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Cluster formation as a sustainable rural development tool in Ukraine

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Abstract

The difficult situation in Ukraine in general and in the agricultural sector in particular, caused by the war: destruction of settlements with infrastructure, property damage to business entities, impossibility of conducting economic activity in the temporarily occupied territories and territories where active hostilities are taking place, relocation of business, massive displacement of the population to more peaceful regions – necessitates a rethinking of pre-war approaches to the development of rural areas. This study focuses on one of the most promising tools – clusters. Since proper legal regulation is crucial for the effective development of clustering processes, the purpose of the study is to analyse the state of legal support for clustering in rural areas, considering the requirements of smart specialisation, to identify the main problems and to develop proposals for their solution. This goal was achieved through the use of several methods of scientific knowledge: dialectical (philosophical),

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analysis, formal legal, hermeneutical, abstract logical, and historical and legal. As a result, the author formulates a definition of the concept of “cluster”, which enshrines its features (voluntary association of entities with the status of entrepreneurs, sectoral or intersectoral nature). The purpose of the cluster activity is substantiated: creation of products and/or provision of services, promotion of sustainable development of rural areas. It is established that clusters combining agricultural production with other, in particular non-agricultural, activities are promising for rural areas. The necessity to consider the provisions of smart specialisation of regions in the formation of clusters is proved. Proposals have been developed regarding the formation of the legal framework for the formation and functioning of clusters by supplementing the normative acts of economic legislation with provisions on the form of organisation of cluster formations; defining clustering as a promising task in the national and agrarian-sectoral strategic planning documents; basic directions of state support for the creation and functioning of clusters in the field of agriculture/in rural areas. The results obtained are of theoretical importance for the development of the science of agrarian and commercial law. The conclusions of the work are also of practical value since they can be considered in the content of the improved legislation on clusters and smart specialisation of regions

Keywords: clustering; legal regulation; economic legislation; agriculture; business entity; entrepreneurship promotion; smart specialisation

Introduction

The challenges faced by Ukraine in the difficult conditions of war affect all spheres of social life, economic activity, etc. without exception. The full-scale war has dealt a huge blow to the Ukrainian economy. According to preliminary estimates, the damage caused by the war in the country between 24.02.2022 and 24.02.2023 is estimated at over USD (United States dollar) 134.7 billion. Among the most affected sectors are the residential sector (accounting for 38% of the total damage), the transport sector (26%), the energy sector (8%), the trade and industry sector (8%), and the agriculture sector, which accounts for 7% of the total damage (Bohdan, 2023). It should be emphasised that these figures do not yet consider the actual and potential damage to farmland and agricultural production caused by the destruction of the Kakhovka reservoir dam. And the damage is constantly increasing as the fighting continues.

Under such circumstances, the pre-war vision of rural development and the agricultural sector has largely lost its relevance. There is a need to find new directions adapted to the realities of today and the prospects of the post-war period: first, to restore rural areas, and second, to develop them progressively. And this work should be done now, without waiting for the end of the war. The key thesis should be not just the restoration of the destroyed material base of rural settlements or agricultural enterprises, but the development of comprehensive approaches to “reset” agricultural production, agricultural entrepreneurship, and non-agricultural activities to bring the life of the rural population to a qualitatively new level, preserve the environment, and ensure sustainable development of rural areas. This is a unique chance to present Ukraine’s agricultural sector and the charms of rural areas not only to potential investors but also to the wider

world community against the backdrop of growing interest in Ukraine country, its history, culture, traditions, etc. Smart specialisation and clustering are among the tools for regional development, including rural areas, that have already been tested at the international, in particular European, level. They not only allow for a significant consideration of regional interests and opportunities, but also involve the combined efforts of the state, local governments, businesses, educational and research institutions, and other entities interested in the welfare of the region.

