

Kostyantyn Flissak,

*Doctor of sciences (in Economics), professor,
Professor of the department of international
and European law, West Ukrainian National
University*

ORCID: <http://orcid.org/0000-0002-0980-2398>

LEGAL IMPERATIVES AND MECHANISMS FOR PROTECTION OF NATIONAL INTERESTS IN INTERNATIONAL INVESTMENT ACTIVITIES

Acknowledgements

This work was supported by the Erasmus+ program of the European Union (project 101239881 - EUROWUNU - ERASMUS-JMO-2025-HEI-TCH-RSCH "Jean Monnet Chair of European Integration at West Ukrainian National University" (EUROWUNU)). The European Commission support for the publication of this article does not constitute an endorsement of the contents, which reflects the views of the authors only, and the Commission cannot be held responsible for any use, which may be made of the information contained therein.

Ця стаття підготовлена за підтримки програми Еразмус+ Європейського Союзу (проект 101239881 - EUROWUNU - ERASMUS-JMO-2025-HEI-TCH-RSCH "Кафедра Жана Моне з європейської інтеграції в ЗУНУ" (EUROWUNU)). Проте підтримка Європейською Комісією публікації цієї статті не є автоматичною підтримкою її змісту, який відображає лише погляди автора. Комісія не несе відповідальності за будь-яке використання інформації, що наведена в статті.

Investment activity is one of the cornerstones of socio-economic development of territories, countries, and regional formations, as well as one of the main criteria for classifying states as developed or developing. This topic has not lost its relevance for decades. The problems of investment, investment activities, and investment processes are constantly in the field of view of economists, scientists, practitioners, politicians, and statesmen. Long-term investment of capital, its movement between countries in the context of the international division of labour and globalization processes is one of the main factors for creating the necessary material potential for the development of the economy of the relevant countries. At the same time, cross-border capital movement characterizes the openness of national economies and confirms their market status.

This process is a component of international economic relations and manifests itself in the form of capital exports. At the same time, there are differences in estimates and the impact of exports of goods and services on the formation of gross domestic product and capital exports for national economies. If the export of goods and services clearly has a positive impact, then the export of capital can be evaluated differently and have a different impact on national economies: on the one hand, it is the attraction of capital, in particular, foreign direct investment, on the other hand, it is the outflow of funds outside the country, and in some cases, the direct flight of capital. In such circumstances, a conflict of interest inevitably arises between states, individual enterprises that are subjects of investment activity, and multinational corporations.

Thus, the problem of protecting national interests may become more acute. This makes it necessary to form and constantly develop appropriate mechanisms for guaranteeing investments and protecting them, that is, the problem of taking into account and developing the necessary imperatives for protecting national interests in investment activities, especially in the field of international economic relations, remains relevant. This applies not so much to economic levers of influence as to effective regulatory mechanisms at the national and international levels.

Based on the above, the article considers the issue of the need to implement modern imperatives of protecting the national interests of states in the process of international capital movements and the form of direct investment, depending on the interest in attracting them to the national economy or in investing abroad. There is drawn attention to the fragmentation and grouping of countries depending on interest in transnational investment. Investment protection tools in the system of international investment law are investigated and the main criteria requirements for the actions of countries participating in the cross-border investment process are structured. Attention is focused on investment risks and investment threats to national interests and national security, the origin of which can be both internal and external. The article highlights the peculiarities of imperatives and mechanisms for protecting national interests in international investment activities of the European Union, the United States of America, the Federal Republic of Germany, Japan and

India. There are formulated conclusions on the problems of international investment law in terms of actions aimed at investments protecting.

Keywords: international law, international relations, international economic relations, international economic law, national security law, national interests, foreign direct investment, protection and guarantee of investments.

Фліссак К.

Правові імперативи і механізми захисту національних інтересів у міжнародній інвестиційній діяльності

Одним із наріжних каменів соціально-економічного розвитку територій, країн, регіональних формувань, а також одним з головних критеріїв віднесення держав до рівня розвинутих чи тих, що розвиваються, є інвестиційна діяльність. Дана тема не втрачає актуальності впродовж десятиліть. Проблематика інвестицій, інвестиційної діяльності, інвестиційних процесів постійно перебуває в полі зору економістів, науковців, практиків, політиків, державних діячів. Довгострокові вкладення капіталу, його переміщення між країнами в умовах міжнародного розподілу праці і глобалізаційних процесів є одним із головних факторів створення необхідного матеріального потенціалу для розвитку економіки відповідних країн. Одночасно транскордонне переміщення капіталів характеризує відкритість національних економік та підтверджує їх ринковий статус.

