

UDK 347.7

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LEGAL PROTECTION OF THE INNOVATIVE DEVELOPMENT OF SMALL AND MEDIUM-SIZED BUSINESSES

The experience of successful countries, as we usually called countries with developed market economy indicates that small and medium-sized innovative enterprises is an important factor of the steady economy, and their number and the degree of consistency determines how the country's economy has reached the level of a socially oriented market.

Keywords: public policy, legal protection, an intellectual potential, an innovative development, a legislative practice, small and medium-sized enterprises, developed market economy.

A long-term experience of European countries shows that small and medium-sized innovative enterprises are an important factor in the steady state of the economy, and their number and the degree of consistency determines how the country's economy has reached the level of a socially oriented market.

As shows detailed analysis of the economic structure of European countries, bulk of their economic potential are small and medium-sized enterprises (SMEs). According to statistics, for example, the share of SMEs accounted for 99 % of the total number of all enterprises in the EU, they create 65 million jobs.

We will give a few figures to illustrate this general trend in detail, the essence of which is that SMEs give innovative impetus to a market economy. In the countries with developed market economies the number of employed in small entrepreneurship entities, as a rule, exceed 50 % of the working age population (EU countries), and in some places, is closer to 80 % (Japan).

Production of small enterprises is more than 50 % in GDP of the countries of continental so-called «old» Europe (Germany, France)

and more than 30 to 40 % in GDP of the countries of «new» Europe (the Czech Republic, Slovakia, Hungary) [1].

Improvement of innovative and intellectual potential of SMEs, generally, should be one of the main directions of public policy. We emphasize that we are talking about the development of the innovation component of SMEs.

Innovation, as it is known, is determined by the final result of innovation activity, which is used in the form of new or improved product introduced on the market, new or improved technological process used in practical activities or a new approach to social services.

We note optimistic that in the domestic law, the activities of SMEs regulated sufficiently, in particular the Laws of Ukraine «On Development and State Support of Small and Medium Entrepreneurship in Ukraine» [2], «On the National Program to Promote Small Entrepreneurship in Ukraine» [3]. With regard to innovation policy, we clearly note, the Law of Ukraine «On the priority directions of innovation activity in Ukraine», adopted in 2011 with amendments from 2013, aimed at defining a strategic innovation policy priorities for the period 2011–2021 [4].

Now the principles of innovation policy is enshrined in more than 70 legal and policy documents, including the Law of Ukraine «On State Regulation of Activities in the Sphere of Technology Transfer», with amendments from 2015, [5] and the Law of Ukraine «On Scientific Parks» from 2009 [6]. The innovative component of the public policy in the sphere of support to SMEs is also mentioned in the Strategy on Sustainable Development «Ukraine–2020» and the Concept of the State Program of Development of Small and Medium Enterprises for 2014–2024. However, we note that this is the external side of the coin. On the content, even the latest legislative initiatives regarding the improvement of SMEs, have almost not been implemented, and they require further development and a clear agenda of reforms.

We note that, as a rule, in the domestic practice SMEs are enterprises in which the number of employees less than a certain established norms, differentiated for different countries. It should be noted, partly a classification of SMEs are represented in the updated Economic Code of Ukraine; however, domestic legislation, unfortunately, does not clearly define the characteristics of SMEs. It seems most appropriate factors characterizing SMEs proposed by the European Commission for entrepreneurship and industry, which carry out the differentiation, depending on the number of employees, annual turnover and balance (tab. 1).

Table

Classification of SMEs according to the definition of the European Commission for entrepreneurship and industry

Business type	Number of employees		Annual turnover (in million euros)		Annual balance sheet (in million euros)
Very small (micro) enterprise	< 10	and	≤ 2	or	≤ 2
Small enterprise	< 50	and	≤ 10	or	≤ 10
Medium enterprise	< 250	and	≤ 50	or	≤ 43

According to statistics, there are nearly 200 thousand small enterprises in Ukraine. The real business is carried out about 1 million entrepreneurs without establishing a legal entity and almost 40 thousand farmers. Small business employs more than 2.7 million people or 9 percent of the working population of Ukraine. At the same time, small business produces 11 percent of the total volume of production (works and services) in Ukraine as a whole, which indicates more efficient functioning of small business in comparison with the so called big business [7]. Since Ukrainian independence to 1 July 2013 the status of a private entrepreneur received 5 million 142 thousand people – it seems to be the highest growing dynamics of the development of SMEs. Unfortunately, 2 million 099 thousand people have already stopped their own business.

To explain this sad statistics is quite simple: the category of small business owners are always most vulnerable to external stimuli, including: tax and customs legislation, price fluctuations of inputs and products marketing, as well as currency, the lack of an effective credit policy to support small business, and the like. In this case, the level of income and the number of applicants to do small business is the criteria for the development of SMEs.

