

SECTION 3. General issues in management

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The problems of the present condition of state control and regulation in the field of economic activity

The article analyzes the present condition of state control and regulation of the economic activity, as well as raises the issue of the optimal combination of state regulation and market self-regulation. On the basis of conducted research the ways of the regulation optimization, in particular through the changes to the current regulatory legislation, are suggested.

Keywords: state control, state regulation, control, deregulation, economic activity, combination of state regulation and market self-regulation.

JEL Classification: L51, O11, O12.

Introduction

Under conditions of integration of Ukraine into the global economic space the process of carrying out the economic reforms is becoming increasingly important, including the field of economic activity. The unconcealed dissatisfaction of the society with the quantity, quality and pace of such reform is the peculiarity of the present condition of social relations in Ukraine. It is obvious that Ukraine can become an equal partner of the global economic system only in case of successful solving of the problems on economy reforming.

For the successful implementation of these reforms it is necessary to solve the whole range of issues, including the issue of the degree of state intervention in the economic processes and directly in economic activity. It is foreseen that such intervention should consist, firstly, in the formation of qualitative legal framework, and secondly, in the ensuring the rights and interests of persons involved in economic activity.

The present condition of the state control in the field of economic activity is characterized by the excessive intervention of state in the activities of economic entities that is reflected in too thorough legislative regulation of economic activity; unreasonably large number of state bodies with control functions towards economic entities; unreasonable number of inspections. The experience of economically developed countries shows that successful functioning of market relations is possible only under conditions of the optimal combination of state regulation and market self-regulation, which is especially important for Ukraine in terms of carrying out the economic reforms.

The research of interdependence of economic relations processes in the system “control – regulation” and the delineation of necessary and sufficient intervention of state institutions in the market regulation is important, both from a theoretical and practical point of view. According to the principles of system approach the control and regulation perform the function of the feedback in management process. In this process the information flows are directed from the object to the subject of management. The control and regulation in the system of management form an entire subsystem, which has its own organizational structure, executive bodies, methods of the present condition assessment, analysis and decision making as well as its information base.

The analysis of recent researches and publications. The problematic issues of state intervention in economic processes have been the subject of scientific researches of O.F. Andriiko [2], S.S. Vitvitskyi [3], J.K. Galbraith [5], V.V. Dobrovolska [7], M.G. Isakov [8, 9], O.V. Klym [10], T.M. Kravtsova [12] N. Koychev [11] and many others, but at the same time they require the further researches.

The purpose of the research is to study the present condition of state regulation of the economic activity in Ukraine and develop the scientific and methodological approaches to the possible ways of this condition improvement.

Research outcomes. The need to determine the optimal combination of state control and market self-regulation has appeared with the emergence of market relations. This problem was getting the practical importance depending on the objective internal and external economic and political conditions, the theoretical “fashionable” concepts and the subjective views of people who were close to authorities [11]. It is reasonable to agree with V.V. Dobrovolska who points out that the state is

intended to regulate effectively the economic activities and to control the legality of its carrying out, and state regulation of economic activity ultimately comes down to the problem of ensuring the balance of the private (economic) and public (social and state) interests [7].

In its turn, the present balance between private and public interests in the field of economic activity is characterized by that fact that “in spite of the extended guarantees of freedom of economic activity and the development of private property, the state *strictly* (it was marked with italic type by authors) controls the keeping of economic order principles through the implementation of public interests in the economic field” [12]. In addition, the state not only “strictly controls” but, in most cases, also uses the different kinds of sanctions, “that suppresses the private property, deprives of competitiveness by minimizing the positive influence of market mechanisms” [8].

At the same time, we should agree with M.G. Isakov, who points out that state cannot completely renounce the regulation of the economic activity and control over its implementation, but it is important to determine the borders of legal intervention in economic activity at the legislation level [8].

Historical experience shows that the states, which completely release all the levers of regulatory influence and rely only on market relations, face the problem of the existence of monopolistic economic groups. Therefore, the division of state and economy inevitably leads to the merging of financial and economic groups with the government. As a result the functions of state administration and the regulation of economic relations are performed not by state institutions but by authority and oligarchic groups.