Даний процес виступає складовою міжнародних економічних відносин і проявляється у формі експорту капіталу. При цьому існують відмінності в оцінках та впливу експорту товарів і послуг на формування валового внутрішнього продукту і експорту капіталу для національних економік. Якщо експорт товарів і послуг однозначно має позитивний вплив, то експорт капіталу може по різному оцінюватись і мати різний вплив на національні економіки: з одного боку – це залучення капіталу, зокрема, прямих іноземних інвестицій, з другого боку – це відплив коштів за межі країни, а в ряді випадків і пряма втеча капіталу. В таких обставинах неминує виникати конфлікт інтересів між державами, окремими підприємствами - суб'єктами інвестиційної діяльності, транснаціональними корпораціями.

Таким чином може загострюватись проблема захисту національних інтересів. Зазначене обумовлює необхідність формування і постійного розвитку відповідних механізмів гарантування інвестицій і їх захисту, тобто актуальною залишається проблематика врахування і вироблення необхідних імперативів захисту національних інтересів в інвестиційній діяльності, особливо у сфері міжнародних економічних відносин. Стосується це не стільки економічних важелів впливу, як ефективних нормативно-правових механізмів національного і міжнародного рівня.

Виходячи із зазначеного у статті розглянуто питання необхідності реалізації сучасних імперативів захисту національних інтересів країн в процесі міжнародного руху капіталів і формі прямих інвестицій в залежності від зацікавленості в залученні їх у національну економіку чи у вкладенні за кордоном. Привернуто увагу до фрагментації і групування країн залежно від зацікавленості у напрямках транснаціонального інвестування. Досліджено інструменти захисту інвестицій в системі міжнародного інвестиційного права та структуровано основні критеріальні вимоги щодо дій країн-учасників інвестиційного процесу транскордонного характеру. Акцентовано увагу на інвестиційних ризиках та інвестиційних загрозах для національних інтересів і національної безпеки, походження яких може мати як внутрішній, так і зовнішній характер. Висвітлено особливості імперативів та механізмів захисту національних інтересів у міжнародній інвестиційній діяльності Європейського Союзу, Сполучених Штатів Америки, Федеративної Республіки Німеччини, Японії та Індії. Сформульовано висновки щодо проблематики міжнародного інвестиційного права в частині дій, орієнтованих на захист інвестицій.

Ключові слова: міжнародне право, міжнародні відносини, міжнародні економічні відносини, міжнародне економічне право, право національної безпеки, національні інтереси, прямі іноземні інвестиції, захист і гарантування інвестицій.

Formulation of the problem. Investment activity is one of the cornerstones of socio-economic development of territories, countries, and regional formations, as well as one of the main criteria for classifying states as developed or developing. The topic that has not lost its relevance for decades. The problems of investment, investment activities, and investment processes are constantly in the field of view of economists, scientists, practitioners, politicians, and statesmen. Long-term investment of capital, its movement between countries in the context of the international division of labour and globalization processes is one of the main factors for creating the necessary material potential for the development of the economy of the relevant countries. At the same time, cross-border capital movement characterizes the openness of national economies and confirms their market status.

This process is a component of international economic relations and manifests itself in the form of capital exports. At the same time, there are differences in estimates and the impact of exports of goods and services on the

formation of gross domestic product and capital exports for national economies. If the export of goods and services clearly has a positive impact, then the export of capital can be evaluated differently and have a different impact on national economies: on the one hand, it is the attraction of capital, in particular, foreign direct investment, on the other hand, it is the outflow of funds outside the country, and in some cases, the direct flight of capital. In such circumstances, a conflict of interest inevitably arises between states, individual enterprises that are subjects of investment activity, and multinational corporations.

Thus, the problem of protecting national interests may become more acute. This makes it necessary to form and constantly develop appropriate mechanisms for guaranteeing investments and protecting them, that is, the problem of taking into account and developing the necessary imperatives for protecting national interests in investment activities, especially in the field of international economic relations, remains relevant. This applies not so much to economic levers of influence as to effective regulatory mechanisms at the national and international levels.

