

PROBLEMS OF LEGISLATIVE REGULATION OF INNOVATIVE ACTIVITY IN UKRAINE

**Makhinchuk Vitalii, F.G. Burchak Scientific-Research Institute of Private
Gusarov Konstantin, Yaroslav Mudryi National Law University**

**Kulaha Elina, Kyiv National Economic University named after Vadym
Hetman**

Koroied Sergii, King Danylo University

**Kovalenko Inna, Institute of Law and Modern Learning Technologies of Kyiv
National University of Technologies and Design**

ABSTRACT

Description: *The aim of the article is to analyze legislative regulation of innovative activity in Ukraine, to identify the relevant problems and to develop the proposals to overcome them based on the study of foreign experience.*

The Subject of Study: *The subject of the study is problems of legislative regulation of innovative activity in Ukraine.*

Methodology: *The methodological basis for the article is the following methods of scientific knowledge: normative and dogmatic method, monographic method, methods of analysis and synthesis, comparative and legal method, and statistical method, abstract and logical method.*

The Results of the Study: *Ukrainian legal acts governing innovative activity in the country were examined. The peculiarities of State regulation of this issue in some countries were investigated.*

Practical Implications: *The problems of legislative regulation of innovative activity in Ukraine, which are: imperfect regulatory framework, lack of public funding, lack of effective mechanisms for attracting foreign investment, were identified.*

Value/Originality: *Based on the study of foreign experience, the ways to improve the legislation of Ukraine regulating the issue under consideration were proposed.*

Keywords: Legislative Regulation, Innovation, Innovative Activity, Ukraine, Foreign Experience.

INTRODUCTION

Ukraine's commitment to European integration requires the updating and improvement of legislation in all sectors of activity, including innovation. Our State is interested in processing and implementing an innovative development model that should promote a high and stable rate of sustained economic growth, as well as solve some social and environmental problems, will make the national economy competitive, will enhance export security and increase its status in the European Union. In addition, research and innovation will also contribute to the achievement

of the Sustainable Development Goals 2030 (UN), which Ukraine has acceded to, since the industrialization of Ukraine and the introduction of innovative technologies in production are necessary for the sustainable growth of the national economy and its structure optimization.

Nowadays, however, this sector faces a number of challenges. These include inadequate regulatory frameworks, insufficient public funding and the absence of effective mechanisms to attract foreign investment. In 2019, according to the Global Innovation Index, Ukraine lost 4 positions and ranked 47th among 129 economies of the world. The 80 indicators provide a complete picture of innovative development, including a review of the political, educational, infrastructure and business situation (Ministry of Education and Science of Ukraine, 2020).

Therefore, the aim of the article is to analyse the legislative regulation of innovation in Ukraine, to identify relevant problems and develop proposals to overcome them based on the study of foreign experience.

MATERIALS AND METHODS

In order to achieve the aim of the Article, the following methods of scientific knowledge are used: normative and dogmatic method was applied when analysing legal acts regulating innovative activity in Ukraine. Monographic method helped in the study of world experience of State regulation of innovative activity in different countries. The methods of analysis and synthesis enabled to assess the effectiveness of mechanisms for State support of innovation in Ukraine. Comparative and legal method allowed comparing the peculiarities of State regulation of innovative activity in different countries. Statistical method was useful when considering the current state of innovative activity in Ukraine. Abstract and logical method was used to formulate the relevant conclusions and suggestions.

The scientific and theoretical basis for the Article is general theoretical works, which highlight the fundamental provisions of the theory of innovative activity. The normative basis for the work is the Constitution of Ukraine, legislative acts of the Verkhovna Rada of Ukraine, acts of the President of Ukraine, regulations of the Cabinet of Ministers of Ukraine governing the issues of innovative activity and innovative development. The empirical basis for the study is the data of the State Statistics Service of Ukraine, the Ministry of Education and Science of Ukraine, monographs and articles of the scholars of various branches of law, the results of the authors' own researches.

RESULTS AND DISCUSSION

The current legal and regulatory framework (laws, Presidential decrees, by-laws in the form of Government resolutions, orders issued by central executive authorities, etc.) for scientific, technical and innovative activities comprises about 200 documents.

