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Legal regulation of public-private partnership relations and protection of the interests of business entities in Ukraine

Правове регулювання відносин державно-приватного партнерства та захист інтересів суб'єктів господарювання в Україні

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Abstract

Infrastructure development in conditions of limited funding requires the search for and implementation of appropriate innovation mechanisms. To form an effective system of public administration and ensure its competitiveness, more and more states are turning to a combination of private and public ownership within the public-private partnership (PPP). Given these trends, it is essential to examine the PPP in the field of innovation as a driver of the economic development of Ukraine. The work aims to study PPP in the field of innovation as an effective mechanism for effective public economic management. The object of research is PPP in the field of innovation. The researchers used such methods as a method of interpretation of scientific data, method of analysis, statistical method, structural-functional method, method of comparison, and system method. As a result of the study, the scientific positions of foreign and domestic scientists in the settled topic direction and the

Анотація

Розбудова інфраструктури в умовах обмеженого фінансування потребує пошуку та впровадження відповідних інноваційних механізмів. З метою формування ефективної системи державного управління та забезпечення її конкурентоспроможності, все частіше держави звертаються до поєднання можливостей приватного та державного власника в межах державно-приватного партнерства (далі – ДПП). З огляду, на вказані тенденції важливо проаналізувати ДПП у сфері інновацій як рушій економічного розвитку України. Метою роботи є дослідження ДПП у сфері інновацій як дієвого механізму ефективного державного управління економікою. Предметом дослідження є відносини ДПП у інноваційній сфері. Під час дослідження ДПП у сфері інновацій використовувалися такі методи, як: метод інтерпретації наукових даних, метод аналізу, статистичний метод, структурно-функціональний метод, метод порівняння та системний метод. У результаті проведеного

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regulatory framework were studied. It was also concluded that cooperation between the state and the private sector creates opportunities for the parties to use innovative developments and participate in globalization processes.

Keywords: public-private partnership, investments, innovations, economic policy, regional development, economic strategy, legal support.

Introduction

Partnership dialogue, which is based on an innovative combination of opportunities between private and public owners within the framework of public-private partnership (hereinafter – PPP) is becoming increasingly popular as an effective way to implement public tasks.

Changing priorities in financial management, decentralization, the need for innovative development of infrastructure, medicine, education, corporate sectors of the economy at the regional level, and integrated territorial communities indicates the relevance of the study of PPP mechanisms at the state, regional, and local levels.

The field of innovation in public-private partnerships requires coherence and proper implementation of legal, organizational, and institutional responsibilities. In such cooperation, the state, as a participant in the innovation process, performs the function of rule-making, business incentives, and support for innovation projects, as well as is responsible for creating innovation infrastructure (Ernst & Young LLC, 2020). Simultaneously, the business is responsible for developing innovative products, financing, and ensuring effective management and support of product commercialization and delivery to the consumer. As a result of the interaction, the private partner may receive benefits, such as protection against market risks; a chance to create large-scale projects that require large financial investments; maximizing profits from product commercialization, and prioritizing research potential.

According to international experience, the development of the state requires the provision of favorable conditions for the functioning of innovative enterprises, the development of the national innovation ecosystem, the interaction of business and the public sector, which is based on

дослідження проаналізовано проблематику реалізації ДПП у сфері інновацій, досліджено наукові позиції закордонних та вітчизняних науковців в цьому напрямі, та нормативно-правову базу. Також зроблено висновки про те, що співпраця між державою та приватним сектором створює можливості використання в діяльності сторін інноваційних розробок та долучення до глобалізаційних процесів.

Ключові слова: державно-приватне партнерство, інвестиції, інновації, економічна політика, регіональний розвиток, економічна стратегія, правове забезпечення.

innovation. PPPs in the field of innovation is the key to ensuring the above components, as state regulation of the economy must meet national needs and general development trends. Numerous studies involving the World Bank, the EBRD, and others have highlighted the significance of public-private as an effective way to improve public capital investment management. Both representatives of Ukraine and international organizations agree that the partnership between the state and the private sector helps attract additional financial resources for Ukraine and create conditions for modernization of infrastructure and new jobs, regional development, and restoration of economic growth.

At present, there are no clear innovation-oriented mechanisms for the formation and interaction of innovation infrastructure in Ukraine, so it is important to solve problems that arise at the junction of public understanding of organizational structures (business centers, technology parks, venture funds, etc.). Moreover, the Ukrainian discourse on the research topic is only gaining momentum, as business and government partnership models are under development. Thus, in Ukraine, the general principles of cooperation between the public and private sectors have been declared, but there is still no proper coordination of the research process, no system of measures for PPP development, regulations contradict each other, and other issues do not contribute to government and business for a cooperation meeting (European Union, 2017).

