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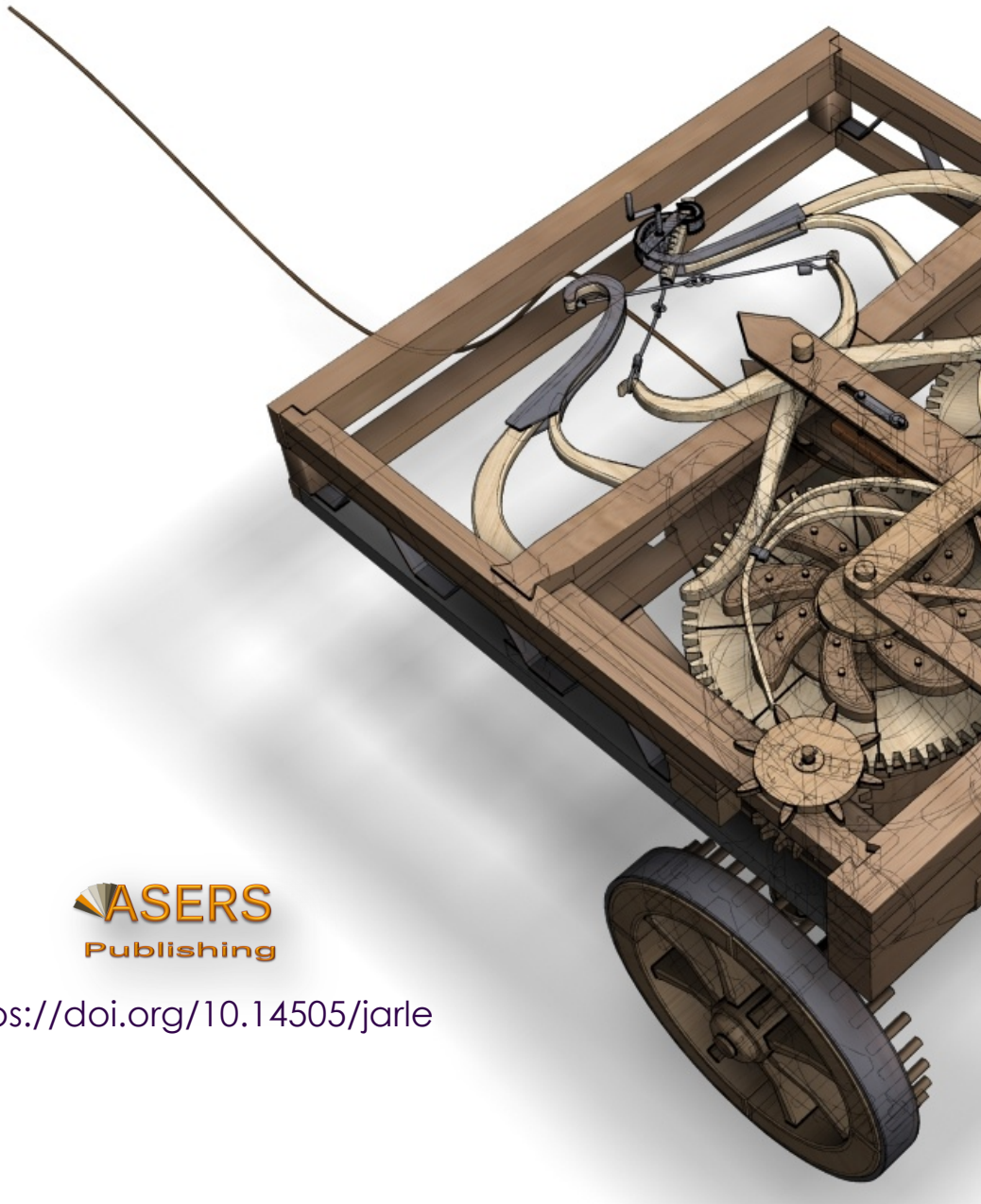

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Comparative and Legal Analysis of the Legal Entities System of Ukraine and the European Union

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Abstract:

Issues of the system and legal status of legal entities are traditionally widely covered in domestic civilization; however, there was no comparative legal analysis of the system of legal entities of Ukraine and the European Union. According to the results of the study, it was stated that the system of legal entities, in terms of its legislative design, is a holistic legal institution, the norms of which mediate the creation and participation in civilian turnover of legal entities as independent subjects of law. The analysis of doctrinal approaches to the definition of 'system of legal entities' allowed proposing an author's definition of the concept, which suggests understanding the orderly set of organizations with the status of a legal entity, integrated into the complex of interacting elements according to certain criteria. On the basis of a detailed study of the peculiarities of the system of legal entities of the European Union, the definition of the concept of 'system of legal entities of the European Union' is formulated.

Keywords: system of legal entities; European Union; improvement of legislation; adaptation; entrepreneurial activity; organizational and legal forms.

JEL Classification: F47; F63.

Introduction

In the context of the transformation of social relations, the latest views on the system of legal entities, especially given the results of scientific and technological progress and the testing of artificial intelligence in the activities of companies, have become a integral part of the modern world, the condition of its existence and received extraterritorial character. Innovation permeates today all the spheres of human activity, ranging from everyday life to the provision of banking and financial activity in most developed countries, the tax system, transport management, industry, trade, and others (These 100 companies… 2018), which produces its influence on the formation of legal bases. That is why, in today's economic and political conditions, the popularization of improving

the system and activities of legal entities in the context of innovation processes and updating its legislative regulation in the light of European integration processes is increasing annually, accelerating the processes of displacement of the usual trade relations, and becoming a dominant on the way to achieving a qualitative growth of the efficiency of all economy subjects.

