

## MODERNIZATION OF STATE POLICY IN THE FIELD OF STATE CONTROL (SUPERVISION) OVER ECONOMIC ACTIVITY

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### Summary

The article analyzes the essence of modernization of the State policy in the field of control (supervision) over economic activity with due regard for the changing political and economic situation in the country. The author examines the main conceptual approaches to the definition of basic terms, and also identifies the features and purpose of state control (supervision) in the economic sphere.

It is found that the state of the system of control (supervision) over economic activity does not always correspond to the realities of today. Hence, the author concludes that the control system is not always relevant and effective.

The author identifies the main problems on the way to modernization of legislation in the field of control (supervision) over economic activity.

The author proposes to use adequate means of regulating and controlling economic activity during a special period caused, for example, by a pandemic, military operations on the territory of Ukraine, etc. The author examines the key areas of state policy in the field of legal regulation of control (supervision) over economic activity. The author defines the system of regulatory and legal support of the state policy in the field of control over economic activity at different stages of economic development of the country. The author analyzes the legal acts adopted under the legal regime of martial law aimed at stabilizing the situation in the economic system of our country.

**Key words:** control, supervision, economic activity, state policy, balance of interests.

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### 1. Introduction

Economic activity has always (at all stages of its existence in one form or another) been subject to control by the authorities. The economic sphere belongs to the economic component of our country, which is characterized by state control as one of the mechanisms and factors of its state regulation. Control is one of the most important means of regulating the economic sphere.

The provisions of modern economic legislation demonstrate the legislator's attempts to optimally combine the principles of market self-regulation of economic relations and state regulation and control of economic relations.

The problem of determining the limits of state intervention in economic activity has always attracted the attention of scholars, legislators and business entities. The more adequate the approaches to defining the limits of state control and establishing a system of state guarantees to protect business entities from unlawful interference in their activities, the more attractive our country has become to foreign investors.

It would seem that the state has enough legislatively enshrined means of influencing business entities, and the main directions have already been determined. However, an analysis of the current situation with the relocation of Ukrainian enterprises to other regions or countries during the war proves otherwise.

The current state of legal regulation of control activities over economic activity by the authorities in Ukraine is extremely unsatisfactory in view of the constantly changing situation. At least because the legal regulation mechanism is imperfect and, accordingly, the goal of regulatory influence is not achieved. This necessitates an immediate revision of the approaches to legal regulation of control in the economic sphere.

Therefore, the **main purpose** of this research paper is to determine the main directions of modernization of the State policy in the area of control (supervision) over economic activity at the current stage of functioning of the Ukrainian State. The main tasks set by the author in disclosing this issue include the following: 1) to determine the main directions of the State policy on control (supervision) over economic activities in Ukraine; 2) to analyze the factors which affect the efficiency of the system of control over economic activities; 3) to analyze current and prospective legislation in the field of control (supervision) over economic activities in Ukraine; 4) to identify promising areas for reformatting the State policy in this area.

**Materials and methods of research.** The main focus of our study is on rethinking the approaches to the development of state policy in the field of control over economic activity. This was made possible by applying the method of retrospective analysis of the main stages of legal regulation of the system of control over economic activity in Ukraine. In some cases, we used the method of comparative legal analysis to define the terminology in this area both among scholars and to consolidate the relevant terms at the level of regulatory legal acts. The main emphasis was placed on the works of Ukrainian scholars and Ukrainian legislation due to the specifics of the development of legislation in the field of control, in particular, due to Ukraine's long history as a part of the USSR and the peculiarities of the development of national legislation. We mainly used the modeling method to characterize the main directions of modernization of the state policy in the field of control (supervision) over economic activity, considering the current situation, as well as other special conditions, such as a pandemic, war, etc. However, a number of issues in this study were considered using the method of analysis. In general, where appropriate, some generalizations have been made about the approaches to the issues under study.

A number of scholars have devoted a number of works to the issues of state policy in the field of control over economic activity. Thus, in the field of commercial law, the works of O. M. Vynnyk, O. P. Vikhrov, V. V. Dobrovolska, H. L. Znamenskyi, I. M. Kravets, V. K. Mamutov, O. P. Podtserkovnyi, V. P. Popeliuk, V. S. Shcherbyna, and others are devoted to the study of certain issues of control in the field of economic activity. In his PhD thesis, I. Zyskind identified the economic and legal features of control and supervisory relations in the insurance sector.

