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CREDITING TO AGRICULTURAL COMMODITY PRODUCERS: ECONOMIC AND LEGAL PROBLEMS

Abstract. In the article the economic and legal problems connected with small and medium-sized commodity producers' credit have been analyzed. It has been proved that in Ukraine, unlike foreign countries, the mechanism of easing credits remains virtually the only financial instrument aimed at developing credit relations in the agrarian sector of the economy. It is noted that in the mentioned sphere the provisions of the Ukrainian Law «On State Support to Agriculture in Ukraine» are not fully implemented. In particular, the requirements concerning the size of the credit subsidy, the possibility of obtaining compensation for long-term credits and credits received in foreign currency aren't performed. Taking into account the aforementioned, as well as reducing the amount of financing of the corresponding state program by 4.5 times, the authors have concluded that these legislative requirements are mainly declarative. Thus, ensuring in practice the access to the cheap credit resources for small and medium-sized agricultural producers shall become one of the important tasks of the state agricultural policy.

Keywords: credit relations, rural credit, concessional lending, state support, easing of credit, credit subsidy, agrarian receipt, agricultural commodity producer, budgetary loan, Agrarian fund.

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КРЕДИТУВАННЯ СІЛЬСЬКОГОСПОДАРСЬКИХ ТОВАРОВИРОБНИКІВ: ЕКОНОМІКО-ПРАВОВІ ПРОБЛЕМИ

Анотація. Обґрунтовано, що в Україні, на відміну від зарубіжних країн, практично єдиним фінансовим інструментом, спрямованим на розвиток кредитних відносин в аграрному секторі економіки, є механізм здешевлення кредитів. Вказано на декларативний і суперечливий характер законодавства в зазначеній сфері, що призводить до неможливості його реалізації на практиці. Доведено, що забезпечення доступу до дешевих кредитних ресурсів малих і середніх сільськогосподарських товаровиробників має стати одним із важливих завдань державної аграрної політики.

Ключові слова: кредитні відносини, сільськогосподарський кредит, пільгове кредитування, державна підтримка, здешевлення кредиту, кредитна субсидія, аграрна розписка, сільськогосподарський товаровиробник, бюджетна позика, Аграрний фонд.

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КРЕДИТОВАНИЕ СЕЛЬСКОХОЗЯЙСТВЕННЫХ ТОВАРОПРОИЗВОДИТЕЛЕЙ: ЭКОНОМИКО-ПРАВОВЫЕ ПРОБЛЕМЫ

Аннотация. Обосновано, что в Украине, в отличие от зарубежных стран, практически единственным финансовым инструментом, направленным на развитие кредитных отношений в аграрном секторе экономики, является механизм удешевления кредитов. Указано на декларативный и противоречивый характер законодательства в данной сфере, что приводит к невозможности его реализации на практике. Доказано, что обеспечение доступа к дешевым кредитным ресурсам малых и средних сельскохозяйственных товаропроизводителей должно стать одной из важных задач государственной аграрной политики.

Ключевые слова: кредитные отношения, сельскохозяйственный кредит, льготное кредитование, государственная поддержка, удешевление кредита, кредитная субсидия, аграрная расписка, сельскохозяйственный товаропроизводитель, бюджетный заем, Аграрный фонд.

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Actuality of research. The complexity of the credit relations in the agrarian sector of the economy is subject to the number of factors. As it is noted in the economic literature, this is a high specificity of the agricultural production (its seasonality, insignificant capital intensity and, consequently, a significant dependence on weather conditions, low level of financial efficiency) and strategic importance for the national economy [1]. Accordingly, it could not be agreed with the idea that the formation of the system of crediting agricultural commodity producers due to the high level of risk and financial instability, is more difficult task than in any other industry economy [2, p. 1]. Lack of the credit resources as the result of the high cost of bank loans and the complex mechanism

of their obtaining are characteristics of the credit supply of the agrarian sector of the economy. In addition, the obligatory requirement for the conclusion of loan agreements with agricultural producers is the availability of pledge, which, in the absence of the agricultural land market, is problematic. As the result, such a source of attraction of resources, such as bank loans, becomes inaccessible to the most small and medium-sized agricultural producers. Moreover, a similar situation is observed in EU countries, where most farmers are not able to obtain loans on the favorable terms. Indeed, lending to farmers or small agricultural businesses is considered by banks as risk [3, p. 1]. Although, the scientific literature argues that a significant, if not the overwhelming part, of the risks associated with lending to farms can be considered as ordinary, and in general, it is not very different from lending in microenterprises [4, c. 160]. Nevertheless, the development of the credit relations in the agrarian sector is slowed down and largely continues to depend on financial support from the state. Therefore, the study of legal regulation of the state policy in the sphere of providing agricultural commodity producers with access to preferential credit resources shall acquire the special significance.

