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Modern Experience of Foreign Countries in the Field of International Military-Technical Cooperation and the Possibilities of Its Use in Ukraine

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ABSTRACT

This article examines the models used by EU and NATO member states that engage in international military-technical cooperation, how to work with these organizations, and how to legally adapt them to the current state of Ukraine. The comparative legal analysis conducted allows us to formulate the following author's proposals for improving Ukrainian legislation in the field of military-technical cooperation. Codification of legislation on military-technical cooperation (MTC). The current system of public law governing MTC lacks coherence; legal norms governing MTC are found in various places, including substantive and procedural provisions of general laws; executive decrees; and regulatory acts published by government agencies. To create a coherent and structured framework for international military-technical cooperation, it is important to adopt a single law on international military-technical cooperation, which will establish the legal principles governing military-technical cooperation, the entities involved, the institutional bodies responsible for military-technical cooperation, and the procedures for such cooperation. For Ukraine's participation in PESCO projects as a foreign country, participation (previously established by a 2024 decision) will depend on establishing the status of a participant, arbitrary secrecy rules, reviewing intellectual property rights, and establishing responsibilities between all relevant parties – all of which are not covered by current legislation. Comparative legal analysis of information security has shown that achieving effective legal protection of defense information requires a clear distinction between public and private organizations, for example, between public and private structures, independent security audits and compliance with international standards such as ISO/IEC 27001 (ISO 14001), as well as compliance with the NATO INFOSOC Code of Conduct. The proposed amendments to the Law of Ukraine "On the Basic Principles of Ensuring Cybersecurity of Ukraine" and various regulatory acts on the protection of state secrets should be made. The most urgent direction of further research is monitoring the implementation of more than 20 bilateral security agreements concluded by Ukraine in 2022–2025: it is the analysis of the gaps between their declarative provisions and actual implementation that will allow formulating the evidence base for the development of a model Law on International Military-Technical Cooperation.

KEYWORDS

military-technical cooperation, Association Agreement, PESCO, European Defense Agency, defense industry, national security, information security, corruption prevention.





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Сучасний досвід зарубіжних країн у сфері міжнародного військово-технічного співробітництва та можливості його використання в Україні

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У цій статті розглядаються моделі, що використовуються країнами-членами ЄС та НАТО, які здійснюють міжнародне військово-технічне співробітництво, як працювати з цими організаціями та як юридично адаптувати їх до сучасного стану України. Проведений порівняльно-правовий аналіз дозволяє сформулювати наступні авторські пропозиції щодо вдосконалення законодавства України у сфері ВТС. Кодифікація законодавства щодо військово-технічного співробітництва (ВТС). У чинній системі публічного права, що регулює ВТС, бракує узгодженості; правові норми, що регулюють ВТС, знаходяться в різних місцях, включаючи матеріальні та процесуальні положення загальних законів; виконавчі укази; та нормативні акти, опубліковані урядовими відомствами. Для створення узгодженої та структурованої бази для міжнародного військово-технічного співробітництва важливо прийняти єдиний закон про міжнародне військово-технічне співробітництво, який встановить правові принципи, що регулюють військово-технічне співробітництво, залучених суб'єктів, інституційні органи, відповідальні за військово-технічне співробітництво, та процедури такого співробітництва. Для участі України в проектах PESCO як зовнішньої країни участь (раніше встановлена рішенням 2024 року) залежатиме від встановлення статусу учасника, довільних правил секретності, перегляду прав інтелектуальної власності та встановлення відповідальності між усіма відповідними сторонами – усі ці питання чинне законодавство не охоплює. Порівняльно-правовий аналіз щодо інформаційної безпеки показав, що для досягнення ефективного правового захисту оборонної інформації потрібен чіткий розмежування між державними та приватними організаціями, наприклад, між державними та приватними структурами, незалежний аудит безпеки та відповідність міжнародним стандартам, таким як ISO/IEC 27001 (ISO 14001), а також дотримання правил поведінки НАТО INFOSOC. Необхідно внести запропоновані зміни до Закону України «Про основні засади забезпечення кібербезпеки України» та різних нормативних актів щодо захисту державної таємниці. Найбільш нагальним напрямом подальших досліджень є моніторинг імплементації понад 20 двосторонніх безпекових угод, укладених Україною у 2022–2025 роках: саме аналіз розривів між їх декларативними положеннями та реальним виконанням дозволить сформулювати доказову базу для розробки модельного Закону про міжнародне ВТС.

