

LOBBY LEGALIZATION - LEGAL INSTRUMENT FOR ENSURING STATE SUBSIDIES TO LEADERS OF AGRICULTURAL PRODUCERS

¹Dr. Tetiana Tielkiniena, ²Gryshova Inna, ³Shabatura Tatyana, ⁴Nehodenko Viktoriia, ⁵Didur Hanna, ⁶Shevchenko Alisa

¹principal researcher, Legislation Institute of Verkhovna Rada of Ukraine,

²Doctor of Economics, Professor, National Scientific Center «Institute of Agrarian Economy», Heroiv Oborony str. 10, 03127 Kyiv Ukraine

³Doctor of Economics, Professor the Department of Economic Theory and Economics Odessa State Agrarian University of Ukraine

⁴PhD in Economics, assoc professor, Kyiv National University of Trade and Economics, 0000-0001-6873-2011

⁵PhD in Economics, assoc professor, Department of Economic Theory and Economics Odessa State Agrarian University of Ukraine

⁶PhD in Economics, assoc professor, department Economic Theory and Economics Odessa State Agrarian University of Ukraine

alisochka1978@gmail.com

ABSTRACT: In the absence of legal regulation of lobbying relations, large agricultural producers have the advantage of protecting their economic interests, since it requires significant resources: intellectual, financial and so on. Adoption of a special law on lobbying will bring out the identified phenomenon from the “shadow”. The introduction of optimal legal mechanisms to defend, in particular, the interests of the business will lead to a reduction in the necessary organizational actions. Civil society in general and each citizen will be able to obtain information on lobbyists of a particular management decision separately if they wish. In particular, the determination of the procedure for payment of subsidies in the agricultural sector of the economy. Such changes will reduce the level of corruption in this area, which can significantly increase the flow of investment in the national sector of the economy.

Such changes will, in our opinion, promote the self-organization of small and medium-sized businesses in agriculture. The updated conditions of communication of business groups and government bodies will give the merged agricultural associations of small / medium-sized economic entities (producers) the opportunity in a legal (legal) way to influence the legislative process.

KEY WORDS: agricultural policy, lobbying interests, domestic agricultural producers, state subsidies, leadership

Introduction

In this work, the goal is to identify the shortcomings in the legal support of the mechanism for providing state subsidies to agricultural producers in Ukraine and to prepare proposals for amending existing legislation to increase the transparency of the legislative process.

By the way, part of the writing team has numerous publications on lobbying (Tielkiniena T. E., 2014, Tielkiniena T. E., 2017, Gryshova I., Tielkiniena T., Guliyeva A., 2019). Compared to other researchers who have published their results in the past, we continue to study various aspects (components) of this issue.

It is worth emphasizing that the agricultural sector is now a major part of our economy. Taking into account this reduction in the current material of the potential positive impact of the adoption of the law on lobbying on the procedure for providing state subsidies to agricultural producers in Ukraine, it will increase public support for such legislative innovations and increase the chances of realization in the near future.

During the last fifteen years, the publications of Ukrainian scientists of certain specialties have been repeated different in form, but similar in meaning (essence) to the thesis about the need to adopt a law on lobbying in Ukraine. Most of the researchers are right. However, it is necessary to revive the scientific discussion and to attract (turn to) first of all not foreign experience, but carefully study (analyze) modern Ukrainian practices by unregulated lobbying legislation. This work demonstrates the movement from general to specific in lobbying research in Ukraine. The results of the analysis of the legal mechanism for the provision of subsidies are presented, which revealed the decisive influence of agrarian monopolists on its formation and the lack of legal procedures for the protection of their interests by representatives of small and medium-sized agricultural businesses.

Literature review

In the legal scientific literature, only some aspects of the chosen topic were considered. So, in the article O.V. Scherbanyuk noted the need to ensure control of the state and civil society lobbying so that it is not interwoven with corruption [Shcherbanyuk O.V., 2006]. The authors of the dissertation on legal sciences on certain aspects of lobbying have identified the following factors as actualizing the adoption of the law on lobbying:

V.F. Nesterovich - the possibility of minimizing the extra-legal orientation of Ukrainian lobbying, O.O. Odintsova - the necessity of mastering social skills to effectively use the positive features of lobbying, as well as reduce the impact on the social development of its negative features, T.E. Tielkiniena - based on the historical and legal analysis of the development of the lobbying institution in Ukraine - the need to prevent the risk of the transition of the active part

of society to radical, illegal methods of forcing state bodies to start a dialogue with citizens [Nesterovich V.F., 2008, Odintsova O., 2008, Tielkiniena T.E., 2017].