Even though the concepts of clustering and smart specialisation were implemented in Ukraine before the war, the legal framework for the relevant relations is only beginning to take shape, and the existing regulations need to be updated to reflect the specifics of Ukraine's current situation. The development of legal aspects of these instruments in scientific doctrine is also at an early stage. The vast majority of works on the creation and functioning of clusters and the introduction of smart specialisation are the work of economic specialists, indirectly touching on certain legal aspects. The thesis by M. Slynko (2021b), which focuses on the theoretical and practical aspects of smart specialisation as a new tool for regional governance, is worth highlighting. The author also addressed the regulatory framework for the implementation of smart specialisation in the regions of Ukraine, in particular in terms of retrospective analysis of legislation (Slynko, 2021a). The institutional and legal framework for the implementation of smart specialisation in Ukraine was covered in the work of another representative of economic science – I. Zalutsky (2019). Interesting from the point of view of studying international experience are the works on smart specialisation in less developed regions of Europe (Kruse & Wedemeier, 2022); assessment of

sustainable development of rural areas in certain regions, such as Latvia, using the concept of smart specialisation (Sipilova *et al.*, 2017); comparative analysis of sustainable agricultural development in Central and Eastern Europe based on smart specialisation (Shvets *et al.*, 2023). The institutional framework for the creation and functioning of agro-industrial innovation clusters was studied by Yu. Nosenko *et al.* (2020a). The authors analysed the institutional framework for the creation and functioning of agro-industrial innovation clusters and concluded that a separate regulation on clusters should be adopted. There are also studies on specific areas of smart specialisation or cluster formation in rural areas. For example, the role of smart specialisation in the development of farms (Hutorov *et al.*, 2021), and rural green tourism (Bugil & Dudyak, 2020). However, only a few works are devoted to the legal framework, legal regulation of relations in the field of smart specialisation, and the cluster approach to rural development. The study of I. Kovalchuk *et al.* (2023), which attempts to identify the prospects for state policy to support the development of clusters in the agricultural sector, is worth noting.

Given the aforementioned, the study aims to investigate the status of legal support for smart specialisation and clustering in rural areas as tools for sustainable development and to formulate theoretical conclusions and practical proposals for improving the legal regulation of the relevant relations. The study aims to determine the following main tasks: to identify the main shortcomings in the legal regulation of clustering in the agricultural sector and rural areas and the main constraints to the development of the relevant clusters; to define the concept of “cluster”; to determine the optimal form of association of cluster members; to develop proposals for amendments and additions to the current Ukrainian legislation on clusters.

Materials and Methods

The relevant methodological tools contributed to the accomplishment of the tasks outlined and the achievement of the purpose of the study – a set of methods of scientific knowledge. The study is based on the dialectical (philosophical) method, which, along with the historical and legal methods, was used to comprehensively analyse the current state and retrospective of legal regulation of clustering in Ukraine in general and in the agricultural sector in particular. The analysis method was used in the study to analyse the doctrinal approaches to the definition of the concept of “cluster”, the types of clusters typical for the agricultural sector, and the organisational and legal forms of cluster associations. The analysis method was also used to identify the shortcomings of the legal acts regulating relations in the field of cluster formation and functioning. The content of the provisions of regulations in the field of clustering was clarified using the formal legal method. The hermeneutic method was used to define the basic categories of “cluster”, “enterprise”, “organisation”, and “association of enterprises”. The data analysis was used to study the state of development of the problems of legal support for the formation and functioning of clusters in the scientific works of Ukrainian and foreign researchers. The use of the abstract and logical method was used to generalise the results of the study and to formulate final proposals for solving the problematic issues.

The study’s objectivity is also based on the source base, which is composed of regulations of various industries and focus. First of all, these are acts of economic legislation as the basis for the legal regulation of any economic relations, in particular through clusters: Economic Code of Ukraine (2003, January), Laws of Ukraine “On Public-Private Partnership” (2010, July), “On the Priority Areas of Innovative Activity in Ukraine”

