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DIRECTIONS FOR IMPROVEMENT OF MECHANISM OF PUBLIC-PRIVATE PARTNERSHIP IN UKRAINE

НАПРЯМИ ВДОСКОНАЛЕННЯ МЕХАНІЗМУ ДЕРЖАВНО-ПРИВАТНОГО ПАРТНЕРСТВА В УКРАЇНІ

НАПРАВЛЕНИЯ СОВЕРШЕНСТВОВАНИЯ МЕХАНИЗМА ГОСУДАРСТВЕННО-ЧАСТНОГО ПАРТНЕРСТВА В УКРАИНЕ

Summary. The article is devoted to public-private partnership (PPP), which is formed as a result of consolidation of efforts of state authorities, local governments and business structures. The paper examines the domestic practice of applying public-private partnership projects. The definition of the concept of "public-private partnership" under the current system of legislative regulation of public-private partnership in Ukraine, as cooperation between public and private partners, does not correspond to best international practices in the implementation of public-private partnership projects. The purpose of the study is to analyze the state mechanism of public-private partnership in Ukraine, its advantages and opportunities in the modern period. In the work, such general scientific methods as generalization, synthesis, analysis, comparison are used. The article systematizes the main normative acts regulating public-private partnership in Ukraine. It was revealed that a number of legislative acts regulating certain forms of implementation of public-private partnership, as well as mechanisms of attracting private investments, are in force today. It is substantiated that under the conditions of maintaining the current model of regulation of legal relations in the field of public-private partnership, a high risk exists for a private partner, which greatly complicates the process of realization of the public-private partnership project and leads to a decrease in the interest of potential partners in cooperation with the state partner within the framework of the state- private partnership. It was revealed that the main problem is the development of procedures and stimulation of processes that

ensure the effectiveness of public-private partnership and the establishment of new institutions. Proposals are developed that will improve the normative bases of realization of public-private projects, increase their quantity and effectiveness.

Key words: *public-private partnership, public-private partnership projects, public-private partnership mechanism, partnership between government and business.*

Анотація. *Стаття присвячена державно-приватному партнерству, яке утворюється в результаті консолідації зусиль державної влади, органів місцевого самоврядування і бізнес-структур. У роботі досліджено вітчизняну практику застосування проектів державно-приватного партнерства. Визначення поняття «державно-приватного партнерства» за поточною системою законодавчого регулювання сфери державно-приватного партнерства в Україні, як співробітництва між державним та приватним партнерами, не відповідає кращим світовим практикам впровадження проектів державно-приватного партнерства. Метою дослідження є аналіз державного механізму державно-приватного партнерства в Україні, його переваги та можливості в сучасний період. У роботі використано такі загальнонаукові методи, як узагальнення, синтез, аналіз, порівняння. В статті систематизовано основні нормативні акти, які регулюють державно-приватне партнерство в Україні. Виявлено, що на сьогодні є чинним низка законодавчих актів, які регулюють окремі форми здійснення державно-приватне партнерства, а також механізми залучення приватних інвестицій. Обґрунтовано, що за умов збереження чинної моделі регулювання правовідносин у сфері державно-приватного партнерства, для приватного партнера зберігається високий ризик, що значно ускладнює процес реалізації проекту державно-приватного*

партнерства та спричиняє зниження зацікавленості потенційних партнерів в співпраці з державним партнером в рамках механізму державно-приватного партнерства. Виявлено, що основною є проблема вироблення процедур і стимулювання процесів, які забезпечують ефективність функціонування державно-приватного партнерства та започаткування нових інститутів. Розроблено пропозиції, які дозволять покращити нормативні основи реалізації державно-приватних проектів, підвищити їх кількість та результативність.