КЛЮЧОВІ СЛОВА

військово-технічне співробітництво, Угода про асоціацію, PESCO, Європейське оборонне агентство, оборонна промисловість, національна безпека, інформаційна безпека, запобігання корупції.



1. Introduction

The initial phase of Russia's war against Ukraine began on February 24, 2022. After the initial phase, it became clear that there is a huge gap between Ukraine's ambitions for European integration and the regulatory framework in place to support military-technical cooperation (MTC) with Ukraine. The transition from Ukraine's neutral strategic military position to membership in a collective security agreement requires significant investments in equipment and significant reforms of the legislation governing the development, production, procurement and transfer of military products.

Ukraine's legal relations with EU Member States on military-technical cooperation were established within the framework of the Association Agreement between Ukraine and the European Union, signed and ratified on September 16, 2014. As stated in Article 10 of this agreement, "The Parties will consider cooperation in military-technical developments", and Ukraine and the European Defense Agency "will have close contact with each other to discuss how Ukraine can strengthen its military potential" [1, Art. 10].

Although this regulation has only broad application, it is it that has provided the legal basis for the development of a new structure of security relations between Ukraine and the European Union. At the same time, the actual implementation of the key provisions of the Agreement on Military-Technical Cooperation remains incomplete, since there are numerous gaps in domestic legislation regarding the following aspects:

- a) the procedure for concluding agreements on the implementation of defense cooperation;
- b) the confidentiality of state secrets related to the development of joint projects and contracts for the supply of defense goods and products under these agreements;
- c) prevention of corruption in the sphere of defense procurement; and
- d) protection of critical information infrastructure in the context of military-technical cooperation with other states. The significance of studying these issues for science lies in the need to develop a comprehensive theoretical model for regulating military-technical cooperation within the framework of Ukraine's modern integration into the Euro-Atlantic community.

2. Literature Review

For a long time, the topic of international military-technical cooperation has been insufficiently researched in the field of domestic legal research. A systematic analysis of the laws that form the basis of international military-technical cooperation between the Armed Forces of Ukraine showed that the initial creation of regulatory acts took place in the early 2000s and acquired a new quality since the NATO summit in Wales in 2014 and the Warsaw summit in 2016 [2].

O. Sverkhunov studied issues related to the use of compensation and import policy management in international military-technical cooperation, in particular, regarding the economic security of the state. The impact of military-technical cooperation on the integration of the national defense industry with NATO defense industries and the importance of public-private partnerships in this regard was determined in a joint study conducted by the Center for Military Strategy of the National Defense University of Ukraine [3].

The current experience of foreign countries in the field of international military-technical cooperation shows that the effectiveness of such interaction increasingly depends not only on the volume of defense assistance or technology transfer, but also on the ability of states to integrate digital solutions, analytical platforms, artificial intelligence and innovative management mechanisms into the system of defense-industrial development. For Ukraine, in wartime conditions, the adaptation of best international practices is of particular importance, in particular regarding the digitalization of processes for coordinating military-technical cooperation, increasing the transparency of defense procurement, developing joint production and introducing dual-use technologies [4]. In this context, the digital transformation of the national economy is considered an important prerequisite for strengthening the defense capability of the state, since it creates new opportunities for the modernization of management, production and logistics processes [5]. At the same time, the application of artificial intelligence is shaping new structural changes in the global economy and opens up prospects for increasing the effectiveness of international military-technical cooperation through risk forecasting, resource

optimization, decision automation, and strengthening Ukraine's technological resilience [6]. This general argument is central to a correct understanding of how the standards of defense cooperation between the European Union (EU) and Ukraine will be adapted: simply adopting or copying PESCO rules by Ukraine will be ineffective without an appropriate institutional structure. One of the particularly critical and sensitive aspects of military-technical cooperation is information security.

This conclusion can be directly applied to the classification of data security related to joint defense projects. The anti-corruption component of military-technical cooperation is as important as any other component of military-technical cooperation. O. Shevchuk analyzed the administrative and legal support for the state's information security in terms of preventing corruption and concluded that corrupt activities in the context of the security sector pose an additional threat, since such activities "deform not only individual management decisions, but also the entire institution", thereby reducing the state's ability to defend itself from external threats" [7, p. 72].

