukrainian civil legislation in the context of European integration. Formal law method is applied in the analysis of legal rules governing legal relations and practices of their application.

¹ Law of Ukraine “On Joint Stock Companies”. (2008, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/514-17>

² Law of Ukraine “On Securities and Stock Market”. (2006, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3480-15>

³ Law of Ukraine “On Environmental Protection”. (1991, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1264-12>

Among other methods of researching the aforementioned issues, a simulation method was used, which provided an opportunity to consider the scientific and legislative problem of improving the civil legislation and, accordingly, the abolition of the Commercial Code, as an organized and purposeful goal that serves to improve the Ukrainian legislation. The presented scientific ideas of the authors in the context of the modern development of civil relations include targeted, methodological, substantive, institutional, and resultative components.

2. RESULTS AND DISCUSSION

2.1 General characteristics of the Commercial Code of Ukraine and its main drawbacks

The debate over the ways in which the legal rules governing relations in economic turnover should be organized have been ongoing for more than a decade and its fiery has not diminished over time. It received a new impetus during the last large-scale codification in Ukraine. Back in 2002, the authors of the textbook "Commercial Law" stated with unprecedented optimism that the main branch-related codification act in economic relations should be the commercial code, which would consolidate the unity of the subject, the general principles and directions of business and legal regulation and thus should become a backbone act [1].

Representatives of commercial law science had high hopes for the Commercial Code, because they viewed it as a pivotal act that would determine the basic "rules of the game" for all participants of economic turnover [2]. At the same time, even before the entry into force of simultaneously adopted and inharmonious Civil Code and Commercial Code, civilists had warned of probable issues that awaited not only lawyers but also the entire entrepreneurial environment [3].

Even then, the Commercial Code of Ukraine caused an avalanche of criticism from opponents: "The pillars of the code and many other "components" were made during the first five-year plans (economic competence, forms of property, branch management of the national economy) and in the 1960s (the right of economic management, the right of operational management, forms of ownership, enterprise funds, the owner of the enterprise, industrial goods, consumer goods). The "youth" is represented by the monstrosities that saw the light in the early 1990s as a result of desperate attempts to oppose the old Soviet instruments of managing the administrative economy by the new economic realities of semi- and quarter-market Ukrainian reforms (state, communal, private, leased enterprises).

The developers of the Commercial Code gripped the legacy of the socialist past with a bulldog determination, either intentionally or otherwise trying to squeeze the Ukrainian economy into a Procrustean bed of bankrupt concepts [4]. We shall note that the developers of the Commercial Code of Ukraine and its supporters have largely manipulated the unawareness of most Ukrainian entrepreneurs at the time and the assurance that in civilized Europe, along with the conventional Civil Code, there is another one, which governs the stream of commerce – the Commercial Code, for example, in Germany, France..

I.V. Spasybo-Fatieieva fairly points out that the comparison of the adoption of the Civil Code and the Commercial Code in Ukraine with the codification experience of other countries, which our codified acts attempt to emulate, is not always appropriate. This applies to the statement that in many countries there are commercial or trade codes and

therefore the adoption of the Commercial Code of Ukraine is a natural step in the European legal framework. Apart from being untrue, this statement contains a misrepresentation of the Commercial Code of Ukraine as something similar to commercial or trade legislation of other countries [5]. Analysing the experience of legislative development of Eastern European countries, Ye.O. Sukhanov points out some important general tendencies which, among other things, extend to Western European states. Firstly, this refers to a substantial reduction of legal systems that maintain a separate regulation of civil and commercial law. Secondly, in reducing the scope of agreement-based regulation that is enforced by trade law (in those countries where it is preserved as a national feature of their rule of law), its "corporate part" comes to the fore. Thirdly, the commercial codes that are in force in European states (both the classic codes of the 19th century and the modern codifications of Bulgaria, Lithuania, or the draft Slovak Trade Code) remain private law acts, which systematize a certain (rather small) part of private law institutions and represent commercial law as "special private law", which is generally subordinated to the action of civil law as "general private law" [6].

Despite the fact that over the years since the Commercial Code of Ukraine came into force it has been massively ousted by acts of special legislation, its proponents do not give up the hope of delaying its complete disintegration, making every effort to demonstrate its ability to "survive" in the legislative orbit". At the same time, the experiment, which began in Ukraine in 2003-2004, not only did not reveal any advantages of the implemented codification of economic legislation, but quite the contrary – confirmed that the only correct and logically consistent way is the incorporation of commercial legislation according to its main areas: stock, investment, competition, banking, insurance, corporate, bankruptcy, etc. [7].

One of the developers of the Civil Code of Ukraine, A.S. Dohvert points out that civil law codification has become a significant achievement of national legal thought in Ukraine and, undoubtedly, the most significant step towards democratic transformation in the country. The Code confidently steers relations towards the market and civil society, even though it was doomed to act in the environment of the non-market and opposing Commercial Code of Ukraine [8-10]. Therefore, it is no coincidence that the updating of the Civil Code of Ukraine and its recodification cannot be a complete, logical, effective tool without abolishing this "vestige" of the administrative-totalitarian system – the Commercial Code of Ukraine. To assess the consequences and identify potential risks of cancellation of the Commercial Code of Ukraine, the provisions of the Commercial Code of Ukraine were consistently analysed and compared with the corresponding provisions of the Civil Code of Ukraine, other codes and laws of Ukraine. Considering the limited volume of the scientific article, only the main conclusions and results of the study are given.

Thus, the analysis of Section I of the Commercial Code of Ukraine¹ "*Basic Principles of Business Activity*", which includes 4 chapters and 54 articles, gives reason to believe that its provisions by their nature create a certain attribute of the Commercial Code as a codified regulation, which should include certain general provisions. However, the analysis of articles included, for example, in Chapter 1 of the Commercial Code of

¹ Economic Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/436-15>

Ukraine, suggests that they do not substantially comply with the principles of free entrepreneurial activity, market principles of economic development of Ukraine, in particular those enshrined in Art. 42 of the Constitution of Ukraine¹. The same applies to the provisions of Chapter 2, "*Main Directions and Forms of State and Local Government Participation in the Economic Sector*", which are purely declarative in nature and are intended to outline the potential fields of influence of the state and local governments on entrepreneurial relations. At the same time, in view of the fact that according to Part 2 of Art. 19 of the Constitution of Ukraine, the said influence of state and local self-government bodies is exercised solely on the basis, within the powers and in the manner prescribed by the Constitution and laws of Ukraine, the respective regulatory powers, as a rule, are stipulated by special legislation – Laws of Ukraine "On the Cabinet of Ministers of Ukraine", "On the Antimonopoly Committee of Ukraine", "On the State Property Fund of Ukraine", etc. Accordingly, the provisions of Chapter 2 of the Commercial Code of Ukraine are purely declaratory or referential and have no considerable regulatory effect on entrepreneurial relations.

A detailed analysis of Chapter 3 of the Commercial Code of Ukraine² "*Restriction of Monopoly and Protection of Business Entities and Consumers from Unfair Competition*" also confirms the conclusion that this chapter is unable to ensure even a minimal level of regulatory influence on respective relations in competition law. This function is performed in full by specific laws. These are, above all, the Laws of Ukraine "On the Antimonopoly Committee of Ukraine"³, "On Protection of Economic Competition"⁴, "On Protection against Unfair Competition"⁵, etc.

A similar conclusion is reached in the analysis of Chapters 4 and 5 of the Commercial Code of Ukraine⁶, which lack the truly meaningful principles of regulation of entrepreneurship in Ukraine. Instead, the provisions of these chapters are either declaratory or refer to an indefinite scope of legislative acts that should regulate the so-called "commercial business" and "non-commercial business" activities. Art. 49 of the Commercial Code of Ukraine deserves special mention, it introduces the term "foreign entrepreneurs" into Ukrainian legislation, and at the same time fails to define it.

Against this background, and given the minimum substantive and regulatory load of articles included in Section I "*General Provisions*" of the Commercial Code of Ukraine, it is reasonable to conclude that there are no adverse effects in the abolition of the articles included in this section (Articles 1-54 of the Commercial Code of Ukraine). Furthermore, the abolition of Section I of the Commercial Code of Ukraine can take place without significant risks to the legal regulation of economic relations, given their minimal

¹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

² Economic Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/436-15>

³ Law of Ukraine "On the Antimonopoly Committee of Ukraine". (1993, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/3659-12>

⁴ Law of Ukraine "On Protection of Economic Competition". (2001, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/2210-14>

⁵ Law of Ukraine "On Protection against Unfair Competition". (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/236/96-%D0%B2%D1%80>

⁶ Economic Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/436-15>

regulatory impact on entrepreneurial relations and considering the detailed regulation of these relations in the Civil Code of Ukraine.

Section II "*Business entities*" also incites serious remarks. It is known that in the Civil Code of Ukraine¹ the concept of legal entities originally proceeded from the approaches existing in the European private law concerning the types and legal forms of legal entities. As Professor A.S. Dovhert points out on this matter, "maintaining an existing system of" enterprises" in Ukraine (identifying an enterprise with a legal entity is a fatal error) will only prolong economic stagnation".

The concept of legal entities enshrined in the Civil Code of Ukraine is as follows. Legal entities are the subjects of relations, these legal structures provide for the separation of property, which may occur with or without the unification of persons (Art. 81 of the Civil Code of Ukraine). Approaches to differentiation of legal forms in Civil Code of Ukraine are quite simple and clear:

– if the property is separated with the association of persons, this refers to companies (entrepreneurial and non-entrepreneurial);

– if property is separated without an association of persons, these are institutions and their founders do not take part in the management of these institutions (Art. 83 of the Civil Code of Ukraine).

In turn, entrepreneurial companies can be set up as business partnerships (joint stock partnerships; limited or additional liability partnerships; unlimited partnerships; limited partnerships) or as production cooperatives (Art. 84 of the Civil Code of Ukraine). In its draft prepared by the developers, the Civil Code of Ukraine did not envisage the possibility of other legal forms [11]. However, given the simultaneous adoption of the Civil Code of Ukraine and the Commercial Code of Ukraine in 2003, Art. 83 of the Civil Code of Ukraine defined the list of legal forms of legal entities as open. In the doctrine of civil law prevails the position that separated property can be held by a legal entity only on an ownership basis. Such subject as a non-owner legal entity should not exist in the economic environment. The retention of such organizations in Ukraine contradicts the nature and designation of legal entities in society [12]. And this is quite logical since legal entities in property turnover are responsible for their obligations with their own property.

