

LEGAL ISSUES OF FINANCIAL SUPPORT FOR THE CREATION OF HIGH – TECH INDUSTRIES WITH THE PARTICIPATION OF SCIENTIFIC INSTITUTIONS IN UKRAINE

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Abstract. Taking into account the fact that a large part of the industrial and agricultural complex of Ukraine has been destroyed as a result of military operations, the transformation of the economy of our state is extremely important.

It has been established that the key driver of economic growth of any state is high-tech production. An important step for Ukraine today and in the post-war period is the reorientation of the economy from raw materials to high-tech.

The Procedure for providing financial support for the creation of high-tech industries with the participation of higher education institutions and scientific institutions on the terms of co-financing, the project of which is proposed by the Ministry of Education and Science of Ukraine, is intended to a certain extent to solve the specified tasks.

The purpose of this article is to analyze the draft Resolution of the Cabinet of Ministers of Ukraine “On approval of the Procedure for providing financial support for the creation of high-tech industries with the participation of higher educational institutions and scientific institutions on the terms of co-financing”. In addition, the goal is to establish advantages, as well as contradictions, shortcomings of the specified project and provide relevant proposals for its improvement, applying general scientific and special scientific methods.

Keywords: co-financing, grant, high-tech production, high-tech products, scientific institution.

Author’s contribution

The authors made an equal contribution to the article. Together they selected literature, analyzed it and drew common conclusions.

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INTRODUCTION

Even before the start of the full-scale war, which was launched by the Russian Federation on February 24, 2022, the economy of Ukraine was mainly built on agricultural and, to some extent, raw material production. Thus, 95% of the economy as a whole was occupied by the agricultural, metallurgical and chemical industries, petrochemicals, heavy engineering, outdated energy (Volkova & Manaenko, 2018)

If we analyze in detail the structure of export and import of high-tech goods of Ukraine in 2018, it can be noted that only the products of the aerospace industry are characterized by a positive balance of \$ 252,488 million US\$. Thus, Ukraine is today, first and foremost, an importer in the world market of high-tech products, because foreign trade in high-tech goods is characterized by low shares of high-tech goods in total exports and a large negative balance (Matyushenko et al., 2020).

The main task of our state today and in the post-war period will be to change the export strategy from raw materials to a greater share of products with high added value, including high-tech products. At the same time, financial instruments and the presence of research and development play an important role in the production of high-tech products potential in the economic entity or the possibility of obtaining such services from specialized institutions. In addition, taking into account a number of reasons (riskiness, large financial outlays for the development and creation of high-tech products, specificity, limited sales channels, etc.), the comprehensive support of the state using various means of regulation in this matter is extremely necessary.

Thus, within the framework of this study, the main emphasis is on the analysis of the draft regulatory act, which is designed to stimulate high-tech production by implementing the instrument of co-financing of a private economic entity and the state, as well as the involvement of qualified employees of scientific institutions in the creation of high-tech products.

LITERATURE REVIEW

The issue of the development of high-tech production in Ukraine was given attention in a number of scientific articles and studies.

In particular, O. Salikhova examines the toolkit for evaluation and identification of high-tech enterprises of Ukraine (Salikhova, 2012).

In addition, in his scientific work I. Matyushenko examines the place of Ukrainian high-tech goods on the world market, the ratio of the export of such products to the merchandise export of Ukraine, economic problems and prospects for reaching a qualitatively new level of the indicated indicators (Matyushenko, 2016).

Hlibko S. examines the legal issues of the formation and functioning of the national innovation system of Ukraine in general and the stimulation of the production of high-tech products in particular (Hlibko, 2019).

For the most part, the specified scientists studied the essence and problems of stimulating the development of the production of high-tech products from the point of view of economic theory, indicating the presence of isolated problems of legal regulation of the specified issue. In contrast to the mentioned works, this study uses the approaches of the science of economic law to the legal regulation of economic activity in relation to the production and supply of high-tech products. In addition, attention is focused on the analysis of the draft legal act – The procedure for providing financial support for the creation of high-tech industries with the participation of higher education institutions and scientific institutions on the terms of co-financing, the purpose of which is the development and support of high-tech industry in Ukraine.

