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TRANSITION TO SELECTIVE REGULATION OF RETAIL TRADE IN UKRAINE ON THE BASIS OF EU EXPERIENCE[3]

The article analyzes the causes and consequences of the rapid development of retail trade networks. It is shown that this contributed to increased production efficiency, while retail chains gained market power and began to play a key role in the supply chains of many consumer goods. This allows them to redistribute in their favor part of the value added created in other sectors. For this purpose, they use unfair trading practices: unjustified delays in payments for delivered products, imposing services that do not add value to suppliers, transferring commercial risks to them, etc.

The system of regulation of retail trade in European countries has been studied. Differences in the regulation of this sector in 13 countries were analyzed based on the data of the Retail Restrictiveness Indicator. It is shown that the strictest restrictions are enforced in Belarus and in Italy. The regulatory regime in the Baltic states is the most liberal. The authors argue that in the EU countries there is a tendency to move to selective regulation of retail trade, whose object primarily includes "discontinuities" in commodity and financial flows in the systems of vertically adjacent commodity markets. Selective regulation does not limit the operation of market mechanisms, but, on the contrary, promotes their more efficient functioning, eliminating market failures without a significant regulatory burden on business. On the one hand, restrictions on the opening of large-format stores, on trade at reduced prices, etc., are considerably eased. On the other hand, regulation is introduced in certain areas where it was not implemented before. Clarified changes

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in the regulatory system of retail trade in the EU after adoption of Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.

The authors substantiate the necessity and ways of transition to selective regulation of retail trade in Ukraine. It is shown that the prohibition of unfair trading practices in the food supply chain is much more important in Ukraine than in EU countries. The need to implement the norms of EU Directive 2019/633 into domestic legislation by adopting the Draft Law "On protection against unfair trading practices in relations between business entities in the field of supply of agricultural and food products" has been justified.

Keywords: *retail trade, retail trade chains, selective regulation, unfair trading practices*

By selling consumer goods, retailers satisfy the needs of the population and create conditions for reproduction in other sectors of the economy. A dynamic and competitive retail sector is very important for consumers, producers, and hence the economy as a whole. Due to its relatively high share in total employment and the ability to provide jobs for people with low levels of education and skills, this sector plays an important role in stabilizing society. This is why the government pays considerable attention to this sector.

In recent decades, retail has undergone significant changes. The system of state regulation in developed countries is also changing significantly. Their experience is very important for Ukraine, as its critical analysis allows us to prepare reasonable proposals for improving the system of state regulation of this sector and bringing Ukrainian legislation closer to EU legislation. Creative use of thebest international experience will help to significantly accelerate the recovery of Ukraine's economy after the war.

Trends in the development of retail trade and foreign experience in regulating this sector were studied in the works of Ukrainian scholars: A. Gerasimenko [1], O. Kavun-Moshkovska [2], V. Lisitsa [3], A. Mazaraki [4], G. Pyatnytska [5], etc. However, the world economy and the system of state regulation of retail trade in many countries are undergoing changes that are not sufficiently analyzed in these works. They also lack reasonable proposals for improving the retail regulation system. Partly as a result of this, the programmatic documents adopted in recent years lack balanced measures aimed at addressing the key problems of this sector.

The purpose of this paper is to substantiate the ways to improve the retail trade regulation system in Ukraine based on the study of retail trade development trends and foreign experience of state regulation of this sector.

Trends in global retail development

In recent decades, the retail trade underwent significant changes, primarily related to the activities of retail chains. In a number of EU countries, up to 80%

of all consumer purchases are made in chains. Retail chains have many advantages over individual stores. They are able to cut costs by using economies of scale, eliminating intermediary services, creating their own logistics and distribution centers. Retail chains purchase more efficient equipment, hire highly skilled professionals, and choose suppliers that offer the most competitive products. Cooperation with retail chains is beneficial for businesses, as they are able to sell large quantities of goods and effectively promote new products. Consumers benefit from a high level of service, a wide range of goods with guaranteed quality, and relatively low prices. The dynamic development of retail trade has contributed to improving the efficiency of many economies and curbing inflation.

Retail chains appeared in the United States in the nineteenth century, and in other developed countries they began to grow rapidly in the 1950s. However, until the end of the twentieth century, the level of concentration in retail trade was relatively low. In 1982, the four largest companies accounted for 15.4% of food sales in the United States [6, p. 515].

The fundamental work of F. Scherer and D. Ross, Industrial Market Structure and Economic Performance, the third edition of which was published in 1990, examines the patterns of formation of market structures, and the dependence of firm behavior and performance on market structure. The book provides numerous examples of abuses of market power by producers. At the same time, the market power of buyers is seen primarily as a balancing force, limiting the abuses of producers. "By using their influence, strong buyer companies are able (if not always, then in many cases) to stop sellers from raising prices" [6, p. 529].

