

INSTITUTIONAL SUPPORT FOR INVESTING IN CRITICAL INFRASTRUCTURE OBJECTS IN UKRAINE

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ABSTRACT

Investment in critical infrastructure objects in conditions of military conflict and against the backdrop of the destruction of such infrastructure is associated not so much with economic growth as it is with the survival of the country today. Due to the need to restore critical infrastructure objects through foreign investments, the foundation is laid for unhindered investment in conditions of a state of war, as well as further post-war reconstruction of the country. The purpose of the article is to analyze the state and prospects of institutional support for investment in critical infrastructure objects. It is established that the system of regulation of investment relations in Ukraine is practically formed; it includes various norms contained in different sources and differing in their legal nature. However, this system was formed in peacetime and is mostly aimed at ensuring investors' subjective rights and fulfilling their legal obligations during that period. The conducted analysis indicates the need for the adoption of new legislative acts that will transmit the national approach to investment in ensuring the stability and restoration of critical infrastructure. State institutions and regulatory acts should not only carry out control measures regarding the management of investment processes but also create favorable conditions for stimulating investment inflows. The main focus should be shifted towards reducing investment risks and creating attractive conditions for investment.

Keywords: *investment, foreign direct investment, critical infrastructure, critical infrastructure facilities, investment in critical infrastructure, state investment policy.*

1. INTRODUCTION

Disruptions caused by accidents, disasters, natural calamities, anthropogenic crises, military actions or other security risks demonstrate that failures in key systems and basic services, such as water supply, power supply, transportation or information and telecommunications systems, result in significant material damage. The problem of vulnerability of critical infrastructure only worsens, as vulnerability directly depends on the interconnection that exists between critical infrastructure objects, which often leads to negative consequences not for one sector, but for several, generating global resonance.

Recognizing the importance of critical infrastructure, in the 21st century, governments of many countries began to pay special attention to it, which was reflected in the development of state policy aimed at the development and investment in critical infrastructure, and its protection. Typically, such measures include efforts to identify the most important sectors with critical infrastructure, develop a list of key objects of critical infrastructure, adopt regulatory acts, national programs or mechanisms of incentives to increase the resilience of these assets. At the same time, the common

problem for all countries with attracting foreign investments into various infrastructure objects is exacerbated by common negative global economic crises.

The problem of investment is one of the urgent issues for our country. Ensuring investment in critical infrastructure objects in conditions of hostilities and against the background of the destruction of this infrastructure is related not so much to economic growth as to the survival of the country today.

2. LITERATURE REVIEW

A significant number of Ukrainian scientists have researched the institutionalization of investment processes taking place in Ukraine and around the world, in particular, O. Laiko studied the conceptual principles of ensuring a favorable institutional environment for investment activity (Laiko, 2016) and investigated institutional factors for stimulating investment activity in national economy (Laiko, Chabarov, Araftenii, 2017). D. Nikytenko, in his work (Nikytenko, 2018), investigated the institutionalization of ensuring investment security, and V. Kudriavtseva researched the problems of creating a legislative framework for the formation and state support of a legal investment order, proposed directions for improving the investment legislation of Ukraine to increase national investment security (Kudriavtseva, 2019). K. Gumenna considered the issues related to investment activity and its legal regulation and in her work (Gumenna, 2013) tried to systematize the investment legislation of Ukraine. A. V. Kudriavtseva, M. Ovchinnikova and M. Chernukha, in their works (Kudriavtseva, 2017; Ovchinnikova, 2012; Chernukha, 2013), analyzed the problems of investment legislation of Ukraine and provided recommendations for its improvement. The study of investment needs and the determination of the features of the financing of certain objects of critical infrastructure of Ukraine were and continue to be a topic of discussion for many authors. In particular, A. Buyak in his work (Buyak, 2016) considered the conceptual principles of investment management in the energy sector of Ukraine, L. Sotnychenko and A. Sivan researched the investment security of the transport infrastructure of the regions of Ukraine, in particular, the financing of the port infrastructure (Sotnychenko, 2015; Sotnychenko and Sivan, 2021). As a foreign experience, it is important to consider the works of foreign scientists regarding the specifics of financing critical infrastructure objects. In particular, in his work Fosu (2021) proves the importance of investing in railway lines and the positive impact of such investments on economic growth in the USA. Sénquiz-Díaz (2021), in his work, notes that the quality of transport infrastructure affects the development of the economy, in particular, the quality of roads and ports makes a significant contribution to increasing exports in developing economies. Attention to this area is explained by its significant practical importance. Critical infrastructure represents the main strategic object and lever of the country's economic development; therefore, these issues will always be in the focus of attention. For instance, Voitko and Demishev (2022), while studying the problems and prospects of attracting foreign direct investment in the economy, provide recommendations on forming investment attractiveness of strategic sectors of Ukraine in the conditions of economic recovery after the war, taking into account priorities of its economic development. L. Pankova and O. Kamalova-Kutynets, while analyzing trends and prospects of attracting foreign investments in the conditions of the war economy, argue that potential investors choose a waiting strategy and observe changes that occur in the reform of the Ukrainian investment system, considering both wartime factors and pre-war drawbacks (Pankova and Kamalova-Kutynets, 2022). Scientists agree that full-scale war has become a new factor affecting the level of business activity and investment environment in Ukraine. In this case, it is necessary to agree with the position of Palinchak and Marchuk (2022) that the main way to solve the problem of foreign investment in critical infrastructure objects should be: improving the investment environment by improving state and private legislation that regulates investment relations in accordance with European standards; implementation of investment projects on the principle of "one-stop-shop"; creating economic mechanisms for protection against risks of foreign investments by providing state guarantees to investors and reflecting them at the legislative level, and so on. However, despite significant scientific achievements in this area, not all issues of institutional support for investment in critical infrastructure objects have been resolved, which determines the relevance of this research direction. The use of an institutional approach in research dedicated to investing in critical infrastructure will explain its current state and forecast further development.

