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PRIORITIES FOR THE DEVELOPMENT AND PROTECTION INTELLECTUAL CAPITAL OF THE DIPLOMATIC SERVICE

Abstract. The article deals with the main aspects related to the characteristics and analysis of the development and protection priorities of the intellectual capital of the diplomatic service in Ukraine. The main interpretations of foreign scientists regarding the concept of intellectual capital and its main components are analyzed, including in the context of the intellectual capital of the diplomatic service. An explanation of each component of intellectual capital is given in detail and it is concluded that despite the disagreements in the concept of intellectual capital, foreign scientists equally assess the role and importance of this component in the work, including the diplomatic service. It is determined that human capital occupies the bulk of the intellectual capital of the diplomatic service in Ukraine. The analysis of foreign experience of legislative support for the work of the diplomatic service in the countries of the European Union, in particular in Lithuania

and Bulgaria. It is substantiated that using the models and approaches of foreign countries of the European Union, as examples, it is possible to build a high-quality legislative framework in Ukraine, in particular, it will concern intellectual capital and its role in the work of the diplomatic service. The regulatory framework for the protection of intellectual capital in Ukraine is analyzed in detail, the main forms of protection of intellectual capital rights are highlighted, a detailed description of each of these forms and procedures is provided in case of violation of the intellectual capital rights of civil servants, in particular diplomatic employees of the Ministry of Foreign Affairs of Ukraine. It is separately illustrated that the number of budget employees of the diplomatic service is not planned to increase in the next 2 years (until 2022 inclusive). Based on the analysis and characteristics of the intellectual capital of the diplomatic service, it was concluded that Law № 7322 “On the diplomatic service” requires certain improvements, in particular, the law should include clear rules that ensure the protection of intellectual property of the diplomatic service in Ukraine, taking into account the practice of some countries of the European Union.

Keywords: intellectual capital, diplomatic service of Ukraine, European Union, Ministry of Foreign Affairs of Ukraine, protection of intellectual capital, intellectual capital of diplomatic service.

ПРІОРИТЕТИ РОЗВИТКУ ТА ЗАХИСТУ ІНТЕЛЕКТУАЛЬНОГО КАПІТАЛУ ДИПЛОМАТИЧНОЇ СЛУЖБИ

Анотація. Розглядаються основні аспекти, пов’язані з характеристикою та аналізом пріоритетів розвитку та захисту інтелектуального капіталу дипломатичної служби в Україні. Проаналізовано основні тлумачення зарубіжних вчених щодо поняття інтелектуального капіталу та його основних складових, у тому числі в контексті інтелектуального капіталу дипломатичної служби. Детально зазначено пояснення кожної складової інтелектуального капіталу та зроблено висновок, що незважаючи на розбіжності в понятті інтелектуального капіталу, зарубіжні вчені ідентично оцінюють роль та значення цієї складової в роботі, в тому числі і дипломатичної служби. Визначено, що людський капітал займає основну частину інтелектуального капіталу дипломатичної служби в Україні. Проведено аналіз зарубіжного досвіду щодо законодавчого забезпечення роботи дипломатичної служби в країнах Європейського Союзу, зокрема в Литві та Болгарії. Обґрунтовано, що використовуючи моделі та підходи зарубіжних країн Європейського Союзу, як приклади, можна збудувати якісну законодавчу базу в Україні, яка буде стосуватися зокрема інтелектуального капіталу та його ролі в роботі дипломатичної служби. Детально проаналізовано нормативно-правову базу щодо захисту інтелектуального капіталу в Україні, виокремлено основні форми захисту прав інтелектуального капіталу, надано детальну характеристику кожної з даних форм та порядку дій у випадку порушення права на інтелектуальний капітал державних службовців, зокрема дипломатичних працівників Міністерства закордонних справ України. Окремо проілюстровано, що кількість бю-

джетних працівників дипломатичної служби не планується збільшуватися в найближчі 2 роки (до 2022 року включно). На основі проведеного аналізу та характеристики інтелектуального капіталу дипломатичної служби зроблено висновок, що Закону України “Про дипломатичну службу” № 7322 потребує певних доопрацювань, зокрема до нього мають бути включені чіткі правила, які забезпечують захист інтелектуальної власності дипломатичної служби в Україні, беручи до уваги практику деяких країн Європейського Союзу.

Ключові слова: інтелектуальний капітал, дипломатична служба України, Європейський Союз, Міністерство закордонних справ України, захист інтелектуального капіталу, інтелектуальний капітал дипломатичної служби.