In particular, national innovation legislation includes provisions of the Constitution of Ukraine, the Commercial Code, the Law of Ukraine "*On innovative activity*", the Law of Ukraine "*On priority areas of innovative activity in Ukraine*", the Law of Ukraine "*On investment activity*", and the Law of Ukraine "*On scientific and scientific and technical activity*", the Law of Ukraine "*On the special mode of innovative activity of technology parks*" and other legal regulations defining the legal, economic and organizational principles of the State regulatory

framework for innovation activity in Ukraine, determining forms of State innovation promotion processes and aimed at supporting the innovative development of the Ukrainian economy.

The Constitution of Ukraine (Law of Ukraine, 1996) is at the top of the hierarchy of these legal regulations, Article 54 thereof guarantees citizens the freedom of scientific and technical as well as other forms of creativity, the protection of intellectual property and their copyright. The State promotes the development of science and scientific relations between Ukraine and the international community.

In addition to the Constitution of Ukraine, provisions on innovation are in numerous acts of various branches of legislation. They can be divided into two groups.

The first group includes legal regulations that determine the framework for public innovation policy. For example, this is the Law of Ukraine "*On scientific and technical activity*" (Law of Ukraine, 2015). It provides the legal, organizational and financial framework for the functioning and development of scientific, scientific and technical activities and creates the conditions for scientific, scientific and technical activities, for meeting the needs of society and the State for technological development through the interaction of education, science, business and power.

Moreover, this group includes the Concept of scientific and technological and innovative development of Ukraine (Resolution of the Verkhovna Rada of Ukraine, 1999). The Concept provides for the main goals, priority areas and principles of the national science and technology policy, mechanisms for accelerated innovation development, guidelines for the structural processing of scientific and technological potential and its resources. It provides for the framework for relationship between the State and scientific and technological actors, based on the need for priority public support for science, technology and innovation as a source of economic growth, part of the national culture, education and the sector of citizens' intellectual potential realization. The Concept is intended for the period of the economy stabilization and achievement of its permanent development.

Special legal regulations on innovation activities in Ukraine are:

The Law of Ukraine "*On innovative activity*" (Law of Ukraine, 2002) provides for the legal, economic and organizational bases of the State regulatory framework for innovation in Ukraine establishes the forms of State innovation promotion processes and is aimed at supporting the innovative development of the Ukrainian economy. According to the definition provided in this Law, innovation is an activity aimed at using and commercializing the results of research and development and predetermines the entry of new competitive goods and services into the market.

The Law of Ukraine "*On investment activity*" (Law of Ukraine, 1991) provides for the general legal, economic and social conditions for investment activity in Ukraine. It is aimed at ensuring equal protection of the rights, interests and property of investment actors regardless of the form of ownership, as well as effective investment in the economy of Ukraine, development of international economic cooperation and integration. Article 3 of the Law stipulates that innovation is a set of activities aimed at the processing, introduction, dissemination and realization of innovations for commercial and/or social impact by means of investments in innovation objects.

The Law of Ukraine "*On priority areas of innovative activity in Ukraine*" (Law of Ukraine, 2011) is aimed at an innovative model of economic development by focussing the resources of the State on priority areas of scientific and technical renewal of production, by

improving the competitiveness of domestic products in domestic and foreign markets. The priority areas of innovation in Ukraine require the executive authorities at all levels to establish a regime for the greatest possible promotion of activities aimed at implementing the relevant priority areas and to focus financial and economic, as well as intellectual, resources on them.

The Law of Ukraine "*On the special mode of innovative activity of technology parks*" (Law of Ukraine, 1999), provides for the legal and economic framework for initiating and functioning of a special mode of investment and innovation activities of technological parks.

