DOI https://doi.org/10.30525/978-9934-571-83-1-33

FEATURES OF THE LEGAL STATUS OF THE INTERNATIONAL FINANCIAL ORGANIZATION AS A SUBJECT OF THE CURRENCY RELATIONS

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INTRODUCTION

Foreign exchange relations mediate almost all spheres of foreign economic activity of states, legal entities and individuals. Yes, they operate not only in the field of foreign trade, international transport, international investment, but also in the scientific, technical, cultural and other fields of life of the world community. The circle of subjects of currency relations is wide enough and varied, and also they differ significantly in their legal status. For example, the feature of the legal status of the state as a subject of currency relations and international monetary law, among other things, is the presence of such important features of the state as sovereignty and immunity, including currency immunity and currency monopoly. An important role in the organization of currency relations are played by the central authorities of the state, which are entrusted with the functions of regulating and managing the currency sphere, both in the middle of the country and its international currency relations. These bodies are increasingly influencing the regulation of foreign loans, the level of interest rates, the organization of the system of state and non-state insurance in the currency field (for example, export credits), taking measures for the circulation of national currency in international currency markets and capital markets. Thus, in most countries of the world, an important role in determining the state policy in the field of currency relations belongs to the government. He, in particular, may make decisions on the provision of external state loans, take measures for the devaluation and revaluation of the national currency. Regulatory influence on the state of the currency sphere and the international monetary relations are also carried out by the central banks of the states. Consequently, along with the implementation of functions related to the organization of cooperation in the monetary sphere, the state is the subject of specific payment, credit and other currency relations.

But in foreign exchange relations, in the broad sense of this term, not only the state is involved. The accessory subjects of the international monetary law are international financial organizations. Growth of external debt of many countries of the world exacerbated the problem of currency risks, solvency of debtors. In

connection with this, coordination of the policy of international financial organizations and states with respect to debtor countries and supervision over the activities of commercial banks has intensified. The implementation of interstate cooperation in this direction is facilitated by the activities of non-governmental financial institutions. Other participants in foreign exchange relations can be physical and legal persons (for example, banks, exchanges, funds, insurance companies, foreign economic organizations, etc.).

At the current stage, Ukraine actively cooperates with a number of international financial institutions, in particular with the International Monetary Fund, the International Bank for Reconstruction and Development, the European Bank for Reconstruction and Development, the European Investment Bank and others. But the concept of "international financial organization" is not currently in the national legislation of our state[1], although the legislator often operates this term. Such a situation creates significant problems in practical activities, in particular in the implementation of projects of international financial organizations in Ukraine.

Yes, in Art. 2 of the Law of Ukraine "On International Treaties of Ukraine" dated 29.06.2004 No. 1906-IV contains the definition of an international organization as an international intergovernmental organization[2] that does not disclose the essence of this term.

1. Features of the legal status of an international financial organization

It is generally acknowledged that international financial organizations, as a type of international organization, are created by the primary subjects of international law on the basis of an agreement between them, so they belong to secondary (derivative) subjects of international law. The scope of their legal personality is based on the relevant constituent documents, and they are endowed with appropriate privileges and immunities. Thus, according to the Convention on Privileges and Immunities of the Specialized Institutions of 1947, international financial organizations have the status of a legal entity. They are empowered:

– conclude contracts

[1] 1.Закон України «Про зовнішньоекономічну діяльність» від 16.04.1991 р. № 959-XII. *Відомості Верховної Ради УРСР.* 1991. № 29. Ст. 377.

2. Бюджетний кодекс України від 08.07.2010 р. № 2456-VI. *Відомості Верховної Ради України.* 2010. № 50–51. Ст. 572.

3. Митний кодекс України від 13.03.2012 р. № 4495-VI. *Відомості Верховної Ради України*. 2012. № 44–48. Ст. 552.

4. Податковий кодекс України від 02.12.2010 р. № 2755-VI. *Відомості Верховної Ради України*. 2011. № 13-17. Ст. 112.

[2] Закон України «Про міжнародні договори України» від 29.06.2004 р. № 1906-IV. *Відомості Верховної Ради України*. 2004. № 50. Ст. 540.

– to acquire and own movable and immovable property,

– to prosecute[3].

At the same time, contractual capacity of international organizations differs significantly from the contractual capacity of States, as international organizations have a legal personality that derives from the legal personality of the states in which they are created. International financial organizations can participate in a relatively narrow range of contracts, the possibility of which:

– provided for by their charters, in which the international organization has a certain amount of international legal personality and contractual capacity,

– is based on the special powers of the Member States[4].

Analyzing the privileges and immunities of an international financial organization, it can be argued that they are based on the privileges and immunities of international organizations, including UN specialized agencies. Namely:

– international financial organizations, their property and assets enjoy immunity from any form of judicial intervention;

– the premises of these organizations are intact;

– archives and documents that are owned or stored by them are intact;

– official correspondence and other official communications are not subject to censorship;

– assets, revenues, other property and these organizations are exempt from all direct taxes, customs duties, import and export prohibitions;

– the representatives of the member states of the organization and its officials enjoy certain privileges and immunities[5].

