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МІНІСТЕРСТВО ВНУТРІШНІХ СПРАВ УКРАЇНИ
НАЦІОНАЛЬНА АКАДЕМІЯ ВНУТРІШНІХ СПРАВ

# ЮРИДИЧНИЙ ЧАСОПИС
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# Problematic aspects of studying the impact of criminal activity among illegal migrants on organised crime

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**Abstract**
The relevance of this article is justified by the need to analyse the problematic aspects of studying the link between criminal activity among illegal migrants and organised crime. This study aimed to conduct a comprehensive examination of international experience in preventing criminal offences committed by illegal migrants. To achieve this aim, the research employed general and specialised scientific methods, including analysis, synthesis, classification, and grouping, which facilitated the examination of a broad spectrum of academic discussions on the issue. A review of the scholarly literature enabled a critical analysis of the prevailing discourse on the erosion of distinctions between legality and illegality and the decriminalisation of unacceptable behaviour, particularly concerning illegal migrants. The analysis of research findings indicated that criminologists should prioritise the development of an effective state strategy for addressing crime, particularly that involving illegal migrants. Such a strategy would enable the optimal allocation of societal resources for countering criminal manifestations associated with illegal migration. It has been established that a significant obstacle to developing a scientific foundation and formulating such a policy is the lack of objective data, that would enable the construction of an accurate criminological profile of this social group. This is due to the fragmented nature of research on this subject and the absence of studies providing a comprehensive assessment of criminal activity among illegal migrants within specific states or large administrative units. The

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findings of this study may be applied in practice by governmental authorities to enhance migration policy and by law enforcement agencies to prevent criminal activity among illegal migrants

**Keywords:**
illegal migration; illegal migrants; organised crime; interaction; crime prevention

## Introduction

For centuries, migration, including illegal migration, has played a significant role in the development of many social communities in various countries. It can be assumed that addressing migration policy issues will remain relevant in the future, as irregular migration becomes a survival strategy for entire age groups in certain countries (Ikuteyijo, 2020). The researched topic of the connection between organised criminal business and the criminal activity of illegal migrants is relevant due to insufficient study in the literature, which mostly considers the contribution of illegal migrants to crime in general.

Research on the link between migrants and crime was brought into sharper focus by the increase in migration worldwide in the 21st century. In a study by M. Leiva *et al*. (2020), a review of the literature on the connection between the growth of immigrants and crime rates was conducted. The authors found that evidence regarding the link between immigration and crime is contradictory, as some studies find no impact of immigration on crime or only a minor impact on economic crimes, while others find a positive correlation, which is also confirmed by the research of C. Chouhy & A. Madero-Hernandez (2020). The statistical study by M. Leiva *et al*. (2020) on the impact of migrants on crime in Chile showed no correlation between an increase in the number of immigrants and a rise in the level of most types of crime. However, it is worth noting that within such studies, researchers have significantly more data on legal migration, which, with some exceptions, does not allow these conclusions to be applied to illegal migrants. A notable exception is the study by C. Gunadi (2021), which records the absence of a correlation between the growth of crime in the USA and the nearly 11 million undocumented individuals in the country, with the clarification that illegal migration at an early age increases the likelihood of involvement in crime, which is linked to institutionalised crime. However, it is important to point out that conclusions from one country cannot be extrapolated to others. For example, the article by G. Adamson (2020) demonstrates that illegal migrants in Sweden, who make up 10% of all migrants, commit a disproportionate number of crimes relative to their share of the population. The discrepancies in the results obtained may be related to regional specificities, which only emphasises the need for more research in this direction within individual countries.

The importance of researching this topic is evidenced by the results obtained by M. Pocuca & J. Matijasevic (2021) and A. Dyussenova *et al*. (2024), who studied the impact of illegal migration on human trafficking – one of the most dangerous forms of organised crime – and the security challenges in this area within the European Union and Central Asia region, as well as in the context of international security. According to the researchers, one of the most common forms of exploitation of human trafficking victims, linked to illegal migration, is sexual exploitation. Similar studies on the connection between illegal migration and human trafficking were also conducted by K. Kuschminder & A. Triandafyllidou (2020), who documented the formation of organised crime around migration flows from Libya to Italy.

New challenges in combating organised transnational crime require improved cooperation between the police and other government agencies in addressing these phenomena, as well as the implementation of new forms and methods for countering migrant crime, both legal and especially illegal, into the activities of law enforcement and other government bodies. This is supported by the research of M.A. Visser & S.A. Simpson (2019). Using a multi-level event history model, the authors concluded that the adoption of migration policy regulations by county governments is influenced by the racism of immigration discourse and political behaviour at the municipal and state government levels, while the economic characteristics of the local labour market and perceived ethnic competition from migrants have a minor direct impact on the likelihood of adopting migration policies. These findings are consistent with a more recent study by T.C. Kulig *et al*. (2021), which demonstrated that the perception of migrants as criminogenic elements is influenced by racial/ethnic prejudice and the white group's identity on public opinion and justice issues.