ПРИОРИТЕТЫ РАЗВИТИЯ И ЗАЩИТЫ ИНТЕЛЛЕКТУАЛЬНОГО КАПИТАЛА ДИПЛОМАТИЧЕСКОЙ СЛУЖБЫ

Аннотация. Рассматриваются основные аспекты, связанные с характеристикой и анализом приоритетов развития и защиты интеллектуального капитала дипломатической службы в Украине. Проанализированы основные толкования зарубежных ученых относительно понятия интеллектуального капитала и его основных составляющих, в том числе в контексте интеллектуального капитала дипломатической службы. Подробно указано объяснение каждой составляющей интеллектуального капитала и сделан вывод, что несмотря на разногласия в понятии интеллектуального капитала, зарубежные ученые идентично оценивают роль и значение этой составляющей в работе, в том числе и дипломатической службы. Определено, что человеческий капитал занимает основную часть интеллектуального капитала дипломатической службы в Украине. Проведен анализ зарубежного опыта законодательного обеспечения работы дипломатической службы в странах Европейского Союза, в частности в Литве и Болгарии. Обосновано, что используя модели и подходы зарубежных стран Европейского Союза, в качестве примеров, можно построить качественную законодательную базу в Украине, которая будет касаться в частности интеллектуального капитала и его роли в работе дипломатической службы. Детально проанализировано нормативно-правовую базу по защите интеллектуального капитала в Украине, выделены основные формы защиты прав интеллектуального капитала, предоставлено подробную характеристику каждой из данных форм и порядка действий в случае нарушения права на интеллектуальный капитал государственных служащих, в частности дипломатических работников Министерства иностранных дел Украины. Отдельно проиллюстрировано, что количество бюджетных работников дипломатической службы не планируется увеличиваться в ближайшие 2 года (до 2022 года включительно). На основе проведенного анализа и характеристики интеллектуального капитала дипломатической службы, сделан вывод, что Закон Украины “О дипломатической службе” № 7322 требует определенных доработок, в частности в него должны быть включены четкие правила, которые обеспечивают защиту интеллектуальной собственности дипломатической службы в Украине, учитывая практику некоторых стран Европейского Союза.

Ключевые слова: интеллектуальный капитал, дипломатическая служба Украины, Европейский Союз, Министерство иностранных дел Украины, защита интеллектуального капитала, интеллектуальный капитал дипломатической службы.

Problem definition. Intellectual capital of the diplomatic service in Ukraine is very significant, since all the developments, vision and results of the work of the diplomatic service play one of the key roles in international politics, in particular the international politics of the European Union. Intellectual capital protection mechanisms play a significant role in the process of work of the diplomatic service. Therefore, it is very important to have a legal basis for such protection, developed and adopted at the highest, state level. Unfortunately, Ukraine has not shown significant improvement in the area of intellectual property rights protection, while government agencies set a bad example in the context of compliance with legislation in this area. It is the failure to comply with the law that increases the risks of the impossibility of fully protecting the intellectual capital of the diplomatic service in Ukraine, and it is precisely the minimization of this risk that is the main development priority and, in fact, the protection of the intellectual capital of the diplomatic service of Ukraine.

Analysis of recent research and publications. A significant number of scientific publications are devoted to the topic of characterization and analysis of the main priorities for the development and protection of the intellectual capital of the diplomatic service. Considerable attention was paid

to the study of issues related to intellectual capital, in particular its protection in the diplomatic service, was paid by such foreign scientists: E. Brooking, D. Duffy, K.-E. Sveiby, L. Malone, L. Edvinson, D. Long, P. Ray, J. Galbraith and others. Among domestic scientists, the study of this issue is devoted to the works of: S. Illyashenko, T. Poltavets, S. Zakharin, M. Baikov, A. Kazaryan, V. Semynozhenko, L. Melnyk, A. Chukhno, V. Geiets and others.

Despite numerous and important studies, not all aspects of this topical issue have been clarified and substantiated.

The purpose of the article. Characteristics and analysis of priorities for development and protection of intellectual capital of the diplomatic service.

Presentation of the main research material. Emergence of the concept of intellectual capital practically coincides with the beginning of the creation and development of a new economy, where the main resource is precisely the knowledge that can create intellectual capital. The intellectualization of state bodies, in particular the diplomatic service of Ukraine, is becoming an increasingly objective process of expanding the conditions for using the intellectual capabilities of workers, providing labor of an intellectual and innovative nature, ultimately ensuring the fulfillment of the tasks of accelera-

ting the development and protection of intellectual thought.

