

THE ANALYSIS OF THE ECONOMIC AND LEGAL MECHANISM OF PUBLIC MANAGEMENT FOR THE SUSTAINABLE DEVELOPMENT ON THE ECOLOGICAL COMPONENTS BASIS

Denys Tarasenko, Olena Tsyklauri

АНАЛІЗ ЕКОНОМІКО-ПРАВОВОГО МЕХАНІЗМУ ПУБЛІЧНОГО УПРАВЛІННЯ СТАЛИМ РОЗВИТКОМ НА ЗАСАДАХ ЕКОЛОГІЧНОЇ СКЛАДОВОЇ

Денис Тарасенко, Олена Циклаурі

Summary. *The article analyzes the state of the economic and legal mechanism of public management of sustainable development on the basis of environmental component in Ukraine.*

The research is aimed at identifying the directions of the mentioned mechanism improvement by increasing its effectiveness and efficiency, as well as on determining further guidelines for public management to Ukraine's sustainable development.

It has been noted that the current economic and legal mechanism of public management for sustainable development in terms of environmental taxation and environmental budget expenditures has its drawbacks and ineffective for the economy and entrepreneurship development, as well as for improving the environmental sphere in Ukraine.

In particular, attention has been paid to: the absence of preferential taxation conditions for enterprises trying to modernize their facilities and implement the latest environmentally friendly, low-waste, energy and resource-saving technologies; the need for a gradual increase in environmental tax rates; the expediency of increasing responsibility for environmental offenses; imperfection of regulatory regulation of the special fund budget expenditures on environmental measures, which allow for misuse of funds, etc.

The results of the study may find practical application to eliminate the identified disadvantages and promote the sustainable development of Ukraine by amending a number of regulatory acts: the Tax Code of Ukraine, the Budget Code of Ukraine, the Law of Ukraine "On Local Self-Government in Ukraine", the Code on Administrative Offences of Ukraine and other laws and by-laws related to these issues.

Key words: *sustainable development, legislative regulation of sustainable development, economic and legal mechanisms of sustainable development, environmental protection, an environmental tax.*

Анотація. *У статті досліджено стан економіко-правового механізму публічного управління сталим розвитком на засадах екологічної складової в Україні.*

Дослідження спрямовано на виявлення напрямів удосконалення зазначеного механізму через підвищення його дієвості й ефективності, а також на визначення подальших орієнтирів публічного управління сталим розвитком України.

Відзначено, що сучасний економіко-правовий механізм публічного управління сталим розвитком в частині екологічного оподаткування та видатків бюджету на охорону навколишнього природного середовища є вельми недосконалим та малоефективним як для розвитку економіки і підприємництва, так і для поліпшення екологічної сфери в Україні.

Зокрема, звернено увагу: на відсутність пільгових умов оподаткування підприємств, що намагаються модернізувати потужності та впроваджувати новітні екологічно чисті, маловідхідні, енерго- і ресурсозберігаючі технології; необхідність поступового підвищення ставок податку на забруднення навколишнього природного середовища; доцільність підвищення відповідальності за правопорушення в екологічній сфері; недосконалість нормативно-правового регулювання видатків спеціального фонду

бюджетів на природоохоронні заходи, які надають можливість нецільового використання коштів тощо.

Результати дослідження можуть знайти практичне застосування для усунення виявлених недоліків і сприяння дійсно сталому розвитку України через внесення зміни до низки нормативно-правових актів: Податкового кодексу України, Бюджетного кодексу України, Закону України «Про місцеве самоврядування в Україні», Кодексу України про адміністративні правопорушення та інших законів і підзаконних актів, пов'язаних із зазначеними питаннями.

Ключові слова: *сталий розвиток, нормативно-правове регулювання сталого розвитку, економіко-правовий механізм сталого розвитку, охорона навколишнього природного середовища, екологічний податок.*

Introduction. In recent years, a lot of reforms have been taking place in Ukraine in almost all spheres of life of the state and society. Given the current intensification of crisis in political, economic, environmental, social and other spheres of public administration, the crisis of public administration itself, in view of Ukraine's aspirations and focus on European integration, reform must be based, first and foremost, on the basic principles of “good governance”: openness, rule of law, responsiveness, participation, accountability, equity, efficiency and effectiveness, strategic vision, coherence, and etc. It is the adherence and implementation of these principles at the national level through public management mechanisms that will ensure sustainable development.

Towards European Integration, Accession to the Global Sustainable Development Goals, adopted by world leaders in September 25, 2015, at the 70th session of the UN General Assembly at an historic UN Summit in New York [1, 2015; 2, 2017; 3, 2019], in light of the implementation of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one hand, and Ukraine, on the other, ratified by Ukraine Law No 1678-VII of 16.09.2014 [4, 2014], is of the utmost importance for our country to implement and comply with EU norms and standards, which will further shape the long-term international cooperation.