Management of any legal entity is carried out in accordance with the rules established by Articles 97-103 of the Civil Code of Ukraine. Such transparency in relation to the management of a legal entity, according to the developers of the draft of the Civil Code of Ukraine is one of the main guarantees of protecting the rights of all subjects of economic turnover.

The Civil Code of Ukraine also regulates the issue of state involvement in civil relations. As these relations in the conditions of a market economy with the participation of the state are relations of private law, the state therefore must act in these relations not with the combination of its political and economic functions or as some special subject of law, as it was in times of a planned administrative system of management, but in legal forms that are adequate to these relations. The state (as well as territorial communities, the Autonomous Republic of Crimea) takes part in these relations as a legal entity governed by public law (Articles 81-82 of the Civil Code of Ukraine). Unlike other public law

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>

entities, important aspects of the legal status of the state, the Autonomous Republic of Crimea, territorial communities are directly defined in articles 167-176 of the Civil Code of Ukraine [12]. Considering the commitments made by Ukraine pursuant to the Association Agreement with the European Union (hereinafter referred to as the EU) in the areas of legislation on the establishment and operation of partnerships, corporate governance, with a view to creating a fully functioning market economy and stimulating trade, Ukraine and the EU have agreed to cooperate in particular to protect the rights of shareholders, creditors, and other interested parties in line with EU requirements in this area; on the further development of corporate governance policy in line with international standards, as well as the progressive approximation of EU rules and recommendations in this area.

At the same time, the regulation of legal entities (so-called "business entities") in the Commercial Code of Ukraine corresponds neither to the concept of legal entities reflected in the Civil Code of Ukraine nor to the common EU practices and standards in this field. In such circumstances, it is advisable to harmonize the legislation of Ukraine in this respect with the European approaches to the regulation of the institution of a legal entity, with consideration of the general provisions of the Civil Code of Ukraine and certain special laws adopted by the Verkhovna Rada of Ukraine after their entry into force, in particular the Laws of Ukraine "On Joint Stock Partnerships"¹, "On Limited Liability and Additional Liability Partnerships"², etc.

The issue of the fate of legal entities that currently operate in legal forms that are not stipulated by the Civil Code of Ukraine is fully justified in this situation – this refers, above all, to enterprises as subjects of law (state and municipal enterprises, so-called "collective ownership enterprises", private enterprises, enterprises with foreign investments, etc.) and their unions (associations, corporations, consortia, groups, etc.). Back in the day, the Ukrainian legal system has already faced a similar issue. With the adoption of the Law of Ukraine "On Joint Stock Partnerships" in 2008, the types of joint stock partnerships were changed – at the time, the law separated public joint stock partnerships and private joint stock partnerships. Pursuant to the transitional provisions of this law, a period of 2 years was established for companies created before its adoption to bring their articles of association into conformity with the provisions of the law. It should be reminded that there were more than 30 thousand joint stock partnerships at the time.

According to the State Statistics Service of Ukraine, as of October 1, 2019, there are 1,354,069 registered legal entities in Ukraine, of which 3,745 are state-owned enterprises, 32 are public enterprises for operational management of public property, and 14,018 are municipal enterprises. The figures for the unions of enterprises are similar: 553 associations, 79 corporations, 185 consortia, 317 concerns, 741 unions of consumer cooperatives. There are, according to the State Statistics Service, "other" unnamed unions of legal entities, of which there are 619 more units [13]. It is considered that a mechanism for establishing a certain transitional period for the harmonization of legal forms of legal

¹ Law of Ukraine "On Joint Stock Partnerships". (2008, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/514-17>

² Law of Ukraine "On Limited and Additional Liability Partnerships". (2018, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2275-19>

entities in accordance with the Civil Code of Ukraine should also be proposed in case of abolition of the Commercial Code of Ukraine.

In terms of the structure of Section II "Business Entities" of the Commercial Code of Ukraine¹, it consists of 7 chapters and at the time of adoption there were 88 articles, a wide array of which was eliminated over time. Obviously, the provisions contained in these articles are declaratory provisions devoid of any regulatory influence. This, in particular, can be exemplified by Art. 59 of the Commercial Code of Ukraine "Termination of a Business Entity", which consists of one sentence: "Termination of a business entity is carried out in accordance with the law". It is clear that the abolition of this rule, as well as of other provisions of this section, will have no negative consequences for the legal regulation of activity and termination of legal entities.

We cannot ignore Chapter 7 of the Commercial Code of Ukraine (Articles 62-72 of the Commercial Code of Ukraine), which covers the enterprise as a subject of law and has caused many conflicts in domestic legal regulation. As mentioned earlier, the existence of an enterprise as a subject of law contradicts not only the provisions of the Civil Code, but also the obligations assumed by our state under the Association Agreement between Ukraine and the EU. The parallel existence of the category "enterprise" in the Ukrainian legal framework both as a subject of law and as an object of law (see, in particular, Art. 191 of the Civil Code of Ukraine) has created ambiguity and confusion in the legal regulation of entrepreneurial relations. Obviously, the enterprise as a subject of law entered into the Commercial Code of Ukraine precisely to justify the possibility of existence of state, municipal, and other types of enterprises. These are, in particular, state and municipal unitary enterprises, state commercial enterprises, public enterprises for operational management of public property (Chapter 8 Commercial Code of Ukraine, Articles 73-78), the so-called "collective ownership enterprises" (Articles 93-112 of the Commercial Code of Ukraine). The Commercial Code of Ukraine includes in this concept production cooperatives, consumer cooperatives, enterprises of public and religious organizations, other enterprises envisaged by law. The Commercial Code of Ukraine also mentions private enterprises and other types of enterprises (Articles 113-117 of the Commercial Code of Ukraine).

In addition, Chapter 12 (Articles 118-127 of the Commercial Code of Ukraine) establishes the right of enterprises to unite with other enterprises to coordinate their industrial, scientific, and other activities in order to solve common economic and social problems. However, instead of determining that the union of enterprises as legal entities is exercised by means of creating of a certain business partnership, Articles 119-120 of the Commercial Code of Ukraine state that, depending on the procedure of establishment, the business unions may be formed as economic unions or as a state or municipal economic unions. With that, business unions are formed as associations, corporations, consortia, concerns, and other unions of enterprises envisaged by law. Art. 127 of the Commercial Code of Ukraine goes further and states that the law may determine other forms of joining the interests of enterprises (alliances, unions, associations of entrepreneurs, etc.), not stipulated in Art. 120 of the Commercial Code of Ukraine. We shall draw attention to the fact that it is no longer a matter of uniting enterprises, but of "joining the interests of

¹ Economic Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/436-15>.

enterprises".

Particularly noteworthy is the regulation of the creation and operation of business partnerships in the Commercial Code of Ukraine – this issue is addressed in 12 articles of the Code (Chapter 8 of the Commercial Code of Ukraine, Articles 79-90 of the Commercial Code of Ukraine). As already noted, the Commercial Code is characterized by a blanket method of regulation, when the text of the Commercial Code of Ukraine includes declaratory provisions devoid of regulatory influence, which do not even refer to a specific regulation, but simply indicate that the issue is regulated (or should be regulated) by law. The provisions of Chapter 8 of the Commercial Code of Ukraine are no exception. Thus, Part 1 of Art. 79 states that the procedure of creation and the order of activity of certain types of business partnerships is regulated by law. The rest of the provisions duplicate the corresponding provisions of the Civil Code of Ukraine and special laws – "On Joint Stock Partnerships", "On Limited and Additional Liability Partnerships". The lion's share of this chapter is occupied by Art. 90 of the Commercial Code of Ukraine "Accounting and Reporting of a Business Partnership". It should be reminded that the Law of Ukraine "On Accounting and Financial Reporting in Ukraine"¹ covers the issues of accounting and reporting of legal entities. In such circumstances, an attempt to regulate these relations with a single Art. of the Commercial Code of Ukraine is undoubtedly not the best solution from the standpoint of lawmaking technique.

Thus, the analysis of the provisions of Section II of the Commercial Code of Ukraine, which deals with the regulation of the legal position of economic entities, gives reason to conclude that there is a wide array of systematic contradictions between the provisions of the Commercial Code of Ukraine and the Civil Code of Ukraine, and the EU-Ukraine Association Agreement. In such circumstances, it is considered appropriate to eliminate these contradictions by abolishing the corresponding provisions of the Commercial Code and at the same time defining a transition period to bring the legal forms of existing legal entities in conformity with the provisions of the Civil Code of Ukraine.

2.2 Features of regulation of property fundamentals of management in accordance with the Economic Code of Ukraine

Section III of the Commercial Code of Ukraine², which begins with Chapter 14, "Property of Business Entities", covers the regulation of the property fundamentals of business. It is based on an understanding of property rights that is enshrined in Book 3, "Property Rights and Other Real Rights" of the Civil Code of Ukraine. However, the provisions of Art. 136 ("Right of Economic Management") and Art. 137 ("Right of Operational Management") of the Commercial Code of Ukraine in fact reflect the regulation of property relations, which was inherent in a controlled economy, when the property was transferred to the legal entity (as a rule, state-owned or municipal enterprise) not into ownership, but on titles, which constituted some kind of a substitute, an ersatz. A legal entity to which property was provided under the right of economic management or the right of operational management could not freely manage it or operate it under its obligations.

¹ Law of Ukraine "On Accounting and Financial Reporting in Ukraine". (1999, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/996-14>

² Economic Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/436-15>

As stated in one of the comments to the Commercial Code of Ukraine, “the right of economic management is one of the legal forms of exercising ownership. The right of economic management is remarkably similar to ownership, but it cannot be equated with ownership... the right of economic management is a right that is dependent on ownership and is its derivative. The right of economic management is limited not only by law, but also by the prescriptions of the certificate of title, approved by the owner... The right of economic management... is understood as the real right of the business entity that owns, uses, and disposes of the property assigned to it by the owner (their authorized body), with limitation of the competence to dispose of certain types of property with the consent of the owner in cases stipulated by the Commercial Code of Ukraine and other laws” [13]. A similar approach is defined in the above commentary to the right of operational management, which is “a derivative, secondary right. It is even more restricted than the right of economic management, for example, by the purposes of the activity of the subject of this right, by the tasks of the owner, by the purpose of the property owned by it under the right of operational management, the authority to dispose of the said property [13].