Later, however, the level of concentration in the retail sector began to grow rapidly. In June 2022, the share of three chains (Tesco, Sainsbury's, Asda) in food sales in the UK was 56%, and the share of five chains was 74.5% [7]. The share of the top three companies in food sales in France in March-April 2022 was 58% [8]. The situation was similar in most developed countries. The largest companies that own retail chains grew rapidly, went beyond national borders, and became multinational corporations. Walmart was at the top of the Fortune list for 20 years as the world's largest company in terms of revenue. This had a significant impact on other links in the supply chain in vertically adjacent markets and the structure of the economy as a whole.

American economist Gary Jeffery identified two main types of supply chains: producer-driven supply chains and buyer-driven supply chains. Producer-driven supply chains are characterized by capital-intensive, high-tech activities (automotive, aircraft, computer manufacturing, etc.). The leading role in them belongs to the manufacturers of final products.

In customer-driven supply chains, retailers and brand owners play a key role. It is worth noting that Nike, Reebok and other companies that own well-known brands, as a rule, do not own industrial enterprises. They develop models of clothing, footwear, etc., passing orders to manufacturers and coordinating their activities [9].

The prerequisites for the rapid development and growing influence of retailers were the significant changes that took place in the economy in the second half of the twentieth century. In 1954, there were 500 shopping centers in the United States, in 1965 - 7000, and in 2010 - more than 50 thousand. Similar processes took place in other countries. The emergence of personal computers and the use of barcodes made it possible to effectively manage inventory. The rapid development of container transportation gave retail chains the opportunity to rationalize their supply channels by organizing massive purchases of goods abroad, primarily in Asia [10].

From simple distribution channels and end-user service systems, retail chains are turning into market "creators", prompting restructuring and territorial relocation of production. Chains prefer to work with small groups of large suppliers that are able to meet their requirements. This significantly limits the development of small and medium-sized businesses.

Retailers are actively using their own private labels. This allows them to reduce costs compared to purchasing goods from independent producers and respond more quickly to changes in demand. Consumers benefit from the opportunity to buy quality goods at a lower price. Chains offer all kinds of goods under their trademarks: food, pet food, medicines, cosmetics, paints, etc. These products are actively replacing brands of well-known manufacturers.

Manufacturers of private label products are divided into three categories:

large firms that produce both their own brands and products under the trademarks of chains;

large retailers who run their own factories and supply goods for their stores;

small and medium-sized producers specializing in products under chain brands.

The benefits of such cooperation with retail chains are obvious: manufacturers receive guaranteed, regular orders and do not have to spend money on advertising. At the same time, retail brands become an instrument of their subordination. This applies primarily to small and medium-sized businesses that specialize in products under the brands of retail chains.

According to Nielsen, the share of chains' own brands in retail turnover in 32 European markets averaged 28% in 2021. At the same time, in Switzerland, Belgium, the UK, and the Netherlands, the share of retail brands exceeded 40%. The lowest level is in the Scandinavian countries and Greece, Czech Republic, and some other Central and Eastern European countries. However, sales of such goods were growing slowly in recent years, and in 2021, most countries saw a decline in their share of turnover. However, due to rising inflation and declining purchasing power, it is predicted that the share of chains' own brands in retail turnover will increase [11].

The shift in the balance of market power from producers to retailers allows the latter to dictate their terms. This leads to discrimination against

suppliers, imposing unfavorable contract terms on them, unreasonably lowering purchase prices, and delaying payments for goods sold. EU documents characterize such actions as Unfair trading practices (UTP). They are defined as practices that significantly deviate from fair commercial behavior, contradict the principles of good faith and honesty and are unilaterally imposed by one trading partner on another [12, p. 2].

The redistribution of value added in favor of retail chains leads to "gaps" in commodity and financial flows between the trade and processing sectors of adjacent market systems. The result is financial losses of the participants of the logistics chain, the emergence of a number of structural imbalances, a significant decrease in the efficiency of logistics chains, and a slowdown in economic growth [13, pp. 123-126]. These processes occur in the supply chains of a number of non-food products, primarily clothing and cosmetics. However, unfair trade practices reached the largest scale in the supply of food products. In a survey conducted in March 2011, 96% of respondents in the food supply chain stated that they were affected by at least one form of UTP [14, p. 16]. This is due to the peculiarities of these products, as most of them have a limited shelf life, and many are perishable. In addition, small and medium-sized businesses play an important role in food production.

Retail trade was greatly influenced by the development of information technology. This became one of the most important factors that led to the rapid growth of retail chains and their displacement of traditional forms of trade and independent businesses. In recent years, the world was actively developing online commerce. Consumers are now able to buy goods from the comfort of their homes at prices lower than in stores. At the same time, merchants are reducing the cost of renting and maintaining retail space. The development of online commerce accelerated significantly since the start of the coronavirus pandemic. Retailers spent huge amounts of money to develop online services. Specialized companies saw particularly rapid growth.