METODOLOGY

The methodological basis of the research is a combination of general scientific and special scientific methods. The formal-logical method became the basis of the analysis of the main provisions of the draft Resolution of the Cabinet of Ministers of Ukraine «On approval of the procedure for providing financial support for the creation of high-tech industries with the participation of higher education institutions and scientific institutions on the terms of co-financing» and making proposals for improving certain provisions of the specified project in the researched area. The application of the dialectical method became the basis for the characterization of the relevant legal phenomena. The comparative legal method has become useful for comparing the provisions of the draft of the researched normative legal act and the current legal norms of Ukraine and the relevant international legislation. In addition, the article uses the method of legal analysis, the application of which allows to provide a legal structure with an improved content of normative legal acts. The empirical basis of the study was the regulatory legal acts of Ukraine and the practice of their application in the regulation of high-tech production issues, industry legislation of Ukraine, international law, lists and recommendations of international organizations, which contain standards for the regulation of a certain field of research.

RESULTS AND DISCUSSION

In the global competition for competitiveness, the creation, exploitation and commercialization of new technologies are essential. In the context of economic globalization, technology is a key factor in promoting growth and competitiveness in the business world. The high-tech sector and enterprises are a key driver of economic growth and productivity and generally provide high added value and well-paid jobs (European Commission, 2018).

It is believed that one of the important reasons for Ukraine's insignificant place in the world market of high-tech products is the state policy in the field of science, technology and industry. Over the past thirty years, the specified state policy contributed to the consolidation of the predominant weight of industries of 3-4 technological generations instead of 5-6 in the structure of the economy, and to the reduction of the role of science in the economy (Belov, 2022).

One of the elements of promoting high-tech production in Ukraine can be a tool for providing financial support in the form of a grant for the creation of high-tech production with the participation of higher education institutions and scientific institutions to cover some areas of costs.

The action plan for the years 2021-2023 for the implementation of the Strategy for the development of the sphere of innovative activity for the period until 2030, provides for the creation of production with the participation of scientific institutions or institutions of higher education together with industrial enterprises, belonging to the high-tech sector of industry.

In order to implement the specified normative legal act, a draft resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedure for providing financial support for the creation of high-tech industries with the participation of higher education institutions and scientific institutions under the conditions of co-financing" (hereinafter referred to as the Procedure) was developed. It is proposed to determine the conditions, criteria and mechanism for conducting competitive selection by the Ministry of Education and Culture of Ukraine in order to provide financial support to business entities for the creation of high-tech industries with the participation of higher education institutions and scientific institutions in the form of grants on the terms of co-financing. The specified document also stipulates the procedure for obtaining a grant, types of expenses that can be incurred by the grantee, mandatory terms of the grant agreement and the procedure for refunding funds in case of non-fulfillment of the terms of such an agreement.

Taking into account the fact that recently the need for high-tech development of Ukraine, for the most part, has only been declared (Chubenko, 2019), the specified project of the act became one of the first in Ukraine, which is designed in certain aspects to ensure legal regulation of the stimulation of high-tech production.

First of all, it should be noted the advantages of involving higher education institutions and scientific institutions in the process of creation and production of high-tech products. This will have a positive impact not only on the ability to commercialize research and development works, but also on private businesses getting an additional opportunity to attract scientists to their production. Thus, in Kyiv, scientific development and research was carried out by 339 organizations in 2019, while in 2000 – 375, and in 2010 – 333. Currently, almost half of them belong to the academic sector of science and have weak integration ties with production that does not always ensure high-quality and efficient use of innovations (Bykova & Shchabelska, 2021).

Strengthening the ties between business and the scientific environment is also of particular importance in view of the European integration processes in Ukraine. An important aspect for business R&D is also addressed. The Commission acknowledges, that the EU and its Member States would need to promote stronger links between researchers and business. While large companies may have the means to develop their research activities in-house, this is often not the case for small and medium-sized enterprises. Stronger and more direct links with the research community have the potential to bridge this gap (Jurak, 2020).

It is correctly noted that in national innovation system of all countries generating innovations is made by industrial science, state research institutes, as well as research universities. As a specific form of scientific and education activity organization, a research university is intended to considerably

intensify innovative activities in higher education. A distinctive sign of such a university is the ability to generate new scientific knowledge on the basis of a wide range of fundamental and applied research, the possibility of transferring technologies to the real sector of the economy and the availability of an efficient system of highly qualified personnel training. These characteristics determine a university's innovative road of development, which is connected with the introduction of new technologies, ideas, and knowledge to the scientific-and-research process with the aim of their practical application (Hlibko, 2019).

At the same time, despite the fact that the Procedure for providing financial support for the creation of high-tech industries with the participation of higher education institutions and scientific institutions under the conditions of co-financing has not yet been adopted and has not entered into force, the latter is subject to significant criticism, which consists of the following.