Analyzing the reasons of the third crisis of the economic theory, James K. Galbraith points out that “the main reason of the third crisis is the wrong assessment of the regulation role”. Suggesting the directions of crisis overcoming, he pointed out the following: “... we need to reconnect with those who know and study the laws. And the purpose of this debate should not be another empty argument on how the market has to replace the legal system. The task is that the laws and regulation should force the market institutions to work” [5].

The regulatory function is characterized by certain norms determining: any deviation from the norm is in the field of view. The regulation is to achieve such system activity in which all deviations of the system functioning results are aligned. In its turn, the control is regarded as one of management functions, without which all other functions cannot be implemented to the full extent.

Thus, it is obvious that the state control in the field of economic activity can be carried out only on the basis of a corresponding legal framework and such framework, according to S.S. Vitvitskyi, should clearly determine the borders of state influence, take into account the specifics of the private sector of economy and act as a guarantor of stability of the economic sector of the state [3]. That is why it is reasonable for the further research to analyze the existing legal framework.

It is common practice to distinguish three sets of regulatory legal acts that regulate the economic activity: 1) the Constitution of Ukraine, which contains norms on the right on economic activity; 2) special regulatory legal acts that regulate exclusively the economic activity (the principal ones are as follows: the Commercial Code of Ukraine, and, for example, the Law of Ukraine “On State Registration of Legal Entities and Physical Persons – Entrepreneurs”); 3) regulatory legal acts that contain certain norms or set of norms that regulate the relations in the field of economic activity (for example, the Civil Code of Ukraine, the Budget Code of Ukraine and the Forest Code of Ukraine, etc.) [10].

The Law of Ukraine “On Basic Principles of State (Supervision), Control in the Field of Economic Activity” has an important position among above mentioned regulatory legal acts [15]. This law determines the legal and organizational foundations, basic principles and procedure of state control in the field of economic activity, the powers of the bodies of state control, their officials and the rights, obligations and responsibilities of the economic entities. At the same time the law does not reach the relations that appear while carrying out the following measures: the control by the bodies of the state fiscal service; exchange control; state export control; control over the compliance with the budget legislation; banking supervision; state control over the compliance with the legislation on the protection of economic competition; state supervision over the compliance with the requirements of nuclear safety; state supervision (control) in the field of civil aviation; while carrying out the operational investigations, inquiry, legality control by procuracy, pretrial investigation and justice, state supervision and control over the compliance with the legislation on labor and employment of the population.

It is reasonable to agree that the law protects the rights of economic entities to some extent by establishing general requirements to the carrying out of the state control; by reducing the frequency of scheduled inspections and by determining the well-grounded reasons for unscheduled ones; by requiring from each body of state control the list of items according to which the inspection will be

conducted and the specification of such a list for each enterprise. In addition, the law establishes the following: if there exists the ambiguous interpretation of the legal norms that determine the rights and responsibilities of the economic entity or the body of state control and its officials, the decision is made in favor of the economic entity.

At the same time, it should be noted that now there is a lot of bylaws that regulate the state control in certain fields of economic activity, which often contradict each other and have narrow-departmental direction and impede their enforcement. For example, the procedure for the issuing of permissions and approvals on starting and conducting the economic activity is regulated by approximately one hundred of laws, 500 Decrees of the Cabinet of Ministers and more than 1,500 branch normative acts and the acts of local authorities [6]. And in general, as the Minister of Economy A. Abromavychus said, Ukraine has about 14,000 regulatory acts [1]. Against this background, the Law of Ukraine “On Basic Principles of State (Supervision), Control in the Field of Economic Activity” ceased to be the principal legislative act in the field of legal regulation of state control over economic activity, that is why its regulatory influence becomes ineffective. In such case, it is necessary not to call the entrepreneurs to ignore the fulfillment of inspector requirements [13], but to develop a “level playing field” by ordering the bylaws in a certain system, and on this basis to adopt the new edition of the Law of Ukraine “On Basic Principles of State (Supervision), Control in the Field of Economic Activity”. We believe that as a result of such ordering some number of bylaws, that reflect narrow interests, should be completely abolished.

