

Legal Regulation of Innovation and Investment Activities in Agrarian Sector of Ukrainian Economy

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Investment activity in the field of agriculture has been carefully studied by domestic scientists and practitioners based on the criteria of economic indicators, but legislation determining procedure for attracting investments to the agrarian sector of national economy has remained out of their attention. In order to overcome objective and subjective obstacles, for continuous and intensive development, Ukrainian agriculture needs special support, that can be provided to a large extent whereby of foreign investments. Guaranteeing productivity and profitability of the entire agricultural sector, especially its most labor-intensive areas (for example, animal husbandry, horticulture, cultivation of special crops, etc.), moreover, in conditions of full-scale Russian aggression against Ukraine, is possible only thanks to improvement and adjustment of investment activities in this area, as well as unconditional State support and introduction of innovations. Normative and legal regulation of attracting investments to agricultural sector of Ukraine has been studied. The ways of improving legislative regulation of investment procedure in order to increase attractiveness of investment climate in our country are outlined. The article purpose is to identify problematic aspects of current laws and subordinate legal acts that prevent optimizing procedure of investing in agrarian sector of national economy, as well as consider international legal framework on this issue. For achieving the goal, general scientific dialectical method and methods of scientific knowledge were used, and for the

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full and comprehensive disclosure of the research topic, hermeneutic, formal-legal and formal-logical methods were used.

Keywords: *agricultural sector; investments; innovations; investment activity; normative and legal regulation; forensic science; judicial protection.*

Research Problem Formulation

Research on normative and legal regulation of attracting investments in agricultural sector of Ukraine is the basis for formation of attractive investment climate in the State. Investment activity in the field of agriculture has already been repeatedly and carefully studied according to criteria of economic indicators, and the legislation that determines procedure for attracting investments to agrarian sector of the national economy has remained out of attention of scientists and practitioners. Agricultural sector of Ukraine needs special support and constant intensive development that can be provided to a large extent whereby foreign investment. Guaranteeing productivity and profitability of the entire agricultural sector, especially its most labor-intensive areas (for example, animal husbandry, horticulture, cultivation of special crops, etc.), moreover, in conditions of full-scale Russian aggression against Ukraine is possible only thanks to improvement and adjustment of investment activities in this area, as well as unconditional State support and introduction of innovations.

Article Purpose

Investigate and identify issues of current legislation and international legal frameworks that stand in the way of investing in the agrarian sector of national economy; determine ways to optimize legislative regulation of the investment procedure in order to increase investment climate attractiveness in our country.

Research Methods

Research on issues of legislative regulation of agricultural innovations and legal relations in the field of implementation of State policy of innovative development of the agricultural field is based on provisions of general scientific dialectical method and method of scientific knowledge. In addition, hermeneutic, formal-legal and formal-logical methods were used for full and comprehensive disclosure of the topic of our scientific investigation.

Analysis of Essential Researches and Publications

I. I. Pavlenko and V. Yu. Bilinska (Kolisetska)¹, Yu. O. Lupenko and O. V. Zakharchuk²

- 1 Павленко І. І., Білінська (Колісецька) В. Ю. Інноваційно-інвестиційне забезпечення розвитку сільського господарства в Україні. *Теоретичні та прикладні питання економіки* : зб. наук. пр. 2015. Вип. 1 (30). С. 104–113. URL: http://www.library.univ.kiev.ua/ukr/host/viking/db/ftp/univ/ttpe/ttpe_2015_30.pdf (date accessed: 10.09.2023).
- 2 Лупенко Ю. О., Захарчук О. В. Інвестиційне забезпечення інноваційного розвитку сільського господарства України. *Економіка АПК* : міжнар. наук-виробн. журн. 2018. № 11. С. 9. DOI: 10.32317/2221-1055.201811009 (date accessed: 10.09.2023).

studied innovative investment support for development of agriculture in Ukraine; O. F. Andriiko ³ paid attention to theoretical and practical legal aspects of investment activities in agriculture; N. O. Koziar considered specifics of agriculture as an investment object ⁴. Review of research papers indicates that foundation for studying procedure of attracting investment in agricultural sector of national economy has been formed, but it lacks an analysis of current legal acts, violation of urgent issues in the field of investment regulation and the determination of ways to their solving.

Main Content Presentation

International legal norms regarding the regulation of investment attraction procedure, in particular the provisions of the Seoul Convention of 1985 on establishment of Multilateral Investment Guarantee Agency, define the leading vectors for strengthening international

cooperation: promoting economic development and increasing investment contributions to the economy of states ⁵. Convention on Procedure for Settlement of Investment Disputes between States and Foreign Persons stipulates requirements according to which the parties to the agreement should focus their attention on effective resolution of investment conflicts in order to increase investment climate attractiveness and ensure sustainable economic development ⁶. According to Constitution of Ukraine, international treaties which binding consent was given by the Verkhovna Rada of Ukraine are a component of national legislation ⁷. In view of the above, State authorities should establish a regulatory and legal procedure with the aim of attracting investments to economy of Ukraine, in particular, to its agricultural sector. Investment activity in the national agriculture is regulated by a set of legal acts: Laws of Ukraine (*On Investment Activities* ⁸, *On the Foreign Investment Regime* ⁹, *On State Support for*