Very important for the characterization of the legal status of an international financial institution as a subject of currency relations are provisions of Article 7 of Art. III of the said Convention. In particular, international financial organizations can not be restricted by financial control, rules or moratorium. They can own funds, gold or currency of any kind and carry out transactions in any currency. And these organizations can freely transfer their funds, gold or currency from one country to another, or within any country, and convert any currency at their disposal into any other currency[6].

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[3] Конвенция о привилегиях и иммунитетах специализированных учреждений от 21 ноября 1947 г. *Международное публичное право. Сборник документов.* Т. 1. Москва : Издательство БЕК, 1996. С. 279–300.

[4] Рязанова Н.С. Міжнародні фінансові організації: підручник / Н. С. Рязанова, М. А. Гапонюк, А. А. Максименко. К.: КНЕУ, 2010. С. 31.

[5] Конвенция о привилегиях и иммунитетах специализированных учреждений от 21 ноября 1947 г. *Международное публичное право. Сборник документов.* Т. 1. М.: Издательство БЕК, 1996. С. 279–300.

[6] Конвенция о привилегиях и иммунитетах специализированных учреждений от 21 ноября 1947 г. *Международное публичное право. Сборник документов.* Т. 1. М.: Издательство БЕК, 1996. С. 279–300.

In addition, international financial organizations can resolve disputes that arise in the course of their activities, sometimes disputes between participating countries, as well as they bear international legal responsibility for the negative effects of their actions.

It is also necessary to draw attention to the fact that some of the provisions of the Convention on the Privileges and Immunities of the Specialized Agencies of 1947, have particular features of application to international financial organizations. So, in relation to the IMF there is a certain specificity of the application of p. 32 of Art. IX of this Convention for the transfer to the International Court of the United Nations of any disagreement arising out of the interpretation or application of this Convention only in respect of disputes arising out of the interpretation or application of the privileges and immunities granted to the Fund by this Convention. In addition, the provisions of the Convention do not change or require changes to the provisions of the IMF Statute (Treaty), do not violate or restrict the rights, immunities, privileges granted to the Fund by its Statute or under the laws of any Member State. That is, the de jure is the priority of the provisions of the IMF Statute (Treaty) over certain provisions of this Convention[7].

A similar situation and the effect of these provisions of the Convention on the International Bank for Reconstruction and Development. However, in addition, it is noted that IBRD may be sued only in courts having jurisdiction in the territory of the Member State in which the Bank has an office or in which it has appointed a representative authorized to receive litigation documents or which securities issued or guaranteed by them. At the same time, the assets of the Bank can not be subject to arrest, prohibition or enforcement until a final court decision has been made against the Bank[8].

The legal personality of international financial organizations and its volume are based on the charters of these organizations. In this case, as noted by V. M. Shumilov in relation to an international organization[9], the statute of an international financial organization as a type of international organization may contain so-called “presumptive” elements of legal personality, that is, it refers to the powers of an organization not provided for by the statute, but are purpose, tasks of this organization and necessary for its fulfillment of its functions and powers. In particular, there may be a certain extension of the legal personality of

[7] Конвенция о привилегиях и иммунитетах специализированных учреждений от 21 ноября 1947 г. Международное публичное право. Сборник документов. Т. 1. Москва : Издательство БЕК, 1996. С. 279–300.

[8] Конвенция о привилегиях и иммунитетах специализированных учреждений от 21 ноября 1947 г. Международное публичное право. Сборник документов. Т. 1. Москва : Издательство БЕК, 1996. С. 279–300.

[9] Шумилов В.М. Международное экономическое право: в 2 кн. Москва : ООО «Издательско-консалтинговая компания “Дека”», 2002. Кн. 1. С. 178.

an international financial organization through the decision of its authorities, in the absence of objections by Member States.

Also, for international financial organizations it is characteristic to enter into the scope of their legal personality "quasi-legislative" and "quasi-judicial" powers. Thus, for example, the IMF may, in accordance with its statutes, exercise quasi-legislative powers when its authorities take binding decisions for Member States, and also the highest authorities of the Fund are authorized to deal with disputes between Member States on relevant issues and in regard to the interpretation of its statutes and other documents, and therefore endowed with certain "quasi-judicial" powers.

In order to ensure the cooperation of our state with international financial organizations, the relevant international agreements were signed with these organizations[10] in accordance with the Law of Ukraine "On International Treaties of Ukraine"[11].