Research methods

The main method used for this study is the method of documentary analysis.

We have studied the following documentary materials:

- legal acts (Resolution of the CMU No. 83 of February 8, 2017 «On approval of the Procedure for allocation of the budget grant for the development of agricultural producers and promotion of agricultural production in 2017», etc.)
- the statements by non-governmental organizations, particular those that declare the protection of interests of Ukrainian agricultural producers (for example: an appeal from the All-Ukrainian Agrarian Council)
- publications, which set out the positions of representatives of the parties to the conflict in the struggle for influence on the process of formation of the procedure of distribution of subsidies, as well as experts in the agricultural sphere (in particular, the chairman of the board of the agricultural holding «Mironivsky Hliboproduct» Yuriy Kosyuk, vice-president of the Association of Farmers and Landowners of Ukraine Yaroslav Kardash, Deputy Chairman of the Ukrainian Agrarian Association Marian Zablotsky, National Consultant to the United Nations of the Food and Agriculture Organization (FAO) in Ukraine Tamara Ostashko, senior economist of the project «Support to reforms in agriculture and land relations in Ukraine» of the Kiev School of Economics Oleg Nievsky) [Resolution of the Cabinet of Ministers Approval of the Procedure for Allocation of the Budget Grant for the Development of Agricultural Producers and Promotion of Agricultural Production in 2017. 2017, The Ukrainian Agri Council gathers the Second All-Ukrainian Agrarian Council, Kosyuk Y., 2018, Polovynko L., 2018, Yuzich M., 2018, Pirozhok O., 2018, Nievsky O., Nate R., 2018].

The use of materials that covered both similar and antagonistic positions of a wide range of subjects of discussion on the fairness of the subsidy distribution procedure established by the Cabinet of Ministers contributed to the achievement of relevant results in the research.

Results of the research

Based on the analysis of the legal mechanism for granting state subsidies in Ukraine for VAT compensation to agricultural producers, will prove that the legalization of lobbying will help to improve the current legislation in this field.

At the same time, despite the absence of a special legal act on lobbying, the current Ukrainian legislation contains certain constitutional legal norms that allow for actions that generally have a significant potential for deliberate influence on the state bodies and their officials in the process of drafting them. So, in particular, in the Constitution of Ukraine: the right of citizens to individual and collective appeals (Article 40), the right to participate in government (directly and indirectly) (Article 38), the right to peaceful assembly (Article 39), in the Rules Verkhovna Rada of Ukraine: open meetings of the Verkhovna Rada of Ukraine (Article 3) [Constitution of Ukraine of June. 1996.]. The executive bodies, which are the drafters of the normative acts, ensure their public discussion in accordance with § 42 of the Regulation of the Cabinet of Ministers of Ukraine and paragraph 5 of the Procedure of holding public consultations on issues of formulation and implementation of state policy approved by the Cabinet of Ministers resolution of 03.11.2010. No. 996 [Resolution of the Cabinet of Ministers Procedure for conducting public consultations on the issues of formation and implementation of state policy. 2010].

At first glance, the current legislation provides an association of citizens who aim at protecting their interests. The media quite widely cover the facts of the active protection by representatives of the agricultural sector of their economic interests. (Gryshova, I.I., Mityay, O.V., Kuzhel, V.V, 2015)