The analysis of recent research and publications. The topics of investment activity, ensuring the efficiency of investments, forming a favourable investment climate and administrative legal support of investment processes have been the subject of research and the object of attention of scientists and practitioners around the world for many decades. The range of research areas cover investment activity and segments of the role of state, regional and international management and financial structures in a globalized world. However, the dynamics of world development and international relations are constantly changing. A significant part of such changes arise primarily on the basis of conflicts of interest. Such phenomena require the necessary response both at the level of national governments of states and specialized international organizations. Accordingly, the needs and requests of practice for scientific justification of the necessary effective solutions are formed, which stimulates scientific interest to the consideration of the problem. Currently, the attention of scientists and practitioners to the topic under consideration is represented by a significant range of published works by both Ukrainian and foreign authors.

In this context, professional literature highlights the peculiarities of investment activity and investment processes in theoretical terms, from the point of view of financial support, in the context of state regulation, in terms of regulatory framework, in the segment of forming guarantees and ensuring protection. Among the Ukrainian and foreign authors who study this issue are such as S.I. Abramov, A. Arcuri, V.D. Bazylevych, C. Borman, M.P. Denysenko, U.Ermschel, G.Feldmayr, P.Grecaud, V.M. Heetz, V.M. Hopchan, J.K.Jakson, L.T.Jasper, J.N.Köpl, T.V. Majorova, Ch.Mobius, F.Montanaro, O.E. Najdenko, A.A. Peresada, K.Poggensee, A.M. Poruchnyk, L.Rosan, H.G.Sönksen, O.P. Suschch, St. Schill, S.Trautmann, H. Wengert, T. Wolf and a number of others. Such Ukrainian researchers as M.M. Blikhar [1], V.M. Vazhinsky [2], V.P. Petryna [3] pay attention to the issues of regulatory support and legal regulation of investments at the national level.

At the same time, remain ignored by modern researchers some key positions related to the investigated issue. Among them are: the current aspects of modern imperatives in the segment of protecting the national interests of countries in the process of international capital movement in the form of foreign direct investment, dependence on the interest in attracting these investments to the national economy or on investing appropriate capital abroad, when exporting capital in order to implement long-term strategic goals of an economic and not only economic nature.

Presentation of the main research material. The importance and significance of considering the formation of regulatory mechanisms in the system of regulation of investment activities in the context of defending national interests is confirmed by statistical data on the movement of investment funds, the dynamics of foreign direct investment in the areas of attraction to the national economy and investments outside the relevant countries. According to the UN Trade and Development Conference (UNCTAD), the annual volume of attracted foreign direct investment in the world as a whole increased from 204.9 billion USD in 1990 up to 1,508.8 billion in 2024 (an increase of 7.4 times), including in the European Union for the same period – from 65.1 billion USD up to 267.8 billion USD (growth of 4.1 times). At the same time, the annual volume of direct investment of countries invested abroad on a global scale increased from 243.9 billion USD in 1990, up to 1,608.9 billion USD in 2024 (an increase of 6.6 times), and in the European Union – from 114.2 billion USD up to 446.1 billion USD (growth of 3.9 times) [4, P.253-256].

Such dynamics strongly indicate the need and importance of applying effective mechanisms to influence, stimulate, regulate, protect and guarantee investments. This is particularly important in the context of protecting national interests and ensuring the national security of countries. Thus, in the Strategy of national security of Ukraine, factors that hinder the attraction of internal and external investment are classified as threats to national security and national interests [5].

Research and analysis of the dynamics of investment processes and investment cooperation in countries with different levels of market status of the economy give grounds to formulate fragmentation of interest in different aspects of investment activity. Collectively, they can be divided into three groups.

The first is countries where investment requests and needs for the maximum possible attraction of foreign direct investment prevail, their main goal is the technical and technological development of the potential of the national economy within the country itself with all its derivatives. In this case, attracting foreign direct investment is primarily focused on solving problems of socio-economic development and implementing relevant programs within the country.

The second is countries that are more interested in investing abroad, with the goal of creating an appropriate production and technological infrastructure and material base there, aimed at prospectively expansion of their presence in foreign markets. The main goal is to expand in foreign markets, expand its presence in other countries, and implement strategic tasks of an economic and non-economic nature.

The third is countries with a high level of participation in international cooperation (industrial, technical, technological, scientific, logistics). Investment and cross-border movement of capital in this case is subject to the goal of joint implementation of the efforts of partner countries in competition in international markets. At the same time, «investment flows are distributed among countries depending on the economic potential of partners, political and economic stability, investment climate, living standards and development of the social protection system of the population, depending on the role of a particular country in the system of international cooperation» [6; 7, P.114].