(2011, September). Normative acts of agricultural legislation, in particular the Law of Ukraine “On State Support of Agriculture of Ukraine” (2004, June), and employment legislation – the Law of Ukraine “On Employment of Population”. (2013, October) were also used in the study. An array of programmatic acts is presented in the National Economic Strategy for the Period until 2030 (Resolution of the Cabinet of Ministers of Ukraine No. 179... (2021, March)), State Strategy of Regional Development for 2021-2027 (Resolution of the Cabinet of Ministers of Ukraine No. 695... (2020, August)), Concept of the Development of Rural Areas (Order of the Cabinet of Ministers of Ukraine No. 995-r... (2015, September)), Concept of the State Target Program for the Development of Vegetable Growing for the Period until 2025 (Order of the Cabinet of Ministers of Ukraine No. 1333-r... (2020, October)), Concept of the State Target Program for the Development of Industrial Potato Growing for the Period until 2025 (Order of the Cabinet of Ministers of Ukraine No. 345-r... (2020, October)). To comprehensively study the identified issues, the prospective legislation was also analysed: Draft Order of the Cabinet of Ministers of Ukraine “On Approval of the Concept of Stimulating the Development of Entrepreneurship in Rural Areas until 2030” (2021, September), Draft Law of Ukraine “On the Development and State Support of Small and Medium-Sized Enterprises in Ukraine” (2014, December).

Results and Discussion

The cluster as one of the most promising forms of economic development, especially in the agricultural sector, is relatively new for Ukraine. As for the legal regulation of the relevant relations, it is only at the initial stage of formation. Experts point to this fact as a deterrent that negatively affects the

process of introducing clustering in our country (Romanenko, 2019). In 2008 and 2009, legislative initiatives were already introduced that were supposed to form the basis for the creation of clusters. These are the Concept of Creating Clusters (2008), developed by the Ministry of Economy of Ukraine, and the Draft Concept of the National Strategy for the Formation and Development of Cross-Border Clusters, developed by the Ministry of Regional Development and Construction of Ukraine (Decision of the Board of the Ministry... (2009, September)). Despite the goal of defining the basic principles for the creation and development of clusters to increase the rate of economic growth in Ukraine and stimulate the activation of small and medium-sized businesses in the field of integration into business networks, the creation of regional, industrial, innovative, and cross-border clusters, both documents remained at the project level. Currently, at the level of laws, the concept of “cluster” is mentioned in only a few regulations. Among them: the Law of Ukraine “On Employment of Population” (2013, October), where Article 16 defines the development of clusters of folk artistic crafts as a direction of implementation of the state policy in the field of employment; the Law of Ukraine “On the Priority Areas of Innovative Activity in Ukraine” (2011, September), where Article 3 mentions innovation clusters in the context of medium-term priority areas of innovative activity. At the same time, several policy documents envisage the development of clusters in various areas and at various levels as an effective tool for economic development. In particular, the State Strategy of Regional Development for the Period until 2020 defined the introduction of clusters as a stimulus for economic development at the local level (Resolution of the Cabinet of Ministers of Ukraine No. 385..., 2014). The current State Strategy of Regional Development for 2021-2027 (Resolution of the Cabinet of Ministers of

Ukraine No. 695... (2020, August)) pays much more attention to clusters. This document envisages the formation of urban and regional economic clusters, IT clusters, cross-border clusters, cluster models in the context of the development of resort infrastructure and recreational areas, and innovation clusters. The strategy also declares the need to stimulate research aimed at identifying priority areas for cluster formation and borrowing international experience in cluster creation. Another document, the Strategy for the Development of Small and Medium-Sized Enterprises in Ukraine for the Period up to 2020 (Order of the Cabinet of Ministers of Ukraine No. 504-r... (2017, May)), also focused on the need to develop and implement programmes aimed at integrating small and medium-sized enterprises into cluster structures. However, all these provisions have largely remained purely declarative, without further practical implementation.

