

REVISITING THE ISSUE OF DEVELOPMENT OF THE LEGAL FRAMEWORK FOR CLUSTER DEVELOPMENT

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Revisiting the Issue of Development of the Legal Framework for Cluster Development

The article deals with the concept of clusterization of the national economy as a process of creating within the national economy clusters (cluster systems), and other network structures, there highlighted its importance for the development of the national economy (it ensures increasing competitiveness of the national economy, strengthening its innovation component, improving the quality of education, reconciling the interests of government and business structures, etc.). As a result of investigation of the major clusters, there determined the underdevelopment of the legal framework of clusterization and the negative impact of the legislative factor on it. The article presents recommendations for the development of the legal framework for cluster development in four areas: development (adoption) of certain laws and regulations, the introduction of amendments to the existing laws in the field of clustering, changes to a number of legal acts concerning the regulation of the national economy, adherence to the norms of international law.

Keywords: economy, clusters, clusterization, legal framework, development.

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Кузьмін О. Є., Маслак О. О., Петришин Н. Я., Жежуха В. Й.

До питання розвитку нормативно-правового поля кластеризації

У статті розглянуто поняття кластеризації національної економіки як процесу створення в межах національної економіки країни кластерів (їх систем) та інших мережевих структур, окреслено її значення для розвитку національної економіки (забезпечує підвищення конкурентоспроможності національної економіки, посилення її інноваційної складової, покращення якості освіти, узгодження інтересів влади та бізнесових структур тощо). У результаті дослідження найбільших кластерів визначено нерозвиненість законодавчо-правового поля кластеризації та негативний вплив законодавчого чинника на неї. У статті сформувано рекомендації із розвитку нормативно-правового поля кластеризації за чотирма напрямками: розроблення (прийняття) окремих законів та нормативних актів, визначенням змін до чинного законодавства у сфері кластеризації, внесення змін до багатьох нормативно-правових актів, дія яких пов'язана із регулюванням національної економіки, приєднання до норм міжнародного права.

Ключові слова: економіка, кластери, кластеризація, нормативно-правове поле, розвиток.

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Кузьмин О. Е., Маслак А. А., Петришин Н. Я., Жежуха В. И.

К вопросу развития нормативно-правового поля кластеризации

В статье рассмотрено понятие кластеризации национальной экономики как процесса создания в рамках национальной экономики страны кластеров (их систем) и других сетевых структур, определено ее значение для развития национальной экономики (обеспечивает повышение конкурентоспособности национальной экономики, усиление ее инновационной составляющей, улучшение качества образования, согласование интересов и бизнес-структур и т.д.). В результате исследования крупнейших кластеров определена неразвитость законодательно-правового поля кластеризации и негативное влияние законодательного фактора на нее. В статье сформулированы рекомендации по развитию нормативно-правового поля кластеризации по четырем направлениям: разработка (принятие) отдельных законов и нормативных актов, определение изменений в действующее законодательство в сфере кластеризации, внесение изменений в многие нормативно-правовые акты, действие которых связано с регулированием национальной экономики, присоединение к нормам международного права.

Ключевые слова: экономика, кластеры, кластеризация, нормативно-правовое поле, развитие.

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Urgency of the problem and its connection with important scientific and practical issues. The essence of clusterization can be defined as the process of creating clusters (their systems) and other network structures within the national economy. At the same time, clusters themselves should be considered as special types of associations of interconnected enterprises, scientific institutions, public organizations, etc., whose activities are aimed at obtaining a synergistic effect, increasing the competitiveness of both products and the region as a whole. A cluster consists of main enterprises (industrial enterprises), manufacturers of related products, research institutes, experimental and experimental centers, etc. More developed clusters have specialized supplier bases, service companies, wider scale of supporting industries, distribution networks. Also, a cluster may provide for cooperation with state executive authorities of different levels and local government in many areas of activity of the cluster, as well as with the institutional environment (financial, banking institutions, scientific and educational institutions, public organizations, mass media, etc.).