Also, international financial organizations play a significant role in the process of regulating the balance of payments of the states and Ukraine, in particular. A special role in this context is played by the International Monetary Fund, which, in accordance with the IMF Treaty (Statute), besides the issues of forming the mechanism of the modern currency system, is obliged to deal with issues related to the regulation of balance of payments of the member states. The following international financial institutions are tasked with developing the balance of payments mechanism:

a) improvement of the methodology of drawing up payment balances;

b) unification of the balance of payments of the member states;

c) collection and analysis of information on the balance of payments of the member states;

d) publication of the results of the analysis of the balance of payments of the member states;

e) assist member states in regulating their balance of payments[12].

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[10] Рамкова угода між Україною та Європейським інвестиційним банком від 14.06.2005 р. Угоду ратифіковано Законом від 07.02.2006 р. № 3392-IV. *Відомості Верховної Ради України.* 2006. № 22. Ст.193; Закон України «Про ратифікацію Меморандуму про взаєморозуміння між Україною як Позичальником та Європейським Союзом як Кредитором і Кредитної угоди між Україною як Позичальником і Національним банком України як Фінансовим агентом Позичальника та Європейським Союзом як Кредитором (щодо отримання Україною макрофінансової допомоги Європейського Союзу у сумі до 1 мільярда 800 мільйонів євро)» від 18.06.2015 р. № 538-VIII URL: http://search.ligazakon.ua/l_doc2.nsf/link1/T150538.html; Статьи Соглашения Международного валютного фонда от 22.07.1944 г. URL: http://zakon0.rada.gov.ua/laws/show/995_921 та ін.

[11] Закон України «Про міжнародні договори України» від 29.06.2004 р. № 1906-IV. *Відомості Верховної Ради України.* 2004. № 50. Ст. 540.

[12] Статьи Соглашения Международного валютного фонда от 22.07.1944 г. URL: http://zakon0.rada.gov.ua/laws/show/995_921 та ін.

Рязанова Н.С. Міжнародні фінансові організації: підручник / Н.С. Рязанова, М.А. Гапонюк, А.А. Максименко. Київ : КНЕУ, 2010. С. 48.

Thus, in January 1948 the International Monetary Fund published its first "Balance of Payments Manual" (Balance of Payments Manual), which was subsequently repeatedly revised. Classification of balance of payments articles by the IMF methodology is placed on the basis of the development of a national classification by the Member States, which contributes to the unification of the balance of payments of the states and ensures the comparability of their indicators[13].

However, there are currently discussions in the Ukrainian society about whether we need IMF loans, or whether we can refuse cooperation with this international organization, which, according to its statutory documents[14], de jure and de facto has certain supranational powers. So, we are talking, for example, about the IMF's demand for raising the retirement age. On the one hand, unfortunately, the government encourages the spread of rumors about a memorandum of the IMF on economic and financial policies. On the other hand, there is hardly a need to blindly follow all the requirements of this organization, which first of all cares about the return of the loans granted with the payment of interest and requires the creation of legal conditions and financial and economic guarantees for their return. Moreover, in our country the problem of raising the retirement age is not relevant, unlike Germany and some other European countries. Because there are other ways to fill the Pension Fund of Ukraine, in particular due to the expansion of the number of payers, taking into account the potential possibility of their increase more than twice. That is, the problem lies not so much in the requirements of the IMF, as in the ways of their implementation by the state, in particular in creating the legal framework for the complete withdrawal of the country's economy and salaries from the "shadow". In addition, it is necessary to solve the problem with persons who do not pay (or not fully pay) contributions to the Pension Fund, and upon reaching the retirement age, they will need a corresponding pension (so-called "migrant workers", as well as those who are not officially registered on the spot) work or are arranged on a part-time basis, or receive wages "in envelopes", etc.). In general, it is necessary to speak about a comprehensive pension reform that can solve existing problems without raising the retirement age (insurance or length of service) for our citizens. Moreover, there are no social indicators for such an increase. In particular, first of all, it refers to such indicators as a high mortality rate among the population, low indicators of the average life expectancy of Ukrainians, etc.

[13] Рязанова Н. С. Міжнародні фінансові організації: підручник / Н. С. Рязанова, М. А. Гапонюк, А. А. Максименко. К.: КНЕУ, 2010. С. 48.

[14] Статьи Соглашения Международного валютного фонда от 22.07.1944 г. URL: http://zakon0.rada.gov.ua/laws/show/995_921 та ін.

At the same time, effective cooperation with this organization has its advantages and is a definite indicator for other international financial organizations, as well as various lenders and investors. Therefore, when deciding on the need to obtain a loan, it is first and foremost, in each case, to proceed from the existing state of the economy and the interests of citizens and conduct negotiations based on these postulates.

2. Features of legal status of some international financial organizations of Europe and cooperation with Ukraine

As noted above, Ukraine actively cooperates with a number of international financial organizations in Europe, namely, the European Bank for Reconstruction and Development (EBRD) and the European Investment Bank (EIB). In order to effectively cooperate with European financial institutions, Ukraine faced the challenge of adapting national legislation in the monetary, financial and banking sectors to the EU law, as well as creating a national legal environment adequate to the current realities and needs of the state and its residents.