Narrowing down to the issue of regulatory support for the creation and functioning of clusters in the agrarian/agricultural sector, the following should be noted. One of the fundamental documents that defines the vectors of the Ukrainian economy – the National Economic Strategy for the Period until 2030 (Resolution of the Cabinet of Ministers of Ukraine No. 179... (2021, March)) – includes the development of agricultural clusters as a way to achieve strategic objective 1 “Ensuring an agricultural policy of stimulating and advisory content”, which should include the reflection of the development of these clusters in the concept of cluster creation at the national level, the formation of a model of cluster development, as well as the formation of a regulatory framework for the regulation of relations between clusters. The creation of specialised clusters is also mentioned in sector-specific documents: Concept of the State Target Program for the Development of Industrial Potato Growing for the Period until 2025 (Order

of the Cabinet of Ministers of Ukraine No. 1345-r... (2020, October)), Concept of the State Target Program for the Development of Vegetable Growing for the Period until 2025 (Order of the Cabinet of Ministers of Ukraine No. 1333-r... (2020, October)) does not contain any mention of clusters. The same is true for the draft Concept of Stimulating the Development of Entrepreneurship in Rural Areas until 2030 (Draft Order of the Cabinet of Ministers of Ukraine... (2021, September)). Therefore, there is inconsistency and a virtual absence of state policy in cluster development. Both in general and concerning clusters in the agricultural sector in particular. The above declarative provisions have not been practically implemented.

Meanwhile, there are several initiatives aimed at further developing the cluster model of economic development. One of the primary initiatives is the Project of the Recovery Plan of Ukraine, drafted in July of 2022 by the working group "Recovery and Development of the Economy" of the National Council for the Restoration of Ukraine from the Consequences of the War (2022). The strategic objectives and measures of the Structural Modernisation and Full Integration into the European Union stage, which are scheduled for implementation in 2026-2032, include "building an industry 4.0 and clustering ecosystem". That is, stimulating and supporting the establishment of cluster production chains, as well as its internationalisation. While this position of the developers is commendable, it should be noted that the Recovery Plan does not mention any special legislation on clusters in terms of the necessary regulatory framework for these measures. Another document, the National Programme of Cluster Development Until 2027, created by a group of experts of the cluster committee of the Industry4Ukraine platform (2020), is much more meaningful in terms of practical implementation of the ideas of cluster inten-

sification. The developers position it as a guiding document for all stakeholders in Ukraine's cluster development. A review of its content leads to the conclusion that the proposed national cluster development programme until 2027 is comprehensive – from an attempt to define basic terms and concepts to highlighting the European experience of forming and operating a cluster economy, the role of the state and government agencies, defining clear benchmarks and objectives for cluster development in the short term (until 2025), as well as recommendations for central and regional executive authorities. However, both of these documents are not normative acts but can be considered solely as sources of information, ideas, and recommendations for action for entities interested in forming clusters.

Regarding the problems of legal regulation of cluster creation and functioning in Ukraine, the first point to note is the absence of a legal definition of the term "cluster". Researchers attempted to fill this gap, but so far, no regulatory act contains this definition, which leaves it open to interpretation in practice. The current author's definitions of the concept of "cluster" are somewhat controversial. S. Hrudnytska and L. Nestyrenko (2018) suggest defining a cluster as a legal institution with a complex structure, including an open system of legal institutions. According to the researchers, a legal institution is a set of relations of economic and legal content that arise between cluster members. It is impossible to agree with this vision of the category "cluster" since it does not consider the provisions of the legal theory on the concept of "legal institution". The latter is not a set of relations, but a set of legal norms regulating homogeneous, interdependent social relations. This is a well-established understanding of a legal institution by legal theorists (Husariev & Tykhomyrov, 2017).

Another debatable position is the understanding of a cluster as a “form of innovative enterprise” (Nosenko *et al.*, 2020a). Chapter 7 of the Economic Code of Ukraine (2003, January) sets out clear criteria for an enterprise, including an organisational form of management; operating based on constituent documents; being a legal entity; and not having other legal entities in its structure. These features are not typical for clusters. Given the current state of legal regulation, it is more correct to say that a cluster is an informal association of efforts of different entities, which allows coordinating efforts, experience, etc. to achieve the purpose of such an association and the interests of the participants (Nosenko *et al.*, 2020b). The issue of the organisational and legal form of the cluster will be addressed below.

