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PECULIARITIES OF THE IMPLEMENTATION OF THE LEGISLATION ON PUBLIC-PRIVATE PARTNERSHIP IN THE FIELD OF ENVIRONMENTAL PROTECTION

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The article considers the theoretical and legal issues of public-private partnership in the field of environmental protection.

On the basis of a comprehensive systematic approach to the study of legal phenomena, the peculiarities of the implementation of current legislation on public-private partnership in the field of environmental protection are studied.

The form of public-private partnership means a set of rights and responsibilities of private and public partners, which consist of mandatory and optional elements, giving the right to private and public partners to build relationships in a specific form within the law.

The general procedure for concluding and implementing public-private partnership agreements applies to all projects, including in the field of environmental protection.

An analysis of the stages of implementation of public-private partnership, the rights and responsibilities of public and private partners at different stages of project implementation.

The purpose and objectives of the project must meet the objectives set out in the Basic Principles (Strategy) of State Environmental Policy for the period up to 2030. During the implementation of the public-private partnership project in the field of environmental protection, several types of state control will be carried out.

The public partner is empowered to monitor the implementation of the agreement, including the private partner's compliance with legislation, such as the design, construction and operation of the facility.

The second type of state supervision is the supervision of authorized bodies over the implementation of legislation by a private partner during the implementation of the agreement. These are the types of supervision (control) provided by sectoral legislation. Environmental projects require a systematic approach. Environmental projects require a systematic approach. The procedure for concluding agreements should be supplemented by the

need to provide information on the positive environmental impact that will arise as a result of the project.

Agreements should be complemented by the need to provide information on the positive environmental impact that will result from the project implementation.

Key words: public-private partnership, environment, agreement, stages of agreement implementation, control.

Formulation of the problem. The issue of actualization of the mechanism of public-private partnership is inextricably linked with the process of socialization of social relations, which are formed on the basis of environmental protection. World practice shows the importance of this mechanism in the context of limited budget resources and the need to stimulate investment in order to attract private capital. The dual nature of public-private partnership involves its consideration as the basis of the economy and the project itself, implemented in various areas of environmental protection.

Analysis of the study of the problem. The importance of scientific research on the implementation of legislation on public-private partnership in the field of environmental protection is confirmed by numerous works: B. I. Babenko, V. E. Boreyko, N. P. Bortnik, V. L. Bredikhina, M. T. Gavriltsiv, O. V. Golovkin, S. G. Gritskevich, V. I. Knysh, I. A. Kuyan, O. Ya. Lazor, J. I. Lazarenko, K. Yu. Melnyk, R. V. Myronyuk, M. V. Rudenko, K. A. Ryabets, S. V. Taranushich, Y. M. Tolochko, O. A. Ulyutina, O. M. Khimich, V. V. Shemchuk and others.

Adaptation of national legislation to the requirements of the European Union makes the task of studying the implementation of public-private partnership in the field of environmental legislation relevant.

The purpose of the article is to study the peculiarities of the implementation of the legislation on public-private partnership in the field of environmental protection.

Presenting main material. From the origin of the idea of public-private partnership project and implementation there are a number of stages: development and evaluation of the project justification, the procedure for selecting a private partner, concluding a public-private partnership agreement and direct project implementation. According to the Law on Public-Private Partnership, public and private partners can initiate the implementation of public-private partnership projects in the field of environmental protection. The law establishes an exhaustive list of requirements that a private partner must meet.

The Law on Public-Private Partnership excludes the possibility of combining state capital with state capital (on the side of a private partner) in the implementation of projects in the field of environmental protection.

The stage of development of the justification for the project is largely similar for public and private partners, except for some features and. The private and public partner ensures the development of a proposal for the implementation of a public-private partnership project in accordance with the requirements established for such a proposal in the Law “On Public-Private Partnership” [1].

The implementation of the project should be carried out taking into account the purpose and objectives set out in the planning documents. If you plan to implement a project, for example, in the field of solid waste management, the purpose and objectives of implementation should be set out in the documents.

According to the provisions of the Law “On State Target Programs”, these are documents adopted at the state, regional and local levels and include socio-economic development programs, sectoral planning documents, forecasts, targeted state programs [2].