Environmental protection is one of the main directions of public policy in the sustainable development terms, which combines balanced development of economic, ecological and social sphere. Taxation is one of the most effective instruments in many countries' environmental and economic policies. At the same time, in Ukraine, unfortunately, the legislator pays insufficient attention to the issues of effective legal mechanisms of taxation in the environmental sphere.

Domestic and foreign practitioners and scientists of various fields have devoted a lot of works to the study of individual issues of public administration in the field of environmental protection, including: S.F. Marova, O.V. Balueva, B.V. Burkinskiy, T.K. Kvash, O.M. Kolenov, L.P. Marchuk, L.A. Musina, O.P. Svetlichny and others. Despite the numerous researches, there remain many questions about effective regulatory support in the environmental field, in particular, with regard to taxation that need to be addressed.

The purpose of the article is to analyze and identify ways to improve the economic and legal mechanism of public management for the sustainable development on the ecological components basis.

The main chapter. Tax instruments play an important role in the economic and legal mechanism system of public administration of sustainable development, because taxation itself has a significant impact on the possibilities of business environment development and budgeting efficiency. They can both promote and hinder the growth of the latter. In the current conditions, environmental taxes are mainly a related to financial matters function and are mainly aimed at redressing the environmental damage, that is, the fight against the consequences rather than prevention. At the same time, in many countries, environmental taxes also focus on promoting environmental safety and developing eco-friendly production.

Paragraph д) Part 2 of Art. 41 of the Law of Ukraine “On Environmental Protection” of

25.06.1991, № 1264-XII provides for the provision of enterprises, institutions and organizations, as well as citizens of tax, credit and other privileges in the implementation of low-waste, energy and resource-saving technologies and non-traditional types of energy and other effective environmental measures. In addition, the provisions of Art. 48 of the mentioned law identified ways to promote the rational use of natural resources and the protection of the environment [5]. Nevertheless, further legislative mechanisms for preferential taxation have not been implemented.

Conditions for environmental taxation are regulated by the Tax Code of Ukraine dated December 2, 2010, No. 2755-VI (as amended) [6]. These rules provide for a list of subjects, objects, tax base and tax rates for certain types of pollution, but do not contain positions, both for incentives and preferential taxation, and for strict sanctioning for pollution.

A distinctive feature of European countries is a sufficient amount of environmental taxes, which are neutral for the budget, that is, when they were introduced there was a reduction in the corresponding amounts of contributions to social funds and adjustments in income tax.

For example, the UK has made significant progress in reducing pollutant emissions through annual increases in tax rates for pollutants and other environmental damages and the introduction of significant tax concessions for companies investing in its protection projects.

In relation to energy-intensive industries, the UK government has allowed a tax cut of 80 %, subject to the adoption and fulfilment of energy cost commitments to a minimum of ten years and the revision of standards every two years, for instance. Such commitments have been accepted by the biggest companies in the aluminum, chemical, paper, steel and other sectors of the economy [7, Chernyavskaya, Kleyman, 2015].

At the same time, more stringent standards for environmental pollutants need to be implemented. Atmospheric pollution standards in Japan are among the most stringent in the world. They exceed 2-3 times similar parameters in other countries. Special allowances for taxes on hazardous production and goods are provided, as well as payments for emissions in excess of the established sulfur dioxide standards [8, Zhybynova, 2005].

In view of all the above positions, a pressing question arises as to the granting of tax breaks to manufacturers who introduce the latest environmentally-friendly technologies into production. At the present stage, the tax legislation of Ukraine does not have direct norms that would provide privileges and preferences in taxation of ecp-friendly production, but it is part of the world practice, so stimulating payments for environmental activities of enterprises, and fiscal through the financing of environmental activities have been addressed.

Among the conditions for liberation from taxation of enterprises profits, which is provided by the provisions of Art. 142 of the Tax Code of Ukraine, there is no definition of the possibility of dismissal, even partial, for the entities that upgrade the existing and introduce new environmentally-friendly facilities [6].

Another pressing issue is the allocation and use of environmental tax revenue. According to the provisions of Clauses 4), 4-1) Part 1 of Art. 69-1 of the Budget Code of Ukraine 70 % of monetary penalties for damages caused by violation of environmental legislation due to economic and other activities and 55 % of environmental tax (except environmental tax, defined in clause 16-1 part 2 Article 29 of the Tax Code Of Ukraine) are the revenues of the special fund of local budgets and according to Part 2 of Art. 70 of the Budget Code of Ukraine can be spent exclusively on the measures provided by the decision on the local budget in accordance with the law [9].