3. AIM AND OBJECTIVES

The aim of the article is to analyze the state and prospects of institutional support for investment in critical infrastructure objects.

The following tasks were identified to achieve this goal:

- analyze the institutional support for investment in critical infrastructure objects in Ukraine;
- study the foreign experience of regulating investment in critical infrastructure objects;
- propose directions for improving the institutional and regulatory framework for investment in critical infrastructure restoration.

4. METHODS

The methodological basis of the research consists of a set of methods of scientific cognition, the systematic and comprehensive use of which allowed for the justification of theoretical and methodological principles and the development of scientific and practical recommendations for institutional support of investment in critical infrastructure objects. In particular, in order to substantiate the conceptual foundations of investment in critical infrastructure objects, a logical-dialectical approach and such methods of scientific cognition as observation, comparison, abstraction, methods of decomposition, analysis, and synthesis were applied. In order to form the methodological basis for institutional support of investment in critical infrastructure objects, a systemic approach was applied. Systemic and comprehensive approaches were applied to analyze the mechanism of legal regulation of investment relations, study the prospects for its further development. Indicative and integral approaches were used to assess the prospects of inflows of foreign direct investment into critical infrastructure objects. Statistical method, comparative, quantitative, and qualitative approaches were applied to analyze the state of attracting foreign direct investment in Ukraine and its critical infrastructure. The aforementioned methods, in conjunction with general logical methods and techniques, allowed for a comprehensive and effective study of the specifics of institutional support for investment in critical infrastructure objects.

5. RESULTS

Starting our research, it is worth noting that not only Ukraine's economy but the world economy as a whole is experiencing crises. As soon as economic growth began to recover after the COVID-19 pandemic, the intensification of Russian aggression against Ukraine and the resulting economic sanctions had a negative impact on the economy of many countries, including the aggressor country's economy. The combined effect of these negative factors has led to a significant deterioration in the conditions for financing large infrastructure development projects. States that previously invested in large infrastructure projects have faced significant financial difficulties after the events in Ukraine. For example, Germany's national debt has risen to a record level. By the end of 2022, the debt of federal, state, and municipal budgets, and even social insurance funds, had significantly increased and amounted to about 237 billion euros. This is 2% higher than the debt in 2021 (Nynko, 2023). As of today, Germany's national debt is 70% of its gross domestic product (GDP). Regarding France, its level of national debt exceeded 3 trillion euros by 2023 and stands at 113% of GDP. In the work (Đukić, Štaka, Drašković, 2021) presents the results of a study of the impact of the COVID-19 pandemic on the main macroeconomic indicators of the EU, in particular such as GDP, unemployment, public debt. The debt indicators in developing countries continue to rise: by the end of 2021, the external debt of such countries amounted to \$9 trillion, more than twice the amount of a decade ago, with 60% of the poorest countries in a debt crisis or at high risk of it. Meanwhile, currency depreciation and tightening monetary policy make servicing external debt increasingly expensive. As we can see, the COVID-19 pandemic and subsequent events have undermined the financial stability not only of low-income countries but also of countries with medium and high income levels, which will only contribute to the increase in the cost of further borrowing.

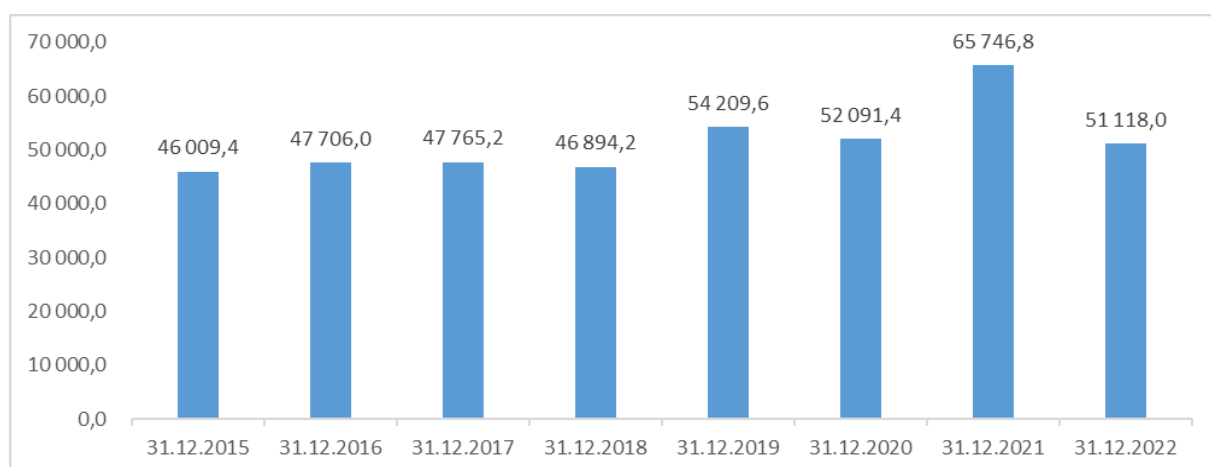
Considering the current situation, governments will focus on attracting private investments in critical infrastructure projects to continue investing in them. In this case, those critical infrastructure projects that can offer attractive commercial returns to private investors will be financed to a greater extent.