According to international experts, access to finance resources remains a key constraint to development of SMEs in Ukraine, there is a systematic reduction in Bank lending to SMEs too [9]. According to the

Business Environment and Enterprise Performance Survey (BEEPS V) (EBRD, 2014), the problem of access to credit is especially typical for medium-sized enterprises (referred as obstacle by almost 35 % of respondent enterprises). In addition to the current crisis the Ukrainian private sector also faces many challenges and deep obstacles, including corruption, weak investment climate and low level of innovation. Despite the availability of a skilled workforce, Ukraine has low level of productivity in Europe and Central Asia (ECA). The country occupies the 77th place out of 144 countries assessed in the preparation of the global competitiveness Index in 2014, notes a study conducted by experts from the world economic forum [10].

But the key problem of Ukraine is connected with implementation of reforms, primarily economic, in particular, legislative initiatives to support SMEs. With sadness we note, as a result, the amount of expenses from the State Budget for the development of SMEs in 2014–2015 reduced to near zero.

With respect to innovative activities of SMEs within the framework of fair competition, it is necessary to emphasize that because of the support of the innovation activities of SMEs is extremely important as at the state level in general and at the level of individual region, the overall situation in this area could significantly improve the establishment of regional innovation infrastructure for SMEs.

Financial support for the implementation of innovative component in the activities of SMEs should provide the Foundation for the Support of Small Innovative Business, but starting from 2013, the mentioned institution has not received budgetary financing. As reported 41 % of SMEs managers interviewed by the experts during the current assessment of the Index policy on SMEs: Eastern partnership countries, the analysis for the year 2016 is a major obstacle to innovation for SMEs is the size of the costs.

Financial support in the form of grants and tax incentives may contribute to the development of innovative activity. Despite the presence in Ukraine of a specific innovative infrastructure, its effectiveness is limited by financial issues and by a lack of targeted support. We note that in 2014 there were 82 incubators to launch innovative startups, however, according to the State Service for Regulatory Policy and Entrepreneurship Development, in fact, only 27 of them worked. Of the 50 technology parks actually worked only 13 [11].

The establishment of the newest forms of financial support for innovative small and medium-sized enterprises, for example, venture funds funding should help to resolve this issue. We note that in developed countries, the emergence of venture capital funds and venture capital firms was due to the need to finance small high-tech business: they were created as investment companies of small innovation business. This experience would be very useful for Ukrainian SMEs. As a rule venture capital firms are created by a small like-minded group – engineers, researchers, scientists, and managers with relevant work experience in labs of large companies with the aim of attracting funds of large companies to solve specific scientific problems. Their advantage is specialization, the concentration of logistical and financial resources in the chosen area of research and the ability to refocus on new directions quickly.

We note critically that venture financing is not widespread enough in Ukraine. In our opinion, the government should encourage the existence of venture capital small and medium-sized enterprises through the provision of benefits to founders of venture funding in the taxation of the part of funds which is directed to the development of innovative activities in the region (in developed countries money invested in scientifically-innovative sphere are tax-free) [12].

Therefore, according to scientists systemic compensatory measures by the state is extremely important for innovative entrepreneurship, especially small and medium. These could be tax benefits, the possibility of obtaining interest-free loans or the loan on favorable terms, state orders and a funding of programs of the scientific institutions to develop an innovative product or technology. Thanks to advisory and encouragement scientific programs aimed at development of business, innovative products and technologies should be cost-effective for small and medium-sized enterprises and competitive in the market, as is done in the countries of the European Union.

REFERENCES

1. Kovalenko, H.M. (2012). Formuvannia innovatsiinoho potentsialu pidpriemnystv maloho ta serednoho biznesu [The formation of the innovation potential of small and medium enterprises business]. *Enerhozberezhennia. Enerhetyka.*

Enerhoaudyt, Energy Savings. Energetics. Energy audit, 9, 48-51 [in Ukrainian].

2. Zakon Ukrainy Pro rozvytok ta derzhavnu pidtryмку maloho i serednoho pidpriemnytstva v Ukraini: vid 22 bereznia 2012 roku No. 4618-VI [Law of Ukraine The development and State support of the small and medium business in Ukraine from March, 22, 2012, No. 4618-VI]. *Vidomosti Verkhovnoi Rady Ukrainy, Bulletin of Verkhovna Rada of Ukraine*, 3 [in Ukrainian].

3. Zakon Ukrainy Pro natsionalnu prohramu sprianiia rozvytku maloho pidpriemnytsnva v Ukraini: vid 21 hrudnia 2000 roku No. 2157-III [Law of Ukraine on national programme to promote the development of small business in Ukraine from December, 21, 2000, No. 2157-III]. *Vidomosti Verkhovnoi Rady Ukrainy, Bulletin of Verkhovna Rada of Ukraine*, 7 [in Ukrainian].