As is known, clustering ensures increasing the competitiveness of the national economy, strengthening its innovative component, improving the quality of education, harmonizing the interests of the authorities and business structures, etc. The clustering of the national economy in combination with other processes (for example, tax credits for the development of innovation or other measures to stimulate innovation) can increase the level of safe innovation development, create favorable conditions for its provision by improving the innovation system, increasing the effectiveness of its innovation policy (indirectly), etc. The impact of clusterization (the process of creating clusters and other integrated network structures through organizational and economic measures and ensuring appropriate conditions) on the security of innovation development is realized through providing conditions for reducing threats and forming a favorable macro and micro economic environment of the national economy.

To date, in Ukraine there created about 25 operating and 50 potential industrial clusters (the earliest forms of integration of production facilities that are concentrated in the same

geographic area, have similar technologies, common sales channels, etc.). The largest industrial clusters in Ukraine are the innovative technology cluster AhroBum, Lviv cluster of IT and business services, the wood processing cluster Polissya Roknivshchyna, the cluster of environmentally clean baby food «Poltavshchyna», the transport and logistics cluster «Pivdenni Vorota Ukrainy» («Southern Gates of Ukraine»), the souvenir production cluster «Suziria» («Constellation»), the cluster of rural tourism «Oberig» («Amulet»), the construction, sewing cluster NGO «Sewing cluster» of Association «Podillya Pershy», etc. On the basis of their studying, it can be stated that the number of cluster participants varies from 10 to more than 50 enterprises and organizations of different spheres of activity, sizes, forms of ownership; the provided financial support does not ensure an effective functioning of industrial clusters, which forces them to search for alternative sources of financing; the increase in the activity of enterprises participating in the cluster takes place on an innovative basis, thanks to close cooperation with academic institutions and educational institutions; their activities are partly formed within the framework of programs for the development of the regions in which they are located. This suggests the existence of problems in the development of clusters and the initial stage of industry clustering.

As a result of studying the largest industrial clusters and the problems of the clustering of the national economy, we noted the lack of a legal framework for cluster development and the negative influence of the legislative factor on it. Legislation in the field of innovation (clusterization) is not systemic, it is dominated by numerous disparate sub-legal acts. Today, the organization of innovation activity in Ukraine is regulated by more than 400 legal acts (Law of Ukraine «On Innovation Activity» of 04.07.2002, Law of Ukraine «On Education» of 23.05.1991 – №1060, Law of Ukraine «On Higher Education» of 01.07.2014 №1556-VII, Law of Ukraine «On scientific and technical activity» of 13.12.1991 №1977, Law of Ukraine «On priority directions of innovation activity in Ukraine» of 16.01.2003, etc.). Clusters as objects of innovation infrastructure are mentioned in more than 100 legislative and normative acts, and the essence of the concept is defined in different ways

and is unjustified (for the first time since 2003, the concept of «cluster» is used without any definition or explanation). An example of the ineffectiveness of the current legislation in the area of innovation and clustering is the laws and regulations that envisage the creation of innovative infrastructure objects. In addition to clusters, each of the considered legislative acts provides for the creation and development of industrial parks. Until recently, they have been the only innovation structure in Ukraine supported by the state legislation. Technoparks were meant to become a model for a further strengthening of the innovation infrastructure, taking certain measures to support innovative business. They were also called upon to promote the development of small and medium-sized enterprises and ensure the competitiveness of high-tech branches of the national economy.

This is determined by the lack of legislative support for clusterization processes, the corresponding state policy, which would ensure a systematic approach and the organization of interaction between different levels of executive power in the implementation of cluster projects and support of cluster initiatives by the state, etc. This requires the development of the legal framework for cluster development.

Analysis of recent research on the problem under investigation and identification of unsolved issues. The matters of clusterization and the legal framework for its provision were investigated and thoroughly described in the works by S. Sokolenko, O. Butkevych, I. Kurilov, V. Zakharchenko, and others. These and other researchers analyzed the current legislation of Ukraine regarding the recognition of a cluster as an object of the state economic and legal policy; determined the necessity of perfecting the legislation on improving the competitiveness of the economy, studied the legal aspect of the formation and functioning of clusters in certain spheres of eco-

nomical activity, etc. At the same time, the issues of systematization of the existing legislation in the sphere of clusterization, as well as its supplementation and further development in certain directions, remain inadequately investigated.