In Ukraine, in addition to traditional areas for private investment such as energy, agriculture, and information technology, investment opportunities are also proposed in critical infrastructure objects such as airports, roads, ports, bridges, railways, and others due to the destruction caused to these objects. The Ukrainian government is actively working with others on creating an infrastructure for attracting private capital, including BlackRock, Morgan Stanley, Citi, to move away from relying solely on state capital for the country's recovery ("Ukraine is ready", 2022). An analysis of global investment flows shows that, in fact, from 2000 to the COVID-19 global pandemic, the private sector annually supported infrastructure projects in developing markets by an average of about \$90 billion in real terms. Between 2000 and 2020, 50% of all constructed generating capacities in low- and middle-income countries were financed through private investments.

However, the current global macroeconomic situation reduces the opportunities for the private sector and its ability to finance infrastructure projects in developing markets. Global financial conditions have significantly tightened, reflecting higher monetary policy rates, greater volatility, and reduced investor risk appetite. At the same time, the heightened perception of risk also increases the cost of new borrowing: in 2020, about 30 emerging market countries experienced multiple sovereign risk premium reductions. This has harmed foreign direct investment (FDI) inflows into transitioning market economies, which decreased by 14% in 2020 and reached the lowest level in the last decade ("Global", 2022). Almost every major global crisis has led to significant reductions in private capital inflows to infrastructure projects in low- and middle-income countries. Whether it was the Asian financial crisis of 1998, the SARS outbreak of 2003, the global financial crisis of 2008-2009, or the European debt crisis of 2012, such periods caused a decline in private investment inflows of between 20-60%. After the crisis periods, a period of recovery followed that lasted several years, and it was only after this period that countries received pre-crisis levels of private capital investment.

The COVID-19 pandemic has harmed the economies of countries around the world, and Ukraine was no exception. In 2020, the volume of foreign direct investment in Ukraine decreased by 2.1 billion USD, or 96.1% of the level in 2019 (Figure 1). However, in the following year, with the gradual reduction of the pandemic's impact and the recovery of the country's economy, the situation with attracting foreign direct investment significantly improved. In 2021, they increased by 13.7 billion USD to reach 65.7 billion USD. The growth in investment was 26.2% compared to the previous year. However, the full-scale invasion of the Russian Federation into Ukraine in early 2022 negated the previous gains. In 2022, there was a significant outflow of foreign direct investment from the country, with a decrease of 22.3%, reaching 51.1 billion USD.

Figure 1. Foreign direct investments in Ukraine at the end of the year, USD million



Source: created by authors based on data of the National Bank of Ukraine (<https://bank.gov.ua/ua/statistic/sector-external#5>)

Analyzing the direct foreign investments by types of economic activity, it is possible to identify the volumes of such investments in certain critical infrastructure sectors (Table 1). As can be seen, during the period of 2015-2021, there has been a slow growth in direct foreign investments in the supply of electricity, gas, steam and air conditioning from 1.8 billion USD in 2015 to 4.4 billion USD in 2021. The share of such investments in the total volume of direct foreign investments increased from 3.8% in 2015 to 6.6% in 2021. Similar trends are observed in the following sectors: transportation, warehousing, postal and courier activities (an increase from 1.6 billion USD in 2015 to 2.2 billion USD in 2021) and information and telecommunications (an increase from 2.5 billion USD in 2015 to 2.9 billion USD in 2021). However, their shares in the total volume of investments decreased over this period. The share of direct foreign investments in the sector of water supply, sewerage, waste management is negligible and on average amounted to 0.1%.

Table 1. Foreign direct investments in Ukraine at the end of the year by types of economic activity

	31.12.2015		31.12.2016		31.12.2017		31.12.2018		31.12.2019		31.12.2020		31.12.2021	
	USD million	% of the total	USD million	% of the total	USD million	% of the total	USD million	% of the total	USD million	% of the total	USD million	% of the total	USD million	% of the total
Electricity, gas, steam and air conditioning supply	1 766,0	3,8	1 172,4	2,5	1 638,5	3,4	1 836,8	3,9	3 441,1	6,3	3 640,7	7,0	4 359,3	6,6
Water supply; sewerage, waste management and remediation activities	59,4	0,1	61,5	0,1	73,9	0,2	50,8	0,1	51,0	0,1	50,6	0,1	68,8	0,1
Transportation and storage	1 553,2	3,4	1 651,7	3,5	1 781,7	3,7	1 642,5	3,5	2 151,4	4,0	1 902,9	3,7	2 171,7	3,3
Information and communication	2 534,6	5,5	2 906,4	6,1	3 015,3	6,3	2 662,6	5,7	2 954,1	5,4	2 955,4	5,7	2 910,4	4,4

Source: constructed by authors based on data of the National Bank of Ukraine (<https://bank.gov.ua/ua/statistic/sector-external#5>)

