

PECULIARITIES OF THE LEGAL NATURE OF A JOINT ACTIVITY AGREEMENT IN THE FIELDS OF PUBLIC-PRIVATE PARTNERSHIP AND INNOVATION

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Abstract. The *subject* of the present study is the theoretical, methodological and applied provisions of legal regulation of joint activities and relations in the most economically promising areas, namely public-private partnerships and innovation. *Methodology.* The research process was informed by established scientific methodologies. Specifically, the dialectical method of cognition proved instrumental in elucidating the essence of the concept of public-private partnership. The analysis performed enabled the determination of the specifics of the legal regulation of contractual relations for the implementation of joint activities in the area of public-private partnerships and innovations. Synthesis was used to determine the legal characteristics of a joint activities agreement in the field of public-private partnership and innovations. Finally, the method of deduction was used to substantiate the feasibility and effectiveness of applying the joint activities agreement structure in the investigated areas. The *objective* of the present article is to ascertain the particularities of implementing a joint activities agreement for the purpose of regulating legal relations in the most promising socio-economic domains, namely public-private partnerships and innovations. The findings of the research have demonstrated that joint activity agreements have the potential to serve as a pivotal instrument for ensuring expeditious and efficacious collaboration among the various participants involved in the restoration process, particularly those engaged in public and private legal relations. In contexts where traditional business and partnership models may prove challenging or hazardous due to the prevailing conditions of war, the utilisation of joint activities has been shown to mitigate risk and streamline project management by leveraging the resources and expertise of businesses, governments, and international partners. *Conclusion.* It has been established that the expediency of widespread application of the structure of a joint activities agreement in the field of public-private partnership is obvious, especially in the context of Ukraine's post-war reconstruction and implementation of its European integration aspirations. This contract structure facilitates the effective pooling of resources from both state and private companies, thereby enabling the addressing of complex economic and social challenges. It enables the state to attract investments, innovative technologies and private sector expertise while retaining control over strategic development directions. Consequently, private partners are granted access to substantial state projects, thereby facilitating business development and the creation of new employment opportunities. It has been determined that the effective implementation of innovation activities necessitates not only the presence of progressive ideas and highly qualified scientific potential, but also the existence of adequate legal regulation that ensures the practical realisation of these ideas. In the context of rapid technological changes and high competition in the innovation market, a key instrument for ensuring successful collaboration between government agencies, the private sector and research institutions is the formulation of a joint activities agreement. The establishment of such an agreement facilitates the delineation of the terms of partnership, the distribution of rights and

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obligations, the financing procedures, and the mechanisms for protecting intellectual property and commercialising scientific achievements.

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1. Introduction

Due to their specific characteristics and unique legal nature, joint activity agreements have long occupied an independent place in the system of civil law contracts in most European countries. In international business practice, the term "joint activity agreement" refers to a partnership formed by natural or legal persons who pool their assets, money and other organisational capital, set specific objectives for their joint activity and agree to share profits, losses, management and control in more or less equal parts. A joint activity in a broad sense is an agreement in which the parties agree to act together for a certain purpose or in certain activities and to combine their property, labour and knowledge for this purpose, without creating a new legal organisational entity (Marcinkevičius, 2009).

Previous scientific works have shown that the legislation of such countries as France, Germany, Romania, Austria, Poland, Moldova and others pays considerable attention to the legal regulation of joint activity relations, recognising the importance of this contractual structure both for harmonising legal relations between entities seeking to achieve a common goal and for intensifying various economic processes. Ukrainian civil law is no exception, in particular Chapter 77 of the Civil Code of Ukraine, which also provides for fairly detailed regulation of relations in the field of joint activities aimed at achieving a certain goal that does not contradict the law (The Civil Code of Ukraine).

The doctrinal research of agreements on joint activities, in particular, their legal nature, types and areas of their most effective application, is important and relevant in the context of the war waged by Russia against Ukraine. Russia's full-scale military invasion of Ukraine on February 24 resulted not only in a catastrophe for the civilian population, but also in significant destruction of infrastructure, the closure of enterprises throughout the country, a significant decrease in gross domestic product and a deep economic crisis. This situation posed great challenges for Ukraine, but also created opportunities for new forms of co-operation in post-war economic reconstruction and development.