Thus, during the period from the end of 2017 to the middle of 2018 continued public campaign, the purpose of which was to introduce such amendments to the Tax Code of Ukraine that would improve the taxation regime of export operations for exporting soybeans and seeds outside the customs territory of Ukraine. This required the adoption of Bill No. 7403-2 [The Ukrainian Agri Council gathers the Second All-Ukrainian Agrarian Council]. In December, the European Business Association (EBA) announced the need to maintain VAT refunds on oilseed exports in general [The EBA considers it necessary to maintain VAT refunds on oilseed exports]. At the beginning of 2018, a deliberate impact on central government to achieve the above goal was coordinated by the EAC. In particular, in February 2018, the Second All-Ukrainian Agrarian Chamber was held, in which, according to the EAC press service, deputies of more than ten regional councils, people's deputies from all factions, heads of agricultural enterprises from all regions of Ukraine took part [The Ukrainian Agri Council gathers the Second All-Ukrainian Agrarian Council]. One of the results of this event is an appeal to the President of Ukraine, the Prime Minister and the Chairman of the Verkhovna Rada of Ukraine to facilitate the expedited consideration and adoption of the above-mentioned draft law. In mid-February, this document was supported by deputies from thirteen oblast councils [The appeal to the VR demanding the abolition of the oil non-refundable rate was supported by 13 oblast councils].

The vast majority of the above measures are defined in the theory of lobbying as indirect methods that are used in the case of limited or no direct communication with the object of lobbying (influence).

At the same time, more effective in Ukraine is the pressure of monopolists of one or another sector of the economy, who use direct methods (establishing direct contact between the subject and the object of relations) to influence officials in personal communication. A priori, representatives of state bodies will always take into account the position of budget-forming enterprises. In addition, the high efficiency of their impact is due to the significant intellectual and financial resources that they have at their disposal.

At the beginning of 2018, the results of the provision of state subsidies for VAT compensation to agricultural producers on the basis of the Cabinet of Ministers of Ukraine dated February 8, 2017 No. 83 «On approval of the Procedure for allocation of the budget grant for the development of agricultural producers and promotion of agricultural production in 2017» [Resolution of the Cabinet of Ministers Approval of the Procedure for Allocation of the Budget Grant for the Development of Agricultural Producers and Promotion of Agricultural Production in 2017.]. The established procedure for allocating subsidies was based on the following criterion: the more taxes an entity pays from its own internal VAT to the budget, the more subsidies it receives. For this program in 2017 it was planned 4 billion UAH. For the period from January to October 1,4 billion UAH received by Public Joint Stock Company "Mironivsky Hliboproduct", 517 million UAH. - an open-end public limited company "Ukrlandforming" [Pirozhok O., 2018], which are among the top 5 largest Ukrainian agricultural companies.

The media and society as a whole extremely negatively assessed the fact of receiving almost half of the volume of subsidized funds by only two producers. Particularly acute is the reaction of the media about Mironivsky Hliboproduct, whose chairman Yury Kosyuk first held the post of first deputy head of the presidential administration of Ukraine for several months of 2014, and then served as his freelance adviser [All advisers to the president. Minus two - plus seven.].

The doubts about the fairness of the mechanism for granting subsidies and receiving the Mironivsky Hliboproduct agricultural holding the lion's share of the budget funds allocated by the Cabinet of Ministers are set forth, in particular, in the materials of one of the most popular Ukrainian mass media, «Ukrainian Truth» (Economic Truth) [Denkov D., 2018, Pirozhok O., 2018]. In addition, based on materials from several media, we can admit that there is no unanimity in assessing the model for the provision of state subsidies in the agricultural sector of the economy [Polovynko L., 2018, Yuzich M., 2018, Nievsky O., Nate R., 2018]. At the same time, the majority of both experts and business representatives, who publicly voice their attitude to the situation, are dissatisfied with it.

Some experts are critical of the model of government subsidies to entrepreneurs in the agricultural sector, which operates in Ukraine. In particular, it is - Deputy Executive Director of the Fund «Renaissance», Taras Kachka, National Consultant to the United Nations of the Food and Agriculture Organization (FAO) in Ukraine Tamara Ostashko, senior economist of the project "Support to reforms in agriculture and land relations in Ukraine" of the Kiev School of Economics Oleg Nievsky). The principal disadvantages include the following: promotion of the development of, first and foremost, the business component of the agricultural sector, rather than the social and security ones; limited access of small farmers to subsidies; opacity of calculations during the formation of the grant model [Pirozhok O., 2018, Nievsky O., Nate R., 2018].

