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**REGULATORY AND LEGAL REGULATION OF PUBLIC-PRIVATE
PARTNERSHIP AS AN TOOL OF INNOVATIVE DEVELOPMENT**

The article considers the legal support of public-private partnership in Ukraine. The system of normative-legal acts in the sphere of public-private partnership is investigated. The composition of the legal framework for public-private partnership regulation has been determined, including normative legal acts and by-laws. The main provisions of the Law of Ukraine "On Public-Private Partnership" are considered, in particular, the concept of public-private partnership, private and public partners, the object of public-private partnership, proclaimed the principles and characteristics of public-private partnership, distributed powers between entities. the rights and responsibilities of the subjects of public-private partnership are formulated, the procedures for choosing a private partner are revealed, the procedure for conducting direct negotiations is determined. The main obstacles limiting the development of public-private partnership in Ukraine are considered. Certain shortcomings that hinder the development of public-private partnership have been identified. Aspects of the formation of the legal framework that need improvement have been studied. It is proposed to make some changes to the Law of Ukraine "On Public-Private Partnership".

Key words: public-private partnership, laws, codes, proposals, advantages, disadvantages.

Formulation of the problem. The rapid development of the public-private partnership in Ukraine, which in the national legislation was called "public-private partnership", is gaining more and more relevance, since the attraction of investments from the private sector is a priority direction of the socio-economic development of the state. Public-private partnership, in contrast to traditional forms of interaction between the state and business, is an instrument of state influence on the sphere of its responsibility through the admission of a private investor and cooperation with him on the basis of combining resources and competences, sharing risks, obligations and benefits and observing economic interests of the partners, which in turn gives the private partner additional opportunities to obtain a guaranteed profit and increase competitiveness,

In the conditions of innovative development of the economy, the role of the state in direct regulation of economic processes is lost, and alternative mechanisms of state participation in the development of economic sectors appear. One of such mechanisms for attracting public and private capital for the purpose of creating socially significant objects is public-private partnership.

Legal foundations for the development of certain forms of public-private partnership have been forming in Ukraine for a long time. Improving the country's legal framework in the field of PPPs can become one of the factors in strengthening the integration processes in the Eurasian space, contributing to the sustainable economic growth of the country and its infrastructural restoration.

A lot of attention is paid to the study of problems related to the legal regulation of public-private partnership in the legal literature. The subject of research is the concept of this specific type of activity, along with state investment and private investment, the conceptual apparatus and principles on which legal regulation in the specified area should be built are analyzed.

Analysis of the latest scientific research and publications and legislative regulation of the public-private partnership mechanism are considered in the works of many domestic and foreign scientists: V. Rebok, O. D. Syrotyuk, N. Dotsenko-Bilous, H. Znamenskyi, O. Vinnyk, V. Voronenko, N. Hoyda, N. Kurdil, P. Nadolishny, M. Maisuradze, I. Selivanova and others. etc. However, the normative and legal regulation of public-private partnership in the works of experienced scientists is covered partially and only in general terms, which encourages a more specific study of it.

Presenting main material. In recent years, public-private partnership has become one of the ways of mutually beneficial cooperation between state authorities, business and civil society in areas traditionally regulated by the state and in which private business, as a rule, was not allowed. For Ukraine, PPP still remains a new form of relationship between government and business, therefore, one of the important tasks of state policy research in the field of PPP is the analysis of regulatory and legal support for PPP, especially in certain spheres of society.

The well-known scientist Mocherny S. considers regulation as methods and mechanisms of subordinating an object to a certain subject, as a management function of ensuring the functioning and development of phenomena and processes within the limits of the prescribed values [1]. In turn, D. Weimer and E. Vining consider regulation to be additional rules that influence the change of choice that could be made by the objects of regulation under other conditions [2].

The well-known researcher Maisuradze M. Yu. notes that "legal ambiguity in the field of PPPs does not allow for the effective development of this institution, which is potentially capable of providing solutions to the most acute problems of the development of the public sector of the economy [3]. According to the scientist, the development of a national PPP program is equally important, which will contribute to its more effective development."

Domestic scientists A.M. Aparov, A.V. Yatsenko. note that "a fairly new legal phenomenon - public-private partnership - is an important tool on the way to the restoration and modernization of the national economy, solving important socio-economic problems by combining and using the resources of the public and private sectors. The high effectiveness of PPP as a legal form of interaction between the state and business is proven by the experience of many countries around the world" [4].

Ukraine has created an extensive system of normative legal acts in the field of PPP, which consists of laws and by-laws, and ensures the implementation of PPP in various spheres of public life.