Deloitte annually publishes a rating of the largest retail chains. The latest report shows their performance in financial year 2020 (from July 1, 2020 to June 30, 2021). They indicate a further process of concentration in this area. The turnover of the world's 250 leading retail chains increased by 5.2% in financial year 2020, and the 10 largest by 12.4%. At the same time, companies specializing in selling goods online are developing most dynamically. Amazon's turnover increased by 34.8%, and the Chinese online retailer JD.com's by 26.7% [15, p. 8].

The system of retail trade regulation in Europe

The special role of retail trade in the economy determines the significant attention of the state to this sector. The system of state regulation should stimulate the growth of labor productivity, ensure the protection of the rights of consumers, employees, small businesses and competition, and balance the interests of traders, suppliers and consumers. For this purpose, both laws related to the economy as a

whole (labor, antitrust, etc. ones) and regulations related exclusively to trade are used.

Until recently, there were three main areas of state regulation of retail trade:
- market entry rules (registration and licensing requirements);
- regulating the operating hours of trade facilities;
- price regulation.

In most EU countries, the procedure for reviewing an application for the construction or location of a retail facility depends on the store's size. For small facilities, the procedure is simplified. At the same time, in order to obtain permits for the construction of large-format facilities, studies are conducted to define how it will affect the existing stores and urban infrastructure. In France, such studies are required to open stores with an area of more than 300 square meters, in Germany - more than 700 square meters. By imposing such restrictions, the government aims to support small and medium-sized businesses and protect the rights of consumers who cannot constantly travel to distant stores to buy goods.

In many countries, the opening hours of retail facilities are regulated. In Germany, France, and other countries, most stores are prohibited from operating on Sundays and public holidays. Such restrictions hinder the development of retail chains. At the same time, they increase the amount of free time that people can spend with their families and engage in active recreation.

Until the 1970s, a number of Western European countries actively used price regulation to prevent unjustified price increases. However, it is currently used only in some EU countries for certain goods (bread, medicines, etc.). Targeted assistance is provided to the poor. Regulation aimed at preventing the sale of goods at a price below a certain level (purchase price or such price plus a certain percentage) is much more active. It is believed that this practice leads to the displacement of small and medium-sized businesses from the market. In France, in 1996, the Galland Act was adopted, which prohibited the sale of goods at a price lower than the purchase price. Similar laws, called resale-below-cost laws, were also adopted in Belgium, Hungary, Italy, Luxembourg, Portugal, Ireland, Spain, and Greece [16, p. 373]. However, later in Ireland the relevant law was repealed, and in France such restrictions were eased.

The EU countries are paying great attention to retail regulation. Changing societal needs and the growth of e-commerce are transforming this sector. At the same time, the level of productivity in the EU retail sector is lower than in the US and some other countries. One of the reasons is the imperfect regulatory framework. Retailers have to comply with many different and often complex regulations at the national, regional, and local levels. In a number of cases, the latter have a negative impact on the development of the retail sector and the economy as a whole. For example, according to some estimates, tighter regulation of retail trade in France at the end of the twentieth century led to a 3% increase in retail food prices and a reduction in employment in the sector [17].

Many restrictions can be justified by legitimate public policy objectives, but their cumulative effect creates barriers to new entrants and thus negatively affects the efficiency of the sector. Brick-and-mortar stores often lose out in competition to online retailers, as the latter face far fewer restrictions. In its 2018 report "A European retail sector fit for the 21st century", the European Commission noted that the competitiveness of the retail sector is hampered by unjustified restrictions. The responsibility for regulating this sector lies primarily with Member States. They should evaluate the existing regulatory framework to ensure that it is non-discriminatory, duly justified, proportionate and effective for the public interest. Such an analysis will allow them to identify less restrictive measures without compromising public policy objectives. Member States should modernize their retail markets, where necessary, using the experience of other countries [18].

To facilitate this work, the Commission developed the Retail Restrictiveness Indicator. It is a dynamic monitoring tool to measure the efforts of Member States to reduce restrictions in this sector and the impact of such reforms on market functioning. It uses 14 indicators reflecting different restrictions.

The indicator includes two components: restrictions on the opening of new retail outlets and restrictions on the operation of retailers. The index value ranges from zero to six, with a lower value reflecting a more competitive regulatory regime. Although retail regulation is carried out in all EU countries, its nature differs significantly. Some countries use 12 different types of restrictions, while others use only a few. This has a significant impact on the environment in which businesses operate retail trade. The most difficult countries to open a new store are Italy, Luxembourg, and the UK. In the process of work, the most restrictions exist in Spain, France, and Romania. At the same time, the most liberal regulatory regime is in the Baltic countries [18].

In 2019 the Estonian consulting firm Civitta calculated a retail restriction indicator for 13 European countries. Among them are 10 emerging market economies: Poland, Lithuania, Latvia, Estonia, Ukraine, the Russian Federation, Belarus, Moldova, Serbia, and Romania. Some of them are members of the EU, others are not. Data are also provided for three developed countries that actively regulate the retail sector: Spain, Italy, and Germany [19].