Regarding military-technical cooperation, this indicates that corruption schemes in defense procurement have not only a financial impact, but also physically disrupt the mechanisms by which combat capability is formed. The scientific literature also does not present a general comparative legal study of the main models of military-technical cooperation in the EU countries and their possible application by Ukraine, taking into account its unique security situation (a country involved in constant military operations, whose model of military-technical cooperation must support its aspirations for European integration). Therefore, the purpose of the study is to fill this gap.

3. Problem Statement

The article aims to provide theoretical foundations and practical proposals aimed at improving the legal regulation of international military-technical cooperation in Ukraine by conducting a comparative analysis of the relevant experience of leading EU countries.

4. Methods and Materials

The materials of the study were international legal acts and regulatory documents regulating the sphere of international military-technical cooperation, in particular the Association Agreement between Ukraine and the European Union, NATO documents, regulatory acts of the European Union in the field of security and defense, acts regulating the activities of PESCO, the European Defense Agency, as well as the legislation of Ukraine in the field of national security, defense, information protection and cybersecurity. Additionally, scientific works of Ukrainian and foreign scientists devoted to the issues of military-technical cooperation, defense policy, information security and anti-corruption support of the defense sector were used.

The methodological basis of the study is a complex of general scientific and special legal methods. Using the dialectical method, modern trends in the development of international military-technical cooperation in the context of the transformation of the security environment were investigated. The formal-legal method was used to analyze the regulatory acts of Ukraine, the European Union and NATO. The comparative legal method was used to compare models of military-technical cooperation of individual EU and NATO member states and determine the possibilities of their implementation in Ukraine. The system-structural method made it possible to study the relationship between legal, organizational and institutional elements of the mechanism of international military-technical cooperation. The generalization method was used to form the author's proposals for improving the legislation of Ukraine in the specified area.

5. Results and Discussion

The current system of military-technical cooperation in the European Union (EU) is based on a complex regulatory framework that combines primary and secondary EU legislation, as well as intergovernmental agreements. Article 42(3) of the Treaty on European Union provides the framework for a "European capabilities and armaments policy" and gives the European Defence Agency (EDA) a central role in implementing this policy. Meanwhile, Article 346 of the Treaty on the Functioning of the EU grants Member States the right to take any measures they consider necessary to protect their

fundamental national security interests with regard to “the production of or trade in arms, munitions and war material” [8]. The existing constitutional conflict between pan-European and national interests creates tensions within the entire EU System of Defence Integration. Permanent Structured Cooperation (PESCO) was established in November 2017 on the basis of Articles 42(6) and 46 TEU and Protocol 10 to the Treaty of Lisbon [9]. Its aim is to create a legally binding framework for defence cooperation within the EU. PESCO introduces 20 commitments to be respected by Member States. These include increasing defence spending, standardising defence capabilities and addressing capability gaps. All 27 Member States except one (Malta) are currently part of PESCO [10].

PESCO currently has 75 projects under implementation, covering a range of topics, such as maritime surveillance systems, cyber defence and unmanned aerial systems. The modular structure of PESCO is crucial: no single State is obliged to participate in all projects (i.e., States are not obliged to participate in every project), but States participating in a project have specific legal obligations. There is a discrepancy between the share of investment made by EU Member States in joint transnational projects and the amount agreed by the EDA. In 2020, 11% of EU Member States’ defence investment was made through joint projects, compared to the target of 35% set in the EDA [11]. The figures clearly show that there are limits to a legally binding commitment that would ensure the elimination of traditional national preferences. At the same time, the European Defence Fund (EDF) is being introduced and an unprecedented amount of new funding is being made, consisting of almost €7.3 billion from 2021 to 2027, of which €2.7 billion is earmarked for joint defence research and €5.3 billion for joint capability development [12].

It is worth noting that 60% of EDF development projects are linked to PESCO projects, demonstrating their intention to cooperate between the two programmes [13].

In 2018, states with limited defence-industrial capabilities, such as the Baltic States, and some Central European countries, received more support from the European Defence Fund than their national defence R&D budgets during the last year of operation, showing how this instrument can change the way small countries cooperate [13].

An example of this could be bilateral or multilateral PTS cooperation models, where the Weimar Triangle (cooperation between France, Germany and Poland) is a good example of how to harmonise the responsibilities of the parties involved in joint projects, especially in multilateral situations such as EU Battlegroups (EUBG): Poland is the lead country responsible for operational command, Germany provides logistics and France provides medical support [14].