It has been proven on multiple occasions that joint activities agreements can serve as a pivotal

instrument for ensuring expeditious and effective collaboration between disparate stakeholders in the recovery process. In environments where traditional business and partnership models may be difficult or dangerous due to the circumstances of war, joint activities can reduce risks and simplify project management by combining the resources and expertise of businesses, governments and international partners. The role of such agreements is of particular significance in the context of restoring critical infrastructure and industrial capacities, as well as developing new technologies and sectors that have the potential to form the basis for post-war economic growth. The establishment of joint activities facilitates the formation of temporary partnerships between government agencies, private enterprises and international organisations, ensuring the efficient utilisation of resources to achieve common objectives. In this view, there is a quite objective need to investigate the peculiarities of application of the joint activities agreement structure in the two most promising socio-economic areas – public-private partnership and innovations.

2. Joint Activities Agreement in the Field of Public-Private Partnership

The present socio-economic conditions of Ukraine are a consequence of the full-scale military invasion by Russia, which has resulted in significant human casualties and damage to infrastructure. With regard to the latter, the Kyiv School of Economics (KSE) has estimated that as of November 2024, the total amount of direct damage to Ukraine's infrastructure resulting from Russia's full-scale invasion amounted to nearly 170 billion USD. This figure has increased by 12.6 billion USD since the beginning of 2024, a development attributable to further destruction resulting from missile attacks and hostilities. The sectors most adversely affected were those of housing, transport infrastructure and energy. The housing sector has been the most adversely affected, with direct losses estimated at 60 billion USD. Additionally, the transport infrastructure incurred substantial losses, amounting to 38.5 billion USD. Notably, over 26,000 kilometres of motorways were damaged and destroyed, with estimated costs reaching 28.3 billion USD. The rail transport sector incurred

losses of 4.3 billion USD, the port infrastructure sector 0.85 billion USD, and the aviation industry 2 billion USD. The estimated direct losses incurred by private passenger transport amount to 2.2 billion USD, with 260,000 cars destroyed or damaged. Ukraine's energy sector, which has suffered severely from constant missile attacks by the aggressor country, has lost 14.6 billion USD (direct damage to Ukraine's infrastructure from the war has risen to 170 billion USD). Given the limited resources available for Ukraine's recovery, as well as the lack of financial and organisational capacity to fully implement all tasks on its own, the state faces an important challenge in finding private investors to help accelerate the recovery process and ensure its sustainability, efficiency and stable development in the conditions of global changes and challenges.

This approach allows the integration of global experience and private investment into the national economy, which is crucial for the country's future recovery and economic growth. As the concept of public-private partnership is based on the idea of co-operation between public and private entities in socially important areas, this institution is becoming increasingly important.

In the context of international practice, public-private partnerships are interpreted in two distinct ways. Firstly, they are understood as a system of relations between the state and business, which is widely utilised as a tool for economic and social development at the international, national, regional and local levels. Secondly, they are regarded as specific projects implemented jointly by state authorities and private companies on the basis of state and municipal property (Mustafina, 2015). In this view, the term 'public-private partnership' is considered in both narrow and broad senses in scientific works. In the narrow sense, public-private partnership is defined as long-term, contractually regulated co-operation between the state and the private sector to fulfil public tasks, covering the entire life cycle of a project: from planning to operation, including maintenance (Karyi, Protsak, Mavrina, 2015). The concept of a public-private partnership is understood to signify a long-term, sustainable legal co-operation of financial, investment, organisational, managerial and intellectual resources of public authorities and private entrepreneurship for the joint solution of socially important tasks (Komarnytska, 2019). In essence, a public-private partnership constitutes a long-term contract between the government and a private entity, wherein the former engages the latter to deliver goods or services. The private partner is responsible for the construction, operation and maintenance of assets necessary for the delivery of goods or services (Navarro-Espigares, Hernandez-Torres, 2009).