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- 3 Андрійко О. Ф. Актуальні теоретичні і практичні правові аспекти інвестиційної діяльності в сільському господарстві України. *Часопис Київського університету права*. 2008. № 2. С. 257–259. URL: <https://chasprava.com.ua/index.php/journal/issue/view/27/2-2008-pdf> (date accessed: 10.09.2023).
 - 4 Козяр Н. О. Особливості сільського господарства як об'єкту інвестування. *Інвестиції: практика та досвід*. 2018. № 23. С. 82–87. DOI: 10.32702/2306-6814.2018.23.82 (date accessed: 10.09.2023).
 - 5 Про заснування Багатостороннього Агентства з гарантування інвестицій (Сеульська конвенція 1985 р.) : ухвал. Міжнар. банком реконструкц. і розвит. 11.10.1985 р.
 - 6 Конвенція про порядок вирішення інвестиційних спорів між державами та іноземними особами : ухвал. ООН 18.05.1965 р. ; ратифік. Законом України від 16.03.2000 р. № 1547-III (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/995_060#Text (date accessed: 10.09.2023).
 - 7 Конституція України : Закон України від 28.06.1996 р. № 254к/96-ВР (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text> (date accessed: 10.09.2023).
 - 8 Про інвестиційну діяльність : Закон України від 18.09.1991 р. № 1560-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1560-12#Text> (date accessed: 10.09.2023).
 - 9 Про режим іноземного інвестування : Закон України від 19.03.1996 р. № 93/96-ВР (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/93/96-%D0%B2%D1%80#Text> (date accessed: 10.09.2023).

*Agriculture in Ukraine*¹⁰), Program for Development of Investment and Innovation Activities in Ukraine¹¹ and the Promotion Strategy attraction of private investments in agriculture for the period until 2023¹² (approved by the resolution and order of the Cabinet of Ministers of Ukraine (hereinafter referred to as *CabMin*), respectively) and etc. The norms of the Law of Ukraine: *On Investment Activities* define the general social, legal and economic principles of investment procedure in Ukraine. According to this Law, practical actions of citizens, legal entities and the State, aimed at realization of investments, form the concept of *Investment activities*. Investment activities are carried out with involvement of investments:

- 1) citizens, non-state enterprises, economic associations, unions and societies, as well as public and religious organizations and other legal entities based on collective ownership;
- 2) state authorities, state enterprises and institutions;
- 3) local self-government bodies;
- 4) foreign states, legal entities and citizens of foreign states;
- 5) joint investment¹³.

Investment activity in the field of agriculture is a procedure regulated by legislation, complex social relations

arising on the basis of a legal fact between subjects of agriculture and investors in relation to subjects defined by law, with the aim of ensuring rights and obligations of participants in the field of agricultural production products¹⁴. According to Program for Development of Investment and Innovation Activities in Ukraine, agricultural sector is one of the main budget-generating branches of the economy, where investment and innovation projects are implemented (especially in the production, processing and storage of agricultural products, as well as in the production of alternative energy sources and agricultural machinery)¹⁵. Successful development of rural areas is directly related to effective improvement of the agricultural sector of the national economy. In 2020, Ministry of Economic Development, Trade and Agriculture of Ukraine identified the main tasks for ensuring sustainable development of the agricultural sector and ways to optimize life within rural areas: in particular, by attracting direct investments in rural development in the amount of 10 billion US dollars by 2024 and creating development tools in rural areas (with support of small and medium-sized agricultural producers) which should contribute to improvement of living conditions for residents of rural

10 Про державну підтримку сільського господарства України : Закон України від 24.06.2004 р. № 1877-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1877-15#Text> (date accessed: 10.09.2023).

11 Програма розвитку інвестиційної та інноваційної діяльності в Україні : затв. постановою КМУ від 02.02.2011 р. № 389. URL: <https://zakon.rada.gov.ua/laws/show/389-2011-%D0%BF#-Text> (date accessed: 10.09.2023).

12 Стратегія сприяння залученню приватних інвестицій у сільське господарство на період до 2023 року : затв. розпорядженням КМУ від 05.07.2019 р. № 595-р. URL: <https://zakon.rada.gov.ua/laws/show/595-2019-%D1%80#Text> (date accessed: 10.09.2023).

13 Про інвестиційну діяльність URL: <https://zakon.rada.gov.ua/laws/show/1560-12#Text> (date accessed: 10.09.2023).

14 Грушинський Я. М. Правове регулювання агроінвестиційної діяльності в Україні : дис. ... канд. юрид. наук. Київ, 2011. 182 с.

15 Програма розвитку інвестиційної та інноваційної діяльності URL: <https://zakon.rada.gov.ua/laws/show/389-2011-%D0%BF#Text> (date accessed: 10.09.2023).

areas and the development activation of the entire agricultural sector of the national economy¹⁶. Unfortunately, up to day, authorities have not properly assessed production and export potential of the national agricultural industry, although Ukraine has a favorable climate and is rich in black soil, forest and water resources creating all the prerequisites for efficient production and an attractive investment climate in the agricultural sector.

Strategy for Promotion of Attracting Private Investments in Agriculture until 2023 lists general investment issues, in particular:

- 1) structural limitations (anti-competitive environment and imperfect market infrastructure);
- 2) complex procedures for distributing and receiving State support, as well as complicated procedural aspects of investment attraction;
- 3) unfinished land reform;
- 4) difficulties in accessing financial instruments for agricultural producers;
- 5) irrational use of natural resources, etc.¹⁷.

Scientists call the main shortcomings of Ukraine innovation and investment policy negatively affecting investment climate attractiveness in the country in general and in its agricultural sector in particular, direct support of projects of non-state investors; low levels of innovative development, motivation to introduce

small agribusiness in countryside and capital profitability. Analysts single out the following gaps in national legislation regarding investment activities in the field of agriculture:

- 1) conflicting legal regulations;
- 2) corruption component;
- 3) inefficiency of judicial system and legislative support of investment procedure;
- 4) volatility of regulatory provisions regarding procedure for attracting foreign investments.