It can be stated that now transformations in the economic sphere of our state are taking place under the influence of centuries-old dynamic changes of the domestic market environment and testing of the latest forms of management that are in line with the challenges of time and the transformations taking place in property rights relations around the world. The emergence of variational forms of ownership has led to the gradual formation of modern forms of economic activity, which in turn served as a qualitative modernization of domestic legislation that regulates the existence and functioning of the legal entities in Ukraine. Therefore, the urgent need to consider the chosen topic is largely due to the development of a market economy in our country, which, of course, implies not only the availability but also the high degree of development of legal means and methods for regulating economic turnover, the main participants of which are legal entities. Exactly they produce most of the goods and services and remain the main taxpayers. Scientists reasonably believe that the question of the nature of legal entities and the definition of their system belong to the fundamental problems of civilization (Spasybo-Fatyeyeva 2014; Konesev *et al.* 2018). However, neither in the legislation nor in the legal doctrine there is a single approach to the issue under investigation. That is why there is a need for a theoretical understanding of the accumulated significant empirical material on the problem from the formation and improvement of the system of legal entities through the prism of the historical process analysis of the legal entities system structure development, its contemporary significance and prospects for improvement in the territory of our country in the conditions of European integration.

According to scientists, significant transformations in the state cannot be realized in the absence of doctrinaitically grounded strategic course, comprehensive plan and structured political component, the basis of which would be forecasting, peculiarities of domestic legal and social realities, positive foreign practice (Andryko *et al.* 1998; Buribayev *et al.* 2016; Albano *et al.*2017). The above thesis makes updating of the research, among other things, also in the context of the need to take into account the modern system of legal entities in the reform of positive foreign practice that is capable of raising domestic science and practice to a new, more qualitative level. In recent times, the role and significance of legal comparativism (comparative law) has increased, which is explained by the international integration of Ukraine with the countries of the world community. As a result, the range of issues that are revealed during comparative legal research is significantly increasing. This is due in large part to the fact that modern law cannot develop in isolation from global trends in development (Kharitonov 2016; Mukhamadiyeva *et al.* 2017). The purpose of comparative legal research is to identify the laws of the formation; development and functioning of the legal systems of modernity, the improvement of national law and order. Under such conditions, the impact of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand (from March 21, 2014 and June 27, 2014) is required, (Association agreement between… 2014) which in its norms foresees the convergence of legal systems and the bringing of domestic legislation of Ukraine to European standards and requirements, including in the area of the formation of an updated system of legal entities. The above normative act directly affects the construction of the domestic legal field, enforcement and development of the national economy, is crucial and applies to many spheres, which prompts new comparative studies in the field of reforming the legal entities of Ukraine in order to achieve the greatest compliance of the legislation with the requirements established by international obligations of our state.

Taking into account the above mentioned, the main objective of the article is to conduct comparative legal analysis of the legal entities of Ukraine and the European Union countries with the purpose of borrowing positive foreign experience and forecasting further development of domestic legal regulation in the specified sphere taking into account the future membership of our state in the European Union. In pursuance of the above goal, the following tasks of the article are defined: (1) to consider scientific approaches to the interpretation of the notion ‘system of legal entities’; (2) conduct a comparative legal analysis of the legal entities of Ukraine and the countries of the European Union; (3) to reveal the peculiarities of the system of legal entities directly to the European Union and to conduct relations with the domestic components of such a system; (4) to formulate theoretical conclusions based on the results of the research, to develop author's proposals for improving the national legislation and outline the prospects for its further development in the context of European integration.

The scientific and theoretical basis of the research were the works of well-known scientists in the fields of the theory of law, civil law and commercial law, such as S.S. Alekseev, V.I. Borysova, E.V. Bogdanov, S.M. Bratus, V.A. Vasilieva, A.V. Venedyktov, O.M. Vinnyk, I.P. Greshnykov, V.P. Grybanov, V.A. Davydov, V.V. Dolinska, A.S. Loffe, I.A. Zenin , A.I. Kaminka, T.V. Kashanina, O.R. Kibenko, N.V. Kozlova, V.M. Kravchuk, I.E. Krasko, N.S.

Kuznetsova, M.I. Kulagin, I.M. Kucherenko, V.V. Lutz, R.A. Maidanyk, V.P. Mozolin, V.A. Musin, I.V. Spasybo-Fateiev, E.O. Sukhanov, I.T. Tarasov, D.V.T. Tarikanov, Ye.O. Kharytonov, O.I. Kharitonov, B.B. Cherepakhin, Ya.M. Shevchenko, V.S. Shcherbyna, I.S. Shytkina, R.B. Shishka, B.V. Shuba and others.

Issues of the system and legal status of legal entities are traditionally widely covered in domestic civilization. At the same time, the problem of profit-making organizations is usually of great interest to researchers. Of course, the doctrine pays attention to the system of legal entities, however, there has not yet been a comprehensive legal study on the comparison of the legal entities of Ukraine and the European Union. Therefore, only a comprehensive and thorough comparative legal analysis will allow forming the most objective conclusions and recommendations regarding the level of efficiency, timeliness and effectiveness of the domestic legal regulated system of legal entities.

1. Materials and Methods

The following methods serve as methodological basis of the article: dialectical, comparative-legal, historical-legal, analysis and synthesis, dogmatic, analogies, legal modeling and others. The leading method in the research process was the dialectical method of knowledge of phenomena and processes, which allowed determining the state, trends and prospects of the development of scientific research and legislative developments in the field of legal regulation of the legal entities in Ukraine and the European Union. A comparative legal method, which was used in the process of comparative analysis of scientific and legislative development of issues of the formation, existence and development of a system of legal entities in the territory of our state and the EU member states with a view to revealing positive legal practice, expedient and possible before the approbation in Ukraine, taking into account the peculiarities of the domestic legal system and the realities of the present.