In accordance with the stipulations outlined in Article 1 of the Law of Ukraine "On Public-Private Partnership", a public-private partnership is defined as a collaborative endeavour between the State of Ukraine, the Autonomous Republic of Crimea, hromadas (territorial communities), as represented by the relevant state bodies that oversee the management of state property in accordance with the Law of Ukraine "On Management of State Property Objects", local governments, the National Academy of Sciences of Ukraine, national branch academies of sciences (public partners) and legal entities, with the exception of state and municipal enterprises, institutions and organisations (private partners). Such co-operation is to be conducted on the basis of an agreement in accordance with the procedure established by this Law and other legislative acts, and is to meet the features of public-private partnership defined by this Law (The Law of Ukraine "On Public-Private Partnership"). Article 5 of the Law establishes the framework for public-private partnerships, encompassing a range of contractual structures. Among these, the joint activities agreement occupies a distinct position.

In essence, a public-private partnership, predicated on a joint activities agreement, serves to amalgamate private and public legal entities around a common goal that engenders a socially beneficial effect. The nomenclature of this co-operative endeavour, namely a public-private partnership, is congruent with the conceptual framework of a joint activity agreement predicated on coordination, thereby rendering it pertinent to employ in the regulatory framework governing the relations amongst its constituents. The establishment of public-private partnerships is particularly important in the context of the implementation of post-war reconstruction of state and municipal infrastructure damaged or destroyed as a result of hostilities. As demonstrated in the provisions of Article 4 of the Law "On Public-Private Partnership", various forms of partnership are established, including the construction and/or operation of motorways, roads, railways, runways at airfields, bridges, road overpasses, tunnels and subways, sea and river ports and their infrastructure; the installation of modular houses and the construction of temporary housing for internally displaced persons; and the construction and overhaul of residential buildings that were fully or partially destroyed as a result of hostilities in the territory of the anti-terrorist operation. At the same time, according to Article 7 of the Law, the objects of public-private partnership are: a) existing, including reconstructed (through reconstruction, restoration, overhaul and technical re-equipment), state or municipal property or property of the Autonomous Republic of Crimea, or property of business entities in which the state, a local

government or the Autonomous Republic of Crimea holds 100% of the shares; b) objects created or newly constructed in accordance with an agreement concluded within the framework of a public-private partnership.

A significant feature of co-operation between private partners and public legal entities within the framework of a joint activities agreement is the specific legal regime of partnership objects. In accordance with Article 7 (3) of the Law, the transfer of a public-private partnership object to a private partner, including its reconstruction, restoration, overhaul and technical re-equipment by the private partner, does not result in the transfer of ownership of the object to the private partner and does not terminate the right of state or municipal ownership of such object. In such cases, the objects in question are subject to return to the state partner following termination of the relevant agreement, in accordance with the procedure stipulated by the agreement concluded within the framework of a public-private partnership. It is important to note that this also applies to cases where the joint activity results in the construction of a new real estate object. While this approach may appear to significantly disrupt the balance of public and private interests, which is an integral attribute of partnership relations, it is important to note that it also strengthens the economic position of the state through investments by private partners, while creating significant risks for the latter related to investments and loss of property resources.

Recognising the unfairness of such an approach, the national legislator has established the rule that the agreement may provide for joint ownership of the public and private partners of the newly created (newly constructed) objects of the public-private partnership. The agreement concluded within the framework of a public-private partnership shall determine the procedure for determining the shares of the public and private partners in the joint ownership of the created (newly constructed) objects, as well as the conditions and procedure for alienating the share in the right to joint ownership. Such an approach is quite reasonable, as it is aimed at creating legal guarantees for the private partners to protect their property interests.