The purpose of the work is to identify directions in the development of the legal framework for cluster development and formulate recommendations for their provision.

Presentation of the main research material with the author's scientific substantiation of the results. The assessment of the development of the legal framework of Ukraine and the determination of the possibility of a safe innovation development of industry under conditions of clusterization of the national economy allowed to outline the need to systematize the existing innovation legislation as well as its supplementation and further development in two areas:

1. legislative support for clustering;
2. legislative support for foundations of the safe industrial innovation development.

Concerning the first area, it is necessary to carry out a number of transformations in the following groups:

- creation (adoption) of relevant laws of Ukraine and normative acts;
- introduction of changes to the current normative documents in order to deepen the legal framework for cluster development;
- accession to international conventions (memorandums of clustering).

In our opinion, it is reasonable to consider each of the directions separately, as well as supplement them with another one providing for amendments to existing normative documents that are not related to the processes of clusterization, and regulate the economic activity of the country as a whole (Fig. 1).

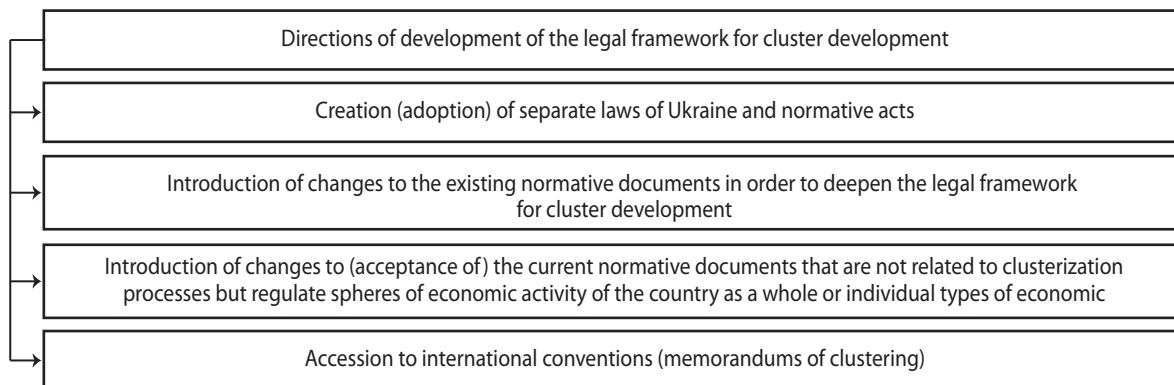


Fig. 1. Directions of development of the legal framework for cluster development

As for the first direction, it would be advisable to support the adoption of the Concept of Creation of Clusters in Ukraine, which was approved by the Decree of the Cabinet of Ministers of Ukraine in 2008. It outlines the main types of clusters, prerequisites and reasons for their creation, as well as a set of measures to intensify clusterization of the economy. It is also necessary to ensure adoption of the National Strategy for the Formation and Development of Cross-Border Cluster, which was approved by the Cabinet of Ministers of Ukraine in 2009 (Draft National Strategy for the Formation and Development of Cross-Border Cluster was developed in 2009 by the Ministry of

Regional Development and Construction of Ukraine together with the National Academy of Sciences of Ukraine).

At the same time, approval of these normative acts by the relevant ministries should be ensured. A positive development in this direction is that the Draft Concept of the National Strategy for Formation and Development of Cross-Border Clusters was approved by the Ministry of Regional Development and Construction in 2009. Based on the decision on approval, the Concept of the National Strategy for the Formation and Development of Cross-Border Cluster has been worked out with relevant central and local executive authorities, local authori-

ties, scientific institutions, discussed at the International Conference on Transboundary Clusters and Improved Investment Attractiveness of the Regions (14.09.2009), as well as considered and approved at the meeting of the Section on international, cross-border cooperation, investment development and European integration of the Scientific and Technical Council of the Ministry of Regional Development and Construction. Such a solution facilitates the implementation of a flexible clustering industry policy, given the desired level of decentralization of managerial functions and a definite role for local communities in it.

