

Regulatory and legal basis of Ukraine's investment policy in the field of higher education

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Abstract. Elaboration and implementation of investment programs for the development of modern universities, cooperation with the business sector, public investment aimed at modernization of the educational environment, implementation of grants, etc. can now be considered as structural components of investment activities of higher education institutions in the context of strategic planning. Therefore, the process of active reform of the educational sector of Ukraine and its integration into the European educational space require a review of approaches, methods and forms of management of education and educational institutions, in particular on investment policy. **The purpose of the study** is to analyse and summarize the legislative aspects of introduction of the investment programs for the development of higher education institutions as an element of state educational policy. **The subject of the study** is the regulatory framework for investment activities of higher education institutions in Ukraine in the implementation of investment programs for their development as an element of state educational policy. The following **research methods** were used: terminological analysis (definition of the conceptual apparatus of the research), systematization of normative legal acts (study of normative provision and state of the researched problem), classification method (ranging of normative legal acts by branches of human activity). The **practical importance** of the study is in description of the current state of regulatory and legal support of Ukraine's investment policy in higher education. **As a result of the study**, we concluded that the investment activity of higher education institutions is determined by laws and subsidiary laws that regulate general aspects of Ukraine's investment policy at the state level and insufficiently regulate the development of investment opportunities at the institutional level. There is no concept of investment and investment activity in the regulations in the field of higher education at all. However, at the present stage of development of the studied branch it is important to specify the provisions of regulations and scientific concepts of Ukrainian investment policy for higher education. Thus, the analysis of regulations on investment activities of higher education institutions and the search for weaknesses in them will help improve the current legislation of Ukraine, identify priority areas for investment in education at the institutional level and consolidate investment opportunities of higher education institutions.

Keywords: higher education institution, investments, investment program of higher education institution development, national legislation, educational policy.

1 Introduction

The rationale of the chosen topic is that the higher education sector in Ukraine is currently in the process of reform, which involves further convergence with the European educational space and strict compliance with the requirements of the Bologna education system. Investment activity of higher education institutions, especially in terms of attracting additional funds for their own development, becomes relevant and becomes one of the conditions that shape the prestige of such an educational institution.

Since 1991, i. e. since Ukraine's independence, the national legal field has not formed a qualitative regulatory and legal support for investment activities of educational institutions at the national and especially at the institutional level. Therefore, for a long time the lack of sectoral regulations for investment activities in higher education and mechanisms for its implementation has led to the lack of the necessary investment climate in this area. At the same time, legislative acts [1, 3, 4] define general economic models of investment activity without taking into account the specifics of other spheres of human life, including education and most scientific works on certain issues cover its purely economic aspect. We are convinced that the investment activity of higher education institutions and its legal support should be considered through the prism of a specific area of public life, and not only from an economic point of view.

It should be noted that the term “investment” appeared in educational policy relatively recently and is considered mostly as a purely economic concept, which is in no way characterized or defined in the national legislation of Ukraine as part of the financial and economic activities of higher education institutions. It is important that at the state level the legislation enshrines the possibility of universities to participate in investment activities, defines their investment rights and opportunities, outlines the possibility of elaboration of individual investment programs for their development as a roadmap or part of a strategic plan to attract additional funds and resources for their development and improving the reputation component and competitiveness.

The scientific novelty is in the analysis of the current legal framework concerning the content of investment policy in the field of higher education in Ukraine.

The purpose of the study is to clarify the legislative aspects of the implementation of investment programs for the development of higher education institutions as an element of state educational policy.

2 Investment and foreign investment legislation of Ukraine

When studying the issue of regulatory and legal support for the content of investment policy in the field of higher education in Ukraine, it is necessary to analyse its basic provisions first. It was found that the regulatory framework of the national investment policy in Ukraine is regulated by a sufficient number of laws and regulations governing the investment activities of economic entities, regardless of the founder and form of ownership as a separate type of financial, economic and foreign economic processes. Currently, the Ministry of Economic Development, Trade and Agriculture of Ukraine directs the foreign economic and investment policy of Ukraine.

