

HIGHER EDUCATION FUNDING IN UKRAINE (REGULATORY AFFAIRS)



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Abstract. The article deals with the economic regulatory considerations of higher education funding in Ukraine under the applicable statutory. Budgetary and non-budgetary sources are analyzed for financing of higher educational institutions. The role of educational endowment is investigated in higher education

funding. It is concluded that the legislation on higher education should be oriented towards the well-balanced settlement of budgetary and non-budgetary sources of higher education funding to enforce its functions and tasks.

Keywords: *higher educational institutions, educational endowment, funding sources, budgetary financing, non-budgetary financing.*

Introduction

Adequate financing of higher educational institutions (hereinafter referred to as HEI) is more than one key element for the maintenance of higher education activity, but it is an execution condition for the crucial social function of the state related to equal opportunities to access to higher education for Ukrainian citizens and meeting needs of the society and state in relevant trained specialists. Therefore, the legal regulation of these social relations plays an important role in the mechanism of the HEI system regulation of different forms of ownership. The proper funding allows HEIs to fulfill the following socially important tasks alongside with the statutory ones: 1) maintain the spiritual culture and intellectual potential of society; 2) support educational activity at the appropriate level, quality of specialist training and conducting relevant scientific researches; 3) support the stability of the teaching staff in the higher education system; 4) social protection of the teaching staff, other employees of HEIs, and student body; 5) development of the physical facilities and social infrastructure of HEIs [11, 222].

The literature review

The regulatory affairs of higher education funding have been the subject of research for a series of scientists including T. Boholib, I. Gryshchenko, B. Derevianka, M. Dmytryshyn, I. Karzun, O. Krasilnyk, M. Kushnir, I. Lytvyn, E. Martiakova, A. Monaenko, E. Oharenko, T. Ryzha, I. Savchenko, N. Fuchs, L. Shevchenko, I. Shpuhanych, R. Yakubovskiy and others. At the same time, the conclusions they have made require certain adjustment and development due to the modernization of national legislation on higher education going on over recent years.

The research results

It is known that for a long time the economic development of HEIs was ensured by full state funding in Ukraine. State regulation characterized by activity planning and development of educational institutions at the level of relevant government agencies, strict directive centralized state administration on the basis of regulatory documents, immediate subordination and public control

over financial and economic activity of educational institutions excluded an autonomy of decision-making [15, 6]. Hence, the theoretical position on the priority role of the state has been widely accepted for the higher education funding, as well as active regulation of the mechanism providing educational services in order to achieve the optimization of various funding sources [7, 11].

However, despite the significant role of the state in higher education funding [5, 89], it is no longer possible to accept the underlying premise of priority role of the state funding HEIs of different forms of ownership and management. Since the conditions of the market economy and commercialization of higher education naturally stipulate the multidirectional HEIs funding from various sources in Ukraine, search for the best ways to ensure its functioning and executing its functional role in society.

It should also be noted that the economic crisis is objectively and significantly reducing the state budget revenues in Ukraine consequently restricting the state financial capacity to maintain HEIs, most notably state and municipal ones. Therefore, it is probably necessary to agree with the conclusion of I. Karzun to consider the current trends in the development of the controlled economy excluding a significant increase in public education expenditures over the coming year. That is why it is necessary to look for other ways, first of all to ensure efficient use of available budgetary funds, use of alternative financing sources, involvement of foreign partners for investments, participation in international programs (for example EU "Horizon 2020" program), implementation of results of scientific research and experiments in accordance with needs of the real economy and society. [5, 109-110].

Higher education funding HEIs are understood in scientific information sources to mean a concept reflecting economic relations during development, circulation, distribution and redistribution of financial resources generated from various funds and reserves to maintain the activity of HEIs; such funding is targeted and controlled [7, 17]. It is incumbent upon us to emphasize a financially backed nature of higher education funding on the one hand and its targeted nature and controlled status of such maintenance on the other hand.

Ukrainian researcher M. Dmytryshyn attributes all monetary funded and unfunded assets to the financial resources of HEIs created at the expense of budgetary funds and funds received as payment for education and other services provided to meet the educational needs of the individual, society and state, been in their possession on the rights of operational management and used to finance training in accordance with state

education standards, strengthening and expanding the physical facilities [3, 18]. However, such a definition cannot be accepted for the following reasons: first, this definition does not take into account the legislative changes under which property (and hence money) is transferred ownership or economic jurisdiction to HEIs rather than operating management; secondly, the funding streams are obviously not limited to the training goals according to the state education standards, as well as strengthening and expanding the physical facilities, but have an undedicated function stipulated by both the legislation and HEI statute.