According to expert assessments, the level of approximation of Ukrainian legislation to the EU acquis in the field of banking law, in particular, the Law of Ukraine "On Banks and Banking", is high. According to an analysis carried out by the European Bank for Reconstruction and Development, Ukraine, ranking ahead of the Czech Republic, Latvia, Russia and Slovenia, ranks thirteenth in the ranking of Central and Eastern European and Baltic States, whose legislation complies with the requirements of the Basic Principles of Effective Banking Supervision, approved by the Basel Committee on banking supervision issues[15].

Considering the peculiarities of the legal status of the EBRD as an international organization, it is first necessary to refer to some of the provisions contained in the Agreement Establishing the European Bank for Reconstruction and Development of May 29, 1990[16], in the context of cooperation with Ukraine. The idea behind the creation of the EBRD was initiated by the French President Mitterrand and endorsed by the Council of Europe in support of the European community for the profound structural changes in almost all areas of life that took place in the USSR and other socialist countries of Central and Eastern Europe.

Yes, according to Art. 1 Chapter I of the Agreement Establishing the European Bank for Reconstruction and Development of May 29, 1990 (hereinafter referred to as the Agreement), the aim of the EBRD is to contribute

[15] Огляд стану адаптації законодавства України до acquis communautaire. К.: ТОВ «Ніка-Прінт», 2006. С. 15.

[16] Угода про заснування Європейського банку реконструкції та розвитку від 29 травня 1990 р. URL: www.ebrd.com/inforequest.

to economic progress and reconstruction, to promote the transition to an open, market-oriented economy and development private and entrepreneurial initiatives in Central and Eastern European countries that adhere to the principles of multiparty democracy, pluralism and a market economy[17]. The provisions of this article can be applied in the process of cooperation of the EBRD with Ukraine, since according to Art. 1 of the Constitution of Ukraine it is proclaimed that it is a sovereign and independent, democratic, social, and law-governed state[18]. At the same time, first of all, separate articles of sections I, II, etc. the Constitution, reveals and details the content of Art. 1 of the Basic Law of Ukraine. Also, an official interpretation of the provisions of Art. 1 of the Constitution of Ukraine was given in the Decision of the Constitutional Court No. 3-рп/ 2012 dated January 25, 2012[19].

In clause 1 of Art. 2 Chapter 1 of the Agreement sets forth the functions performed by the Bank to achieve its purpose. In particular, the Bank promotes the beneficiary countries that are members of the Bank in implementing structural and sectoral economic reforms, including demonopolization, decentralization and privatization, in order to help the economies of these countries to fully enter the world economy by: i) facilitating, through private and other interested investors, to improve and expand productive, competitive and private entrepreneurial activity, namely small and medium enterprises; (ii) the attraction of domestic and foreign capital, as well as managerial experience; (iii) promoting productive investment, including investment in services and finance, and appropriate infrastructure where necessary to support private and entrepreneurial initiatives, in order to create a competitive environment and increase labor productivity, living standards and improve working conditions; iv) technical assistance in the preparation, financing and implementation of relevant projects; v) stimulating the development of capital markets; vi) supporting economically viable projects involving more than one beneficiary member; vii) to promote, in all its activities, environmentally sound and sustainable development; viii) other activities and provision of other services that may contribute to the fulfillment of these functions. At the same time, note that the term “other interested investors” includes both domestic and foreign investors (paragraph (i), part 1)[20].

[17] Угода про заснування Європейського банку реконструкції та розвитку від 29 травня 1990 р. URL: www.ebrd.com/inforequest.

[18] Конституція України. Прийнята Верховною Радою України 28 червня 1996 р. № 254К/96-ВР. *Відомості Верховної Ради України.* 1996. № 30. Ст. 141.

[19] Рішення Конституційного Суду України у справі за конституційним поданням правління Пенсійного фонду України щодо офіційного тлумачення положень статті 1, ... № 3-рп/2012 від 25.01.2012 р. *Офіційний вісник України.* № 11. 2012. Ст. 422.

[20] Угода про заснування Європейського банку реконструкції та розвитку від 29 травня 1990 р. URL: www.ebrd.com/inforequest.

In order to carry out its functions, the Bank must work closely with not only Member States but also with a number of international organizations. In particular, with the United Nations and its specialized agencies, the Organization for Economic Cooperation and Development, the International Monetary Fund, the International Bank for Reconstruction and Development, the International Finance Corporation, the Multilateral Investment Guarantee Agency, as well as with public and private and private entities, with economic development and investment in the countries of Central and Eastern Europe (Clause 2 Art. 2, Chapter I of the Agreement)[21]. It should be noted that in the process of its activities, the Bank is guided by the principles set forth in Art. 13 of the Agreement[22].