Crime and the number of illegal migrants, particularly through the Western Mediterranean route from Morocco to Spain (Fernandez-Sebastian, 2020), are natural problems that require government intervention. M. Neikova (2024) analysed the political measures and socio-economic consequences of illegal migration on Bulgaria's national security. The author highlighted various risks and threats associated with illegal migration and emphasised the need for comprehensive strategies that address both security needs and humanitarian obligations. The article states that illegal migration poses significant risks to Bulgaria's national security, affecting border integrity, economic stability, social cohesion, and international relations.

Yu. Kuryliuk *et al*. (2021) analysed the stages of development of migration policy and legislation in Ukraine during its independence. The authors concluded that, unlike Ukraine, where the fight against illegal immigration is mainly reduced to imposing prohibitions and fines on illegal immigrants, the EU has developed a system of incentives and measures aimed, among other aspects, at supporting the readmission and reintegration of migrants.

Given these trends, this study aimed to analyse existing research to provide an overview of international approaches to preventing criminal offences among illegal migrants. To achieve the aim, a methodology was applied that included a comprehensive approach to the analysis of secondary data. This allowed for the systematisation, generalisation, and critical evaluation of existing knowledge about the relationship between illegal migration and organised crime. The main methods used were the analysis and synthesis of literature and empirical research. The method of analysis enabled the examination of various theoretical concepts explaining the relationship between migration-related crime and organised criminal business, as well as the identification of the main approaches and models used in this field. This helped to structurally organise the review and highlight key thematic areas. The synthesis method, in turn, ensured the integration of the obtained data into a unified conceptual framework, allowing for the formation of a holistic understanding of the phenomenon. Through this method, various studies were combined, general trends in criminal activity among illegal migrants and their impact on organised criminal business structures were identified. Classification and grouping methods facilitated the organisation of materials by areas and types of criminal activity. For the critical evaluation of sources, the method of comparative analysis was used, which allowed for the comparison of different approaches to researching the issue. In combination, these methods enabled a thorough review of existing research and also ensured a critical understanding of the significance of illegal migrant criminal activity for organised criminal business.

## The problematisation of illegal migration in modern public and academic discourse

The problem of immigration policy regarding border security and human rights protection is serious and complex. According to G.R. Musolf (2019), people fleeing persecution find refuge in other countries, and this American tradition has enshrined human values worldwide. The asylum process is complicated by illegal immigration. The surge in migrant numbers has led to controversial policies that have persisted for many years (Anderson & Gerber, 2008). Unlike those who cross the border illegally and remain unknown to law enforcement, anyone who files a positive asylum claim with a U.S. Citizenship and Immigration Services (USCIS) officer undergoes a thorough background check to establish identity and involvement in criminal offences and terrorism.

In turn, M. Mesáros (2021) noted that migration is a problem worldwide and represents not only a huge financial but also a social burden for economically developed countries. At the beginning of 2020, the problem partially receded due to the global pandemic, but it still exists and awaits resolution. Not only EU countries face this problem, but also the USA on the border with Mexico. Regarding EU countries, according to the author, they must quickly find a common solution to protect the countries on the northern Mediterranean coast, where terrorism and organised crime are gaining a new image by penetrating cyberspace, and migrants arriving in EU countries are becoming tools in the hands of organisations from the Arab world.

M.A. Paarlberg (2022) concluded that in countries with counterproductive immigration policies, there is more active activity of transnational criminal organisations that conduct illegal activities in several countries based on a mafia or cartel model. This model represents the most developed form of organised crime: deeply institutionalised, well-resourced, hierarchically structured, highly profitable, and diversified in its criminal activities. According to the author, transnational crime is very diverse in its organisation, activity, scale, and composition of participants. The main type of transnational criminal organisation that does not fit the mafia archetype is the transnational gang.

Having examined the years of the "migration crisis" (2013-2017) in Italy, I. Fontana (2020) concluded that there is a close relationship between migration, criminal groups, and domestic migration control policies. By examining the structure that connects the actions of criminal groups with domestic political processes in migrant-receiving countries, the author concluded that Italian migration policy is shaped by the link between crime and migration. In crisis conditions, this link has taken on new forms, which Italian migration policy has not adequately countered in a timely manner.

The National Intelligence Council (2021) report stated that changing migration flows can contribute to the emergence of certain types of organised crime. Ethnically organised criminal groups typically reach out to members of their own diasporas and use them to strengthen their positions in new regions. Issues of illegal migration related to crime have been constantly considered in recent years. For example, as B. Robert (2021) noted, as early as 2021, the U.S. Supreme Court stated that the Biden administration should have complied with a lower court ruling to reinstate President Donald Trump's policy, which required many asylum seekers to wait outside the United States while their cases were resolved. The administration asked the court to suspend a federal judge's order that the "remain in Mexico" policy, known as the Migrant Protection

Protocols (MPP), be immediately reimplemented. Earlier, U.S. District Judge Matthew Kacsmaryk ruled that the Biden administration had not provided sufficient reason for cancelling the policy and that its procedures for asylum seekers entering the country were unlawful (Alvarez, 2021).