Stable and predictable agrarian policy and transparent regulatory and legal regulation of investment activities in Ukraine will contribute to a gradual increase in investment attractiveness of the agrarian sector of national economy. Currently provisions of the draft law on “investment nurse” aimed at improving the investment climate with the help of the following measures are relevant:

- 1) investor who invests USD 100 million or more in Ukraine will receive a contract with Ukraine;
- 2) manager support (“investment nurse”), who will provide solutions to any issues and provide answers to all questions related to investment procedure;
- 3) providing investors with significant tax benefits¹⁸.

These and other measures are designed to improve investment conditions and attract more investors to Ukrainian agriculture¹⁹.

16 Звіт про хід і результати виконання Програми діяльності Кабінету Міністрів України у 2019 році / Урядовий портал : офіц. вебсайт. 17.02.2020. 309 с. URL: <https://www.kmu.gov.ua/news/zvit-pro-hid-i-rezultati-vikonannya-programi-diyalnosti-kabinetu-ministriv-ukrayini-u-2019-roci> (date accessed: 10.09.2023).

17 Стратегія сприяння залученню приватних інвестицій ... URL: <https://zakon.rada.gov.ua/laws/show/595-2019-%D1%80#Text> (date accessed: 10.09.2023).

18 Зеленський розповів, на якому етапі створення «інвестиційних нянь» / УНІАН : офіц. вебсайт. 20.05.2020. URL: <https://www.unian.ua/economics/finance/pres-konferenciya-zelenskogo-prezident-rozpoviv-na-yakomu-etapi-stvorenniya-investitsiy-nih-nyan-novini-ukrayina-11004260.html> (date accessed: 10.09.2023).

19 Ibid.

In 2015, legislators made an attempt to improve normative and legal regulation of investment activities in agricultural sector of economy of Ukraine by approving the Concept of the State target program for development of the agricultural sector of the economy for the period until 2022, where one of the ways of solving socio-economic issues in the field of agriculture is named improving investment climate and maintaining the attraction of investments from international financial institutions and strategic partners of Ukraine for implementation of projects in agrarian complex with observance of transparent, effective and practically possible instruments on the basis of public-private partnership²⁰.

Researchers summarized positive impact of attracting foreign investment in development of the agricultural sector of the Ukrainian economy, namely:

- 1) simultaneously with financial resources from foreign sources, advanced technologies and innovations in the field of production and management will arrive that will have a positive effect on activities of local enterprises and ultimately contribute to increasing the profits of national economy (in particular, due to the increase in efficiency of resource use);
- 2) quality improvement of Ukrainian agricultural products with further increase of its competitiveness on international markets (thanks to updating of equipment and

technologies according to international standards) that will increase interest of both foreign consumers and new foreign investors;

- 3) increased competition in domestic markets will stimulate local producers to work more efficiently to maintain competitiveness;
- 4) increasing labor productivity (since foreign companies usually invest more capital per labor unit) will contribute to production efficiency and to economic development of agricultural enterprises²¹;
- 5) investment funds as an additional source of replenishment of national capital (replacement or displacement of less efficient national agricultural companies by foreign ones will contribute to redistribution of internal resources between more and less profitable enterprises and growth of average labor productivity and average income per capita in the country receiving investment)²²;
- 6) profitable part increase of local budgets thanks to tax payment;
- 7) creation of new job positions;
- 8) strengthening Ukrainian integration into international market.

Priority of investment activity in ensuring effective development of agricultural sector of Ukrainian economy and strengthening the competitiveness of agricultural producers is stipulated in the State Target Program for Development of Ukrainian Village until 2015, approved in 2007, which provides

20 Концепція Державної цільової програми розвитку аграрного сектору економіки на період до 2022 року : затв. розпорядженням КМУ від 30.12.2015 р. № 1437-р. (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1437-2015-%D1%80#Text> (date accessed: 10.09.2023).

21 Атаманова Ю. Є. Господарсько-правове забезпечення інноваційної політики держави : монографія. Харків, 2008. С. 354.

22 Мельник О. І., Мельник А. Г., Пасічник Ю. О. Організаційно-економічні умови активізації інвестиційної діяльності в аграрному секторі економіки України. *Агросвіт*. 2018. № 22. С. 6. DOI: [10.32702/2306-6792.2018.22.3](https://doi.org/10.32702/2306-6792.2018.22.3) (date accessed: 10.09.2023).

for formation of an innovative and investment model for development of agriculture²³. Implementation of such a model of agricultural development involves constant improvement of State investment policy that is important component of State economy regulation. Implementation of public administration tasks by State bodies through provision of state support will contribute to investment development of the agrarian sector of Ukrainian economy²⁴.

Ratification of Association Agreement between Ukraine, on the one hand and the European Union, European Atomic Energy Community and their member states, on the other hand²⁵ (hereinafter referred to as European Union–Ukraine Association Agreement), marked the beginning of a new era for the Ukrainian people in establishment of a democratic, legal and social state based on the new methodological principles of market economy functioning with the construction of an effective legal system and state administration, the development of local self-government and the guarantee of the rights and freedoms of man and citizen in accordance with

international standards, harmonization and adaptation of Ukrainian legislation to the requirements of legislation and the law of the European Union²⁶ In Ch. 17: *Agriculture and development of rural areas* of this Agreement provides for cooperation between the parties in the field of agriculture and development of agrarian regions in the following directions:

- 1) maintaining development of modern and sustainable agricultural production, including organic methods of production and biotechnologies through introduction of best practices in these areas;
- 2) exchange of knowledge and experience in agrarian policy in order to promote economic well-being of local rural communities;
- 3) increasing agricultural sector competitiveness, efficiency and transparency of markets, as well as creating favorable conditions for investments;
- 4) dissemination of knowledge through training and information events;
- 5) maintaining innovations through conducting researches and expanding services for agricultural producers;

23 Державна цільова програма розвитку українського села на період до 2015 року : затв. постановою КМУ від 19.09.2007 р. № 1158 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1158-2007-%D0%BF#Text> (date accessed: 10.09.2023).