Given that, it is crucial to conduct a theoretical and methodological study of PPP in the field of innovation as a significant mechanism for sustainable development of Ukraine's economy, examine the essence of this phenomenon, its features, and ways to improve existing

mechanisms of state regulation of PPP development in Ukraine.

Theoretical Framework or Literature Review

The following scholars examined the problem of PPP: Avksentiev (2010), Afanasieva (2015), Bezbach (2011), Brailovsky (2015), Yermolaev,

Romanova, and Yemets (2018), Zapatrina (2021), Kvitka (2015), Kravchenko (2018), Kruglov (2020), Kosach (2015), Kozachenko (2019), Kravets (2017), Liba (2017), Lyovochkin (2018), Melnyk (2017), Pavlyuk, K. and Pavlyuk, S. (2010), Tarasyuk, and Laguta (2020) (Table 1).

Table 1.
Scientific position on the notion of PPP. By the authors of the article.

Scholar	Scientific position
Avksentiev (2010)	The researcher analyzed PPP as a modern mechanism for attracting investment in infrastructure sectors of Ukraine and researched scientific, methodological, and practical issues of attracting private investment in infrastructure sectors of Ukraine. The author also improved the conceptual apparatus clarified the methodological tools of an effective model of risk management, studied foreign experience in the organization and functioning of this area. Methodical approaches to the formation of a strategy to counteract the risks that arise during the implementation of public-business partnership projects are proposed, as well as a system of measures to develop a unified public policy for the development of PPP in Ukraine. As a result of this work, the author has developed practical recommendations for the initiators of PPP projects, which take into account the specifics of the project life cycle and contain a list of key tasks and actions required for the successful completion of the project.
Afanasieva (2015)	In the work of the scholar, PPP is considered as a tool for infrastructure development. For a comprehensive analysis, the scholar studied international experience and weighed the prospects of PPP in Ukraine. The author noted that the state plays the most influential role in the state-business tandem because, without the interest and political will of the government, the development of partnership mechanisms is not considered possible. Given this, according to the author, the state should stimulate comprehensive development, which should provide the following areas: development of the institutional environment of PPP in Ukraine, and; identification of priority sectors of the economy for their development on the basis of PPP.
Bezbach (2011)	Problems of functioning of mechanisms of state regulation of partnership relations in Ukraine became the subject of Bezbach's research. After analyzing the experience of European countries, the scholar made the following conclusions. The key to successful PPP projects is not only a proper legal framework but also a strong public sector, flexibility for project participants and their incentives; In order to achieve the PPP goal, it is necessary to involve experts to create a thorough legal and regulatory framework.
Brailovsky (2015)	A detailed theoretical analysis of the methodology and mechanisms of PPP was conducted by Brailovsky (2015). In his study, the author noted the main shortcomings in PPP legislation. According to the author, such shortcomings are that the existing legislation can not fully take into account all the specifics of financial and legal relations of project participants using the PPP mechanism; the legislative level does not clearly define the sectors of the economy and the areas in which the use of the PPP mechanism will be allowed; there are no legal acts containing provisions on the powers of public authorities in the case of their participation in the implementation of projects using the PPP mechanism; the law does not provide for agreements and contracts on PPP in the public sphere. No less noteworthy, according to the author, is the legally established position on the property, tax structure, and regulation of potential conflicts of interest. Promising mechanisms, according to the author are implementation of large infrastructure projects; development of the country's innovation infrastructure; use of the financial potential of private firms; development of social infrastructure; use of new forms and mechanisms of PPP.
Yermolaev., Romanova, and Yemets (2018)	The authors explored Ukrainian perspectives and international experience in the development of the communal economy.