Following the given direction it is worthwhile to provide a definition of «clusterization» in the current legislation. Despite the fact that the importance of this issue was already supported by the adoption of the Concept of the National Program for the Development of Small and Medium-Sized Enterprises for 2014-2024, which was approved by the Cabinet of Ministers of Ukraine in August 2013, the definition has not been provided yet.

The definition can be envisaged in the amendments to the Law of Ukraine «On Priority Areas of Innovation Activity in Ukraine» [1]. Article 7 of the Law, which defines the strategic priority directions of innovation activity in Ukraine, could be supplemented by issues of clusterization, with regard to the following: «A harmonious development of human potential, economy and natural environment of Ukraine, clusterization in strategic directions of innovation activity was proclaimed a special priority of the state».

Taking into account that by the current legislation clusters are included in innovative structures (a legal entity of any organizational and legal form established in accordance with the legislation (type A), or a group of legal entities acting on the basis of an agreement on joint activity without the creation of a legal entity and without uniting the contributions of its participants (type B), characterized by certain spheres of activity and type of operation and oriented towards the creation and implementation of science intensive competitive products), it is advisable to initiate the adoption of the Law of Ukraine «On innovative structures». In the absence of such a normative act, the creation and operation of clusters as innovative structures is regulated by the Decree of the Cabinet of Ministers of Ukraine dated May 22, 1996 №549 «On Approval of the Regulation on the Procedure for the Establishment and Functioning of Technoparks and Innovative Structures of Other Types».

It would be worthwhile to envisage in this law the creation of special innovation structures – private research centers. With regard to the experience of the functioning of clusters in EU countries, they should promote the integration of knowledge into industrial production. To do this, universities (or educational structures of other types) create research centers in the form of legal entities under the guidance of persons from the professorial environment. Legislation at the state level will facilitate the functioning of cluster-type structures in the form of adopting the recommended law status of such research centers.

Therefore, within the development of the legal framework of clusterization, provision should be made for the formulation of methodological recommendations for the implementation of cluster policy (there exists in the Russian Federation, where methodological recommendations for the implementation of cluster policy, approved by the letter of the Ministry of

Economic Development of Russia from 2008, have been formulated) [2]. It should be noted that in the practice of regulatory control of clusterization, in these documents the definition of an innovation territorial cluster, which should be understood as a set of located on a limited territory of enterprises and organizations (members of the cluster), is characterized by the presence of

- the research production chain, which unites participants of a cluster;
- a synergistic effect, expressed in increasing the economic efficiency and performance of each enterprise due to a high degree of integration [2].

This proposition will facilitate its implementation at the local level and the interaction of central and local authorities in the process of cluster management. Since most of the normative acts contain a section that interprets the main terms, the definition of the essence of clusterization can be envisaged by this normative act.

According to the second direction of development of the normative field of clusterization, it is necessary to determine recommendations for the development of the normative field in adjacent (supporting) industries. In this context, we can mention those laws that will promote the development of clusters, regardless of types of economic activity. As such we defined, for example, the Law of Ukraine «On General Principles of the Establishment and Functioning of Special (Free) Economic Zones», the Memorandum «About creation and development of the National Technology Transfer Technology Transfer Network (UTTN) by state and non-state subjects of technology transfer», etc. Let us explain this statement. According to the first law, there developed the procedure for establishment and liquidation of special (free) economic zones in Ukraine, the general legal and economic bases of their status, as well as the general rules for regulating the relations of the economic entities of these zones with the local Soviets of People's Deputies, bodies of executive power, and other bodies. Using the experience of CIS countries and granting the status of special zones to tourist and recreational areas will help to form new tourist clusters and develop the already existing ones in Ukraine.

The Memorandum «About creation and development of the National Technology Transfer Technology Transfer Network» promotes the formation of the Ukrainian Technology Transfer Network (UTTN) and its segments, and initiates effective international cooperation in this area. The NTTN will enable integrating into the European Enterprise network (EEN) and increase the level of cluster interaction in the international sphere in particular.

As already noted, during the development of the legal framework for cluster development, methodological recommendations regarding the implementation of cluster policy should be formulated. This fact requires introducing changes to the Law of Ukraine «On the promotion of regional development» [3]. This Law defines the legal, economic and organizational principles for the implementation of the state regional policy in order to stimulate the development of regions and overcome the depression of the territories. In this context, stimulation of the development of regions could be carried out on the basis of clusterization.