Analysis of the provisions of the Law of Ukraine "On Public-Private Partnership" reveals the following peculiarities of the legal nature of an agreement on joint activities in this sphere: 1) the special composition of the subjects, which includes public legal entities, in particular, state authorities, local governments, the National Academy of Sciences of Ukraine, national sectoral academies of sciences (public partners) and legal entities of private law (private partners); 2) the special nature of the common goal of the joint activity of all partners, which is to create and/or construct, reconstruct, overhaul and/or

manage the object of the public-private partnership; 3) the long-term nature of the relations mediated by the agreement on joint activities in the field of public-private partnership (from 5 to 50 years); 4) joint and fair distribution of risks between public and private partners in the process of implementing agreements on joint activities; 5) achievement of a socially useful effect based on the results of joint activities; 6) ensuring compliance with the balance of property interests of private and public partners; 7) a special multi-stage procedure for concluding a joint activity agreement, which includes: preparation of a proposal for a public-private partnership; analysis of the effectiveness of a public-private partnership; decision on the implementation of a public-private partnership; competitive selection of a private partner; publication of information on the results of the tender for the selection of a private partner; and conclusion of a joint activity agreement; 8) a high level of state control and supervision over the implementation of the joint activity agreement due to the participation of the state in contractual legal relations and the need to ensure national security and state interests in this regard.

3. Agreements on Joint Activities in the Field of Innovations

Another promising area of application of the joint activities agreement structure is the field of innovation. Partnerships have emerged as a key vehicle to compete in new technology-driven domains, including renewable energy, circular economy, digital health, and mobility. In the context of anti-globalisation sentiments and the increasing prevalence of restrictive regulatory regimes, joint activities with local partners emerge as a strategic instrument for expanding or consolidating a company's international foothold (Bhargava, Bamford, 2021).

According to the researchers, innovation is currently considered to be a manifestation and satellite of continuous scientific and technological progress. It is regarded as one of the key factors and prerequisites for success, given that technological change and scientific discoveries have long been a driving force for socio-economic development. In a manner consistent with other countries, Ukraine acknowledges the significance of innovation and makes substantial efforts to support and develop it at all levels. This has become particularly pertinent in the aftermath of the full-scale armed aggression of the Russian Federation in February 2022, resulting in the adoption of novel forms of support. Nevertheless, the effective implementation of innovative activities demands not only ingenious concepts and scientific potential, but also adequate contractual arrangements grounded in progressive and consistent legal regulation (Tsiura, 2023).

In this context, it should be noted that one of the types of agreements in the field of innovation activities enshrined in the current legislation is a joint activities agreement. This agreement is concluded without the establishment of a legal entity and without combining the contributions of technology park participants. The concluding of such an agreement is provided for by the provisions of the Law of Ukraine "On Special Regime of Innovative Activities of Technology Parks" (The Law of Ukraine "On Special Regime of Innovative Activities of Technology Parks"). Consequently, there are compelling reasons to hypothesise that the formulation of a joint activity agreement can be applicable in the domain of innovation. In accordance with Article 1 of the aforementioned Law, a joint activities agreement lacking the establishment of a legal entity and the combination of the contributions of technology park participants should be interpreted as an agreement between legal entities – technology park participants. This agreement must contain information regarding the composition of technology park participants, their rights and obligations, and priority areas of technology park activities. The agreement should also include information on the governing bodies and the management body of the technology park, their respective powers and the procedure for decision-making. Furthermore, the agreement should detail the procedure for financing the activities and the procedure for the liquidation of the technology park (termination of the agreement) and exclusion from the number of technology park participants. The agreement should also include the procedure for the liquidation of the technology park (termination of the agreement).

In this regard, A. Stasiv posits that such an agreement possesses certain characteristics that diverge from the conventional framework of a classical contract, given its obligation to delineate the protocol for the admission of new participants and the exclusion of existing ones. Accordingly, the researcher posits that this results in a change of parties to the agreement, which does not invalidate the validity of the joint activities agreement. This is in direct opposition to the fundamental principles of contractual relationships, as the replacement of parties to a contract inevitably results in the dissolution of the agreement, necessitating the establishment of a new contract with the new constituents. However, the legislator has not provided for this issue. Furthermore, the appointment of governing bodies is specific to such agreements, as outlined in Article 1 of the Law. It appears that the structure of the management body is not consistent with that of contractual relations. Conventionally, the institution of legal entities is the norm. It is evident that the institution in question should comprise a person or persons who are duly

authorised to manage the activities stipulated within the contractual agreement and to conduct business on behalf of the contracting parties with third parties (Stasiv, 2022).