The research methodology is generally consistent with that used by the EU. However, it was adjusted to take into account the specifics of regulation in non-EU countries. There are 17 indicators used. It should be borne in mind that the report was published four years ago, and some changes took place since then.

The indicator has two components. The first is "Establishment", which is calculated on the basis of nine indicators that reflect the constraints when opening new retail facilities.

The requirements for the planned opening of a retail outlet may depend on its size. According to Polish law, no special permit is required to establish a small or medium-sized retail facility (only a notification), but projects with an area of 2000 square meters or more are allowed only after approval. In Lithuania, such a

permit is required only for facilities over 5000 square meters. In Belarus, Russia, and Moldova, the retailer is obliged to notify the supervisory authority of the opening of a retail facility, regardless of its size. In Romania, Estonia and Latvia, retailers must obtain a permit to open any store.

Since location is very important for a retailer, regulations that affect the choice of location are of great importance. Among the most common types of location-based regulation is the prohibition of large stores in the city center.

The applicant may be required to provide the regulatory authority with data on the economic impact of the planned retail facility. For example, in Italy, applications for a medium or large store (1700 square meters or more) must be accompanied by a report on its impact on the environment, traffic flows, local commercial activity and employment. In Belarus, every retail chain or large retail facility (with a floor space of more than 3000 square meters) must submit information to local authorities on its turnover for the previous year. But in most countries, such requirements are not imposed.

The competent authorities (usually at the regional level) may impose planning restrictions on the location of stores in certain city districts. This affects the location strategy and store formats. However, in most countries, the level of detail required in spatial plans is usually limited to "retail use" or determining the area for large stores.

In Belarus, five permits are required to open a trade facility. At the same time, Latvia, Spain, and Moldova introduced a "single window" system that allows for the simultaneous receipt of all necessary permits. In Germany and Latvia, only one permit is required.

The average duration of the procedure for opening a trade facility is six months. In Belarus, the duration of this procedure reaches 18 months, which is the highest among the countries analyzed. In contrast, in Latvia, the process takes about 15 days, mainly due to the small number of procedures and the short timeframe for reviewing the application.

Transparency in decision-making on applications for opening trade facilities is also important. Publication of all decisions by the authorities increases transparency and gives future applicants a better assessment of their chances. In half of the countries (Poland, Lithuania, Latvia, Estonia, Romania, Ukraine, Serbia, and Moldova), the authorities are obliged to publish both positive decisions and refusals. In Belarus, Spain and Germany, decisions are not made public. In Italy and Russia, the competent authorities publish only positive decisions.

As can be seen in Fig. 1, Italy is the most difficult country to open a trade facility. Its place in the ranking is due to the high level of bureaucracy. It is also difficult to open a new store in Germany, Spain, and Belarus. The simplest and most time-efficient procedures for opening a retail outlet are in Estonia and Latvia.

The second component of the retail trade restrictions indicator is "Operations and competition". It is calculated on the basis of eight indicators that reflect restrictions related to the operation of trade facilities and antitrust regulation.

In Spain, Germany and Poland, only a few stores are allowed to operate on Sunday. Opening hours used to be regulated in Italy, but these rules were abolished as part of liberalization. In most countries, opening hours are not regulated at all.

All 13 countries regulate the sale of tobacco, alcohol, or over-the-counter (OTC) medicines. Only Poland allows the sale of OTC drugs outside of pharmacies without additional requirements. In Lithuania, Italy, and Germany, OTC drugs can be sold outside of pharmacies, but only if additional conditions are met. In other countries, the sale of medicines outside pharmacies is prohibited. In most countries, licenses are required to sell alcohol and tobacco products.
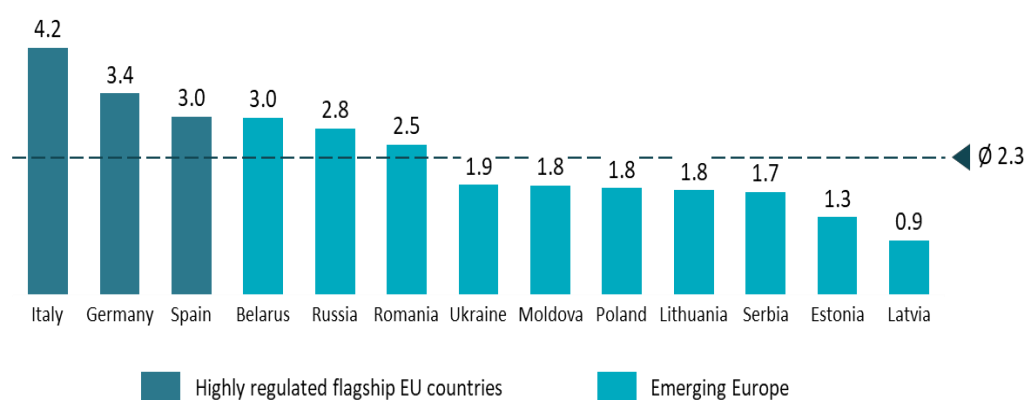