According to Art. 8 of Chapter III of the Agreement, the resources and services of the Bank are used exclusively for the achievement of the purpose and performance of its functions. At the same time, the Bank can carry out its operations in countries that are consistently implementing the transition to a market economy and to the development of private and entrepreneurial initiatives and apply the principles set forth in Art. 1 of the Agreement[23]. In this case, in clause 3. of Art. 8 Chapter III of the Agreement states that in the event that a member country conducts a policy incompatible with Art. 1 of the Agreement, or in the event of an emergency, the Board of Directors as an EBRD body shall consider suspending or otherwise modifying the access of such member to the Bank's resources and may make appropriate recommendations to the Governing Board[24].

Also in Part 1 of Art. 11 of the Agreement states that the Bank carries out operations according to its purpose and functions in the following ways:

lending or co-financing with multilateral institutions, commercial banks or other interested entities, or participating in loans to private sector enterprises, any state-owned enterprise operating in a competitive environment, and a participant in a market economy and loans of any kind -any state-owned enterprise in order to facilitate its transition to private ownership and private control; in particular, to facilitate or facilitate the participation of private and / or foreign capital in such enterprises;

– (ii) (a) equity investment in private sector enterprises; (b) equity investment in any state-owned enterprise operating in a competitive environment and in

[21] Угода про заснування Європейського банку реконструкції та розвитку від 29 травня 1990 р. URL: www.ebrd.com/inforequest.

[22] Угода про заснування Європейського банку реконструкції та розвитку від 29 травня 1990 р. URL: www.ebrd.com/inforequest.

[23] Угода про заснування Європейського банку реконструкції та розвитку від 29 травня 1990 р. URL: www.ebrd.com/inforequest.

[24] Угода про заснування Європейського банку реконструкції та розвитку від 29 травня 1990 р. URL: www.ebrd.com/inforequest.

transition to a market economy and investment in the equity of any state-owned enterprise in order to facilitate its transition to private ownership and under private control, in particular, in order to facilitate or facilitate the participation of private and / or foreign capital in such enterprises; (c) when other means of financing are inappropriate, guaranteed placement of securities issued by both private sector enterprises and state-owned enterprises referred to in subparagraph (b) above for the purposes specified in this sub-paragraph;

– (iii) facilitating the access of private sector enterprises and other enterprises referred in paragraph (i) to domestic and international capital markets by providing guarantees when it is inappropriate to apply other means of financing, as well as by providing financial advice and assistance in other forms;

– iv) placement of special fund resources in accordance with the agreements that determine their use;

– (v) provision or participation in loans and technical assistance for the reconstruction and development of infrastructure, including environmental programs necessary for the development of the private sector and the transition to a market economy. For the purposes of this paragraph, a state-owned enterprise operating in a competitive market environment shall recognize only the enterprise that operates independently in a competitive market environment and is subject to bankruptcy law[25].

The Board of Directors reviews annually the Bank's operations in the beneficiary countries and its borrowing strategy to ensure full compliance with the Bank's objectives and functions. At the same time, such a consideration includes, inter alia, an analysis of the progress of each beneficiary country in the field of decentralization, demonopolization and privatization, as well as consideration of the relative shares of loans provided by the Bank to private enterprises, state enterprises in the process of transition to a market economy, or privatization, infrastructure, technical assistance and other purposes (Part 2 Art. 11 of the Agreement)[26]. At the same time, in Part 3 of Art. 11 of this Agreement states that the state sector shall be provided no more than 40 percent of all loans, guarantees and equity investments provided by the Bank, without prejudice to other operations of the Bank. Definition of the category "public sector", and exceptions are given in clause iii of part 3 of Art. 11 of the Agreement. Thus, the public sector includes central and local authorities, their institutions, as well as enterprises that are owned or controlled by them. However, they are not considered as provided to the public sector: a loan or guarantee, or an equity

[25] Угода про заснування Європейського банку реконструкції та розвитку від 29 травня 1990 р. URL: www.ebrd.com/inforequest.

[26] Угода про заснування Європейського банку реконструкції та розвитку від 29 травня 1990 р. URL: www.ebrd.com/inforequest.

investment in a state-owned enterprise that implements a program aimed at switching to private ownership and under private control; loans to a financial intermediary for the purpose of transferring them to the private sector[27].

In the case of given loans by the Bank, participation of the Bank in the loans or the Bank's issuance of guarantees, terms and conditions for granting a loan or guarantee are specified in the contract, including conditions for repayment of main debt, interest, fees, charges, dates of payment by loan or guarantee. In defining these conditions, the Bank fully takes into account the need to secure its income (Part 1 of Art. 14 of the Agreement)[28].