24 Кіс Г. В. Іноземний інвестор на українських теренах: проблеми чи перспективи? *Іноземний інвестор на українських теренах: проблеми чи перспективи?* : зб. ст. регіон. міжвуз. студент. наук.-практ. інтернет-конф. Вип. 2. (Вишнян. коледж ЛНАУ, 16.05.2018). Вишня, 2018. URL: <http://www.vyshnya.in.ua/%d1%96%d0%bd%d0%be%d0%b7%d0%b5%d0%bc%d0%bd%d0%b8%d0%b9-%d1%96%d0%bd%d0%b2%d0%b5%d1%81%d1%82%d0%be%d1%80-%d0%bd%d0%b0-%d1%83%d0%ba%d1%80%d0%b0%d1%97%d0%bd%d1%81%d1%8c%d0%ba%d0%b8%d1%85-%d1%82/> (date accessed: 10.09.2023).

25 Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським Співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони : ратифік. Законом України від 16.09.2014 р. № 1678-VII. (зі змін. та допов.). URL: https://zakon.rada.gov.ua/laws/show/984_011#Text (date accessed: 10.09.2023).

26 Носік В. В. Земельно-правові проблеми забезпечення сталого розвитку України. *Правове забезпечення економічного розвитку та екологічної безпеки суспільства* : мат-ли Всеукр. наук.-практ. конф., присвяч. 50-й річн. створ. ДНУ та 30-й річн. створ. каф. господар. права ДНУ (Вінниця, 14–15.05.2015). Вінниця, 2015. С. 210.

- 6) quality regulation of agricultural products, standardization of production and other aspects.

Sustainable development strategy: *Ukraine – 2020*²⁷ provided for the reform of agrarian relations: formation of new State agrarian policy aimed at improving innovative and ecologically safe agrarian management, expanding types of economic activity within rural areas, introducing alternative energy and improving investment image of the State.

It is important to note that *investment* concept in agribusiness goes beyond innovation, since in agriculture, investments are considered as long-term capital investments in the fixed assets of agricultural production, processing industry, transport and other branches of agricultural sector with the aim of reproduction, increase and improvement of the main assets.

Terms of reference of legal regulation of relations in agrarian sector is exacerbated by the social importance of mechanism functioning of sustainable development of the State. In the EU countries, there is regulatory and economic stimulation of investment development of agriculture, contributing to the activation of regional development, development expansion of various territories and modernization of technical equipment of the agricultural sector. In Western Europe, various financial measures are used to stimulate investment, such as:

- 1) active subsidization by the State;
- 2) financing of export operations;
- 3) subsidies for agricultural producers;
- 4) creation of favorable conditions for attracting foreign capital to agricultural sector (in particular, long-term direct investments in bioengineering);
- 5) creation of regional development funds;
- 6) coordinating workflow of various ministries and agencies responsible for attracting foreign investments²⁸.

Council Regulation (EU) № 1698/2005 dated on September 20, 2005 on support for rural development by the European agricultural fund for rural development (EAFRD) provides for assistance in solving social problems (financing of rural social field) through implementation of a special EAFRD body for development of rural districts in order to achieve²⁹ four main goals:

- 1) increasing competitiveness of agricultural and forestry industries (implies investments to increase efficiency of processing and sale of primary products, improvement and development of infrastructure related to development and adaptation of agriculture and forestry, as well as restoration of potential of agricultural production damaged as a result of natural disasters), increase quality of production and products (assistance to farmers in adapting to EU legislation, partial compensation of their

27 Стратегія сталого розвитку «Україна — 2020»: схвал. Указом Президента України від 12.01.2015 р. № 5/2015. URL: <https://zakon.rada.gov.ua/laws/show/5/2015#Text> (date accessed: 10.09.2023).

28 Дзюрах Ю. М. Державне регулювання інвестиційної діяльності в сільському господарстві: дис. ... д-ра філос. з публ. упр. та адмініструв. Львів, 2020. С. 68, 69.

29 Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) and repealing Council Regulation (EC) No 1698/2005 / EUR-Lex : Access to European Union Law. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX-%3A32013R1305&qid=1695197943945> (date accessed: 10.09.2023).

additional costs or loss of income due to new obligations);

- 2) improving the state of environment and rural areas (maintaining sustainable development by encouraging farmers and forest owners to use ecological methods of land use, correlated with the need to preserve natural environment and landscape; non-productive investments aimed at achieving agrarian and ecological goals, improving forest resources, for example: maintenance of the first afforestation of agricultural lands, creation of systems of agroforestry improvement or restoration of forest potential and prevention of natural disasters);
- 3) life quality improvement in rural areas and diversification of rural economy (development of non-agricultural activities, support for creation and development of micro-enterprises, development and protection of tourism, as well as financing creation and restoration of social infrastructure, preservation and effective use of rural heritage and development of local development strategies);
- 4) for this project implementation, the *Leader* program, based on a public-private partnership (local initiative groups), receives financial support of

96 billion euros from the European Regional Development Fund ³⁰.