Immediately following the inauguration of the US President on 20 January 2025, Donald Trump signed a new executive order to close the southern US border to illegal migrants, suspending the physical entry of foreign nationals through the southern border. The order calls for immediate reinforcement of measures to combat illegal migration through the country's southern border (The White House, 2025). According to the order, the government is invoking Article IV, Section 4 of the Constitution of the USA[1], which mandates to "protect each of (the States) against Invasion". These legislative changes were deemed necessary following appeals from border states, such as Texas, which had repeatedly requested federal authorities to intensify measures against illegal migration, though no effective actions had been taken. Consequently, the executive order mandates the US Department of Homeland Security, the US Department of Justice, and the US Department of State to take immediate action to deport and repel illegal migrants. It also restricts the application of immigration provisions that would allow illegal migrants to remain in the USA (The White House, 2025).

As a result of their research, G. Murat Kırdar *et al*. (2022) concluded that the study of the impact of migrants on crime rates is mostly conducted in the context of economic migrants in developed countries. However, according to the authors, much less research has been done on the impact of refugees on crime in low- and middle-income countries, the number of which is increasing worldwide. Although these refugees are much poorer than the local population, have limited access to formal employment, and face partial mobility restrictions, the overall per capita crime rate (including locals and refugees) falls with the arrival of refugees, which applies to several types of crime except for smuggling, which increases due to the population influx. Research by X. Del Carpio & M. Wagner (2019) shows that although refugees were legally prohibited from working in the formal sector, many found work in the informal sector of the economy, which resulted in the displacement of low-skilled locals, with statistically significant results showing a negative impact of migrants only on women's employment.

M. Pocuca & J. Matijasevic (2021) noted that the scale and dynamics of migration movements in the 2010s, as well as their connection to numerous types of illegal activity, undoubtedly affect the security of individuals and regions, and also international security, and mainly – the security of the migrants themselves, who become victims of human trafficking. The authors also emphasised the importance of considering whether the European Union, in its attempt to protect the national security of EU member states, hinders migrants arriving in its territories from adapting, as criminal groups of illegal migrants operate most often within the immigrant community.

According to the statistical data of the State Migration Service of Ukraine as of 31 December 2024 (Statistical data, n.d.), the following are registered: 1,464 persons – foreigners and stateless persons recognised as refugees in Ukraine, of which: 1,042 men; 422 women; 1,056 persons – foreigners and stateless persons recognised as persons in need of additional protection in Ukraine, of which: 781 men; 275 women. According to O. Pyshchulina *et al*. (2023), the full-scale aggression of the Russian Federation against Ukraine has created new challenges and threats both for Ukraine as a victim of aggression; and for countries that provide temporary shelter to Ukrainian citizens fleeing the war; for other countries that host Ukrainian refugees. Scholars have examined contemporary processes of forced emigration, considering the Eastern Partnership as an initiative aimed at developing civilised migration processes with EU countries, and concluded that during the full-scale military invasion of Ukraine by the Russian Federation, migration problems are extremely relevant. Large flows of migrants (including internally displaced Ukrainian citizens) significantly impact the crime situation in the country, which in turn creates additional difficulties for the preventive activities of law enforcement agencies. The destabilisation of the economic situation in the country attracts foreigners with criminal intentions for profit through fraudulent operations in the economic and military spheres, drug trafficking, human trafficking, arms trade, and so on. In another study, Yu. Kuryliuk & S. Khalymon (2020) attempted to create a criminological profile of smugglers of illegal migrants in Ukraine. The study covered 360 verdicts from 2013 to 2018 regarding 406 individuals. The results showed that organised crime is associated with this offence in only 8% of crimes, which may be due to Ukraine's lower attractiveness to migrants and, consequently, the lack of demand for smugglers' services.

In his research, D.O. Nazarenko (2013) concluded that there is a close connection between the increase in the number of visiting migrant criminals and individuals who do not have a permanent source of income, the unemployed. Such individuals are in most cases inclined to seek illegal sources of income. The author focused not so much on the quantitative as on the qualitative features of the criminality of foreign visitors, who are characterised by high criminal professionalism and organisation in committing crimes. However, this study

[1] Constitution of the United States of America. (1787, May). Retrieved from https://constitutioncenter.org/the-constitution/full-text.

does not consider inter-ethnic relations and crime rates. For example, according to a study by M. Coutteniер *et al*. (2019), most migrants in Switzerland commit offences against their own ethnic group.