Despite the lack of consensus on the definition of elements of intellectual capital, the vast majority of foreign scientists and practitioners agree that intellectual capital is a system of certain components, a set of interconnected and complementary elements. It is obvious that the components of intellectual capital are heterogeneous due to the heterogeneity of knowledge itself. Despite the fact that they are all generated by human intelligence, some of them exist in the form of knowledge inseparable from the individuals who possess them, while others, frankly, form the conditions for applying this knowledge to increase productivity and development of diplomatic service in Ukraine [3].

Given the fact that knowledge is heterogeneous, the elements of intellectual capital have their own classification. At the end of the last century K.-E. Sveiby developed an extensive structure of intellectual capital, defining it as an intangible asset. First of all, it should be noted that the author refers to the intellectual capital of three components, namely:

1. individual competence (human capital);

2. internal structure of the institution;

3. external structure of the institution [9].

This study led to further attempts to systematize the factors and elements that create intellectual capital. For example, mostly all researchers agreed with the K.-E. Sveiby, which includes not only human capital, but also external and internal intellectual factors of institutions. An example is the structure of intellectual capital proposed by E. Brooking and E. Mott [12].

The authors acknowledge the contradiction between the concept of intellectual capital and accounting methods that are traditionally used in relation to the calculation of intangible assets. Researchers include market assets, intellectual property and infrastructure assets, and human capital in the intellectual capital of institutions (Fig. 1).

Market assets are intangible assets of the diplomatic service that determine its position in the market (Ministry of Foreign Affairs of Ukraine, various favorable agreements and contracts).

Intellectual property assets are defined as intellectual property belonging to the diplomatic service at the Ministry of Foreign Affairs of Ukraine and

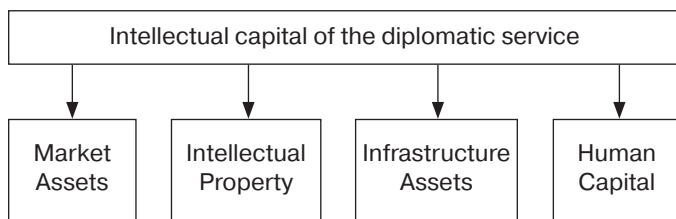


Fig. 1. The structure of the intellectual capital of the company (E. Brooking, E. Mott)

Source: [2]

protected by law (patents, laws, copyrights).

Infrastructure assets are intellectual assets that contribute to the functioning of the diplomatic service at the Ministry of Foreign Affairs of Ukraine (management philosophy, corporate culture, management processes, etc.).

Human assets (human capital) are the knowledge and skills used by the diplomatic service at the Ministry of Foreign Affairs of Ukraine, belonging to ordinary analysts of the Ministry of Foreign Affairs of Ukraine, to advisers directly involved in negotiations and the Minister of Foreign Affairs of Ukraine [1].

In a more systematic form, the scheme of intellectual capital is given by L. Edvinsson and M. Malone. In intellectual capital, they clearly distinguish between two main components: human capital and structural capital, while clearly defining their content (Fig. 2).

The first element is embodied in the civil servants of the diplomatic service at the Ministry of Foreign Affairs of Ukraine and their teams in the form of knowledge, experience, skills, competitiveness, ability to innovate, as well as

in the culture of public administration and internal values.

Human capital, according to L. Edvinsson, is a set of knowledge, practical skills and creative abilities of employees of the diplomatic service at the Ministry of Foreign Affairs of Ukraine, applied to the current tasks solution. Its other components are the culture of work and the general approach to business and moral values. Human capital is the total amount of investment in training and the ability of the employee [9].

In our opinion, the main component of intellectual capital is human capital – a set of knowledge, skills and abilities. Particularly this component of intellectual capital occupies the largest share in the diplomatic service at the Ministry of Foreign Affairs of Ukraine. This group of knowledge, that is possessed by employees, can be demonstrated, but it is difficult to distinguish. The transfer of such knowledge can be carried out through demonstration or training in the workplace, during meetings, negotiations. Such knowledge is difficult to protect. Once transferred, the owner will not be able to control the use of this knowledge. Human resources – the most active and dynamic

