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# LEGISLATIVE FRAMEWORK FOR THE DEVELOPMENT OF INNOVATIVE INFRASTRUCTURE OF EFFICIENT USE AND PROTECTION OF LAND UNDER FOREST SHELTER BELT PLANTATIONS

***Introduction.*** *Clause 5 of the Law of Ukraine on the Environment Protection states that the use of environment as a total of environmental, natural and social conditions and processes, natural resources, both involved in an economic circulation and not used in economic activities in this period (earth, bowels, water, atmospheric air, forest and other vegetation, fauna, landscapes and other natural complexes) are protected and regulated by the state of Ukraine.*

***Problem Statement.*** *One of the major problems in the field of the innovative infrastructure is absence of the legal regulation of the efficient use and protection of lands under forest shelter belts; reduction of area of the linear-type forest shield belt as a result of illegal economic activities; reduction of financing of scholarly researches on forest amelioration, etc.*

***Purpose.*** *To develop new scientific approaches to the specific features of legal nature of forest shelter belts and legal arrangements in the sphere of forest economy and to form the scientifically justified suggestions on mechanisms for implementing the mentioned legal arrangements.*

***Materials and Methods.*** *The method of scientific generalization, as well as logical and comparative methods have been used.*

***Results.*** *Taking into account the norms of national and international legislation, among the basic law-regulated ways of addressing the problems related to forest shelter belts that have not been transferred for use, there are the following measures: based on decision of regional public administration, to carry out inventory of agricultural lands covered by forest shelter belts; to record information obtained as a result of the land inventory in the State Land Cadaster; and to elaborate and to approve the respective specifications, etc.*

***Conclusions.*** *Two options of solving the indicated problem have been offered and specific measures taking into account the norms of applicable legislation (national and foreign) have been suggested.*

*Keywords: innovative infrastructure, forest shelter belt plantations, legal framework, procedure, and legal relations.*

Currently, regulative framework for the use, reproduction, and protection of soils has been poorly studied in Ukraine, however, it is extremely important insofar as the soil, as a component of the earth surface, is one of the most important natural objects, the main natural wealth, since it has a unique property that is fertility [1, 4].



The environmental problems of modern agrolandscapes have aggravated as a result of noncompliance with optimal parameters of ecological and socio-economic functions of territories. This is caused primarily by the use of lands without systemic reclamation and anti-erosion measures on arable lands, which makes up about 78% of agricultural lands in Ukraine. The linear type protective forest plantations create an ecological

framework of agrolandscapes, but their quantity, bonitet status, and unsystematic placement do not correspond to the functional purpose.

One of the most important environmental problems of the agrosphere that covers about 70% of the territory of Ukraine and forms its high agricultural potential is to stabilize and to enhance the agroecosystem stability. As a result of intensifying the development of agrotechnologies, with the highest amount of plowed areas in Europe, the processes of degradation and soil contamination have got intensified, the annual growth of eroded lands has already exceeded 80 thousand hectares, and almost a half of arable lands has been covered by water erosion and deflation.

The creation of a field shelter belt system is one of the most radical ways to ensure agroecosystem stability, in particular, to enhance their buffering capacity due to the partial reproduction of forest biogeocoenoses that was an integral part of natural landscapes in the prehistoric times, as well as the formation of forest phytocoenoses in the intrazonal upland soils of steppe areas. The actualized interest in the assessment of ecological functions of field shelter belts is associated not only with the deterioration of their general condition in Ukraine over the last 15—20 years, but also with the aggravation of biodiversity problems known as the "sixth extinction" [2].

The legal aspects of field shelter belts have been studied by V. Yu. Yukhnovskyi, V. P. Tkach, G. B. Hladun, O. I. Pylypenko, O. I. Furdychko, A. P. Stadnik, A. S. Zaryshniak, A. I. Hodovaniuk, V. D. Bondarenko, M. M. Kocherha, V. O. Bodrov, G. M. Vysotskyi, P. I. Herasymenko, I. M. Sazonov, V. E. Svyrydenko, O. V. Sovakov, etc.