Regarding the project in the field of solid waste management, the relevant goals and objectives are contained in the Basic Principles (strategy) of the state environmental policy for the period up to 2030 [3]. The Basic Principles define the purpose of state policy in the field of environmental development, define

the main tasks, including prevention and reduction of negative impact on the environment, ensuring environmentally friendly waste management and others. These tasks, along with the purpose, can be a justification for the implementation of public-private partnership project. For other objects of public-private partnership in the field of environmental protection, in the planning documents you can find the goals and objectives that correlate with the purpose and objectives of such a project.

According to the Law on Public-Private Partnership, the agreement must include elements that determine the form of partnership. It is determined by including the required elements in the agreement and determining the sequence of implementation.

Under the form of public-private partnership, the legislator understands a set of rights and responsibilities of private and public partner, which consist of mandatory and optional elements, giving the private and public partner the right to build relationships in a specific form within the law.

Based on the content of the Law on Public-Private Partnership, forms of public-private partnership in the field of environmental protection will include construction, reconstruction, financing, operation, the condition of private ownership of the object. The legislator has chosen a not very good wording on the types of public-private partnership.

The condition that must be in the public-private partnership agreement is information about the object of the agreement. The object of the agreement may be real estate or real estate and movable property, technologically related and intended for the activities provided for in the agreement.

According to the Law on Public-Private Partnership, the object of a public-private partnership agreement may be property in respect of which the legislation of Ukraine does not establish state and municipal ownership or prohibit alienation to private ownership or stay in private ownership. Mandatory element of the public-private partnership agreement is the construction and reconstruction of the facility by a private partner.

These can be landfills, solid waste treatment, disposal and disposal plants and ancillary facilities that will be created or reconstructed as ancillary to the main facility and registered as a single real estate complex.

Objects can be electricity facilities that operate at the expense of renewable energy sources, production facilities in the implementation of activities related to breeding, maintenance, cultivation of aquaculture facilities. The implementation of such facilities as reclamation systems and ecotourism facilities, with the existing legal regulation, may cause some difficulties.

Reclamation systems are considered as an object that is designed to improve the quality and maintenance of land, does not have an independent functional purpose, is part of the land, can not be recognized as real estate. Within the framework of public-private partnership, it is possible to implement objects of reclamation systems, which will have an independent functional purpose.

In Ukraine, ecotourism has no special regulations, although in the Law “On Tourism” this term is used [4]. There are many definitions and concepts of ecotourism and its development in the literature. The development of ecotourism is envisaged taking into account the protected natural areas – nature reserves and national parks (hereinafter – nature reserves). The construction of such real estate can be either within nature reserves or outside. If the construction of real estate will be carried out outside the nature reserves, it can be said that this object is aimed at the development of ecotourism.

In our opinion, an important criterion by which it will be possible to distinguish, for example, a normal hotel built outside the nature reserves, from a hotel built there, but on the development of ecotourism, it is difficult to find. The following should be considered when considering the possibility of building such facilities within nature reserves.

The Law “On the Nature Reserve Fund of Ukraine” refers to the tasks of state nature reserves as the development of cognitive tourism, the definition of this type of tourism in the law is not given [5].

Development of protected ecotourism on protected lands is expedient when it is regulated, conditions for compliance with environmental requirements are created in order not to disturb the fragile natural balance and the necessary infrastructure is created for the stay of citizens of interest to the state and

business. However, given the restrictions on attracting private partners under the Law will not work, so you can use the partnership model provided by the Law on Concessions, which does not provide for the ownership of real estate by a private partner [6].

These include only three categories of facilities: electricity generation, transmission and distribution; in which processing, utilization, neutralization, placement of solid household waste are carried out; production of agricultural products under the condition of reproduction of bioresources in order to compensate for losses from activities that have a negative impact on bioresources and their habitat.

In addition to the above conditions, others must be reflected in the public-private partnership agreement. According to the Law on Public-Private Partnership, the agreement must include the obligation of the public partner to ensure the provision of land to the private partner intended for the lease.

The agreement must contain such conditions as technical and economic indicators of the object, terms of the agreement, ways to ensure the fulfillment of obligations by the private partner, liability of the parties and other conditions provided by law.

At the stage of development of the project justification, the relevant proposal shall specify other information about the project that is of an economic nature, as based on them the public and private can assess the economic component of the project and the risks associated with the project.

Differences exist at the stage of project justification, depending on the subject of the initiative. Features are defined by the legislator in the Law "On Public-Private Partnership". If the project is initiated by a private partner, it may hold preliminary negotiations with the public partner to develop a project proposal.