Important features of foreign crime are association on an ethnic basis (Couttenier *et al*., 2019) on an economic basis. Crime among migrants and illegal migrants in Ukraine is a pressing issue that affects public safety and social stability. Research indicates varied trends in this area, particularly regarding crime levels, its structure, and the factors influencing its dynamics. The COVID-19 pandemic and related quarantine measures have significantly impacted migration processes and crime among migrants. According to research by A. Kalinina (2021), in 2020, Ukraine saw a decrease in the proportion of crimes committed by migrants, to 0.5% of the overall crime structure. The level of registered criminal offences committed by migrants decreased by more than 30%, and the number of convicted foreigners decreased by 13.5%. At the same time, the number of detained illegal migrants decreased almost threefold compared to 2019, while the number of registered offences for illegal transportation of persons across the state border of Ukraine increased by more than 10%. According to research presented at a scientific forum on criminology, illegal migration is a significant criminogenic factor that contributes to the growth of crime, the spread of dangerous diseases, and the creation of a shadow labour market (Lutsenko & Tarasiuk, 2021).

Among the main causes of migrant crime are socio-economic factors, legal vulnerability, cultural differences, and discrimination. Illegal migrants often find themselves in a vulnerable position, which increases the risk of their involvement in illegal activities. To reduce crime rates among migrants, it is necessary to improve migration policies, ensure the social integration of migrants, enhance the effectiveness of law enforcement agencies, and conduct public awareness campaigns (Solomko, 2014). Thus, the problem of migrant crime in Ukraine is multifaceted and requires a comprehensive approach that takes into account contemporary challenges and trends.

Although the literature review presented is not systematic, it outlines key directions and approaches to the problematisation of illegal migration in contemporary academic discourse. The analysis demonstrates that the issue of illegal migration is examined through the lens of its impact on the labour market, the scrutiny of public prejudices against migrants, and the evaluation of the effectiveness of government strategies aimed at combating illegal migration and its impact on crime rates. Scholars pay particular attention to the involvement of illegal migrants in organised crime and the possible mechanisms for their social integration or exclusion. Thus, contemporary academic discourse on illegal migration balances between the pursuit of an objective analysis of the problem and the influence of socio-political contexts that determine the direction of state migration policy. However, a more detailed study of this issue is complicated by several factors. Firstly, the presence of public stereotypes and the politicisation of the discourse lead to discrepancies in research conclusions and difficulties in separating real threats from speculation. Secondly, the illegal status of migrants complicates access to reliable data, as they often avoid official contact with state structures and researchers, making their participation in organised crime difficult to accurately assess.

## Problems in developing concepts for preventing migrant crime

The effectiveness of preventative measures against migrant crime largely depends on the systematic interaction between prevention agencies, the implementation of joint preventative actions, the exchange of operational information, and the holding of coordination meetings to develop unified, agreed-upon strategies. The cooperation of law enforcement agencies with the migration service and other government bodies, as well as scientifically grounded concepts for preventing illegal migrant crime, are of particular importance in the fight against migrant crime. The formation of these concepts requires both the aforementioned cooperation and a systematic approach to data collection, which would allow for the development of victimological forecasting practices for this social group.

Regarding the difficulties in identifying migrant criminals and implementing preventative measures against them, these lie in the specific nature of certain groups of temporary migrants who do not officially re-register their place of residence. In this regard, it is worth mentioning the views of O. Frolova (2003), who rightly noted the importance of studying the contingent of "visiting" migrants who influence the criminogenic situation in the region, and proposed investigating their commission of offences according to two criteria: the place of commission of the crime and the permanent place of residence of the offender. In case of discrepancy between these criteria, a person who committed an offence outside the country where they are registered is classified as a "visiting" criminal. The author also identifies migrant criminals who do not belong to the "visiting" category, as they have officially registered in the host country, and therefore, from a formal legal standpoint, should be considered local residents.

It is necessary to note that as of 2025, the distinction of crimes committed by "visiting" migrants into a separate category has certain criminological significance, as a whole range of new economic, social, political, and ideological problems arise, including those related to international legal aspects: the status of foreigners on the territory of the state, ensuring their

safety, place of residence, and so on. The impact of illegal migration on crime must be considered through the lens of the latency of migrant crime because it is often actually recorded as the crime of illegal migrants only upon the detection of the crime and the identification of the perpetrators, that is after it is established that the perpetrator is a migrant. Migrants who influence the criminogenic situation in the country need to be studied according to certain types: their composition; the motivation and purpose of their arrival; duration of stay; and demographic, ethnic, and social characteristics. It is also necessary to consider the specifics of regions and the scale of the influx of visitors, in particular, large cities have always been the most attractive to migrants.

Victimological forecasting of criminal offences by foreign nationals is based on two main methodological principles. The first is the recognition of the objective nature of negative social processes that determine victimological phenomena. The second principle is based on the recognition of the primacy of the subjective factor in the development of victimological forecasting and the system of victimological crime prevention, that is the purposeful activity of a person, taking into account accumulated scientific (victimological) potential and moral values, as well as the ability to choose specific guidelines for the development of a system for preventing criminal offences. It is noted that one of the principles of victimological forecasting is the principle of clearly defining the status and characteristics of the victimological object of forecasting (Nikitin *et al*., 2018).