Another definition of the concept of “cluster” is offered by the developers of the National Programme of Cluster Development (Industry4Ukraine, 2020), namely as an association of organisations that is sectoral, territorial, and created voluntarily. This association involves close cooperation between the participating organisations and other entities. The cluster aims to create value, increase the competitiveness of the cluster’s products and their exports, and thus develop the region. Taking a critical approach to this meaning of the concept of “cluster”, the use of the term “organisation” as the main cluster member is debatable. The word “organisation” is interpreted very broadly as “an association of people, social groups, states based on common interests, goals, programmes of action, etc.” (Dictionary of the Ukrainian language, 1974). Its use to define the subject composition of a cluster does not remove, but rather adds new questions about who exactly can be part of such an association: should it be only legal entities or is the participation of individuals allowed? Should such organisations

have the status of a business entity? Another observation is that the definition in question only mentions “products” produced by the cluster, and therefore does not indicate whether the cluster can provide services. As the existing practice of clusters in rural areas shows, these can be either purely production clusters (for the production of agricultural products) or clusters that combine production with the provision of services. An example of the first option is the Public Union “Ukrainian Organic Cluster” (n.d.), which has become a platform for the development of organic agricultural production. A vivid illustration of the second type of cluster in rural areas is the Frumushyka-Nova agro-ecological cluster in the Tarutino district of the Odesa region, which united agricultural producers (sheep farming, breeding and a breeding farm and a grape-growing enterprise), its processing (cheese, wine, and honey production), as well as recreational and tourist entities (hotel, tavern, local history museum, conference halls, entertainment facilities, etc.) (Malska & Zinko, 2018). These are just some examples of the successful functioning of the rural cluster development model. However, they confirm the expediency of moving from purely agricultural production to the widest possible range of activities to mitigate the risks of agricultural activity (the same seasonality, dependence on weather and climate conditions), maximise the involvement of the rural population in entrepreneurial activities, and use the potential of rural areas not only in terms of the spatial basis and resources for agricultural production but also its historical and cultural value. In modern conditions, all of the above has not only not lost, but, on the contrary, has increased its relevance. This is supported by the emergence of new challenges. These include the need to employ the same internally displaced persons who are not always able and willing to

engage in purely agricultural activities, and the need to find new solutions to reformat the activities of entrepreneurs due to the impossibility of agricultural production as a result of the mining of agricultural land, destruction of enterprise infrastructure, etc. Finally, it is inappropriate to limit the definition of “cluster” to its sectoral nature, as cross-sectoral clusters have proven to be effective both in Ukraine and globally.

The most successful definition of the concept of “cluster” is proposed by the authors of the Draft Law of Ukraine “On the Development and State Support of Small and Medium-Sized Enterprises in Ukraine” (2014, December). According to this definition, a cluster is an association of business entities characterised by voluntariness, sectoral or intersectoral, territorial in nature, created to increase the competitiveness of domestic products and promote the economic development of the region. A mandatory feature of a cluster is the cooperation of its member businesses with local executive authorities, local self-government bodies, educational and research institutions, public associations, etc. However, this should not be limited to the promotion of products manufactured by cluster members. The overall goal of the cluster should also be adjusted to consider another tool for regional development – smart specialisation. This phenomenon is new to Ukraine and is defined in the Procedure for the Development of the State Strategy for the Regional Development of Ukraine and the Plan of Measures for its Implementation, as well as the Monitoring and Evaluation of the Effectiveness of the Implementation of the Specified Strategy and the Plan of Measures (Resolution of the Cabinet of Ministers of Ukraine No. 931... 2015, November). According to this document, smart specialisation is an approach that involves identifying at the regional level those types of economic activity that have the greatest