Zapatrina (2021)	A detailed analysis of PPP's institutional capacity was conducted by Zapatrina (2021). The author emphasizes that it is important to increase the institutional capacity and responsibility of public authorities in ensuring infrastructure development, including by applying the PPP mechanism. This mechanism cannot exist without monitoring and amending legislation.
Kvitka (2015)	The author drew attention to PPP as an effective mechanism for interaction between government and business. According to the author, the peculiarities of state regulation of partnerships with business are largely determined by the general expansion of contractual relations with private sector enterprises, non-profit and public organizations in those areas that were previously the prerogative of the public sector. Simultaneously, the author emphasizes that the PPP requires adequate improvement of the contractual mechanism itself, including guarantees of compliance with the parties' obligations, risk-sharing, and revenue-sharing mechanisms.
Kravchenko (2018)	Kravchenko (2018) analyzed PPP as a mechanism for improving counseling and diagnostic care in his study.
Kruglov (2020)	Mechanisms of state regulation of PPP development in Ukraine became the subject of Kruglov's research.
Kosach (2015)	The author made a thorough analysis of PPP in the context of the system-synergetic paradigm, as well as emphasized the problematic issues and prospects of the economy and governance.
Kozachenko (2019)	Kozachenko (2019) explored the peculiarities of the implementation of the mechanism of PPP to improve the infrastructure of the region in the conditions of decentralization of management.
Kravets (2017)	Issues of public administration of social development through the mechanism of PPP became the topic of Kravets' research.
Liba (2017)	Researcher Liba (2017) studied the implementation of public-private partnership in the system of regional industrial policy and concluded that the purpose of public-private partnership in developed economies is to solve problems related to private sector economic activity, implementation of investment projects with significant payback period and significant initial and current costs. In developing countries, public-private partnerships are used in the implementation of infrastructure projects (especially aimed at the development of road transport and communication infrastructure) and in the electricity sector.
Lyovochkin (2018)	Socio-economic specifics of PPP in the field of state infrastructure became the subject of Lyovochkin's research.
Melnuk (2017)	Researcher Melnyk (2017) studied in detail the issue of PPP in the system of institutions of the national economy and analyzed the mechanisms of development of this instrument of cooperation between different countries.
Pavlyuk, K. and Pavlyuk, S. (2010)	Pavlyuk, K. and Pavlyuk, S. (2010) research reveals the essence and role of PPP in the socio-economic development of the state.
Postnikov (2018)	Peculiarities of the use of PPP as a regulator of the development of PPP became the object of Postnikov's (2018) research. The author notes that the mechanisms of PPP implementation will improve the integrated approach to economic development. Moreover, the author comments that the PPP must clearly define the obligations of the parties: the state guarantees businesses the creation of a favorable environment and production necessary for its operation and development of public goods such as production, social and institutional infrastructure; in addition, businesses are committed to paying taxes and rebuilding the economic resources used in society.
Tarasyuk and Laguta (2020)	The development of PPP in ensuring the socially responsible behavior of business entities was the subject of a study by Tarasyuk and Laguta (2020).

Kharytonov, Kharytonova, Kostruba, Tkalych, and Tolmachevska, Y. (2020), Bolokan, Samoylenko, Tkalych, Panchenko, and Dmytriv, V. (2021). in their works investigated the interaction of the state and private law entities in the field of sports in the context of regulating sports relations.

In addition, various articles on the state of PPP in Ukraine and on project financing, infrastructure and PPP were examined.

Methodology

The study used the method of interpretation of scientific data, the method of analysis, statistical method, structural-functional method, comparison method, and systematic method.

PPP mechanisms were examined using the method of interpretation of scientific data. Interpretation of data meets the necessary requirements, namely: the nature of evaluation and interpretation are defined in general at the stage of program development and research concept, which outlines the basic characteristics of the object under study; fully defined object and the subject of research; data are interpreted from different positions. Therefore, with the help of numerical values, the data on the state of PPP were transferred into a logical form, as well as hypotheses were formed, which were tested in the course of the research. Given the noteworthy role of correct interpretation of scientific data, this method is a meaningful component of the study.

The statistical method has become an equally vital method in conducting PPP research in the field of innovation. Using the statistical method, the state of PPP development in Ukraine and the world was analyzed. Also, statistical analysis was used in the analysis of the domestic state of PPP projects. It is worth noting that the statistical method allowed to work with large amounts of data on the number of concluded contracts, subjects of contracts, the status of performance of contracts, and etc. Statistical processing of sociological survey results involved the benefit of statistical grouping, tabulation, analysis of absolute and relative distribution series, assessment of statistical reliability of sociological survey results, and performed using the computer program Microsoft Excel.

In addition, a comprehensive study of the topic of the work became possible due to the structural-functional method. Through the study of management phenomena and processes, thanks to this method it became possible to divide the PPP phenomenon into its component parts, study the relationships between them and determine their specific functions, taking into account the integrity and interaction with the environment.

