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## Cuestionar la supervisión y el control del espíritu empresarial: una evaluación de la norma europea y su aplicación según la legislación de Ucrania

### Questioning the Supervision and Control of Entrepreneurship: An Appraisal of the European Standard and its application under Ukrainian Law



**Maryna Volodymyrivna Kostenko**

Yaroslav Mudryi National Law University, Ukraine  
kostenko884@gmail.com



**Ruslan Orlovskyi**

Yaroslav Mudryi National Law University, Ukraine  
rs.10@ukr.net



**Viktoriiia Olegovna Pankratova**

Kharkiv National University of Internal Affairs, Ukraine  
ejacobbarrios@mail.uniatlantico.edu.co



**Olena Valeriivna Bulhakova**

Donetsk Law Institute of the Ministry of Internal Affairs, Ukraine  
eL\_vl@email.ua

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#### Resumen

El propósito del artículo es estudiar la experiencia de los principales países europeos en el control y la supervisión del espíritu empresarial y determinar las oportunidades para su aplicación en Ucrania. Los autores del artículo han fundamentado la conveniencia de estudiar la experiencia de los países desarrollados del mundo, ya que puede permitir delinear los vectores del desarrollo de la legislación ucraniana, para adaptarla a los requerimientos del mundo y de la Comunidad Europea. Hasta la fecha, Europa ha desarrollado enfoques bastante diferentes y al mismo tiempo interesantes para llevar a cabo el control sobre el espíritu empresarial. Su diferenciación se debe a: en primer lugar, las particularidades de la situación económica y política de un país; en segundo lugar, la política del Estado en las esferas económica, financiera y política. Se ha señalado que el legislador ucraniano no debe introducir imprudentemente toda la experiencia positiva, porque también se deben tener en cuenta las peculiaridades de la economía, la política y la mentalidad. Es necesario fortalecer la supervisión y el control, sin embargo su implementación debe basarse en los principios de conveniencia, es decir, debe llevarse a cabo solo si existen razones que están definidas por las normas de la legislación vigente. El fortalecimiento del control y la supervisión debe ir acompañado de una mejora simultánea de los incentivos para estimular el espíritu empresarial a través de instrumentos políticos, económicos, fiscales y presupuestarios; la cuestión del control interno requiere una regulación legislativa detallada. El legislador debe revisar los principios organizativos para llevar a cabo el control y la supervisión del espíritu empresarial y diferenciar claramente las competencias de las entidades de control para evitar la duplicación de sus poderes.

**PALABRAS CLAVES:** experiencia internacional, legislación, control, supervisión, emprendimiento, iniciativas actuales, desempleados, ocupados.

#### Abstract

The purpose of the article is to study the experience of leading European countries in carrying out control and supervision over the entrepreneurship and to determine opportunities for its application in Ukraine. The authors of the article have substantiated the expediency of studying the experience of developed countries of the world, since it can allow to outline the vectors of the development of Ukrainian legislation, to adapt it to the requirements of the world and European Community. To date, Europe has developed quite different and at the same time interesting approaches to carry out control over the entrepreneurship. Their differentiation is due to: first of all, the specifics of the economic and political situation in a country; secondly, the policy of the state in the economic, financial and political spheres. It has been noted that the Ukrainian legislator should not recklessly introduce the entire positive experience,

introduce the entire positive experience, because one should also take into account the peculiarities of the economy, politics and mentality. It is necessary to strengthen supervision and control, however its implementation should be based on the principles of expediency, i.e. it should be carried out only if there are reasons that are defined by the norms of the current legislation. Strengthening control and supervision should be accompanied by a simultaneous improvement of stimulating entrepreneurship incentives through political, economic, tax and budgetary instruments; the issue of internal control requires detailed legislative regulation. The legislator should review the organizational principles of carrying out control and supervision over the entrepreneurship and clearly differentiate the competencies of controlling entities to avoid duplication of their powers.

**KEYWORDS:** international experience, legislation, control, supervision, entrepreneurship, current initiatives, unemployed, employed.

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## I. Introduction

Human constitutional right and constitutional freedom of entrepreneurial activity are closely related but not alike. Every person has the right to conduct an entrepreneurial activity, which is not forbidden by law. Prohibition of certain types of entrepreneurial activity and restriction on entrepreneurial activity for particular categories of individuals by the current laws confirms their theoretical significance and the necessity of solving important practical tasks concerning a person's exercise of the constitutional freedom (Penkov, Chabanenko, 2019, p. 160). In this regard, ensuring stable growth of the country's economy requires the legislator to take a number of important steps, where the development of entrepreneurship is important. This cannot be achieved without the establishment of the system of supervision and control in this area. And the study of international experience in this context is of great theoretical and practical importance. In fact, the study of the experience of developed world countries will provide an opportunity to outline the vector of the development of relevant Ukrainian legislation, to adapt it to the requirements of our country by the world and European community. The institutional structure of different countries is strikingly heterogeneous due to differences in their inherent constitutional, cultural, economic and other significant contexts. International experience demonstrates that the number of risks' types is limited, so they should be used as the basis for building any inspection system and organization responsible for inspections and control over economic activities. However, existing systems have been developed mainly under the influence of historical factors, rather than as a result of careful planning.