The issues of legal regulation of control and supervision are discussed in detail in the works of representatives of administrative and legal science, such as: V.B. Averyanov, O. F. Andriyko, L. R. Bila, D. M. Bakhrakh, E. V. Dodin, S. V. Kivalov, O. M. Muzychuk, I. S. Orekhova, V. M. Tsenda, etc. The doctoral dissertation of O. Muzychuk covers the issues of control over the activities of law enforcement agencies in the administrative and legal aspect.

These works are of undoubted value for the development of legal science. However, it should be emphasized that these works do not contain provisions on the current state of legal regulation of the system of control (supervision) over economic activity in special conditions. Therefore, we believe that it is necessary to propose new approaches to the regulation of the

system of control over economic activity, considering the challenges of today and with a view to improving the effectiveness of control measures in special conditions.

The study allowed us to identify those internal and external factors that negatively affect the effectiveness of the system of state control (supervision) over economic activity. A thorough analysis of the current situation in the Ukrainian State has made it possible to identify the main directions of modernization of the State policy in this area, considering the interests of all parties to these legal relations. In the following, we will consistently present the results of the author's research of these aspects.

## **2. Control over economic activity: conceptual approaches to the definition of the concept**

The main issue is the definition of the concept of "control" and the actual definition of the features and main forms of control over economic activity.

In general, state control is used to verify whether the activities of participants to social relations comply with the established regulations, within the framework and limits within which they should act. It seems that the purpose of state control (supervision) is to establish the results of the activities of certain entities, deviations from the accepted requirements, principles of organization, identify the causes of these deviations, and identify ways to overcome obstacles to the effective functioning of the entire system. With the help of control, which in the science of public administration is called "feedback," the management entity receives information about the results of its activities, as well as about those mistakes and changes in the situation that may lead to failure to fulfill the tasks or to obtain completely different results. Having this kind of information (and in a timely manner), it is possible to intervene promptly and bring the management process in line with the conditions of proper business operations in order to prevent negative consequences.

After the declaration of Ukraine's independence, the architecture of economic relations and control over them changed dramatically: most of the sectoral governing bodies were liquidated, business entities were given the right to plan their economic activities independently, at their own discretion and risk, government orders were fulfilled on a contractual rather than a planned basis, etc.

In philosophical science, control is understood as a set of processes in a social system (society, social group, organization, etc.) that ensure compliance with certain "patterns" and restrictions on behavior, the violation of which negatively affects the functioning of the system. At the same time, patterns and restrictions are understood as systems of values, legal and moral norms, administrative regulations, decisions, customs, habits, etc. (*Tsependa V. M., 2020*). Specialists in the field of social management assume that control is a system of monitoring and verification of compliance of the object's functioning with the adopted management decisions – laws, plans, norms, standards, rules, orders, etc. (*Tsependa V. M., 2020*).

In general, the issue of determining the content of state control has been and is the subject of research by scholars not only in various branches of law, but also in various sciences in general. Thus, V.B. Averyanov defines control as the observation of compliance of the controlled object's actions with the instructions it received and the implementation of decisions made. This is a specific form of work that requires analyzing the actual state and comparing it with the requirements, identifying deviations in the performance of tasks and their causes, as well as assessing the effectiveness of the chosen path (*V. B. Aver"yanov and oth., 2003*).

At the same time, we should agree with the Doctor of Science in Administrative Law that there is no clear difference in semantics between the terms "control" and "supervision", since

dictionaries use them synonymously, and the purpose of both is to comply with the law, which can be considered as a set of laws (*Muzychuk O. M., 2010 : 80*).

However, it is worth emphasizing that at the regulatory level, the concept of state supervision and control is enshrined in the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Field of Economic Activity", which states that this is an activity carried out by the authorities determined by law at various levels to identify and prevent violations of the law by business entities and to protect the interests of society. The main goal is to ensure the quality of products and services and reduce risks to the public and the environment (*Pro osnovni zasady derzhavnoho nahlyadu (kontrolyu) u sferi hospodars'koyi diyal'nosti: Zakon Ukrainy*).

There is a widespread opinion among scholars that control is a specific legal form of activity of state bodies, officials and other entities engaged in management. At the same time, the main features of such control activities are: firstly, the fact that it is carried out (should be carried out) in accordance with the requirements of the law, and, secondly, that its results always entail certain legally significant consequences or are related to their occurrence (*Shcherbyna V. S., 2011 : 30*).

Shcherbyna V. S. considers state supervision (control) in the field of economic activity as a legal form of state regulation of the economy (*Shcherbyna V. S., 2011 : 30-33*). Such a conclusion follows from the analysis of the provisions of Chapter 2 of the Economic Code of Ukraine. At the same time, O. M. Vynnyk defines supervision (control) in the field of economic activity as a legal form of state economic management (*Vynnyk O. M., 2008: 19-22*).