In cases where the recipient of a loan or guarantee is not a member but is a state-owned enterprise, the Bank may, taking into account the different approaches to publicly owned and state owned enterprises that are transferred to private ownership and under private control, require a member or members in whose territories to implement the relevant project, or from any public institution or other bodies of this member or members acceptable to the Bank, to guarantee repayment of principal and interest payments, as well as other fees and charges on loans in dpovidnosti with its terms. Moreover, the Board of Directors also annually reviews the Bank's practice in this area, paying attention to the Bank's creditworthiness (Part 2, Article 14 of the Agreement)[29].

Thus, analyzing the provisions of the Agreement Establishing the European Bank for Reconstruction and Development of May 29, 1990, in the context of the peculiarities of cooperation with Ukraine, it is worth focusing on some points:

First of all, Ukraine has joined this Agreement[30].

Secondly, in its essence and objectives, this Agreement aims, in contrast to the Agreement on the International Monetary Fund and the Agreement on the International Bank for Reconstruction and Development, namely the promotion of private sector development, the promotion of private and foreign investment.

Thirdly, taking into account the aforementioned, the Bank will facilitate the transition of the public sector from centralized control and management to decentralization and privatization.

Fourthly, the Bank will also promote the demonopolization of the economy, the formation of a competitive business environment.

Fifthly, the Bank's activities will contribute to the implementation of structural and economic reforms in the country.

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[27] Угода про заснування Європейського банку реконструкції та розвитку від 29 травня 1990 р. URL: www.ebrd.com/inforequest.

[28] Угода про заснування Європейського банку реконструкції та розвитку від 29 травня 1990 р. URL: www.ebrd.com/inforequest.

[29] Угода про заснування Європейського банку реконструкції та розвитку від 29 травня 1990 р. URL: www.ebrd.com/inforequest.

[30] Указ Президента України «Про членство України в Європейському банку реконструкції та розвитку» від 14 липня 1992 р. № 379/92. *Збірник указів Президента.* 1992. № 3.

Sixth, taking into account all of the above, it should be remembered that the Bank carries out its activities in order to ensure profit (revenues), as well as to facilitate the admission of investors to state-owned enterprises – first of all, from donor countries, and the transition of state ownership to private property, including foreign private property. It is clear that such projects require careful analysis, from the point of view of the interests of the state and citizens in each particular case. At the same time, it is necessary to take into account the Ukrainian realities associated with corrupt practices and the banal theft of public funds, which requires the creation of an effective mechanism for monitoring and controlling the spending of borrowed funds.

The European Investment Bank (EIB) was founded in accordance with the Treaty of Rome on the establishment of the EEC. The Bank has the status of a legal entity, relevant governing bodies and financial autonomy. Analyzing the specifics of the legal status of the EIB, first of all, let us draw attention to the Statute of the European Investment Bank[31]. Yes, in Art. 267 of the Statute of the European Investment Bank, the main objective of the EIB is defined, namely the promotion of a balanced and sustainable development of the common market in the interests of the EU through access to the market of loan capital and the use of its own resources[32].

To achieve this purpose, the Bank operates on a non-profit basis, provides loans and guarantees that contribute to the financing of the following projects in all sectors of the economy:

a) projects aimed at the development of less developed regions;

b) projects aimed at the modernization or conversion of enterprises or the development of new fields of activity necessary for the gradual construction of the common market, where, due to the scale or nature of such projects, they can not be fully funded by various means which have the individual Member States;

c) projects or common interests of several Member States of a scale or nature which do not allow them to be financed by the various means available to individual Member States[33].

The Statute of the European Investment Bank also defines the principles that it observes in the process of credit and guarantee operations. In particular, the Bank:

– ensures the most efficient use of funds in the interests of the EU;

[31] Протокол (№ 5) об Уставе Европейского инвестиционного банка от 25 марта 1957 г. URL: https://zakon.rada.gov.ua/laws/show/994_680 (с изменениями и дополнениями).

[32] Протокол (№ 5) об Уставе Европейского инвестиционного банка от 25 марта 1957 г. URL: https://zakon.rada.gov.ua/laws/show/994_680 (с изменениями и дополнениями).

[33] Протокол (№ 5) об Уставе Европейского инвестиционного банка от 25 марта 1957 г. URL: https://zakon.rada.gov.ua/laws/show/994_680 (с изменениями и дополнениями).

– does not acquire any shares in the enterprise and assumes no responsibility for its management, unless it is necessary for the protection of the rights of the Bank to secure payment of the debt;

– can dispose of its requirements in the market of borrowed funds and may demand from this end from its debtors the issue of bonds or other securities;

– does not propose, as the participating States, requirements requiring the costs incurred by the Bank in the arrears of funds in the territory of a particular State Party;

– may make a condition for obtaining a loan for the conduct of international competitive bidding;

– does not finance, in whole or in part, any projects against which the participating states, on the territory of which they are to be implemented, are denied (Art. 20 of the Statute)[34].

