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STATE-OWNED ENTERPRISES AND PRIVATIZATION «BY NEW»

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Purpose: the article is devoted to the analysis of the privatisation processes into Ukraine and the legal status of state-owned enterprises. **Methods of research:** the legal basis that regulates relations connected with the state-owned enterprises, as well the legal status of foreign state-owned enterprises, is analyzed. **Results:** the need to save state enterprises of the nagging branches of the economy from thoughtless privatization. **Discussion:** regulatory and regulatory issues that arise when implementing the new privatisational proceduress.

Keywords: state-owned enterprises, foreign state-owned enterprises, privatization.

Formulation of the problem. The 18th of January 2018 there was Law of Ukraine «On Privatization of State and Communal Property» passed by Parliament and signed by President of Ukraine [1]. It significantly changed the process of privatization in Ukraine. As experts say: «The law answers the question of how to sell quickly, but does not say how to sell expensive and efficiently. Moreover, everything has been done to realize state property cheaply. And in the explanatory note to the bill, the authors for some reason tried to convince us that the state has left only a heap of scrap metal, which it is necessary to immediately install somewhere for at least one hryvnia, although in reality everything is not so. This raises questions» [2].

State of research. The question of the legal nature of the management of state-owned objects focuses on the attention of such scholars as lawyers Belianevich O., Vinnuk O., Podcerkovnuy O., Selivanova I., Zaruba P.

The purpose of the article there is a further theoretical development of legal peculiarities of state-owned enterprises and privatisation influences to national economy.

Presenting main material. Privatisation is an ambiguous page of Ukraine history. From the one hand it helps to increase an income of enterprises already not state-owned but from the other hand there are can be traced job cuts, avoidance of taxa-

tion and even in some cases the ventures were neck and crop closed for usage of the land as the place for building block-houses or shopping malls. So, can we think that privatization deprive our national economy from such huge economical entity as state-owned enterprises (hereandafter – SOEs)? Researchers came to the conclusion that in most cases privatization leads to increased productivity, but in Ukraine, on the contrary, it has led to a decrease in efficiency. We can seek to pro et contra justification of privatization and to turn SOEs into private compfnies but most expedient is to analyse the experience of foreign countries within this area. The first privatization wave, between the mid-1980s and 2000, was predominantly European. The privatization pace accelerated after 1991, when Eastern Europe started offering thousands of stateowned companies for sale. The second privatization wave came in the mid-2000s.

Despite predictions of their demise in the aftermath of the collapse of socialist economies in Eastern Europe, state-owned enterprises (SOEs) are very much alive in the global economy. The state is still in business [3].

The state is a distinctive type of owner. It is an economic and political organization in its own right, giving rise to another layer of agency costs – which might be called the «agency costs of state capitalism». The main agency cost within the state

is that between government officials (elected or not) and citizens, who should in theory be the ultimate beneficiaries of state action. As is well known, the agency costs within the state are particularly severe, for various reasons. First, the exit options enjoyed by citizens are far weaker than those available to shareholders (and, in non-democratic societies, the voice option is also virtually non-existent). Second, the collective action problem faced by citizens in monitoring politicians is more intense than the one facing shareholders in private firms. Third, the lack of a clear consensus on which objectives the government should pursue – as well as on the means to accomplish such objectives – hinders the development of effective mechanisms of accountability. Consequently, there is great risk that the actions by government officials will serve their own interests in enhanced power and wealth, rather than the interests of citizens [3].

If the state is actively engaged as a shareholder, this can, in theory, reduce managerial agency problems but at the cost of increasing the potential for abuse by the controlling shareholder. As in private firms, there is a risk that the state will appropriate to itself a disproportionate share of SOE returns – what the corporate governance literature calls pecuniary private benefits of control – to the detriment of minority shareholders. State ownership exacerbates other risks, however, such as the possibility that government officials will appropriate financial value to themselves to the detriment of both citizens and minority shareholders – in other words, the risk of corruption.

Despite extensive privatization, governments continue to own and operate national commercial enterprises in such critical sectors as finance, infrastructure, manufacturing, energy, and natural resources. State-owned sectors in high-income countries, in major emerging market economies, and in many low- and middle-income countries have continued, and even expanded. Indeed, many SOEs now rank among the world's largest companies, the world's largest investors, and the world's largest capital market players. In many countries, SOEs in strategic industries are increasingly viewed as tools for accelerated development and global expansion [4].