Fig. 1. Restrictions on opening new outlets in 13 European countries

Source: Retail restrictiveness analysis in Eastern Europe. Report. *Civitta.* 2019**.** URL**:** https://civitta.com/articles/retail-restrictiveness-analysis-in-emerging-europe/

Most countries do not impose restrictions on end-of-season sales. Italy and some regions of Spain regulate sales at the close of business, requiring notification in advance. Italy and Serbia require a permit to sell goods for a price lower than the price at which they were purchased.

In most countries, there are no special taxes on retail sales. However, in Poland, such a tax must be paid if retail sales (excluding VAT) exceed 17 million zlotys (equivalent to 3.9 million euros). In Moldova, retailers are required to pay a special local tax.

Rules restricting the purchase of goods are not typical for European countries. At the same time, Belarusian stores have to sell a certain amount of goods produced in that country. In Romania, food retailers have to buy half of their meat, eggs, vegetables, fruits, dairy products, and bakery products from their country.

In today's environment, prices for most goods are not regulated. However, many countries regulate the prices of certain goods. Italy, Spain, Ukraine, and Serbia regulate prices for alcoholic beverages and/or tobacco products. In Belarus, Russia, and Moldova, margins on a number of food products are limited.

As shown in Fig. 2, the most stringent regulation of retailers' operations is in Belarus. Significant restrictions also exist in Russia and Moldova. The most liberal regime for regulating retailers is in Lithuania and Poland.
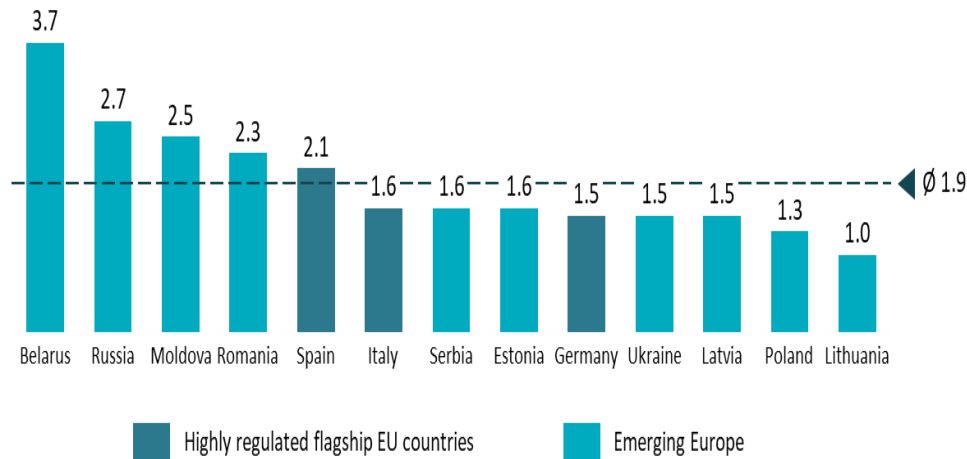

Fig. 2. Restrictions related to the operation of retail outlets and antitrust regulation in 13 European countries

Source: Retail restrictiveness analysis in Eastern Europe. Report. *Civitta.* 2019**.** URL**:** https://civitta.com/articles/retail-restrictiveness-analysis-in-emerging-europe/

Fig. 3 shows data on indicators of retail trade restrictions for 13 countries. The most severe restrictions are observed in Belarus and Italy. The least restrictions are in the Baltic countries.
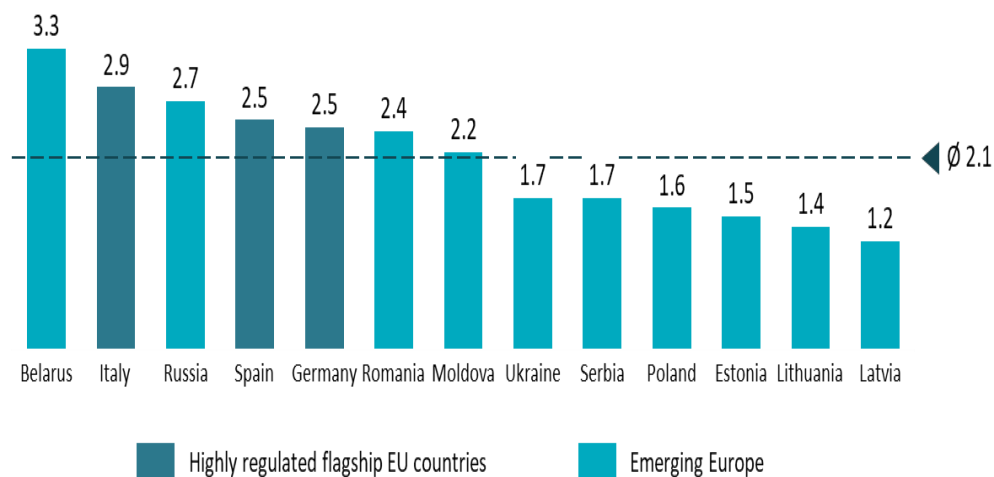