Victimological forecasting includes: analysis of pre-prognostic and prognostic background; study of the victimological problem in theory and the situation in the practice of victimological crime prevention; defining the goals and objectives of specific forecasting; formulating hypotheses of victimological forecasting; conducting a pilot study; forming the conclusions and proposals obtained. The effectiveness and reliability of forecasts are determined by many factors, including the study of victimological phenomena and processes; the choice of the main victimological determinants, determining their role and significance in society; compiling a comprehensive multilevel forecast both in general about victimisation and for its individual types; the depth and objectivity of victimological analysis of initial information. This is facilitated by: the development of victimological crime prevention programs; the implementation of victimological forecasting through situational victimological centres (Golina *et al*., 2017); the implementation of forecasts through the victimological service; and the provision of forecasts to the Ministry of Internal Affairs of Ukraine.

Victimological forecasting is based on the calculation of the possibilities of mass victimisation in the future under the influence of both objective and subjective victimological determinants. Victimological phenomena and processes are largely determined by the inevitable development of society. This allows, based on victimological modelling, to predict the victimological future. An ideal victimological forecast is one for which a database of victimological indicators collected by the victimological service with the participation of situational victimological centres is used (Dzhuzha *et al*., 2020).

As successfully noted by researchers T.V. Korniakova *et al*. (2016), victimological modelling is the basis of victimological forecasting because a predictive model is a model of the object of victimological forecasting, the study of which allows to obtain new victimological information about the possible states of the object of victimological forecasting in the future. It is obvious that a law-abiding state is obliged to direct its efforts to the creation of a migration victimological service, which, in cooperation with law enforcement agencies, will carry out continuous victimological prevention.

The systematic practice of such victimological forecasting could be the scientific basis for the Concept of Targeted State Migration Policy of Ukraine. According to the data obtained and victimological modelling, it would be possible to substantiate both possible liberalisation and anti-crisis measures, for example, strengthening the punishment of employers who hire illegal migrants, for example, depriving them for five years of the right to participate in public tenders or receive subsidies, and revoking licenses to engage in certain commercial activities.

In preventing criminal offences by migrants, especially those of a transnational nature, Interpol and Europol provide significant assistance (Serova, 2004). They conduct direct contact with foreign colleagues regarding the search for criminals, their extradition, and other legal issues. Also, the National Bureau of Interpol has information useful for the preventive activities of law enforcement agencies, because to achieve positive results in preventing criminal offences by migrants, quality information support is necessary. In this regard, it is necessary to create a unified centralised database that contains the necessary information on the prevention of criminal offences by migrants. The analysis of activities to prevent criminal offences by migrants involves the need to develop special targeted plans, and programs for the application of preventive measures in this area, taking into account the financial and material resource support for the implementation of such programs (Hailu, 2024).

Migration victimological policy, in the apt opinion of V.V. Vasilevych (2020), will be possible only when science accumulates reliable victimological information about the current criminal situation, scientifically grounded knowledge about the interdependence of criminological and victimological factors, provided that effective methods are developed to reduce and prevent the harm caused to society by migrant crime, especially illegal migrants.

Regarding the regulation of migration policy in the area of ensuring a secure environment and preventing criminal offences committed by illegal migrants, M. Pocuca & J. Matijasevic (2021) noted that a mandatory condition for establishing a common movement regime within the entire European Union is, among other things, the adoption of the *acquis communautaire*. This means that each member state must take responsibility for controlling its immigration policy and thus contribute to the stability of immigration movement throughout the European Union, which has long been very important for member states from a purely security point of view. The long-standing concern in this segment actually relates to the ability of new member states to control migration movements within their territories.

## Conclusions

The subject of this study was to examine the link between illegal migration and crime, as well as the role of organised criminal business in these processes. The research focused on analysing contemporary academic approaches to the issue and the challenges in preventing crime among illegal migrants. The study found that the problem of illegal migration and crime is multifaceted and has significant regional specificities. An analysis of academic literature indicates that scholars do not have a unified view on the direct link between migration and crime rates: some studies confirm an increased level of criminal activity among illegal migrants, while others emphasise the socioeconomic aspects that play a key role. Particular attention was paid to the issue of the involvement of illegal migrants in organised crime, particularly in the areas of human trafficking, smuggling, and drug trafficking. In addition, the study demonstrated that state migration policies significantly affect the scale of crime among migrants: more repressive strategies can lead to the marginalisation of illegal migrants, which contributes to their involvement in criminal structures.