Due to the COVID-19 pandemic, 10% of projects involving direct foreign investments in Europe were canceled, and another 25% were put on hold. Half of the investors partially reduced their planned investment volumes for 2020, while 15% significantly reduced them. In 2020, there was a sharp decline in investments, which began to recover in 2022. Private infrastructure investments in the first half of 2022 amounted to \$42.3 billion USD for 120 projects, which is 24% higher than in the first half of 2021. The transportation sector once again outpaced other sectors in terms of private capital inflows to infrastructure projects, with \$28.4 billion USD for 41 projects (Imad and Fatouma, 2023). After travel restrictions were lifted, private investments also increased in logistics infrastructure projects, such as logistics centers, cargo terminals, distribution warehouses, etc. However, investments in the energy sector in the first half of 2022 decreased by 12% compared to the level in the first half of 2021, reaching the lowest level in the last 10 years. It is noteworthy that almost 90% of the 55 new energy production projects were aimed at renewable energy sources. As for the volume of investments, almost 44% of new investments in electricity production are related to renewable energy sources. Ukraine is of significant interest to investors in this regard, thanks to its developed networks and potential for building solar and wind power plants. In this field, Ukraine hopes to attract from \$100 to \$150 billion USD in direct foreign investments. In our opinion, urgent measures need to be taken to attract private capital flows to Ukraine in order to finance the resilience and restoration of critical infrastructure. This will not only improve people's lives today but also prepare the country's economy for the post-war period. To change the current situation, there is a need for coordinated efforts by the Ukrainian government with the governments of other countries, as well as with international financial organizations, aimed at covering investment risks. For example, Japan has become the first country to allocate \$23 million to cover military risks for investments in Ukraine. The Japanese government is contributing to the Multilateral Investment Guarantee Agency (MIGA), which belongs to the World Bank Group. In addition, on April 14, 2023, the Ministry of Community Development, Territories, and Infrastructure of Ukraine and the Japan International Cooperation Agency signed a grant agreement for the allocation of \$400 million. The funds will be used to restore critical infrastructure in Ukraine damaged by the war ("Japan became", 2023). We believe that every dollar, euro, pound, etc., of public or private investment, should be

directed towards supporting high-quality, resilient critical infrastructure that maximizes its value to the economy of Ukraine, its citizens, and the environment.

In addition to private funds, state funds are also involved in the development of critical infrastructure in Ukraine (Table 2). In particular, support for the fuel and energy complex gradually increased from \$126.6 million USD to \$521.6 million USD between 2018 and 2022. It should be noted that there has been significant support for the development of road infrastructure during 2020-2021. Expenditures on this sector in the mentioned period increased by 3-4 times compared to previous years (from \$1.0 billion USD in 2018 to \$4.8 billion USD in 2021), which is related to the implementation of the program «Development of the network and maintenance of public roads of national importance.» However, in 2022, due to the full-scale invasion of the Russian Federation into Ukraine, the volume of such expenditures was significantly reduced to the level of 2018-2019. The main focus of the state was concentrated on supporting the defense sector. Thus, the volume of expenditures on defense in 2022 increased almost 10 times compared to 2018 (from \$3.6 billion USD to \$35.3 billion USD) and amounted to 42.2% of the total amount of Ukraine's state budget expenditures. Among defense expenditures, the largest share is spent on military defense. In 2022, such expenditures accounted for 96.3% of all defense expenditures. In addition, the share of expenditures on civil defense has significantly increased from 0.16% in 2018 to 0.88% in 2022 of Ukraine's total state budget expenditures. In terms of volume, such expenditures increased from \$57.7 million USD in 2018 to \$733.6 million USD in 2022.

Table 2. Expenditures of the state budget of Ukraine

	2018		2019		2020		2021		2022	
	USD	% of the total	USD	% of the total	USD	% of the total	USD	% of the total	USD	% of the total
Defense	3 567 058 174,29	9,84	4 124 862 457,16	9,94	4 465 326 223,90	9,35	4 673 692 329,52	8,56	35 336 767 005,53	42,24
Military defense	3 218 481 445,07	8,88	3 952 794 870,28	9,52	4 269 771 135,39	8,94	4 449 888 641,04	8,15	34 017 440 459,63	40,67
Civil defense	57 719 243,62	0,16	56 276 340,75	0,14	62 190 906,05	0,13	69 199 606,77	0,13	733 625 288,24	0,88
Other defense activities	290 857 485,60	0,80	115 791 246,14	0,28	133 364 182,46	0,28	154 604 081,70	0,28	585 701 257,67	0,70
Fire protection and rescue	406 193 087,27	1,12	566 052 484,59	1,36	676 729 730,48	1,42	627 918 486,52	1,15	1 647 132 685,76	1,97
Fuel and energy complex	126 606 464,26	0,35	164 871 510,43	0,40	221 942 936,76	0,46	220 663 815,85	0,40	521 568 027,91	0,62
Transport	1 027 663 704,78	2,84	1 422 312 444,27	3,43	3 503 829 219,10	7,33	5 015 637 249,71	9,18	1 300 260 196,63	1,55
Pipeline and other transport	4 394 426,80	0,01	5 274 032,67	0,01	4 978 173,01	0,01	8 019 432,37	0,01	15 104 593,60	0,02
Road management	1 006 120 513,89	2,78	1 388 487 602,31	3,35	3 482 457 460,79	7,29	4 829 693 815,92	8,84	1 251 591 144,06	1,50
Communication, telecommunications and informatics	9 984 284,27	0,03	11 196 693,83	0,03	11 425 233,07	0,02	11 891 308,49	0,02	20 456 179,54	0,02
Communal economy	10 916 529,17	0,03	4 176 772,77	0,01	3 284 610,79	0,01	6 012 320,62	0,01	16 345 366,45	0,02

Source: constructed by authors based on data of the National Bank of Ukraine (<https://bank.gov.ua/ua/statistic/sector-external#5>) and Open budget (<https://openbudget.gov.ua/national-budget/expenses?class=-functional&view=table>)

Diversity and complexity of shocks, increasing interdependence and interconnectedness of various critical infrastructure objects, as well as physical destruction of infrastructure, are the realities that Ukraine has faced, providing not only development but also survival of critical infrastructure. Domestic policymakers, as well as researchers of critical infrastructure problems, conclude that it is necessary today to focus on investing in increasing the resilience of remaining critical infrastructure objects and restoring destroyed ones. This approach contributes to the leveling of existing uncertainty in modern Ukraine through the integration of such concepts as adaptability, flexibility, and reliability into the structure of critical infrastructure and the corresponding regulatory framework.