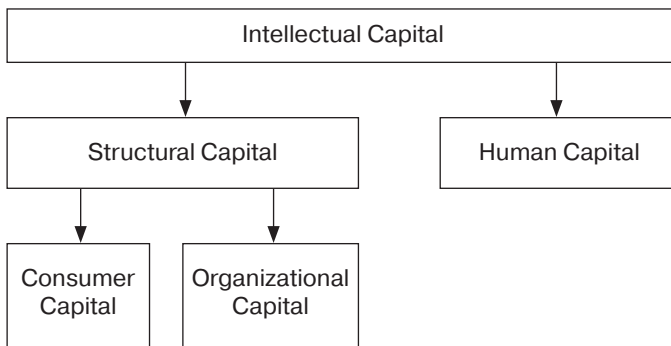


Fig. 2. The structure of the intellectual capital (L. Edvinsson, M. Malone)
Source: [2]

component of intellectual capacity, are the basis of all components of intellectual capital [9].

Nowadays the role of highly educated human personality is growing, which is able not only to perceive previously accumulated scientific knowledge, but also to summarize, analyze, create new knowledge with their further use within diplomatic service at the Ministry of Foreign Affairs of Ukraine.

The Diplomatic Service of Ukraine was established in the post-Soviet period and has retained some of the features of diplomacy that existed before 1990, especially the straightforwardness of the management system; partial blocking of information in circulation and its level of protection, which is unsatisfactory; insignificant connection of the Ministry of Foreign Affairs and the diplomatic service with the services of public administration; as well as financial and human resources issues. The reform of the diplomatic service and the legal regulation of a large number of issues related to the professional activities of civil servants are particularly important and unshakable component of the current state policy in Ukraine. [8].

On 5 of April 2018 the Verkhovna Rada of Ukraine adopted Law № 7322 “On the Diplomatic Service” [2]. The parliamentary majority supported adoption of the law. Regulation of this Law is based on the legal norms of the Vienna Convention (1961) on Diplomatic Relations, the Vienna Convention (1963) on Consular Relations, the Constitution of Ukraine and other acts. The Law on Diplomatic Service consists of 10 sections, transitional and final provisions. A significant shortcoming, in our opinion, is that there is no

justification for the development and, in particular, the protection of the intellectual capital of the diplomatic service in Ukraine.

Such laws are taken as a basis in the vast majority of European countries, where the guideline is the provisions and basic principles of the Vienna Convention of 1961. This Convention is open for signature by all States Parties to the Statute of the International Court of Justice, all UN member states and states invited by the UN General Assembly to be parties to the Convention. In total, they are 179.

The Vienna Convention clearly sets out the basic rules of conduct and the exchange of official ambassadors between the two countries. This convention can guarantee that all diplomats will perform their duties implicitly, without any threat to the influence of the host government, and is considered as the basis for external negotiations and external cooperation. Also, according to the Convention, diplomats must strictly comply with all legal norms of the host country, and in case of a violation of such compliance, the immediate deportation of diplomats from the host country is possible. In case the Convention does not provide an answer to a specific diplomatic problem, fundamental law should be used [8].

The Vienna Convention holds an important place in the Lithuanian diplomatic service. Referring to the Law of Lithuania № VIII-1012 “On the Diplomatic Service” 29 of December 1998, the diplomatic service is an indisputable part of the entire civil service of the country, which is subordinated to the President, the Seimas and the Government of Lithuania. This Law deals

with the establishment of the diplomatic service and its legal functioning, the rights and status of the families of diplomats and the possibility of obtaining social guarantees for them. Diplomatic institutions and diplomatic missions are financed from the state budget of Lithuania. The staff of consular and state institutions has a certain immunity and bonuses, which are specified in the Vienna Convention on Consular Relations. According to Article 18 of the Lithuanian Law on Diplomatic Service, there are a number of established requirements for persons who hold and may be appointed to diplomatic service in Lithuania. A citizen who works as a diplomat must not be older than 62 years and 6 months, but there are also exceptions when older persons may perform as diplomatic representatives of Lithuania for a certain period of time. Such a rule and law is agreed by the President of Lithuania and the Minister of Foreign Affairs [8].

Appointments in the service in Lithuania takes place only in accordance with the results of competitions (competitive basis). A person who wants to apply for the position must be originated from Lithuania and have the citizenship of this country, good reputation, be fluent in at least two foreign languages, and have the right to process state, classified information. Not a single person who is involved in corruption, or who has ever been involved in a criminal offense against his/her country or nationals of the state, will ever have the opportunity to obtain a public position in the Lithuanian diplomatic service. For diplomats there is a probationary period of 1 year, although this period can be reduced, by decision of the Minister of

Foreign Affairs to 3 months if the diplomat shows good results. It should be noted that diplomats do not have the right to be involved in any work during their stay in the civil service [5].