The literature review revealed that the issue of illegal migrant crime is considered through the lens of social, economic, and political factors. The analysis shows that the criminalisation of illegal migrants in public discourse is often based on stereotypes, which influence migration policies and law enforcement practices. At the same time, studies confirm that the involvement of illegal migrants in criminal activity largely depends on state integration mechanisms or their absence. Particular emphasis was placed on the importance of improving international cooperation in the fight against organised crime related to illegal migration. Despite the significant volume of studies reviewed, aspects such as the impact of illegal migration on specific types of crime in individual countries, as well as the effectiveness of alternative approaches to integrating migrants into host societies, remain understudied. Further research should focus on expanding the empirical base and analysing the long-term impact of state migration strategies on crime rates, which will allow for the scientific substantiation of new and more effective concepts for preventing migrant crime.

All of the above indicates the need to continue international criminology, including comparative legal studies, which compare both the crime of different countries as a whole and its individual types. In this sense, criminology can become a general theoretical basis for the sciences of the criminal law cycle.

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## Conflict of Interest

None.

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# Проблемні аспекти вивчення впливу кримінальної активності нелегальних мігрантів на організовану злочинність

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**Анотація**
Актуальність статті обґрунтована необхідністю аналізу проблемних аспектів вивчення зв'язку кримінальної активності нелегальних мігрантів з організованою злочинністю. Метою статті було комплексне дослідження міжнародного досвіду у сфері запобігання кримінальним правопорушенням, вчинюваним нелегальними мігрантами. Відповідно до поставленої мети в статті використано загальні та спеціальні методи наукового пізнання, серед яких: методи аналізу, синтезу, класифікації та групування, які надали можливість опрацювати широкий спектр наукових дискусій з порушеної проблематики. Аналіз наукової літератури допоміг критично проаналізувати представлену в публічному дискурсі думку щодо нівелювання відмінності між законністю та незаконністю, декриміналізації неприйнятної поведінки, зокрема нелегальних мігрантів. За результатами огляду наукових досліджень встановлено, що головним завданням кримінологів має стати розроблення ефективної державної стратегії впливу на злочинність, зокрема нелегальних мігрантів, що надало б можливість максимально результативно розподіляти ресурси суспільства для протидії злочинним виявам, пов'язаним, зокрема, з нелегальною міграцією. Встановлено, що перешкодою для формування наукової бази й напрацювання такої політики є брак об'єктивних даних, які надали б можливість скласти точний кримінологічний портрет цієї соціальної групи. Це спричинено фрагментарністю досліджень із цієї тематики й відсутністю студій, у яких було б надано комплексну оцінку кримінальній активності нелегальних мігрантів у межах окремих держав чи великих адміністративних одиниць. Результати дослідження може бути використано на практиці в діяльності державних органів для ефективного забезпечення міграційної політики та правоохоронних органів у запобіганні кримінальній активності нелегальних мігрантів

**Ключові слова:**
нелегальна міграція; мігранти-нелегали; організована злочинність; взаємодія; запобігання правопорушенням

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# The role of the concept of "legal awareness" in the study of delinquent behaviour

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## Abstract
The relevance of this study is determined by the urgent need to eliminate factors contributing to the distortion of legal awareness and unlawful behaviour. This article aimed to examine the relationship between the concepts of "legal awareness" and "delinquent behaviour" and to initiate a scholarly discussion on the theoretical foundations of effective approaches to addressing the distortion of legal consciousness and preventing delinquent behaviour. The methodological framework of the study is based on sociological, phenomenological, and synergetic approaches, as well as formal-logical, systemic, and structural-functional methods. The study explore how the interaction between an individual's inherent characteristics and the social environment determines the level of legal awareness and, consequently, the nature of human activity, including legal activity. The formation of delinquent behaviour is largely influenced by the combination of internal factors, such as an individual's moral and psychological state and distorted legal consciousness, and external factors, including motives, causes, and conditions. Legal awareness and an individual's value orientations are examined as factors in fostering legal activity and legally significant behaviour. These elements constitute a distinct set of personal attitudes shaped by motives, goals, and needs. The study theorised the role of conviction in the necessity of complying with existing legislation as a key determinant of legal behaviour and its relationship with other components of legal culture. It is demonstrated that legal behaviour depends on and can only develop based on legal knowledge and a high level of legal awareness. Given this interdependence, delinquent behaviour prevention is considered concerning such concepts as human and citizen rights and freedoms, social inequality and injustice, and corruption. The practical significance of the article lies in its provision of specific, scientifically grounded proposals and recommendations that can be applied in empirical research on delinquent behaviour prevention

**Keywords:**
crime; offence; law; legal attitude; distortion; motive

## Introduction
The protracted reformation of the socio-political system in post-Soviet states, coupled with socioeconomic crises across Eastern Europe, has placed significant strain on populations and democratic institutions. Corruption remains rampant in post-Soviet countries (In Ukraine, the second..., 2024), accompanied by economic decline, socio-economic inequality, and human rights violations (NISS, 2024). The crisis within the social sphere contributes to the formation of a conflict-prone environment (Kizilkaya, 2021). All of these

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factors provoke the distortion of legal awareness and delinquent behaviour, which undermines national security and poses a substantial threat.