In accordance with the global interests of these groups of countries is being formed the architecture of state regulation of investment activities, regulatory support for guaranteeing and protecting investments. Along the way, attention should be paid to periodically emerging discussions and controversial issues regarding the interaction and interdependence of national and international legal norms in the field of investment activity.

Objectively assessing this problem, it should be noted that the international law of investment protection in recent decades has become the most dynamically developing sphere of international law and international dispute resolution. This situation is explained not only by the growth of practical significance, but also by the increased attention paid to the development of the theory of law. However, as notes St. Schill, this branch of law periodically faces serious challenges, when states, investors, non-governmental organizations, as well as legal doctrine (both at the level of international law and at the level of national public law) often raise questions about the very legitimacy of international investment protection law [8]. In this situation, we cannot but agree with the statement that international investment protection law serves not only to ensure the arrangements reached in the agreement between a foreign investor and the host state. It also performs a regulatory and political function that goes beyond these limits at the level of the world economic order in the era of globalization. This regulatory and political function consists in the fact that investment protection agreements establish principles that provide foreign investors with property protection, legal protection and treatment in accordance with the postulates of a legal state (rule of law). These principles guarantee the reduction of the so-called «political risk» in the provision of foreign investment. Thus, although the right to protect investments resorts to arbitration actions for the purpose of resolving investment disputes, it assumes the performance of functions that are closer to (national) administrative and constitutional law than to the private-law principles of commercial arbitration [8].

In the system of international investment law in a globalized economy, imperatives are formed to promote the global interests of participants in the investment process. As rightly noted by Schill S.W. and Djanic V., the implementation of the norms of international investment law: 1) strengthens the organization of management of international investment relations in the developing global economy; 2) serves the purpose of strengthening the rule of law both at the international and domestic levels through the operation of the mechanism for ensuring compliance with its norms and the efforts of states to fulfil their obligations; 3) restrictions imposed on states contribute to the formation of institutional requirements necessary for economic growth; 4) the economic benefits of international investment law act as a catalyst for creating a financial basis for the realization of global public interests, including those related to sustainable development [9, P.34-41].

In the conditions of the modern world economic system, international law, thus, in the segment of international investment activity legalizes the general principles on the basis of which mechanisms for protecting and guaranteeing investments are formed. These are, first of all, such as the national regime, legality, security and full protection, restrictions on expropriation, mechanisms for resolving and settlement disputed issues.

Investment protection tools in the system of international investment law, as evidenced by the practice of international investment cooperation, include the following:

1) bilateral agreements concluded between states to define framework conditions, establish rules and standards for investment protection;

2) multilateral international conventions, the main purpose of which is to form a system for resolving controversial issues and disputes. One of the important documents of international investment law is the Convention on the settlement of investment disputes between States and nationals of other States, signed in Washington on 18.03.1965 and ratified by the law of Ukraine of 16.03.2000 No. 1547-III (1547-14) [10].

In addition, the system of international law itself, which forms a set of principles and norms that regulate the movement of foreign investments, has structured the main criteria for the actions of countries participating in the cross-border investment process. These principles and norms include: legality; compliance with a minimum international standard; security and full protection; nationalization; ensuring access to dispute resolution mechanisms. Legality in this case means that all measures relating to investor rights must be based exclusively on the letter of the law. At the same time, the state accepting investments must provide foreign investors with an investment regime that is not lower than the minimum international standard, as well as an appropriate level of protection against material damage. As for possible precedents for the nationalization of investors' property by states, this is allowed only in accordance with international legal norms.

Despite the importance and significance of international law as one of the main mechanisms regulating international investment relations, one should not lose sight of the second, no less important component of regulating these relations – the national legal norms of the states participating in investment processes. Since, as noted above, there are different vectors of national interests in investment activities, national legal norms regarding investment activities are formed accordingly. This concerns, first of all, the protection of national security from possible risks that may arise in the process of movement of investment funds, in other words, to ensure investment security.

To this point, A.M. Chorna and I.I. Syadrist draw attention, emphasizing that in order to ensure the investment security of the national economy, in particular in Ukraine, it is necessary to: work out legal mechanisms for state regulation of security in the investment sphere; form an appropriate regulatory framework for creating and improving a favourable investment climate; form legal mechanisms for developing and improving the quality of investment potential of the national economy; legal regulation of the functioning of the ensuring investment security levels with the definition of the range of subjects and their competence to carry out such activities; regulation of the forms and procedure for interaction of subjects engaged in activities in the field of ensuring investment security [11, p. 208].