First of all, it should be noted that the draft of the Procedure does not contain a definition of the concept of “high-tech production” or any blanket norm with an indication of the relevant legal act that provides for such a definition. At the same time, this concept is extremely important both for understanding the scope of legal regulation of this draft act and for evaluating the compliance of the criteria of high-tech production of projects proposed by grant recipients.

Thus, the closest in terms of legal regulation to the proposed draft of the Procedure is the National Comprehensive Program for the Development of High Science-intensive Technologies (Law of Ukraine, registration number 1676-IV of April 9, 2004) according to which high-tech production is production in which science-intensive technologies are used. At the same time, according to the given Law, high science-intensive technologies - technologies created on the basis of the results of scientific research and scientific and technical developments, ensure the manufacture of high-tech products, contribute to the introduction of high-tech production at enterprises of basic industries. That is, it is advisable to unify these two concepts (“high-tech production” and “high science-intensive technologies”) existing in the current legislation of Ukraine with the concept of “high-tech production” used in the Procedure, due to the main features that are laid in their basis.

At the same time, to solve this issue, it is advisable to take into account also the main features of high-tech production, which are cited by scientists. In particular, there is a point of view that in Ukraine the main criterion of high-tech production is the specific weight of the revenue of high-tech products in the total volume of the company's products. In combination with this indicator, the efficiency of production (gross added value, labor productivity), the technical and technological level of production (the coefficient of technological development, which is based on the number of employees on automated production lines, the specific weight of high technologies in technological processes, etc.), the assessment of the level of qualifications of employees (in particular, the number of people employed in R&D) (Pruschkivska & Tkachuk, 2019).

In addition, the draft of the Procedure defines the list of areas of high-tech production, projects for which are accepted for participation in the competition (Clause 6):

- development of new energy transportation technologies, introduction of energy-efficient, resource-saving technologies, development of alternative energy sources;
- mastering new technologies of high-tech development of the transport system, rocket and space industry, aircraft and shipbuilding, weapons and military equipment;
- development of new technologies for the production of materials, their processing and joining, creation of the industry of nanomaterials and nanotechnologies; technological renewal and development of the agro-industrial complex;
- introduction of new technologies and equipment for high-quality medical care, treatment, pharmaceuticals;
- wide application of cleaner production and environmental protection technologies;
- development of modern information, communication technologies, robotics.

It should be noted that there is no officially approved or standardized list of high-tech industries, industries or high-tech products in Ukraine. In this aspect, it is expedient to adopt international experience and define the above-mentioned directions of high-tech production, taking into account the formed international lists.

In particular, the criterion for assignment to the groups classified by international organizations as high-tech products is the high intensity of research and development works in the production of technical products. Thus, a list of high-tech products was presented to the Organization for Economic Cooperation and Development back in 1994. This list has been changed several times (the latest version SITC Rev. 4), which is also taken as a basis by the Statistical Organization of the European Commission (Eurostat) for approval of the corresponding catalog. The list of high-tech products, according to the latest edition mentioned above, includes aerospace products, computer and office equipment, electronics and telecommunications, pharmaceuticals, scientific instruments, electrical machines, chemistry, non-electrical equipment, weapons.

Thus, the areas of co-financing of high-tech production proposed in the draft of the Procedure, in most cases, do not coincide with those defined by international organizations. Taking into account the above, as well as the fact that Ukraine has submitted an application to join the OECD, we believe that the indicated contradictions should be eliminated and appropriate changes should be made to the Procedure.

At the same time, it should be noted that the project of the Procedure for providing financial support for the creation of high-tech industries with the participation of higher education institutions and scientific institutions on the terms of co-financing includes the direction of co-financing “weapons and military equipment”.

However, in accordance with the Law of Ukraine “On State Secrets”, information on inventions, research and development of new types of weapons in the interests of ensuring national security and defense and on the results of such research and development; on scientific, research, development and design works, the subject of which is the creation of the latest complex samples of weapons, military or special equipment and other works that have an important defense or economic significance or significantly affect the foreign economic activity and national security of Ukraine, refers to a state secret (Article 8). At the same time, according to Clause 8 of the Procedure, one of the main principles of the organization and conduct of the competition is its transparency. In addition, in the process of evaluating submitted applications, as well as checking the relevant contract concluded with the grant recipient, a large number of officials who do not have appropriate access to state secrets are subject to involvement. The above, accordingly, creates risks of violation of legislation in the field of state secrets.