Forest shelter belts are an important element of the modern agrolandscape, as they play an essential role in the existence and development of agroecosystems [3]. They are a special type of manmade forests that due to their location (the original plateau) and design (narrow strips) significantly differ from other types of managed plantations [4].

The ecological functions of field shelter belts in agroecosystems are determined by:

a) effect on the spatial and functional organization of biogeocoenoses in agrolandscapes;

b) effect on the state of ecotopes and geochemistry of forest agrarian landscapes;

c) effect on the dynamics of populations, biogeocoenoses, and interbiogeocenotic relations;

d) effect on energy flows and productivity of biogeocoenoses [5].

In addition, field shelter belts and other protective plantings have a significant potential in land use and management [6].

According to V. Yu. Yukhnovskyi, for eliminating the uncertainty of the status of lands under field shelter belts, in the Land Code of Ukraine (hereinafter — LCU), it is necessary to remove the field shelter belts from the list of non-agricultural lands in order to assign these and other forest improvement plantations to the forestry lands; to authorize village, town, and city councils to exercise control over the use and protection of communal ownership lands, compliance with the applicable land and environmental legislation and obligatory ecological certification of land plots based on the assessment of their compliance with soil protection requirements using the complex of agrotechnical, hydrotechnical, organizational, economic, and agroforestry improvement measures; to make amendments to the LCU that the land plots under forest shelter belts and other protective plantings may be provided for use to land owners and other land users who farm the adjacent plots for commercial agricultural production and have specialized forestry units in their organization structure. The legal framework in the LCU should be tax and credit privileges to individuals and corporates dealing with land improvement through the creation of agroforestry plantations [7].

According to A.Y. Hodovaniuk, field shelter belts are excluded from the forestry fund and classified as nonagricultural part of agricultural lands and belong to the reserve lands of village and town councils. Forest shelter belts as reserve

lands are considered the property of communal ownership. As a result, nominally, they have a communal owner, however, there was no economic structure that would be able to carry out proper monitoring of their use. The prolonged absence of the owner of forest shelter belts and other forest vegetation has become a crucial problem at the national level. In addition, the situation with forest belts requires revising the general legislative approach to all forest plantations not included in the forest lands, which in general will enable the creation of a legal framework for further development of agrarian forests. In terms of effect and economic significance, the shelter belts belong to forest improvement plantations. Growing on agricultural lands in the defined system, they are one of the most effective long-term measures to increase the productivity of crops due to improving microclimatic conditions, changing the hydrological conditions, and combating soil erosion [8].

The last 15—20 years, in Ukraine, there was a pause in the development of protective forests. For the time being, the forest shelter belts have no owner. Changing forms of land ownership, the distribution of land shares, the formation of new agroindustrial associations, and hard economic conditions of the population have led to the destruction of these plantations. Deforestation is provoked, among other reasons, by unsatisfactory condition of trees, since in the Southern Steppe, most wood species are short-lived, especially in the absence of any care. In addition, breaches of the recommendations on the selection of wood species for plantations and agricultural conditions for their cultivation have had a significant adverse effect. There are no data on the types and amount of works for improving the existing forest stands, increasing their effectiveness or replacing them [9].

In the legal literature, one of the most important problems of forest shelter belts is the legal regulation of relations related to the creation of forest belts. There are proposals to create a unified system for cadastral assessment of lands under forests in order to organize their efficient use and protection. At the same time, to take an inventory of the lands under forest belts, researchers recommend to use an aerotaxation survey followed by its decryption. Of course, this idea is not new and requires significant financial costs [10].

According to A.M. Miroshnichenko, today, there is no economic structure that would care for and create new linear forest belts [11].

In addition, there is an opinion that those who use forest shelter belts for protecting their fields from dry hot winds, dust storms, and dehydration shall be responsible for taking care of the protective plantings. Tenant farmers who use agricultural land plots protected by forest shelter belts shall make lease agreements for lands under protective plantings [12].