Fig. 3. Indicators of retail trade restrictions in 13 European countries

Source: Retail restrictiveness analysis in Eastern Europe. Report. *Civitta.* 2019**.** URL**:** https://civitta.com/articles/retail-restrictiveness-analysis-in-emerging-europe/

Changes in the EU retail regulatory system - an example for Ukraine

A number of EU countries are easing restrictions on discounted sales, weekend hours, and the opening of large format stores. However, this does not mean abandoning state regulation of retail trade, but a gradual transition to selective regulation of this sector. Selective regulation of the development of commodity markets is a targeted impact of the state on certain sectors ("growth points") or "gaps" in commodity and financial flows in the systems of vertically adjacent commodity markets [20, p. 13]. It does not limit the work of market mechanisms, but, on the contrary, contributes to their more efficient functioning, eliminating market "failures" without a significant regulatory burden on business, or unreasonable restrictions on companies' activities. Selective regulation helps to improve the efficiency of retail trade, benefits consumers and has a positive impact on other sectors of the economy.

Along with the easing of restrictions, the EU is introducing regulation in certain areas where it was not previously implemented. For example, the regulation of retailers' relations with suppliers is being actively introduced, as unfair trade practices (UTPs), as described above, are being actively used there. These abuses lead to decreased competitiveness of many business entities and require government intervention. As of 2016, 21 EU member states adopted legislation aimed at eliminating UTPs. However, not all countries adopted such acts, and there were significant discrepancies between these regulations. This significantly reduced the effectiveness of regulation, so it was decided to introduce a harmonized approach at the EU level.

On April 17, 2019, the European Parliament and the European Council adopted Directive 2019/633 on unfair trade practices between undertakings in the agricultural and food supply chain. The Directive protects weak suppliers from strong buyers and applies to any supplier of agricultural and food products with a turnover of up to EUR 350 million. The EU banned 16 unfair practices. Only 10 of them were banned unconditionally:

- payment later than 30 days for delivered agricultural and perishable food products;
- payment for the supply of other food products later than 60 days;
- cancellation of an order and/or delivery of perishable products in a short time;
- unilateral change of the contract terms by the buyer;
- collecting payments from the supplier that are not related to the supply of products;
- shifting risks of loss and damage to products on the supplier;
- the buyer's refusal to fix in writing certain terms of the product supply agreement if the supplier requires written confirmation;
- unlawful use of trade secrets by the buyer;
- commercial retaliation against a supplier; - imposing on the supplier the costs associated with handling consumer complaints.

And the other six practices may be authorized based on a clear and understandable contract.

The requirements of the Directive apply to suppliers and buyers located outside the European Union, provided that one of the parties is located in the EU. Thus, it provides protection for Ukrainian agricultural producers and food processing companies exporting to the EU.

The Directive is binding on all EU members. Most of them have adopted a relevant legislation or amended the previous ones. In many countries, compliance with UTP legislation is monitored by competition authority. In other countries, it is the responsibility of the Ministry of Agriculture (Ireland, Slovakia), the Office of Consumer Affairs and Markets (the Netherlands), the Food Markets Ombudsman (Finland), etc. Unfair trade practices are punishable by heavy fines. And in Ireland, violators also face imprisonment for up to three years.

The European Commission conducts annual surveys to assess the effectiveness of measures taken by Member States to combat unfair trade practices. The latest one took place online from October 2021 to March 2022. 319 respondents operating at all stages of the agri-food chain in the EU were surveyed. 44% of the respondents believed that UTP is most often used by retailers, 34% - by wholesalers, and 19% - by processing companies.

About 35% of respondents faced delays in payments, and unilateral changes to contract terms by buyers, 24% faced commercial retaliation by buyers, etc. At the same time, there is a significant decrease in the frequency of most violations compared to the survey conducted a year earlier. Back then, for example, 54% of respondents reported unilateral changes in the terms of the contract by buyers [21]. This indicates a certain effectiveness of the EU's UTP control system.

Directive 2019/633 applies only to the agri-food sector. However, unfair practices are also widespread in the supply chains of a number of non-food products. Therefore, the Federation of European Trade Unions IndustryALL justifies the need to expand the scope of the Directive by prohibiting such practices in the supply of clothing [22].

If we analyze the data on the retail trade restrictions indicator shown in Figs. 1-3, it can be concluded that the system of regulation of this sector in Ukraine is less stringent than in many European countries. However, it should be noted that this indicator is calculated in accordance with the requirements of the law. However, compliance with the law may vary significantly from country to country, which limits the ability to compare individual countries. Unlike countries where the development of retail trade is hampered by imperfect legislation, in Ukraine the most negative factor for this sector is the administrative interference of state and local governments in the activities of business entities.

