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On the issue of legal support for the use of green bonds for the development of organic production in Ukraine

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Abstract

In this article, it has been conducted a scientific and theoretical analysis of the legislation, which introduces the green bonds as a tool for financing organic production, and also it has been identified the ways to improve it. It has been determined that a new type of valuable securities – green bonds can become one of the tools to support the development of organic agricultural production. It is proved that singling out of environmental projects as a direction, which involve the use of funds raised from the issue of green bonds, organic farming, is debatable due to the lack of a regulatory definition of this concept, which can complicate the

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practical implementation of legislative prescriptions and compliance with the standards for issuing green bonds (Green Bond Principles). Based on the analysis of legal doctrine in terms of defining the concepts “organic farming”, “organic crop production”, “organic production”, as well as the features of organic production, it has been concluded that organic crop production, animal husbandry, aquaculture fully meet the categories of environmental projects, stipulated by the GBR principles (such as: environmentally sustainable agriculture, animal husbandry and aquaculture; agricultural technologies that do not harm the climate, etc.). It is proposed to lay out the first paragraph of the Part 2 of the Article 18 of the Law of Ukraine “On Capital Markets and Organized Commodity Markets” in the following wording: “an environmental project is a project in the field of alternative energy, energy efficiency, minimization of the formation, disposal and processing of wastes, the introduction of environmentally friendly transport, organic production, conservation of flora and fauna”, water and land resources, adaptation to climate change, as well as another project aimed at protecting the natural environment, introducing environmental standards, reducing emissions into the environment.”

Keywords: government support, green bonds, legal support, environmental project, organic production, organic farming, organic products

Introduction

Ukraine, being an agrarian state, has a significant potential for the development of organic agricultural production. More and more agricultural producers are choosing specifically this vector of activity (in particular, according to the latest monitoring data of the Ministry of Economy in 2019, there were 617 organic market operators in Ukraine, and 470 of them – agricultural producers) [1]. This indicates an increase in demand for organic products both in the domestic and foreign markets. According to official data, the domestic market of organic products in 2020 amounted to 25.1 million hryvnias, by demonstrating the growth by 3% [2], and the total export of Ukrainian organic products for the same period amounted to 204 million US dollars [3]. However, further positive dynamics in the development of organic production largely depends on the state’s position, methods, directions, support volume for this area.

It is worth noting that in 2021, great attention has been paid to the state support for organic production. Namely, the Law of Ukraine “On Amendments to Certain Laws of Ukraine on the Functioning of the State Agrarian Register and the Improvement of State Support for Agricultural Producers” dated November 5, 2020 № 985-IX changed the Article 17-2 of the Law of Ukraine "On State Support for Agriculture of Ukraine" dated June 24, 2004 № 1877-IV – it is provided three new areas of state support for agricultural producers: 1) allocation of budget subsidies counting upon unit of cultivated land and/ or one head cattle; 2) reimbursement of up to 30% of the cost of certification of organic production; 3) reimbursement of up to 30% of the cost for the purchase of approved plant protection products and fertilizers, seeds, planting material and fodder. As for the volumes of financing, the budget for supporting organic production for 2021 was expected to be in the amount of UAH 100 million [4].

Undoubtedly, such innovations are positive, but the state must and can support the organic production sector in a comprehensive manner, in different ways, by providing the producers of organic agricultural products with greater choice and more opportunities to attract financial resources for the development of their business.

The establishment of the market of so-called green bonds Ukraine can become one of these ways – a new type of valuable securities introduced (from July 7, 2021) by the Law of Ukraine "On Capital Markets and Organized Commodity Markets" dated February 23, 2006 № 3480- IV as amended by the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Related to the Simplification of Attracting Investments and Introduction of New Financial Instruments" dated June 19, 2020 № 738-IX. Since green bonds are a novelty for Ukraine, a study of the issues of legal support for their use in various areas, in particular for financing the projects for organic production, has not yet been carried out, which emphasizes the timeliness and relevance of this work.

Existing developments in the field of legal regulation of organic production (which include the works by A.V. Gafurova, V.M. Ermolenko, V.M. Kornienko, P.F. Kulinich, T.V. Kurman, S.I. Marchenko, V.A. Melnik, A.M. Statovko, O.M. Tueva, V.Yu. Urkevich and others) have been carried out related to the mentioned legislative changes and they have not touched upon the indicated aspects.