The algorithm for forming a mechanism for ensuring investment security in the context of protecting national interests is proposed by T.H. Bondaruk and O.S. Bondaruk, who believe that it is based on a principled scheme that assumes the presence of three components: 1) national interests (in particular, interests in the investment sphere); 2) threats as factors that create a danger to the implementation of national interests; 3) a system of measures aimed at eliminating threats, their foresight and timely prevention. At the same time, the authors include, first of all, a system of organizational, economic, institutional and legal measures of influence among the components of the mechanism for ensuring investment security [12, p.85-86].

Since the issue of investment security is an independent, rather voluminous topic, we will only note here that a prerequisite for the effectiveness of the mechanism for protecting national interests from the perspective of investment security for state governments is to take into account investment risks and investment threats, the origin of which can be both internal and external. These include currency and inflation risks, interest rate and credit risks, industry and territorial risks (investment countries). Investment threats may include threats of an organizational, legal and financial nature, in particular gaps in legislation, lack of an investment strategy, lack or weakness of a system of protection, guarantees and insurance of investments, the impact of economic and financial crises.

Regarding the imperatives of protecting national interests in investment activities in the context of ensuring economic security, the practice of the European Union, as well as a number of leading countries, is of interest.

Thus, the instruments for restricting investment in fixed assets in the USA are: 1) internal investment control (carried out by The Committee on Foreign Investment in the United States (CFIUS). «CFIUS is an interagency committee authorized to review certain transactions involving foreign investment in the United States and certain real estate transactions by foreign persons, in order to determine the effect of such transactions on the national security of the United States. ») [13]; 2) Control over foreign investments (checking of outbound investments); 3) The CHIPS and Science Act (is a U.S. federal statute enacted by the 117th United States Congress and signed into law by President Joe Biden on August 9, 2022); 4) Location restrictions; 5) Sanctions regime (USA, UN).

In Germany, to restrict investments in fixed assets, are used such instruments as, firstly, a system of internal investment control and, secondly, the introduction of a sanctions regime (in accordance with EU and UN

regulations). In the European Union, such instruments include: 1) coordination measures; 2) EU screening regulation; 3) ACI – Accelerating Community Investment system, which allows to improve the state of public finances, create opportunities for public development financing agencies, interact with investors focused on specific goals and broader capital markets; 4) EU sanctions regime [14].

UNCTAD data shows that there was no clear preference for investing abroad or attracting to the country in the US between 2000 and 2024. Thus, the annual volume of attracted foreign direct investment (FDI) during this period ranged from 53.2 billion USD up to 467 billion USD, and the annual volume of American investments abroad – from 15.4 billion USD up to 396.5 billion USD [4]. Accordingly oriented are the state's mechanisms and regulatory framework for protecting and guaranteeing investments in the context of protecting national interests. However, in any case, the first mandatory requirement for all national entities conducting business, including in the field of investment activities, is the requirement declared in developed and implemented the bill of rights for American business: the general basis for determining the nature and degree of support of the US government for a specific offer of an international transaction should be the national interest of the United States. Determining this interest will help, first of all, to weigh and evaluate the intended material benefits to the American economy that can be obtained from this project and evaluate the essence of the application for government assistance related to this particular offer or transaction [15]. The national interest in this case is shown in the fact that the promotion of global direct investment through appropriate mechanisms used by the Department of Commerce is aimed at active behaviour of the United States in the development of new markets in developing countries [16].

Certain positive experience in guaranteeing and protecting investments has been accumulated in the Federal Republic of Germany. Investment protection is ensured in accordance with German constitutional law. At the same time, German legislation on the protection of foreign investments is invariably guided by the principle of freedom of investment. The German legal regime regarding economic activity is characterized by continuous freedom and the principle of equal treatment within the country. With regard to asset protection, foreign investors and their investments must primarily be treated in accordance with German civil, criminal and administrative law, as well as the relevant regulatory and procedural rules in force in Germany [17].

With regard to market access, we can also talk about the principle of freedom of investment, focused on equal treatment within the country. The principle as such, although not enshrined in law, is the result of the interplay of various provisions protecting individual business acts necessary for the implementation of investments, in particular freedom of enterprise [18], the right to establish private and corporate companies [19] and foreign economic freedom [20].