Currently the Law of Ukraine “On Investment Activity” [4] No. 1560–XII dated 1991, as last amended on 03.10.2019 exists, which regulates the mechanisms of interaction of investment participants, defines the main objectives of investment and its state regulation, promotes foreign economic relations and defines the main sources of financing investment policy in Ukraine. Thus, according to the law, investments are considered to be all types of values that are attracted to achieve profit or social effect in the relevant objects or structures [4].

The current Law of Ukraine “On Foreign Economic Activity” [1] No. 959–XII, adopted in 1991 (current version — 15.08.2020), defines the legal regulation of foreign economic activity, where Ukrainian domestic businesses, regardless of ownership, are one of the subjects of international economic relations. It is important to note that this law quite succinctly lists the categories of international economic cooperation — “production”, “economy”, “trade”, “economic relations”, etc. It should be added that the latest editorial changes to this law concerned the customs and defence processes of Ukraine. It’s worth noting that this law defines the concept of *foreign investment* as all types of property and intellectual property invested by foreign economic entities in Ukraine, resulting in profit (income) or social effect. One of the types of foreign economic activity, according to Article 4 of the said law, is defined as “scientific, scientific-technical, scientific-industrial, production, educational and other cooperation with foreign economic entities; education and training of specialists on a commercial basis” [1].

Since 1996, Ukraine has defined a mode of foreign investment at the state level, which is supported by the Law of Ukraine “On the mode of foreign investment” [3] No. 93/96–VR. The law regulates the procedural and

organizational mode of existence and activity of foreign investors operating in Ukraine, as well as the process of regulation and control of the use and accounting of their foreign resources coming to Ukraine in the form of investments. According to this law, **foreign investments** are defined as values invested by foreign investors in the projects in accordance with the legislation of Ukraine in order to make a profit or achieve a social effect [3].

Thus, in the national legislation of Ukraine there are two laws [1, 3], which define the term “**foreign investment**”, but the content of these definitions differ, which objectively determines the emergence of a legal conflict. It is important to note that despite the specific purpose of foreign investment in Ukraine, in most cases, national legislation regulates aspects related to income, and therefore the expected social effect is not supported by the mechanism of its implementation.

Acts of the government and other central executive bodies regulating investment policy in Ukraine may also include: government decree No. 1062 dated December 2017 “On approval of the procedure for maintaining the State Register of investment projects” [10], No. 701 dated June 2011 “On approval of the Procedure for state expert appraisal of investment projects” [9], Orders of the Ministry of Economic Development and Trade of Ukraine No. 724 dated June 2012 “On the approval of the project (investment) proposal form, on the basis of which an investment project is prepared, for the development of which state support may be provided, the Procedure for the development and form of an investment project, for the implementation of which state support may be provided” [6], No. 1279 dated November 2012 “On approval of the Methodological Recommendations for the development of an investment project, for the implementation of which state support may be provided” [7] and No. 255 dated February 2012 “Some issues of the effectiveness analysis of the implementation of public-private partnership” [8].

3 Sectoral educational legislation on investment activities of higher education institutions

Sectoral educational legislation is represented in Ukraine by a number of laws adopted by the Verkhovna Rada of Ukraine and subsidiary laws of the Cabinet of Ministers of Ukraine and the Ministry of Education and Science of Ukraine. Higher education institutions in Ukraine are guided in their activities by the Laws of Ukraine “On Education” [5] and “On Higher Education” [2]. In view of this, it is important to analyse in the educational legislation of Ukraine the legal aspects of the implementation

of opportunities for investment activities by higher education institutions, their regulatory basis.