The historical-legal method was used in the study of the genesis of the legal entities system formation in Ukraine and in foreign countries; methods of analysis and synthesis were used to establish the essence and content of the system of legal entities, criteria for the selection of its components. In addition, these methods allowed to outline the variability of legal definitions of the concept of 'system of legal entities' on the doctrinal level and argued the need for its legislative consolidation. With the help of a dogmatic method, conclusions were formulated in accordance with the purpose of the study. The method of analogy allowed, taking into account the experience of foreign states, to conclude that the need to improve the domestic system of legal entities. During the formulation of legislative proposals, a normative-semantic method, logical methods of cognition and a method of legal modeling were used.

2. Results

Issues of the legal entities system are of paramount importance for the development of modern Ukrainian legislation, civil science and the formation of civilian turnover that meets the needs of a market economy. The role of a legal entity in property relations cannot be overestimated. In conditions of significant globalization economic transformations, legal entities, their development and legal status are a kind of indicator of the economic development of the whole society and the state of property relations in general. That is why the system of legal entities, which finds its consolidation in the legislation, should correspond to the socio-economic development of the country and be flexible in accordance with all the latest transformational processes, not only in the legal, but also in all other spheres of social life. The poor quality of legal regulation of relations with the participation of legal entities or the non-compliance of their legally regulated system with the needs of civilian turnover can significantly affect the further development of the state and society as a whole.

Before conducting a comparative analysis of the legal entities of Ukraine and the European Union, it is advisable to first turn to the interpretation of the notion 'system', which is undeniably a philosophical category that characterizes the organization of the spiritual and material world. Translated from the Greek language, 'systema' is an entire, composed of parts of the connection (Livshits 2013; Komarova 2018). According to the most conservative estimates in the literature, there are more than 30 different definitions of the notion 'system'. This situation is explained by the fact that the authors usually do not want to really give a general definition of the concept of 'system', their goals are more specific: they seek to identify exactly the concept with which they deal in their research.

Thus, in the Short Philosophical Dictionary, edited by A.P. Alekseiev, the following definitions are proposed:

(1) 'the system is a complex of interacting elements' (Ludwig von Bertalanffi);
(2) 'a set of elements arranged in a cerytain way and interdependent with each other, which forms some integral unity' (V.N. Sadovskyi);

(3) 'the system is delimited by a multitude of interacting elements' (A. Averianov) (Alekseev 2012). The most widespread in theoretical and applied works has become classical, the first of the above definitions, proposed by L. Bertalanfi, the founder of the general theory of systems (Bertalanffy 1968).

In the American English Noah Webster's vocabulary, three definitions of the notion 'system' are given at once: (1) the complex unity formulated by many, as a rule, by various factors and has a general plan or serves to achieve a common goal; (2) a collection or complex of objects, united by regular interaction or interchangeability; (3) orderly functioning integrity, totality (New Webster`s Dictionary... 1993). In the dictionary of S. I. Ozhegov the system is understood as 'something integral, representing the unity of the lawfully located and those that are in mutual communication, parts', 'a set of organizations that are homogeneous in their tasks, or institutions, organizationally united into one whole' (Ozhegov 2008). A similar interpretation is found in the dictionary of financial and legal terms, which defines the system as 'a device, a structure that represents the unity of naturally located and functioning parts' (Voronova 2011). In all definitions for the system's characteristics, such concepts as 'element' and 'interaction' are used. It should be noted that the combination of isolated elements produces the possibility of creating a new unity. The above statements are generalized by scientific doctrine and it is noted that the system as such is characterized by the following: it is an integral set of elements; the components and their properties are inextricably linked; the existence of a defined organization of system elements; the definition of the special purpose of creating the corresponding system, etc. (Kostovskaya 2005; Khaustova 2017). Therefore, the leading features that belong to any system, it is expedient to determine the existence of system-forming elements and their interaction, which in their totality mediates the emergence of a certain unity that is significantly different from its individual components.

In the legal literature, the 'system of legal entities' is defined as: (1) 'a set of interconnected and interacting elements – organizations that have the status of a legal entity, possess the properties of integrity, stability and expediency' (Spasybo-Fatyeyeva 2012); (2) 'set of subjects of civil legal relations (legal entities), united on the basis of common, that is inherent in all the subjects of such association, signs and provides for differentiation by legal status (status) and inclusion in the system of entities on the basis of certain criteria (principles)' (Semyulutina 2015). The first of the above definitions most accurately reflects all the essential characteristics of the system as a philosophical concept, and should be taken as a basis. As for the second definition, it can be used to reflect the specifics and functional significance of the formation of a legal entity, which is also important for a genuine quality study. The creation of a system of legal entities is carried out through integration, that is, the unification of individual elements into a single whole. Such a construction ensures the finding of the constituent elements of the system in strictly established order, which defines the basic principles of interconnections in the system (Besedenand Kozina 2013; Jurka and Kurapka 2017).

The system of legal entities, in terms of its legislative design, is a holistic legal institution, the norms of which are mediating the creation and participation in civilian turnover of legal entities as independent subjects of law. The system of legal entities in its type belongs to the number of organic systems: it is characterized by the development and formation of new components in its structure, the latter is transformed in the process of historical development on the basis of the influence of the external environment and, above all, phenomena of social and economic nature.The system of legal entities cannot be separated from the historical conditions in which its formation took place, and its construction should correspond to those functions that corresponding to the system of legal entities. The conclusion about the historical and especially economic conditionality of the legal entities system, which should meet the needs of property turnover, is of fundamental importance for further research, which should take into account the complex legal reform existing in our country.