The Law of Ukraine "*On State targeted programmes*" (Law of Ukraine, 2004) establishes the bases for the development, approval and implementation of State targeted programmes. The State targeted programme is a set of interrelated tasks and activities aimed at solving the most important problems of the development of the State, individual sectors of the economy or administrative and territorial units; implemented by involving the funds of the State budget of Ukraine and agreed upon in terms of implementation, executors and resources. State targeted programmes are grouped into national programmes for economic, scientific and technical, social, national and cultural development, environmental protection and other programmes aimed at solving individual problems of economic and social development, as well as problems of development of individual branches of economy and administrative-territorial units requiring State support.

The Commercial Code of Ukraine (Law of Ukraine, 2003) considers the innovative activity only in the field of business and defines it as the activity of participants in economic relations, carried out on the basis of investments for long-term scientific and technical programmes with long payback periods and of new scientific advances in production and other sectors of public life (Article 325).

The second group of legal regulations is those considering innovations, science, technology and innovative activity only as part of the functioning of the country's social and economic problems. This group includes the Laws of Ukraine "*On the special mode of innovative activity of technology parks*", "*On priority areas of innovative activity in Ukraine*", the Resolutions of the Cabinet of Ministers of Ukraine on implementing these laws, as well as other legal regulations on certain aspects of innovation.

Therefore, the legislation governing innovation in Ukraine is extensive and fragmented. This issue is regulated by a large number of different legal instruments, often contradictory rather than complementary. In addition, most provisions are only declaratory and, although progressive, they have not been implemented.

According to the State Statistics Committee, the imperfect legislative framework is almost 40% of all reasons hindering innovation (State Statistics Service of Ukraine, 2020). This is the reason for the pervasive practice of ignoring legislation or suspending articles of laws relating to the financing and promotion of science, technology and innovation. For example, such neglect exists even on the part of the State, since the actual financing of scientific and technical activities from the State budget of Ukraine over the past five years has not exceeded 0.4% of GDP, while Article 34 of the Law "*On scientific and scientific and technical activity*" provides 1.7%. The proportion of targeted programme funding for research does not exceed 10% of the total expenditure on science, while 30% are prescribed by law (Stoliarchuk, 2011).

Furthermore, the current legal and regulatory framework is not fully in line with the knowledge economy. There is still a lack of a sufficiently effective legal framework for the protection of intellectual property rights, the operation of venture capital as a market-based

institution; the procedures for individual innovation actors are unreasonably complex. Moreover, the criteria for the innovation of projects and the distinction between investment and innovation projects are not established by law. The issues of objective expertise and the competitive basis for the budgetary financing of scientific, scientific and technical, and innovative programmes and projects are insufficiently regulated. For example, the Law of Ukraine "*On State targeted programmes*" provides for obligatory State expertise of State targeted programmes' projects according to the provisions of the law, which do not exist (Zhovnirchuk, 2012).

In addition, the scattered powers of the various bodies coordinating the work of the sector, as well as the low level of State funding, are challenges to the legislative regulation of innovative activity.

With regard to the first issue, in 25 years of reforms, an effective system of public investment management has not been provided. Relevant public authorities have been established, organized and dissolved, but a sound investment base for investment growth has not been founded. Nowadays, public investment management in Ukraine is carried out at the national and regional levels by various public authorities, from the Verkhovna Rada to local government bodies; each of which is authorised to implement investment policy specifically. Their involvement in investment management processes is conditioned by the functions they perform in the overall system of economic management (Fedorchak, 2017).

With regard to insufficient innovation funding, it is worth mentioning that in 2019, 29,536.7 million UAH went to this sector, that is 5% of the total funds allocated by all actors to innovation. In 2018 and 2017, the budget was even lower, 21,036.7 million UAH (4%) and 14,324.6 million UAH (3.5%) respectively.

Most of the financing for innovation, about 88%, came from enterprises. Six enterprises (3.9%) received funds from the State budget, and three enterprises (0.3%) received funds from foreign investors. In 2019, 782 Ukrainian enterprises involved in innovation activities. Of these, 13.8% initiated innovation, such as products and/or processes. In comparison, twice as many enterprises, 1,758, involved in innovation activities in 2012, but 13.6% initiated innovations (Ministry of Education and Science of Ukraine, 2020).