As is known, the state procurement of high-tech products and the use of patents remain one of the problem issues in

the process of stimulating and supporting innovation activity in Ukraine. Since clustering is a powerful catalyst for innovation development, the Law of Ukraine «On the Procurement of Goods, Works and Services for Public Funds» № 1490-III dated 22.02.2000 could provide public funds for their development [4].

The second direction is not limited to these normative acts, there exist many more such examples. However, we propose to consider legislation in a specific type of economic activity. We have chosen agriculture as an object of research, since it is traditionally a strategic kind of economic activity within the national economy. Despite this, clusters in agriculture of Ukraine have not become widespread.

In this area, the reform could be applied to the Laws of Ukraine «On the Basic Principles of the State Agrarian Policy», «The State Target Program for Development of the Ukrainian Village», and the Law of Ukraine «On Agriculture». The first two regulations (Law of Ukraine «On the Basic Principles of the State Agrarian Policy for the Period till 2015», «The State Target Program for Development of the Ukrainian Village for the Period until 2015») were in force until 2015 and did not mention any agrarian clusters or other interorganizational branches of the industry. An exception is the draft Law of Ukraine «On Agriculture». It determines that inter-farm organizational and managerial structures can be created in agriculture in the form of self-governing economic associations of cooperative economy and cluster regional cooperation in the organizational and legal forms of partnerships, associations, consortia (Article 11.4) [5]. Consequently, for the development of clusterization of the agrarian sector of economy, it is necessary to adopt the mentioned normative document.

Since the development of clusters can be predicted not only in the corresponding types of economic activity but also in a certain territory (in the corresponding regions), then it is necessary to determine the ways of development of the legal framework for their functioning. Thus, changes can be reflected in the respective development strategies of the regions. For example, we propose to adopt the Strategy for Development of Seaports of Ukraine for the period until 2038, approved by the Cabinet of Ministers of Ukraine, July 11, 2013 № 548-p. Among the advantages of the port industry, this strategy considers the creation of clusters and special zones in seaports while among the problems of the port areas the lack of a cluster network. Therefore, within the framework of the implementation of the strategy (in order to achieve the main goal of the creation), there envisaged the creation of a network of clusters through:

- compiling the list of sea ports and types of clusters;
- expanding the list of services provided in seaports;
- attracting private investments for the development of seaports, the transfer of port enterprises and parts of the port infrastructure, in particular, to concession [6].

In this context, the initiative of the Sevastopol City State Administration, which supported the «Organizational Plan to Promote the Creation and Development of Cluster Structures in the Sevastopol Region for 2004-2005» [7], could be used. Despite the special status of the city of Sevastopol, such initiatives in the regions should cover most cities in the regions. Therefore, it is worthwhile taking into account and ensuring in the re-

gions the implementation of initiatives for the adoption of «Organizational plans to promote the creation and development of cluster structures in the regions» for the relevant period.

The introduction of changes to the Law «On Local Self-Government in Ukraine» and «On the bodies of self-organization of the population» support the decentralization of state government of the national economy and the role of local communities that is defined in it. These two documents are interconnected, because according to the first one, local councils have the right to give consent to the formation of bodies of self-organization of the population. Taking into account that making decisions on forming an association, joining associations or other forms of voluntary amalgamations of local self-government bodies, and leaving them belongs to the exclusive competence of village, settlement and city councils, they can become participants of cluster unions. It should be clarified in the text of Article 25 [8]. A similar role in the processes of clusterization is performed by bodies of self-organization of the population. The Law on their creation envisages granting them the authority to submit proposals as to projects of local programs of socio-economic and cultural development of the corresponding administrative-territorial units and projects of local budgets in accordance with the established procedure [9]. This list can be supplemented with proposals as to clustering in the regions.