Taking into account the above mentioned, it is expedient to offer author's definition of the notion 'system of legal entities', which should be understood as an ordered set of organizations with the status of a legal entity combined into a complex of interacting elements according to certain criteria.The modern system of legal entities of Ukraine has been consolidated in Subsection 2. A legal entity of the Civil Code of Ukraine, which for the first time not only marked organizational and legal forms in which collective entities may be created, but also their distribution into types. The analysis of the current legislation of Ukraine allows distinguishing the classification, which is set by the legislator in the basis of the construction of the legal entities. In particular, Article 81 stipulates that legal entities, depending on the order of their creation, are divided into legal entities of private law and legal entities of public law (Civil Code of Ukraine… 2003). Thus, the main criterion for classification is the establishment of a legal entity.

Article 83 of the same normative legal act provides for the forms of legal entities, among which the following are allocated – societies, institutions and other forms established by law. Thus, the current national legislation provides for the existence of three organizational and legal forms of legal entities of private law in the structure of legal entities: institutions, societies and others. At the same time, the first two received their settlement in the Civil

Code of Ukraine, while the rest were regulated by the Commercial Code of Ukraine (The Commercial Code of Ukraine… 2003) and other normative-legal acts. It is worth mentioning that the draft Civil Code of Ukraine envisaged only two organizational forms – institutions and societies in the system of legal entities. The latter may be entrepreneurial and non-entrepreneurial, and entrepreneurial – economic partnerships and production cooperatives. The logic of the outline model legal act, which, unfortunately, was not implemented, would allow regulating all the numerous forms and types of legal entities, clearly formulating their system.

Another criterion for division can be called even the long-known Ukrainian legislation, the division of organizations into entrepreneurial and non-business, stipulated in Article 83 of the Civil Code of Ukraine (Civil Code of Ukraine… 2003). Unfortunately, during the development of this norm, the experience of legal regulation existing in foreign countries, in particular in the European Union, was not taken into account. The global trend is the commercialization of non-profit organizations, which continues to be negatively perceived by domestic theorists and practitioners (Borisova 2016). In today's economic environment, when non-profit organizations are forced to work, based on the principles of self-sustainability and self-financing of their activities, the functional criterion for the division of organizations into entrepreneurial and non-entrepreneurial businesses goes back to the background. An economic criterion, based on the prohibition of profit sharing in favor of individuals who have created a legal person, is gaining the same role. Its main advantage is that this criterion does not rely on the objectives declared by the organization in the charter, but considers specific activities, given their presence in the functioning of a legal entity, that is, for an economic criterion, the question of what a particular organization is engaged in, this always a matter of fact (Nezhiborets 2012). Of course, the coming back from the functional criterion in European legislation is conditioned by the specificity of modern economic development, which, in turn, makes the functional approach inapplicable in a developed market economy. The choice of the economic criterion by the Ukrainian legislator as the main and only criterion for the division of legal entities into entrepreneurial and non-entrepreneurial organizations could be a significant step in the construction of a system of legal entities and ensure the possibility of an unhindered transition, if necessary, of the activities of organizations from the non-commercial sector to commercial ones. However, the introduction of an economic approach in Ukraine requires a consistent change in the legal regulation of not only civil law relationships, but also, for example, tax, since tax benefits should be granted, based not on the status of the organization, but on the actual activities being carried out.

The analysis of the current legislation of Ukraine allows us to summarize the normative and legal principles, which have regulated the existence of a system of legal entities, and to offer the following components of this institution. Thus, the system of legal entities of Ukraine consists of:

(1) Legal entities of private law:
(a) under the Civil Code of Ukraine:
- institution;
- societies;
- others.

(b) under the Commercial Code of Ukraine:
- economic entities, defined in the Commercial Code of Ukraine (section 2 of the said regulatory legal act);
- legal entities under the Commercial Code of Ukraine;
- legal entities as defined in the Civil Code of Ukraine;
- others.

(2) Legal persons of public law:
(a) according to the Commercial Code of Ukraine:
- state and municipal enterprises;
- state and municipal economic associations;

(b) by other normative-legal acts:
- joint-stock companies, created in the process of corporatization and privatization;
- state-owned joint-stock companies;
- others.

It is worth mentioning that the main problems in the process of developing the most well-balanced system of legal entities are the expansion of normative-legal regulation, the existence of a large number of special legal acts, gaps and inconsistencies in existing norms. Thus, modern Ukrainian legislation is an extremely controversial conglomerate of legal norms, which are unsystematically scattered over the main sources of legal regulation.

At the moment, the legal reform that is gaining momentum in our country, refers to its leading benchmarks the improvement of domestic legislation in the field of reforming the investigated institution as well (Yuschik *et al.* 2015). Therefore, the outlined issue should be resolved in the near future, since, in accordance with the provisions

of the Association Agreement between Ukraine and the European Union, our state has undertaken to adapt the national legislation to the standards and requirements of the Union in the priority areas to which the legislation on legal entities (*i.e.* corporate law) (The Plan of Measures…2017). In particular, the first steps were the numerous model legal acts that contribute to the proper implementation of Ukraine's international legal obligations. As a result of systemic transformations and the completion of the process of harmonizing Ukrainian legislation with EU law, societies should have wider powers to regulate the internal issues of their functioning.