In contrast, Germany spent 15.8 billion euros on innovation in 2016, about 2.9% of the country's gross domestic product. Moreover, funding for this sector increased by 75% between 2005 and 2016 in this country. In 2018, Poland financed 24.1% of innovation research from the State budget, and in the Czech Republic the level of budget support for innovation was 10.5%. In the United States, the federal government's share of the USD 133 billion spent on innovation is almost half, 49.3% (Lihuzova et al., 2017).

In addition, Ukraine does not use incentive and promotion mechanisms such as subsidies, grants, subventions, concessional loans, enshrined in legislation and actively applied in most advanced countries of the world.

For example, in Great Britain, which is one of the leaders in scientific and innovative development in Europe, the number of new patents registered each year is increasing, and venture capital companies are being actively established, and granted significant concessions on:

1. Income tax relief;
2. Insurance of funds provided to venture capital companies by the State;
3. Reimbursement of innovation cost according to public programmes to subsidize small innovative firms;
4. Any amount of relief for the cost of products (services) and R&D expenditure.

5. In Germany, enterprises that initiate and carry out innovative activities enjoy the most favourable conditions for innovation:
6. Targeted subsidies provision to enterprises, mastering new technology;
7. Grants provision for raising the qualifications of research staff for up to three years;
8. The US supports enterprises that initiate and implement innovation by:
9. Soft loans provision to firms (up to 50% of the funds invested by the owner of the firm) with annual sales not exceeding 300 million euros, if they invest in the enterprise modernization, the development of new products and the rational use of energy;
10. Soft loans provision, up to 100,000 euros, to small and medium-sized enterprises entering into industrial cooperation with other firms.
11. The US supports enterprises that initiate and implement innovation by:
12. Tax relief for R&D firms up to 20% of the increase in R&D expenditure over the annual average of previous years;
13. Tax relief for up to 20% of companies' expenditure on basic research materials contracted by universities;
14. Deduction from taxable income of the scientific equipment cost that companies provide free to universities and research organizations;
15. Preferential treatment of depreciation;
16. Investment tax credit provision, namely income tax reduction from 6% up to 10% of the total investments in equipment (Dmytriv, 2014).

In Italy, the task of stimulating scientific, technical and innovative activities is fully performed by the State, but it does not abolish the benefits that previously existed in scientific organizations. From the wide arsenal of the actions carried out in the area of the State stimulation of scientific and technical and innovative activity, the following are the most important:

1. Tax incentives;
2. Incentives through depreciation policy (independent mechanism);
3. Direct budget subsidies to companies developing new types of products;
4. The possibility of obtaining an investment tax credit.

The main principle of the Italian innovation system is that tax benefits are provided not to scientific organizations, but to the companies and investors that meet the demand for research and innovation. The advantage of tax support is that it is provided not in advance, but for real innovation.

In order to stimulate innovation, as well as expand and strengthen the existing base for research and development in France, there is an extensive system of benefits:

1. Tax credit for the increase in R&D expenditures in the amount of 25% increase in the company's R&D expenditures compared to the level of the previous year;
2. Funds invested in risky projects are not taxed;
3. Preferential tax for new companies;
4. Providing State subsidies to organizations conducting research work under contracts up to 50% of the amount of costs for work commissioned by small and medium enterprises;
5. Providing subsidies to small and medium enterprises up to 50% of the cost of hiring research staff (up to 175 thousand euros per year) (Dmytriv, 2014).

CONCLUSION

Therefore, despite the priority of innovation development, currently, our State faces many challenges in this field. A range of legal regulations have provisions on innovative activity, but

they are fragmented and contradictory. Moreover, most provisions are only declaratory and, although progressive, they have not been implemented.

There is still a lack of a sufficiently effective legal framework for the protection of intellectual property rights, the operation of venture capital as a market-based institution; the procedures for individual innovation actors are unreasonably complex.

In addition, the scattered powers of the various bodies coordinating the performance of the sector, as well as the low level of State funding, the lack of innovation incentive and promotion mechanisms, actively applied in most advanced countries of the world, are challenges to the legislative regulation of innovative activity. In addition, the scattered powers of the various bodies coordinating the work of the sector, as well as the low level of State funding, are challenges to the legislative regulation of innovative activity.