An analysis of the Law of Ukraine “On Education” No. 2145–VIII [5] revealed that it lists the necessary aspects for the integration of the Ukrainian educational environment into the European one, including the opportunities for investment activities by educational institutions. The law provides allocations for education of at least 7% of GDP from state and local budgets. Prior to the adoption of this law, the realities of higher education in Ukraine were determined by the post-Soviet model of investment, where the main investor was the state, which determined the need to invest in educational institutions. But the adoption of the framework education law in 2017 for the first time laid the foundations for the development of Ukraine’s investment policy in the field of education, including higher education. Under the new law, educational institutions are, first, autonomous at their own expense; second, they can participate in national and international grants regardless of their subjects; third, they may receive extra-budgetary funds, financial and charitable assistance for their own development; fourth, the resources received are not the income of the educational institution, and therefore they do not pay taxes or fees, which allows their maximum effective use for the development of the institution. However, this law does not define the investment rights or opportunities of educational institutions, which indicates the imperfection of the regulatory framework for investment activities in the field of education [5].

The activity of higher education institutions in Ukraine since 2014 is provided by the updated Law of Ukraine “On Higher Education” No. 1556–VII [2]. The law defines the basic provisions for the activities of higher education institutions, directs the vector of state educational policy in the field of higher education, establishes the rights and responsibilities of higher education students and universities, establishes the structure of higher education, its levels and cross-sectoral links, its economic and financial activities, etc. It should be noted that the whole section of the law is devoted to economic and financial activities, the analysis of which shows the imperfection of certain rules, in particular on investment opportunities and the foundation of foreign investment activities for universities, insufficient sources of funding. At the same time, as a positive property, it can be noted that the Law of Ukraine “On Education” [5] stipulates that forms and types of financing and other issues of financial and economic activities are provided by specialized laws governing higher education.

The government and sectoral central executive bodies in the field of education and economics, which regulate education and investment

policy, which create the basis for investment activities of higher education institutions, do not fully realize their own legislative initiative. Therefore, in recent years, since the update of education legislation, the Ministry of Education and Science of Ukraine has not developed acts for government approval, provided official explanations or prepared other sources of information that would contain information on organizational, legal or other aspects of implementation of investment activities by higher education institutions. An important document that lays the foundations for reforming the system of management and financing of higher education is the Concept of reforming public financing and management of higher education institutions of Ukraine [11], presented by the Ministry of Education and Science of Ukraine in 2019. However, in our opinion, the proposed concept of coverage of investment in higher education is not exhaustive given the current challenges the higher education system is facing.

4 The real state and forms of investment in higher education

European trends that are currently being implemented in the modern Ukrainian educational field are taking educational institutions to a new level. Quantitative and qualitative changes are forcing Ukrainian education to move for the better. Unfortunately, in the post-Soviet space, educational institutions become hostages of the legal bureaucratic system, as the regulatory framework provides for some rules, and de facto they do not work or the existing regulations do not have a mechanism for implementation. European education authorities and educational institutions act ex contrario when drafting a legislative act: their own experience and approbation mechanisms form the basis of the mechanism for implementing the legislative act. At the same time, in the Ukrainian educational dimension, the implementation of the right of educational institutions to investment activities is defined at the legislative level very relatively, so very often in the best scenario educational institutions become hostages of legal conflicts in the legislation of their own state, and in the worst scenario, official investigations by central executive bodies are launched against educational institutions.

Ukraine ranks 44–47 in the QS Higher Education System Strength Rankings, which identifies the strongest higher education systems in the world. The inclusion of Ukrainian education in this ranking highlights the real opportunities for development and the first results of the adoption of European trends in educational policy and management. One of such

positive trends is the attraction of investment in the development of the university, which happens due to the human factor — the ability to see prospects and set priority goals for university managers to their subordinates.

The investment activity of a higher education institution consists in attracting funds or material values from outside in order to obtain financial and social benefits. The main forms of attracting investment in higher education presented in Fig. 1.