To find out what critical infrastructure is and what objects can be invested in, the following legal acts can be consulted: the Law of Ukraine «On Critical Infrastructure» dated November 16, 2021, No. 1882-IX ([“On critical infrastructure”, 2021](#)), the Law of Ukraine «On Amendments to Certain Laws of Ukraine regarding the Powers of the Authorized Body in the Field of Protection of Critical Infrastructure of Ukraine» dated October 18, 2022, No. 2684-IX ([“On amendments”, 2022](#)), the Resolution of the Cabinet of Ministers of Ukraine «On Certain Issues of Critical Infrastructure Objects» dated October 9, 2020, No. 1109 (as amended by the Resolution of the Cabinet of Ministers of Ukraine

dated December 16, 2022, No. 1384) (“[Some issues](#)”, 2020), the Order of the Ministry of Community and Territorial Development of Ukraine «On Approval of the Sectoral List of Critical Infrastructure Objects by Type of Main Service» dated September 7, 2022, No. 167 (“[On approval](#)”, 2022), and others. According to the Law of Ukraine «On Critical Infrastructure,» critical infrastructure is a set of critical infrastructure objects. Many people associate the concept of critical infrastructure only with defense objects and other strategically important sectors, which is quite logical in connection with military actions that take place in the country. However, in reality, the sphere of critical infrastructure defined by law is significantly broader. As such, objects of critical infrastructure are objects of infrastructure, systems, their parts and their combination, which are important for the economy, national security and defense, the disruption of which can harm vital national interests (paragraph 13, part 1, article 1). Among the vital functions and/or services, the disruption of which leads to negative consequences for the national security of Ukraine, are, in particular: 1) governance and provision of the most important public (administrative) services; 2) energy supply (including heat supply); 3) water supply and water disposal; 4) food supply; 5) healthcare; 6) pharmaceutical industry; 7) production of vaccines, stable functioning of biolaboratories; 8) information services; 9) electronic communications; 10) financial services; 11) transportation; 12) defense, national security; 13) law and order, administration of justice, detention; 14) civil protection of the population and territories, rescue services; 15) space activities, space technologies and services; 16) chemical industry; 17) research activities (part 4 of article 9) (“[On critical infrastructure](#)”, 2021). Thus, the enterprises of the defense complex are just one of the areas that fall under the legislation on critical infrastructure.

The Ukrainian government and interested foreign investors face a number of key problems when it comes to investing in the resilience and recovery of critical infrastructure. A significant portion of these problems are derived from issues related to the organization of critical infrastructure functioning. It should be emphasized that most of the norms and mechanisms aimed at addressing issues related to critical infrastructure objects are not currently working. The existence of such a state of affairs is explained by the following reasons: 1. Armed aggression by the Russian Federation, during which the Government has more pressing tasks to ensure the functioning of the state, as a result of which some organizational issues related to critical infrastructure functioning have not been resolved. 2. The authorized body in the field of critical infrastructure protection does not carry out proactive activities to implement certain investment projects. 3. Separate regulations have not been approved, which relate, in particular, to the Registry and passportization of critical infrastructure objects ([Tomashuk, 2022](#)). Taking into account the current situation in the country and the circumstances mentioned, investors have nothing else to do but wait for the resolution of the above-mentioned problems in order not to lose their investments.

Increasing investment in critical infrastructure worldwide, digitalization, and changing risks present opportunities for rethinking state policies on critical infrastructure objects based on progressive foreign experience. Foreign investment is one of the key factors in competitiveness and economic development. Thus, the US, EU, and China are among the top countries and regions in the world in terms of the volume of foreign investment (both attracted and invested) in critical infrastructure objects. The impact that foreign investment can have necessitates a special legislative approach to regulating issues related to investment in critical infrastructure objects. The regime of regulating direct foreign investment varies significantly in different countries, but a heightened regime of control over investments in critical infrastructure objects remains unchanged.

For example, in the EU, control over FDIs that are crucial for the continuous economic growth, competition, and innovation in the EU has led to the adoption of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union (“[Regulation \(EU\)](#)”, 2019). The aim of the Regulation is to increase trust and ensure the possibility of intervention in case of threats to the security of European countries, which may be an integral part of foreign investments. Overall, the Regulation is not aimed at fully harmonizing the mechanisms for controlling FDIs in the EU and does not replace national regulation and control over FDIs with a screening mechanism at the EU

level. Instead, it promotes cooperation, information exchange, and a minimum level of transparency regarding FDI between the European Commission and the Member States.

Most EU countries pay special attention to investing in critical infrastructure objects. For example, in France, the government fully controls investments in such areas as energy, water supply, transportation, electronic communications, health care, as well as enterprises, infrastructure, or objects that are «vital» for France. In Germany, the Law on Foreign Trade of 17.07.2020 (Außenwirtschaftsgesetz, AWG) and the Resolution on Foreign Trade of 29.10.2020 (Außenwirtschaftsverordnung, AWW) establish a regime for checking foreign investments that are made in German companies related to critical infrastructure objects for public safety reasons. In Germany, the Regulation on the determination of critical infrastructure was adopted and is in force in accordance with the BSI Act of 22.04.2016 (BSI-KritisV) ([“Verordnung”, 2016](#)). Currently, critical infrastructure in Germany includes objects and their parts that are necessary for providing critical services in a certain sector and that exceed certain threshold values that reflect their importance for ensuring the supply of the population from the point of view of society as a whole. The list of critical infrastructure operators in Germany is constantly growing as their threshold qualification values gradually decrease.