A significant number of representatives of the agricultural sector holds a similar position. Thus, the vice president of the Association of Farmers and Landowners of Ukraine (UAFLO) Yaroslav Kardash, emphasizes that it is the large entities with significant intellectual resources and good credit history that will take advantage of the proposed state aid program [Polovynko L., 2018]. The main negative consequence of the formula for calculating subsidies established by the Decree of the CMU, Deputy Chairman of the All-Ukrainian Agrarian Council (EAC), Mikhail Sokolov, considers the following: all medium and small farms participating in the program did not receive subsidies [Pirozhok O., 2018]. Marian Zablotsky, deputy chairman of the «Ukrainian Agrarian Association», notes that a loss-making enterprise, which primarily needs grants, will not be able to receive them [Yuzich M., 2018]. However, Arthur Loza, President of the Ukrainian Pig Association, approves the criterion introduced by the CMU [Yuzich M., 2018].

Representatives of agricultural associations are dissatisfied with the legal decision-making mechanism for determining the procedure for granting subsidies. For example, Valery Perepelytsia, chairman of the Drava District Organization of UAFLO, has no reason to believe that the effectiveness of government action would be higher if the Ministry of Agrarian Policy listened more closely to the opinions of farmers and agricultural professionals, who are best aware of all its subtleties, [Polovynko L., 2018]. The EAC also criticized the ministry for lacking effective communication on developing a compromise and effective model for subsidizing farmers [The Ukrainian Agri Council gathers the Second All-Ukrainian Agrarian Council].

At the same time, Dmitry Denkov, the editor of Economic Truth, claims about the attempt of some people's deputies, in particular those close to Y. Kosyuk, to change the procedure for granting subsidies, which was introduced by the CMU resolution in 2018, in favor of the Mironivsky Hliboproduct agricultural holding [Denkov D., 2018]. However, the names of parliamentarians or their affiliation with factions or groups in the Verkhovna Rada of Ukraine are not indicated by the journalist.

In contrast to the above, Yuriy Kosyuk, chairman of the board of the agricultural holding Mironivsky Hliboproduct, appeals to the transparency of the decision-making process on subsidies and denies even the hypothetical possibility of outside influence on its adoption [Kosyuk Y., 2018]. This counterargumentation is due, first of all, to the lack of clear legal mechanisms for such actions and to the extremely negative attitude of the public to the influence of big business on public officials. Instead, well-known Ukrainian economic experts, based on the analysis of a new system of subsidies for farmers in 2018, recognize its main drawback as a lack of open professional discussion based on facts and research [Polovynko L., 2018, Yuzich M., 2018, Pirozhok O., 2018, Nievsky O., Nate R., 2018].

Provided that there is legal regulation in Ukraine for lobbying a fervent discussion on the principles and mechanism of subsidies for agricultural producers would be refined at the stage of elaboration (preparation) of the relevant CMU resolution, not on the results of its implementation. (Agrarian) Associations in this sector of the economy would compete with each other for the establishment of such state subsidy rules that would facilitate the development of those enterprises that are part of them. Transparency and competition in the exercise of lawful influence on the public

authority and its officials in order to consolidate their own interests in the enacted acts, in our opinion, determines the effectiveness of the relevant administrative decisions.

At present, in the absence of legal regulation of lobbying relations, large producers of agricultural products have the natural advantage of protecting their own economic interests. The action requires significant resources: intellectual, financial, etc. Adoption of a special law on lobbying will bring out the identified phenomenon from the "shadow". The introduction of optimal legal mechanisms to defend, in particular, the interests of the business will lead to a reduction in the necessary organizational actions. Such changes will, in our opinion, promote the self-organization of small and medium-sized businesses in agriculture. The updated conditions of communication of business groups and state bodies will give the merged agricultural associations of small / medium-sized economic entities (producers) the opportunity to influence the legislative process in a legal way.

In the case of lobbying legalization, there will be an increase in transparency of relations between agricultural producers and public authorities. Civil society in general and each citizen separately, if he wish, will be able to obtain information on lobbyists of a particular management decision. In particular, the determination of the procedure for payment of subsidies in the agricultural sector of the economy. Now we have the opportunity to use only publications in the media and social networks. Such changes will reduce the level of corruption in this area, which can significantly increase the flow of investment in the national sector of the economy. Due to the mentioned changes, the standard of living of every citizen of Ukraine cannot be improved. However, it is not a matter of a deterministic link between the legislative regulation of lobbying relations and the economic interests of Ukrainians. We are adherents of the correlative nature of the interconnections of the phenomena of public life.