We draw attention to the opinion of N. Ignatiuk, who noted that "norms and legal provisions are the "framework", the basis of the public-private partnership mechanism, on which you can "cultivate" other elements that contribute to normal, uninterrupted work in the implementation of state-business partnership relations » [5].

Currently, the legislative framework includes: the Constitution of Ukraine, the Civil Code of Ukraine, the Economic Code of Ukraine, legislative acts of Ukraine (Table 1).

The above-mentioned basic legal acts are primary in the field of public-private partnership, therefore they regulate general issues of the relationship between state authorities and business and do not contain specific provisions on PPP regulation. Thus, a certain legal field has been created in Ukraine for attracting investments and developing the economy of Ukraine PPP

Legislative and normative regulation of the processes of implementation of projects in the field of PPP, creation of the basis for the functioning of various legal forms of combining public and private interests lies in the sphere of effectiveness of the legal mechanism of state regulation.

Table 1

Legislative basis for regulation of public-private partnership

No	<i>Document</i>	<i>The main content of the document in the field of PPP</i>
<i>Normative and legal acts</i>		
1.	Constitution of Ukraine	The state, in the form of state authorities, must provide society with favorable conditions for its life and development. Therefore, an important task of the Government is the development and implementation of socially important projects aimed at observing the constitutional provisions on the rights and freedoms of every citizen of the country.
2.	The Civil Code of Ukraine	The legal status of private partners, the main forms and the procedure for implementing contractual relations between the parties of the public-private partnership are defined.
3.	Economic Code of Ukraine	Regulates contractual relations of state authorities with business entities.
4.	Tax Code of Ukraine	Legal bases of taxation of private investors in the implementation of PPP projects and determination of special tax regimes (special economic zones, benefits and preferences for private investors).
5.	Law of Ukraine "On Public-Private Partnership"	Defines the organizational and legal principles of interaction between public partners and private partners and the main principles of public-private partnership on a contractual basis.
6.	Law of Ukraine "On Concessions"	Defines the concepts and legal principles of regulation of concession relations of state and communal property, as well as the conditions and procedure for its implementation in order to increase the efficiency of the use of state and communal property and ensure the needs of citizens of Ukraine in goods (works, services).
7.	The Law of Ukraine "On Amendments to Certain Laws of Ukraine on the Elimination of Regulatory Barriers for the Development of Public-Private Partnerships and Stimulation of Investments in Ukraine"	Its task is to improve the functioning of the financial mechanism of public-private partnership, reduce administrative obstacles, expand the scope and forms of state guarantees for private investors, and eliminate contradictions between legislative acts in this area.

Continuation of the table. 1

<i>Sub-legal regulatory acts</i>		
8.	Resolution of the Cabinet of Ministers of Ukraine "On the approval of the Methodology for identifying risks related to public-private partnerships, their assessment and determining the form of their management" No. 232 of February 16, 2011.	It is used when analyzing the effectiveness of a public-private partnership, making decisions about its implementation, distributing risks between public and private partners, and concluding a contract between them. According to this Methodology, the types of possible risks associated with public-private partnership are determined.
9.	Resolution of the Cabinet of Ministers of Ukraine dated April 11, 2011 No. 384 "Some issues of organizing the implementation of public-private partnership"	Determines the mechanism for preparing and holding a competition for the identification of a private partner for the implementation of public-private partnership with respect to objects of state, communal property and objects belonging to the Autonomous Republic of Crimea, the determination of the winner of the competition and the conclusion of relevant contracts within the framework of the implementation of the PPP
10.	Resolution of the Cabinet of Ministers of Ukraine dated July 1, 2020 No. 541 "On approval of the Procedure for replacing a private partner (concessionaire) under a contract concluded within the framework of a public-private partnership (concession contract)"	This Procedure defines the mechanism for replacing a private partner (concessionaire) in the case of involvement of a private partner (concessionaire) in financing a project carried out under the terms of a public-private partnership (concession) based on a financing agreement.
11.	Order of the Ministry of Economic Development, Trade and Agriculture of Ukraine dated 12/22/2020 No. 2721 "On Approval of the Procedure for Competitive Selection of Independent Experts", registered in the Ministry of Justice of Ukraine on 02/15/2021 No. 191/35813	This Procedure defines the mechanism for engagement of independent experts by the state partner (concessionaire) for the provision of services, which consist in providing explanations, recommendations, consultations and conclusions on matters requiring special knowledge, during a competition to identify a private partner.
12.	Order of the Ministry of Economic Development and Trade of Ukraine "Some issues of the analysis of the effectiveness of public-private partnership implementation" No. 255 dated 27.02.2012.	The methodology defines the general principles of performance analysis of public-private partnership implementation (hereinafter - performance analysis). This Methodology is used during the performance analysis of the implementation of public-private partnership by the authorized body for performance analysis based on the proposal for the implementation of public-private partnership.