The Law of Ukraine “On the Basic Principles of State Supervision (Control) in the Field of Economic Activity” determines the State Supervision (Control) as the activity of central executive bodies (authorized by the law) and their territorial bodies, state collegiate bodies, executive bodies of the Autonomous Republic of Crimea, local authorities [15]. However, the mentioned law does not provide a list of control bodies. Herewith it should be noted that in general the system of control bodies in the field of economy is not determined by any regulatory legal act, and as a result, there is no unified system of state control of a special competence in the field of economy in our state. The existing control bodies do not have a unified structural center that would direct and coordinate their activities. They are united only by the “administrative vertical (hierarchy) line”, in the structure of which the control bodies are developed or the control function is carried out by special administrative body structures [2].

Currently the supervision of tax compliance with economic entities is carried out by the State Fiscal Service. A specially authorized licensing body is the Ministry of Economic Development and Trade, as well as various ministries and departments that exercise powers in the field of licensing. A state control over the compliance with economic competition protection legislation is carried out by the Antimonopoly Committee of Ukraine. The supervision over the compliance with labor legislation by employers is performed by the State Labor Inspectorate of Ukraine. The control over setting prices and tariffs by economic entities is carried out by the State Inspectorate of Ukraine on Price Control. The regulation of the compliance with health legislation is carried out by the State Sanitary and Epidemiological Service of Ukraine. The control in the field of fire and technogenic safety is performed by the State Inspectorate of technogenic safety. In addition, the state control over certain types of economic activity is carried out by the following bodies: State Intellectual Property Service of Ukraine, State Road Service of Ukraine, State Assay Service of Ukraine, State Service of Ukraine on Drugs Control, the State Agency on Energy Efficiency and Energy Saving of Ukraine, the State Environmental Inspectorate of Ukraine, State Agency of Land Resources of Ukraine, the State Service for Technical Regulation of Ukraine etc.

Herewith it should be noted that the control powers of the mentioned state bodies are not determined strictly by the legislation, usually only the right of the corresponding body to carry out the state control is set. However, the very fact of state control carrying out is regulated by the bylaws, that contradicts the Constitution of Ukraine, according to which these bodies and their officials have to act only on the ground, within the powers and in the way set by the Constitution and laws of Ukraine (art. 19 of the Constitution of Ukraine). In addition, economic regulation mainly by the bylaws leads to numerous restrictions and prohibitions in economic activity [3].

Carrying out the state control over economic activity on the ground of numerous narrow departmental regulatory legal acts is the basis for corruption that has recently overtaken the whole vertical (hierarchy) line of economy of Ukraine, including the processes of decision-making by the state apparatus, economic activity and households functioning. It has become the most burning problem of the society [4].

Therefore, the system of control bodies needs an urgent reformation that is proposed to be implemented in two ways in the scientific researches. The first way, that in our opinion seems to be more reasonable, suggests that the basic law of Ukraine “On the Basic Principles of State

Supervision (Control) in the Field of Economic Activity” should give the comprehensive list of bodies that carry out the control over the economic entities, and determines the corresponding fields of their activities. Another possible approach is the creation of a unified state body that would carry out the overall control of all the activities of economic entities [9].

However, in our opinion, whatever the way would be chosen, the problem of excessive intervention in economic activity by the state may be solved by establishing the institution of deregulation.

Especially valuable for our country is the experience of Great Britain where the problem of overregulation of economic activity by the state has been solved by the deregulation institution and reconsidering the existing regulatory framework on business and its control issues [8]. As it is accurately pointed out by T.N. Kravtsova, the British government, using the deregulation institution, proceeded from the logic, that if it is possible to prove that a particular intervention or control are no longer necessary or desirable for the business environment, so it is possible to simply remove the instruments of state regulation by means of the legal framework, leaving the determination of the results to the discretion of market and private rights [12].

Although the law signed by the President of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Business Environment Simplification (Deregulation)” [14] contains the term “deregulation” in its title, it obviously does not solve the complex of deregulation problems, because it is important mainly for the agricultural sector. Herewith, according to the estimates of the Ministry of Economic Development and Trade of Ukraine, the implementation of the law will allow the business to save about UAH 100 mln. on processing the documents and UAH 150-250 mln. on the informal payments.