A similar model of responsibility sharing with equal status among participants could help support Ukraine in formalizing its participation in such joint projects towards full integration into the EU. The Nordic countries participating in NORDEFECO (Northern Defence Cooperation) have demonstrated a particular approach: informal but systematic cooperation related to strategic planning, capability development and training, which allows small countries to benefit from economies of scale without creating excessive bureaucratic procedures [14].

The case of FINABEL, an intergovernmental organization that promotes the harmonization of land forces (created in 1953 by five member states), illustrates how highly effective military-technical cooperation can also result from non-financial means of cooperation: through the harmonization of standards, the exchange of doctrine, and the harmonization of tactical procedures. Comparing the legal frameworks governing military-technical cooperation in Ukraine and the EU, we see that there is a structural gap created by two fundamentally different developments in the ways in which military-technical cooperation has developed in these two regions; the EU has moved from a system based on voluntary cooperation to one anchored by contractual obligations that include numerous forms of multinational financing, while Ukraine has historically regulated this area through decisions of the President and the NSDC, as separate or one-off acts, rather than through a coherent or coordinated set of laws.

The main legal basis for military and dual-use trade in Ukraine is the Law of Ukraine “On State Control over International Transfers of Military and Dual-Use Goods” dated 20.02.2003 No. 549-IV; Presidential Decree No. 121/99 on military and dual-use trade of 04.02.1999; as well as subsequent decisions of the National Security and Defense Council, which repeatedly specified the list of states with which military and dual-use trade was conducted (see [15]); the signing of the Administrative Agreement between the Ministry of Defense of Ukraine and the European External Action Service dated

07.12.2015 became a real step towards the implementation of Article 10 of the Agreement between the European Union and Ukraine on establishing partnership and cooperation (see [16; 17]).

However, this Agreement mainly operates in an advisory, rather than a project, capacity. PESCO is fundamentally different from the EU due to its legally binding status based on Articles 42(6) and 46 of the Treaty on European Union, while there are no agreements on Ukraine's participation in PESCO or other peacekeeping/peacekeeping forces in Ukraine, as all Ukrainian laws on peacekeeping were adopted by the Parliament between 2002 and 2023 in relation to the United Nations. Article 12 of the Lisbon Treaty provides for separate legislation that would allow for Ukraine's future accession to PESCO; therefore, the implementation mechanism should be regulated separately.

Ukraine's ability to participate in these agreements may be and will need to be regulated by a separate legislative act establishing the necessary legislation to implement such agreements in conjunction with social agreements (contractual arrangements) to allow for Ukraine's future participation. This process is similar to how Norway, Canada and the United Kingdom have regulated individual projects within the PESCO framework through separate/coordination agreements with each country [10].

A second gap in the current approach to regulating and managing information contained in electronic databases and registers also exists in ensuring that Ukraine's data protection policy and legislation comply with European Union (EU) standards. The analysis by N. Mentukh and O. Shevchuk has shown that there is a fundamental difference between how Ukraine approaches data protection and how EU Member States approach this issue; in particular, they create "hybrid regulatory models" that use a combination of legal mechanisms, technical standards and organizational processes to ensure comprehensive protection of information in electronic registries and databases [18].

In terms of the framework of military-technical cooperation, this means that partner countries express uncertainty about Ukraine's ability to adequately protect sensitive defense technologies from misuse during their transfer to Ukraine due to a lack of confidence in the effectiveness of protecting the information contained in the system. This is confirmed by the results of a comparative study of information security conducted by N. Mentukh and O. Shevchuk, which notes that the most important indicator of the adequacy of protection of sensitive technologies and information in Ukraine is the presence of independent control and verification mechanisms, rather than the existence of formal laws [6, p. 82].

In parallel with this gap, Ukraine has taken significant steps to develop independent control and verification mechanisms, as evidenced by the adoption of the Law of Ukraine "On the Basic Principles of Ensuring Cybersecurity of Ukraine" (Law No. 3014) on October 5, 2017. Although Law No. 2163-VIII has been implemented in Ukraine, the regulatory acts related to PESCO standards have not been sufficiently implemented, in particular in two key areas: the ability to adapt regulatory regimes to the specific legal statuses of EU member states; and the presence of strong anti-corruption measures (the legal regime, as noted in the previous link, was not designed to combat corruption).

O. Shevchuk notes that corruption in the defense sector, if it exists, is one of the most vulnerable opportunities, and that without a comprehensive administrative and legal mechanism to effectively combat corruption, it is unlikely to be successful (e.g. preventive as well as repressive mechanisms). In contrast, EU member states have a comprehensive regulatory framework to control every aspect of the defense procurement process through the provisions set out in the EU Directive 2009/81/EC on defense and security procurement (regarding the defense policy outlined above).