Considering the contemporary realities, it should be noted that the Ukrainian economy, in accordance with our commitments to the international community, must objectively comply with established global approaches not only regarding the legal forms of legal entities, but also regarding property relations. Thus, the provisions of the Civil Code of Ukraine not only regulate the property rights in detail (consolidating concepts, warranties, grounds for acquisition, transfer, termination, etc.), but also establish common approaches to the use of the property of another – this primarily refers to rent and trust management. It should be emphasized that the institution of property management, which has become one of the innovations of the Civil Code of Ukraine¹, is completely understandable for the developed economies and can fully perform the functions of the instrument of transfer of property by the owner (including the state) to legal entities of public law so as to exercise their respective functions. In other words, the institution of property management is capable of completely replacing the outdated Soviet vestiges, such as “right of economic management” and “right of operational management” [14-16].

If we analyse entrepreneurial companies, first of all, joint-stock partnerships and limited liability partnerships whose shares and corporate rights belong to the state – such companies should own the property right on the title understandable to all participants in the trade turnover. For these reasons, Art. 141 of the Commercial Code of Ukraine² “Features of the Legal Regime of State Property in the Field of Business” can be abolished. The rest of the articles in Chapter 14 of the Commercial Code of Ukraine are either blanket or declarative, or they duplicate legal rules contained in special legislation and can therefore be abolished without any adverse effect on the legal regulation of property (real) relations in entrepreneurial activity.

A similar conclusion is reached upon the analysis of Chapter 15 “*Use of Natural Resources in Management*” of the Commercial Code of Ukraine, the provisions of which completely duplicate the provisions of the Constitution of Ukraine³, in particular of Art.

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.

² Economic Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/436-15>

³ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

13, Part 3 of Art. 14, paragraph 5 of Part 1 of Art. 92, Art. 4 of the Law of Ukraine "On Environmental Protection"¹, Articles 1, 3, 78 of the Land Code of Ukraine,² as well as articles of the Water Code of Ukraine³, the Forest Code of Ukraine⁴ and the Subsoil Code of Ukraine⁵. An example of this are the provisions of Art. 149 of the Commercial Code of Ukraine, which repeat Part 1 of Art. 38 and Art. 23 of the Law of Ukraine "On Environmental Protection"⁶, and Part 2 of the same Art. has no regulatory impact at all, including only the informative component. The same is observed in the analysis of the provisions of the following articles: Art. 150 of the Commercial Code of Ukraine (acquisition of land title together with water bodies, forests, perennial plantations thereon is regulated by Articles 56, 59, 79 of the Land Code of Ukraine; Art. 7 of the Law of Ukraine "On Farming"⁷; the procedure for exercising this title is determined by Art. 51 of the Water Code of Ukraine, Art. 12 of the Forest Code of Ukraine, Articles 18, 23 of the Subsoil Code of Ukraine, Art. 4 of the Land Code of Ukraine⁸; the procedure for granting land ownership is determined by Part 3 of Art. 14 of the Constitution of Ukraine⁹); Art. 151 of the Commercial Code of Ukraine (duplicates the provisions of Art. 2, Part 3 of Art. 38 of the Law of Ukraine "On Environmental Protection"¹⁰. The implementation of economic activity is regulated in the Land, Water, Forest Codes of Ukraine, Subsoil Code of Ukraine and other regulations regarding the use of natural resources); Art. 152 Commercial Code of Ukraine (duplicates Articles 90, 95 of the Land Code of Ukraine; Art. 18 of the Law of Ukraine "On Farming"; Art. 7 of the Law of Ukraine "On Personal Farming"¹¹; Art. 153 Commercial Code of Ukraine refers to Articles 91, 96 of the Land Code of Ukraine, Art. 44 of the Water Code of Ukraine, Articles 14, 19, 20, 21 of the Forest Code of Ukraine, Art. 24 of the Subsoil Code of Ukraine, Art. 34 of the Law of Ukraine "On Fauna").

As a result, it should be noted that the provisions of Articles 148–153 of Chapter 15 “*Use of Natural Resources in Management*” of the Commercial Code of Ukraine¹² by their

¹ Law of Ukraine “On Environmental Protection”. (1991, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1264-12>

² Land Code of Ukraine. (2001, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2768-14>

³ Water Code of Ukraine. (1995, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/213/95-%D0%B2%D1%80>

⁴ Forest Code of Ukraine. (1994, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/213/95-%D0%B2%D1%80>

⁵ Subsoil Code of Ukraine. (1994, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/132/94-%D0%B2%D1%80>

⁶ Law of Ukraine “On Environmental Protection”, op. cit.

⁷ Law of Ukraine “On Farming”. (2003, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/973-15>

⁸ Water Code of Ukraine. (1995, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/213/95-%D0%B2%D1%80>; Forest Code of Ukraine. (1994, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/213/95-%D0%B2%D1%80>; Subsoil Code of Ukraine. (1994, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/132/94-%D0%B2%D1%80>; Land Code of Ukraine. (2001, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2768-14>

⁹ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

¹⁰ Law of Ukraine “On Environmental Protection”, op. cit.

¹¹ Law of Ukraine “On Farming”. (2003, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/973-15>

¹² Economic Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/436-15>

very nature, contain provisions referring to special regulations and are not of a regulatory nature. Accordingly, they can without exception be excluded as such that duplicate the provisions of special legislation [17]. Particular attention in this study should be given to the issues of the use of intellectual property rights in economic activity (Chapter 16 of the Commercial Code of Ukraine). An analysis of Chapter 16, “*Use of Intellectual Property Rights in Economic Activity*”, points to the conclusion on duplication of the provisions of the Civil Code of Ukraine¹, including the provisions of special regulations in this sector.

Provisions of Art. 154 of the Commercial Code of Ukraine are exemplary, which are of a blanket nature and for the most part are non-regulatory. They merely state that the provisions of the Civil Code of Ukraine shall be applied to govern such relations. The provisions of Art. 155 of the Commercial Code of Ukraine duplicate the provisions of Art. 420 of the Civil Code of Ukraine, which defines the list of intellectual property rights. Art. 156 of the Commercial Code of Ukraine also contains no substantive regulation, as it duplicates the provisions of Part 1 of Art. 462 of the Civil Code of Ukraine, Articles 7, 8 of the Law of Ukraine “On Protection of Rights to Industrial Designs”². Articles 8, 9 of the Law of Ukraine “On Protection of Rights to Inventions and Utility Models”³. Art. 157 of the Commercial Code of Ukraine duplicates the provisions of Part 1 of Art. 494 of the Civil Code of Ukraine, including Part 3 of Art. 5 of the Law of Ukraine “On Protection of Rights to Marks for Goods and Services”⁴. Art. 158 of the Commercial Code of Ukraine does not determine the specifics of legal regulation and is a reference to other regulations, and also partially duplicates Part 3 of Art. 16 of the Law of Ukraine “On Protection of Rights and Marks for Goods and Services”, which gives grounds to claim that there is no actual influence of the Commercial Code of Ukraine rules on the regulation of such relations as against the rules contained in special regulations.

Thus, almost all of the provisions of Chapter 16, “*Use of Intellectual Property Rights in Economic Activity*” (except Articles 160, 161 of the Commercial Code of Ukraine), duplicate the provisions of the Civil Code of Ukraine, including the provisions of special regulations and thus can be excluded as having no regulatory effect.

The analysis of Chapter 17 “*Securities in Economic Activities*” also shows that there is no independent regulatory influence, since the types of securities, their issue, sale, acquisition are governed by Art. 195 of the Civil Code of Ukraine, as well as the Law of Ukraine “On Joint Stock Partnerships”⁵, the Law of Ukraine “On Securities and the Stock Market”⁶, the Law of Ukraine “On the Circulation of Bills in Ukraine”⁷ and the Law of

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.

² Law of Ukraine “On Protection of Industrial Design Rights”. (1993, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/3688-12>

³ Law of Ukraine “On Protection of Rights to Inventions and Utility Models”. (1993, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/3687-12>

⁴ Law of Ukraine “On Protection of Rights to Marks for Goods and Services”. (1993, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/3689-12>

⁵ Law of Ukraine “On Joint Stock Partnerships”. (2008, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/514-17>

⁶ Law of Ukraine “On Securities and Stock Market”. (2006, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3480-15>

⁷ Law of Ukraine “On the Circulation of Bills in Ukraine”. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2374-14>

Ukraine "On the Depository System of Ukraine"¹. As an example, we shall take Art. 164 of the Commercial Code of Ukraine, the provisions of which duplicate the provisions of the Law of Ukraine "On Securities and the Stock Market"² (Part 2, Art. 8 – regarding the prohibition of covering losses at the cost of the bonds of the enterprise; provisions of Art. 12 – regarding the concepts and general provisions concerning investment certificate); including the provisions of the Law of Ukraine "On Joint-Stock Partnerships"³ (Part 5 of Art. 15; Part 2 of Art. 19 – regarding the special procedure for the use of shares to cover losses; Art. 13 – regarding the right of depositors to receive of the deposit and interest on it (savings (deposit) certificates after the specified term [17]). Features of the issue, circulation, and repurchase of securities, joint investment institutions are regulated in the Law of Ukraine "On Joint Investment Institutions"⁴. Part 6 of Art. 164 of the Commercial Code of Ukraine contains no regulatory mechanisms. Financial activities of the states that created the real estate operations fund and attracted funds of individuals and legal entities are regulated by the Law of Ukraine "On Financial and Credit Mechanisms and Property Management in the Construction of Housing and Real Estate Transactions"⁵. Part 7 of Art. 164 of the Commercial Code of Ukraine duplicates the provisions of Part 1 of Art. 14 of the Law of Ukraine "On Securities and the Stock Market"⁶. The issue and circulation of securities is regulated by the Law of Ukraine "On Circulation of Bills in Ukraine"⁷ and the Law of Ukraine "On Securities and the Stock Market"⁸. Part 8 of Art. 164 of the Commercial Code of Ukraine is purely informative, has no regulatory effect, since the production of securities (or their forms) is regulated by the Law of Ukraine "On the National Bank of Ukraine"⁹. The same applies to other articles in this chapter.