In Art. 18 of the EIB's Statute is defined the scope of the Bank's activities and terms of providing loans. In particular, it is noted that within the framework of the problem formulated in Art. 267 (b) of the EIB's Statute, the Bank provides loans to its participants, either private or public enterprises, for investment in projects implemented in the European territory of the participating States when the funds can not be provided from other sources on acceptable terms. However, the Governing Council, acting unanimously on the proposal of the Board of Directors, may authorize the Bank to provide loans for investing in projects that are fully or partially implemented outside the European territory of the participating States[35].

At the same time, in p. 2 of Art. 18 of the EIB's Statute states that loans shall, as far as possible, be provided only on condition that other sources of funding are also used. And if a loan is provided to an enterprise or body that does not represent a State party, then the condition of granting a loan to the Bank is either a guarantee of the State Party in whose territory such a project will be implemented or other appropriate guarantees (p. 3, Art. 18 of the EIB's Statute)[36].

And in the p. 4 of Art.18 of this Statute an opportunity has been provided for the Bank to provide guarantees on loans taken by public or private enterprises in order to implement the projects envisaged in Art. 267 of the Statute[37].

[34] Протокол (№ 5) об Уставе Европейского инвестиционного банка от 25 марта 1957 г. URL: https://zakon.rada.gov.ua/laws/show/994_680 (с изменениями и дополнениями).

[35] Протокол (№ 5) об Уставе Европейского инвестиционного банка от 25 марта 1957 г. URL: https://zakon.rada.gov.ua/laws/show/994_680 (с изменениями и дополнениями).

[36] Протокол (№ 5) об Уставе Европейского инвестиционного банка от 25 марта 1957 г. URL: https://zakon.rada.gov.ua/laws/show/994_680 (с изменениями и дополнениями).

[37] Протокол (№ 5) об Уставе Европейского инвестиционного банка от 25 марта 1957 г. URL: https://zakon.rada.gov.ua/laws/show/994_680 (с изменениями и дополнениями).

However, in Art. 15 and 16 of the EIB's Statute, the Bank's cooperation and interaction with the participating states, international organizations, as well as banking and financial organizations in the countries where it operates are determined[38].

Note that the concrete examples and peculiarities of cooperation between the EIB and Ukraine on the implementation of individual projects in the territory of our country, the author considered in her earlier scientific publications[39].

CONCLUSIONS

Taking into account the above-mentioned, we consider it necessary to discuss with scientific community about the name of the legal category "international financial organization". So, at the present stage in science, and in national legislation, there is no clear, generally accepted name for this term. Yes, scientists use different terms that denote this legal category: "international monetary organization", "international financial organization", "international monetary and financial organization", "international monetary and banking organization", etc. From our point of view, the most complete correspondence with the purpose and essence of such organizations will be the term "international monetary organization", which will reflect the main "weight" category with which these organizations are dealing, namely, the currency that mediates all operations of these international structures, that is the key in defining the subject, the purpose and functions of these organizations. That is, based on the approach of A. B. Altshuller to the "weight" category of the subject of international monetary law[40], we note that the essence of all financial transactions performed by such international institutions is the use of currency as a unifying, generic and "weight" category that distinguishes these operations from others gives them some specifics and features.

According to the results of scientific research, we propose to consolidate the notion of the international monetary organization in the text of the normative legal acts of Ukraine, taking into account the specificity of its legal status, in order to avoid misunderstandings in the practice of law enforcement and in the practice of legal entities, individuals and public authorities.

[38] Протокол (№ 5) об Уставе Европейского инвестиционного банка от 25 марта 1957 г. URL: https://zakon.rada.gov.ua/laws/show/994_680 (с изменениями и дополнениями).

[39] Шереметьєва О.Ю. Співробітництво України з ЄІБ: особливості правового регулювання реалізації деяких проектів. *The development of legal sciences: problems and solutions.* International scientific-practical conference. Conference Proceedings, April 27-28. Kaunas: Izdevnieciba "Baltija Publishing", 2018. P. 73–76.

[40] Альтшулер А.Б. Международное валютное право. Москва : Междунар. отношения, 1984. 254 с.

SUMMARY

At the article the peculiarities of the legal status of an international financial organization as a subject of currency relations have been analyzed. In particular, the peculiarities of the legal personality of the international financial organization, the privileges and immunities that these international financial institutions are endowed with. Also, the article analyzes the specifics of the legal status of some international financial organizations in Europe and cooperation with Ukraine, describes some modern aspects of Ukraine's cooperation with the International Monetary Fund. Summarizing the material presented, the author notes that in science and Ukrainian legislation there is no clear, generally accepted name of the term "international financial organization". In this regard, the author believes that the most complete correspondence with the purpose and essence of these international financial institutions will be the term – "international monetary organization". Yes, it is this term that reflects the main "weight" category with which these organizations deal, that is, the currency only mediates all their transactions. In addition, the author proposes conducting a scientific discussion on the definition of "international monetary organization", taking into account the specificity of its legal status, in order to avoid misunderstandings in law enforcement practice.

