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REPEAL OF THE COMMERCIAL CODE OF UKRAINE IN THE CONTEXT OF EU LAW ALIGNMENT: TRANSITION PERIOD, IMPACTS, AND RISKS FOR BUSINESSES

The Commercial Code of Ukraine has become invalid in accordance with Law No. 4196-IX “On the peculiarities of regulating the activities of legal entities of certain organizational and legal forms in the transitional period and associations of legal entities” of 09.01.2025 [2]. This legislative reform is aimed at aligning Ukrainian business law with European Union standards and eliminating inconsistencies within the national legal framework. For many years, the Commercial Code existed alongside the Civil Code, which sometimes caused confusion, overlapping rules, and legal loopholes. In some cases, businesses could choose the legal norm that was more beneficial for them. The new law has to remove these inconsistencies and create a single, clear law framework for business activity. Although this reform is expected to improve legal certainty in the long term, it also creates short-term challenges, especially for small and medium-sized enterprises that must adapt to the new legal environment within the specified timeframe, which dates until the middle of 2028.

For more than two decades, business activities in Ukraine were regulated simultaneously by the Civil Code and the Commercial Code, which resulted in duplication of legal norms, conflicts in regulation, and legal uncertainty [1]. In particular, the coexistence of two Codes enabled businesses to selectively apply legal provisions depending on their interests, which led to inconsistent judicial practice. Moreover, differences in legal regulation sometimes meant that the same action could be considered lawful under one Code and unlawful under the other. The Commercial Code also contained outdated provisions, including specific forms of property rights for state and municipal enterprises that did not correspond to classical civil law principles. In contrast, the Civil Code is based on a clear system of ownership and limited property rights. Another ones are legal conflicts: Different rules in the Civil and Commercial Codes meant the same action could be legal under one Code but illegal under the other (e.g., in contracts or invalidating agreements). The outdated rules in Commercial Code allowed state and municipal enterprises to own property without ownership rights. The Civil Code is based on classical property rights and limited property rights. The new legislation replaces these outdated rights with the right of usufruct. In addition, the Civil Code explicitly allowed the parties to the contract to apply such sanctions (for example, refusal to pay in a case of poor quality goods) without going to court. The Civil Code did not have such a concept, which created the risk of their being declared illegal if they were not spelled out in detail as terms of the contract. Apart from differences there were overlapping rules: the Commercial Code repeated much of the Civil Code, causing chaos instead of order, difficult application: businesses and lawyers had to check both codes, which increased the risk of errors, especially when signing contracts [9].

The reform aims to unify regulations, cancel outdated legal forms, and align with EU standards, forcing a three-year reorganization for many entities. Now, the change

simplifies Ukraine`s business regulation and creates a single way for lawyers and judges to solve business disputes. The law selectively transposes certain parts of the Commercial Code to the Civil Code and other special laws that are going to regulate commercial activities [3; 4]. In particular, the following provisions have been kept: corporate Relations (rules for joint-stock and limited liability companies are now part of the Civil Code, based on EU standards), bankruptcy (rules for closing insolvent companies are collected within the Code on Bankruptcy Procedures), contractual obligations (rules for business contracts are included in the Civil Code, with specific terms for companies), public procurement, concession agreements, and natural monopolies - these rules were moved to specific industry laws. For example, rules for state-owned companies in public tenders are now governed by the Law “On Public Procurement” [7]. However, the reform also creates particular short-term challenges for small and medium-sized businesses. Existing companies have to change their forms of incorporation. All enterprises must be reorganised into a modern corporate entity, such as a joint stock company (JSC) or limited liability company (LLC). There is a list of affected enterprises: state-owned enterprises, municipal enterprises, private enterprises, foreign enterprises, subsidiary enterprises, enterprises of citizens` associations (trade unions, religious organizations), and consumer cooperative enterprises. State-owned enterprises will have to be converted to JSCs or LLCs, or a non-profit company, with the state owning 100% of the shares. Municipal enterprises will have to be converted into JSCs or LLCs, or a non-profit company, with the relevant municipality or other territorial community owning 100% of the shares. Private enterprises (companies with only one individual as a shareholder), foreign enterprises (companies with only one foreign shareholder) and subsidiary enterprises must be converted to LLCs.. It is prohibited to establish new entities in listed organizational forms. These changes will be energy and resource-intensive for small and medium-sized businesses, due to costs for lawyers, updates of documents, revision of contract templates. Additionally, the transition period may cause legal uncertainty and unfair court interpretations, as judges, lawyers, and businesses adapt to the new unified civil-law framework. Many contracts and internal regulations still contain references to the Commercial Code which is now outdated. This can lead to disagreements over the validity or interpretation of contract terms, creating temporary gaps in legal protection for businesses. Small and medium-sized enterprises are particularly vulnerable, as they often lack the resources to quickly review and update all documentation, making them more exposed to disputes and potential financial losses [2].

Also these changes can lead to some possible positive consequences. First of all, the changes delete duplication of norms. From now on, the organizational and legal forms of enterprises will be standardized in accordance with the Civil Code and special laws, which will bring the Ukrainian business environment closer to European standards. In the long term, all this could lead to an increase in the investment attractiveness of Ukrainian business. Companies with a simpler form such as joint-stock companies or limited liability companies are more trustworthy among investors and partners from around the world. Reorganization opens up wide opportunities for improving internal operations. Optimizing management structures can reduce costs and simplify operations. On the other hand, dividing business activities into separate specialized companies increases the reliability of each segment and allows for more targeted risk management. A more transparent and optimized corporate structure increases investors` investment and makes it an easier entry into international markets [6, 8].

Companies that adapt to new rules fast will have a more efficient structure, better opportunities for development and competitive advantages in both domestic and foreign markets.

Conclusion

In conclusion, the repeal of the Commercial Code of Ukraine represents a significant step towards the Europeanization of national legislation. Although the transition period involves certain risks and challenges for businesses, particularly for small and medium-sized enterprises, the reform is expected to ensure greater legal certainty, improve the investment climate, and promote the long-term development of the Ukrainian economy. These law changes create some difficulties for the business environment. But surely it will lead to Europeanisation of Ukrainian law and will have positive effects in long-term conditions such as attracting international investors and simplifying the structures of corporations despite the short-term difficulties and unclarity that it creates during the transitional period. Now, business relationships will rely on Civil Code, Law “On the peculiarities of regulating the activities of legal entities of certain organizational and legal forms in the transitional period and associations of legal entities”, and other special Ukrainian laws such as Law “On Limited Liability Companies and Additional Liability Companies”, law “On Joint Stock Companies”, law “On Cooperation”, law “On State Registration of Legal Entities, Individual Entrepreneurs and Public Organizations”.

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