The foregoing suggests that Chapter 17 "Securities in Economic Activities", namely Articles 163-166 of the Commercial Code of Ukraine¹⁰ can be removed without negative consequences, given their referential nature and lack of regulatory impact.

Chapter 18 "*Corporate Rights and Corporate Relations*". Unlike the controversial regulation of corporations and corporate rights in the Commercial Code of Ukraine, the Civil Code of Ukraine does not contain the definition and regulation of corporate law and corporate relations. In its turn, the Commercial Code of Ukraine also does not address this issues, as it rather ambiguously defines the approach to defining corporate rights, since the

¹ Law of Ukraine "On the Depository System of Ukraine". (2012, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/5178-1>

² Law of Ukraine "On Securities and Stock Market". (2006, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3480-15>

³ Law of Ukraine "On Joint Stock Partnerships". (2008, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/514-17>

⁴ Law of Ukraine "On Joint Investment Institutions". (2012, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/5080-17>

⁵ Law of Ukraine "On Financial and Credit Mechanisms and Property Management in Housing and Real Estate Transactions". (2003, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/978-15>

⁶ *Op. cit.*, 2006.

⁷ Law of Ukraine "On the Circulation of Bills in Ukraine". (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2374-14>

⁸ Law of Ukraine "On Securities and Stock Market", *op. cit.*

⁹ Law of Ukraine "On the National Bank of Ukraine". (1999, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/679-14>

¹⁰ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>

provision of Art. 167 refers to “the rights of a person whose share is determined in the authorized capital (property) of a business organization”. It is known that the authorized capital is the value of the contributions of the shareholders (founders, participants) made for the purpose of forming its assets for the beginning or further activity, and also serves to guarantee the interests of creditors and debtors. In turn, property as a special object is considered to be a separate thing, a combination of things, including property rights and obligations (Part 1 of Art. 190 of the Civil Code of Ukraine). The above suggests that the approach of the Commercial Code of Ukraine to the identification of authorized capital and property of a business organization in the context of modern development of economic relations is unacceptable and creates obstacles in the cooperation of Ukrainian companies with foreign ones. Considering the best practices of the doctrine of private law, business organization should be understood as a generic concept, arising from the basic understanding of the legal entity as an organization.

The concept of "corporate relations", which are mentioned in paragraph 3 of Art. 167 Commercial Code of Ukraine, also does not add to the clarity, according to which "corporate relations are relations that arise, change, terminate in relation to corporate rights". Hence the misunderstanding: are the relations between business organizations and participants or the supervisory board and general meetings, etc. corporate?

The issues of the scope of the relations covered by Part 3 of Art. 167 of the Commercial Code of Ukraine remains unclear. Considering the fact that corporate legal relations, like any other legal relations, have their own structure, which consists of subjects, objects, content, as well as the grounds for the emergence of such relationships, it is also erroneous to claim that they are specifically regulated [18-20]. According to the general legal understanding, corporate relations are a type of economic relations, and therefore their regulation should be in accordance with the provisions of the Civil Code of Ukraine¹, the Law of Ukraine "On Business Partnerships"², the Law of Ukraine "On Joint Stock Partnerships"³, the Law of Ukraine "On Limited and Additional Liability Partnerships"⁴, etc. A much broader list of competences that make up the content of corporate rights is contained in the Principles of Corporate Governance, approved by the National Securities and Stock Market Commission No. 955 of July 22, 2014.

More successful, in our opinion, is the definition of corporate relations contained in the Draft Law No. 2635 dated 19.12.2019. Thus, the draft proposes to supplement Art. 96-1 of the Civil Code of Ukraine⁵ as follows: “Art. 96-1. Corporate rights.

1. Corporate rights are a set of competences that belong to a person as a participant (founder, shareholder, partner) of a legal entity in accordance with the law and/or constituent documents of a legal entity.

2. Corporate rights are acquired by a person from the moment of acquiring the right

¹ Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>; Economic Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/436-15>

² Law of Ukraine “On Business Societies”. (1991, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/1576-12>

³ Law of Ukraine “On Joint Stock Partnerships”. (2008, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/514-17>

⁴ Law of Ukraine “On Limited and Additional Liability Partnerships”. (2018, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2275-19>

⁵ Civil Code of Ukraine, op. cit.

to a share (stock, share, or other object of civil rights, which certifies the participation of the person in the legal entity) in the authorized (compound) capital of the legal entity.

3. Participants (founders, shareholders, partners) of legal entities can have the rights stipulated in the constituent documents and the law.

4. The law can impose restrictions on the exercise of certain corporate rights by certain persons, as well as conditions and/or restrictions on the exercise of certain corporate rights by certain persons”

Regarding Art. 172 of the Commercial Code of Ukraine, we shall note that its provisions refer us to the Law of Ukraine "On State Property Objects Management". The provisions of this article do not have a regulatory impact, as relations related to corporate rights management are governed by an entire system of legal acts of different legal force. Relations with the exclusive subject of certain activities, in particular banking, insurance, stock exchange, joint investment, etc. are regulated by special legislation, namely the Law of Ukraine "On Privatization of State and Municipal Property".

Therefore, given the existence of an entire system of regulations governing corporate rights in general, including corporate states in particular, Chapter 18 "Corporate Rights and Corporate Relations" can be excluded without any negative consequences for the legal regulation of corporate relations. In turn, the concept of corporate rights and the specifics of their regulation should be enshrined in the Civil Code of Ukraine factoring in these reservations.

The above suggests that articles included in Section III of the Commercial Code of Ukraine "*Property Management Basis*" can be excluded from the text of the Commercial Code of Ukraine, and the concept and general provisions of corporate rights must be enshrined in the Civil Code of Ukraine.

2.3 Comparative analysis of controversial and debatable provisions of the Commercial Code of Ukraine and the Civil Code of Ukraine

Thus, the rules contained in Chapter 19 of the Commercial Code of Ukraine on the regulation of business obligations, by their very nature and content, should exclusively reflect the specific features inherent in the latter. Instead, "the regulation of business obligations in the Commercial Code of Ukraine in many cases almost coincides with the provisions stipulated in Book Five of the Civil Code of Ukraine. An example of this is the very first article of this chapter (Art. 173 of the Commercial Code of Ukraine – definition of business obligation) which by its content repeats Art. 509 of the Civil Code of Ukraine. It would seem that the focus of this paper should be on property and organizational and business obligations, but from the definitions of both property and economic (Part 1 of Art. 175 of the Commercial Code of Ukraine) and organizational and business obligations (Part 1 of Art. 176 of the Commercial Code of Ukraine) follows their private law nature, as directly stated in the analysed chapter of the Commercial Code of Ukraine (Part 1 of Art. 175, Part 4 of Art. 176 of the Commercial Code, etc.). In this regard, Section 1 of the Book Five of the Civil Code of Ukraine would be appropriate to supplement with an article that would enshrine the concept and nature of the legal obligations.

As for the grounds for the emergence of business obligations – Art. 174 of the Commercial Code of Ukraine repeats Art. 11 of the Civil Code of Ukraine almost word for word, at the same time introducing terminological confusion by using the term

"agreement" in the context of a transaction. Art. 177 of the Commercial Code of Ukraine "Social and Municipal Obligations of Business Entities" is dissonant with Art. 4 of the Commercial Code of Ukraine and duplicates the provisions of Art. 17 of the Law of Ukraine "On Fundamentals of Social Protection of Persons with Disabilities in Ukraine"¹, Resolution of the Verkhovna Rada of Ukraine "On the Concept of Sustainable Development of Settlements"², Art. 40 of the Law of Ukraine "On Regulation of Urban Development"³ etc. The same applies to the wording of Art. 178 of the Commercial Code of Ukraine "Public Obligations of Business Entities", which duplicates the provisions of Art. 633 of the Civil Code of Ukraine, bringing disharmony into the understanding of the construction of a public contract. Chapter 20, "Economic Agreements" (Articles 179–188), as it appears from its content, is essentially a brief version (a kind of a "sampler") of Chapters 52–53 of the Civil Code of Ukraine. However, based on the titles of Art. 183 «Features of Conclusion of Economic Agreements under Public Procurement» and Art. 186 "Conclusion of Organizational and Economic Agreements" should reflect the dynamics of contractual obligations and their respective features. However, in their current wording, they are "copying" the provisions of Section VII of the Law of Ukraine "On Public Procurement" in the first case, and the general provisions of Chapters 52–53 of the Civil Code of Ukraine in the second case. Furthermore, the provisions of articles of Chapter 20 of the Commercial Code of Ukraine contain significant contradictions regarding the use of the construction of standard contracts (Art. 184) under the Commercial Code of Ukraine and the concept of standard conditions (Art. 630) under the Civil Code of Ukraine. The approaches used in the Commercial Code of Ukraine substantially limit the principle of freedom of contract in business, which significantly impedes investment in the country's economy.