The Parliament of Bulgaria, back in 2007, approved a similar Law as in Lithuania. The law states that diplomats are selected through a public, open competition. Those who are the winners of such a competition are automatically enrolled in the civil service, having the position of assistant and a probationary period of up to 18 months. After one year of work, the new employee must successfully pass the exam, according to the results of which he will receive the highest diplomatic rank – attaché. If the exam is unsuccessful for the first time, it is possible to retake it after 6 months. If the specified exam has not been passed successfully the second time, business relations with such a civil servant are terminated without additional warnings. [8].

To become a diplomatic official, you must have the following qualities and meet the requirements:

1. Be a citizen of Bulgaria or the EU;
2. Fluently speak at least 2 foreign languages;
3. Have a master's degree;
4. Be computer literate;
5. Do not have any chronic mental illness [8].

In accordance with article 34, diplomatic employees have a graduation of their morning, which is granted and shows career merit and career growth, in accordance with the very assessment of the employee's performance of his public duties, as well as professional experience (in years, months) in the public service. To get a higher (next)

diplomatic rank, you must complete an internship at the previous rank, which is mandatory.

It should be pointed out that diplomats are not eligible to be involved with any political party or organization during their time in public service [8].

During the entire duration of the diplomatic service period, the civil servant will also receive allowances or additional bonuses, which are calculated separately from salary. The amount of allowances and bonuses depends on the family of the employee and his position or diplomatic rank. This amount is charged and approved by the Council of Ministers.

Also, during service, an employee can additionally receive compensation that covers, in the host country, the tuition fees of his children. [8].

In the legislation of Ukraine, two main forms of protection of rights and intellectual capital should be distinguished:

1. Jurisdictional;
2. Non-jurisdictional [4].

The jurisdictional form is effective when a civil servant submits appeals to state bodies or a court to obtain protection for violation of his rights. These bodies, in turn, are authorized to take all necessary measures to restore the violated rights of a civil servant. Within the framework of this form of protection, it is also necessary to distinguish separately the judicial and administrative procedures for the protection of violated intellectual capital rights.

According to the judicial procedure, the protection of intellectual capital rights and interests protected by law is carried out by the court. The vast majority of such disputes are heard by

local courts. With the consent of the participants, the dispute between them may be referred to the arbitration court. Disputes arising between individuals are considered by local courts.

The administrative form is the administrative procedure for their protection. In this case, the employee sends an appeal to the appropriate state body, in particular, to the State Department of Intellectual Capital of the Ministry of Education and Science of Ukraine, or to the superior body of the defendant, which, if necessary, can provide such protection.

The non-jurisdictional form of protecting the rights of intellectual (in particular, human) capital assumes that civil servants act independently, without appealing to the court or the relevant competent state bodies to protect their intellectual capital rights.

As an example, there may be a refusal to carry out certain actions, as were not indicated when concluding a license agreement, or even a refusal to fulfill all the provisions of the agreement as a whole.

Defined means of self-defense do not have to be contradictory to the laws of Ukraine and in any moral principles. Moreover, the ways to carry out self-defense must be identical to legislative and legal norms, correspond to the rights that are to be violated, and also lead to precisely the consequences that arose as a result of such a violation. The civil servant chooses exactly what way to protect himself, which is indicated by civil law when concluding an agreement and acts.

The following forms of protection of rights can be attributed to the jurisdictional form of protection:

1. civil form;
2. criminal law form;
3. administrative and legal form [4].

Civil law form of protection of intellectual capital rights is, first of all, legal and material measures that are coercive in nature and provided by law. They are called to assist in the recognition or restoration of violated intellectual capital rights, termination of the offense.

Disputes related to the infringement of intellectual capital rights in Ukraine are considered by general, economic and administrative courts. The case is initiated in court on the basis of a statement of claim (in written form) submitted by the person whose rights have been violated. As a rule, lawsuits against an individual are submitted to court related to the place of residence, and against legal entities – at their location. General civil law methods of protection of rights, which also apply to the protection of intellectual capital rights are:

1. substantiation of rights;
2. substantiation of the deal as void;
3. blocking the violating action;
4. restoration of the violated situation;
5. performance of duty, including compulsorily;
6. changes in the legal form;
7. termination of the legal relationship;
8. compensation for property damage;
9. compensation for intangible damage [4].

The court can protect the rights of intellectual capital in another civil law way, established by an agreement or law. This list is supplemented by provi-

sions that relate exclusively to the violation of intellectual capital rights.