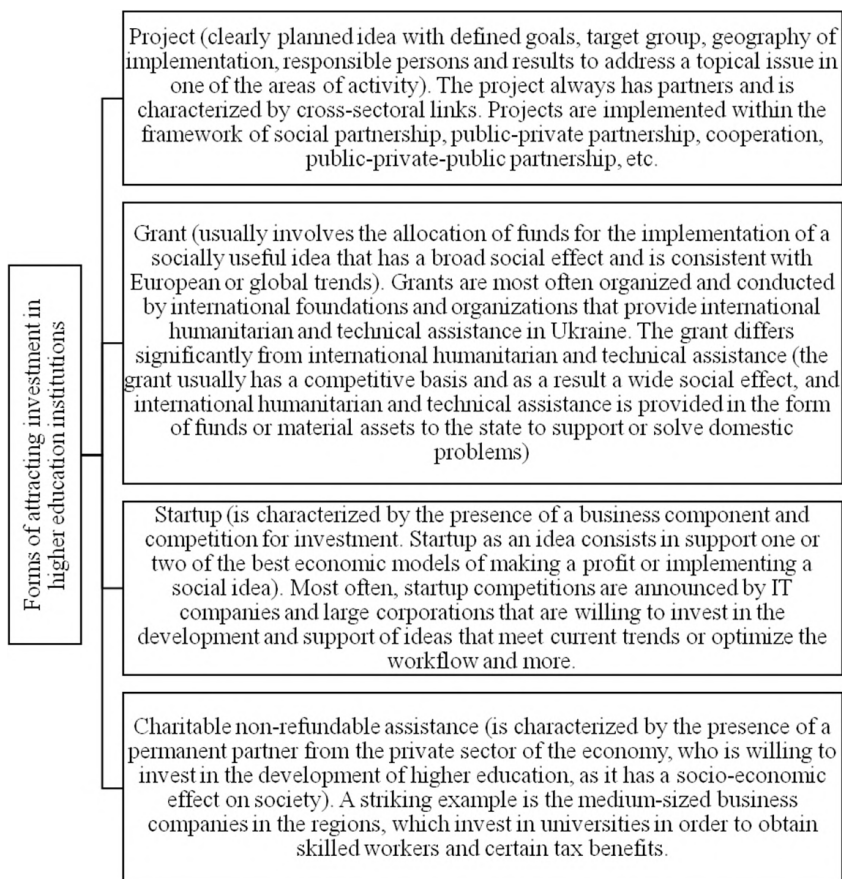


Fig. 1. Forms of attracting investment in higher education

The higher education sector is currently undergoing active reform and therefore needs investment. Instead of developing an effective mechanism for

attracting investment and negotiating with the real sector of the economy — business, public authorities have begun the process of consolidating the idea of the need for additional funding for higher education through regulations designating the state as the main investor. Ukrainian universities, as centres of scientific and educational activities, are ready to work on creating a unified investment policy for educational policy. Recently, universities headed by progressive leaders are actively attracting investment for the development of their institution. Such leaders and their teams are motivated, and therefore ready to work on improving the legal framework of educational policy and develop practical tools for higher education in the field of investment.

5 Conclusions

In the course of the research we came to the conclusion that the improvement of the legal framework of investment activity, determination of the autonomy of higher education institutions in the investment activity and the possibility of individual investment development program will be aimed at developing regional communication relations between universities of Ukraine and European countries, infrastructure and digital transformation of the educational process. These processes will stimulate the economic development of countries, improve the quality of education, provide new educational services, improve university infrastructure, attract international partners, bring higher education institutions of Ukraine to European standards and business models.

We believe that the higher education sector is one of the key parts of the national education system, which, in turn, is a public institution of the state. Therefore, sustainable socio-economic development of higher education is a guarantee of economic growth and social integration of education into the international educational environment. In the context of globalization and informational transformation, the role of investment increases, including in higher education. Investment in higher education is a means targets achievement and development, and partially becomes a means of financial and economic process. The content of Ukraine's investment policy in the field of higher education has changed over the last 10 years under the influence of subjective socio-political, economic and other factors, which has led to a number of significant changes that require analysis and further scientific understanding.

Based on the above, it can be concluded that an important factor in implementing effective investment activities of higher education institutions

of Ukraine and attracting investment programs for the development of higher education institutions is the issue of improving regulatory support for investment activities in higher education at the institutional level.

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