Based on the above definitions of the concept of "control (supervision) over economic activity", the features of this concept can be derived (*Tsependa V. M., 2020*):

- state control is a type of social control; state control is an integral dynamic system that develops with many components;
- state control has a state power character;
- state control is implemented with strict adherence to the established norms and rules;
- state control is carried out through an extensive system of state bodies, which in their unity form its mechanism;
- state control has a legal character;
- state control is based on the power of persuasion and coercion, but it always has a compulsory nature.

The regulatory framework for the implementation of state supervision (control) in the field of economic activity is as follows:

- a) The Constitution of Ukraine;
- б) The Economic Code of Ukraine;
- в) The Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Field of Economic Activity";
- г) a system of special regulatory legal acts, the norms of which regulate relations arising in the course of implementation of control measures in various areas of economic activity – currency control, customs control, control over compliance with budget and tax legislation, control over compliance with the procedure for making payments, production and circulation of alcohol, alcoholic beverages and tobacco products, use of state and municipal property, banking and insurance supervision, other types of special state control over the activities of entities;
- д) by-laws and regulations that develop the provisions of laws on the specifics of control (supervision) over economic activities in various areas of business, which contain mechanisms for exercising state control (supervision).

### 3. The main problems of balancing the interests of the state and business entities

When conducting business, a very important issue (not only in Ukraine but also globally) is to determine the limits of state interference in business activities. Objectively, the law should apply here: everything is prohibited except what is permitted. In practice, this is not always the case.

However, if we are talking about commercial economic activity (entrepreneurship), it is important to have certain guarantees against unlawful interference by the state when carrying out entrepreneurial activities that are risky in nature.

The problem is quite deep. On the one hand, each state establishes certain rules (enshrined in law) on how to conduct business on its territory. On the other hand, the state also establishes a mechanism for monitoring compliance with the rules of economic activity at the legislative level. Both the state and the business entity are interested in having as many business entities as possible, as this is a source of revenue for the state budget in the form of taxes. On the other hand, the state, represented by the competent authorities, is obliged to create both transparent and stable business conditions and to clearly monitor whether the business entity complies with the requirements of the current legislation of Ukraine.

It is worth noting that the protection of business entities from unlawful interference in their activities is enshrined at the legislative and constitutional levels. Thus, according to Art. 42 of the Constitution of Ukraine, the right to entrepreneurial activity not prohibited by law, which is a type of economic activity, is a constitutional right of a person and a citizen (*Konstytutsiya Ukrainy, 1996*). This article also defines the obligation of the state to protect the rights of consumers, control the quality and safety of products and all types of services and works, and promote the activities of public consumer organizations.

It is worth noting that a business entity builds its relations with the authorities and consumers on the basis of legality. That is, it fulfills its rights and obligations within the law, while ignoring unlawful claims of third parties.

One of the main principles of business according to the Economic Code of Ukraine is the prohibition of unlawful interference of state and local authorities and their officials in economic relations (Article 6) (*Hospodars'kyi kodeks Ukrainy, 2003*).

In general, in the theory of law, principles are understood as the leading idea, the guiding principles of legal regulation of certain relations. As rightly noted by the authors of the textbook "Theory of State and Law" edited by Academician O. V. Petryshyn, the principles of law are characterized as the most general requirements for social relations and their participants, as well as the initial guiding principles, the starting points that express the essence of law and stem from the ideas of justice and freedom, determine the general direction and most essential features of the current legal system (*M. V. Tsvik and oth., 2009*).

In fact, it is the basic "core", the concept on which a particular branch of law rests. The principle of non-interference in economic activity means, in fact, the elimination of artificial obstacles to economic activity, especially entrepreneurial activity. This makes it possible to build a certain system of guarantees for economic activity with the help of commercial law provisions.

Part 5 of Article 19 of the Economic Code of Ukraine provides that "unlawful interference and obstruction of economic activity of business entities by public authorities and their officials in the course of their state control and supervision are prohibited" (*Hospodars'kyi kodeks Ukrainy, 2003*). The limits of control over the activities of business entities are defined by law. Only within these limits can controlling authorities exercise their powers. The provisions of this

Code, which regulate the legal status of business entities of various organizational and legal forms, clearly state this. Moreover, this provision explicitly prohibits unlawful interference and obstruction of business activities by state authorities and their officials.