With regard to the above mentioned the financing package should include budget financing, funding sources of state institutions, as well as self-financing, equity capital, lending and credit, non-repayable financial aid [1]. However, the financing system is monumentally determined by the form of ownership, type of the HEI and state educational policy [16, 4]. Taking all of this into account, the procedure of higher education funding was divided into groups depending on the form of ownership in accordance with Clause 71 of the Law of Ukraine "On Higher Education": 1) financing of state HEIs is carried out at the expense of the state budget on the terms of the state order for training specialists, scientific and pedagogical staff and at the expense of other sources not prohibited by the law observing the principles of purposeful and effective fund usage, publicity and transparency in decision-making; 2) the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, local self-government agencies can provide financing of state HEIs in accordance with the law; 3) the size of government expenditures on the training of higher education professionals, as well as training of scientific and pedagogical personnel is established by the State Budget of Ukraine for the respective year. At the same time, according to Part eight, Clause 72 of the Law, training of higher education professionals funded through the State Budget of Ukraine in specialties of the relevant higher education degrees established in the amount to provide at least 180 students per 10 thousand people [14].

As A. Monaenko notes, "the major role of the state budget is manifested (and experience confirms it for the countries with

developed market economies), first, its share in the total volume of higher education funding to exceed all other financing sources; secondly, the fact that a state budget is a means of government regulation over fund-forming and distributing relations as a whole" [11, 223].

Instead of it, the municipal HEI funding is executed at the expense of local budgets and other sources not prohibited by law in accordance with the Budget Code of Ukraine. Private HEI funding is provided by their founders and other sources not prohibited by law (Parts four – five, Clause 71 of the Law of Ukraine "On Higher Education" [14]). The approach relating to the widest possible system of financing sources for municipal and private HEIs generally meets the regulatory approval type of legal control and is intended to maximize the financial support of the respective institutions.

Somewhat different classification of HEI finances is found by following attributes in the economic literature: 1) by the point of origin – created domestically and attracted from abroad; 2) by source of formation – received from budgetary and non-budgetary sources; 3) by form of ownership - public, private, municipal (corporate, mixed) and non-resident resources; 4) by accumulation methods – created by fiscal methods and voluntarily formed on a charitable basis; 5) by level of management – centralized and decentralized; 6) by directions of use – aimed at replenishment of current and non-current assets, consumption, savings; 7) by regularity of appropriation– financial resources constantly received (budget allocations, tuition fees) and non-recurring charges (grants, sponsorship contributions, funds for the execution of individual assignments) [3, 18-19].

However, such classification is primarily of scientific and theoretical importance, and, classification by sources of these funds is more important for legal regulation and for the economic-legal approach. Thus, T. Boholib proposes to classify the funding sources for higher education and science by the following features: 1) by type of services: tuition fees, revenues from scientific activities; income from economic and industrial activities; rental fees; sales proceeds of property; 2) by way of formation: the general fund of state and local budgets; own revenues of budgetary institutions; charitable contributions; grants

and gifts; funds received for the execution of specific orders from legal entities and individuals; loans; funds of foreign companies; 3) by type of activity: basic (tuition fees, revenues from scientific activities, etc.); ancillary (income from economic and industrial activities, rental fees, etc.); 4) by type of ownership: state (state budget funds); private (tuition fees, charitable contributions, payment by private entities for services, etc.); 5) by a regularity of receipts: permanent (tuition fees, rental fees, etc.); temporary (sales proceeds of property, grants and gifts, charitable contributions, etc.); 6) by link to a country: domestic (state budget funds, legal entities registered in Ukraine, and natural persons, citizens of Ukraine); foreign (funds of legal entities of other states) [2, 18-19; 15, 7]. Diversification of such sources possesses great economic importance for the university system, because, as E. Oharenko rightly noted., the financial support of the Ukrainian higher education system should proceed from the "survival" mode to the "development" mode, from budgetary maintenance to the mode of investment in the educational sector [12, 68]. And it is impossible without diversification of HEI financing sources, thus insufficient attention is paid to it by a lawmaker and the Law "On Higher Education".