Determining the economic structure that should take care of the land plots under forest shelter belts and their legal regime, identifying the possible ways for financing their maintenance, and differentiating the land fees depending on their positive impact on agricultural lands is among the most important tasks today [13].

The Conception for the development of agroforestry in Ukraine as approved by the Order of the Cabinet of Ministers of Ukraine of September 18, 2013 [14] envisages measures aiming at solving the above problem by improving the reclamation of linear forest shelter belts and their formation based on scientific approaches and technologies.

The purpose of the Conception is to identify the directions of institutional changes and to improve the legislation, which will optimize the areas of linear-type forest shelter belts based on the zonal principle. Their efficient management will be a prerequisite for balanced development of agrolandscapes. This will enable solving the problems of soil protection from degradation and pollution, increasing the yield of crops and output of environmentally safe products, creating food security of the state, preserving the landscape and biological diversity, and creating environmentally safe living conditions. The Conception is expected to be implemented in 2014—2025.

The problem of ineffective protection of agricultural lands by forest shelter belts of the linear type is conditioned by:

1) unbalanced ratio of arable lands, grasslands and pastures, and forests;

2) aggravating adverse effects on agrolandscapes and their biological component (climate change, aridization, man-caused loads, etc.);

3) deteriorating conditions of linear-type forest shelter belts, reducing the area under them, degrading their protective and reclamation functions;

4) nonconformity of the configurations of plantations, which reduces their reclamation effect on agricultural lands;

5) lack of complete systems of linear-type forest shelter belts;

6) application of simplified agricultural technologies that weaken the reclamation effect of linear-type forest shelter belts on agricultural lands;

7) reducing areas under agroforestry plantations in recent decades.

At the same time, the practice of successful agricultural management in advanced economies has shown the importance of using the linear-type forest shelter belts as an integral part of modern agriculture. In these countries, at the national level, there are budget-funded programs for the creation of linear-type protective plantings, with landowners encouraged to implement these programs in their activities.

The reasons for decreasing effectiveness of the protection of arable lands by linear-type forest shelter belts are as follows:

1) the lack of purposeful systemic nationwide measures for linear-type forest shelter belts;

2) insufficient total area of various categories of linear-type protective plantings;

3) ineffective land protection by the existing systems of linear-type forest shelter belts in conditions of intensifying dry hot winds, droughts, water and wind erosions over the past decades, as a result of climate change; their reclamation effect protects only 30% of arable lands;

4) a significant decrease in the amount of newly created linear-type protective plantings;

5) the lack of completed systems of linear-type protective plantings at different parts of water intake structures;

6) deteriorating condition of linear-type forest shelter belts, their improper optimal age and species composition;

7) reducing areas under linear-type protective plantings as a result of unauthorized economic activities;

8) liquidation of agroforestry services;

9) a significant decrease in the funding of scholarly research in the field of agroforestry;

10) the absence of legal norms that establish liability for inefficient land use;

11) a low level of financial support of soil protection against erosion.

Currently, there are two possible ways to solve the problem. The first option involves improving the system for managing the agroforestry development and increasing the amount of funding for measures to create, to account, and to monitor the protective plantings, which enables to partially stabilize negative processes in agrolandscapes.

The second option is to make appropriate amendments to the regulatory acts, to take into account the issue of optimizing the areas under linear-type forest shelter belts according to the zonal principle in government targeted forestry and land protection programs. This will make it possible to assign funds from the national budget to the protection of arable lands as the most vulnerable part of agricultural lands.

The second option is more optimal, provided the measures are funded from the national budget, local budgets, and investors' funds.

The problem can be solved by the following measures:

1) inventory of lands under linear-type forest shelter belts;

2) stage-by-stage forest management activities and obtainment of objective information about their current status and efficiency;

3) introduction of amendments to legal acts on the use of linear-type forest shelter belts;

4) justification of the amount and categories of linear-type forest shelter belts;

5) development of the system of incentives for the creation of linear-type forest shelter belts;

6) resumption of trainings for specialists in agroforestry at HEEs of the 3rd—4th accreditation level, based on the state order.