Regulation of the Council of the EU on improving efficiency of agricultural infrastructure (1985) already contained specific measures to support various types of activities ³¹. For example, the project for improvement of business activity provided for investments not only in agriculture (in particular, in development and preparation of pastures, afforestation of agricultural land and improvement of forest resources, creation of forest protection strips, fire barriers and water supply points, as well as forest roads), but in development of tourism and handicrafts (clause 1 of Art. 17, Art. 20) ³².

Later EU legal regulations focused even more attention on development of non-agricultural activities. Amendments to the EU Council regulation on improving efficiency of agricultural structures ³³ provide for expansion of financial support not only for farmers, but for persons whose main occupation is not agriculture: for example, if they are engaged in forestry, tourism, crafts or related activities with natural environment protection and preservation of rural areas ³⁴.

As K. O. Nastechko rightly notes, for development of competitive large-scale agricultural production based on innovations, it is necessary to use

30 Гафурова О. В. Диверсифікація сільськогосподарського виробництва / Велика українська юридична енциклопедія : у 20 т. Т. 16 : Земельне та аграрне право // редкол.: М. В. Шульга (голова) та ін. Харків, 2019. С. 129, 130.

31 Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures / EUR-Lex : Access to European Union Law. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31985R0797&qid=1695200702838> (date accessed: 10.09.2023).

32 Ibid.

33 Corrigendum to Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures (OJ No L 218 of 6. 8. 1991) / EUR-Lex : Access to European Union Law. URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31991R-2328R%2801%29&qid=1695201554354> (date accessed: 10.09.2023).

34 Кульчий І. М., Шульга М. В. Спільна аграрна політика ЄС / Велика українська юридична енциклопедія Т. 16 С. 613, 614.

mechanisms of corporatization and clustering that provide availability of a leader (integrator) that can be a large enterprise, advanced or joint processing enterprise (product cluster) or a body of inter-economic management, created jointly (territorial production cluster), etc. An example of such a cluster model is a regional agrochemical cluster: a voluntary association of agrochemical service entities such as agrochemical structures of various forms of ownership, producers of agrochemical preparations and agricultural commodity producers ³⁵.

In addition to clusters, a modern form of attracting investment in large-scale agricultural production is agrarian holding companies. In legal science, a number of multidisciplinary researches are devoted to the legal status of holdings ³⁶. At the same time, the analysis of the legal status of agricultural holdings in particular remains insufficient. Holding management of agricultural enterprises and the procedure of its creation in Ukraine are still not clearly defined at the legislative level. Legislation of

Ukraine on holding companies includes: Civil Code of Ukraine ³⁷, Economic Code of Ukraine ³⁸, Tax Code of Ukraine ³⁹, Laws of Ukraine: *On Holding Companies in Ukraine* ⁴⁰, *On Business Associations* ⁴¹, *On Foreign Investment Regime* ⁴², *On Investment Activities* ⁴³ and other laws and legal acts regulating activities of holding companies, their corporate enterprises and the specifics of investing in them (in particular, in the agro-innovative field).

Innovations in the agricultural sector of Ukraine are mostly determined by activities of agricultural holdings with foreign investments and development of startups providing agricultural companies with innovative services. Here are a few leading areas of innovation that will contribute to increasing efficiency and productivity of the national agricultural industry:

- 1) use of a system of remote sensors (for example, soil moisture, meteorological, ones etc.), satellite images, multispectral cameras for accurate monitoring of soil and crop conditions;

35 Настечко К. О. Правове регулювання публічно-приватного партнерства у сфері аграрного виробництва / Д. В. Бусуйок та ін. Правові проблеми публічно-приватного партнерства в аграрних і земельних відносинах : монографія // відп. ред.: В. І. Семчик, П. Ф. Кулинич. Київ, 2015. С. 32.

36 Старіков О. Ю. Інвестиційна діяльність у сільському господарстві (на прикладі реформованих аграрних підприємств) : дис. ... канд. екон. наук. Київ, 2002. 199 с.

37 Цивільний кодекс України від 16.01.2003 р. № 435-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/435-15#Text> (date accessed: 10.09.2023).

38 Господарський кодекс України від 16.01.2003 р. № 436-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/436-15#Text> (date accessed: 10.09.2023).

39 Податковий кодекс України від 02.12.2010 р. № 2755-VI (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/2755-17#Text> (date accessed: 10.09.2023).

40 Про холдингові компанії в Україні : Закон України від 15.03.2006 р. № 3528-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/3528-15#Text> (date accessed: 10.09.2023).

41 Про господарські товариства : Закон України від 19.09.1991 р. № 1576-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/1576-12#Text> (date accessed: 10.09.2023).

42 Про режим іноземного інвестування URL: <https://zakon.rada.gov.ua/laws/show/93/96-%D0%B2%D1%80#Text> (date accessed: 10.09.2023).

43 Про інвестиційну діяльність URL: <https://zakon.rada.gov.ua/laws/show/1560-12#Text> (date accessed: 10.09.2023).

- 2) introduction of GPS tracking units for agricultural machinery in order to facilitate its tracking and management;
- 3) creation of automated systems for managing land banks of agricultural enterprises for more efficient use of land resources;
- 4) use of drones and relevant algorithms (for example, geospatial analysis) to collect and analyze images in real time and to ensure accuracy of applying fertilizers and plant protection products;
- 5) development of solutions for laboratory diagnostics and agronomic researches;
- 6) development of innovative solutions for managing energy efficiency and fuel use;
- 7) implementation of automated irrigation systems for more efficient use of water resources;
- 8) development and launch of startups aimed at innovative development of agricultural sector of Ukraine.