innovation potential. This definition should be reasoned, based on the tasks and goals of the regional development strategy, consider the competitive advantages of the region, and contribute to the restructuring of the region’s sectoral structure into a more efficient one. At the same time, experts point out that smart specialisation is not just a list of sectors that are prioritised for a particular region but is a dynamic process of finding such regional advantages that promptly considers changing trends and regional opportunities (Shvets & Shevtsova, 2020). Clusters, in turn, are one of the principles of smart specialisation defined internationally in the Guide to Research and Innovation Strategies for Smart Specialisation (RIS 3) (Foray *et al.*, 2012). Therefore, the creation of clusters in Ukraine should be based on the principles of smart specialisation. For the sake of objectivity, it is worth noting that work in this area has begun. Even before the outbreak of the full-scale war in Ukraine, the creation of the Slobozhanske Hemp Farming agro-tourism cluster was launched, which was supposed to be a kind of business card for Sumy region, uniting producers of hemp as raw material, entities engaged in the production of hemp food, clothing, etc. The cluster was to focus on the development of the region, the revival of hemp farming traditions, and the development of the latest technologies for the production of hemp products and the provision of services using hemp. Experts describe this cluster as an institutional and innovative project (Omelianenko, 2022), which is valid.

There are already developments in terms of finding options for applying smart specialisation with the creation of clusters in post-conflict areas (for example, the Luhansk region). This refers to the period after 2014, before the start of Russian full-scale invasion. Shevtsova *et al.* (2020) analysed the impact of the armed conflict

on the economic structure of this region, the actual destruction of the chemical industry, which is traditionally a priority for the Luhansk region, prove the feasibility of diversification, innovative and intersectoral “reset” of the region through the digitalisation of the chemical business and its integration into the regional agro-industrial complex through the concept of precision agriculture.

For the regions to effectively operate in the area of smart specialisation, the State Strategy of Regional Development for 2021-2027 (Resolution of the Cabinet of Ministers of Ukraine No. 695... 2020, August) provided for the Ukrainian regions to join the European Smart Specialisation Platform (S3 Platform) to access the platform’s tools. However, scholars note that before the war, only nine regions of Ukraine had joined the S3 Platform (Slynko, 2021a). With the start of the Russian full-scale invasion, this process was suspended.

It should be noted that the S3 concept in the EU has already transformed due to the growing interest in solving the global problems of humanity, implementing the Green Deal, and ensuring sustainable development goals. Therefore, S3 has received a new direction of development – Smart Specialisation Strategies for Sustainability (Navarra’s smart specialisation strategy..., 2021). Alternative energy, efficient use of natural resources, production of quality and safe food, etc. are becoming a priority for the European community. Given Ukraine’s European integration course and the desire to become a member of the European Union as soon as possible, it is necessary to build smart specialisation of regions and, accordingly, the formation of clusters, in particular in rural areas, based on the S4 principles.

It is advisable to mention the government’s initiatives to develop alternative energy and energy independence for consumers, which, given the significant potential of the agricultural sector

in generating energy from renewable sources (biogas, biomass, solar, wind, etc.), may become an additional area of activity for clusters in rural areas. The Law of Ukraine “On Making Changes to Some Laws of Ukraine Regarding Restoration and “Green” Transformation of the Energy System of Ukraine” (2023, June), which, among other things, provides for the possibility of uniting consumers and small producers of electricity from alternative sources through the institution of aggregators, launching a mechanism for self-generation of electricity with the possibility of selling its surplus to the supplier, and other initiatives, is of the primary focus.

Given the aforesaid, it is advisable to define the overall goal of clusters, in particular in the agricultural sector/rural areas, not as “economic development of regions”, but as “sustainable development of regions”, which combines economic, social, and environmental components. Thus, the author offers the following definition of the concept of “cluster”: it is a voluntary sectoral or intersectoral association of business entities that involves cooperation with executive authorities and local self-government bodies, educational and research institutions and other interested parties, the purpose of which is to create and promote goods and services, including export of products, and ensure sustainable development of regions. This definition is universal and can be applied to the definition of a “cluster” in any industry. Given the current state of development of engineering, technology, logistics and other factors, territorial limitations are not a mandatory feature of clusters. To ensure the unambiguity of terminology, it is advisable to enshrine the above definition in the Economic Code of Ukraine (2003, January).