Categorical analysis was utilized in the study of definitions in the system of state regulation of

PPP. An integrated and institutional approach made it possible to identify the features of PPP development policy, to clarify the essence of the processes, to identify the similarity of their elements and contradictions between them, and to identify trends in PPP implementation. Moreover, the systematic method was used to determine the characteristics and classification of forms of partnerships.

Employing the method of analysis, the Law of Ukraine "On PPP" (Law No. 2404-VI, 2010), the Law of Ukraine "On Concessions" (Law No. 997-XIV, 1999), the Resolution of the Cabinet of Ministers of Ukraine "Some Issues of Organization of PPP" were studied (Resolution No. 384, 2011).

The joint usage of comparative, statistical, and comparative analysis helped generalize the international experience of cooperation between government and business. The combination of systemic, functional, complex, and program-targeted approaches provided an opportunity to explore the mechanisms of state regulation of PPP in Ukraine and justify the improvement of the studied mechanisms.

The statistical and information base of the study was provided by the legal framework and legislation of Ukraine, documents and regulations of public authorities, published official statistical information, monographs and scientific publications of leading domestic and foreign researchers, analytical information, Internet resources.

Results and Discussion

PPP's international experience in the field of innovation, problems and ways to solve them

Foreign countries serve as an example of effective communication between the state and business in the field of innovation. Consider the examples. The classification of countries according to the implementation of PPP processes in national economic systems is quite interesting (Kvitka, 2015) (Table 2).

Table 2.

The classification of countries according to the implementation of PPP processes in national economic systems. Data provided by Kvitka (2015).

Group	Countries	Specifics
Economically developed countries	United States, Canada, Japan, Singapore, United Kingdom, France, Germany, Ireland and Italy	Most areas are involved in the implementation of projects based on PPP. The main areas of PPP in the UK are education, health, housing, defense, roads, IT infrastructure, etc. The United States implements PPP projects in the field of environmental protection, rural development. France has a significant number of projects in the areas of healthcare, rail transport, road construction, and urban life support systems. It is not new for France to create innovation clusters, the so-called "poles of competitiveness", which unite private enterprises, state research, and educational organizations in a certain area. Ireland and Italy are paying more attention to PPPs in urban health, transport, and housing. In Germany, most attention is paid to the construction and reconstruction of urban infrastructure, education, defense, and health care. Abandoned land restoration projects are also being implemented quite actively. Spain has focused on developing PPP in port development, health care, road construction, and providing cities with adequate infrastructure.
Countries with a medium level of PPP (intermediate countries)	Spain, Portugal, the Netherlands	The Netherlands has identified education, transport (rail and road), and housing and communal services as priority areas for PPP.
Countries where the use of PPP is just beginning	Luxembourg, Belgium, Greece, Norway	The use of PPP is just beginning

It is worth noting the countries that pay significant attention to innovation in PPP. For example, Austria is known for the Kplus program, which aims to create cooperative research initiatives between public institutions and private businesses on a long-term basis. There is also a PPP program Kind/Knet, which provides infrastructure and networks for the transfer of knowledge and technology. Australia has introduced a system of incentives for public-private partnerships in innovation, creating a network of Cooperative Research Centers. Their purpose is to ensure the transfer of knowledge and the commercialization of innovations. In China, research universities have a government-funded technology transfer structure out of the total amount allocated to the institution.

Foreign countries consider the effect of PPP projects to be positive. Thus, PPP projects in the field of innovation have economic effect, measured by financial indicators and the size of financial flows, growth of business capitalization, etc.; political effect, which is

manifested in increasing the level of business reputation of the company and trust in government; social effect, which demonstrates the impact of the implemented PPP project on changes in living standards and raising social standards.

General principles of public-private partnership in the field of innovation

In the science and law of different countries, the term "PPP" is considered from several points, which gives grounds to say that there is no single approach to this issue and there is a need to study its content and further clarify the distinctive features.

From the analysis of the definitions of the essence of PPP, described in domestic legislation, development programs of world organizations and proposed in the scientific literature, we can suppose that the essence of the concept of "PPP" is considered from several positions (Table 3):

Table 3.
Positions on the essence of the concept of "PPP". Data provided by Pavlyuk, K., & Pavlyuk, S. (2010).

Positions			
as a form of cooperation between the state and the private sector in certain areas of activity;	as the relationship between the state and business in order to implement socially significant projects;	as an agreement between public and private parties in the field of production and provision of infrastructure services;	as a means of improving the efficiency of budget financing.