According to the third direction (adherence to international law), the EU Vienna Cluster Manifesto (2007) and the Cluster Memorandum (approved in Stockholm on January 21, 2008) should be ratified. In addition, it is worthwhile to join the system of other documents of the Council of Europe and the EU, interstate agreements, among which are:

- the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities;
- Regulation of the European Parliament and the European Council dated July 5, 2006, № 1082/2006 «On a European grouping of territorial cooperation»;
- the Lisbon Strategy;
- Recommendation of the Committee of Ministers of the Council of Europe Rec (1984) 2 on the European Charter for Regional / Spatial Planning (Torremolinos Charter);
- Recommendation of the Committee of Ministers of the Council of Europe Rec (2002) 1 on the Guiding Principles of Sustainable Spatial development of the European Continent.

The decision to join these agreements is already envisaged by the Draft Concept for Creation of Clusters in Ukraine, which was approved by the Cabinet of Ministers of Ukraine in 2008.

As stated in the «Recommendations on the Implementation of New Forms of Cross-Border Cooperation», for the development of clusterization, it is necessary to accelerate the acquisition of the status of a full member of the EUREKA program (European Research Coordination Agency) [10].

The EUREKA Science and Technology Program (European Research Coordination Agency) was established in 1985 on the initiative of the government of France and Germany to assist scholars in conducting research (within the framework of joint projects) in the field of information technology, telecom-

munications, energy, environment and biotechnology, transport, and new materials [10].

The purpose of the EUREKA program is to introduce innovative scientific and technical developments in the production, implementation of competitive non-military research and development (R & D) in the world. The EUREKA program also facilitates the development of products, introduction of technological processes, provision of high quality services, etc.

One of the areas of the program is Cluster Projects, which allows uniting for implementation of projects that can not be carried out independently in a particular country, contributes to increasing the competitiveness of European firms and develops small and medium-sized companies working in the field of R & D [10].

In this context, it is worth considering international projects of cluster development, which can be joined in the future. Ukraine is already participating in such projects as Regions of Knowledge / RoK (Regions of Knowledge), INTERREG (the largest Community Initiative program of the EU for supporting

the development of the border regions of the EU member states and some of the coastal areas), PHARE CBC (cross-border cooperation program for the border areas of Central European countries), etc. [11].

Participation in these and other projects requires appropriate approval within the limits of certain types of economic activity or regions. The outline of such decisions requires a thorough study carried out in such regions or industries, so in this study it can not be clearly defined. However, relying on the results of research conducted in the economic literature, the promising international projects in the field of clusterization are International Long-term Ethno-Design Project «Ecological Focus», RERAM (created to enhance cooperation and coordination of research institutions and innovation development organizations with the EU and the Eastern Partnership countries in the sphere of efficient use of wood as a resource), etc. [12].

The generalization of the recommendations for the development of the regulatory legal field of clusterization is shown in Fig. 2.



Fig. 2. Recommendations on the development of the legal framework for cluster development

Conclusions and prospects for further scientific developments. For the development of clusterization, which implies the creation of clusters and other network structures, in order to increase the competitiveness of Ukraine's national economy, its innovation development and obtain other advantages, it is necessary to ensure the improvement of the current legal framework.

The article forms recommendations for the development of the legal framework for cluster development in four directions. The first direction involves the development (adoption) of separate laws and regulations (adoption of the Concept of Creation of Clusters in Ukraine, the National Strategy for Formation and Development of Cross-Border Clusters, the Law of Ukraine «On Innovative Structures», etc.), the second is

related to the introduction of changes to the current legislation in the field clusterization (introduction of amendments to the Law of Ukraine «On priority directions of innovation activity in Ukraine», Resolution of the Cabinet of Ministers of Ukraine «On Approval of the Regulation on the Procedure for the Establishment and Functioning of Technoparks and Innovative Structures of Other Types» etc.), the third one requires the introduction of amendments to many normative legal acts whose actions are related to the regulation of the national economy (the Law of Ukraine «On the Basic Principles of the State Agrarian Policy», «The State Target Program for Development of the Ukrainian Village», the «Strategy for Development of Seaports of Ukraine for the period until 2038», etc.), and the fourth – adherence to the norms of international law (the EU Vienna Cluster Manifesto and the Cluster Memorandum, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, etc.).

In further research on the problem, the modeling of clusterization of the economy under conditions of innovation development should be carried out.

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