Part 4 of Article 23 of the Economic Code of Ukraine: "4. Unlawful interference by local self-government bodies and officials in the economic activities of business entities is prohibited. It is not allowed to issue legal acts of local self-government bodies that establish restrictions on the circulation of certain types of goods (services) on the territory of the respective administrative-territorial units not provided for by law" (*Hospodars'kyy kodeks Ukrayiny, 2003*). Local self-government bodies and officials have no right to interfere with the economic activities of business entities: to set standards for contributions to the entity's funds or in other areas, to force them to perform any work, produce goods, provide services, etc. The commented article separately prohibits the above-mentioned local self-government entities from imposing restrictions on the circulation of goods or services. This is in line with the requirements of antitrust law and the needs of the time, as business practice shows that there are numerous cases of restrictions on the circulation of certain goods (sugar, grain, etc.).

In addition, guarantees are provided to investors. In particular, part 1 of Article 397 stipulates that one of the guarantees of ensuring the stability of the legal regime of foreign investment is guarantees against expropriation, as well as against illegal actions of the authorities and their officials (emphasis added).

Today, it is important to achieve a balance of interests between the business environment and the state in the field of adjusting the rules of economic activity. At the same time, the most pressing issues are still defense, protection of sovereignty, territorial integrity and inviolability. However, it was during the martial law that certain compromises were reached to create the most favorable mechanisms for conducting business. And certain legal grounds for achieving this balance are already in place.

Thus, by the Decree of the President of Ukraine No. 64 of February 24, 2022, martial law was introduced in Ukraine due to the armed aggression of the Russian Federation. Therefore, the legal regime of martial law has been introduced in Ukraine in accordance with the Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". "In the context of the legal regime of martial law in Ukraine, one of the priorities of the Government is to create favorable conditions for economic activity, which is the key to economic victory over the enemy" (*Derehulyatsiya hospodars'koyi diyal'nosti pid chas diyi voyennoho stanu, 2022*). Such measures include deregulation, which provides for the abolition of certain regulatory and other restrictions on business activities. One of the measures to deregulate economic activity under martial law is the adoption by the Cabinet of Ministers of Ukraine of Resolution No. 303 dated 13.03.2022 "On Termination of State Supervision (Control) and State Market Supervision under Martial Law". Given that state supervision (control) is "one of the important measures in the implementation of the tasks and functions of the state, the main purpose of which is to exercise state supervision and control over economic activity, the realization of its purpose in the current conditions is associated with certain problems" (*Yuldashev S.O., Syerov S.L., 2019 : 58*), which actualize the need for a separate scientific study and justification of further solution, primarily within the framework of organizational and legal support for the implementation of the relevant functions of the state, and as part of ensuring the national defense capabilities of states At present, this topic is of particular scientific interest and relevance, given the difficult political, economic and social situation in our country caused by the martial law and taking into account the relevant regulatory changes in legislation.

Therefore, the conclusions of some scholars that "state supervision and control in the economic sphere is characterized by dependence on the economic and political situation,



implementation according to clearly defined norms and delimitation of competence of controlling entities" are quite reasonable *Vasylenko, V. M., Muzychuk, O. M. and oth., 2024 : 62*).

The analysis of legislation in the field of control (supervision) over economic activity makes it possible to identify the following problems on the way to its modernization:

- Multiple and contradictory regulatory legal acts in the field of control;
- violation of a reasonable balance of interests of the state or territorial community and business;
  - violation of a reasonable balance in determining the degree and limits of participation of state authorities and local self-government bodies in economic relations;
  - inefficient management of enterprises of the state and municipal sectors of the economy;
  - imperfection of the system of state aid to business entities in emergency situations;
  - application of certain means of state regulation and implementation of state control and supervision in the field of economic activity;
  - imperfection of the legal framework for accounting and financial reporting of business entities during the special period;
  - the lag of legal regulation from the current practice and trends in the digitalization of economic activity;
  - low level of protection of the rights and legitimate interests of participants in economic relations;
  - imperfection of provisions on liability for certain types of offenses committed by business entities, partial inconsistency of the list of grounds for such liability and sanctions for offenses in the field of business with the needs of today;
  - excessive overregulation and, at the same time, gaps and contradictions in the regulation of activities in certain industries and sectors of the economy, etc.

#### 4. Conclusions

In conclusion, it is worth emphasizing that the main trend today is to preserve business in Ukraine as much as possible. Many different means are used for this purpose. One of the most effective and efficient means of creating a favorable environment for business, in addition to the introduction of special incentive-based business regimes, is the system of control (supervision) over business activities.

The extent to which specially authorized state and local government bodies consider the conditions of economic activity at a certain stage of development of the state or a particular territorial community depends on the level of overregulation of economic activity, as well as the means of legal influence on business entities.