However, citizens should not idealize the mechanisms of public administration. In any country, big business entities have an impact on the set up process. The only difference is how transparent the appropriate political and legal mechanisms. At the same time, the assessments of the enforcement of lobbying laws in foreign countries by Ukrainian researchers and experts on lobbying are somewhat different from those produced by European or American authors.

Olga Trofimtseva, who in 2016-mid 2019 belonged to the leadership of the Ministry of Agrarian Policy and Food of Ukraine, has experience of scientific activity and work in agricultural companies in Germany [Trofimtseva O., 2017], is convinced that lobbying the interests of Ukrainian farmers is a necessary component of the decision-making process. Increasing the competitiveness of our agricultural producers in the EU markets is, in her opinion, impossible without using lobbying methods. The ex-official strongly recommends studying and applying the experience of German and European agricultural associations, such as the German Farmers Association (DVB) Deutscher Bauernverband) and COPACOGECA (Hlushko, O., Gryshova, I., Shcherbata, M., 2015) Thus, DVB is mandatory participant in any discussions on the current German or European, strategic agricultural and economic policy.

The German media is generally critical of the lobbying activities in general and agricultural associations in particular. We offer one of the many examples: an article in the liberal economic newspaper "Süddeutsche Zeitung" on September 15, 2017 under the eloquent title "Lobbyists determine what we eat" («Lobbyistenbestimmen, was wir essen») [Lobbyisten bestimmen, was wir essen].

By the way, the results and conclusions of the study of a significant number of French and German publications, the focus of which is lobbying, and the authors are independent journalists, scientists, high-level experts, which are presented in the article "Lobbying for public interests is an alternative to revolution? (Notes in the margins of Western authors publications of recent years), "does not lose relevance, in our opinion, even today [Tielkiniena T.E., 2014]. In France and Germany, the importance of lobbying is recognized as an instrument to protect the special interests of various groups by introducing appropriate amendments to national legislation. At the same time, a considerable number of comments are made regarding the non-transparency of lobbying practices and their incomplete compliance with the current legislation (Gryshova, I.Y., Mityay, O.V., Kuzhel, V.V, 2016)

Conclusions

At first sight, certain constitutional rules allow for actions that, in general, have significant potential for targeted influence on the state authorities and their officials. Moreover, the Ukrainian media cover quite broadly the facts of active protection by the representatives of the agrarian sector of their economic interests.

Therewith, the results of state subsidies on VAT compensation to agricultural producers in 2017 give reason to claim that it is more effective in Ukraine to pressure monopolists on officials. We believe that the factors contributing to this are: the primacy of the need to take into account the position of budget-forming enterprises; significant intellectual and financial resources; almost unlimited opportunities for personal communication with government decision makers in the agricultural sector.

In view of the above, a special law on lobbying should be adopted which will introduce the optimum legal mechanism for defending, in particular, business interests. Such legislative changes will lead to a reduction in the cost of necessary organizational action and will, in our opinion, facilitate the self-organization of small and medium-sized businesses in agriculture. The updated conditions of communication of business groups and state bodies will give the merged agricultural associations of small / medium-sized economic entities (producers) the opportunity to influence the legislative process in a legal way.

Such changes will reduce the level of corruption in this area, which can significantly increase the flow of investment in the national sector of the economy. Due to the mentioned changes, the standard of living of every citizen of Ukraine cannot be improved. However, it is not a matter of a deterministic link between the legislative regulation of

lobbying relations and the economic interests of Ukrainians. We are adherents of the correlative nature of the interconnections of the phenomena of public life.

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DATA OF THE AUTHORS

1. **Tetiana Tielkiniena**, principal researcher, Legislation Institute of Verkhovna Rada of Ukraine, Ukraine, Kyiv, Nestorivsky lane, 4 a, 04053,
ORCID: 0000-0002-1463-021X <https://orcid.org/0000-0002-1463-021X>

2. **Nehodenko Viktoriia.** PhD, assoc professor, Kyiv National University of Trade and Economics ,
0000-0001-6873-2011