That is, these funds of the special fund of local budgets can be used only for financial support of the environmental measures implementation, including protection from the harmful effects of the waters of rural settlements and agricultural lands, resource-saving measures, including scientific research on these issues, maintaining the state cadaster of territories and objects of nature conservation fund, as well as measures to reduce environmental pollution and ensure compliance with environmental standards and regulations concerning environmental protection, to reduce the impact of environmental pollution on the population health (Article 47

of the Law of Ukraine “On Environmental Protection”) [5].

The list of measures is defined by the Decree of the Cabinet of Ministers of Ukraine № 1147 of 17.09.1996 (as amended) [10]. This document addresses a lot of comments from researchers and scientists, since in some provisions it is possible to misunderstand the measures, expand their content, etc. and, accordingly, to use “environmental receipts” not for the intended purpose (see, for example, [11, 2019; 12, 2019; 13, 2019]). As for the “environmental revenues” of the State Budget of Ukraine, they are often spent to cover the shortage of funds for other expenditures.

The authors believe that the environmental situation improvement in Ukraine is possible if the environmental tax rates for environmental pollution are substantially increased, while simultaneously granting tax exemptions to enterprises that implement low-waste, energy and resource-saving technologies and other non-traditional energy sources on the environment protection.

There has to be the condition to make it significantly more advantageous for producers to modernize production at the expense of "temporary special partial exemption from taxation", provided that targeted funds are allocated for appropriate improvements and upgrades than to continue to pay significant environmental taxes. These “exemptions” can be implemented through the conclusion of an administrative agreement with public authorities (with the participation of both tax and environmental authorities and bodies) with a transparent calculation of the cost of measures, terms and other conditions of implementation.

At the same time, it is advisable to determine the precautionary measures in order to prevent the improper use of the tax exemption, and to comply with the terms of the contract by imposing a duty to pay tax liabilities and substantially significant fines in percentages to the amount of the exemption and other liability protectors, as the enterprises themselves and officials and officers guilty of such violations.

Conclusions. Summarizing the abovementioned, it has to be noted that improvements to the economic and legal mechanism of public management of sustainable development on the basis of environmental component require amendments to tax and budget legislation, the Law of Ukraine “On Local Self-Government in Ukraine”, the Code on Administrative Offences of Ukraine and a number of other related issues of pollution taxation, allocation of special fund budget funds to environmental measures, ensuring control over their implementation and compliance with the regulatory purpose (e.g., to increase rates of contamination while providing the possibility of using entities “temporary special partial exemption” or directing special funds budgets for upgrading enterprises).

Ensuring the sustainable development of Ukraine is one of the priorities of national policy. That is why further exploration of ways of effective functioning improvement of effective legal mechanisms of public administration for the sustainable development of the Ukrainian cities and communities, both in economic and other spheres of the state and society life is one of the most promising directions.

References:

[1] The Transformation of our World (2015). Sustainable Development Agenda for the period up to 2030. Retrieved from www.ua.undp.org/content/dam/ukraine/docs/SDGreports/Agenda2030_UA.pdf [in Ukrainian].

[2] National Report "Sustainable Development Goals: Ukraine". (2017). www.me.gov.ua. Retrieved from www.me.gov.ua/Documents/Detail?lang=uk-UA&id=6f446a44-9bba-41b0-8642-8db3593e696e&title=NatsionalnaDopovid-tsiliStalogoRozvitku-Ukraina- [in Ukrainian].

[3] Pro tsili staloho rozvytku Ukrainy na period do 2030 roku: Ukaz Prezydenta Ukrainy # 722/2019 [The Decree Of The President Of Ukraine # 722/2019 "About the Sustainable Development Goals of Ukraine until 2030"]. (2019). *Ofitsiynyi visnyk Ukrainy – The official Bulletin of Ukraine*, 79 [in Ukrainian].

[4] Pro ratyfikatsiiu Uhody pro asotsiatsiiu mizh Ukrainoiu, z odniiei storony, ta

Yevropeiskym Soiuzom, Yevropeiskym spivtovarystvom z atomnoi enerhii i yikhnyim derzhavamy-chlenamy, z inshoi storony: Zakon Ukrainy vid 16.09.2014 r., # 1678-VII [The Law of Ukraine of 16.09.2014, # 1678-VII " On ratification of the Association Agreement between the European Union and the European Atomic Energy Community and its Member States, of the one part, and Ukraine, on the other part"]. (2014). *Vidomosti Verhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, 40 [in Ukrainian].

[5] Pro okhoronu navkolyshnoho pryrodnoho seredovyscha: Zakon Ukrainy vid 25.06.1991, # 1264-XII No 1264-XII [The Law of Ukraine of 25.06.1991, # 1264-XII "On Environmental Protection"]. (1991). *Vidomosti Verhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, 41 [in Ukrainian].