A perspective exists that delinquent behaviour may stem from a complex interplay of factors, including individual, group, and societal legal awareness, social contradictions, and more. However, this assertion requires further theoretical substantiation and empirical validation, particularly in light of the crisis of classical approaches to understanding the origins of crime. The claim that preventing the consequences of offences necessitates the elimination of their causes and motives sparks debate, especially regarding the feasibility and effectiveness of completely eradicating such factors in contemporary societies. Within theoretical discussions, considering these factors in law-making, law enforcement, and preventive activities can be understood as contributing to the optimisation of the formation of a rule of law state, ensuring national security, and realising human rights. To prevent such expectations from becoming overly idealised, given the complexity of social processes and the limitations of existing legal regulatory tools, a theoretical verification of the conceptual foundations of these discussions is necessary. These conceptual foundations are the concepts of "legal awareness" and "delinquent behaviour". Further research is also needed into the relationship between the understanding of prevailing societal attitudes and the ability to predict offences, as reflected in the articles of certain scholars, such as T. Raymen (2016). A systematic analysis of the factors influencing crime could potentially yield practical benefits, although its effectiveness and comprehensiveness remain debatable.

The driving factors behind deviant, including delinquent, behaviour have been analysed by G. DeAngelo *et al*. (2017), who substantiated the idea that in combating such behaviour, policies aimed at influencing social norms may be more effective than sanctions. The relationship between violence, deviance, and crime was investigated by J. Regalado *et al*. (2022), who concluded that crime and violence create stressful conditions and induce changes in human behaviour. Deviant behaviour in the workplace was analysed by I. Načinović Braje *et al*. (2020), who identified personality traits and examined the organisational culture within institutions and enterprises that contribute to deviant behaviour. A relevant example of research into the causes of criminal behaviour in the context of socio-environmental and psychological factors is the study by Ž. Bjelajac (2024). The impact of social factors on the behaviour of offenders was also analysed by T. Yanovska (2023) and R. Abhishek & J. Balamurugan (2024), who concluded that to reduce crime, it is necessary to create conditions that facilitate the satisfaction of basic human needs and enhance legal awareness. Personality traits indicating a risk of committing offences were identified by N.K. Tharshini *et al*. (2021), including psychopathy, low self-control, and difficult temperament.

Another dimension of the discussion is presented in the research of Ya.S. Bohiv (2022), who examined the role of legal awareness in building a rule-of-law state. The study concluded that legal consciousness is an ideological category that underpins the guarantee and observance of human and citizen rights and freedoms, the protection of legitimate interests, and the unconditional fulfilment of legal obligations.

The study of this author is a significant contribution to the development of theories that assert that positive results in curbing criminal behaviour can be achieved through rational social policy. In the empirical realm, it should be noted that the level of research on these specific factors is currently insufficient.

This research aimed to conduct a general theoretical analysis of legal awareness as a factor in delinquent behaviour, as well as the specification of ways to overcome the distortion of legal awareness, as one of the ways to prevent offences. The research objectives were:

- to identify the main approaches to understanding legal awareness in the context of the study of delinquent behaviour;
- to analyse the theoretical and methodological problems that arise in studies of legal awareness and its impact on delinquent behaviour;
- to assess the current state of research on the problem and identify prospects for its further development.

The methodological basis of the article was comprised of hermeneutic and contextual methods. These methods were applied to elucidate the essence of the constructs "legal awareness", its components, the essence of "delinquent behaviour", its distinction from "deviant behaviour", and its connection to other concepts. The utilisation of the laws of formal logic, primarily contradiction, identity, sufficient reason, etc., contributed to the definiteness, consistency, and validity of the conclusions. The systemic method was employed in the process of analysing the components of the concept of "legal awareness" in contemporary scientific research, as well as the phenomena and processes that are identified as factors influencing each component. The phenomena and processes under investigation are considered in their interconnection and interdependence with the surrounding environment against the backdrop of which the system functions. The systemic approach required, in the analysis of system elements, an emphasis on their significance for the system as a whole, on the functions that the elements perform in the system, and on the connections and relationships between the elements of the concepts. At the same time, the conceptual framework of this study is shaped by the principle of the priority of the whole over the part (Tymoshenko, 2024), aligning with a sociological approach rooted in the principle of social determinism.

## Defining the scope of the concepts of "delinquent" and "legal awareness"

The term "delinquent" (from the Latin *delinquens* – one who commits an act) refers to a subject whose "deviant behaviour, in extreme manifestations, constitutes criminally punishable actions" (Shapar, 2007). The consequences of such behaviour affect the life of an individual and society, hinder the sustainable development of the country, violate existing legislation, create obstacles to the realisation of human and civil rights and freedoms, undermine the authority of the state at the international level, and pose a threat to national security.