It is quite obvious that the system of control (supervision) over economic activity should depend on the purpose of such control. Of course, it is quite relevant to review the current basis of control in the economic system, given the difficult political and economic situation in the country.

Attention should also be focused on the fact that the system of state control (supervision) over economic activity does not always meet the requirements of today. We believe that one of the main problems is the low speed of response to the problems of the effectiveness of state control by the state, its bodies, and local governments.

## References

1. Tsependa V. M. (2020) *Sutnist' derzhavnoho kontrolyu yak orhanizatsiyno-pravovyy sposib zabezpechennya zakonnosti v enerhetychniy haluzi [The Essence of State Control as an Organizational and Legal Method of Ensuring Legality in the Energy Sector.]*. Publichne upravlinnya i administruvannya v Ukrayini. Vyp. 16. <https://doi.org/10.32843/2663-52402020-16-23> [in Ukrainian].
2. V. B. Aver"yanov, O. F. Andriyko, YU. P. Bytyak ta in. (2003) *Derzhavne upravlinnya: problemy administratyvno-pravovoyi teorii ta praktyky [Public administration: problems of administrative and legal theory and practice]*. Kyiv: Fakt [in Ukrainian].
3. Muzychuk O. M. (2010) *Kontrol' za diyal'nisty pravookhoronnykh orhaniv v Ukrayini: administratyvno-pravovi zasady orhanizatsiyi ta funktsionuvannya [Control over the activities of law enforcement agencies in Ukraine: administrative and legal principles of organization and functioning]* : dys. ... dokt. yuryd. nauk: 12.00.07. Kharkiv: Kharkivs'kyi natsional'nyi universytet vnutrishnikh sprav. [in Ukrainian].
4. *Pro osnovni zasady derzhavnoho nahlyadu (kontrolyu) u sferi hospodars'koyi diyal'nosti [On the basic principles of state supervision (control) in the field of economic activity]: Zakon Ukrayiny vid 05.04.2007 № 877-V.* [in Ukrainian].
5. Shcherbyna V. S. (2011) *Derzhavnyy nahlyad (kontrol') u sferi hospodaryuvannya: udoskonalennya pravovoho rehulyuvannya [State supervision (control) in the sphere of economic activity: improvement of legal regulation]*. Yuryst Ukrayiny. № 2. URL: [http://nbuv.gov.ua/UJRN/uy\\_2011\\_2%2815%29\\_5](http://nbuv.gov.ua/UJRN/uy_2011_2%2815%29_5) [in Ukrainian].
6. Vinnyk O. M. (2008) *Hospodars'ke pravo [Economic law]: navch. posib. 2-te vyd., dopov.* Kyiv: Pravova yednist'. [in Ukrainian].
7. *Konstytutsiya Ukrayiny [Constitution of Ukraine]: Zakon Ukrayiny vid 28.06.1996 № 254k/96-V* URL: <http://zakon1.rada.gov.ua>. [in Ukrainian].
8. *Hospodars'kyi kodeks Ukrayiny [Economic Code of Ukraine]: Zakon Ukrayiny vid 16.01.2003 r. № 436.* URL: <http://zakon1.rada.gov.ua>. [in Ukrainian].
9. M. V. Tsvik, O. V. Petryshyn, L. V. Avramenko ta in. (2009) *Zahal'na teoriya derzhavy i prava [General theory of state and law]: pidr. dlya studentiv yurydychnykh vyshchyykh navchal'nykh zakladiv.* Kharkiv: Pravo. [in Ukrainian].
10. *Derehulyatsiya hospodars'koyi diyal'nosti pid chas diyi voyennoho stanu (2022) [Deregulation of economic activity during martial law]*. URL: <https://gc.gov.ua/ua/Informatsiini-povidomlennia/33200.html> [in Ukrainian].
11. Yuldashev S.O., Syerov S.L. (2019) *Kontrol' i nahlyad v konteksti systemnoyi pobudovy antykoruptsiynoho mekhanizmu [Control and supervision in the context of systemic building of the anti-corruption mechanism]*. Naukovi zapysky. Seriya: Pravo. Vyp. 6. Kropyvnyts'kyi: TOV «Polimed-Servis». [in Ukrainian].
12. Vasylenko, V. M., Muzychuk, O. M., Nevyadovs'kyi, V. O. (2024). *Sutnist' ta osoblyvosti derzhavnoho nahlyadu ta kontrolyu u suchasniy derzhavi [The essence and features of state supervision and control in the modern state]*. Forum Prava, 78(1), 58-64. DOI: <http://doi.org/10.5281/zenodo.10156314> [in Ukrainian].