It is challenging to concur with the author's assertions. The formulation of a joint activities agreement, in the absence of the establishment of a legal entity and the amalgamation of the contributions of participants within a technology park, is intended to regulate relations pertaining to the organisation of activities within a technology park. This assertion is derived from the definition of a technology park as a legal entity or a group of legal entities operating in accordance with a joint activities agreement, once again without the creation of a legal entity and without the amalgamation of contributions, with the objective of establishing an organisational framework for the execution of technological projects. Indeed, the agreement under investigation functions as a foundational document, the primary function of which is to ensure the orderliness of the activities of the technology park participants. This is achieved by, amongst other things, determining their rights and obligations, resolving issues related to the management of the technology park as a legal entity or a group of legal entities, and establishing the rules for the formation of its subject composition. In summary, the collaborative endeavour encompassed by this agreement is the organisation and facilitation of the technology park's operations. Consequently, the terms delineated in the agreement are substantiated by legislative imperatives and align with the objectives of the technology park participants' joint endeavours.

Firstly, it is erroneous to identify the latter with the parties to the joint activity agreement. This is due to the fact that the admission of new participants to the entity of the technology park or the termination of participation of the existing ones does not affect the validity of the joint activity agreement. Instead, it merely leads to changes in it in terms of information on the composition of the participants. Secondly, the provisions of the joint activity agreement on information about the governing bodies and the management body relate to the activities of the technology park, and not to the joint activities of the parties to the agreement, which manage it in accordance with the provisions of Article 1131(2) of the Civil Code of Ukraine. In view of the aforementioned points, it can be posited that the structure of a joint activity agreement, in the absence of the establishment of a legal entity and the amalgamation of the contributions of the technology park participants, is optimal and appropriate in view of its purpose and application specifics. This position is further reinforced by the provisions of the Draft Law of Ukraine "On Innovation Parks" No. 7658 dated 11.08.2022, which is currently under review by the relevant committee of the

Verkhovna Rada of Ukraine. The national legislator elected to adopt the approach to determining the structure of the joint activities agreement as set out in the Law of Ukraine "On Special Regime of Innovative Activities of Technology Parks" when establishing the specifics of the joint activity agreement as a legal basis for the functioning of innovation parks. According to Article 1 of the Draft Law "On Innovation Parks", a joint activity agreement constitutes an agreement between legal entities participating in an innovation park, which is established in the form of a business association without the creation of a legal entity and without the amalgamation of the contributions of the innovation park participants.

The content of the agreement is detailed in Article 7 of the Draft Law, which stipulates that if an innovation park is an economic association that does not acquire the status of a legal entity (contractual economic association), such an innovation park shall operate on the basis of a joint activity agreement without combining the contributions of its participants. The essential terms of the joint activity agreement are as follows: the purpose of its conclusion; information about the composition of the participants in the innovation park; the rights and obligations of the participants in the innovation park; the liability of the participants for obligations arising in connection with their participation in the innovation park or the implementation of innovation park projects; the liability of a participant in the innovation park if they withdraw from the innovation park before the completion of the respective project, for obligations incurred during their participation in the agreement; the priority areas of activity of the innovation park; the governing bodies and the management body of the innovation park, their powers, and the decision-making procedure; the procedure for financing the activities of the governing bodies and the management body; the procedure for accepting new participants into the innovation park, the procedure for excluding and withdrawing participants from the innovation park, the procedure for distributing rights to innovative products among the participants of the innovation park; and the procedure for terminating the joint activity agreement (The Draft Law of Ukraine "On Innovation Parks"). It seems that the inclusion of an exhaustive list of essential terms and conditions in a joint activity agreement in the context of the operation of innovation parks is quite reasonable and justified. This is especially true given the absence of such a list of essential terms and conditions in the general provisions of the Civil Code of Ukraine, as well as the legislator's desire to detail the specific nature of the studied contractual structure in the innovation sector.