SOEs are organizations founded by governments having goals along two distinctive dimensions of performance: social and economic. SOEs are located predominantly in emerging economies, but are also present in developed economies in industries such as energy, transport, and utilities. Even in the United States, one of the most pro-market developed economies, in extreme circumstances the state intervened in the economy, in effect temporarily nationalizing firms. Many SOEs own certain resources that governments may wish to keep under control, such as transportation and communication networks, in addition to natural resources. In theory, SOEs are owned by all citizens in a country. However, in practice they are controlled by state bureaucrats and politicians. The firms' citizen-owners have no corporate governance mechanisms to monitor the running of SOEs, which may be run according to politicians' goals. Officials' goals typically support their own political interest, but do not necessarily support social or economic performance – especially since profits go into the governments' coffers, not to the bureaucrats themselves. Overall, political interference results in lower managerial discretion over firm strategy, especially if the SOEs have a high level of dependence on the state for resources. While POEs' owners usually have economic performance as their main organizational goal, the owner of SOEs, the state, may have additional multiple social goals, such as maximizing social welfare and providing employment protection, resulting in different slack generation and usage patterns. The pursuit of social goals and full employment may override the pursuit of profits and development of new products, thus potentially harming firm growth [5].

SOEs should not enjoy a competitive advantage simply because of their State ownership. SOEs in formerly non-traded sectors of the economy such as telecommunications, air and inter-city bus transport and energy generation are subject to on-going market liberalisation initiatives and have become a focus for competition policy in recent years. There may be potential to develop greater contestability in other markets currently dominated by SOEs – for example in the provision of urban bus services, rail freight and water services [6].

Several socio-economic, political and historical reasons explain why governments have established and maintain state-owned enterprises. In industries where conditions are such that it is most efficient if there is only one supplier (natural monopoly) or competition is imperfect, governments have often opted for direct control of the service providers. SOEs have also been established to carry out nationally strategic but risky or long-term investments where private sector investors were not available [7].

While SOE boards may lay claim to having independent directors, it may be in name only. Where undue political influence is involved, such directors might be given a place at the board table by virtue of their political connections, rather than for their professional skills and industry expertise. If they are reliant on the political powers-that-be for their position they may not want to challenge bad decisions. Plus, being in the minority on the board makes it a bit awkward to challenge the majority [8].

In Western Europe, privatization became a socially accepted policy element after the vigorous implementation of the United Kingdom's privatization program in the mid-1980s. In Latin America, where state entrepreneurship has a long tradition, privatization was introduced as part of fiscal adjustments to the debt crisis in the early 1980s. After the collapse of communist regimes in Central and Eastern Europe and the former Soviet Union, the SOE reforms and privatization became central elements of a comprehensive transformation process to create market economies based on private property rights. These world-wide trends in privatization imply a massive transfer of ownership and control rights to the private sector over the ten-year period from 1984 to 1994 [9].

Privatisation is not an automatic solution to improving the quality of goods and services available to businesses or the performance of state-owned enterprises. The evidence suggests that if privatisation is to improve the provision of infrastructure and services and the performance of firms over the longer term, it needs to be complemented by policies that promote competition and effective regulation of the industries in question [6].

In Finland, the 2007 State Shareholding and Ownership Steering Act, transferring most SOEs to an ownership unit in the Prime Minister's Office, is seen as having been instrumental in enhancing the separation of the ownership function from the regulatory and sector policy responsibilities of branch ministries. In Korea, the 2007 Public Entity Management Act represented major legal and regulatory changes not only to SOEs but to any other kind of autonomous body controlled by the state. The main gist of the reform has been to create a more unified institutional framework in which all types of public institutions can be addressed. Among the consequences of the reform, any public institution regardless of legal form is considered as an SOE if it has more than 50 employees and generates at least 50% of its total revenues through its own earnings. Mexico has provided OECD with in-depth information on its SOE sector. In Poland, the draft bill before parliament (first tabled in 2008) aims to collect in one legal act all regulations on the treasury ownership function that are currently contained in various laws. (These include, in particular, the «Commercialisation and Privatisation Act» and the «Act on Rules for the Exercise of Treasury Rights»). The draft law proposes significant change in the SOE sector, for example by proposing corporatisation of all noncommercialised «state-owned enterprises» under the general Commercial Code (as well as the State Enterprises Act) or alternatively liquidate them. It also introduces incentives for greater involvement of local authorities in publicly owned commercial entities. The draft Bill further includes measures to ensure a more flexible, entirely professional management; an economically efficient utilisation of assets; and a strengthening of ownership oversight with SOEs. As a consequence of the Bill, the ownership function – currently fractured but with the Ministry of Treasury overseeing by far the largest number of SOEs – would become more centralised, with the Ministry of Treasury exercising a measure of oversight over all state-owned entities. The Belgian authorities have notified a small inaccuracy in previous reporting concerning their ownership architecture. (Belgium was described as having a wholly centralised structure.) The responsibility for SOEs is mostly with the Minister for State Owned Assets, but some gov-