For the development of Ukraine's retail trade, a transition to selective regulation is necessary. It is particularly important to limit administrative interference, especially to streamline inspections. At the same time, it is necessary to introduce selective regulation tools aimed at leveling the "gaps" in commodity and financial flows between the processing and trade sectors.

In Ukraine, unlike in the EU, there is no legislation aimed at eliminating unfair trade practices. Prohibiting such practices in the food supply chain in Ukraine is much more important than in the EU, as the scale of abuse in our country is much higher. Payment terms for goods delivered by retailers are up to 150 days. According to the calculations by the Antimonopoly Committee of Ukraine (AMCU), the total effective margin - the difference between revenues and reasonable costs - of Ukrainian retailers with a predominantly food assortment averaged 45%, while the Polish Eurocash's margin was 10.5%, BIM (Turkey) - 15.6%, and Jeronimo Martins (Portugal, Poland) - 22.3% [23]. This leads to a significant increase in food prices. However, while food accounts for an average of 14% of household consumption expenditures in the EU, in Ukraine in 2021 this share was 48%. And in 2022, the living standards of most Ukrainians dropped significantly due to the war, and the share of food expenditures increased even more.

The AMCU tried to combat abuses in retail chains. It found out that 15 retail chains in Kyiv coordinated their activities by exchanging information through the research company ACNielsen Ukraine. After considering the case, the Committee fined them a total of UAH 203.6 million on April 29, 2015. The AMC also ordered the retail chains to cease unfair trade practices by harmonizing their contractual relations with suppliers and/or producers of goods and approaches to pricing for their consumers with the legislation on protection of economic competition [24]. However, this decision was challenged in the courts. This example clearly demonstrates the limited possibilities of using economic competition protection legislation to combat abuses committed by retail chains and the need for institutional regulation, in other words, the adoption of legislation specifically dedicated to this problem.

The fact that the government partially understands this is evidenced, in particular, by the Resolution of the Cabinet of Ministers of Ukraine No. 160 of February 26, 2022 "On Ensuring Stable Operation of Food Producers under Martial Law". It stipulates that the maximum period for making payments for the supplied domestically produced food products of significant social importance should be ten calendar days. However, this applies only to part of the goods, and the resolution will lose its validity after the end of the war. Measures aimed at balancing the interests of networks and suppliers are not envisaged in programmatic documents, in particular the National Economic Strategy for the period up to 2030, approved by the Cabinet of Ministers on March 3, 2021, No. 179. They are not provided for either in the Recovery Plan of Ukraine.

However, in 2021, MPs submitted a number of draft laws to the Verkhovna Rada aimed at implementing the provisions of EU Directive 2019/633, streamlining the relationship between retailers and their suppliers (registration number 6068, 6068-1, 6068-2, 6068-3, and 6155). However, the draft laws were not considered. The Committee on Ukraine's Integration into the European Union believes that these drafts fragmentarily take into account the provisions of EU law, and their adoption could lead to a distortion of the principle of freedom of contract.

However, EU documents emphasize that there is no true freedom of contract where there is a clear inequality between the parties [25, p. 6].

The most advanced among these draft laws, in our opinion, is the draft Law of Ukraine "On Protection Against Unfair Trade Practices in Relations between Business Entities in the Field of Supply of Agricultural and Food Products" (registration number 6068-2 of 29.09.2021). At the same time, it has certain shortcomings that need to be corrected [for details, see 26, pp. 56-57]. It is necessary to adopt this law in the first reading as soon as possible, and after making the necessary adjustments - as a whole.

The war waged by Russia complicated the already difficult relationship between retailers and their suppliers. As a result of the hostilities, the networks suffered and will continue to suffer significant losses. They will need funds to rebuild destroyed stores and logistics centers. If the existing relationships in the supply chain are maintained, a significant part of these funds will be obtained by redistributing part of the value added created in the manufacturing sector. However, many industrial enterprises suffered even more as a result of the war. The continuation of unfair trade practices will inevitably lead to the closure of a large number of such enterprises. The economic recovery after the war will be significantly speeded up if the interests of retailers and Ukraine's producers can be balanced by eliminating anticompetitive agreements and discriminatory practices. Restricting unfair trade practices will also help to curb the growth of food prices and improve living standards.

Conclusions

In recent decades, retailers played a key role in the supply chains of many consumer goods. From simple distribution channels and end-user service systems, they have turned into market "creators", prompting restructuring and territorial relocation of production. The networks' considerable market power allowed them to redistribute in their favor part of the added value created in other sectors. To do this, they use unfair trade practices: unreasonable delays in payments for delivered products, imposing services that are of no value to suppliers, shifting commercial risks to the latter, etc. Unfair practices are most widespread in the food supply chain. This results in financial losses for business entities, a number of structural imbalances, and a slowdown in economic growth.