REFERENCES

1. Конституція України. Прийнята Верховною Радою України 28 червня 1996 р. № 254К/96-ВР. *Відомості Верховної Ради України*. 1996. № 30. Ст. 141.

2. Бюджетний кодекс України від 08.07.2010 р. № 2456-VI. *Відомості Верховної Ради України.* 2010. № 50-51. Ст. 572.

3. Митний кодекс України від 13.03.2012 р. № 4495-VI. *Відомості Верховної Ради України.* 2012. № 44–48. Ст. 552.

4. Податковий кодекс України від 02.12.2010 р. № 2755-VI. *Відомості Верховної Ради України.* 2011. № 13–17. Ст. 112.

5. Закон України «Про зовнішньоекономічну діяльність» від 16.04.1991 р. № 959-XII. *Відомості Верховної Ради УРСР*. 1991. № 29. Ст. 377.

6. Закон України «Про міжнародні договори України» від 29.06.2004 р. № 1906-IV. *Відомості Верховної Ради України.* 2004. № 50. Ст. 540.

7. Закон України «Про ратифікацію Меморандуму про взаєморозуміння між Україною як Позичальником та Європейським Союзом як Кредитором і Кредитної угоди між Україною як Позичальником і Національним банком України як Фінансовим агентом

Позичальника та Європейським Союзом як Кредитором (щодо отримання Україною макрофінансової допомоги Європейського Союзу у сумі до 1 мільярда 800 мільйонів євро)» від 18.06.2015 р. № 538-VIII. URL: http://search.ligazakon.ua/l_doc2.nsf/link1/T150538.html.

8. Рамкова угода між Україною та Європейським інвестиційним банком від 14.06.2005 р. Угоду ратифіковано Законом від 07.02.2006 р. № 3392-IV. *Відомості Верховної Ради України.* 2006. № 22. Ст.193.

9. Конвенция о привилегиях и иммунитетах специализированных учреждений от 21 ноября 1947 г. *Международное публичное право. Сборник документов.* Т. 1. М.: Издательство БЕК, 1996. С. 279–300.

10. Статьи Соглашения Международного валютного фонда от 22.07.1944 г. URL: http://zakon0.rada.gov.ua/laws/show/995_921.

11. Угода про заснування Європейського банку реконструкції та розвитку від 29 травня 1990 р. URL: www.ebrd.com/inforequest.

12. Рішення Конституційного Суду України у справі за конституційним поданням правління Пенсійного фонду України щодо офіційного тлумачення положень статті 1, ... № 3-рп/2012 від 25.01.2012 р. *Офіційний вісник України.* № 11. 2012. Ст. 422.

13. Огляд стану адаптації законодавства України до acquis communautaire. К.: ТОВ «Ніка-Прінт», 2006. 516 с.

14. Альтшулер А.Б. Международное валютное право. М.: Междунар. отношения, 1984. 254 с.

15. Рязанова Н.С. Міжнародні фінансові організації: підручник / Н. С. Рязанова, М. А. Гапонюк, А. А. Максименко. К.: КНЕУ, 2010. 230 с.

16. Шереметьєва О.Ю. Співробітництво України з ЄІБ: особливості правового регулювання реалізації деяких проектів. *The development of legal sciences: problems and solutions.* International scientific-practical conference. Conference Proceedings, April 27-28. Kaunas: Izdevnieciba “Baltija Publishing”, 2018. P. 73–76.

17. Шереметьєва О.Ю. Особливості співробітництва України з ЄІБ щодо реалізації окремих проектів: правовий аналіз. *Modern jurisprudence of the European Union: The interaction of law, rulemaking and practice*. International scientific conference. Conference Proceedings, April 17. Lublin: Izdevnieciba “Baltija Publishing”, 2018. P. 96–99.

18. Шереметьєва О.Ю. Правові питання реалізації окремих проектів Європейського інвестиційного банку в Україні. *Правове регулювання економіки.* 2018. № 17. С. 119–129.

19. Шереметьєва О.Ю. Специфіка правового статусу кінцевого бенефіціара за Фінансовою угодою між Україною та ЄІБ Проект «Основний кредит для аграрної галузі – Україна». *Conceptul de dezvoltare a*

statului de drept in Moldova si Ucraina in contextual proceselor de eurointegrare. Conferinta internationala stiintifico-practica 2-3 noiembrie, 2018. Chisinau: S.n., 2018 (Tipogr. “Tipocart Print”). P. 104–107.

20. Шумилов В.М. Международное экономическое право: в 2 кн. / В.М. Шумилов – М.: ООО «Издательско-консалтинговая компания “Дека”», 2002. Кн. 1. 384 с.

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