ernment participations are owned by a separate holding company. The Czech Republic, in January 2006, disbanded the National Property Fund (NPF), which had been established as a central privatisation and state ownership agency at the beginning of the transition period. The role of the NPF was, in all essentials, taken over by the Ministry of Finance. The Czech ownership model remains dual, with sector ministries nominating SOE directors and voting the States shares and the Ministry of Finance in charge of SOEs operational performance. In Finland, the 2007 legal reform created a comparatively centralised ownership structure for SOEs. The Ownership Steering Department, serving as the ownership agency, is administratively located in the Prime Ministers Office and is politically accountable to the Minister of Defence – who was chosen for this role because his ministry is not involved in the oversight of any individual SOEs. Subsequently, in 2008 a state holding company, overseen by the Steering Department, in 2008, was established to which government shareholdings in a number of listed companies was transferred. This was seen as an attempt to further safeguard the commercial orientation of the listed companies concerned by «insulating» them through another layer of corporate board responsibility. At the time of the first reform, the Finnish government further approved State Ownership Policy, outlining the key principles and operating practices of the States ownership function [10].

SOEs are especially prominent in sectors of the economy that provide critical services for businesses and consumers and that contribute directly to economic growth and poverty reduction:

- Infrastructure. In many if not most countries, SOEs continue to provide power, rail, and water services, as well as telecommunications services in some countries.
- Banking and other financial services. State ownership in commercial banks has declined considerably over the past four decades, from an average of 67 percent of total banking assets in 1970 to 22 percent in 2009 (World Bank 2012). Yet, SOEs in this sector occupy a dominant position in many cases. In 2010, state banks exceeded half the assets of the banking systems in Algeria, Belarus, China, the Arab Republic of

Egypt, India, and the Syrian Arab Republic. In other major emerging market countries – such as Argentina, Brazil, Indonesia, the Republic of Korea, Poland, Russia, and Turkey – state banks do not lead the process of credit creation but still have an asset market share between 20 and 50 percent (World Bank 2012).

- Oil and gas. The 13 largest oil companies, controlling 75 percent of global oil reserves and production, are state owned, while conventional multinationals produce only 10 percent of the world's oil and hold just 3 percent of known reserves.
- Industry and services. The presence of SOEs has generally declined in these sectors, with notable exceptions. In Vietnam, for example, SOEs enjoy near-monopoly status in the production of several goods and services, including fertilizer (99 percent), and have maintained a large presence in such consumer goods as cement (51 percent), beer (41 percent), refined sugar (37 percent), textiles (21 percent), and chemicals (21 percent) (World Bank 2011).

The benefits of good corporate governance, a number of governments in developed and developing economies alike are taking concrete actions to address the above challenges in order to: (1) enhance the competitiveness of SOEs and the economy as a whole; (2) provide critical infrastructure, financial, and other services in a more efficient and cost-effective manner; (3) reduce the fiscal burden and fiscal risk of SOEs while improving their access to external sources of finance through the capital markets; and (4) strengthen transparency and accountability [4].

Conclusions. Taking advantage of the opportunity to use the debt to reduce the book value of enterprises with a hammer, important state enterprises can leave for a penny. The subsequent optimization of business processes is likely to deprive a large number of employees of such state-owned enterprises. The experience of foreign states analyzed in this article shows a false way of such privatization.

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Riabova K.

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ДЕРЖАВНІ ПІДПРИЄМСТВА І ПРИВАТИЗАЦІЯ «ПО-НОВОМУ»

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Мета: стаття присвячена аналізу правового статусу державних підприємств в Україні. **Методи дослідження:** аналізується правова основа, яка регулює відносини, пов'язані з державними підприємствами, а також правовий статус іноземних державних підприємств. **Результати:** обґрунтовується необхідність не допустити бездумної приватизації державних підприємств окремих галузей економіки. **Обговорення:** проблемні питання, що виникають при впровадженні нової процедури приватизації.

Ключові слова: державні підприємства, іноземні державні підприємства, приватизація.

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ГОСУДАРСТВЕННЫЕ ПРЕДПРИЯТИЯ И ПРИВАТИЗАЦИЯ «ПО-НОВОМУ»

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Цель: статья посвящена анализу правового статуса государственных предприятий в Украине. **Методы исследования:** анализируется правовая основа, регулирующая отношения, связанные с государственными предприятиями, а также правовой статус иностранных государственных предприятий. **Результаты** обосновывается необходимость не допустить бездумной приватизации государственных предприятий отдельных отраслей экономики. **Обсуждение:** проблемные вопросы, возникающие при внедрении новой процедуры приватизации.

Ключевые слова: государственные предприятия, иностранные государственные предприятия, приватизация.