Chapter 21 "*Prices and Pricing in the Commercial Field*" (Articles 189–192) has neither substantive nor regulatory weight, since the basic principles of price policy, the detailed regulation of relations in this field, and the exercise of state control (oversight) and surveillance in pricing is governed by the Law of Ukraine "On Prices and Pricing". Given the existence of which retention of a separate chapter in the Commercial Code of Ukraine is inappropriate. Chapter 22 "*Performance of Business Obligations. Termination of Obligations*" (Articles 193–208) as well as Chapter 20 of the Commercial Code of Ukraine also constitute a brief version of Chapters 48–51 of the Civil Code of Ukraine. Thus, Art. 193 of the Commercial Code of Ukraine contains provisions which, within a single article, specify: 1) the general conditions for the performance of the obligation (Art. 526 of the Civil Code of Ukraine); 2) elements of performance (Articles 527, 529, 531 of the Civil Code of Ukraine); 3) the legal consequences of non-performance or improper performance (Articles 610, 615, 616, 622 of the Civil Code of Ukraine); 4) confirmation of performance (Art. 545 of the Civil Code of Ukraine), which indicates the inappropriateness of its retention. By analogy, Art. 194 of the Commercial Code of Ukraine

¹ Law of Ukraine "On the basics of social protection of persons with disabilities in Ukraine". (1991, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/875-12>

² Resolution of the Verkhovna Rada of Ukraine "On the Concept of Sustainable Development of Settlements". (1999, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1359-14>

³ Law of Ukraine "On Regulation of Urban Planning Activity". (2011, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3038-17>

"Performance of a Business Obligation by a Third Party", which duplicates the provisions of Art. 528 Civil Code of Ukraine and creates the effect of excessive "regulation" of relations concerning the possibility of involving third parties as executors of a contractual obligation. Concerning the revision of Art. 195 of the Commercial Code of Ukraine "Transfer (Delegation) of Rights in Business Obligations" we deem it appropriate to transfer Part 1 of this Art. to Book Five of the Civil Code of Ukraine by supplementing Part 1 of Art. 527 of the Civil Code of Ukraine with paragraph 2 of the following content:

"1. The debtor shall be obliged to perform its obligation, and the creditor shall be obliged to accept the performance in person, unless otherwise stipulated by the agreement or law, does not follow from the essence of the obligations or customs of business turnover. The creditor, unless otherwise stipulated by law, can transfer to another person, with their consent, the right to accept performance from the debtor".

The wording of Art. 198 of the Commercial Code of Ukraine "Performance of Monetary Obligations" contradicts the provisions of Art. 533 of the Civil Code of Ukraine "Currency of Monetary Obligation Performance", considering that these articles reflect different approaches to assessing the possibility of a mismatch between the currency of an obligation and the currency of payment under an agreement. In modern circumstances, it appears to be impractical to imperatively restrict the ability of business entities to express monetary obligations in foreign currency (Art. 198 of the Commercial Code of Ukraine). With that, the currency of payment within the territory of Ukraine should be exclusively hryvnia.

The provisions of Chapter 22 of the Commercial Code of Ukraine (Articles 199–201) should be deleted as devoid of regulatory load, but merely repeating in brief the general and special provisions of Chapter 49 of the Civil Code of Ukraine "Ensuring Performance of Obligations". As for articles dealing with the termination of business obligations and their legal consequences (Articles 202 to 208 of the Commercial Code of Ukraine), it is appropriate to emphasize that the content of Art. 202 of the Commercial Code of Ukraine indicates duplication of the provisions of Art. 598 Civil Code of Ukraine, which consolidates a non-exhaustive list of grounds for termination of obligations under Articles 599, 601, 606, 604, 607 of the Civil Code of Ukraine, etc. The same applies to Art. 203 of the Commercial Code of Ukraine, which in its content is a combination of such articles of the Civil Code of Ukraine as: 1) Part 1 of Art. 203 of the Commercial Code of Ukraine – Part 1 of Art. 599 of the Civil Code of Ukraine; 2) Part 2 of Art. 203 of the Commercial Code of Ukraine – Part 1 of Art. 539 of the Civil Code of Ukraine; 3) Part 3 of Art. 203 of the Commercial Code of Ukraine – Parts 1-2 of Art. 601 of the Civil Code of Ukraine; 4) Part 5 of Art. 203 of the Commercial Code of Ukraine – Part 1 of Art. 602 of the Civil Code of Ukraine. A similar situation occurs with other articles in this chapter, which duplicate the provisions of the Civil Code of Ukraine, which raises reasonable doubts about their practical value and the need to retain them. The existence of Chapter 23, "Bankruptcy Procedure for a Business Entity" (Articles 209–215) within Section IV of the Commercial Code of Ukraine has previously caused some surprise and astonishment, and even more so with the adoption of the Bankruptcy Procedure Code of Ukraine, since there neither was nor is the need for fragmentary, superficial regulation of relations by provisions which do not regulate, and in many cases even contradict the newly adopted codified act.

Therefore, the provisions of Section IV “*Business Obligations*” should, by their very nature and content, reflect the specific features inherent exclusively in business obligation. Instead, the proposed regulation in the respective articles of the Commercial Code of Ukraine in many cases actually repeats the provisions of Book Five of the Civil Code of Ukraine. Accordingly, there are no arguments regarding the advisability of keeping this section in the Commercial Code of Ukraine.

The provisions of Section V, “*Responsibility for Offenses in Business Activity*” duplicate, by their general content, the provisions of Chapter 51 of the Civil Code of Ukraine. As an example, it is advisable to cite the provisions of Chapter 24, “General Principles of Responsibility of Participants in Economic Relations” of the Commercial Code of Ukraine, which duplicate the provisions of Chapter 51 of the Civil Code of Ukraine, and in some cases only enshrine the general rules, such as: “Participants of business relations are economically and legally liable for offenses in business activity by means of applying economic sanctions to business offenders on the grounds and in accordance with the procedure established by this Code, other laws and agreement” (Part 1 of Art. 216 of the Commercial Code of Ukraine) or: “grounds for commercial law liability of the participant in economic relations are an offense committed in business activity” (p. 1, Art. 218 Commercial Code of Ukraine). Partially duplicating the provisions of Art. 617 Civil Code of Ukraine, Art. 219 of the Commercial Code of Ukraine consolidates the grounds for exemption from said liability. This duplication appears to be inappropriate. However, Part 4 of Art. 219 of the Commercial Code of Ukraine deserves to be transferred to Art. 617 of the Civil Code of Ukraine by consolidating the ability of the parties to envisage certain circumstances which, by virtue of their extraordinary nature, may give rise to their exemption from liability in case of a breach of the obligation due to given circumstances, as well as the procedure for attesting to the occurrence of such circumstances.

Articles 220 and 221 of the Commercial Code of Ukraine completely duplicate the provisions of Articles 612 and 613 of the Civil Code of Ukraine. The same applies to the expediency of regulating procedural issues in the pre-trial dispute settlement procedure (Art. 222 of the Commercial Code of Ukraine). Art. 222 of the Commercial Code of Ukraine contains many aspects of the procedural nature that must be enshrined in the procedural codes. In this regard, it is worth emphasizing that it is appropriate to exclude Chapter 25 “Compensation for losses in the in Business Activity” of the Commercial Code of Ukraine, since it does not carry any legal load. In particular, Articles 224-225 of the Commercial Code of Ukraine duplicate the provisions of Articles 22, 623 of the Civil Code of Ukraine, and Articles 227-228 of the Commercial Code of Ukraine, respectively, duplicate Articles 541-544 of the Civil Code of Ukraine.

Chapter 26 “*Penalties and operational-economic sanctions*” should be excluded, given the internal inconsistency of its rules (for example, the recognition of fines and penalties as separate sanctions apart from the forfeit or consolidation of a set-off penalty in Art. 232 of the Commercial Code of Ukraine contrary to the provisions of Art. 624 of the Civil Code of Ukraine, etc.) and duplication of provisions of the Civil Code of Ukraine (for example, Art. 233 of the Commercial Code of Ukraine duplicates the provisions of Articles 551 and 616 of the Civil Code of Ukraine; Art. 234 of the Commercial Code of Ukraine duplicates provisions of Art. 622 of the Civil Code of Ukraine; Art. 235 of the

Commercial Code of Ukraine duplicates provisions of Art. 615 Civil Code of Ukraine, etc.). Furthermore, there is doubt regarding the wording of Art. 231 of the Commercial Code of Ukraine (especially Part 2), in which the expediency of imposing sanctions is unclear if the party to legal relations is the state. This article effectively negates the principle of legal equality of the parties in private law relations, and Chapter 26 "Penalties and operational-economic sanctions" itself does not contain any new approaches to the mechanism of bringing the offender to justice, thereby duplicating the provisions of the Civil Code of Ukraine.

Special attention should be paid to the provisions of Chapter 27 "Administrative and Economic Sanctions" of the Commercial Code of Ukraine on issues that were separately resolved in the provisions of the codified acts of public law (Tax Code, Customs Code, Laws of Ukraine "On Foreign Economic Activity", "On Features of State Regulation of Activities of Business Entities Related to the Sale and Export of Timber", etc.). Furthermore, to date, by means of removal of Art. 37 of the Law of Ukraine "On Foreign Economic Activity", the legislator has refused to apply such special sanctions to business entities engaged in foreign trade activities as temporary suspension of foreign economic activity; individual licensing regime and penalty). Instead, in Chapter 27 of the Commercial Code of Ukraine, these types of administrative and economic sanctions remained. The foregoing indicates that special legislation in this field has been updated without amending the Commercial Code of Ukraine as an ineffective regulator of these relations.

The presence of Chapter 28 "*Responsibility of the Business Entities for the Violation of Antitrust and Competition Laws*" in the structure of the Commercial Code of Ukraine also raises a few concerns on this matter. Thus, the logic of the legislator is unclear, who, having foreseen the specific features of holding business entities liable for violation of antitrust law, placed this chapter in the Commercial Code of Ukraine. The expediency of its existence is undermined by the existence of perfect special legislation in this field, which is evidenced by the adoption of the Law of Ukraine "On Protection of Economic Competition" (section VIII, IX) and the Law of Ukraine "On Protection against Unfair Competition" (Chapter 5, 6). Considering the existence of special legislation in this area, the value of Chapter 28 of the Commercial Code of Ukraine is minimal, because the provisions stipulated therein do not reflect the mechanism of holding business entities liable for violations of antitrust and competition law.

2.4 Analysis of the subject matter of provisions of Section VI "Features of legal regulation in certain economy sectors" of the Commercial Code of Ukraine

The largest by volume is Chapter VI, "*Features of Legal Regulation in Certain Business Sectors*", consisting of 8 chapters and 118 articles. This section begins with Chapter 29 "*Industries and Types of Business Activity*", the content of which indicates that it does not carry any regulatory burden and practical value. Chapter 30 "*Features of Legal Regulation of Economic and Commercial Activities*" is divided into 6 paragraphs: supply, contracting, energy supply, stock trading, property rent and leasing, including other types of economic and commercial activity.

§ 1 "*Supply*" essentially duplicates the general provisions of the Civil Code of Ukraine on the sale and purchase.