In addition, the Ministry of Defense of Ukraine deals with the development of military science, the determination of priority directions for the development of scientific and scientific and technical activities in the military sphere, the determination of the main directions and the coordination of scientific research and development in the interests of defense (the General Staff of the Armed Forces of Ukraine, 2020). Thus, it is impractical to hold a competition and provide funding for the implementation of scientific and technical (infrastructural) projects in the areas of armaments and military equipment, without the involvement of the relevant authorized body – the Ministry of Defense of Ukraine.

It should be taken into account that military goods are goods with limited circulation, therefore the implementation of the grant in the above direction may be complicated in view of the legislation on the permit system in the field of economic activity, on licensing of types of economic activity, etc.

Many questions also arise about the provisions of the draft Procedure, regarding the presence of evaluation terms in it, regarding the content of documents for participation in the competition, the procedure for their verification and evaluation, the absence of mention of the significant form and content of the contract with the grantee, etc.

The cooperation agreement proposed in the draft version of the Procedure is an “unnamed agreement”, and its content and form are not detailed in the Procedure itself. Thus, the above will lead to contradictions and disagreements both at the stage of concluding such contracts between the economic entity and the scientific institution with the participation of which high-tech production is being created, and in the process of participation in the competition and evaluation of the corresponding proposal.

At the same time, the closest named contract to the agreement on interaction is the agreement on joint activity, provided for in Article 1130 of the Civil Code of Ukraine.

In order to avoid the situations mentioned above, it is advisable to determine both the form of the business plan and the form of the corresponding contract, which are approved by the Ministry of Education and Science of Ukraine.

The purpose of conducting the competition and providing a grant to the recipient is the creation of high-tech production, according to the Clause 14 of the Procedure. At the same time, the verification and evaluation of submitted applications is carried out almost without taking into account indicators that indicate the identification of a particular production as high-tech. Therefore, in our opinion, it is appropriate to fill in the Clause 14 of the Procedure with the appropriate criteria: “technological level of production, level of quality and novelty of products, share of high-tech products as a result of production, compliance of products with international standards, indicator of the share of added value of production products, number of qualified employees involved in production”.

The Procedure (Clause 15) provides for the verification of business reputation based on the criterion of open criminal proceedings by the Regional Technology Transfer Center by means of software using information sources used by it in its activities. However, it is impossible to carry out such an inspection by the specified unit in this way, given the following.

According to Clause 9 of the Regulation on the Unified Register of Pretrial Investigations, the procedure for its formation and maintenance, approved by the Order of the Prosecutor General (registration number 298 of June 30, 2020), the users of the Unified Register of Pretrial Investigations (hereinafter – the Register) are a specifically defined comprehensive list of persons. These include heads of prosecutor’s offices, pre-trial investigation bodies and inquiry bodies; prosecutors; investigators of the police, security, tax law enforcement agencies, and the State Bureau of Investigation, and others.

Section III of the above Regulation stipulates that the right of access to information entered in the Register is granted to a specifically defined circle of officials, among whom there are no officials of the Regional Technology Transfer Center. In addition, in accordance with the provisions mentioned above, the Administrator implements a set of software, technological and organizational measures to protect the information contained in the Register from unauthorized access (Vulik, 2018).

Thus, the Regional Technology Transfer Center not only does not have access to the relevant Register to check open criminal proceedings and fulfill the provisions of the Regulation, but also the attempt to access such Register by the specified officials will be unauthorized, and in some cases may lead to a violation of the confidentiality of the pre-trial investigation.

Checking the business reputation according to the “fraud” criterion by the Regional Technology Transfer Center is also impractical, since the specified offense falls under the criminal category, and the latter is also checked, which is indicated in the specified Paragraph 2, Clause 15 of the Procedure (verification of judicial criminal cases).

CONCLUSIONS

Summarizing what has been said, it is worth noting that any state support, introduction of means of state, legal regulation with the aim of stimulating high-tech production, will undoubtedly have a positive effect on the reconstruction and strengthening of the economy of Ukraine, including in the post-war period. The expediency of adopting the Procedure for providing financial support for the creation of high-tech industries with the participation of higher education institutions and scientific institutions under the conditions of co-financing is due to the need for systemic changes in the sphere of innovative activity of Ukraine. The latter should be aimed at creating conditions for the development of the innovation ecosystem, combining scientific and industrial potential, intensifying international cooperation in the field of innovation, ensuring the transfer of technologies and commercialization of scientific results, increasing the volume of innovative products and selling products with high profitability. At the same time, you should pay attention to some contradictions, lack of necessary elements, etc. and improve the specified project. In particular, to introduce the necessary definitions of concepts to the latter, to take into account international practice regarding the list (areas) of high-

tech industries and products, to exclude areas of co-financing of projects related to armaments and military equipment in order to avoid contradictions with relevant legislation and compliance with the requirements of the institute of state secrets, etc.