Despite the fact that the history of the formation and development of PPPs in today's leading countries of the world dates back more than one decade, domestic legislation came close to defining the basics of legal forms of interaction between public and private partners only in 2007, having developed the first draft of the Law of Ukraine "On Public-Private Partnership ", which was not submitted to the Verkhovna Rada of Ukraine for a vote. In 2009, the draft Law of Ukraine No. 3447 "On the general principles of the development of public-private partnership in Ukraine" was adopted, but in the same year it was canceled by a decision of the Verkhovna Rada of Ukraine. Only in 2010 was the Law of Ukraine "On Public-Private Partnership" adopted, according to which relations in the field of PPP were regulated.

Today, the Law on PPPs is a framework law and the only legislative act that establishes a unified state policy in the field of PPPs and defines the main principles of its implementation in Ukraine. The Law of Ukraine "On Public-Private Partnership" [6] defined the concept of PPP, private and public partners, the object of PPP, declared the principles and features of PPP, distributed powers between subjects; the rights and obligations of PPP subjects are formulated, the procedures for choosing a private partner are disclosed, the procedure for conducting direct negotiations and other issues are defined. In general, the draft law meets the needs of legal regulation of the sphere of public-private partnership. Since the mentioned law serves not only as a system-forming sectoral legislative act in the field of PPPs,

However, this legislative act does not establish the priority of PPPs, and instead, the regulation of individual issues is decided by referring to other normative legal acts. That is, when developing numerous projects and using one of the possible forms of PPP, the partners are forced to search and analyze a significant number of legislative acts, which sometimes conflict with each other. There are also questions regarding the implementation of PPP projects at the local level, where the regulation of the specified area is carried out by numerous acts of local authorities at different levels. As a result, we have a significant number of legislative acts that relate to the implementation of

PPPs, which causes a certain contradiction in the legal field and leads to the complexity of the implementation of PPP projects in Ukraine.

Having defined the main provisions governing public-private partnership, one can see a wide range of documents responsible for ensuring PPPs, one side of which indicates the intention of the Ukrainian government to expand the opportunities and powers of PPP partners to increase the investment attractiveness of specific projects. On the other hand, this indicates the instability of the system: numerous changes and additions to by-laws reflect the uncertainty of the vector of PPP development in Ukraine and act as a brake on the execution of contracts between state and private partners.

The phenomenon of inconsistency of the relevant laws and regulations regarding the regulation of PPPs, which often contain different norms on the same issues in the field of PPPs, is quite problematic and a priority for the state, and the mechanism of such projects is not unambiguous and unified. This problem arises due to the uncertainty of the relationship between the Law "On Public-Private Partnership" and other legal acts regulating the implementation of PPP projects, since the procedure and implementation mechanism are not transparent and clearly defined and require clear actions by the government regarding the unification of regulatory - the legal framework in the field of PPP. At the same time, the legislation of Ukraine in the field of PPPs should be analyzed in conjunction with the provisions of other legislative acts of Ukraine, such as the Economic Code of Ukraine, the Civil Code of Ukraine, which is also part of the regulation of PPPs.

One of the main shortcomings is the lack of legal confirmation of the minimum share of private partner participation in the project (in particular, in developed countries, the minimum share of private financing is 25%). In this regard, even a minimal share of private financing in a joint project allows it to be classified as a PPP, transferring most of the responsibility to the state [7].

According to the scientist A. Muzychenko, the legal framework for regulating the development of PPPs in Ukraine is somewhat complicated, which in conditions of

a high level of corruption creates risks for the effective use of this mechanism, which is why it needs constant improvement. development is not easy due to the huge number of obstacles that significantly narrow the circle of potential participants of public-private partnership, but this path has continued for several decades in Western countries as well [8].

The main obstacles limiting the development of PPPs in Ukraine include:

- imperfect regulatory and institutional support; - lack of political will;
- lack of standard, simple and transparent procedures for holding a competition for PPP projects, as well as determining priority areas for their implementation;
- unstable legislation on attracting foreign direct investment [9].

Analyzing the current legal norms regulating PPP activities, it is possible to identify certain shortcomings that prevent the development of PPPs, namely:

- there are no basic provisions of public-private partnership in the field of innovative development;
 - the regulatory system regulates only general issues of implementation of public-private partnership projects, bypassing the specifics of individual forms of its implementation.
- at a rather low level today there are provisions regulating the procedures for determining and distributing risks in the implementation of a public-private partnership project;
- the state in the field of PPP is mainly focused on large capital-intensive infrastructure projects, and not on high-tech innovations.