The application of basic conceptual principles of agroforestry will ensure significant environment and economic effects both direct (increase in yield, additional moisturization of the area, protection of lands from erosion, etc.) and indirect (increase in biodiversity, improvement of living conditions of the fauna and the local population, reduction in the incidence rate, etc.). Provided a full system of protective plantings of various spatial forms and purposes are created, they will have a significant influence on the regional microclimatic conditions.

The implementation of the Conception enables the following: to enhance the stability of biological components of agrolandscapes to negative impact; to ensure the filtration and purification of surface discharges from harmful substances by directing them to the subsoils due to the use of linear-type forest shelter belt plantations; to prevent water erosion and deflation of soils; to improve the forest reclamation functions of linear-type forest shelter belt plantations through the implementation of necessary silvicultural measures; to preserve biological and landscape diversity, to intensify the processes of natural reproduction of agrolandscapes; to optimize the placement of systems of linear-type forest shelter belt plantations according to the landscape adaptation principle; to enhance protective capacity of forest shelter belt plantations; to reduce pollution of soils with chemical compounds; to increase crop yields in the fields protected by forest shelter belt plantations; to increase subsoil discharges provided the optimal woodland percentage of the catchment areas are achieved; to provide an additional carbon absorption by linear-type protective plantings; to increase the efficiency of implementation of government environment programs related to improving the environment condition.

The implementation of the Conception should be funded from the national budget, local budgets and other sources specified by the applicable legislation.

The amount of funding, material, technical, and labor resources necessary for the implementation of the Conception is determined annually, taking into account the capacity of the national and local budgets.

Pursuant to the main principles (strategy) of the state environment policy of Ukraine till 2020, it is expected to increase the area of afforestation up to 17% of the territory of the state by 2020 through reproducing forests and afforesting the land plots of the forestry fund of Ukraine, creating forest shelter belt plantations on nonagricultural lands and lands for afforestation, reproducing and creating new forest shelter belts, except for natural steppe areas. The used configuration for creating forest shelter belt plantations on nonagricultural lands is not in line with the LCU as Clause 19 of the LCU does not identify nonagricultural lands as land category, and Clause 22 of the LCU mentions nonagricultural holdings [15].

At the meeting of the Coordinating Council for Combatting Land Degradation and Desertification of May 4, 2018 [16], there were made recommendations and proposals on additional measures to increase forestation and to create public grasslands and pastures, in particular (paragraph 12), according to the results of the inventory of state-owned agricultural lands: to form state-owned land plots covered with natural forests and to transfer them to state-owned and communal forestry corporations; to identify land plots for the creation of public grasslands and pastures during the formation of state-owned agricultural land plots and their transfer to the communal property of the respective united territorial communities; to take an inventory of

other state-owned lands within the limits of coastal areas and to form land plots suitable for afforestation with their subsequent transfer to state-owned and communal forestry corporations.

The regional administration of forestry and hunting facilities of the Kharkiv Oblast (hereinafter referred to as the Administration) has considered the mentioned issue and stated as follows:

1. According to the data of the General Directorate of the State Geocadaster in Kharkiv Oblast, about 78 thousand hectares of lands covered with forest vegetation, in particular, 22.2 thousand hectares of forest shelter belts, have not been transferred to forestry enterprises and other economic entities.

2. According to Clause 12 of the Forestry Code of Ukraine (hereinafter — FCU) [17], individuals and corporates may acquire closed-loop forest areas having a total area of up to 5 hectares, free of charge or for a fee, as part of farm and other holdings. The area may increase in the case of inheriting other forest areas according to the applicable law.

The *Future We Want* United Nations Conference on Sustainable Development in Rio de Janeiro, 2012, recognizes the economic and social significance of good land management, including soil, particularly its contribution to economic growth, biodiversity, sustainable agriculture and food security, eradicating poverty, addressing climate change, and improving water availability. It is also acknowledged that the protection and efficient use of soils should become a priority of government policy, since the soil condition determines the nature of human activity and has a decisive influence on the environment [18].