Considering the analysis of the legislation and statutes of HEIs, the financing sources of state and municipal HEIs include the following: 1) funds from respectively the state and municipal budget; 2) funds received from the provision of paid services; 3) funds received from other types of economic activity not directly related to education (proceeds from the leasing of premises, buildings, equipment, etc.; proceeds from the sale of property; proceeds from the employment of funds in deposit accounts); 4) voluntary contributions, donations, grants, gifts. It should be noted that an important subject of legal regulation is the financial activity of the HEI covering the following groups of legal rights and responsibilities of these educational institutions: planning its financial resources (budget revenues and a wide range of non-budgetary sources); distribution and use of financial resources for the development, current maintenance, financial support of the teaching staff; the execution of financial obligations to the state in the field of taxation and other payments to the budgetary and

non-budgetary funds, as well as the execution of obligations to banks, other economic entities; the implementation of financial control in HEIs [11, 224]. However, these issues apart from the regulation of financial obligations to the state are currently outside the purview of the law.

At the same time, the Ukrainian legislation also sets some mandatory restrictions on the use of funds intended for the higher education funding. The following restrictions include: 1) the obligatory allocation of the funds for carrying out the statutory activity of the HEI in the manner and under the terms determined by the law and HEI statute; 2) the obligatory inclusion of the costs related to the development of the physical and laboratory facilities in the financial plan (budget) of the HEI with a provision of licensed software products for educational and scientific activities, as well as work experience internship and undergraduate internship for higher education applicants; 3) prohibition of the funds withdrawal into the state or local budgets received by the HEI as payment for education, training, retraining, advanced training for staff or providing educational services (Parts five – seven, Clause 71 of the Law of Ukraine "On Higher Education" [14]).

We believe that the given guides objectively "impose" on a significant adjustment of the higher education funding due to the current status of the state financial capacity. However, as experience has shown, "budgetary and non-budgetary funding is closely linked and has unique resource constraints in the Ukrainian context. In the case of reduced budget financing it is impossible to expect an increase in the total amount of investment in educational institutions; it would only be a substitute for budgetary funds from non-budgetary sources at best" [6, 113].

Due to the analysis of the HEI financial activity a legal institution of educational endowment first legalized in the legislation of Ukraine in 2014 deserves a special mention (a little earlier the institution was legally enshrined in the Tax Code of Ukraine and in the Law of Ukraine "On Charitable Activity and Charitable Organizations"). The scientific literature mostly considers endowments in the field of higher education (also referred to educational endowments) as instruments of charitable activity for the benefit of HEIs [9]

or as components of the financial and credit mechanism of HEI activities [4; 10].

As known, endowment widespread in foreign countries usually: 1) represents a trust fund with a purpose of a non-profit activity generally funding education, medicine, culture and mostly replenished by charitable donations; 2) can invest its funds for profit, but obliged to direct all received profits for the benefit of those organizations for which it was established; 3) has the advantage of its activity transparency, since the funds can be directed only to the organization for which it was established, and this fund cannot be used to minimize taxation [8, 22-23].

This concept of endowment is also embodied in the educational legislation of Ukraine. According to the Law of Ukraine "On Higher Education", HEI due to the procedure established by law and in compliance with the statute has the right to establish a permanent fund (endowment) of the HEI and to dispose the proceeds of its use under the conditions of the sustainable fund, as well as to receive property, funds and material valuables such as buildings, equipment, vehicles from government, local government, legal entities and natural persons including as it relates to charity assistance. Pursuant to Paragraph 22, Part 1, Clause 1 of the Law, a sustainable fund (endowment) of HEI is a pool of funds or value of other property intended for investment or capitalization for a period not less than 36 months, the passive income from which the HEI uses for the purpose of carrying out its authorized activities in the manner identified by a benefactor or a person authorized by him [14]. Thus, the law does not limit the composition of the endowment to cash only making it possible other value property to belong to it. At the same time, we agree that the legislation now does not contain requirements for the structure of the endowment moving the given issue at the discretion of the philanthropists forming the endowment themselves and transferring it to the HEI on a contractual basis as a recipient of charitable assistance. The issues related to the endowment development, usage and supplement are shifted towards a contractual basis [19, 100-101].

The activity of an individual endowment is directly regulated by its charter, adopted in accordance with the law, particularly establishing the legal status and structure of the fund; goals, procedure of formation, directions

and arrangements for use of target capital and income from it; structure and procedure of formation of the fund bodies; fundamentals of the fund's information policy; restrictions on conducting transactions with property constituting the target capital; general principles of the trust management of property, which constitutes the target capital, etc. [8, 23-24]. Such legal innovations take place to one degree or another in the charters of many Ukrainian HEIs of different forms of ownership since 2014, although the endowment establishment is a right and not an obligation of HEIs.