This, in turn, will contribute to a significant upgrade of the legal entities, which will increase the competitiveness of domestic enterprises and attract foreign investment. In particular, the Plan of Measures to Implement the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand, was approved by the decision of the Cabinet of Ministers of Ukraine dated from October 25, 2017 (The Plan of Measures…2017), stipulates that the norms regulating the languages for the creation and operation of limited liability companies and joint-stock companies are brought by 01.09.2019 into conformity with EU law. At present, we can talk about some progress in improving the legal framework, in particular, the adoption of the Law of Ukraine 'On Limited Liability Companies' (About limited liability… 2018), which introduction in the business of legal entities is still being done.

Turning to the system of legal entities of the countries of the European Union, it should first of all be noted that one of the main principles of the pan-European market has become the freedom of establishment, which implies the right of residence and independent economic activity for citizens of the Member States throughout the European Union. These entities are legal entities that are commercial organizations that are also recognized as subjects of EU law. In accordance with Article 54 of the Treaty about the European Union establishment, companies and firms created in accordance with the laws of one of the Member States enjoy freedom of independent economic activity on an equal basis with Union citizens (Treaty of Lisbon…2007). The activities of legal entities in the European Union are subject to regulation of various branches of law. Thus, the most important provisions are set in a large body of antimonopoly legislation, which should take into account many enterprises, primarily large corporations. In addition, a number of provisions of national legislation on the direct taxation of legal entities are harmonized with directives in the field of tax law of the EU etc.

Legal regulation of legal entities in the law of the European Union is now fragmented and is of auxiliary character: it complements in some aspects the basis of national legal regulation. It is in this context that the notion of 'system of legal entities of the European Union' should be considered relatively conditionally. The outlined issue, both at the legislative and the doctrinal level, develops rather slowly and faces great difficulties, caused in the first place by serious differences in national legislation. The Court of the European Union repeatedly referred in its decisions to the problems of legal persons, and to the necessity and complexity of building a united European system, although the jurisprudence on this issue is rather fragmentary. In addition to the interpretation of certain issues in the EU directives, it relates mainly to the conflict of law aspects of the nationality of a legal entity. Thus, the said European judicial institution, having changed the starting position, has unequivocally called for the application of the principle of incorporation in the definition of *lex societatis* – the national law of a legal entity. The most important of this issue is the EC judgment of the Centros Ltd (C-212/97) (Judgment of the Court of 9 March 1999) and the Uberseering BV case (C-208/00) (Judgment of the Court of 5 November 2002). Therefore, for the formation of a single concept and a comprehensive understanding of the issue raised by the institutes of the Union, fundamental work is carried out on the harmonization and unification of national legislation.

Attempts to overcome national differences and create a 'European' form of a company and build a unified system of legal entities that would be recognized in all the countries of the Community have become the object of the efforts of EU institutions aimed at unification and harmonization of legislation on legal entities. Therefore, it is worthwhile to draw attention to the fact that the system of legal entities of the European Union is built up. Despite the lack of direct indications in the Treaty about the European Union establishment, in the early years of the functioning of the union of states, the idea of establishing a single legal system for all Member States with well-defined organizational and legal forms of legal entities, which in doctrine is called either 'supranational', or 'European' legal entities. The latter term is the most expedient because it is used in the names of already established or projected legal entities (European Joint Stock Company, European Co-operative, European Fund, etc.), as well as in the texts of the relevant normative acts. It is worth mentioning that the system of European legal entities, unlike Member State systems, is based on a criterion similar to that which has been tested on the territory of Ukraine – according to the order of creation, therefore, legal entities of private and public law are distinguished in the system of legal entities of the European Union.

It should be noted that the development of the above forms has never been considered as a method of general unification of the legislation of the member states, that is, the complete replacement of national

organizational forms of law by European ones. On the contrary, already established and planned European legal entities act as alternative structures offered to entrepreneurs and other interested entities in order to more effectively organize their activities within the single EU market (Biermeyer and Meyer 2018). At the same time, national organizational forms do not disappear and can still be used in practice. The main formal feature of the European legal entity is that such an organization is based on the sources of European Union law. It is the latter, and not the national law, that grants it legal personality. What exactly should be such a normative act, the EU constituent agreement does not give a direct answer.

The current law of the Community provides for three types of European legal entities: The European Joint Stock Company, the European Cooperative Society, the European Economic Interest Grouping, but their number will be subsequently increased. The most important among such is the European Joint Stock Company, abbreviated as SE. The Regulation on the Status of a European Joint Stock Company (SE Regulation) (Council Regulation (EC) No 2157/2001… 2001) was issued in 2001 and began to be applied after the expiration of three years from the date of adoption (October 8, 2004). The European Cooperative, the short name called SCE, became the next form. The regulation on the status of the European cooperative (SCE Regulation) was issued in 2003 (Council Regulation (EC) No 1435/2003… 2003). The formation of these forms was preceded by the emergence of the European Economic Interest Grouping (EEIG), which became the reception of a similar form provided by French law. Its legal basis was the Regulation establishing a European Union of Economic Interest, issued in 1985, which entered into force on 1 July 1989 (EEIG Regulation) (Council Regulation (EEC) No 2137/85… 1985).

Among legal entities of public law in the system of legal entities of the European Union, the institutions are distinguished, the main features of which are the special order of creation, and their appointment is limited to the realization of a certain sphere of activity of the European Union.Taking into account the above mentioned and based on the research, it is possible to offer the definition of 'system of legal entities of the European Union', which should be understood as a set of interconnected and interacting organizations, the criterion of association of which is the order of their foundation on the basis of directly operating sources of European law Union, which give organizations legal capacity and establish the foundations of their legal status. In addition, it is considered appropriate to borrow proven in the European Union a shorter and exhaustive list of legal entities that can substantially narrow and streamline the domestic system of legal entities with additional consideration of the economic criterion for their creation.