4. Zakon Ukrainy Pro priorytetni napriamy innovatsiinoi diialnosti v Ukraini: vid 8 veresnia 2011 roku No. 3715-VI [Law of Ukraine on priority directions of innovation activity in Ukraine from September, 8, 2011, No. 3715-VI]. *Vidomosti Verkhovnoi Rady Ukrainy, Bulletin of Verkhovna Rada of Ukraine*, 19-20 [in Ukrainian].

5. Zakon Ukrainy Pro derzhavne rehuliuвання diialnosti u sferi transferu tekhnolohii: vid 14 veresnia 2006 roku No. 143-V [Law of Ukraine on State regulation of activities in the field of technology transfer from September, 14, 2006, No. 143-V]. *Vidomosti Verkhovnoi Rady Ukrainy, Bulletin of Verkhovna Rada of Ukraine*, 45 [in Ukrainian].

6. Zakon Ukrainy Pro naukovi parky: vid 25 chervnia 2009 roku No. 1563-VI [Law of Ukraine on scientific parks from June, 25, 2009, No. 1563-VI]. *Vidomosti Verkhovnoi Rady Ukrainy, Bulletin of Verkhovna Rada of Ukraine*, 51 [in Ukrainian].

7. Statystychnyi shchorichnyk Ukrainy «Innovatsii u promyslovosti» [Statistical Yearbook of Ukraine «Innovation in industry»]. Kyiv: Derzhkomstat Ukrainy. Retrieved from https://ukrstat.org/uk/druk/publicat/Arhiv_u/01/Arch_Ukr_.htm [in Ukrainian].

8. Dynamika maloho pidpriemnytstva u 2005–2013 rokakh [The dynamics of small business in 2005–2013]. (n.d.). *nfolight.org.ua*. Retrieved from <http://infolight.org.ua/content/dynamika-malogo-pidpriemnictva-u-2005-2013-rokah> [in Ukrainian].

9. Analitychyj vypusk «Chy ne zanadto bahato u nas serednoho i maloho biznesu v Ukraini?» [Analytical research «Not too many in our small and medium business in Ukraine?»]. (n.d.). *ua.112.u*. Retrieved from <http://ua.112.ua/mnenie/chy-ne-zanadto-bahato-u-nas-serednoho-i-maloho-biznesu-v-ukraini-240000.html> [in Ukrainian].

10. Analitychne doslidzhennia «Rozvytok maloho i serednoho pidpriemnytstva v Ukraini: problemy, potreby, perspektyvy» [Analytical research «The development small and medium business in Ukraine: problems, needs, perspectives»]. (n.d.). *donetskcci.com*. Retrieved from http://donetskcci.com/images/files/SME_Needs.pdf [in Ukrainian].

11. Analitychne doslidzhennia «Kharakterystyka krain na osnovi pryntsyviv akta z pytan maloho biznesu: Ukraina. Indeks polityky shchodo MPS: krainy skhidnoho partnertstva, 2016 rik. Otsinka realizatsii Akta z pytan maloho biznesu (AMB) dlia Yevropy» [Analytical research «The characteristic of countries based on the principles of the Act on small businesses: Ukraine. IPS policy index about SMB: countries of the Eastern partnership, 2016. Evaluation of the implementation of the Act on small businesses (ASB) for Europe»]. (n.d.). *www.oecd.org*. Retrieved from <https://www.oecd.org/globalrelations/Ukraine-chapter.pdf> [in Ukrainian].

12. Zilhalova, O.A. Rol maloho i serednoho innovatsiinoho biznesu v rozvytku perekhidnoi ekonomiky [Role of small and medium business innovation in the development of transition economics]. (n.d.). *www.rusnauka.com*. Retrieved from http://www.rusnauka.com/CCN/Economics/14_zilganova.doc.htm [in Ukrainian].

Стаття надійшла до редколегії 01.02.2017

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Правова охорона інноваційного розвитку малого та середнього бізнесу

Розглянуто актуальні питання вдосконалення правової охорони інноваційного розвитку малого та середнього бізнесу в Україні. Досліджено вітчизняну та міжнародну законодавчу практику покращення умов впровадження інноваційної складової в діяльність малого та середнього підприємництва. Визначено перспективні напрями державної політики щодо посилення інтелектуального та інноваційного потенціалу суб'єктів малого та середнього бізнесу.

Ключові слова: державна політика, правова охорона, інтелектуальний потенціал, інноваційний розвиток, законодавча практика, мале та середнє підприємництво, розвинена ринкова економіка.