§ 2 "*Contracting Agricultural Production*" partially duplicates the provisions of Art. 713 of the Civil Code of Ukraine. At the same time, it would be advisable, within the framework of the same article, to consolidate separate features of the performance of the terms of this agreement (Parts 2-3 of Art. 273 of the Commercial Code of Ukraine). Instead, Art. 274 of the Commercial Code of Ukraine on liability is general and does not contain any features that would distinguish it from liability under agreements of this contractual type. Thus, the Commercial Code of Ukraine does not contain rules that would not be covered by the Civil Code of Ukraine in the regulation of agricultural contracting. Furthermore, it is doubtful whether regulation of agricultural production contracting is based on a model agreement.

§ 3 "*Energy Supply*" partially replicates Art. 714 of the Civil Code of Ukraine. Furthermore, the subject of the agreements stipulated by Art. 714 of the Civil Code of Ukraine and Art. 275 of the Commercial Code of Ukraine is not identical. This issue arises due to the confusion of the terminological nature of the mentioned agreements in the Commercial Code of Ukraine and the Civil Code of Ukraine, considering that the former implies under the wording "to comply with the contractual regime of its use" the use of energy (electricity, steam, hot and overheated water), and the latter, respectively, under "adhering to the contractual regime of its use" means the use of an affiliated network, which creates a certain terminological confusion, which, with the wrong qualification and understanding of the essence of such an agreement can cause problems in its proper application.

§ 4. *Stock trading* concerns, as follows from the content of Part 1 of Art. of the 278 Commercial Code of Ukraine, the legal status of commodity exchange. Hence, firstly, the question arises as to the expediency of placing this paragraph within the individual contractual groups at all, and secondly, the legal status of the commodity exchange is regulated in detail at the level of special legislation (the Law of Ukraine "On Commodity Exchange"), and therefore the advisability of retaining this paragraph is rather dubious.

§ 5. "*Property and Leasing*" duplicates the general provisions for the rental (lease) of Chapter 58 of the Civil Code of Ukraine. Furthermore, the lease of property under Art. 283 of the Commercial Code of Ukraine is described exclusively as real, although the agreement must be described both as real and as consensual. Furthermore, the analysis of Chapters 58-59 of the Civil Code of Ukraine reveals a more detailed regulation of lease relations, both at the level of general provisions and in such objects of civil legal relations as land, housing, buildings or other capital structures, vehicles, etc. Moreover, special law "On Leasing of State and Municipal Property" and § 6 of Chapter 58 of the Civil Code of Ukraine, Law of Ukraine "On Financial Leasing", etc. cover such relations as rental of state, municipal property, and leasing. Given the significant differences between the provisions of the Civil Code of Ukraine, special legislation in these fields and § 5 of Chapter 30 of the Commercial Code of Ukraine, there is no doubt in the expediency of completely excluding this paragraph.

§ 6. *Other types of business and commercial activities* cover barter relations (Art. 293) and storage in the warehouse (Art. 294). The expediency of retaining this paragraph appears to be doubtful, because barter relations are settled at the level of § 6 of chapter 55 of the Civil Code of Ukraine, Art. 716 of which provides for the possibility of applying to such relations general provisions on the sale and purchase, supply agreement, contracting

agreement or other agreements, the elements of which are contained in the barter agreement, if this does not contradict the essence of the obligation. Instead, storage relations are regulated by the provisions of Chapter 66 of the Civil Code of Ukraine, under which a separate paragraph “Storage at the warehouse” is highlighted, including the special Law of Ukraine “On Certified Warehouses and Simple and Double Warehouse Certificates”.

Chapter 31 “*Commercial Mediation (Agency Relations) in Management*” raises several questions, the main of which is the following: why does the Commercial Code of Ukraine identify commercial mediation in management exclusively with agency relations? At the same time, the issues of legal regulation of relations under such intermediary agreements as power of attorney, commission, consignment, and property management are left out of legal regulation. The differences between these agreements are conditioned upon the scope, subject matter, content of the rights and obligations of the parties.

The principal factor underlining the agent's intermediary functions is its performance of actions at the expense of the principal. An agency agreement can be implemented in a wider scope of relations than commission and power of attorney. This is a consequence of the coverage by the subject of actions of any nature, subject to their legitimacy and based on the authority granted. Thus, an agency agreement is an independent contractual model that has several specific features that distinguish it from adjacent contractual structures. At the same time, by its legal nature, an agency contract is a type of contract for the provision of intermediary services, where the agent always acts in the interests of the principal, based on the latter's authority and at its expense. Accordingly, it was expedient to place the said agreement within the bounds of Book 5 of the Civil Code of Ukraine by transferring the individual rational ideas of Chapter 31 of the Commercial Code of Ukraine to the Civil Code of Ukraine. For example, as implemented in Anglo-American law, which is described by an understanding of the agency agreement as a generic, where the power of attorney and the commission act as special types subordinate to the agency institution.

Chapter 32 “Legal regulation of freight transportation” duplicates the general provisions on transportation in Chapter 64 of the Civil Code of Ukraine. Furthermore, these relations are governed at various levels of special legislation: transport codes (Air Code¹, Commercial Maritime Code²), laws of Ukraine (“On Transport”³, “On Railway Transport”⁴, “On Road Transport”⁵, etc.), sub-legislative acts (Charter of Railways, Charter of Inland Waterways, Rules for Transportation of Freight by Road in Ukraine, Rules for Transportation of Freight by Rail, etc.). Due to the presence of such a wide array of multifaceted acts of the legislation in freight transportation, including the absence of any specific features in the transportation of goods that would not be covered by the Civil Code

¹ Air Code of Ukraine. (2011, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/3393-17>

² Code of Merchant Shipping. (1995, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/176/95-%D0%B2%D1%80>

³ Law of Ukraine “On Transport”. (1994, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/232/94-%D0%B2%D1%80>

⁴ Law of Ukraine “On Rail Transport”. (1996, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/273/96-%D0%B2%D1%80>

⁵ Law of Ukraine “On Road Transport”. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2344-14>

of Ukraine and the abovementioned special acts of legislation, the analysed chapter of the Commercial Code of Ukraine is subject to abolition.

Chapter 33 "*Capital Construction*" must be excluded as such that is not based on a unified legislative approach and causes numerous legal conflicts both in the titles of these agreements under the Civil Code of Ukraine and the Commercial Code of Ukraine and in the content of this chapter of the Commercial Code of Ukraine. For example, in the very content of Chapter 33 of the Commercial Code of Ukraine there are terminological contradictions. Art. 324 of the Commercial Code of Ukraine exemplifies this issue, where, compared to the Civil Code of Ukraine, the same agreement has different names, does not stipulate the possibility of involvement of third parties to perform certain stages of work, consolidates the obligation to conduct both prospecting (according to commercial law terminology – exploratory) and design works, the possibility is included for applying the provisions of the agreement for capital construction to the legal relations for the conduct of both prospecting and design works. The same applies to provisions concerning the legal regulation of capital construction relations that would not be covered by the Civil Code of Ukraine. Therefore, Chapter 33 of the Commercial Code of Ukraine "*Capital Construction*" should be abolished as such that is not based on a unified legislative approach and causes numerous legal conflicts both in the titles of these agreements under the Civil Code of Ukraine and the Commercial Code of Ukraine, and directly in the content of this chapter.

Chapter 34 "*Legal Regulation of Innovation*" in fact reproduces the provisions of Chapter 62 "Performing research, development and technological works" of the Civil Code of Ukraine. The said chapter of the Commercial Code of Ukraine is fragmentary, and on certain aspects, contrary to the provisions of the Civil Code of Ukraine, regulates scientific and technical activities. This creates shortcomings in the contractual regulation of research, development, and technological works. Moreover, Articles 325-330 of the Commercial Code of Ukraine cover not the agreement, but the innovative activities and their "state" regulation (as defined in Art. 328 of the Commercial Code of Ukraine). At the same time, several special laws, such as the Law of Ukraine "On Innovative Activity"¹, the Law of Ukraine "On Scientific and Technical Activity"², and the Law of Ukraine "On Scientific and Technical Information"³ cover the legal settlement of these relations. Accordingly, the expediency of a "summary" review of something that has a detailed regulation within the framework of the Civil Code of Ukraine (regarding an agreement for the implementation of research or development and technological works) and special legislative acts (on the legal regulation of innovation activity) is devoid of any sense. Therefore, the abolition of Chapter 34 of the Commercial Code of Ukraine will in no way affect the mechanism of legal regulation of these relations.

Chapter 35 "*Features of Legal Regulation of Financial Activities*" consists of 5 paragraphs, each of which duplicates the provisions of the Civil Code of Ukraine and

¹ Law of Ukraine "On Innovation Activities". (2002, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/40-15>

² Law of Ukraine "On Scientific and Scientific and Technical Activities". (2015, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/848-19>

³ Law of Ukraine "On Scientific and Technical Information". (1993, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/3322-12>

contains a summary of the special legislation.

Thus, § 1 “*Finance and Banking*” covers the definition of the legal status of banks and their financial activities. With that, the legislator, within the framework of this paragraph, allowed the combination of the legal status of banks, their legal forms, bank deposit, credit, settlement, factoring, leasing operations agreements, effectively combining the uncombinable. For instance:

1) definition of the legal status of banks, their legal forms, etc. is covered by separate laws of Ukraine “On Banks and Banking”, “On the National Bank of Ukraine”;

2) legal regulation of financial activities and financial services is covered by several special laws, such as: “On Financial Services and State Regulation of Financial Services Markets”, “On Financial and Credit Mechanisms and Property Management in Housing and Real Estate”, “On Financial Leasing”, “On State Aid to Business Entities”, etc.¹;

3) Chapters 71-74 of the Civil Code of Ukraine cover banking operations.

§ 2 “*Insurance*” duplicates the provisions of Chapter 67 of the Civil Code of Ukraine and the provisions of special laws (“On Insurance”, “On Compulsory Insurance of Civil Liability of Owners of Land Vehicles”²). It is therefore doubtful whether Articles 352-355 of this paragraph should be retained.

§ 3 «*Mediation in Securities Transactions. Stock Exchange*” covers the intermediary relations in the stock market of Ukraine and directly the legal status of the stock exchange. As for brokerage agreements, these relations are governed at the level of the general provisions on representation by Chapter 17 of the Civil Code of Ukraine and the Law of Ukraine “On Securities and Stock Market”³, which stipulates both the legal status of such an intermediary and the stock exchange. Accordingly, the expediency of retaining this paragraph is doubtful.