Analysis of the recent research and publications. The issue of lending to the agrarian sector of the economy were attentively investigated in the scientific literature, both legal and economic. During this research, the works of specialists in the sphere of agrarian economics and agrarian lawyers such as Kh. A. Grigoriev [5], O. E. Gudz [6], A. M. Isayan [1], O. M. Tueva [7], V. Y. Urkevich [8], P. Y. Shvedenko [2] and others were used. In addition, the scientific investigations of the number of foreign scientists were analyzed, including: Lopo de Carvalho [3], Pieter Devuyst [9], Hamish R. Gow [10], Yves Madre [9], Klaus Maurer [4], Johan FM Swinnen [10], Francesco Tropea [3].

The purpose of the article is subject to investigation of economic and legal issues related to lending to small and medium-sized commodity producers and providing them with access to preferential credit resources.

Presentation of the material. Western scientists consider that for the countries of Central and Eastern Europe it is the common practice to intervene into the agricultural loans markets, in particular by providing subsidies at interest rates or establishing state guarantees for bank loans [10, p. 44]. For the large part of the foreign countries, the use of such mechanisms to support agricultural producers is also the common practice. In particular, in the EU countries, preferential lending is extended, which is carried out in such forms as the establishment of a preferential interest rate on a loan, repayment of the certain part of the state loan, extension of the term of repayment of the loan, etc. In Ireland at 2017 the Department of Agriculture, Food and the Marine, in collaboration with the Strategic Banking Corporation of Ireland (SBCI), developed the Agricultural Cash Flow Support Loan Scheme, which provides for the possibility of obtaining the loan not secured by the pledge in the amount of up to 150.000 euros for a term of up to 6 years with an interest rate of 2.95%. Such loans are granted to: farmers engaged in the livestock, crop, horticulture (including mushroom producers) and other persons engaged in the primary agricultural production (including poultry) [11]. In France, people employed in agriculture can receive subsidized loans, that is, loans granted at preferential rates compared to rates registered in the market. For this purpose, agricultural commodity producers must invest in the following directions: to reduce production costs; on improvement and reorientation of production; to improve product quality; on preservation and improvement of the natural environment, hygienic conditions and standards of animal welfare; on diversification of farms (Article D344-1 of the French Code of Agriculture and Marine Aquaculture) [12]. In Brazil, agricultural loans are the main source of state support for farmers. National Sector Credit System (SNCR) provides loans to farmers at preferential interest rates. In order to secure these preferential loans, the government can compensate banks for the interest rate reductions [9].

Under Ukrainian legislation, lending to the agricultural producers is carried out in combination of the generally accepted procedure for granting loans with the special lending regime (foresees, at the expense of the State Budget of Ukraine (hereinafter - SBU), compensation for loans at a rate of not less than 50 percent of the discount rate established by the National Bank of Ukraine

(hereinafter referred to as NBU)) (Article 12 of the Law of Ukraine of January 18, 2001 «On Stimulating the Development of Agriculture for the Period 2001-2004»), which takes into account the specifics of the management of agrarian economic production and the conditions for conducting economic and land reforms in the countryside (Article 11), which was introduced by the Resolution of the Cabinet of Ministers of Ukraine of January 27, 2001 No. 59 «On partial compensation of interest rates on commercial banks' loans granted to agricultural producers and other agroindustrial enterprises complex in 2001» (the amount of partial compensation of interest rates on commercial banks loans ranged from 50 to 70 percent (p. 1). As for now in order to provide financial support to agricultural producers on the basis of the Law of Ukraine of June 24, 2004 «On Supporting Agriculture in Ukraine», a mechanism of cheapening of loans was introduced. As it noted in the economic literature as a result of it was managed to restore ... bank lending of agroindustries with a significant increase in the volume of credit resources involved in economic turnover [6, p. 60]. Reductions in loans is made in the regime of credit subsidy and consists in subsidizing part of the fee (interest) for using loans granted by banks in the national and foreign currencies (Sub-clause 13.1 of the Clause 13). Unfortunately, the level of support under the program «Financial support of measures in the agroindustrial complex by reducing the cost of loans» (CPCE 2801030), compared with 2017, has decreased by 4, 5 times and consists only 66 million UAH. (Annex No. 3 to the Law of Ukraine of December 7, 2017 «On the State Budget of Ukraine for 2018»).