Therefore, it is advisable to consider the existing legal entities in the European Union countries in order to identify the signs of the unity and existence of the Institute investigated in the article. Today, most commercial and non-profit organizations on the territory of the EU are established and operate in the forms provided by the legislation of individual member states, that is, they are national legal entities. Companies in the countries of the continental system of law can be divided into societies that are created on the basis of individual founder agreements with which the participants retain personal connections and participate personally in their management throughout their existence (personal companies), and companies in the narrow sense of the word, acting independently of the founders, and which receive from them only the necessary capital (capital companies) (Lukach 2012).

Societies are considered irrespective of whether they are legal entities in a particular country or not, since in most of the Community countries they are either not legal entities at all or are endowed with only certain features of a legal entity. Even where they are called by legal entities in accordance with the law, it can only be a special modified form of a legal entity, but not a legal person in the traditional sense of the word, for example, in the full societies there is one of the most important features of legal entities – delimitation liability of the company from the liability of its members. Classification of enterprises can be conditionally carried out by two criteria: the degree of separation of responsibility of the company from the responsibility of its founders and the degree of freedom of shares transfer. In the first case we are talking about companies with limited and unlimited liability of their participants (there are various intermediate forms), in the second – about public and private companies. In addition, the so-called group of companies, which consists of the parent company which controls, and subsidiaries – affiliated companies, can be distinguished in a separate category.

Countries of the continental law system, apart from the Netherlands, which lost such separation, distinguish between civil and commercial law entities. In the UK, such a distinction does not exist, however, instead, there are companies that create and do not generate profits. Civilian and commercial companies are usually separated from each other depending on the commercial or non-commercial nature of their activities.In general, four main types of companies are distinguished: a full partnership, a limited liability company, a private company and a public or joint-stock company. The entire partnership is historically the first form of collective entrepreneurship, from which all other types of development were further developed. The main feature of a full partnership is the unlimited and

solidarity responsibility of the members of the partnership for its obligations. In this regard, this form is traditionally used in small or family businesses. Of particular importance in this case is the personal participation of the participants in the activities of the company and in its management. A full partnership is created on the basis of an agreement between the founders, which plays a leading role in the constitution of the company. Legislative regulation of this form, as a rule, is carried out with the help of dispositive norms, which leave a considerable amount of space for the discretion of the members of the company.

In France, Germany and Belgium, civil and commercial full societies do not have legal personality. They exist on the basis of the agreement of their participants and can act on their behalf, even without their own brand name, registration for them is also not mandatory. In Spain, a full partnership may be recognized as a legal entity if it acts on its own behalf. The most common type of partnership in France is 'societeen participation' (SP), otherwise called 'silent society'. The company operates on the basis of an agreement. Participants are in circulation in the interests of the partnership on their own behalf, retain the right to own all property transferred to them by the company, and bear the unlimited liability under its obligations. The distribution of profit and loss is based on an agreement between them. In the Netherlands there is the form of 'maatschap', very similar to the French 'SP' (Kraakman*et al.*2017). In Germany, 'Stille Gesellschaft' combines the features of the French 'SP' and the Ukrainian Limited Liability Company. The difference from the latter is that the liability of the participant is limited by the size of the amount invested only in relations with another party to the legal entity; it is responsible to third parties indefinitely (Kalss and Klampfl 2015).

In the UK, societies are also not recognized as legal entities and are not subject to registration. They are the basis of the treaty. Unless otherwise agreed by the parties, their rights to manage the affairs of the partnership are deemed to be equal. However, the legal status of full societies under English law is significantly different from the continental ones. Societies in the UK have their own name; the property transferred to the members of the partnership is considered to be the property of the partnership, and the participants are considered as its co-owners. In the event of insolvency of one of the participants or directly the company allocated two groups of creditors: personal lenders of each of the participants and the creditors of the partnership – and two property arrays: the property of the partnership and the property of each of the participants (Armour *et al.* 2009). The contradiction between the interests of these lenders causes numerous problems that remain unresolved until now. Each of the participants is considered to be the representative of others in the course of operations that do not go beyond the usual business operations of the specified partnership.

In addition to the above-mentioned full partnerships, there are full partnerships that have the characteristics of a legal entity. In the Federal Republic of Germany, it is 'offene Handelsgesellschaft' (OHG) – a full (trading) company. It has a trademark and is subject to mandatory registration in a commercial register. It is believed that it is not a legal entity, although it has certain features of the latter, in particular, may be the plaintiff and defendant in court. The property of the partnership is considered to be its property, and the participants are considered as a 'community of co-owners'. The relationship between the parties is determined by their agreement, but restrictions established by such an agreement cannot be raised as objections to good faith third parties (Meyer 2018).

In the French Republic there is a form such as 'societe en nom collectif' (SNC). The members of the partnership are fully responsible for its obligations (Siems and Cabrelli 2018). However, a claim against them can only be presented by creditors in the event of the declaration of a company insolvent. The company has its own name and administrative bodies. Transfer of shares is usually carried out only with the joint consent of all participants. There are also limited partnerships that have the advantage that they have two groups of participants: full, who have unlimited and solidary responsibility for company debts and manage the company, and members whose responsibility is only in the amount of their contribution to the authorized capital of a company, however, do not have the right to participate in the management of the company.