Ключові слова: *державно-приватне партнерство, проекти державно-приватного партнерства, механізм державно-приватного партнерства, партнерство влади і бізнесу.*

Анотація. *Стаття посвящена государственно-частному партнерству, которое создается в результате консолидации усилий государственной власти, органов местного самоуправления и бизнес-структур. В работе исследована отечественная практика применения проектов государственно-частного партнерства. Определение понятия «государственно-частного партнерства» по настоящей системе законодательного регулирования сферы государственно-частного партнерства в Украине, как сотрудничества между государственным и частным партнерами, не соответствует лучшим мировым практикам внедрения проектов государственно-частного партнерства. Целью исследования является анализ государственного механизма государственно-частного партнерства в Украине, его преимущества и возможности в современный период. В работе использованы такие общенаучные методы, как обобщение, синтез, анализ, сравнение. В статье систематизированы основные в нормативные акты, которые регулируют государственно-частное партнерство в Украине. Выведено, что на сегодня является действительным ряд законодательных актов,*

которые регулируют отдельные формы осуществления государственно-частного партнерства, а также механизмы привлечения частных инвестиций. Обосновано, что по условиям сбережения действующей модели регулирования правоотношений в сфере государственно-частного партнерства, для частного партнера сохраняется высокий риск, что значительно усложняет процесс реализации проекта государственно-частного партнерства и способствует снижению заинтересованности потенциальных партнеров в сотрудничестве с государственным партнером в рамках механизма государственно-частного партнерства. Выявлено, что основной является проблема выработки процедур и стимулирование процессов, которые обеспечивают эффективность функционирования государственно-частного партнерства и основания новых институтов. Разработаны предложения, которые позволяют улучшить нормативные основы реализации государственно-частных проектов, увеличить их количество и результативность.

***Ключевые слова:** государственно-частное партнерство, проекты государственно-частного партнерства, механизм государственно-частного партнерства, партнерство власти и бизнеса.*

Statement of the problem. Public-private partnership as a model for cooperation is confirmed by changes in successful projects in developed and developing countries. With the establishment of the legislative and institutional framework, the successful preparation and implementation of pilot projects of public-private partnership in various sectors of the Ukrainian economy, in particular infrastructure, energy, and utilities, will open up new opportunities for potential investors, banks and consultants in one of the largest markets of the Central and Eastern Europe.

Analysis of recent research and publications. The research, problems and prospects of the formation of public-private partnership were given by such

domestic scientists as: N. V. Butenko [2], Y. S. Zaloznova [2], I. P. Petrova [2], O. V. Berdanova [10], V. M. Vakulenko [10], M. D. Vasilenko [10], K. V. Pavlyuk [11], D. V. Popovich [12], B. O. Shevchenko [13], and foreign scientists: V. G. Varnavsky [14], A. F. Sinyakova [15], V. I. Yakunin [16]. The writings of these scholars explored the forms of public-private partnership, which are considered by many of them as a new technology for economic development.

Formulation purposes of article (problem). At the same time, the institutional mechanisms of public-private partnership in the field of interaction between government and business are not yet sufficiently developed.

The main material. The mechanism of public-private partnership was introduced into the legal plane in 2010 with the adoption of the Law of Ukraine "On Public-Private Partnership" [1], which outlines the organizational and legal principles of contractual interaction of partners on the basis of principles of public-private partnership. The market for public-private partnership projects is currently under construction. At the same time, the dynamics of the growth of the number of projects implemented under the conditions of public-private partnership according to the statistics of the Ministry of Economic Development during the last 5 years (2012-2016) has shown that there is an increase in the interest of both the private and public parties in such a legal form of cooperation.

Table 1

Dynamics of quantitative growth of projects in terms of public-private partnership forms, 2012-2016 [2]

Types of projects	Years				
	2012	2013	2014	2015	2016
Public-private partnership					1
Common activity	32	31	33	31	32
Concession	79	128	138	146	153
Together	111	159	171	177	186

These projects are implemented in the following areas: [3]:

- treatment of waste (60.5% of the total);
- collection, purification and distribution of water (20% of the total);
- construction and / or operation of highways, roads. Railways, runways at aerodromes, bridges, road overpasses, tunnels and subways, sea and river ports and their infrastructure (8.6% of the total);
- production, distribution and supply of electric energy (2.7% of the total);
- real estate management (1.1% of the total);
- search, exploration of minerals and extraction (0.5% of the total);
- production, transportation and supply of heat (3.2% of the total);
- tourism, recreation, recreation, culture and sports (0.5% of the total);
- others (2.9% of the total).