[6] Podatkovi kodeks Ukrainy: Zakon Ukrainy vid 02.12.2010, # 2755-VI [The Law of Ukraine dated 02.12.2010, # 2755-VI "Tax Code of Ukraine"]. (2010). *Vidomosti Verhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, 13-17 [in Ukrainian].

[7] Chernyavskaya, N.V., & Kleyman, A.V. (2015). Ekologicheskie nalohi zarubezhnykh stran: voprosy primeneniia [Environmental taxes of foreign countries: application issues]. *Mezhdunarodnyi bukhholderskii uchet – International Accounting*, 30, 42-51. Retrieved from <https://cyberleninka.ru/article/v/ekologicheskie-nalohi-v-zarubezhnyh-stranah-voprosy-primeneniya> [in Russian].

[8] Zhibinova, K.V. (2005). *Ekonomicheskie osnovy ekologii [Economic foundations of ecology]*. Retrieved from www.kgau.ru/distance/ur_4/ekology/cont/3-2.html [in Russian].

[9] Biudzhetni kodeks Ukrainy: Zakon Ukrainy vid 08.07.2010, # 2456-VI [The Law of Ukraine dated 08.07.2010, # 2456-VI "Budget Code of Ukraine"]. (2010). *Vidomosti Verhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, 50-51 [in Ukrainian].

[10] Pro zatverdzhennia pereliku vydiv diialnosti, shcho nalezhat do pryrodookhoronnykh zakhodiv: Postanova Kabinetu Ministriv Ukrainy vid 17.09.1996, # 1147 [The Resolution of the Cabinet of Ministers of Ukraine dated 17.09.1996, # 1147 "On the approval of the list of activity types belonging to the environment protection measures"]. (1996). Retrieved from <https://zakon.rada.gov.ua/laws/show/1147-96-%D0%BF> [in Ukrainian].

[11] Ekologichni podatok 2019 v Ukraini: hariachi zminy yak krok do yevropeiskoi modeli rozvytku chy element posylennia tysku na biznes? [Environmental Tax 2019 in Ukraine: hot changes as a step towards a European development model or an element of increasing business pressure?]. (2019). *ecolog-ua.com*. Retrieved from <http://ecolog-ua.com/articles/ekologichnyy-podatok-2019-v-ukrayini-garyachi-zminy-yak-krok-do-yevropeyskoyi-modeli> [in Ukrainian].

[12] Norenko, K., Tiestov, P., & Kuts, N. (2019). *Hromadskyi kontrol za vykorystanniam koshtiv fondiv okhorony navkolyshnoho pryrodnoho seredovyscha [Local public control over the use of budget funds]*. Retrieved from <http://epl.org.ua/wp-content/uploads/2019/03/Instruktsiya-dlya-gromadskosti.pdf> [in Ukrainian].

[13] Voitsikhovska, A., Norenko, K., & Tiestov, P. (2018). *Chyste dovkillia – zdorove maibutnie: nova polityka vykorystannia koshtiv spetsialnykh fondiv okhorony navkolyshnoho pryrodnoho seredovyscha [Clean environment – a healthy future: a new policy on the use of special environmental protection funds]*. Retrieved from http://epl.org.ua/wp-content/uploads/2018/11/Analitdoc_EcoFondu_Net.pdf [in Ukrainian].

[14] Pro mistseve samovriaduvannia v Ukraini: Zakon Ukrainy vid 21.05.1997, # 280/97-VR [The Law of Ukraine dated 21.05.1997, # 280/97-VR "On Local Self-Government in Ukraine"]. (1997). *Vidomosti Verhovnoi Rady Ukrainy – Bulletin of the Verkhovna Rada of Ukraine*, 24 [in Ukrainian].

[15] Kodeks Ukrainy pro administratyvni pravoporushennia: Zakon Ukrainy vid 07.12.1984, # 8073-X [The Law of Ukraine dated 07.12.1984, # 8073-X "Code on Administrative Offences of Ukraine"]. (1984). *Vidomosti Verhovnoi Rady URSS – Bulletin of the Verkhovna Rada of USSR*, 51 [in Ukrainian].

Biography of the authors:

1. Name: Tarasenko Denys.

Academic titles: PhD in Public Administration, Associate Professor.

Organization: Donetsk State University of Management (Mariupol, Ukraine).

Personal e-mail: tarasenkodenis81@gmail.com

2. Name: Tsyklauri Olena.

Organization: Donetsk State University of Management (Mariupol, Ukraine).

Personal e-mail: o.tsyklauri@gmail.com