Thus, there are already several national companies operating in Ukraine that specialize in creation of agrarian startups focused on development of software solutions for *Soft.Farm* (free online system for planning, accounting and analyzing activities of agricultural enterprises). Here are some examples of such innovations. First, these are integrated IT solutions for crop and animal husbandry (electronic logs of zootechnical activities, livestock accounting; management of animal nutrition; precision farming and agricultural intelligence). Secondly, the use of GPS equipment monitoring and analysis of satellite images of

meteorological data makes it possible to monitor crops and the state of agricultural equipment in real time. Third, the IT-Lynx system includes an automated irrigation system with automated water supply and soil temperature and moisture monitoring functions. Fourth, GPS monitoring of fuel consumption by agricultural machinery under the *AgriLab* brand (an international center for precision agriculture that develops complex solutions to improve efficiency of agricultural enterprises). Fifth, this is implementation of remote sensing and soil condition analysis for small and medium-sized agricultural farms using drones and multispectral cameras. Such innovative solutions are aimed at improving productivity and management of agricultural operations in Ukraine.

Forensic expert community considers application of blockchain technologies to be an innovative direction in agribusiness. In particular, in agribusiness, it can be used for concluding smart contracts and further automated monitoring of their execution. Smart contract can function as an automated system designed to execute an agreement concluded in a different form (currently, such automated systems are widely used by banks, telecommunications operators, etc.)⁴⁴. Blockchain technology makes possible to record complete information about agricultural products and food products, starting from the moment of their creation and ending at the moment when they reach the hands of the final consumers: thanks to the use of QR codes, this information is easily accessible (for example, doctor can

44 Мамчур Л., Недибалюк О. Цивільно-правові реалії допустимості використання смарт-контракту у договірних відносинах. *Історико-правовий часопис*. 2018. № 2 (12). С. 92. URL: http://nbuv.gov.ua/UJRN/ipch_2018_2_20 (date accessed: 10.09.2023).

quickly learn about quality products consumed by the patient)⁴⁵.

Ensuring innovative development of agriculture involves: creation of appropriate infrastructure for development and implementation of new technologies, products and services; organizational and administrative activities aimed at the use and commercialization of scientific research and development, which contribute to increasing competitiveness of agricultural enterprises⁴⁶. P. T. Sabluk rightly noted that innovative infrastructure and innovative process in agricultural sector have their own characteristics, due to specifics of agricultural production, interacting with natural factors and uses living organisms and natural resources as means of production⁴⁷. Indeed, innovative activity in agriculture has special objects of legal regulation (in particular, new varieties of plants, breeds of animals, cultivation technologies, storage of agricultural products) and is tied to seasonality. In

addition, agricultural innovations have a rather long payback period and require adaptation of plants and animals to different territorial climatic conditions⁴⁸. Given these characteristics, innovative activity in agricultural sector needs to be regulated at the legislative level.

O. E. Simson defines innovative legal relations as relations between subjects of innovative activity for transfer (use, implementation) of objects of innovation in entrepreneurial field for the purpose of obtaining profit⁴⁹. At the same time, innovative legal relations are diverse of mixed legal nature, as they have both public and private legal components.

General content of innovative activity in Ukraine is recorded in Art. 1 of Law of Ukraine: *On Innovation Activity*⁵⁰ and Ch. 34 of *Economic Code of Ukraine*⁵¹. It is appropriate to note that, although the aforementioned Law defines innovative activity as implementation of scientific and technical developments in creation of competitive goods and

45 Рутіцька В. Блокчейн плюс сільське господарство: як зміниться життя споживача і бізнесу. *Українська правда*. 25.10.2017. URL: <https://www.epravda.com.ua/publications/2017/10/25/630431/> (date accessed: 10.09.2023).

46 Герасименко А. А., Богачев Л. А. Инновационные проблемы сельского хозяйства современной Украины. *Молодий вчений*. 2014. № 5 (1). С. 29, 30. URL: http://nbuv.gov.ua/UJRN/molv_2014_5%281%29__7 (date accessed: 10.09.2023).

47 Саблук П. Т. Інноваційна модель розвитку аграрного сектору економіки України та роль науки в її становленні. *Проблеми інноваційно-інвестиційного розвитку. Серія: Економіка та менеджмент*. 2016. № 9. С. 36. URL: http://nbuv.gov.ua/UJRN/Piir_2016_9_5 (date accessed: 10.09.2023).

48 Олійник О. В., Сідельнікова І. В. Інноваційна діяльність: особливості розвитку і активізації в аграрному виробництві. *Збірник наукових праць ХНПУ імені Г. С. Сковороди «Економіка»*. 2017. Вип. 17. С. 76. URL: <http://journals.hnpu.edu.ua/index.php/economics/article/view/259> (date accessed: 10.09.2023).

49 Сімсон О. Інноваційні правовідносини. Проблема ідентифікації та класифікації. *Теорія і практика інтелектуальної власності*. 2010. № 5. С. 99. URL: http://www.ndiiv.org.ua/Files2/2010_5/simson.pdf (date accessed: 10.09.2023).

50 Про інноваційну діяльність : Закон України від 04.07.2002 р. № 40-IV (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/40-15#Text> (date accessed: 10.09.2023).

51 Господарський кодекс України URL: <https://zakon.rada.gov.ua/laws/show/436-15#Text> (date accessed: 10.09.2023).

services⁵², *Commercial Code* considers it as introduction of investments for the purpose of carrying out long-term scientific and technical programs with long-term periods of payback of costs and implementation of new scientific and technical achievements in production and other fields of life⁵³.