In Germany, Kommanditgesellschhaft (KG) is one of the most common forms of partnership. Regarding full participants, the rules on full partnership (OHG) apply. Contributing Members are responsible for the obligations of the partnership within the limits of their contribution, but do not participate in the management of the company and have no right to represent it before the third parties (Wells 2018). It is worth pointing out that they may be endowed with these rights by an agreement on the founding of a partnership, which, however, does not lead to the loss of privileges of limited liability. In France, this form is called 'societe en commandite simple' (SCS). A full member may be a commercial company or an individual who has the status of a merchant. Full participants have the same legal status as the full partnership (SNC), are responsible for the obligations of the company in the amount of contributions to the authorized fund. They are prohibited from taking part in the management of the affairs of the company and in conducting legal actions on behalf of the partnership with regard to third parties. If, contrary to the requirements, they commit such acts, in such a case they bear personal responsibility for them, and sometimes

they may be subject to unlimited liability for the debts of the partnership, if the latter appeared as a result of their unlawful actions (Kalinina 2013).

In the investigated systems of legal entities, there is no clear division of public and private law legal entities, and the regulation of the investigated institute in these states occurs in a similar way, but has certain features that are inherent in each of the legal systems. In particular, there are differences in the criteria on the basis of which the system of legal entities of a particular country is built up, certain characteristics of the stages of creation, operation and termination of legal entities in the analyzed countries. The above given brief overview of the main types of legal entities existing in the European Union and the United Kingdom clearly shows that, although in almost all of these states there are forms of companies that are very similar to each other, the differences in their legal regulation are quite significant. There is no universal form that could be used for a legal entity at once in several countries. Analysis of the system of legal entities of the above countries gives grounds to assert that, unlike in Ukraine, the criterion for the formation of such a system and the construction of the investigated institute is not the procedure for the creation of legal entities, but the procedure for conducting and types of economic activity. The above mentioned leads to the complete inapplicability of the functional approach to the systems of legal entities of the European Union member states.

3. Discussions

The conducted research showed that in the Ukrainian legal science the issue of the system of legal entities is mostly raised within the controversy about the ratio of the Civil Code of Ukraine and the Commercial Code of Ukraine, as well as during the discussion of the diversity of organizational and legal forms of legal entities. In particular, the need for us to narrow the list of legal entities, such as the European Union, has been supported by scientists for a long time. Thus, I.V. Spasybo-Fatyeyeva, in 2006, offered, taking into account the legalized division of legal entities into societies and institutions, to reformat all organizational and legal forms fixed in the Commercial Code of Ukraine in 'economic and other societies' (Spasybo-Fatyeyeva 2006). The given point of view seems to be quite reasonable and makes it possible to streamline the system of legal entities by significantly reducing its components. However, Yu. O. Verbytska argues that science is strong thanks to generalizations, variational classifications, systems, in connection with which the harmonious combination of criteria only enriches the normative construction of the system of legal entities (Verbitskaya 2011). However, in spite of different points of view, the practical tendency of the development of the legal entities both in the post-Soviet space and in the territory of our state is the refusal of the existing organizational and legal forms, in which there are organizations that mediate the interests of public-law formations in civilian circulation.

The system of legal entities, like any other social system, is an example of systems of moving equilibrium. The main condition for their stability is the compensation of each change by the opposite substitution, the processes of destruction and creation in such systems must go in parallel and mutually counterbalance each other (Muravyov 2011). Denial of a certain legal form of a legal entity as a component of such a system should be offset by the emergence of a new form that will meet the needs of a market economy and in the future will become a more effective substitute for the current one. In addition, the expansion of the number of system elements, including the creation of new organizational and legal forms of legal entities, should take into account the general law of stability of systems, according to which increase in the number of elements of the system can increase its stability only in those cases where it does not lead to a decrease in its structural stability. The stability of any system depends not only on the number of its elements, but also on the methods of their combination, on the nature of their structural qualities (Vinogradov and Ginzburg 1972). The current practice of today shows that the creation of new forms of legal entities in the territory of our state is often unreasonable and inconsistent with the current normative array of legislative decisions, which leads to the destruction of the domestic system of legal entities. It can be stated that, in order to create the proper basis for streamlining the legal regulation of the existence of legal entities and their activities, it is permissible and urgent to consolidate the definition and content of the system of legal entities at the level of legislative acts, while simultaneously systematizing all their organizational and legal forms.

The presented discussion points are an additional argument of the relevance of the offered article proposal for unification of norms in the field of regulation of the existing legal entities system and bringing them in line with international standards and requirements. Moreover, the development of appropriate reforms of domestic legislation should take part in the expert support of model law-making provided by the Agreement on Association of Ukraine with the European Union, representatives of different countries (competent institutions and scientific schools) in order to form the clearest and relevant system of legal entities of Ukraine in the globalizing conditions of the present.

Conclusions

The process of forming civil society in Ukraine and the civilized market increases the value of various organizations – economic, political, legal, cultural, professional, and creative and others. Trends in development indicate the need to create a new model of property management that would meet the needs of modern civilian traffic, built on the principles of a market economy. That is why legal entities become the necessary basis for the development of modern economic relations, and, accordingly, their area of activity is expanding, which in aggregate forms a special sphere of corporate relations that require proper legal regulation. As a result of the above-mentioned transformations, the improvement of the domestic system of legal entities becomes of particular importance.