After conducting negotiations and preparing a proposal for the project, the private partner must submit a guarantee issued by the bank to the state partner at the same time as the proposal. Such measures may be justified in order to prevent the public partner from considering unprocessed proposals from private partners.

The prepared proposal of a private partner must be considered by the state partner in accordance with the procedure approved by the Cabinet of Ministers of Ukraine. Decide either on the impossibility of project implementation on the grounds established in the Law on Public-Private Partnership, or on sending a proposal for project implementation to the authorized body for evaluation of effectiveness.

In case of independent preparation of the proposal, the state partner sends the documents to the authorized body for evaluation. Such assessment is carried out by the authorized body in accordance with the procedure approved by the Cabinet of Ministers of Ukraine, guided by the approved assessment methodology [7]. At this stage, the authorized body evaluates the financial performance of the project, socio-economic effect and determines the comparative advantage.

The methodology on the basis of which the assessment is carried out in accordance with the Law "On Environmental Impact Assessment" should be taken into account when developing a proposal [8]. If the proposal for the implementation of the public-private partnership project in the field of environmental protection is considered by the authorized body and a positive conclusion is received, it should be sent to the body authorized to decide on the project. Such a body is an executive body.

After the decision on the project is made, a private partner is selected through a competition. Exceptions to this rule are established by the Law "On Public-Private Partnership".

If the decision is made on the basis of a project proposal prepared by the project initiator – a private partner, after the publication of the decision on project implementation in due time there are no statements of intent to participate in the competition from others, the agreement is concluded with the project initiator without a competition.

The private partner who is the initiator of the project has the right to expect that there may be no other applicants for such a project. If the project involves co-financing by a public partner for the construction of the facility, it may be of interest to others. If applications for participation in the competition from other persons are submitted, the competition will be held. The competition is regulated by the Law on "On public-private partnership".

Based on the results of the competition, the public partner enters into a public-private partnership agreement with the private partner.

At the next stage, a public-private partnership project is being implemented. At this stage, the state partner monitors compliance with the terms of the agreement. This type of control does not belong to the types of state control (supervision), therefore, does not fall under the regulation of the law "On the basic principles of state supervision (control) in the field of economic activity" [9].

During the implementation of the public-private partnership project, including in the field of environmental protection, several types of state control will be exercised.

The first type of control is carried out within the framework of the Law "On Public-Private Partnership". The subject is the verification by the public partner of the private partner's compliance with the terms of the public-private partnership agreement. Such control is carried out in accordance with the procedure established by the Cabinet of Ministers of Ukraine. The procedure provides for the scope of the inspection at each stage of the agreement implementation. During the design, the terms of design and compliance of the project documentation with the terms of the agreement, design tasks and legislation are controlled.

At the construction stage, compliance with the terms and technical and economic indicators of the created object of the terms of the agreement. The public partner controls the intended use of the land, water body and forest land, if such land has been transferred to a private partner with consent.

The public partner is empowered to monitor the implementation of the agreement, including compliance by the private partner with legislation, for example in the design, if such a stage is provided for in the agreement, in the construction and operation of the facility.

The second type of supervision by the state is the supervision of the authorized bodies over the implementation of the legislation by the private partner during the implementation of the agreement. These are the types of control (supervision) provided by sectoral legislation. For example, during construction or reconstruction, state construction supervision will be carried out, during the operation of the facility – other types of control, including state environmental supervision [10]. The main difference between these types of control is the nature of sanctions imposed by the state on a private partner.

In the first case, if the private partner fails to comply with the order issued as a result of the inspection, the public partner has the right to apply to the court for early termination of the agreement. In the second case, if a violation of the law is detected, the private partner is brought to administrative responsibility [11, p. 508].

The procedure for concluding a public-private partnership agreement is complex and lengthy. Public and private partners must calculate the risks, develop a financial model, and design it properly. Such a procedure is justified in the case when the project is expected to be financed from the budget. The state must be sure that the investment will pay off, the project will be attractive and feasible.

The model of legal regulation of public-private partnership provides for co-financing of the project by a public partner only as an additional element of the agreement. Not every project can be financed from the budget system.

If the private partner initiating such a project does not intend to use the funds of the state partner for the project, then other ways of implementation can be considered, because, except for land for the project, which should be obtained under the agreement without bidding, the private partner will not benefit from cooperation.