In recent years, Spain has strengthened its mechanism for screening foreign investments in critical infrastructure. For foreign investors to acquire a stake in a Spanish company operating in a strategic sector, approval from the Ministry of Industry, Trade, and Tourism or the Council of Ministers is required. Recent changes in legislation have granted these authorities the power to impose significant sanctions in the event of any detected violations, including declaring the transaction null and void and imposing fines that can be equivalent to the value of the investment made.

The countries that shape their state policy based on national security interests through the implementation of strict policies on regulating foreign investment include Anglo-Saxon countries such as the United States, United Kingdom, Canada, Australia, and others. In the UK, the Department for International Trade (DIT) is the main supervisory body responsible for regulating foreign investment. The aim of establishing the DIT in 2016 was to stimulate exports and implement measures to attract foreign investment to the country. Overall, the DIT's activities involve assisting companies in expanding and realizing exports abroad and encouraging foreign investors. In December 2019, the «National Security and Investment Act» was passed, which establishes a regime for reviewing direct foreign investments. The merger control regime was also reformed, giving the UK Secretary of State broad powers to intervene in deals on behalf of the government and investigate operations that could affect national security and public interests. Australia carries out control through the Foreign Investment Review Board (FIRB), while Canada applies the «Investment Canada Act» (ICA) to review foreign investments. Unlike European countries, the United States was one of the first countries to be concerned about controlling foreign investments in critical infrastructure. The Committee on Foreign Investment in the United States (CFIUS) studies the impact of foreign investors on American national interests. Special attention is paid to the origin of venture capital and acquisitions in high-tech areas. Investors who wish to invest in companies operating in Silicon Valley are also under control. CFIUS is empowered to block suspicious investments, particularly in the fields of artificial intelligence and machine learning.

Regarding Ukraine, the system of legal regulation of investment relations currently includes various norms contained in Ukrainian laws, multilateral and bilateral international agreements, documents of international organizations, and so on. National law remains the main regulator of such relations, based on the Constitution of Ukraine. Sectoral codification and other legislative acts of a general nature, primarily the Civil Code of Ukraine, as well as special laws directly regulating investment relations, are in force. Thus, the Law of Ukraine «On Investment Activity» of September 18, 1991, No. 1560-XII, is aimed at ensuring equal protection of the rights, interests, and property of investment entities regardless of ownership forms, as well as at effective investment in the Ukrainian economy, development of international economic cooperation, and integration. A separate Law of Ukraine «On the Regime of Foreign Investment» of March 19, 1996, No. 93/96-VR, was adopted ([“On the foreign”, 1996](#)). It defines the peculiarities of the regime of foreign investment in Ukraine, the main guarantees of the rights of foreign investors in investments and the income and profits received

from them, and the conditions of entrepreneurial activity of foreign investors in Ukraine. This legal act became a logical continuation of the Law of Ukraine «On Protection of Foreign Investments in Ukraine» of September 10, 1991, No. 1540a-XII ([“On the protection”, 1991](#)), which initiated measures to protect the rights and legitimate interests of foreign investors. Investment agreements concluded with investors in the fields of subsoil use, infrastructure, and urban planning are regulated by the Law of Ukraine «On Production Sharing Agreements» dated September 14, 1999 No. 1039-XIV ([“On production”, 1999](#)), the Law of Ukraine «On Regulation of Urban Planning Activities» dated February 17, 2011 No. 3038-VI ([“On regulation”, 2011](#)), the Law of Ukraine «On Concession» dated October 3, 2019 No. 155-IX ([“On concession”, 2019](#)), and other legal acts. The legal regulation of investment activities in special economic zones (SEZ) is carried out by the Law of Ukraine «On the Special Economic Zone «Zakarpattia»» dated March 22, 2001 No. 2322-III ([“On the special economic”, 2001](#)), the Law of Ukraine «On the Special Tourist-Recreational Economic Zone «Kurortopolis Truskavets»» dated March 18, 1999 No. 514-XIV ([“On the special”, 1999](#)), the Law of Ukraine «On the Special Economic Zone «Mykolaiv»» dated July 13, 2000 No. 1909-III ([“On the Mykolaiv”, 2000](#)), the Law of Ukraine «On the Special (Free) Economic Zone «Porto-Franco» on the territory of the Odessa seaport» dated March 23, 2000 No. 1607-III ([“On the special \(free\)”, 2000](#)), the Law of Ukraine «On the Special Economic Zone «Reni»» dated March 23, 2000 No. 1605-III ([“On the special economic”, 2000](#)), the Law of Ukraine «On the Special Economic Zone «Slavutych»» dated June 3, 1999 No. 721-XIV ([“On the special economic”, 1999](#)), the Law of Ukraine «On the Special Economic Zone «Yavoriv»» dated January 15, 1999 No. 402-XIV ([“On the Yavoriv”, 1999](#)), and other legal acts. Despite the fact that these legislative acts were adopted more than 20 years ago and reflect the views on the role and place of SEZ in the country’s economy that existed at that time, they all pursue common goals of creating and have the same mechanism of interaction between persons involved in the implementation of investment projects. In this regard, the question arises about the need to work on the systematization of such laws by consolidating the provisions contained in them in one legislative act, as was done with the legislation regulating the functioning and special regime of investment activities in territories of priority development (TPD).