The system of legal entities of Ukraine is directly related to the state regulation of economic processes and the formation of new organizational and legal forms of legal entities, and, as practice shows, it is rather extensive and overcrowded with superfluous components, which require their generalization and improvement. The current states of the system of legal entities as well as the trends of its development testify to the need to create a new form of mediation of property interests in civilian circulation. It is stated that the system of legal entities, in terms of its legislative design, is a holistic legal institution, the norms of which mediate the creation and participation in civilian turnover of legal entities as independent subjects of law. The analysis of doctrinal approaches to the definition of 'system of legal entities' allowed proposing an author's definition of the concept, which suggests understanding the orderly set of organizations with the status of a legal entity, integrated into the complex of interacting elements according to certain criteria.

On the basis of a detailed study of the peculiarities of the legal entities system of the European Union, the definition of the concept of 'the legal entities system of the European Union' is formulated, which should be understood as a set of interconnected and interacting organizations, the criterion of association of which is the order of their foundation on the basis of directly operating sources of law of the European Union, which give organizations legal capacity and establish the foundations of their legal status. It is argued that neither the doctrine nor the legislation of the European Union contains an interpretation of the notion of a system of legal entities. Attempts to create a unified system and to consolidate it at the legislative level face significant difficulties caused by significant differences in the legal regulation of this institution in the national legislation of the European Union member states, where the main criterion of construction becomes economical, namely, the type of activity and profit making, which leads to the inapplicability of the functional approach used in Ukraine to the system of legal entities of the EU member states.

The choice of the economic criterion by the Ukrainian legislator as the main and only criterion for the division of legal entities into entrepreneurial and non-entrepreneurial organizations could be a significant step in the construction of a system of legal entities and ensure the possibility of an unhindered transition, if necessary, of the activities of organizations from the non-commercial sector to commercial ones. However, the introduction of an economic approach in Ukraine needs a consistent change in legal regulation. In particular, it was offered to amend the current legislation of Ukraine, consolidating the definition of the concept of 'legal entities system' and the structure of this institution, taking into account the economic criterion and positive European experience in the specified field.

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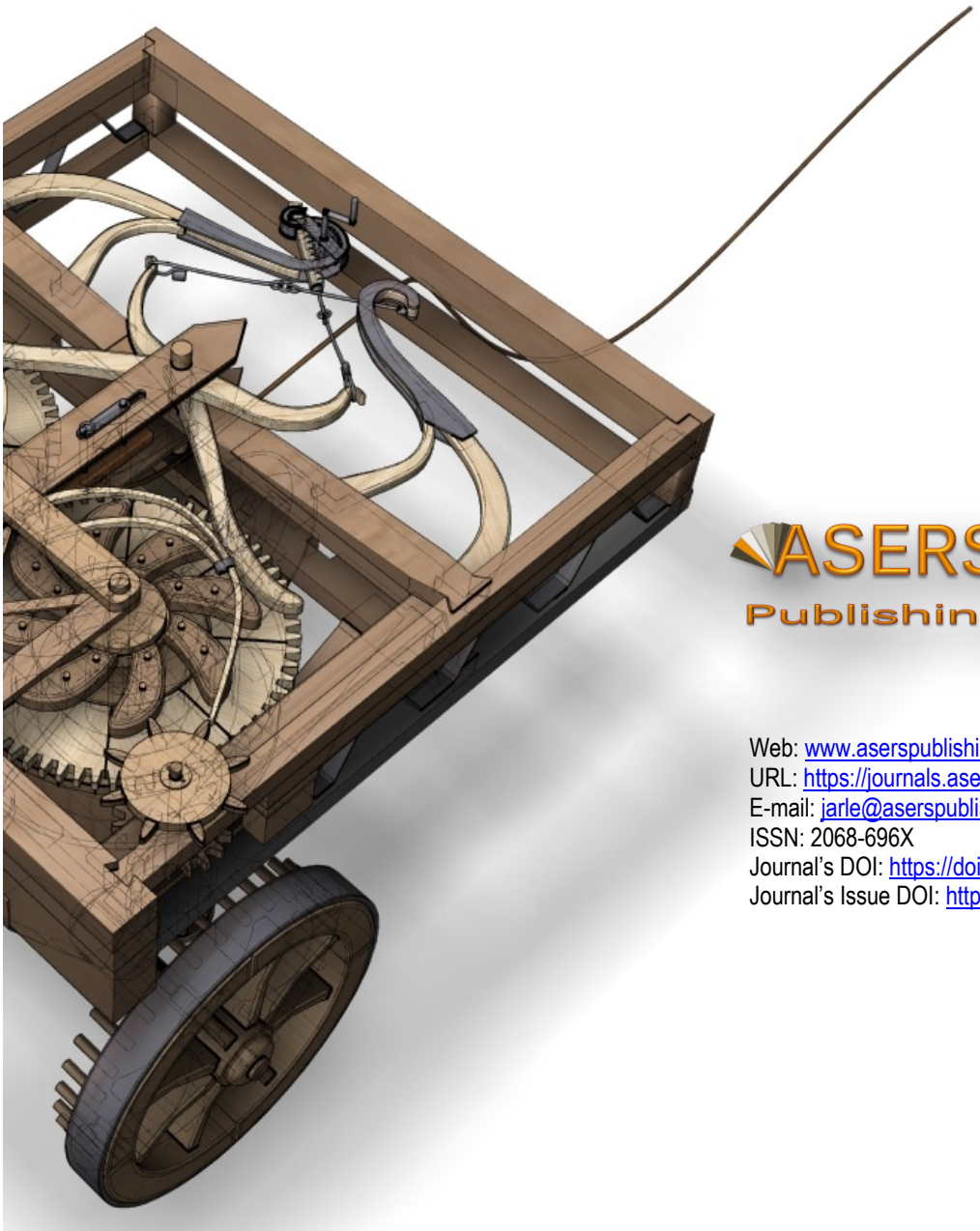

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