What raises hope for the successful solution of the outlined problem is that the Ministry of Economic Development and Trade has invited an international specialist on the “regulatory guillotine” Scott Jacobs, who introduced this “regulatory guillotine” all over the world, analyzed the regulatory influence in the administrations of Ronald Reagan and George H.W. Bush. The Ministry of Economic Development believes that the liquidation of unnecessary control mechanisms and bodies will reduce the corruption [1].

The scientists team of the Scientific Research Centre of the Development Industrial Problems of NAS of Ukraine led by the Professor Ivanov, Yu.B. has developed a draft concept of deregulation of Ukrainian economy. The concept determines the main principles and directions of Ukrainian economy deregulation for 2014-2020 years [16].

The concept is the basis for the development of corresponding regulatory legal acts in the field of economy deregulation that are aimed at the improvement of registration and licensing, taxation, budget system of Ukraine, provision of the appropriate conditions for foreign trade operations, promotion of small business development, improvement of the procedures of carrying out the state supervision (control) in the field of economic activity.

In our opinion, the deregulation of the economy should be considered as the reduction of government intervention in economic activities, simplifying the procedures of starting, maintaining and termination of economic entities, what creates the most effective business environment; improvement of the efficiency of formation and use of the regions potential and their financial self-sustainment. Herewith, the process of deregulation should be based on the set of principles of the effective regulation of economic activity (Table 1).

Table 1. Principles of effective regulation of economic activity

No.	Principles	Criteria of the efficiency
1	Transparency	- objectives of the policy, including the need in the regulation, should be clearly determined; - regulatory interventions should be simple, clear and be provided with administrative support; - subjects of regulation should understand their responsibilities and know what they should expect from the government.
2	Accountability	- persons responsible for regulatory reform bear responsibility the government, citizens and the Verkhovna Rada (Parliament); - all regulatory offers should be highlighted in the press and be discussed before the regulation is approved.
3	Purposefulness	- actions should be aimed at the problem solving; - result-oriented approach to the set tasks should be used wherever possible, but an entrepreneur also should have the right to choose how he will fulfill the requirements; - regulations should be reviewed on their consistency, necessity and efficiency in the constantly changing conditions. In case of negative impact of regulation it is necessary to change it or liquidate.
4	Interaction	- new regulations should interact with regulatory acts that are in force; - regulation should go with an international policy on trade and competition; - supervision of the implementation of regulatory procedures should be carried out by the competent bodies.
5	Proportionality	- alternatives to regulation should be completely grounded and reasoned; - regulatory influence should be determined with taking into account the balance of risks and costs; - sanctions for the non-observance of the regulation should be proportional to the violation.

We believe that deregulation should be performed in the following directions:

- ◆ economy deregulation in the registration field;
- ◆ economy deregulation in the field of permission issue, administrative services and licensing;
- ◆ improvement of the tax system and simplifying tax administration;
- ◆ deregulation in the public sector;
- ◆ simplifying the terms of foreign economic activity implementation;
- ◆ economy deregulation in the field of control and inspection.

Thus, the reformation of state control and regulation in the field of economic activity should be carried out by the liquidation of “unnecessary mechanisms and bodies”, i.e. by means of improving the regulatory legislation in the field of economy and the qualitative reforming of the system of state control bodies in general.

Conclusions

In our opinion, without understanding the objective preconditions and consequences of regulation/

deregulation of market relations, we inevitably face the effect of vicious circle, i.e. the complete removal of regulatory influence on market relations leads to the merger of the financial and economic groups with the state government, but at the same time the overregulation leads to the slowdown of social development.

It can be concluded that the outlined problem of the achieving the optimal combination of state and private interest can be solved by adopting the unified legislative act on the state control over the economic activity field that would regulate accurately the general principles of such control; provide the comprehensive list of subjects of control activity and determine their legal status; minimize the possibility of control activity on the basis of bylaws.

In addition, the systematization of existing bylaws that are aimed at their ordering and fundamental reduction should precede the adoption of such a law. Thus, we can conclude that the current legislation on economic activity needs urgent improvement, since this is the very reformation of the economy that is awaited by the society.

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