Much of the projects implemented on the basis of the mechanism of public-private partnership are concession contracts. The current system of legislative regulation of public-private partnership in Ukraine is characterized by a number of peculiarities that cause difficulties in the practical implementation of projects. Lack of institutional basis for effective implementation of projects as there is no entity in Ukraine that is responsible for considering and approving project proposals both for public-private partnership and for concessions. Today, the state partner of Ukraine, the Autonomous Republic of Crimea, territorial communities in the person of the relevant state bodies and local self-government bodies can act as a state partner. Together with the general Law of Ukraine "On Concessions" [4], three sectoral concession laws (the Law of Ukraine "On Concessions for the Construction and Operation of Highways") [5], the Law of Ukraine "On the Features of Leasing or Concession of Objects in Spheres heat supply, water supply and sewage systems in communal ownership "[6], the Law of Ukraine" On the features of lease or concession of objects of the water and energy complex that are in state ownership "[7]). Measures to reform the legislation in the implementation of the legal relationship of concessions should

be aimed at prioritizing the application of the general Law of Ukraine "On Concessions." Despite the imperfection of the current legal regulation of public-private partnership relations, it should be emphasized that work is under way to improve the legislation to bring it in line with the best international practices in the field of public-private partnership. The Law of Ukraine "On Amendments to Some Laws of Ukraine on Removal of Regulatory Barriers for the Development of Public-Private Partnership and Stimulating Investments in Ukraine" [8] introduced changes aimed at the use of effective mechanisms for attracting investment. Under the auspices of USAID and local experts on public-private partnerships, the procedures for calculating the size of the concession payment and the possibility of an independent choice of how to calculate a concession payment were changed [9]. The procedure for conducting the competition and the analysis of the effectiveness of public-private partnership has been improved. In September 2017, the Ministry of Economic Development and Trade presented a draft new edition of the Law of Ukraine "On Concessions", which was developed with the support of the EBRD and international consultants, which resulted from the search for a balance of interests of all interested groups in the process of updating the infrastructure and improving the quality of socially important services. However, the current legislation does not stipulate the criteria and procedure for determining the feasibility of implementing public-private partnership projects, the implementation of which would contribute to the achievement of the priority goals of socio-economic development. A prerequisite for a further market of public-private partnership projects is the development of a methodology for using standardized tools for a common system for evaluating potential projects, such as:

- comparison of implementation through a public investment project (Public Sector Comparator or PSC shortened);
- an assessment of the effective use of funds (Value for Money Assessment or short-term VFM).

The solution to the problem may be the preparation by the Ministry of Finance of Ukraine of appropriate methodological recommendations for the identification, evaluation and accounting of fiscal risks of projects implemented by the public partner on the basis of the mechanism of public-private partnership, in the first place using concession.

Improving the regulatory framework for implementing public-private partnership projects requires a number of measures, in particular:

- making appropriate amendments to the Law of Ukraine "On Public-Private Partnership" and the corresponding laws that regulate the scope of concession relations, taking into account the experience of the best world practices of successful experience of attracting private investors under the terms of the mechanism of public-private partnership;
- improvement of the conceptual distinction between public-private partnership and concession, clear definition of the issue of compensation for concluding a concession agreement, introduction of the principle of the dependence of concession relations on the volume of concessionaire's investments under the agreement;
- establishing at the legislative level the right to transfer the right under the agreement to creditors in the event that it is impossible for private partners to fulfill their obligations under the agreement and, accordingly, the possibility of assigning rights to the contract partner, if necessary, in exceptional cases (for example, related to security matters).

Insights from this study and perspectives for further research in this direction. Ukraine is gradually developing the mechanism of public-private partnership: the normative base in the sphere of public-private partnership has been developed and introduced, and concession legislation is being improved, which aims to take into account the best international standards for project preparation involving international organizations and business representatives. Implementation of pilot projects with the support of international financial

organizations is a prerequisite for the successful experience of implementing public-private partnership projects using the best international experience and taking into account local specifics of Ukraine. The results of the implementation of specific projects at the national and regional levels should be the basis for further work on improving the normative procedures for the initiation, development and approval of projects.

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