It is important to emphasize that foreign investors who wish to invest in critical infrastructure require clear and stable «rules of the game,» and domestic laws and regulations may not be sufficient to provide such rules. The provisions of these laws can be unilaterally changed by the state, often ignoring the rights and interests of foreign investors. Therefore, foreign investors prefer to invest their finances in states that are signatories or parties to intergovernmental and international legal documents that promise to respect their rights at a higher level. Currently, the norms regulating the order of investment relations are expressed in numerous and diverse legal acts, among which the following multilateral international treaties should be distinguished:

1. The Convention on the Settlement of Investment Disputes between States and Nationals of Other States of May 18, 1965 ([Convention, 1965](#)) (ratified by Ukraine on March 16, 2000) established an international framework for the settlement of investment disputes between states and physical or legal persons of other states through conciliation and arbitration procedures at the International Centre for Settlement of Investment Disputes.
2. The Seoul Convention on the Establishment of a Multilateral Investment Guarantee Agency of 11.10.1985 ([Seoul Convention, 1985](#)) (signed by the Ukrainian SSR on October 11, 1985) established the Multilateral Investment Guarantee Agency, which provides guarantees to foreign investors for their investments in developing countries against non-commercial risks such as currency conversion, expropriation, breach of contract by the host state, war and civil disturbances. Due to the ongoing hostilities and temporary loss of territories in our country, the guarantees provided by the Seoul Convention for foreign investors play a special role, as both Ukraine and the Russian Federation are parties to the Convention.
3. The Energy Charter Treaty of 17.12.1994 ([Agreement, 1994](#)) (ratified by Ukraine on February 6, 1998) contains provisions related to the promotion and protection of investments in the energy sector. These provisions include granting foreign investments the most-favored-nation treatment or national treatment, payment of prompt, adequate, and effective compensation for any expropriated assets, permission for the foreign investor to freely transfer invest-

ed capital and any related income in freely convertible currency out of the country, and more. The peculiar feature of this legal act is that it is entirely aimed at protecting the rights of foreign investors and obliges the states that accede to it to surrender part of their sovereign rights. Most of the international agreements regulating foreign investment are bilateral agreements «on encouragement and mutual protection of investments.» Such agreements guarantee fair status to investments and protect them in the territory of another country. Ukraine has signed almost eighty bilateral investment agreements with countries such as Austria (as of November 8, 1996), Belgium (as of May 20, 1996), Bulgaria (as of December 8, 1994), the United Kingdom (as of February 10, 1993), Greece (as of September 1, 1994), Denmark (as of October 23, 1992), Estonia (as of February 15, 1995), Israel (as of November 24, 2010), Iran (as of May 22, 1996), Ireland (as of February 10, 1993), Spain (as of February 26, 1998), Italy (as of May 2, 1995), Canada (as of October 24, 1994), Qatar (as of March 20, 2018), Latvia (as of July 24, 1997), Lithuania (as of February 8, 1994), Luxembourg (as of May 20, 1996), the Netherlands (as of July 14, 1994), Germany (as of February 15, 1993), Poland (as of January 12, 1993), Portugal (as of October 25, 2000), Slovakia (as of February 26, 2007), Slovenia (as of March 30, 1999), the United States of America (as of March 4, 1994), Hungary (as of October 11, 1994), Finland (as of October 7, 2004), France (as of May 3, 1994), Croatia (as of December 15, 1997), the Czech Republic (as of March 17, 1994), Sweden (as of August 15, 1995), Switzerland (as of April 20, 1995), Japan (as of February 5, 2015), and others. It is worth agreeing with [Shemshuchenko \(2012, p. 460\)](#) regarding the fact that although the structure of bilateral investment agreements is quite typical, the substantive content of these agreements, as well as the formulation of their provisions, may differ significantly. In particular, this concerns provisions on the treatment of investments, where the exclusion of a certain standard of treatment or its characteristic formulation may have a direct impact on the determination of the scope of investor rights, and as a result, on their ability to protect their rights in case of a dispute based on the agreement.

More and more importance is being played by green law for our country. In legal science, it usually refers to acts that do not contain strict and clearly defined obligations for states. Green law typically includes United Nations General Assembly resolutions, codes of conduct, and other acts, including international agreements that aim to unite state efforts in a particular area, which do not entail any specific obligations for them ([Fatouros, 1996, p. 527](#)). In the field of international investment law, these are: UN General Assembly Resolution «On the right to freely exploit natural wealth and resources» of December 21, 1952, No. 626; UN General Assembly Resolution «Permanent sovereignty over natural resources» of December 14, 1962, No. 1803; UN General Assembly Resolution «On the permanent sovereignty of states over natural resources» of December 17, 1973, No. 3171; UN General Assembly Resolution «Declaration on the Establishment of a New International Economic Order» of May 1, 1974, No. 3201; UN General Assembly Resolution «Charter of Economic Rights and Duties of States» of December 12, 1974, No. 3281; UNCITRAL Legislative Guide on Public-Private Partnerships for Infrastructure from 2001; OECD Declaration on International Investment and Multinational Enterprises of 1976; OECD Code of Liberalisation of Capital Movements of 1961, etc. In specialized literature, there are different views on the legal force of documents, from recognizing them as mandatory (since they are customary in international law) to their recommendatory nature. One cannot disagree with the statement by I.F.I. Shihata that «soft law» becomes customary law and is recognized as mandatory for parties if it is a common practice of states that consider themselves legally bound by this practice ([Shihata, 1993, p.42](#)). If states intended to give «soft law» acts mandatory legal force, they would give them the form of an international treaty. It is also undeniable that such acts significantly affect legal reality, as they express a coordinated position of states in the field of investment activity.

Thus, the legal regulation of investment relations in Ukraine is carried out within the framework of the national legal system, taking into account the norms of international law. The domestic legal system allows for the application of laws other than national laws with the consent of the state. Overall, the necessary legal basis for investment activity in Ukraine has been practically formed. However, it was formed during peacetime and is therefore largely aimed at ensuring the subjective rights and fulfillment of legal obligations of investors during such a period. The analysis conducted indicates

the need for the adoption of new legislative acts that will reflect the nationwide approach to investment in ensuring the stability and restoration of critical infrastructure. It should be noted that the OECD Concept on Infrastructure Governance considers infrastructure stability as one of the ten key problems of infrastructure object functioning.