“Operational” legal regulations in this sector require to be brought into line with European standards. The adoption of new laws would be redundant, as Ukraine has already had a large number of laws in force, and their increase could lead to even more disorder and imbalance.

On the contrary, our country’s priorities in this sector are:

1. Improvement of the legal and regulatory framework for innovation and investment;
2. Consolidation of the efforts of legislators and the governmental, scientific and business sectors of society in the best and comprehensive solution of the methodological, strategic and tactical problems relating to processing of a national innovation and investment system;
3. Processing of a strategy for the innovative and investment development of Ukraine in the face of the challenges of globalization enabling to open up prospects for initiating an innovative model of the country’s development and to ensure its competitiveness;
4. Development of an effective financial strategy to support innovation;
5. Creation of attractive conditions for innovators, promotion of innovative activity of entrepreneurship.

REFERENCES

- Dmytriv, V. (2014). *Global experience of financial regulation of the investment-innovative activities: Effective Economy*. Retrieved from <http://www.economy.nayka.com.ua/?op=1&z=3214>
- Fedorchak, O. (2017). Institutionalization of public administration of investment activity in Ukraine. *Public Administration and Local Self-Government*, 4(2), 136-148.
- Law of Ukraine. (1991). *On investment activity of September 18, no. 1560-XII*. Retrieved from <https://zakon.rada.gov.ua/laws/show/1560-12#Text>
- Law of Ukraine. (1996). *Commercial code of Ukraine of January 16, 2003 no. 436-IV*. Retrieved <https://zakon.rada.gov.ua/laws/show/436-15#Text>
- Law of Ukraine. (1996). *Constitution of Ukraine of June 28, no. 254k/96-VR*. Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>
- Law of Ukraine. (2002). *On innovative activity of July 04, 2002 no. 40-IV*. Retrieved from <https://zakon.rada.gov.ua/laws/show/40-15#Text>
- Law of Ukraine. (2004). *On State Targeted Programmes of March 18, 2004 no. 1621-IV*. Retrieved from <https://zakon.rada.gov.ua/laws/show/1621-15#Text>
- Law of Ukraine. (2011). *On priority areas of innovative activity in Ukraine of September 08, 2011 no. 3715-VI*. Retrieved from <https://zakon.rada.gov.ua/laws/show/3715-17#Text>
- Law of Ukraine. (2015). *On scientific and scientific and technical activity of November 26, 2015 no. 848-VIII*. Retrieved from <https://zakon.rada.gov.ua/laws/show/848-19#Text>
- Law of Ukraine. (1999). *On the special mode of innovative activity of technology parks of July 16, 1999 no. 991-XIV*. Retrieved from <https://zakon.rada.gov.ua/laws/show/991-14#Text>

- Lihuzova, V.O., Baklazhenko Y.V., & Hyria R.M. (2017). The world experience of State support for innovation. *Scientific Bulletin of V.O. Sukhomlynskyi National University of Mykolaiv*, 18(1), 36-41.
- Ministry of Education and Science of Ukraine. (2020). *Scientific and analytical research: Innovative activity in Ukraine in 2019*. Kyiv: UkrINTEI.
- Resolution of the Verkhovna Rada of Ukraine. (1999). *On the concept of scientific and technological and innovative development of Ukraine of July 13, 1999 no. 916-XIV*. Retrieved from <https://zakon.rada.gov.ua/laws/show/916-14#Text>
- State Statistics Service of Ukraine. (2020). *Economic statistics: Science, technology and innovation (2000-2019)*. Retrieved from <http://www.ukrstat.gov.ua/>
- Stoliarchuk, N. (2011). Problems of legal and regulatory issues of innovative activity. *Accounting and Finance of Agro-industrial Complex*, 4(1), 71-74.
- Zhovnirchuk, Y. (2012). *The analysis and ways of improving the regulatory framework to ensure the development of the innovative system of Ukraine*. Retrieved from <http://www.economy.nayka.com.ua/?op=1&z=934>