Until recently, there were three main areas of state regulation of retail trade: market entry rules, regulation of the operation of retail outlets, and price regulation. However, in some cases, restrictions have a negative impact on the sector's competitiveness, so the European Commission calls for improving the regulatory framework and introducing less restrictive measures without jeopardizing the public policy objective. To facilitate this work, the Commission developed a retail restrictions indicator. The indicator's data for 13 European countries show significant differences in retail regulation systems across the region. The most severe restrictions are observed in Belarus and Italy. The Baltic countries have the least restrictions.

In the EU, there is a trend toward selective regulation of retail trade. Such regulation does not limit the operation of market mechanisms, but, on the contrary, contributes to their more efficient functioning, eliminating market failures without a significant regulatory burden on business. A number of EU countries are easing restrictions on trading at reduced prices, working on weekends, and opening large format stores. At the same time, regulation is being introduced in certain areas where it was not previously in place. On April 17, 2019, the European Parliament and the European Council adopted Directive 2019/633 on unfair trade practices between undertakings in the agricultural and food supply chain, which banned a number of such practices.

For the development of Ukraine's retail trade, a transition to selective regulation is necessary. It is particularly important to limit administrative interference, especially by streamlining inspections. At the same time, tools should be introduced to balance the interests of chains and suppliers. Prohibition of unfair trade practices in the food supply chain in Ukraine is much more important than in EU countries, as the scale of abuse in this area is much higher in our country. It is necessary to implement the provisions of EU Directive 2019/633 into Ukraine's legislation by adopting the draft law "On Protection Against Unfair Trade Practices in Relations between Business Entities in the Field of Supply of Agricultural and Food Products". It should ensure fair and transparent relations between all business entities involved in the food supply chain.

The scientific novelty of the work is to substantiate, on the basis of the EU experience, the need for transition to selective regulation of retail trade in Ukraine. Prospects for further research are related to the analysis of the EU experience in combating unfair trade practices with a view to its implementation in Ukraine.

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ПЕРЕХІД ДО СЕЛЕКТИВНОГО РЕГУЛЮВАННЯ РОЗДРІБНОЇ ТОРГІВЛІ В УКРАЇНІ НА ОСНОВІ ДОСВІДУ ЄС[6]

У статті проаналізовано причини та наслідки швидкого розвитку роздрібних торговельних мереж. Показано, що це сприяло підвищенню ефективності виробництва, водночас роздрібні мережі отримали ринкову владу, стали відігравати ключову роль у ланцюгах постачання багатьох споживчих

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товарів. Це дозволяє їм перерозподіляти на свою користь частину доданої вартості, створеної у інших секторах. Роздрібні мережі активно використовують недобросовісні торгові практики: необґрунтовані затримки платежів за поставлену продукцію, нав'язування послуг, які не становлять цінності для постачальників, перекладання на них комерційних ризиків тощо.

Досліджено систему регулювання роздрібної торгівлі у країнах Європи. На основі даних індикатора обмежень роздрібної торгівлі проаналізовано відмінності в регулюванні цього сектора у 13 країнах. Показано, що найбільш жорсткими є обмеження у Білорусі, а також в Італії. Найбільш ліберальним є режим регулювання у країнах Балтії.

Встановлено, що в країнах ЄС існує тенденція переходу до селективного регулювання роздрібної торгівлі, об'єктом якого є насамперед "розриви" товарно-фінансових потоків у системах вертикально суміжних товарних ринків. Селективне регулювання не обмежує роботу ринкових механізмів, а, навпаки, сприяє їх більш ефективному функціонуванню, усуваючи "провали" ринку без значного регуляторного навантаження на бізнес. З одного боку, пом'якшуються обмеження на відкриття магазинів великого формату, на торгівлю за зниженими цінами тощо. Водночас запроваджується регулювання в певних сферах, де воно раніше не здійснювалося. З'ясовано зміни в системі регулювання роздрібної торгівлі в ЄС у зв'язку з ухваленням Директиви 2019/633 "Про недобросовісні торгові практики у відносинах між підприємствами у ланцюгу постачання сільськогосподарських та харчових продуктів".

Обґрунтовано необхідність та визначено шляхи переходу до селективного регулювання роздрібної торгівлі в Україні. Показано, що заборона недобросовісних торгових практик у ланцюгу постачання продовольчих товарів в Україні є значно важливішою, ніж у країнах ЄС. Визначено необхідність імплементації у вітчизняне законодавство норм Директиви ЄС 2019/633 через ухвалення законопроєкту "Про захист від недобросовісних торгових практик у відносинах між суб'єктами господарювання у сфері постачання сільськогосподарських та харчових продуктів ".

Ключові слова: *роздрібна торгівля, роздрібні торговельні мережі, селективне регулювання, недобросовісні торгові практики*