The purpose of the article is a scientific and theoretical analysis of the legislation that introduces green bonds as a tool for financing organic production, highlighting the main problematic aspects in this area and developing proposals for their solution.

Results and Discussion

According to part 5 of the Article 11 of the Law of Ukraine "On Capital Markets and Organized Commodity Markets", the green bonds are bonds, the prospectus of which provides for the use of funds raised exclusively to finance the environmental project or its separate stage. In turn, the Article 18 of the same normative act defines the concept "project of ecological direction" – this is a project in the field of alternative energy, energy efficiency, minimization of the formation, disposal and processing of wastes, the introduction of environmentally friendly transport, organic farming, conservation of flora and fauna, water and land resources, adaptation to climate change, as well as another project aimed at protecting the natural environment, introducing environmental standards, reducing emissions into the environment. As it can be seen, the legislator has taken the path of separating projects related to organic farming into a separate type of environmental projects.

It should be noted that the dynamics of development of the world market in the sectoral context shows that the priority areas of "green" projects are currently as follows: the energy efficiency of buildings (37% of the total volume of green bonds issued since 2007), renewable energy sources (26%), environmentally friendly transport (16 %), water resources management (12%), waste management (4%), other (5% [5]. That is, the organic farming is included in the last and least significant category. However, for Ukraine, with its prospects for the development of agrarian sector, the problems in the use of natural resources, the establishment of proper financing for projects related specifically to agricultural production, are extremely relevant and timely tasks. According to the author's opinion, they should not be limited to organic farming. The very use of this definition raises a number of objections, which will be discussed below.

The fact is that according to the world-recognized standards for issuing green bonds (Green Bond Principles (GBR)), the main principles of this type of valuable securities include the targeted use of proceeds from their placement [6]. To do this, the financed project should bring the environmental benefits, which can be assessed by the issuer in terms of qualitative and (if possible) quantitative indicators. In case of neglecting the GBR principles, that is, when misleading investors, state authorities and etc. regarding the areas of using funds received from the issue of green bonds, the so-called "greenwashing" concept will take place. Specialists emphasize that even an isolated case of "greenwashing" can cost Ukraine a loss of confidence and launch the irreversible process of investors' withdrawal [7]. Hence, Ukrainian legislation should outline as clearly as possible which projects can be included in the above-mentioned ones.

However, at this time, the term "organic farming" is not defined legally, and scientific research in this direction continues. For example, R.A. Tsylyurik [8] in his dissertation research on the legal regulation of the use of land for organic farming proposes to consider the organic farming as "a production activity that is inextricably linked with the direct cultivation of certified agricultural land intended for a specific purpose – the production of organic products of plant origin that meets the established requirements". That is, the organic farming is essentially included in the concept "organic crop production", which in turn is an integral part of organic production [8]. O.V. Khafurova and B.D. Psuturi [9] express a similar opinion and refer to organic crop production the following: firstly, the plant growing as a traditional branch of agricultural production, which includes organic farming; secondly, the harvesting of such organic classes of the plant world as wild plants, algae and fungi.

Analyzing the features of organic production and its requirements, first of all, they are determined by the basic Law of Ukraine "On the basic principles and requirements for organic production, circulation and labeling of organic products" dated July 10, 2018 № 2496-VIII, it is clear that organic crop production, animal husbandry, aquaculture fully meet the categories of environmental projects provided for by the GBR principles. For example, such as: environmentally sustainable agriculture, livestock and aquaculture; climate-friendly agricultural technologies, etc. [6].

This thesis is supported by the developments of legal science. Thus, D.S. Poddubna [10] highlights the following actions as the positive consequences of organic production: the restoration of the fertile soil layer, the preservation and improvement of soil fertility, the prevention of erosion processes. Another scientist – I.V. Ignatenko [11] (when considering the organic production in the context of the concept of sustainable development of the agrosphere) emphasizes that preservation of the natural environment and increasing the soil fertility is the main task of organic agriculture. In ecological terms, the author states that organic agriculture is able to produce and apply new technologies that do not violate the natural functioning of the environment [11]. M.A. Deinekha [12] and other scientists consider organic farming as a sustainable form of agriculture, which improves the state of the environment and resource provision.