It is worth noting that investments in agribusiness are a component of material and technical support of agricultural producers. Full-scale Russian aggression against Ukraine had a negative impact on development of agricultural innovations and inflow of investments into agricultural sector of our country. Hostilities caused risks for foreign investors and outflow of investments from the country, lack of benefits for agricultural producers due to the lack of funds for agribusiness development, postponement of innovative projects due to supply disruptions and inaccessibility to resources and technologies. Increase in defense spending had a negative impact on the financing of innovations in all sectors of national economy. Active hostilities harmed Ukrainian trade relations with other countries (in particular, limiting the export of agricultural products).

In these extremely difficult conditions, Ukrainian Government took necessary

regulatory steps to protect property interests of manufacturers. For example, approved the Methods for determining the damage and the amount of damage caused to enterprises, institutions and organizations of all forms of ownership as a result of destruction and damage to their property in connection with the armed aggression of the Russian Federation, as well as the lost profit from the impossibility or obstacles in the conduct of economic activity, in 1 clause of 7 section it is expressly provided that “assessment of damages caused to victims as a result of armed aggression is carried out by conducting an independent assessment of damages or is the result of a forensic examination (expert study)”⁵⁴. Forensic examination (forensic research), related to damage assessment and property assessment is carried out under the conditions and in the order provided by the Law of Ukraine *On Judicial Examination*⁵⁵, taking into account specifics of methodical regulation of assessment of damages caused by loss, destruction and damage to property of State, communal and private forms of ownership during armed aggression, defined by these Methods⁵⁶ and in the research part of forensic expert conclusion, all procedures related

52 Про інноваційну діяльність URL: <https://zakon.rada.gov.ua/laws/show/40-15#Text> (date accessed: 10.09.2023).

53 Господарський кодекс України URL: <https://zakon.rada.gov.ua/laws/show/436-15#Text> (date accessed: 10.09.2023).

54 Методика визначення шкоди та обсягу збитків, завданих підприємствам, установам та організаціям усіх форм власності внаслідок знищення та пошкодження їх майна у зв'язку із збройною агресією Російської Федерації, а також упущеної вигоди від неможливості чи перешкод у провадженні господарської діяльності : затв. наказом Мінекономіки України та Фондом держмайна України від 18.10.2022 р. № 3904/1223. URL: <https://zakon.rada.gov.ua/laws/show/z1522-22#Text> (date accessed: 10.09.2023).

55 Про судову експертизу : Закон України від 25.02.1994 р. № 4038-XII (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/4038-12#Text> (date accessed: 10.09.2023).

56 Методика визначення шкоди та обсягу збитків URL: <https://zakon.rada.gov.ua/laws/show/z1522-22#Text> (date accessed: 10.09.2023).

to assessment of damages provided for by these Methods ⁵⁷ are reflected. In addition, Procedure for determining damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation ⁵⁸ stipulates, in particular, that assessment of damages caused to victims is carried out using an analytical assessment of damages, standardized, independent assessment of damages or it is the result of a forensic examination.

In general, the actions of agricultural enterprises that have suffered property losses can be divided into several stages:

- 1) inventory of agricultural enterprise assets;
- 2) damage size assessment;
- 3) evidentiary information collection;
- 4) compensation procedure for damages and/or lost profit.

There are two possible ways to compensate for damage:

- 1) by decision of Ukrainian judicial authorities;
- 2) by decision of international judicial authorities.

It is worth dwelling on possibility of applying to Ukrainian courts, as this method is simple and available for any business. In the courts of Ukraine, despite the presence of representatives of the Russian Federation at the court session, Russian Federation cannot act as a defendant. Instead, Supreme Court of Ukraine concluded in April 2022 that such cases can be considered in Ukrainian courts regardless of the presence of

representatives of the Russian Federation at the court hearing ⁵⁹. Therefore, currently it is possible to use entire available evidence base and Ukrainian legislation to establish, at a minimum, facts of damage and lost profit to the agricultural producer on these grounds.

As for the issue of alternative sources of financing and technological solutions for the agricultural sector in wartime, Ministry of Digital Information of Ukraine has activated the process of developing agricultural startups and grant projects for the development of agribusiness even in wartime thanks to the *Diia.Business* portal.

Therefore, a significant number of legal regulations are in force in Ukraine determining directions and mechanisms for development of agro-innovations in the country. However, some legislative norms have not been implemented (especially in the agrarian sector of the economy), some provisions have been suspended or canceled altogether and some exist only at the level of declarations, due to which the current State of legal regulation of investment in the agro-innovative sector does not meet modern requirements. It is obvious that agribusiness in Ukraine is an important field of social relations, that currently needs comprehensive legal improvement and further development and expects significant changes in the near future (thanks to the development of agribusiness startups that will implement investment projects).

Use of blockchain technology and artificial intelligence in implementation

⁵⁷ Там само.

⁵⁸ Порядок визначення шкоди та збитків, завданих Україні внаслідок збройної агресії Російської Федерації : затв. постановою КМУ від 20.03.2022 р. № 326 (зі змін. та допов.). URL: <https://zakon.rada.gov.ua/laws/show/326-2022-%D0%BF#Text> (date accessed: 10.09.2023).