§ 4 “*Audit*” is an attempt to regulate the audit activity and the legal status of its entities. At the same time, these legal relations are governed both by the general provisions on services (Chapter 63 of the Civil Code of Ukraine) and by the updated Law of Ukraine “On Audit of Financial Reporting and Auditing”⁴. In this regard, the expediency of retaining this paragraph is also doubtful.

Placing § 5 “*Lottery activity*” in the structure of the Commercial Code of Ukraine raises serious questions, since Art. 365-1 has no regulatory effect, as it immediately refers

¹ Law of Ukraine “On Financial Services and State Regulation of Financial Services Markets”. (2011, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/2664-14>; Law of Ukraine “On Financial and Credit Mechanisms and Property Management in Housing and Real Estate Transactions”. (2003, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/978-15>; Law of Ukraine “On State Aid to Business Entities”. (2004, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1555-18>

² Law of Ukraine “On Insurance”. (1996, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/85/96-%D0%B2%D1%80>; Law of Ukraine “On Compulsory Insurance of Civil Liability of Owners of Land Vehicles”. (2004, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1961-15>.

³ Law of Ukraine “On Securities and Stock Market”. (2006, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/3480-15>

⁴ Law of Ukraine “On Audit of Financial Reporting and Auditing”. (2019, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/2258-19>

to a special law in this area “On State Lotteries in Ukraine”¹, which establishes the basic principles of state regulation of lottery activity in Ukraine with the purpose of creating favourable conditions for the development of the lottery market based on the principles of state monopoly on the issue and holding of lotteries, meeting the needs of the state budget, rights, and legal interests of citizens.

Chapter 36 “*Use of the rights of other business entities in entrepreneurial activity (Commercial Concession)*” duplicates the provisions of Chapter 76 of the Civil Code of Ukraine. Thus, the content of the provisions of the analysed chapter of the Commercial Code of Ukraine superficially, and in certain aspects contrary to the provisions of the Civil Code of Ukraine, regulates the contractual relations on the use of intellectual property rights. Furthermore, chapter 76 “Commercial Concession” of the Civil Code of Ukraine is placed after chapter 75 “Disposal of Intellectual Property Rights” of the Civil Code of Ukraine, which altogether creates a common conceptual framework for regulating relations of disposition of intellectual property rights.

Thus, the analysed content of Chapters IV-VI of the Commercial Code of Ukraine suggests that there is no need to retain them, given the existence of such a wide array of multi-level legislative acts, as well as the absence of any specific regulation of the above relations that would not be covered by the Civil Code of Ukraine and special acts of legislation.

Section VII “*Foreign Economic Activity*”, in particular Chapter 37 “*General Provisions*”, and the provisions of Articles 377-389 duplicate the rules of other legislative acts. Thus, provisions on the definition, entities, types, licensing and quotas, foreign economic agreements, their state registration, customs regulation, principles of taxation in the implementation of foreign economic activity, foreign currency accounts of entities, foreign exchange earnings, obtaining loans by subjects in foreign financial institutions, state protection of rights and legitimate interests duplicate the provisions of the Law of Ukraine “On Foreign Economic Activity”², the Civil Code of Ukraine (in terms of the subject composition), the Customs Code of Ukraine, the Tax Code of Ukraine, including the Law of Ukraine “On State Control of International Transfers of Military Goods and Dual Use”, Law of Ukraine “On State Defence Order”³.

Thus, Articles 377-389 of Chapter 37 “General Provisions” in Section VII “Foreign Economic Activity” of the Commercial Code of Ukraine are subject to exclusion in the absence of direct regulatory impact. The provisions of Chapter 38 “*Foreign Investment*” (Articles 390-400) duplicate the provisions of the Law of Ukraine “On the Foreign Investment Regimes” dated May 7, 1996. Thus, in particular, the first part of Art. 390 of the Commercial Code of Ukraine duplicates the provisions of part 1 of Art. 1 of the Law of Ukraine “On Foreign Investment Regimes”⁴. Art. 391 of the Commercial Code of

¹ Law of Ukraine “On State Lotteries in Ukraine”. (2019, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/5204-17>

² Law of Ukraine “On Foreign Economic Activity”. (1991, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/959-12>

³ Customs Code of Ukraine. (2012, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/4495-17>; Law of Ukraine “On State Control over International Transfers of Military and Dual-Use Items”. (2003, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/549-15>

⁴ Law of Ukraine “On Foreign Investment Regime”. (1996, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/93/96-%D0%B2%D1%80>

Ukraine duplicates Art. 2 of the abovementioned law. Part 2 of Art. 391 of the Commercial Code of Ukraine contains a reference to the law and also has no independent regulatory effect. Art. 394 of the Commercial Code of Ukraine duplicates the provisions of Art. 7 of the same Law. Thus, given that the Law of Ukraine “On Foreign Investment Regimes”¹ regulates the types, forms of implementation, objects of foreign investment, prohibition and restriction of any forms of foreign investment, determines the territories where the activity of foreign investors and enterprises are restricted and prohibited, we shall conclude that Articles 390-400 of Chapter 38 of the Commercial Code of Ukraine are subject to be excluded as such that duplicate the provisions of the Law of Ukraine “On Foreign Investment Regime”. In Section VIII “*Special Economic Modes*”, Chapter 39 “*Special (Free) Economic Zones*” of the Commercial Code of Ukraine, namely provisions of Articles 401-405 duplicate the content of the articles of the Law of Ukraine “On General Principles of Establishment and Functioning of Special (Free) Economic Zones”². In particular, Art. 401 duplicates the provisions of parts 1-2 of Art. 1 of the specified Law, Art. 402 duplicates the provisions of Art. 2 of the said Law, Art. 403 duplicates Art. 3 of the Law, Art. 404 duplicates the provisions of Art. 13 of the same Law, and Art. 405 duplicates the provisions of Art. 4 of the same Law. Thus, given that the special regulatory act regulates the special economic regimes in detail, in particular the special (free) economic zones, Chapter 39 of the Commercial Code of Ukraine, namely Articles 401-405 of the Commercial Code of Ukraine, should be excluded as they duplicate the provisions of the articles of the Law of Ukraine “On General Principles of Creation and Functioning of Special (Free) Economic Zones”³.

Considering that the Law of Ukraine “On Concession”⁴ was adopted on 03.10.2019, which defines the legal, financial, and organizational foundations for the implementation of concession projects to modernize the infrastructure and improve the quality of socially significant services, Chapter 40 “*Concession*”, in particular, Art. 406 of the Commercial Code of Ukraine should be excluded as a provision which duplicates the provisions of the abovementioned law. Regarding Chapter 41 “*Other Types of Special Regimes of Economic Activity*” (Articles 411-418 of the Commercial Code of Ukraine), we shall note that the Law of Ukraine “On Exclusive (Marine) Economic Zone”⁵ dated 23.05.1995 regulates the legal regime of exclusive (maritime) economic zone Ukraine, subject to the relevant provisions of the 1982 United Nations Convention on the Law of the Sea. Considering the fact that this law was adopted in 1995, we shall state that at the time of adoption of the Commercial Code of Ukraine in 2003, its provisions were already duplicating the provisions of the Law of Ukraine “On Exclusive (Marine) Economic Zone”. For example, parts 1-2 of Art. 411 of the Commercial Code of Ukraine duplicate the provisions of part

¹ Law of Ukraine “On Foreign Investment Regime”. (1996, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/93/96-%D0%B2%D1%80>

² Law of Ukraine “On General Principles of Creation and Functioning of Special (Free) Economic Zones”. (1992, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2673-12>

³ *Ibidem*, 1992.

⁴ Law of Ukraine “On Concession”. (2019, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/155-20>

⁵ Law of Ukraine “On Exclusive (Marine) Economic Zone”. (1995, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/162/95-%D0%B2%D1%80>

1-2 of Art. 2 of the Law of Ukraine "On Exclusive (Marine) Economic Zone"¹. Part 3 of Art. 411 of the Commercial Code of Ukraine duplicates Part 1 of Art. 9 of the same Law. Part 4 duplicates Art. 10 of the above law. Part 5 contains a statutory reference to other regulations and has no regulatory effect. Art. 412 of the Commercial Code of Ukraine completely duplicates the provisions of Art. 18 of the Law of Ukraine "On State Border"² dated 18.12.1991. Part 3 of this article duplicates Art. 19 of the Law of Ukraine "On State Control"³. The provisions of Art. 413 of the Commercial Code of Ukraine contain provisions referring to special legislation, in particular the Land Code of Ukraine⁴ and the Law of Ukraine "On the status and social protection of citizens affected by the Chernobyl disaster"⁵. The provisions of Art. 414 of the Commercial Code of Ukraine contain no regulatory impact, since they refer to other regulations, namely the Law of Ukraine "On the Armed Forces of Ukraine", the Law of Ukraine "On economic activity in the Armed Forces of Ukraine", which are special acts and determine the conditions of economic activities in the Armed Forces of Ukraine. Furthermore, Part 1 of Art. 414 of the Commercial Code of Ukraine establishes a general rule that specifies the powers of the Cabinet of Ministers of Ukraine, which are governed by the Law of Ukraine "On the Cabinet of Ministers of Ukraine" and the Resolution of the Cabinet of Ministers of Ukraine No. 950 "On Approval of the Regulation of the Cabinet of Ministers of Ukraine" dated 18.07.2007⁶.

Art. 415 of the Commercial Code of Ukraine has a blanket form under which the law may specify the territory where, under certain conditions, a special regime of investment activity can be introduced. The relevant procedure and conditions are regulated by the Law of Ukraine "On General Principles of Creation and Functioning of Special (Free) Economic Zones"⁷. Thus, there is no need for additional regulation of this issue, and therefore Art. 415 should be excluded as such that does not contain an applicable law and has no independent regulatory impact.