On the other hand, citizenship-related restrictions on commercial activities or foreign economic relations exist only in a few areas. In general, it should be noted that asset protection and access of foreign investment to German markets are guaranteed on a legislative basis, with some exceptions on the basis of equal treatment within the state. These include the rules of residence, the provisions of the Law on the control of military weapons, the Law on explosives and weapons, the Prohibition of trade in respect of foreign legal entities whose legal capacity is not recognized within the state, and the right of foreign economic intervention and control in respect of foreign investment in accordance with the provisions of the Law on foreign economic activity (*Außenwirtschaftsgesetz*).

Investment guarantees protect direct investments of German companies in markets and in developing countries from political risks, such as: nationalization, expropriation, encroachments amounting to expropriation; wars, riots, as well as individual political terrorist acts; risks of conversion or transfer; bans or moratoriums on payments; violation of state obligations. At the same time, investment guarantees provide long-term security due to the fact that the federal government: 1) through active anti-crisis management prevents damage; 2) if necessary, participates in the costs of preventing losses; 3) pays compensation for losses incurred in the event of damage; 4) guarantees represent a value security for capital creditors [21, P.30]. In accordance with bilateral agreements on framework conditions, rules and standards for investment protection, the Federal Government may take measures of protection in the foreign market based on the national legal system to the extent that this legal system protects projects of German investors. At the same time, there are no volume restrictions for investments that are subject to hedging, but there is a maximum hedging limit of 3 billion Euro per company in the destination country [21, P.30].

When considering the legal imperatives of protecting national interests in the field of investment activity, the long-term practice of Japan is of interest. A country with the status of a market economy, with a high level of its efficiency, with a resource deficit differs from other economically developed countries by a high level of state regulation of the economy, including foreign economic activity. Among the main elements of the Japanese model of economic regulation are such as: selective protectionism to protect the domestic market, strict regulation of financial markets, restriction of foreign direct investment [22, P. 521-522].

A special feature of Japan's investment activity is the long-term significant predominance of the volume of investments made abroad over the volume of attracted foreign direct investment. Thus, in 1990 the ratio of attracted FDI to invested abroad was 1.8 billion USD to 50.8 billion USD, in 2000 – 8.3 billion USD to 31.6 billion USD, in 2020 – 11.8 billion USD to 99.7 billion USD, in 2024 – 13.4 billion USD to 204.4 billion USD [4]. The emphasis on capital exports is based on Japan's national interests. Investment abroad is considered as an important factor (with a resource deficit) in achieving stability in the country's supply of raw materials and agricultural products. According to the conclusions of the Japanese Export-Import Bank, when investing capital in extractive industries, agriculture and forestry, it is these motives that prevail, which meets the national interests [23, P. 81-82].

Its own specifics of protecting national interests in the process of investment activities in India. If it is interested in attracting foreign investors, the Government of India encourages investment in energy, transport infrastructure, mechanical engineering, information technology, pharmaceuticals, oil and gas and petrochemical complexes of the country, especially if the products produced by these enterprises can be exported.

However, it should be borne in mind that an India's characteristic feature in investment cooperation with other countries is strict regulation of the level of admission of foreign direct investment in the relevant industries. This position is due to competition in international markets and the country's national interests in the development of relevant sectors of the economy and their impact on socio-economic development and national security of the state. In particular, for foreign direct investment, there are restrictions in the following industries and areas of activity: oil refining and natural gas production (public sector enterprises) – up to 49% in the mode of automatic admission; defence industry – up to 49% in the mode “approved by the government”, more than 49% – by the decision of the Security Committee of the Government in some cases in order to modernize weapons; television, cable networks – up to 49% in automatic mode; terrestrial radio broadcasting in the FM band – up to 26%; publication of newspapers, news magazines – up to 26% in the mode “approved by the government”; insurance – up to 26% automatic admission; energy exchange – up to 26% in automatic mode; banking (private banks) – up to 49% automatic admission, from 49% to 74% in the mode “approved by the government”; banking (public sector) – up to 20% of direct and portfolio foreign investments in total. In addition, the country's legislation prohibits any form of foreign investment in nuclear energy, lottery and gaming business, tobacco production, as well as in the field of railway transport (except for high-speed transport systems for mass passenger transportation) [24, P. 32]. By applying such imperatives in investment activities, the Government of India seeks to ensure a balance between national interests and international capital flows in the context of implementing socio-economic development programs of the country.