The spread of implementation of the organic production methods as a way to encourage modern and sustainable agricultural production (considering the need to protect the environment and animals) is recognized in the Article 404 of the Association Agreement between Ukraine, as well as the European Union, the European Atomic Energy Community and their Member States, ratified by the Law of Ukraine dated September 16, 2014 № 1678-VII. Another basic international document in the field of legal regulation of organic production – the Decree of the Council (EC) № 834/2007 dated June 28, 2007 regarding the organic production and labeling of organic products and cancellation of the Decree (EEA) № 2092/91 – establishes that the method of organic production plays a dual social role: on the one hand, it provides a specific market that meets the needs of consumer in organic products, and on the other hand – it provides a common good, by contributing to the protection of environment, the proper maintenance of animals, as well as the development of rural areas [13].

Certainly, the inexhaustible list of environmental projects (according to the Law of Ukraine "On Capital Markets and Organized Commodity Markets") does not exclude the possibility of using green bonds to finance the organic agricultural production. However, according to the author's opinion, it would be more advisable to foresee this direction (a broader direction compared to organic farming) in order to simplify the practical implementation of legislative regulations.

It is also important that operation of the category "organic production" already fixed in the regulatory field will greatly facilitate the work both in terms of preparing projects financed with funds received from the placement of green bonds, and in terms of monitoring the intended use of such financial resources. This follows from the fact that the current Ukrainian legislation in the field of organic production is already sufficiently developed, it meets the international requirements in general (in particular, the aforementioned Decree of the Council (EC) № 834/2007 dated June 28, 2008, the Decree of the Commission (EC) № 889/2008 dated September 5, 2008 [14] and provides an appropriate level of legal regulation of the relevant relations. Thus, it will be much easier for the issuers of green bonds to adhere to all four Green Bond Principles [6]: the use of funds, the process of evaluating and selecting projects, fund management and reporting.

Conclusions

Therefore, it should be stated that today the local authorities have been given the powers to solve the problem of disposal of unusable pesticides; but at the state level, it is just beginning to discuss the adoption of appropriate state program. Still, it is urgent to accelerate the approval of state programs with the determination of clear measures for its implementation and the sources of funding and strengthening control over the execution of the powers assigned to local authorities and responsibility in case of ignoring or negligence with the handling of obsolete pesticides.

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До питання правового забезпечення застосування зелених облігацій для розвитку органічного виробництва в Україні

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Анотація

У статті проведено науково-теоретичний аналіз законодавства, яким запроваджуються зелені облігації як інструмент фінансування органічного виробництва, а також визначено шляхи його удосконалення. Визначено, що новий вид цінних паперів – зелені облігації, можуть стати одним із інструментів для підтримки розвитку сфери органічного сільськогосподарського виробництва. Доведено, що виокремлення в якості напряму проектів екологічного спрямування, які передбачають використання залучених коштів від емісії зелених облігацій, органічного землеробства, є дискусійним, зважаючи на відсутність нормативного визначення даного поняття, що може ускладнити практичну реалізацію законодавчих приписів та дотримання стандартів емісії зелених облігацій (Green Bond Principles). На основі аналізу правової доктрини в частині визначення понять «органічне землеробство», «органічне рослинництво», «органічне виробництво», а також особливостей органічного виробництва, зроблено висновок про те, що органічне рослинництво, тваринництво, аквакультура повною мірою відповідають категоріям екологічних проектів, передбачених принципами GBR (таким як: екологічно стале сільське господарство, тваринництво та аквакультура; сільськогосподарські технології, що не шкодять клімату та ін.). Запропоновано викласти абзац перший ч. 2 ст. 18 Закону України «Про ринки капіталу та організовані товарні ринки» в такій редакції: «проект екологічного спрямування – це проект у сфері альтернативної енергетики, енергоефективності, мінімізації утворення, утилізації та переробки відходів, впровадження екологічно чистого транспорту, органічного виробництва, збереження флори і фауни, водних і земельних ресурсів, адаптації до змін клімату, а також інший проект, спрямований на захист навколишнього природного середовища, впровадження екологічних стандартів, скорочення викидів у навколишнє природне середовище»

Ключові слова: державна підтримка, зелені облігації, правове забезпечення, проект екологічного спрямування, органічне виробництво, органічне землеробство, органічна продукція