Art. 416 of the Commercial Code of Ukraine contains a referential provision and has no regulatory effect, given that the procedure for conducting business activities in a state of emergency, environmental emergency is established in Part 2 of Art. 64 of the Constitution of Ukraine⁸. Parts 2 and 3 of this Art. contain a referential provision to special

¹ Law of Ukraine "On Exclusive (Marine) Economic Zone". (1995, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/162/95-%D0%B2%D1%80>

² Law of Ukraine "On State Border". (1991, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/1777-12>

³ Law of Ukraine "On State Control". (2017, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/2042-19>

⁴ Land Code of Ukraine. (2001, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2768-14>

⁵ Law of Ukraine "On the status and social protection of citizens affected by the Chernobyl disaster". (1991, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/796-12>

⁶ Law of Ukraine "On the Armed Forces of Ukraine". (1991, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1934-12>; Law of Ukraine "On Economic Activity in the Armed Forces of Ukraine". (1999, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/1076-14>

⁷ Law of Ukraine "On General Principles of Creation and Functioning of Special (Free) Economic Zones". (1992, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/2673-12>

⁸ Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

legislation, in particular the Law of Ukraine "On the Legal Regime of State of Emergency"¹ dated 25.04.2000 and the Law of Ukraine "On the Zone of Emergency Ecological Situation"² dated 25.08.2000.

The provisions of Art. 417 of the Commercial Code of Ukraine also refer to special legislation, namely the Law of Ukraine "On the Legal Status of Martial Law" dated 10.06.2015, which regulates relations in the event of declaration of martial law, including the Law of Ukraine "On Defence of Ukraine" dated 25.12.1991. Art. 418 of the Commercial Code of Ukraine contains a contradictory rule, since the special economic regime is governed by a number of special laws, which are adopted upon the submission of the Cabinet of Ministers of Ukraine in case of stabilization or acceleration of development of certain sectors of the economy. Part 2 of this article has no regulatory impact, because according to Art. 55 of the Constitution of Ukraine, everyone is guaranteed the right to challenge the decisions, actions or inaction of state authorities, local self-government bodies, officials and officers in court.

Thus, Chapter 41 "*Other Types of Special Economic Activity Regimes*", in particular Articles 411-418 of the Commercial Code of Ukraine contain blanket rules, which duplicate the provisions of special legal acts, have no regulatory impact in their content, and therefore should be excluded in full.

CONCLUSIONS

The analysis of the provisions of the Commercial Code of Ukraine, its comparison with certain provisions of the Civil Code of Ukraine, individual laws and other regulations gives grounds to conclude that most of the rules of the Commercial Code of Ukraine are referential or blanket, and therefore have minimal regulatory impact and, as a rule, duplicate the provisions enshrined in other regulations. In such circumstances, to simplify the legal regulation of entrepreneurial activity, as well as in view of the obligations of our country (in particular, to bring the Ukrainian legislation in conformity with the legislation of the EU countries in legislation on the establishment and activity of companies, corporate governance, protection of shareholders' rights, lenders and other stakeholders on the further development of corporate governance policies in line with international standards, as well as the progressive approximation with rules and recommendations of the EU in this area), feasibility of the abolition of the Commercial Code of Ukraine raises no doubts.

Finally, it can be stated that the dispute of civilists with economic executives has long been resolved in favour of freedom by life itself in the post-Soviet space and by the experience of all countries with market economy. Therefore, any revival of economic executives, wherever it takes place, should always be regarded as an attack on freedom. The modern school of business law, with the help of the Commercial Code of Ukraine, seeks to narrow the freedom, the field of private law... It must be clearly understood that the concept of business law is a legal instrument of neo-totalitarianism.

¹ Law of Ukraine "On Legal Regime of Emergency". (2012, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/1550-14>

² Law of Ukraine "On the zone of emergency environmental situation". (2000, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/1908-14>

ACKNOWLEDGEMENTS

The article was prepared based on the materials of the report at the meeting of the Department of Civil Law of the National Academy of Legal Sciences of Ukraine at the Kyiv Regional Centre of the National Academy of Sciences of Ukraine on 20.11.2019.

REFERENCES

- [1] Mamutov, V.K. (Ed.). (2002). *Economic law*. Kyiv: Yurinkom Inter.
- [2] Fedorchenko, N., & Kalaur, I. (2017). Legal regulation of obligations on service delivery in the context of the development of Ukraine's economy. *Transition Studies Review*, 24(1), 71-85.
- [3] Hrnčirikova, M. (2019). Nature of mediation clauses from the point of view of private international law. *International and Comparative Law Review*, 19(2), 224-238.
- [4] Karmaza, O.O., Makhinchuk, V.M., Derkach, A.L., Spektor, O.M., & Sheludchenkova, A.S. (2019). Application of "piercing the corporate veil" doctrine in the Ukrainian law. *International Journal of Economics and Business Administration*, 7(4), 524-538.
- [5] Spasybo-Fatieieva, I.V. (2014). *Civil and Commercial Codes: 2004–2014*. Kharkiv: Yaroslav Mudryi National Law University.
- [6] Hamrouni, A., Boussaada, R., Farhat, B., & Toumi, N. (2019). Corporate social responsibility disclosure and debt financing. *Journal of Applied Accounting Research*, 20(4), 394-415.
- [7] Kuznetsova, N.S. (2013). Systematization of entrepreneurial (economic) legislation: experience, problems, prospects. In *Civil law and modernity. Collection of articles dedicated to the memory of M. I. Braginsky*. Moscow: Statut.
- [8] Dovhert, A.S. (2019). Recodification of the Civil Code of Ukraine: Factors and prerequisites for starting. *Pravo Ukrainy*, 1, 28.
- [9] Beschastnyi, V., Shkliar, S., Fomenko, A., Obushenko, N., & Nalyvaiko, L. (2019). Place of court precedent in the system of law of the European Union and in the system of law of Ukraine. *Journal of Legal, Ethical and Regulatory Issues*, 22(6), 1-6.
- [10] Veebel, V. (2019). European Union as normative power in the Ukrainian–Russian conflict. *International Politics*, 56(5), 697-712.
- [11] Humeniuk, T., Knysh, V., & Kuzenko, U. (2019). The influence of European integration on optimization of the legal conditions of social policy in Ukraine. *Journal of Management Information and Decision Science*, 22(4), 541-554.
- [12] Bulletin of the State Statistics Service of Ukraine as of February 1, 2020. Retrieved from http://www.ukrstat.gov.ua/edrpoj/ukr/EDRPU_2020/ks_opfg/ks_opfg_0220.htm
- [13] Yurkevych, Y.M., Krasnytskyi, I.V., Vovk, M.Z., Avramenko, O.V., & Parasiuk, N.M. (2018). Compulsory termination of legal entities: Civil legal and criminal issues. *Journal of Advanced Research in Law and Economics*, 9(8), 2910-2915.
- [14] Dovhert, A.S., & Kuznetsova, N.S. (2018). *Myths and realities of the Commercial Code of Ukraine: some lessons from the confrontation between civilists and business*

executives in Ukraine (1992–2018). Legal regulation of entrepreneurship in the post-Soviet period. Kharkiv: Pravo.

- [15] Miroshik, S.V., Linkin, V.N., Nemykina, O.E., Tutinas, E.V., & Ostroukhova, K.N. (2018). Legal encouragement of entrepreneurial activity. *European Research Studies Journal*, 21, 296-302.
- [16] Katsoulacos, Y. (2019). On the choice of legal standards: A positive theory for comparative analysis. *European Journal of Law and Economics*, 48(2), 125-165.
- [17] Zelisko, A.V., Vasylyeva, V.A., Malyshev, B.V., Khomenko, M.M., & Sarana, S.V. (2019). Civil law regulation of contracts for joint activity in Ukraine and other post-socialist states. *Asia Life Sciences*, 2, 913-925.
- [18] Kalaur, I., & Fedorchenko, N. (2018). Normative and individual regulator in the mechanism of regulation of legal relations under transfer of property in use. *Transformations in Business and Economics*, 17(1), 38-49.
- [19] Bejček, J. (2019). The bearable toughness of not-being/being of commercial law. *Casopis Pro Právni Vedu a Praxi*, 27, 25-42.
- [20] Mayorova, E. (2019). Corporate social responsibility disclosure: Evidence from the European retail sector. *Entrepreneurship and Sustainability Issues*, 7(2), 891-905.

Natalia S. Kuznetsova

Doctor of Law, Professor

Honored Science and Technology Figure of Ukraine

Member of the Working Party on Recodification (Updating) of Civil Legislation.

Vice-President of National Academy of Legal Science of Ukraine

Full member (Academician) of National Academy of Legal Science of Ukraine

61024, 70 Pushkinska Str., Kharkiv, Ukraine

Head of the Kyiv Regional Center of the National Academy of Legal Sciences of Ukraine

01024, 3 Pylyp Orlyk Str., Kyiv, Ukraine

Oleksii O. Kot

Doctor of Law, Senior Researcher

Honored Lawyer of Ukraine

Member of the Working Group on Recodification (Updating) of Civil Legislation

Leading Researcher of Department of Private Law Issues

Research Institute of Private Law and Entrepreneurship named after

Academician F.G. Burchak of the National Academy of Legal Sciences of Ukraine

01042, 23-a Rayevskiy Str., Kyiv, Ukraine

Andrii B. Hryniak

Doctor of Law, Professor

Expert of the Working Group on Recodification (Updating) of Civil Legislation

Head of Department of Private Law Issues

Research Institute of Private Law and Entrepreneurship named after

Academician F.G. Burchak of the National Academy of Legal Sciences of Ukraine

01042, 23-a Rayevskiy Str., Kyiv, Ukraine

Mariana D. Pleniuk

Doctor of Law, Professor

Expert of the Working Group on Recodification (Updating) of Civil Legislation

Head of Sector of Contract Law Issues

Research Institute of Private Law and Entrepreneurship named after

Academician F.G. Burchak of the National Academy of Legal Sciences of Ukraine

01042, 23-a Rayevskiy Str., Kyiv, Ukraine

Suggested Citation: Kuznetsova, N.S., Kot, O.O., Hryniak, A.B., & Pleniuk, M.D. (2020). Abolition of the Commercial Code of Ukraine: potential consequences and necessary prerequisites. *Journal of the National Academy of Legal Sciences of Ukraine*, 27(1), 100-131.

Submitted: 29/08/2019

Revised: 10/12/2019

Accepted: 11/02/2020