The topic raised in the article was additionally updated due to the fact that in 2011 the European Commission launched a targeted policy for the recognition of the role and support of the social economy titled "Social Business Initiative" - creating a favorable climate for social enterprises, key stakeholders in the social economy and innovation. Commission puts social economy and social innovation central to its agenda, both in terms of approximation of the levels of territorial development and in the search for innovative solutions to the problems facing society, especially in combating poverty and social exclusion.

## II. The State of the Research and Methods of Research Analysis

The following scholars paid their attention to the problem of improving the supervision and control over the entrepreneurship in their scientific works: O. O. Avdieiev, O. A. Yevtushevska, V. O. Zozulia, M. H. Isakov,

S. V. Kivalov, V. K. Kolpakov, L. L. Prykhodchenko, Yu. A. Tykhomyrov, Yu. K. Tolstoi and many others. However, despite the large number of scientific developments, there is no comprehensive research in the legal literature focused on international experience of carrying out control and supervision over the entrepreneurship.

Today, the issue of introducing legal norms into the legislative plane that would regulate the activities of both social entrepreneurship and control over this type of activity is very relevant. Indeed, in our time, in many countries, this issue is quite relevant, in connection with which it is sanctified in the scientific literature. For example, Terziev V. and Georgiev M. (2019, p. 709) focused their attention on the fact that: «At present in the Bulgarian legislation there is no a legal act that gives the legal regulation of the activities of the social enterprise or social entrepreneurship. There is a fragmented legal regulation of individual sectors (social service providers, specialized enterprises for people with disabilities), where subjects engaged in activities are covered by social enterprises, but this approach is rather negative effect on the development of a coherent state policy to support the social economy and social enterprises, which ultimately reflects on their sustainability and efficiency. To clear structuring of the social economy sector in Bulgaria legislative changes should be undertaken and improvement of legislation to create preconditions for adequate legal and statistical recognition of the subjects of the social economy». Impetus has come also from the 2009 global economic crisis which has resulted in widespread public discontentment with the functioning of the global economic system and fuelled interest in more inclusive and pluralistic economic systems. Subsequent implementation of austerity measures - against a backdrop of new and growing social needs - have created both challenges and opportunities for social enterprise in Europe (European Commission, 2015).

The method used in ascertaining the adequacy of this research is that of analytical and confirmation. There is always that tendency that the business world and the Entrepreneurship is a better arena for business productivity. The issue in every business operations is the fact that for every stage of promotion and evolution, there is the need of control and supervision of the activities of the entrepreneurship for it warrant efficiency and effectiveness. The European countries has a standard in ensuring that those operating entrepreneurship should do so for the benefit of the society, and for they to succeed, there is that need to confirm or respect the legal standards put in place for its functioning. One thing is to lay down established rules and regulations, and the other is in ensuring implementation and enforcement of these rules and standard established. It's becomes a complex and problematic in attaining objective put in place if the entrepreneur cannot respect the various tenets of operation. The situation is not different in Ukraine as the government in place has established credible laws and regulations in ensuring that those operating under the umbrella of entrepreneurship should do so in pursuant of the laws and regulations established and put in place. So, there is that need in seeing to that those rules, principles, laws, regulations put in place be European Countries in ensuring control and supervision of entrepreneurship should be implemented to the latter, and also position those effects or consequences accruing as a result of non-respect of these rules. It is really acceptable that the European countries and laid or established a standard which should be respected by all member countries in which Ukraine is not an exception to this. Even though the government of Ukraine has put in place enormous efforts in respecting the prescription put in place by the European Union, there are still some feebleness which is affecting entrepreneurship in the country.

### III. Results of the Research and Study

Studying the experience of government business regulation in the countries of the European Union, it is important to emphasize that their concept of supporting small and medium-sized businesses in them is clear and comprehensible. It takes into account national and Pan-European interests, includes goals and

principles of that sort of policy and has mechanisms and organizational structures for its implementation. Today, small businesses that are constantly growing in the economy of Great Britain account for 25% of the total workforce. Italy is recognized as the European leader in this sphere, which has nearly 800 thousand industrial enterprises in the country and 99% of small and medium-sized enterprises in the total. In Germany and the Netherlands, small and medium-sized businesses provide about 40% of exports, in Italy – 25–30%, in France – 20–25%, and in Japan – 10–15% (Penkov, Chabanenko, 2019, p. 164). In order for us to have an adequate and efficient understanding of this research, it will be necessary for us in portraying a laudable placement in establishing effective implementation of the way entrepreneurship are being manage and control. A standard of this will be in examining the special attention paid some leading states in Europe, among which that of Germany has been deemed necessary and fundamental. The manner in which control and supervision of entrepreneurship done in this country constitutes and eye opening in which every country in Europe must place as an example. The country in its need of showing effective implementation of entrepreneurship carried out enormous control by complying with the legal and regulatory requirements approved by:

- ⇒ The Framework Directive 2009/138 / EU (Article 46 (1));
- ⇒ Delegated Regulation (EU) 2015/35, subject to Delegated Regulation (EU) 2016/2283 (Article 266).

This measure put in place has been important and imperative for the state of Ukraine as they have put in place enormous efforts and backup by ensuring compliance with:

- ⇒ The Guidelines for the management system (EIOPA-BoS-14/253 DE): Guidelines 38 and 39;
- ⇒ Law on State Insurance Supervision, which has gone a long way in rendering the management and supervision of entrepreneurship effective and efficient.

The notion or concept of internal control mechanism for the company, which is always in accordance with the Framework Directive 2009/138 / EC includes: administrative and accounting procedures; internal control system; adequate reporting rules at all levels of the company and the function of the compliance with the requirements (“compliance function”). ICS tasks in accordance with the delegated Regulation (EU) 2015/35 include the guaranteeing of the compliance with applicable legal and administrative norms, the efficiency and effectiveness of companies’ business taking into account the objectives, as well as the availability and reliability of financial and non-financial information. Persons entrusted to carry out internal control must be given access to all necessary information. Appropriate information and communication systems must be set up for this purpose.

#### **IV. Findings and Results Analysis**

The experience of the studied and research in the country in the context of carrying out tax control over the activities of entrepreneurs is very interesting. The essence will be in finding out whether the system of application is efficient and effective among the confines of the European countries. The most relevant here is in examining some of the ways countries in the European setup are engaged in its implementation. A concrete example of examination is that put in place by the Tax Service in France which is operating in three separate levels. includes three levels. Primo is at the level of the office of National and International Inspections, Office of Tax Inspections, and National Office of Tax Investigations. Secondo is at the regional level, and thirdly at the field level. All these methods put in place is in ensuring or ascertaining that supervision and control are effectively carried out to warrant efficiency. The issue of Tax control in entrepreneurship plays a special role in the complex of budgetary control in France, since taxes and fees are the main source of revenue for state and local budgets. It is a beautiful euphoria in putting in place the tax system

for effective management and supervision, but the objective of the law will not be attained if compliance is not administered with the criterion of economic feasibility, the compliance of the objectives with control and spent funds. Another most important aspect that we also need to consider and observed is in ensuring that there should be compliance with the guarantees and rights of taxpayers. There should always be that presumption of “good faith” of taxpayers. If the taxpayer has declared his income, paid taxes in time, he enjoys all the guarantees and rights. First of all, during the court hearings we verify whether the rights of the taxpayer have been violated. Guarantees will not be applied to persons who evade taxation, because they have violated the principle of mandatory payment of taxes (Yevtushevska, 2012, p. 229-230).

An indicator of the effectiveness of tax control over business entities in France is the number of inspections carried out by one tax inspector per year. Qualitative indicators of tax audits include: the amount of accrued taxes with the obligatory indication of the reason for surcharges (for example, intentional / non-intentional tax evasion, etc.) and measures taken to ensure that taxes were fully paid; the correlation between spent resources and the total amount of accrued tax responsibilities. This primarily allows us to compare the activities of different tax departments (Melnik & Leshchuk, 2015, p. 217-218).

## V. Discussion and Conclusion

Studying international experience of carrying out supervision and control over business entities, one should pay attention to the experience of most European countries, which is has succeeded in operating an efficient and effective system of application of entrepreneurship management and enforcement. Most of these countries in European region has ensure that management and supervision of entrepreneurship should be done in accordance with the various prescribed and established laws put in place for its control and management. The countries of the regions has put in place strategies like:

- he National Labor Inspectorate – the subject matter of inspection is the compliance with labor legislation, in particular: regulations and rules of labor protection and safety techniques, legality of employment, regulations on labor relations, wages and other benefits arising from labor relations, such as the compliance with regulations on minimum hourly rate, working hours, holidays, employees’ rights related to parental responsibilities, employment of young people and people with disabilities.
- Social insurance institutions (ZUS) – the subject matter of the audit is the reliability and correctness of the tasks and obligations in the field of social insurance. ZUS inspectors conducting the inspection have the right to check whether the social security payer has submitted all the necessary reports in time, whether the amount of the relevant payments has been calculated correctly, or the amount of insurance benefits, if any.
- KRUS – inspects business entities to observe if they are actually conducting those activities. That is defined in regulations.
- the Tax Service – the subject matter of the audit is to verify the compliance with the obligations of the entrepreneur arising from the provisions of tax law, such as VAT refunds, proper calculation and payment of income tax, as well as proper record keeping and accounting records.
- Customs and Tax Inspection – carries out customs and fiscal control, including the compliance with, inter alia, the provisions of tax law, customs legislation and other provisions related to the import and export of goods in trade between the customs territory of the European Union and third countries, provisions regulating the organization and operation of gambling, currency legislation and conditions of conducting currency exchange transactions. Activities of Customs and Tax Inspection

are aimed at combating economic crimes, eliminating the shadow economy and minimizing offenses. The main task of the inspections is to detect and combat large scale violations – tax and customs fraud, extortion and other crimes that cause significant damage to the state budget, such as VAT fraud. Customs and tax control is characterized by a lack of territorial jurisdiction. It means that this office can carry it out across the country. The powers of officials in the framework of customs and tax control are much broader than it follows from the general principles of the Law on Freedom of Economic Activity. Employees of the customs and tax service additionally have the right to perform so-called operative and intelligence activities.

- » the State Sanitary Inspection – is engaged in the control of entrepreneurs involved in the activities related to the life and health of customers, including supervision over the compliance with environmental hygiene, occupational health, radiation hygiene, food safety, food and objects of hygienic and sanitary purpose.
- » the Chief Veterinary Inspection – conducts veterinary border control and veterinary control in the course of trading and exporting animals and products. It further monitors the *in vitro* diagnostic devices used in veterinary medicine in order to determine whether the devices on the market are included in the list of *in vitro* diagnostic devices used in veterinary medicine.
- » the Trade Inspectorate – the tasks of the Trade Inspectorate are performed by the President of the Office on Competition and Consumer Protection (supreme body) and governors of provinces with the assistance of provincial inspectors of the Trade Inspectorate. The Trade Inspectorate was established to protect the interests and rights of consumers and the economic interests of the state. It carries out inspections of legality and reliability of entrepreneurs' activity in the spheres of manufacture, trade and services (Business in Poland, 2020).

In this vein, concluding the review of international experience in carrying out control and supervision over the entrepreneurship we should cite the position of O. A. Shevchuk (2012), who came to the conclusion in his scientific work "Organization of Tax Control: World Experience" that the organization of tax control in the world countries is as follows:

- » administrative centralization as a direction of control efficiency. There are tendencies of rigid centralization (Germany, Sweden) and, on the contrary, delocalization (Canada, Italy). Strong centralization exists precisely in the matter of collecting declarations and managing the means of payment, forced collection and control of large enterprises;
- » tax audit programming policy. Usually a tax audit policy is defined, which for a two-year or three-year period indicates the general directions, fixes the primary, quantitative and qualitative goals.

Through the federal organization of Germany, the control policy in this country is defined at the level of the federal lands. At the same time, the Bundestag has the right to interfere in the work of local structures to inspect large enterprises and to coordinate the frequency of inspections with the categories of taxpayers and the geographical distribution of funds (Organization of Tax Control). The above scientific position, of course, deserves attention, since carrying out tax control and supervision over business entities at the present stage of development of the Ukrainian state is important. Since it largely influences, first of all, on the filling of the state budget, and secondly, on the level of withdrawal of Ukrainian business from the "shadow".

## VI. Perspective and Further Research in Entrepreneurship Management

Thus, summarizing the presented scientific research, it should be generalized that there are currently quite different and at the same time interesting approaches in Europe and the world in regard to the control over the entrepreneurship. Their differentiation is due: first of all, to the specifics of the economic and political situation in a country, and secondly, to the policy of the state in the economic, financial and political spheres. It should be also noted that the Ukrainian legislator should not recklessly introduce the entire positive experiences, because one should also take into account the peculiarities of the economy, politics and mentality. In our opinion, it is the most appropriate to introduce the following international experience of carrying out control and supervision over the entrepreneurship:

- ⇒ it is necessary to strengthen supervision and control, but its implementation should be based on the principles of expediency. That is, supervision and control should be carried out only in those cases when it is really necessary and if there are reasons which are defined by the norms of the current legislation;
- ⇒ strengthening control and supervision should be accompanied by simultaneous improvement of business incentives through political, economic, tax and budgetary instruments;
- ⇒ the issue of carrying out internal control needs detailed legislative regulation. In this context, it is about its strict regulation at the national level, which can make it possible to ensure the compliance with the rights of the employees who work in each individual enterprise;
- ⇒ the legislator should review the organizational principles of carried out control and supervision over the entrepreneurship;
- ⇒ the competencies of the controlling entities should be clearly separated in order to avoid duplication of their powers.

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