The subsidy is the subject to a portion of the payment (interest) on a loan, the amount of which is used for the purpose intended for the needs of production (for the development of the agroindustrial complex) (Article 13 of the Law of Ukraine «On State Support to Agriculture in Ukraine»). At the same time, the Law provides for the provision of the three types of loans: short-term (up to 12 calendar months) — to cover production costs, medium-term (up to 36 calendar months) and long-term (for a period of 36 calendar months) — for the acquisition of fixed assets of agricultural production; for realization of expenses connected with construction and reconstruction of industrial objects of agricultural purpose, including for ensuring processing of agricultural products (Clause 4 Article 13). The Law also stipulates that the loan subsidy shall be granted: in national currency — at a rate of not less than 1,5 discount rate of the NBU, effective on the day of accrual of interest for the use of loans, but not higher than the amounts provided for by loan agreements; in foreign currency — in the amount of not less than 10 percent per annum, but not higher than the amounts stipulated by the loan agreements (clause 13.3.3 of Article 13 of the Law). Contrary to the aforementioned provisions of the Law, the procedure for using the funds provided for in the state budget to financially support measures in the agroindustrial complex by reducing the cost of loans approved by the CMU from April 29, 2015, No. 300, established that the compensation is provided for interest accrued and paid in the current year interest use of loans: in the amount of the NBU discount rate, effective on the date of accrual of interest, but not higher than the amounts stipulated by the loan agreement, — borrowers having a net income (for example, from the sale of products (goods, works, services) for the last year to UAH 20 million, and borrowers who carry out activities for the cultivation and breeding of animals (cattle for meat and milk production, sheep and goats, rabbits , pigs, poultry (except for chickens and poultry eggs) and used credit funds to cover the costs associated with such activities — in the amount of 50 percent of the NBU discount rate, effective on the date of accrual of interest but not higher than the amount, provided by loan agreements — other borrowers (p. 4). Compensation is the subject to interest rates on the short term loans borrowed to cover production costs and medium term loans borrowed for the acquisition of fixed assets of agricultural production, the costs associated with the construction and reconstruction of agricultural production facilities. Thus, the specified Resolution of the Cabinet of Ministers directly contradicts the Law of Ukraine «On State Support to Agriculture in Ukraine» regarding the size of the loan subsidy, which has already been addressed in the scientific literature [5, p. 318]. Also, the Law provides that any borrower may avail of such a benefit, except those in respect of which a bankruptcy case has been initiated that has been identified as bankrupt in liquidation or has overdue more than six months in arrears to the state budget, the Pension Fund of Ukraine and funds of compulsory state social insurance, which is confirmed by the relevant bodies

of the state fiscal service (paragraph 5). The provisions of the Resolution of the CMU establish the additional requirements for the indicated persons (the size of the net income and activity). Of course, it could be understand as the attempts by the legislator to restrict the support of the large commodity producers to the state and provide financial resources for the livestock sector which are in the critical condition. But such requirements should be contained in the Law, and not in the by-law normative-legal act. It should be noted that the said Resolution of the Cabinet of Ministers provides for the possibility of the compensation for the interest rates only for short-term and medium-term loans, and by law — and for long-term. That is, these provisions also restrict the rights of agricultural producers. Moreover, the CMU Resolution do not contain in general a mechanism for implementing the provisions of the Law on the possibility of obtaining compensation for loans taken in the foreign currency.

The alternative financial instrument that enables the agrarian producers to attract additional credit resources to finance their current production and economic activity on the pledge of future harvest are the agricultural receipts [7, p. 189] – goods handling documents, which record the unconditional obligation of the debtor, which is secured by the pledge, to carry out the supply of agricultural products or to pay cash in the conditions specified therein (Article 1 of the Law of Ukraine dated November 6, 2012 «On Agrarian Receipts»). Today, 53% of the total number of agricultural receipts are issued by the average agricultural producers and 36% by the small agricultural producers on the bail of the certain types of the agricultural products (corn, sunflower, wheat, soya, rapeseed, etc.). More than 190 of them have been issued (107 of which have been completed). The total amount of the funds attracted by them reached more than UAH 1.3 billion [13]. The above data suggest that such a mechanism is used, first of all, by medium and small producers of the agricultural products, which are limited in the ability to obtain bank loans. In addition, it could be concluded that it is only beginning to develop in Ukraine. In order to analyze the experience of the other countries it could be concluded that agricultural receipts are fully operated in Brazil (they provide a significant part of the working capital used in agribusiness: this is almost 20—30 billion dollars a year). Also, they are implemented in Serbia and the Russian Federation [14, p. 13].