Therefore, as can be seen from the above positions (Table 2), PPP should be understood as an innovative organizational and economic model of mutually beneficial cooperation between the state and private partners represented by business structures and business entities, which provides for the transfer of private business certain powers for the design, management, financing, operation and maintenance of facilities for the implementation of socially significant projects.

The legal basis for the interaction of business and the state in Ukraine is enshrined in the Law of Ukraine "On PPP" (Law No. 2404-VI, 2010). This Law establishes the organizational and legal basis for the interaction of public partners with private partners and the basic principles of public-private partnership on a contractual basis and regulates contractual relations between the state and the private sector in the form of concessions, joint activities, and other agreements. Among the fundamental principles of the Law are the following: equality before the law of public and private partners in the conduct of public-private partnerships; prohibition of any discrimination and restriction of the rights of private partners, except as provided by law; coordination of the interests of public and private partners to achieve mutual benefit and achieve the goals of public-private partnership; fair distribution of risks associated with the implementation of public-private partnership

agreements. Also, the Law provides for the PPP examination procedure before the announcement of the tender. At the same time, the Law of Ukraine "On Concessions" (Law No. 997-XIV, 1999) and other legal acts do not provide for such an efficient analysis procedure, which indicates the lack of a unified approach to the procedure. A vital document that determines the organization of PPP is the Resolution of the Cabinet of Ministers of Ukraine "Some issues of organization of PPP" (Resolution No. 384, 2011). This Resolution regulates the procedure for conducting a tender to determine a private partner for public-private partnership on state, municipal property, which determines the mechanism of preparation and implementation using the principles of transparency, objectivity, and non-discrimination of the competition for determining a private partner, determining the winner of the competition and concluding relevant agreements in the framework of PPP. The Resolution also states that if the laws governing the relations arising in the process of concluding these agreements, or in accordance with such laws established a different tender procedure, the tender procedure established by such laws or in accordance with such laws.

From the analysis of statistical data, we can conclude that the experience of PPP projects in Ukraine is available, but the number of projects is insignificant in the country (Table 4).

Table 4.
The number of contracts of PPP as of January, 1, 2021. Data provided by Spilno (2017); Ministry of Economy of Ukraine (2021).

The total number of contracts as of 01.01.2021 – 192		
Implemented	39	29 - concession agreements 6 - on joint activities 4 - other agreements
Not implemented	153	118 - are not executed 35 - terminated / expired

In today's reality, PPP is seen as a tool for innovation at the local and national levels. In this

case, the PPP can operate on the basis of one of two models of PPP (Table 5).

Table 5.

Two models of PPP. Data provided by Kruglov (2020); Zakharina, Simonenko, & Sikevich (2018).

PPP models	
<p>Concession model</p> <p>The state orders private investors to build large capital-intensive facilities at their own expense. Upon completion of construction, the facility was leased by the state for a long term. Thus, private investment was repaid by paying rent, and after the lease expired, the object was transferred at a token value or free of charge to the state. In many cases, the investor was involved in the further operation of the facility and received income from it.</p>	<p>Organizational model</p> <p>Ensures the organization and establishment of sustainable links between the public, private and third sectors to promote economic and social development policy. In PPP, which can take place in any field and to any objects of development, the public partner is not only the state but also the regional entity (territorial community), state and municipal enterprises, institutions, organizations, organizations. unity). Within this model, the PPP is seen as an effective model for implementing innovation policy at the EU and OECD levels.</p>

Thus, there are different approaches to understanding PPP and the model of its implementation, but regardless of the model, this legal instrument plays an important role in economic development and implementation of innovative projects.

Conclusions

1. Ukraine needs to thoroughly address the model of PPP development in the innovation sphere, which would provide a triad "business - science - state" and would allow forming a national innovation system. In turn, the institutional support of public-private partnership processes will create conditions for the real involvement of private businesses in the field of innovation and will form the country's competitive advantages.
2. Public-private partnership projects are mutually beneficial. But for real influence on the economy, first of all the state needs to develop a concept and strategy of public-private partnership; enact laws that will be effective in regulating public-private partnership relations, such as stimulating tax and budget legislation; raising awareness and skills of civil servants and staff involved in the system of public-private partnership, etc.
3. For a viable PPP, it is important to address the ability of government partners to make long-term commitments to the PPP contract; to form a system for monitoring the progress of project implementation, etc.

For further research, it is necessary to pay attention to individual innovative projects in the

field of PPP, to find out their effectiveness, and to analyze international experience in this field.

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