As for the types of clusters and their list, it may not be exhaustive. Experts identify, for example, the same agro-clusters, understanding

them as “an association of organisations based on the territorial principle, between which there are stable ties through industrial, scientific, innovative activities aimed at the development of rural areas” (Trishin, 2020). Without critically analysing this definition, the above definition can be fully applied to this type of cluster with a clarification regarding the scope of association or territorial features, such as rural areas. There are agritourism clusters, local history, and excursion clusters (Malska & Zinko, 2018), tourism micro-clusters, and railway clusters, which include railway-industrial, and railway-agricultural clusters (Prokopiev, 2020). There is also the most general type of cluster division into industrial, regional, local, and innovative clusters (Hrudnytska & Nestyrenko, 2018).

The development of clusters, in particular in the agricultural sector/rural areas, is hindered by the uncertainty of the legal framework regarding the organisational and legal form of such an entity. The authors have already focused on the lack of legal regulation of cluster formation, in particular in the agricultural sector (Kovalchuk *et al.*, 2023). An analysis of existing scientific proposals to fill this gap shows that the main approach is to classify clusters as one of the types of associations of enterprises (Hrudnytska & Nestyrenko, 2018). The following arguments render the statement untenable. As mentioned above, the characteristics of an enterprise according to the Economic Code of Ukraine (2003, January), in particular, the imperative condition that it function as a legal entity, have already been mentioned. The nature and essence of the cluster is not only not limited to the participation of legal entities, but, on the contrary, implies maximum openness of the structure and coverage of the largest possible range of stakeholders, including individual entrepreneurs. In terms of clustering, this feature of clusters is very

important for the sustainable development of rural areas, since a significant number of entrepreneurs in the agricultural sector are represented by farms without the status of a legal entity. One cannot ignore private farms as entities that exist only in the agricultural sector and have significant development potential in the same areas of rural green tourism, rural hospitality, organic production, generation of electricity from alternative sources, etc. Hence, it is inappropriate to consider clusters as associations of enterprises, even considering the non-exhaustive list of organisational and legal forms of the latter under Article 120 of the Economic Code of Ukraine (2003, January). As another argument in support of this opinion, R. Prokopiev (2020), that in considering a cluster as a form of association of enterprises, the issues of interaction of the main cluster members (producers of products and/or service providers) with executive authorities and local self-government bodies, scientific institutions, educational institutions, public organisations, and other auxiliary entities remain unresolved. As a solution to the problem, R. Prokopiev (2020) proposes to formalise the interaction of cluster members through a joint activity agreement. It is also possible to consider the experience of updating the legislation on public procurement, namely, the provision for the creation of an association of participants without the creation of a legal entity (clause 37 of Article 1 of the Law of Ukraine “On Public Procurement” (2015, December)). It is also permissible to use public-private partnership instruments to organise clusters. The phrase “public-private partnership”, as defined in the Law of Ukraine “On Public-Private Partnership” (2010, July), is used deliberately, since local governments and territorial communities should also participate in the creation of clusters and their effective functioning. The creation of clusters is a promising area

for sustainable development of Ukraine's regions in general and rural areas in particular. The state should comprehensively promote clustering, carrying out relevant work without delay until the end of hostilities.

Conclusions

Summarising the study of the state of legal support for clustering in agriculture and rural areas, the following conclusions and generalisations can be drawn that are characterised by scientific novelty and support the achievement of the tasks set and the goal of the study. The primary task of the state is to establish the general principles for the creation and functioning of clusters as an association of participants in a separate Chapter 12-1 of the Commercial Code of Ukraine. It is proposed to consolidate the definition of "cluster" and establish the possibility of forming clusters as an association of participants both with and without the creation of a legal entity. To enhance the creation of clusters in rural areas, it is proposed to consolidate the task of forming relevant clusters based on smart specialisation at the level of a basic document for the agricultural sector: The Concept of Rural Development. Include provisions on clustering of rural areas in the text of the draft Concept for the Development of Entrepreneurship in Rural Areas until 2030. Consider the need to develop clusters in agriculture and rural areas in the plans for post-war regional recovery and in determining the priority areas of cooperation between Ukrainian institutions and international partners in overcoming the consequences of the war in Ukraine.