Existing normative-legal acts do not take into account the current realities that Ukraine has faced since the resumption of active hostilities on its territory. First and foremost, the Law of Ukraine «On Critical Infrastructure» needs to be updated, and the Law of Ukraine «On Foreign Investment in Infrastructure Objects that Have Strategic Importance for National Security of Ukraine» should be adopted. The draft Law of Ukraine «On Foreign Investment in Business Entities that Have Strategic Importance for National Security of Ukraine» can be used as a basis for regulating foreign investment in business entities that have strategic importance for national security of Ukraine and defining the procedure for assessing the impact of such investments on the national security of Ukraine. It is worth emphasizing that the state plays a key role in ensuring the mechanism of investment in critical infrastructure. This circumstance is due to the fact that it is not only a regulator of infrastructure but also an owner, operator, and user of many objects that are part of this infrastructure. The continuity of operation of state institutions depends on the state of critical infrastructure. In addition, investments in large infrastructure projects often depend on large state funds and the overall direction of the country's development, which is determined by the government. Finally, it is the state that bears direct responsibility for its citizens, who may suffer from the consequences of damage to infrastructure facilities. This puts the state in the position of having to take into account numerous dangers and threats that may threaten critical infrastructure facilities, as well as its role in the most important sectors in which critical infrastructure facilities operate, which ensure the livelihood of the population. Gradual legal, institutional, financial, and other transformations are being carried out that are directly related to the functioning of critical infrastructure and investment in it. Special legal regimes are introduced for foreign investors, tax and customs benefits are provided, and so on. For example, the Law of Ukraine «On Amendments to the Tax Code of Ukraine and Other Laws of Ukraine to Stimulate the Development of the Digital Economy in Ukraine» dated December 14, 2021, No. 1946-IX ([“On amendments”, 2021](#)) introduced a special legal and tax regime for the IT industry. The «Diia City» regime is aimed at stimulating the development of the digital economy by creating favorable conditions for conducting innovative business, developing digital infrastructure facilities, attracting investments, and talented specialists. IT companies can join «Diia City» by becoming its residents. Residency is voluntary, and residents are eligible for the system of state guarantees for investment protection and tax incentives. One of the forms of tax benefits in Ukraine is a tax discount, which a taxpayer has the right to credit for the expenses incurred during the reporting tax year for paying interest on a mortgage loan, charitable activities, in favor of educational and healthcare institutions, for purchasing shares (other corporate rights) issued by a legal entity that has acquired the status of a resident of «Diia City».

6.DISCUSSION

During the conducted research, we have come to the conclusion that it would be beneficial for Ukraine to adopt foreign experience related to attracting and state control over foreign investments in critical infrastructure objects. In addition, the experiences of countries that have recently experienced damage to their critical infrastructure due to military conflicts are becoming relevant. Recommendations based on factual data and exchange of best practices between countries can be useful in addressing complex questions such as: What is the government's proper role in enhancing the resilience and restoration of critical infrastructure? How can the government effectively engage infrastructure operators - both state-owned and private - in improving the resilience and restoration of critical infrastructure? What are the most suitable mechanisms for exchanging information about risks, vulnerabilities, and measures to ensure the resilience and restoration of critical infrastructure between the government and relevant operators? How to allocate costs and benefits from investments in the resilience and restoration of critical infrastructure among the government, operators, and end-users? Our further scientific research will be devoted to finding answers to these questions, taking into account foreign experience.

7. CONCLUSIONS

As research has shown, the system of regulation of investment relations in Ukraine includes various norms contained in various sources (multilateral and bilateral international treaties, regulatory legal acts, documents of international organizations, etc.) and differ from each other in their legal nature. The domestic legal system allows the use of norms of law other than national ones with the consent of the state. We have established that, in general, the necessary legal basis for investment activity in Ukraine has been practically formed. However, it was formed during peacetime and, accordingly, is mostly aimed at ensuring the subjective rights and fulfilling the legal obligations of investors in such a period. The analysis conducted indicates the need for the adoption of new legislative acts (for example, the Law of Ukraine «On Foreign Investment in Infrastructure Objects of Strategic Importance for National Security of Ukraine»), which will transmit a nationwide approach to investing in ensuring the stability and restoration of critical infrastructure. Legislation should be aimed not only at controlling the attraction of foreign investments but also at stimulating an increase in investment flows (both state and private). Finding a balance between state financial support and private investments should be based on a cost-benefit analysis method to determine priorities for the most effective ways of distributing costs for joint collective efforts to achieve common investment goals. In addition, it is necessary to provide preferential conditions for investing in damaged objects, restoring destroyed objects of critical infrastructure, compensatory mechanisms for investors who have invested in critical infrastructure objects and suffered losses due to hostilities, and so on.

As the intensity of damage and destruction of critical infrastructure objects in Ukraine increases, despite increased demands from investors, the role of foreign investments, especially private (non-state), will only grow. Special attention should be paid to reducing investment risks. It is worth noting that purposeful work is being carried out in this direction, which is aimed at achieving financial stability and providing guarantees for covering risks (mostly related to the war), which contribute to attracting foreign investments to Ukraine. Due to the need to restore critical infrastructure objects through foreign investments, the foundation is laid for unhindered investment in conditions of martial law, as well as further post-crisis recovery of the country. Currently, the risk assessment for attracting foreign investments in critical infrastructure objects is significantly complicated. The risk itself is extremely high, but at the same time, the existing situation for investors who do decide to invest in critical infrastructure may potentially turn into a high profit.

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