⁵⁹ Постанова ВСУ від 14.04.2022 р. Справа № 308/9708/19. Провадження № 61-18782св21 / ipLex. URL: <http://iplex.com.ua/doc.php?regnum=104086064&red=100003eeb1679d17f8700ac5d2b26f-dc36cbbf&d=5> (date accessed: 10.09.2023).

of innovative startups in the field of agribusiness requires appropriate legal regulation. Blockchain technologies will contribute to product quality control, and best practices of artificial intelligence will contribute to development of agricultural technologies (from virtual platforms and chatbots to robotics and drones for monitoring and cultivating agricultural land). It is important to remember that use of artificial intelligence has certain risks that should be regulated in the legal field.

Currently, the most priority areas of investment in the agricultural sector of the country are preservation of biodiversity, the decarbonization of key components of the food system, as well as maintenance of soil quality and the implementation of a single digital management system. For example, the *Astarta* company created its own IT company: *AgriChain* that developed a platform for a single digital management system in agribusiness. In addition, widespread use of satellite systems for monitoring and data analysis in agriculture is very promising: it will contribute to accurate application of fertilizers and seeds, control of growth of agricultural products and implementation of other useful measures.

Conclusions

Conducted research of regulatory framework for investment activities and analysis of related issues in the context of international standards for investing in the agricultural sector of economy allows us to come to the conclusion that on the eve of full-scale invasion of the Russian aggressors on the territory of Ukraine, positive changes were observed in the aspect of improving the norms regulating procedure of attracting investments in

agriculture of our country. We consider it expedient to direct further steps in this direction to the following:

- 1) elimination of deficiencies in regulatory and legal regulation of investment activities;
- 2) increasing level of state support for agriculture;
- 3) clear demarcation of competences of state authorities implementing investment policy.

Agricultural sector is a dynamic catalyst of the country economy, therefore attracting investments into it becomes a leading factor for effective development of the entire national economy. Sustainable development of rural areas of Ukraine depends on availability of direct foreign investments in the agricultural sector. Factors that contribute to foreign investment in the national agricultural sector, as well as the issues that arise while attracting investment, should be considered while updating the current legislation.

Careful analysis of the main indicators regarding activity of foreign investors in agricultural economy of Ukraine indicates that agricultural producers need investments immediately after they receive permission to open agricultural enterprise, as well as at the stage of processing and selling their products (in order to increase competitiveness). First of all, innovative investments in agricultural sector, aimed at improving efficiency of production, increasing quality and safety of agricultural products and expanding their assortment in order to create competitive Ukrainian agricultural producers, should receive support and distribution.

For our country, one of optimal options, which involving application of best practices of countries with a developed agrarian economy (in connection with

implementation of European Union–Ukraine Association Agreement) is improvement of business climate in agricultural sector of national economy, creation of conditions for increasing the volume of investment, expansion of opportunities for exporting products of the domestic agricultural sector, providing domestic consumers with food of appropriate quality at affordable prices, as well as attracting investments through public-private partnerships, grant support and/or privatization. Mechanism for protecting corporate rights and management security in agrarian corporate enterprises needs improvement (in particular, clarification of legal position of agrarian holding companies with the aim of creating a more attractive investment climate).

We consider promising direction of further research of the discussed issues to be: determination of content of agro-innovative legal relations; order of their occurrence, implementation and termination; analysis of their legal nature. Legal support for artificial intelligence use in agriculture (as a phenomenon that will not only contribute to quantum jump in agribusiness, but has certain security risks) and blockchain deserve special attention.

Since the current agricultural legislation of Ukraine does not contain special norms dedicated to investment in the agricultural sector, we consider it necessary to update the legal framework in this part by adopting, *firstly*, Concept of State Investment Policy in Agriculture and *secondly*, new law on state investment agrarian policy with a separate section: *Investment policy* to regulate the general principles of foreign investment in agriculture of our country.

Правове регулювання інноваційно-інвестиційної діяльності в аграрному секторі економіки України

Дарина Кондратенко

Інвестиційну діяльність у галузі сільського господарства вітчизняні науковці та практики ретельно вивчили за критеріями економічних показників, натомість поза їхньою увагою залишилося законодавство, яким обумовлено порядок залучення інвестицій до аграрного сектора національної економіки. Для подолання об'єктивних і суб'єктивних гальмівних перепон, для невпинного й інтенсивного розвитку сільське господарство України потребує особливої підтримки, що значною мірою можна забезпечити за допомогою іноземних інвестицій. Гарантувати продуктивність і рентабельність усієї сільськогосподарської галузі, особливо її найбільш трудомістких ділянок (наприклад, тваринництва, садівництва, вирощування спеціальних культур та ін.), до того ж в умовах повномасштабної російської агресії проти України, можливо тільки завдяки поліпшенню та налагодженню інвестиційної діяльності в цій царині, а також безумовній державній підтримці й запровадженню інновацій. Досліджено нормативно-правове регулювання процесу залучення інвестицій в аграрний сектор України. Окреслено шляхи вдосконалення законодавчого регулювання інвестиційного процесу задля підвищення привабливості інвестиційного клімату в нашій державі. Метою статті є виявити проблемні аспекти чинних законів і підзаконних нормативно-правових актів, що заважають оптимізувати процес інвестування в аграрний сектор національної економіки, а також розглянути міжнародно-правову базу із цього

питання. Для досягнення поставленої мети використано загальнонауковий діалектичний метод і методи наукового пізнання, а для повного й усебічного розкриття теми дослідження — герменевтичний, формально-юридичний і формально-логічний методи.

Ключові слова: аграрний сектор; інвестиції; інновації; інвестиційна діяльність; нормативно-правове регулювання; судова експертиза; судовий захист.

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Declaration of Competing Interest

The author declares that there are no conflict of interest.

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