The introduction of the agrarian receipts is beneficial for both lenders and debtors. So, for the first one — this is the minimum risk of default. After all, the Law provides that such documents may be issued by the persons who have the right to own a land plot of agricultural purpose or the right to use such a plot (Article 2); as collateral for the fulfillment of obligations of the debtor, the pledge of his future harvest is used (Article 7); the Register of Agrarian Receipts should be conducted (Article 10); requirements for the execution of such financial documents, in particular their notary certification (Article 9); a mechanism for collecting the executive note of the notary (Article 13). For the others, this is, first of all, a simplification of the lending procedure. Especially, it is important the introduction into circulation of the mechanism of commodity receipts, which allows, as rightly noted in the agrarian and legal literature, to guarantee the implementation of products, since rights and obligations in relation to the obligation arise even before its production [15, p. 72].

The *a*gricultural producers can obtain credit funds through the budget institution such as the Agrarian Fund. According to the Law of Ukraine «On the State Support to the Agriculture of Ukraine», the Agrarian Fund (the creditor), while providing the public procurement, provides a budget loan to a grain producer (its size may not exceed 80 percent of the minimum intervention price), which is the subject of the state price regulation (the borrower), on the pledge of the such object, which is executed by transfer to the creditor of the double warehouse certificate (Sub-clause 12.2 of the Clause 12). The fee for using a budget loan is set at the level of 50 percent of the weighted average interest rate on the bank loans granted for up to 12 calendar months and fully secured by collateral, which in fact was formed as of May 1 of the current fiscal year. The procedure for calculating such a weighted average interest is determined by a government resolution (Article 12, 4, Article 12 of the Law). Such a budget loan is provided by the Agrarian Fund on the basis of a loan agreement (Sub-Clause 12.2 of the Clause 12), the standard form of

which is developed by the Agrarian Fund and approved by the Ministry of Agrarian Policy and Food of Ukraine. Unfortunately, as for now, is absent. Since the Order of the Ministry of Agrarian Policy and Food of Ukraine dated March 27, 2015 No 116 termoinated the Order of the Ministry of Agrarian Policy of Ukraine «On Approval of Forms of a Loan Agreement for Budget Loans within the State Procurement Procurement Regime» dated July 15, 2005, No. 338. Thus, as V. Y. Urkevich rightly points out, the standard form of the agreement on granting a budget loan to the Agrarian Fund needs the approval [8, p. 12].

It should be noted that in the abovementioned provisions of the Law, such concepts as loan and loan agreement are applied. In the scientific literature, attention was paid to the fact that these are related concepts, but they have different legal nature, are regulated by various requirements of the legislation (according to the Articles 1046-1053 and Article 1054-1057 of the Civil Code of Ukraine (hereinafter ― the Central Committee of Ukraine) , according to which the text of article 12 of the Law should have been about concluding the loan agreement, and not the loan agreement [16, pp. 87]. Without going into the detailed analysis of the above concepts (the more so as in the civil law literature, such an analysis repeatedly made), it should be noted that, first of all, this agreement differ in the subject structure: in the loan agreement ― the borrower is any natural or legal person (Article 1046), and in a loan agreement, the creditor may be only a bank or another financial institution (Article 1054 of the CCU). Thus, The Agrarian Fund as a state specialized budget institution authorized to implement price policy in the agro-industrial sector of the economy (clause 1 of the Regulation on the Agrarian Fund, approved by the Cabinet of Ministers of Ukraine from July 6, 2005, No. 543) can act only as a lender in the loan agreement. Taking into account the aforementioned, it shoud be considered as necessary to make appropriate amendments to the Law of Ukraine «On State Support to Agriculture of Ukraine» in order to bring its provisions in line with the provisions of the Civil Code of Ukraine.

Conclusions. Thus, in Ukraine, unlike foreign countries, the mechanism of cheapening loans remains virtually the only financial instrument aimed at developing credit relations in the agrarian sector of the economy. After all, the introduction of credit receipts is at an early stage and is unlikely to be able to replace the bank lending in the near future. Unfortunately, not all provisions of the Law in this area are fully implemented. Yes, the requirements for: the size of a loan subsidy, the possibility of obtaining compensation for long-term loans and loans taken in foreign currency are not met. Taking into account the aforementioned, as well as reducing the amount of financing of the corresponding state program by 4.5 times, it can be argued that these legislative decrees are mainly declarative. Therefore, ensuring access to cheap credit resources for small and medium sized agricultural producers, not on paper, but in practice, should become one of the important tasks of the state agricultural policy.

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