For projects in the field of environmental protection, the prospect of obtaining land plots will not be attractive in the absence of co-financing of the project by the state.

The location of solid waste recycling facilities, renewable energy facilities, and aquaculture facilities will not be located within urban development, but will be located outside due to the specifics of this activity. It will be advantageous for a private partner to lease these land plots in accordance with the procedure established by land legislation, or to acquire ownership and implement a project.

The general procedure for concluding and implementing public-private partnership agreements applies to all projects, including in the field of environmental protection. The legislator has developed common mechanisms regardless of the sectoral affiliation of the project. This approach is justified because it makes the procedure for concluding and executing the same for all projects. The implementation of the project will vary depending on the nature of the object. Differences in project implementation are determined by the requirements of the legislation for economic activity.

The object to be built will be subject to urban planning legislation, the Law "On Environmental Protection" [12]. These legal requirements are taken into account will be under implementation. The assessment of the object within the procedure of concluding a public-private partnership agreement is carried out only through an economic prism. The positive environmental effect that can be achieved in the implementation of the environmental project is not assessed.

Economic evaluation is relevant for a private partner, as the goal is to make a profit. But in the case of environmental projects, there is a public interest that needs to be analyzed and evaluated. Relevant information, along with economic information, should be one of the determinants in deciding on the feasibility of the project. The specifics of the project determines the features of the implementation procedure.

Conclusions. Environmental projects require a systematic approach. The procedure for concluding agreements should be supplemented by the need to provide information on the positive environmental impact that will arise as a result of the project.

The presence of public interest necessitates a special distribution of risks in the project. In the Law on Public-Private Partnership, the rules on risk are not adapted to achieve a public goal. The law states that risks must be shared fairly. The main risks for partners are directly related to the interest. For a private partner, this is making a profit, and for a public partner, it is achieving an environmentally beneficial effect. Risk sharing is not provided, although it is a necessary condition for concluding an agreement. Business expects the state to share risks. It is advisable to mirror the risks. The public partner will bear the risk of achieving an economic result, and the private partner – the public one. This will allow for the effective implementation of projects in the field of environmental protection. Achieving the goal of each partner will stimulate coordinated and effective work.

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ОСОБЛИВОСТІ РЕАЛІЗАЦІЇ ЗАКОНОДАВСТВА ПРО ДЕРЖАВНО-ПРИВАТНЕ ПАРТНЕРСТВО У СФЕРІ ОХОРОНИ НАВКОЛИШНЬОГО СЕРЕДОВИЩА

У статті розглядаються теоретико-правові питання державно-приватного партнерства у галузі охорони навколишнього природного середовища.

На підставі комплексного системного підходу до дослідження правових явищ досліджено особливості реалізації чинного законодавства про державно-приватне партнерство у галузі охорони навколишнього природного середовища.

Під формою державно-приватного партнерства розуміють набір прав і обов’язків приватного та державного партнера, які складаються з обов’язкових і факультативних елементів, надаючи право приватному та державному партнерам будувати взаємини у конкретній формі у межах закону.

Загальний порядок укладання та виконання угод про державно-приватне партнерство застосовується щодо всіх проєктів, зокрема й у галузі охорони навколишнього природного середовища.

Здійснено аналіз етапів реалізації державно-приватного партнерства, прав і обов’язків державного та приватного партнерів на різних етапах реалізації проєктів.

Мета та завдання проєкту повинні відповідати цілям, визначеним у Основних засадах (стратегії) державної екологічної політики на період до 2030 року.

При реалізації проєкту державно-приватного партнерства у галузі охорони навколишнього природного середовища здійснюватиметься кілька видів державного контролю. Державний партнер наділений повноваженнями контролю виконання угоди, у тому числі щодо дотримання приватним партнером законодавства, наприклад при проєктуванні, будівництві та експлуатації об’єкта.

Другим видом нагляду із боку держави є нагляд уповноваженими органами над виконанням приватним партнером законодавства під час реалізації угоди. Йдеться про види нагляду (контролю), які передбачені галузевим законодавством. Екологічні проєкти потребують системного підходу. Порядок укладання угод має бути доповнений необхідністю надавати інформацію про позитивний екологічний ефект, який виникне у результаті реалізації проєкту.

Ключові слова: державно-приватне партнерство, навколишнє природне середовище, угода, етапи реалізації угоди, контроль.