Based on the shortcomings of the regulatory and legal regulation of PPPs, there are some aspects of the formation of the legislative framework that need improvement. The main directions of improving the development of PPPs should be aimed at forming a favorable economic and managerial environment for the development and implementation of PPP projects, namely: improving the normative and legal framework for regulating PPP relations; improvement of institutional support for PPP

development; increasing guarantees of protection of the interests of public and private PPP partners in the process of development, approval and implementation of projects.

in order to prevent abuses and ensure the effectiveness of public-private partnerships, it is expedient for the Government to establish the right to approve a Model Public-Private Partnership Agreement defining the limits of contractual freedom of the parties to a public-private partnership (the possibility of reflecting the specifics of a specific public-private partnership in the agreement), as well as to provide openness of information about public-private partnership agreements (taking into account the participation in them of the bearers of public interests and the use of resources of national and/or regional importance). The informational openness of the public-private partnership should create a border for corruption abuses in the sphere of the public-private partnership and, accordingly, ensure the real social orientation of the public-private partnership" [10].

We consider it expedient to make some changes to the Law of Ukraine "On Public-Private Partnership", determining the priority of the latter over the provisions of branch laws that apply to the relevant field. We suggest making the following changes:

1. Define and establish the main tasks of PPP:

- creation of conditions for effective interaction between the state partner and the private partner in order to ensure sustainable socio-economic development of the state;
- attraction of investments in the economy of the state by combining the resources of the state partner and the private partner for the development of infrastructure and life support systems of the population;
- increasing the level of availability and quality of goods, works and services, taking into account the interests and needs of the population, as well as other interested parties;
- increasing the general innovative activity in the state, including promoting the development of high-tech and knowledge-intensive industries.

2. To determine and establish the main provisions of public-private partnership in innovation:

- The main tasks of PPP in innovation:

- 1) development of new technologies, technological processes, technical regulations and their improvement;

- 2) production of a prototype, research and development installation, tests (in particular experimental and industrial), research (in particular laboratory research);

- 3) organization of production and implementation of scientific and technical projects.

- The public-private partnership in innovation must necessarily involve the assessment (re-evaluation) of exclusive rights to the results of intellectual activity related to the public-private partnership project.

- The tender commission, officials of state bodies and other interested persons considering documents related to the project of public-private partnership in innovations, taking into account the protection of commercial and other secrets protected by law.

The problem of reducing risks during the management of long-term public-private partnership projects requires in-depth study. Risks are also associated with annually changing tariffs, prices, customs tariffs, inflation, the economic situation and other factors. There are also serious risks in projects related to local budgets. Given the subsidized nature of most of these budgets and the deterioration of the social situation in connection with the crisis, the funds of these budgets, which are used in public-private partnerships, can be directed to cover current expenses without corresponding compensation to business partners.

The distribution of risks between partners of a public-private partnership should be based on the optimal, and not the maximum, risk of the partner. Ensuring the sustainable functioning of the public-private partnership mechanism, it is important to take into account organizational and political risks that protect the project from changes in state structures and compensation for losses due to currency risks. At the same time,

neither in the law on concessions, nor in state procurement, nor in other contracts does the state have clearly written positions on the responsibility of the parties and decent compensation for losses. Therefore, we consider it necessary to develop and make appropriate changes to the legislation, which will be directed to the definition and distribution of risks between PPP partners.

Support for public-private projects is an important issue for private investors. This especially applies to foreign investments, which are most sensitive to political risks, which play a significant role in Ukrainian realities today. Therefore, for the effective and rapid development of public-private partnership in Ukraine, first of all, it is necessary to minimize business risks, thanks to amendments to the legislation that will allow:

- increase the transparency of interaction between the state and business;
- increase the level of trust between the government and business by overcoming the dispersion of power and increasing accountability;
- to inform state authorities, companies and the public about the possibilities and advantages of public-private partnership;
- strengthening of public-private partnership in strategic development projects of the country and regions.

Conclusions. On the basis of the above research, we have proposed directions for improving the regulatory and legal regulation of the implementation of public-private partnership projects. The specified directions are determined based on the urgent need for the development of public-private partnership. Thus, with the help of the proposed improvement of the public-private partnership mechanism, an increase in the number of public-private partnership projects will be achieved, and as a result, the number of private sector companies will make a profit, and the state will be able to increase the efficiency of budget expenditures for infrastructure development.

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