Conclusions. The study of the problems of international law in the field of investment activity, which is classified as international investment law in the system of branches of law, indicates periodic discussions about material international legal norms focused on investment protection. The study of this issue became the basis for the following conclusions.

1. In the conditions of the modern world economic system, international law in the segment of international investment activity legalizes the general principles on the basis of which mechanisms for protecting and guaranteeing investments are formed. These are, first of all, such as the national regime, legality, security and full protection, restrictions on expropriation, mechanisms for resolving controversial issues and disputes.

2. Foreign direct investment, in addition to significant advantages and economic benefits (creating new jobs, increasing labour productivity, technology transfer), can also carry certain risks to the national security of the country. In this regard, states are forced to apply appropriate regulatory mechanisms to protect national interests, prevent potential threats, and control the impact of foreign investment on strategically important sectors of the economy.

3. In accordance with the global interests of countries with different vectors of national interests in investment activity, the architecture of state regulation of investment activity, national legal norms in this area, regulatory and legal support for guaranteeing and protecting investments is being formed. This applies, first of all, to protecting national security from possible risks that may arise in the process of movement of investment funds, i.e. to ensuring investment security.

4. Regarding the imperatives of protecting national interests in investment activities in the context of ensuring economic security, the practice of the European Union, as well as the world's leading economies (USA, Germany, Japan, India) with characteristic features and practice of application is of interest in the context of further research.

References

1. Blikhar, M. M. (2014). Investytsiyna diyalnist yak object pravovogo reguluvannya [Investment activity as an object of legal regulation]. *Naukovij visnuk Mizhnarodnogo humanitarnogo universytetu. Seriya: Yurysprudentziya – Scientific Bulletin of the International Humanitarian University. Series: Jurisprudence, 10-1*, vol. 1, 174-177 [in Ukrainian].
2. Vazhynskij V.M. (2022). Investytsiyna diyalnist' yak object publichnoho upravlinnya ta okhoronu [Investment activity as an object of public administration and protection]. *Visnyk kryminalnoho sudochynstva – Bulletin of criminal proceedings, 1-2*, 148-155 [in Ukrainian].
3. Petryna, V. P. (2020). Investytsiyna diyalnist' yak predmet pravovogo reguluvannya [Investment activity as a subject of legal regulation]. *Chasopys Kyivskoho universytetu prava – Journal of the Kyiv University of law, 3*, 109-115 [in Ukrainian].
4. *World Investment Report 2025 International investment in the digital economy*. (2025). United Nations. Retrieved from <https://unctad.org/topic/investment/world-investment-report> [in English].
5. Stratehiya natsionalnoi bezpeky Ukrainy (2020). *Zatverdzhena Ukazom Prezydenta Ukrainy vid 14 veresnya 2020 r. № 392/2020 [National Security Strategy of Ukraine. Approved by Decree of the President of Ukraine dated September 14, 2020 No. 392/2020]*. Retrieved from <https://www.president.gov.ua/documents/3922020-35037> [in Ukrainian].
6. Flissak, K. A. (2008). Kooperatsijna model rozvytku dvostoronnikh ekonomichnyh vidnosyn Ukrainy i Nimechchyny [Cooperative model for the development of bilateral economic relations between Ukraine and Germany]. *Dys. kand. ekon. nauk – Doctoral dissertation*. Ternopil: TNEU [in Ukrainian].
7. Flissak, K. A. (2009). *Formuvannya kooperatsijnoji modeli rozvytku bilateralnykh ekonomichnyh vidnosyn Ukrainy i Nimechchyny [Formation of a cooperative model for the development of bilateral economic relations between Ukraine and Germany]*. Ternopil: Novyj kolir [in Ukrainian].
8. Schill, St. (2011). Internationales Investitionsschutzrecht und Vergleichendes Öffentliches Recht: Grundlagen und Methode eines öffentlich-rechtlichen Leitbildes für die Investitionsschiedsgerichtsbarkeit. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*. Retrieved from https://dpp.mpil.de/01_2012/01_2012_71_123.pdf [in German].
9. Schill S.W., Djanic V. (2018) Wherefore art thou? Towards a public interest-based justification of international investment law. *ICSID Review*. Oxford. Vol. 33, № 1. 29-55 [in English].
10. *Konventziya pro poryadok vyrishennya investytsijnykh sporiv mizh derzhavamy ta inozemnymi osobamy (ratyfikovana Zakonom Ukrainy №1547 1547-III (1547-14) vid 16.03.2000) [The Convention on the settlement of investment disputes between States and nationals of other States (ratified by Law of Ukraine № 1547-III (1547-14) of 16.03.2000)]* (2000). Retrieved from https://zakon.rada.gov.ua/laws/show/995_060#Text [in Ukrainian].
11. Chorna, A. M., Syadrysta, I. I. (2022). Investytsiyna bezpeka derzhavy: pravovij ta ekonomichnyj aspekty [Investment security of the state: legal and economic aspects]. *Aktualni pytannya zabezpechennya finansovoi bezpeky derzhavy v umovakh globalizatsiji – Current issues of ensuring the financial security of the state in the context of globalization*. Kharkiv, 205-209 [in Ukrainian].
12. Bondaruk, T. H. & Bondaruk, O. S. (2019). Investytsiyna bezpeka derzhavy: strategichni tzili ta mekhanizm zabezpechennya [Investment security of the state: strategic goals and mechanism for ensuring]. *Statysyka Ukrainy – Statistics of Ukraine, 2*, 83-91 [in Ukrainian].
13. *The Committee on Foreign Investment in the United States (CFIUS)*. Retrieved from <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius> [in English].
14. Medunic, F. (2025) Wirtschaftssicherheit in unsteten Zeiten. *DGAP Policy*. Brief Nr. 11, Mai. 7. Retrieved from: <https://dgap.org/de/forschung/publikationen/wirtschaftssicherheit-unsteten-zeiten> [in German].
15. *US State Department's Advocacy Guidelines*. Retrieved from https://1997-2001.state.gov/about_state/business/cba_business_pub.html [in English].
16. *Trade and Investment. U.S. Department of Commerce*. Retrieved from www.commerce.gov/page/trade-and-investment [in English].
17. Schill Stephan, W. (2018). Investitionsschutz in EU-Freihandelsabkommen: Erosion gesetzgeberischer Gestaltungsmacht? Eine rechtsvergleichende Analyse im Mehrebenengeflecht von Verfassungs-, Unions- und Völkerrecht am Beispiel des EU-Freihandelsabkommens mit Kanada (CETA). *Zeitschrift für ausländisches*