The submitted proposals certainly require more detailed elaboration, and the implementation of such proposals will not solve all problems at once, but will contribute to the improvement of legal regulation of the stimulation of high-tech production in Ukraine. Research results and main proposals can be used in law-making practice to create a system of effective legal regulation. That is, it is emphasized the need to improve the current legislation, which requires the mandatory participation of representatives of the scientific community in the preparation of the corresponding draft of the normative legal act.

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ПРАВОВІ ПИТАННЯ ФІНАНСОВОЇ ПІДТРИМКИ СТВОРЕННЯ ВИСОКОТЕХНОЛОГІЧНИХ ВИРОБНИЦТВ ЗА УЧАСТЮ НАУКОВИХ УСТАНОВ В УКРАЇНІ

Анотація. В умовах воєнного стану на території України, враховуючи факт розрухи великої частини промислового та сільськогосподарського комплексу України внаслідок військових дій вкрай важливою є трансформація економіки нашої держави.

Встановлено, що ключовим рушієм економічного зростання будь-якої держави є високотехнологічні виробництва. За таких умов, важливим кроком для України сьогодні та в післявоєнний період є переорієнтація економіки з сировинної на високотехнологічну. Основну роль в створенні високотехнологічної продукції відіграють фінансові інструменти та наявність науково-дослідного та дослідно-конструкторського потенціалу в суб'єкта господарювання або можливість отримання таких послуг від спеціалізованих установ.

Порядок надання фінансової підтримки на створення високотехнологічних виробництв за участю закладів вищої освіти та наукових установ на умовах співфінансування, проект якого запропонований Міністерством освіти та науки України, покликаний в певній мірі вирішити вказані завдання. Вказаний проект є першим нормативно-правовим актом в Україні, метою якого є визначення умов надання фінансової підтримки у формі гранту на створення високотехнологічних виробництв за участю закладів вищої освіти та наукових установ.

Метою даної статті став аналіз проекту Постанови Кабінету Міністрів України «Про затвердження Порядку надання фінансової підтримки на створення високотехнологічних виробництв за участю закладів вищої освіти та наукових установ на умовах співфінансування» як акту, покликаного стимулювати виробництво високотехнологічної продукції в Україні. Крім того, ціллю є визначення переваг, а також викладення суперечностей, прогалин вказаного проекту та наведення відповідних пропозицій щодо його удосконалення, використовуючи загальнонаукові та спеціальнонаукові методи дослідження.

Ключові слова: співфінансування, грант, високотехнологічне виробництво, високотехнологічна продукція, наукова установа.

LEGAL ISSUES OF FINANCIAL SUPPORT FOR THE CREATION OF HIGH – TECH INDUSTRIES WITH THE PARTICIPATION OF SCIENTIFIC INSTITUTIONS IN UKRAINE

Abstract. In the conditions of martial law on the territory of Ukraine, taking into account the fact that a large part of the industrial and agricultural complex of Ukraine has been destroyed as a result of military operations, the transformation of the economy of our state is extremely important.

It has been established that the key driver of economic growth of any state is high-tech production. Under such conditions, an important step for Ukraine today and in the post-war period is the reorientation of the economy from raw materials to high-tech. The main role in the creation of high-tech products is played by financial instruments and the presence of research and development potential in the economic entity or the possibility of obtaining such services from specialized institutions.

The procedure for providing financial support for the creation of high-tech industries with the participation of higher education institutions and scientific institutions on the terms of co-financing, the draft of which was proposed by the Ministry of Education and Science of Ukraine, is designed to ensure access to the specified tools. This project is the first regulatory act in Ukraine, the purpose of which is to determine the conditions for providing financial support in the form of a grant for the creation of high-tech industries with the participation of higher education institutions and scientific institutions.

The purpose of this article was the analysis of the draft Resolution of the Cabinet of Ministers of Ukraine “On approval of the Procedure for providing financial support for the creation of high-tech industries with the participation of higher education institutions and scientific institutions on the terms of co-financing” as an act designed to stimulate the production of high-tech products in Ukraine. In addition, the goal is to determine the advantages, as well as to outline the contradictions and gaps of the specified draft and to make relevant proposals for its improvement, using general scientific and special scientific research methods.

Keywords: co-financing, grant, high-tech production, high-tech products, scientific institution.

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