It should also be noted that Ukraine's integration into the European Union (EU) requires harmonizing the national legislation with the EU requirements; therefore, the procedures for efficient use and protection of lands under forest shelter belts in the context of the development of legal relationships in the forestry in the national innovation infrastructure shall comply with international standards, in particular, with the Oslo Manual as the main document in the field of innovation processes in the EU. In accordance with the above Manual, in order to become useful tools for decision-making in the areas of public administration and private entrepreneurship, the innovation surveys in emerging markets shall be based on procedures that take into account the specificity of particular legal relationships [19].

Thus, taking into consideration the national legislation and the international law, there are the following priority ways of solving the issue and the sequence of actions concerning the forest shelter belts that have not been handed over for use:

a) based on the decision of the Kharkiv Oblast Public Administration (in accordance with Part 8 of the Procedure for Inventory of Lands as approved by Resolution of the Cabinet of Ministers of Ukraine dated 23.05.2012 No. 513 [20]) to take an inventory of agricultural lands covered with forest shelter belts, at the expense of compensation for losses in the agricultural and forestry production (in accordance with Part 2 of Clause 209 of the Land Code of Ukraine), and to appoint the general manager of compensation funds;

b) to order technical specifications for the inventory of agricultural lands covered by forest shelter belts (in accordance with Part 9 Land Inventory Procedures [20]);

c) to make contract on the development of technical specifications for the inventory of agricultural lands covered by forest shelter belts (in accordance with Part 11 Land Inventory Procedures [20]);

d) to approve the technical specifications in accordance with the requirements of Clause 186 LCU;

e) upon request of the developer of technical specifications (Part 29 of the Land Inventory Procedure for [20]), to record information obtained as a result of the inventory of lands covered with forest shelter belts to the State Land Cadaster in accordance with the procedure for cadaster keeping as approved by Resolution of

the Cabinet of Ministers of Ukraine dated 17.10.2012 No. 1051 and in this way to fix their possession by the state;

e) corporate entities shall apply to the General Directorate of the State Geocadaster in the respective administrative territory (Part 4 of Article 122 of the Civil Code of Ukraine [15]) with a request for delivering possession of land plots covered by forest shelter belts on a permanent basis, the procedure for delivering possession of state-owned land plots to corporate entities is established by Clause 123 of the LCU;

f) the General Directorate of the State Geocadater in the respective administrative territory shall issue an order for delivering possession of land plots covered by forest shelter belts on a permanent basis to the respective corporate entities (Part 4 of Clause 122 of the LCU [15]);

g) the corporate entities shall register the possession of land plots covered by forest shelter belts in the justice administration of the respective administrative territory;

h) the corporate entities receive documents for disposal of forest shelter belts and manage them in accordance with established regulations (Clauses 17 and 48 of the LCU [17]).

Among other priorities there are the development of government target program *Forest Shelter Belts of Ukraine: from Delivery of Possession of Lands to Protection and Efficient Use* and the creation of a task force at the Ministry of Agrarian Business, which consists of researchers of the Vysotskyi Ukrainian Research Institute of Forestry and Agroforestry, the State Committee for Forestry, representatives of regional administrations and other relevant bodies in order to develop a draft comprehensive government program in this field under the guidance of the Cabinet of Ministers of Ukraine.

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## ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ РОЗВИТКУ ІННОВАЦІЙНОЇ ІНФРАСТРУКТУРИ РАЦІОНАЛЬНОГО ВИКОРИСТАННЯ ТА ОХОРОНИ ЗЕМЕЛЬ ПІД ПОЛЕЗАХИСНИМИ ЛІСОСМУГАМИ

**Вступ.** Стаття 5 Закону України «Про охорону навколишнього природного середовища» регламентує, що державній охороні та регулюванню використання на території України підлягають: навколишнє природне середовище як сукупність природних і природно-соціальних умов і процесів, природні ресурси як залучені в господарський обіг, так і невикористовувані в народному господарстві у даний період (земля, надра, води, атмосферне повітря, ліс та інша рослинність, тваринний світ, ландшафти й інші природні комплекси).