Thus, it can be concluded that the effective implementation of innovative activities requires not

only the presence of advanced ideas and highly qualified scientific potential, but also appropriate legal regulation ensuring the practical implementation of these ideas. In the context of rapid technological changes and high competition in the innovation market, an important tool for ensuring successful co-operation between public authorities, the private sector and scientific institutions is the structure of the joint activity agreement. Such an agreement makes it possible to clearly define the terms of the partnership, the distribution of rights and responsibilities, the funding process, and the mechanisms for protecting intellectual property and commercialising scientific results. Based on the analysis of the provisions of the current legislation of Ukraine, the following legal characteristics of the agreement on joint activity in the field of innovation can be identified: 1) the organisational nature of the relations created by a joint activity agreement, which is determined by the absence of legal provisions on the participants' contributions to the agreement; 2) the specific purpose of the joint activity, which lies in the organisational provision of the functioning of technological and innovation parks as subjects of innovative activity; 3) the special subject-matter composition of the contractual legal relations, which is conditioned by the mandatory presence of the legal entity status among the participants of the joint activity agreement; 4) the dual nature of the joint activity agreement, which fulfils both functions as a regulator of contractual relations between the participants of technology and innovation parks, and as a founding document, serving as an organisational and legal basis for the functioning of the parks; 5) special content of the agreement, related to its function as a founding document of technology and innovation parks.

4. Conclusions

The extremely difficult socio-economic and political conditions of Ukraine's development, caused by the full-scale military invasion of the Russian Federation and the active European integration processes that have been going on in Ukraine over the past decade, despite the military aggression, have made it necessary to consolidate efforts and resources for ensuring the stability of the economic system and Ukraine's long-awaited status as an EU Member State. A joint activity agreement, recognised in the legislation of numerous European countries, is a particularly efficacious legal instrument in facilitating the establishment and organisation of interaction between entities to achieve common, socially beneficial goals.

From this standpoint, it is challenging to overstate the significance of the practical implementation of the aforementioned agreement in contemporary conditions. On the one hand, joint endeavours facilitate the accumulation of essential financial

resources, the distribution of risks, the attraction of contemporary technologies, and the enhancement of expenditure efficiency. On the other hand, the structure of a joint activity agreement functions as a mechanism that enables the acquisition of the experience and technologies of European companies, thereby contributing to the adaptation of Ukrainian legislation and practices to European norms.

One of the most promising areas of practical application of a joint activity agreement is public-private partnership. The expediency of widespread application of the structure of a joint activity agreement in this area is obvious, especially in the context of Ukraine's post-war reconstruction. This contractual structure allows for the effective combination of state and private resources to address complex economic and social challenges. It allows the state to attract investment, innovative technologies and expertise from the private sector, while retaining control over strategic development directions. In return, private partners gain access to major government projects, which helps to develop the economy and create new jobs. The article identifies a number of particularities of the investigated agreement in the area of the legal regulation of joint activities as a specific form of public-private partnership, on the basis of an analysis of the relevant legal regulations. The composition of the subject, which includes public law entities and legal entities of private law (private partners); the special nature of the common goal of joint activity for all partners, which is to create and/or construct, reconstruct, overhaul and/or manage a public-private partnership object; the long-term nature of relations; the joint and fair distribution of

risks between the public and private partners; the achievement of a public benefit effect based on the results of joint activity; and the ensuring of compliance with the balance of property interests of private and public partners.

It is evident that the joint activity agreement structure has a significant application in the domain of technology and innovation. It has been demonstrated that such an agreement facilitates the explicit delineation of the terms of partnership, the apportionment of rights and responsibilities, the financing process, as well as mechanisms for the protection of intellectual property and the commercialisation of scientific achievements. The peculiarities of the contractual regulation of joint activity relations in the field of innovation can be summarised as follows: firstly, the organisational nature of the relations is determined by the absence of provisions regarding the participants' contributions to the performance of the agreement; secondly, the specific goal of the joint activity is to organise the functioning of technological and innovation parks; thirdly, the special subject composition of the contractual legal relations is conditioned by the mandatory presence of legal entity status among the participants of the joint activity agreement; fourthly, the joint activity agreement has a dual nature, performing both functions. The document under consideration functions as a regulatory mechanism for contractual relations between participants in technological and innovation parks. It also serves as a foundational document, providing the organisational and legal basis for the functioning of the parks and associated entities.

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