- öffentliches Recht und Völkerrecht. Heidelberg Journal of International Law*, 78. Retrieved from https://www.zaoerv.de/78_2018/78_2018_1_a_33_92.pdf [in German].
18. *Gewerbeordnung In der Fassung der Bekanntmachung vom 22.02.1999 (BGBl. I S. 202) zuletzt geändert durch Gesetz vom 27.12.2024 (BGBl. I S. 438) m.W.v. 30.12.2024*. Stand: 01.11.2025 aufgrund Gesetzes vom 23.10.2024 (BGBl. I S. 323). Retrieved from <https://dejure.org/gesetze/GewO> [in German].
 19. *Vereinsgesetz (Gesetz zur Regelung des öffentlichen Vereinsrechts) Gesetz vom 05.08.1964 (BGBl. I S. 593) zuletzt geändert durch Gesetz vom 30.11.2020 (BGBl. I S. 2600) m.W.v. 01.01.2021*. Retrieved from <https://dejure.org/gesetze/VereinsG> [in German].
 20. *Außenwirtschaftsgesetz vom 6. Juni 2013 (BGBl. I S. 1482), das zuletzt durch Artikel 2 des Gesetzes vom 27. Februar 2024 (BGBl. 2024 I Nr. 71) geändert worden ist*. Retrieved from https://www.gesetze-im-internet.de/awg_2013/BJNR148210013.html [in German].
 21. *Grundlagen der Investitionsgarantien. Investitionsgarantien Jahresbericht 2023*. (2024). Bundesministerium für Wirtschaft und Klimaschutz (BMWK). Berlin. 36. [in German].
 22. Flissak, K. A. (2016), *Ekonomichna dyplomatiya u systemi zabezpechennya natsionalnyh interesiv Ukrainy [Economic diplomacy in the system of ensuring the national interests of Ukraine]*. Ternopil, Novyj Kolir [in Ukrainian].
 23. *Harmonization of Japan and Australia economic politics*. Rep. No 3. [in English].
 24. *Annual Report 2018-19* (2020). Ministry of Finance. Department of Economic Affairs. Retrieved from <http://www.dea.gov.in/annual-reports/annual-report-2018-19> [in English].

Стаття надійшла 15.10.2025
Стаття прийнята до друку 09.11.2025