**Проблематика.** Однією з найважливіших проблем у сфері інноваційної інфраструктури є відсутність правового регулювання питання щодо раціонального використання та охорони земель під полезахисними лісовими смугами; зменшення площі захисних лісових насаджень лінійного типу внаслідок неправомірної господарської діяльності; зменшення обсягу фінансування наукових досліджень з питань агролісомеліорації тощо.

**Мета.** Розробка нових наукових положень про особливості правової природи полезахисних лісових смуг та лісових правовідносин, що виникають, а також формування науковообґрунтованих пропозицій щодо механізму реалізації зазначених правовідносин.

**Матеріали й методи.** Використано метод наукового узагальнення та логіко-юридичний та порівняльно-правовий методи.

**Результати.** З урахуванням норм національного законодавства та міжнародного права, серед основних законодавчо-обґрунтованих шляхів вирішення питання полезахисних лісових смуг, які до сьогодні не надані у користування, слід виокремити такі: на підставі рішення обласної державної адміністрації здійснити інвентаризацію земель сільськогосподарського призначення, вкритих полезахисними лісовими смугами; внесення відомостей, отриманих у результаті зазначеної інвентаризації, до Державного земельного кадастру; погодження та затвердження відповідної технічної документації тощо.

**Висновки.** Запропоновано два варіанти розв'язання досліджуваної проблеми та наведено конкретний перелік кроків з урахуванням норм чинного законодавства (вітчизняного та зарубіжного).

*Ключові слова*: інноваційна інфраструктура, полезахисні лісосмуги, правове забезпечення, процедура, правовідносини.

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# ПРАВОВОЕ ОБЕСПЕЧЕНИЕ РАЗВИТИЯ ИННОВАЦИОННОЙ ИНФРАСТРУКТУРЫ РАЦИОНАЛЬНОГО ИСПОЛЬЗОВАНИЯ И ОХРАНЫ ЗЕМЕЛЬ ПОД ПОЛЕЗАЩИТНЫМИ ЛЕСОПОЛОСАМИ

**Введение.** Статьей 5 Закону Украины «Об охране окружающей естественной среды» устанавливается, что государственной охране и регулированию использования на территории Украины подлежат: окружающая природная среда как совокупность природных и природно-социальных условий и процессов, природные ресурсы, как вовлечены в хозяйственный оборот, так и неиспользуемые в экономике в данный период (земля, недра, воды, атмосферный воздух, лес и иная растительность, животный мир, ландшафты и другие природные комплексы).

**Проблематика.** Одной из важнейших проблем в сфере инновационной инфраструктуры является отсутствие правового регулирования вопроса относительно рационального использования и охраны земель под полезащитными лесополосами; уменьшение площади защитных лесных насаждений линейного типа в результате неправомерной хозяйственной деятельности; уменьшение объема финансирования научных исследований по вопросам агролесомелиорации и т.п.

**Цель.** Разработка новых научных положений относительно особенностей правовой природы полезащитных лесополос и лесных правоотношений, которые возникают, а также разработка научнообоснованных предложений относительно механизма реализации указанных правоотношений.

**Материалы и методы.** Использовано метод научного обобщения, а также логико-юридический и сравнительно-правовой методы.

**Результаты.** С учетом норм национального и международного законодательства, среди основных законодательно урегулированных путей решения вопросов полезащитных лесополос, которые до сих пор не предоставлены в законное пользование, следует выделить следующие: на основании решения областной государственной администрации осуществить инвентаризацию земель сельскохозяйственного предназначения, покрытых полезащитными лесополосами; внесение ведомостей, полученных в результате обозначенной инвентаризации, в Государственный земельный кадастр; согласование и утверждение соответственной технической документации и прочее.

**Выводы.** Предложены два варианта решения исследованной проблемы и указано конкретный перечень шагов с учетом норм действующего законодательства (отечественного и зарубежного).

*Ключевые слова*: инновационная инфраструктура, полезащитные лесополосы, правовое обеспечение, процедура, правоотношения.