The charitable legal nature of the educational endowment is emphasized in the provisions of the Tax Code of Ukraine. Thus, in accordance with Paragraph 170.7.5 of the Tax Code of Ukraine, the recipient of a targeted charitable assistance in the form of funds is entitled to use it within the period established by the terms of such assistance, but no more than 12 calendar months following the month of receipt of such assistance, except for the aid provided for treatment for with the right to use no more than 24 calendar months following the month of receipt of such assistance, except for receiving charitable assistance in the form of an endowment. If the targeted charitable assistance in the form of funds is not used by the acquirer for such a period and is not returned to the benefactor before its expiration, then such acquirer shall be obliged to include the unused amount of such assistance in the total annual taxable income and to pay the corresponding tax. The term "endowment" means the amount of funds or securities contributed by a philanthropist to a bank or non-bank financial institution, whereby a charitable aid acquirer is entitled to use interest or dividends accrued on the amount of such endowment. However, such an acquirer is not entitled to spend or alienate the principal amount of such an endowment without the consent of the benefactor.

It is clear that the charity has a significant influence through these provisions over the intended purpose of the HEI endowment leading to a closer relationship between the HEI as the purchaser of the relevant charitable assistance and the benefactor, who by virtue of the Law of Ukraine "On Charitable Activities and Charitable Organizations" could be capable individual or legal entity of private law (including a charitable organization) that voluntarily carries out one or

more charitable activities (Paragraph 5, Part 1, Clause 1 of the Law of Ukraine "On Charitable Activities and Charitable Organizations") [13]. We have to agree with the opinion of a number of scientists that "higher education is interesting for business as both creating its own positive image among the target audience of students and graduates for their further involvement in the industrial sphere, and from the standpoint of conducting scientific (applied and basic) research for their own development. Finally, the interest of business entities (both individuals and legal entities) in the endowment means the practical implementation of public and private partnerships consequently attesting the degree of corporate social responsibility" [8, 25].

It should be borne in mind that "the obstacles to the establishment of educational endowments are extremely low reputation of some universities, lack of free funds for charity and negative memories of studies (lack of qualification and attention of teachers, bribery, etc.); doubts of potential philanthropists on possible effective directions for funds of university endowments (economy is corrupt; bank deposits are not trusted; the stock market does not perform many functions; there is no legal land market; investments in residential real estate are problematic, universities' investment in foreign assets is not legally regulated); underdevelopment of the charity in general and its forms of state support; lack of specialists able to work with the given funds" [18, 16]. It is also evident that in order to encourage individuals and legal entities to facilitate the endowment development, it should be provided certain tax benefits, which so far has not been done within the legislation framework of Ukraine. Therefore, a substantial part of the motivational potential for non-budgetary funding of HEIs has not yet been sufficiently implemented in practice.

Meanwhile three leading models of financing educational activities have been differentiated in the scientific literature: 1) a free-market model of higher education funding that provides for decentralized management of universities in terms of both scientific and educational activities, as well as attraction of financial resources and determination of its proportions and distribution patterns reducing as possible public spending on educational activities (neoliberal funding policy; M. Friedman, F.A. von Gauck); 2) a model of higher

education funding oriented on the public market with the active participation of the state in the development of the national education system, in particular its financing (D. Schumpeter, M. Kondratiev); 3) social funding model for higher education oriented towards alternative integrated society, under which the state should take full responsibility for the development of the education system, financing [17, 79]. It is quite obvious that given the market conditions of the economy functioning and the denationalization of the higher education system, the third model is unsuitable for Ukraine under current terms. After all, "it is also unacceptable not to use market-based management methods in a market economy" [6, 98].

In the meantime the real choice of the higher education funding model obviously

comes within the first and second models. It should be noted that each of these models has its limitations in Ukrainian conditions, given the current socio-economic situation of the state. The first (neoliberal) funding HEIs model particularly cannot be fully implemented due to the existence of a predominant state subsystem in the HEI system; its total implementation can cause financial collapse of the mentioned state-owned institutions and have long-term negative results for the whole higher education system. At the same time, the second (social) model has significant limitations due to the real decline in the state's financial capacity to participate in the financing of the higher education system.

Conclusions

Hence, it can be said that the elements of the first and second models are implemented with the advantage of the second (social) and with the prospect of gradual strengthening of the elements of the first (neoliberal) model in the conditions of modern Ukraine. However, some warnings should be made here: the state must constantly seek to fulfill its social function in the field of higher education (applicants for education are temporarily displaced persons, privileged citizens, regional criterion, etc.); the state funding of higher education should take into account the support for the development of promising sectors of the economy, encouraging universities to compete, planning for the future activity of HEIs [16, 6]. Considering this warning higher education legislation should aim at a balanced regulation of the budgetary and non-budgetary HEIs funding sources in order to ensure the fulfillment of its functions and tasks.

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