The copyright holder of intellectual capital is given the opportunity to choose the method of protecting violated rights. For example, he has the right, at his discretion, to demand either compensation for damages caused, or recovery in his favor of the income received by the offender as a result of the offense, or compensation. If the non-property rights of intellectual capital are instituted, in particular, elements of human capital, then such moral damage is compensated for in money or otherwise [9].

When determining the amount of losses to be reimbursed to a person whose intellectual capital rights have been violated, as well as to compensate for moral damage, the court must proceed from the essence of the offense, property and moral damage caused to the person who is the owner of intellectual capital rights, as well as from the possible income that could would get this face [10].

Thus, we have a number of regulatory and legal opportunities for the protection of intellectual capital, including with regard to the acquired intellectual capital from the diplomatic service of the Ministry of Foreign Affairs of Ukraine.

It should be noted that the human resource of the diplomatic service of the Ministry of Foreign Affairs of Ukraine, which, as noted earlier, is the fundamental component of intellectual capital, practically does not change from year to year, moreover, it is predicted at the level of 2019 and beyond. (Fig. 3)

The Cabinet of Ministers of Ukraine is working on the draft “National Strategy for the Development of the Sphere

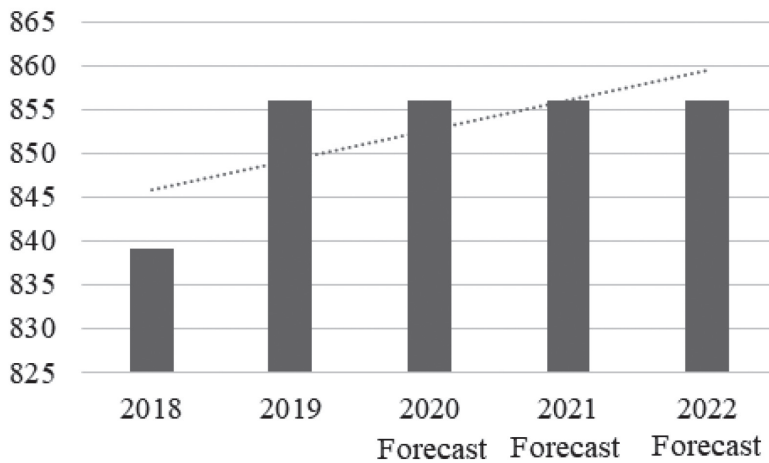


Fig. 3. Dynamics of change in the number of diplomatic staff in state institutions
 Source: [11]

of Intellectual Capital in Ukraine until 2020”, which in the near future will make it possible to raise the economic, legal, institutional and social base to the level of the European Union and will allow full use of intellectual capital products, including in the work of the diplomatic service of Ukraine [12].

The presence of the new national one underlines the desire of Ukraine to strengthen the institution of intellectual capital and moves Ukraine to the legal level of the European Union within the framework of this issue. Work on Nationally. the development strategy of the sphere of intellectual capital is an unconditional continuation of the entire process of improving this sphere of intellectual capital in Ukraine, which took place within the framework of the implementation of the Concept for the development of the state system of legal protection of intellectual capital and is caused by the need for significant changes aimed at using intellectual capital as a strategic resource for increasing the competitiveness of Ukraine’s diplo-

macy and integration of Ukraine into the European Union.

Conclusions. Today, the intellectual capital of the diplomatic service of the Ministry of Foreign Affairs of Ukraine is the basis for high-quality work and, in the end, acts as an aid to the diplomatic service in obtaining the necessary result for Ukraine in negotiations, meetings, discussions. In Ukraine, the activities of the diplomatic service are regulated, in particular, by Law № 7322 “On the diplomatic service”. Unfortunately, this law does not contain descriptions and characteristics that prioritize the development and protection of intellectual, including human, capital of the diplomatic service of Ukraine. Nevertheless, Ukraine has a strong regulatory framework for the protection of intellectual capital rights, the legal resources of which allow a civil servant to protect his rights to human capital. We believe that one of the primary tasks when looking at Law № 7322 “On the Diplomatic Service” is to include in this law specific rules and

regulations for the protection of the intellectual capital of the diplomatic service of Ukraine from various regulatory documents.

Particular attention should be paid to the practice and experience in the protection of intellectual capital in the countries of the European Union. In particular, this applies to Lithuania and Bulgaria. Foreign experience shows that generally accepted international norms have been implemented into national legislation without additional complications, and they confirm their effectiveness.

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