Since the state is expected to have a significant impact on the initial stage of rural clustering (and in the current difficult conditions of martial law and the prospects for post-war reconstruction, this role is only increasing), it is

advisable to provide special conditions for state support for agro-clusters at the level of the Law of Ukraine "On State Support for Agriculture of Ukraine". Such support should be comprehensive, combining direct financial support with indirect measures of consulting and information, providing access to the European Smart Specialisation Platform (S3 Platform) for territorial communities, and in the short term – developing a similar instrument adapted to the specifics of the Ukrainian economic and legal environment, in particular, considering the principles of Smart Specialisation Strategies for Sustainability (S4).

The conclusions drawn are a contribution to the scientific doctrine of agrarian and commercial law, in particular, in terms of enriching the terminological apparatus with the definition of "cluster". The results of the study are also of practical value for lawmaking as a resource in shaping the content of regulations in the field of regulation of relations related to the creation and operation of clusters, in particular in the agricultural sector and rural areas. Further research should be carried out in the following areas: determination of the optimal model of interaction between the state, represented by executive authorities, and cluster members, and its impact on the functioning of such associations; development of a set of bylaws on the mechanism of cluster formation in the agricultural sector/rural areas; development of a procedure for creating and launching an information and resource platform for all stakeholders, primarily leaders of territorial communities.

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Conflict of Interest

None.

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Правові засади формування кластерів як інструменту сталого розвитку сільських територій

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Анотація

Складна ситуація в Україні загалом та в аграрній сфері зокрема, спричинена війною: руйнування населених пунктів з інфраструктурою, нанесення майнової шкоди суб'єктам господарювання, унеможливлення ведення господарської діяльності на тимчасово окупованих територіях та територіях, де ведуться активні бойові дії, релокація бізнесу, масове переміщення населення в більш спокійні регіони – зумовлює потребу переосмислити довоєнні підходи до напрямів розвитку сільських територій. У роботі акцентовано увагу на одному з перспективних інструментів – кластерів. Оскільки вирішальне значення для ефективного розвитку процесів кластеризації має належне правове регулювання, метою дослідження визначено аналіз стану правового забезпечення кластеризації на сільських територіях з урахуванням вимог смартспеціалізації, виокремлення основних проблем та розробка пропозицій щодо їх розв'язання. Досягнення поставленої мети здійснювалось через

використання низки методів наукового пізнання: діалектичного (філософського), аналізу, формально-юридичного, герменевтичного, абстрактно-логічного та історико-правового. У результаті сформульовано дефініцію поняття «кластер», у якій закріплено його ознаки (добровільність об'єднання суб'єктів зі статусом підприємців, галузевий чи міжгалузевий характер). Обґрунтовано мету діяльності кластера: створення продукції та/або надання послуг, сприяння ста-лому розвитку сільських територій. Установлено, що для сільських територій перспективними є кластери, що поєднують виробництво сільськогосподарської продукції з іншими, зокрема несільськогосподарськими, видами діяльності. Доведено необхідність враховувати положення смартспеціалізації регіонів під час формування кластерів. Розроблено пропозиції щодо: формування правових засад утворення та функціонування кластерів через доповнення нормативних актів господарського законодавства положеннями про форму організації кластерних утворень; визначення кластеризації як перспективного завдання в загальнодержавних та аграрно-галузевих документах стратегічно-планувального змісту; базових напрямів державної підтримки створення та функціонування кластерів у сфері сільського господарства/на сільських територіях. Отримані результати мають теоретичне значення для розвитку науки аграрного та господарського права. Характеризуються висновки роботи й практичною цінністю, оскільки можуть бути враховані в змістовому наповненні вдосконаленого законодавства про кластери та смартспеціалізацію регіонів

Ключові слова: кластеризація; правове регулювання; господарське законодавство; сільське господарство; суб'єкт підприємництва; стимулювання підприємництва; смартспеціалізація