In the case of Ukraine, the country has begun to move closer to compliance with the EU Procurement Directives by implementing the Prozorro defense procurement system. However, under wartime conditions in Ukraine, which restrict key aspects of the procurement process, there is an increased risk of corruption. An analysis of the legal experience of EU countries in the field of military-technical cooperation allows us to identify several specific models suitable for adaptation by Ukraine.

The EDF project funding structure could be a good example of how to create a Defense Technology Agency in Ukraine (discussions on the establishment of this agency took place in 2023-2024). The practice of implementing the EDF has revealed several structural prerequisites for successful transnational cooperation. First, the EDF Program Committee has introduced clear "added value" criteria: a project is funded only when its result cannot be achieved solely through national efforts. Second, an independent scientific and technical review of applications has become a mandatory requirement after the first call (2019) revealed an excessive number of duplicative proposals. The

activities carried out under the EDF program are organized around 34 different military functional areas and 34 key technological areas and are implemented on the basis of an annual work plan agreed with the members of the EDF Program Committee representing the Member States. A similar process involving representatives of the Ministry of Defense and the defense industry, as well as independent experts, would help ensure transparency and accountability in the financing of domestic defense projects.

Member States have reached an agreement to deepen Ukraine's integration with PESCO, as foreseen in the Shared Security Commitments signed by the EU and Ukraine in June 2024, by facilitating Ukraine's participation in projects in accordance with the current legal framework. The rationale for such enhanced cooperation is the gradual integration of Ukraine's defence technological and industrial base with the European Defence Technological and Industrial Base.

To achieve this goal, Ukraine should adopt a law providing for its participation in international defence cooperation mechanisms. This law will provide for the legal status of Ukrainian economic entities (defence industry entities) participating in international joint projects and will take into account the issue of classification of information in these projects. The horizontal dimension - regional military-technical cooperation with neighbouring states - is of essential importance.

Bilateral defense agreements between Ukraine and countries such as Poland, the Baltic States, the United Kingdom, Canada, and Turkey have provided significant resources, including for training Ukrainian Armed Forces personnel outside Ukraine in the operation and repair of weapons and military equipment received from these states; training Ukrainian instructors; and establishing logistics systems for the supply of spare parts and the repair of damaged equipment. However, these types of cooperation remain largely regulated by independent interstate agreements rather than a common legal framework, which makes it difficult to scale up and standardize joint activities between countries.

6. Conclusions

The comparative legal analysis conducted allows us to formulate the following author's proposals for improving the legislation of Ukraine in the field of military-technical cooperation. Codification of legislation on military-technical cooperation (MTC). The current system of public law governing MTC lacks coherence; legal norms governing MTC are located in different places, including substantive and procedural provisions of general laws; executive decrees; and regulatory acts published by government agencies.

To create a coherent and structured framework for international military-technical cooperation, it is important to adopt a single law on international military-technical cooperation, which will establish the legal principles governing military-technical cooperation, the entities involved, the institutional bodies responsible for military-technical cooperation, and the procedures for such cooperation. This law will create a codified system of laws similar to Directive 2009/81/EC on defense procurement. Legal framework for participation in PESCO and related mechanisms. For Ukraine to participate in PESCO projects as an external country, participation (previously established by the 2024 decision) will depend on the establishment of the status of a participant, arbitrary rules of secrecy, revision of intellectual property rights and establishment of liability between all relevant parties – all of which are not covered by the current legislation.

A new law is needed that will establish a procedure for the approved ratification of agreements between Ukrainian legislators based on parliamentary oversight of individual projects. Information security standards should be collected and mastered. Comparative legal analysis on information security has shown that achieving effective legal protection of defense information requires a clear distinction between public and private organizations, for example between public and private entities, independent security audits and compliance with international standards such as ISO/IEC 27001 (ISO 14001), as well as compliance with the NATO INFOSOC Code of Conduct.

It is necessary to make the proposed amendments to the Law of Ukraine “On the Basic Principles of Ensuring Cybersecurity of Ukraine” and various regulatory acts on the protection of state secrets. The most urgent direction of further research is monitoring the implementation of more than 20 bilateral security agreements concluded by Ukraine in 2022–2025: it is the analysis of the gaps between their declarative provisions and actual implementation that will allow us to formulate an evidence base for the development of a model Law on International Military-Technical Cooperation.

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