The concepts of "delinquent" and "delinquent behaviour" are employed in general Legal theory, Criminology, Sociology, Pedagogy, Psychology, Social pedagogy, and other fields of knowledge. Initially, the term "delinquent" was used with meanings such as "a person who has committed an offence", "a person who fails to fulfil a legal or contractual obligation", and even "a rebel". Later, it began to be used more broadly, also denoting persons with any unacceptable, unlawful, or culpable behaviour. This term is also used as a "neutral" or "politically correct" alternative to avoid synonyms with negative connotations (such as criminal, thief, or fraudster) if they are perceived as discriminatory or overly derogatory (Blaha, 2019). Examples of delinquent behaviour include administrative offences, disciplinary infractions, and criminal offences, which are divided into criminal misdemeanours and felonies. Delinquent behaviour differs from deviant behaviour (from the Latin deviation – *deviation*), which encompasses acts that contradict the rules of conduct that have developed in a particular community (customs, traditions, moral norms), and significantly deviate from generally accepted standards and norms. That is, the concept of "deviant behaviour" is broader (Tymoshenko & Korolchuk, 2023).

Legal awareness is an attribute, a component of the legal life of society, and the most important category of legal culture. Law and legal awareness are phenomena that are inextricably linked. Being a correlate of law, legal awareness acts as a form of awareness as a specific phenomenon of social reality and an "equivalent for the legitimacy of law" (Horák *et al*., 2021). Legal awareness can be considered as a system of knowledge about law and the proper order of legal regulation. It is also a reflection in people's minds of legal phenomena and ideas about the proper legal order, a psychological reflection of state-legal reality. At the same time, it is also a consequence of such reflection. It can be said that "legal awareness is a belief in the values contained in humans about the law" (Haitao, 2022). Legal awareness is also a person's attitude to existing law, people's attitude to the behaviour of other people, and people's attitude to their rights and obligations. Hence the multi-level nature of the spheres of its implementation, which include both legal knowledge and legal assessments, as well as the specific historical practice of implementing legal relations. At the same time, legal awareness is part of the theoretical triangle "legal awareness – legal values – legal behaviour" (Nelken, 2017), in which it occupies the place of intellectual, as well as emotional and value perception of information about legal reality.

Considering these semantic boundaries, within contemporary legal theory, legal awareness partially encompasses legal psychology and legal ideology. Legal psychology is the collection of feelings, moods, emotions, experiences, skills, and habits through which various social groups, as well as individuals, express their attitudes towards legal phenomena. This includes, for example, a sense of justice, attitudes towards arbitrariness, lawlessness, crime, corruption, and so on. Legal psychology, as the lower level of legal awareness, is formed spontaneously, under the influence of people's direct life experience, the actual practice of legal relations that arise from the inevitable encounter with legal phenomena. The legal knowledge acquired at this level is disorganised and unsystematic.

Legal ideology, which aligns with the theoretical level of legal awareness, constitutes a framework of legal ideas, viewpoints, and theories that either justify the necessity of specific legal norms or demonstrate their illegitimacy (Martyniuk, 2019). This extends beyond mere spontaneous knowledge to encompass a value-driven system that facilitates a profound comprehension of legal phenomena, elucidates the internal mechanisms of legal regulation, or substantiates alterations conducive to the practical realisation of particular value orientations (Adam & Sen, 2021). At this echelon, a complex of legal sciences is formulated, and empirically validated recommendations are devised for legislative and law enforcement agencies. As astutely observed by A. Halpin (2013), any legal theory purporting to expunge ideological content from legal practice is merely a veiled manifestation of an alternative ideological paradigm. It is imperative to underscore that the dichotomy between legal psychology and ideology exists solely within the realm of abstraction. Analogous to the intrinsic unity of emotions and intellect, the structural constituents of legal awareness, predicated upon these foundations, are intrinsically and dialectically interconnected.

An individual's legal awareness manifests its substantive content through legal, or legally significant, behaviour (Savchenko, 2020). The behavioural, practical components are predominantly evident in individual legal awareness, which harmonises the fulfilment of an individual's needs in specific life scenarios with legal norms. The behavioural components of legal awareness that influence an individual's legal conduct encompass legal attitudes, personal value orientations, convictions, goals, and motives.

An attitude is conventionally defined as the primary, initial response of a subject to the influence of a situation necessitating problem formulation and

resolution, reflecting a readiness to act in the presence of an immediate need and an objective situation. Attitudes can be either conscious or unconscious. Legal attitudes, as a structural element of legal awareness, are manifested through active engagement with the law, directly characterising the cognitive-evaluative and regulatory-formative mechanisms of legal awareness. Serving as a crucial target orientation, they stimulate legal activity, prompting legal subjects to engage in legally significant behaviour.

"Legal attitudes are the basis for legal value orientations" (Shulga, 2022). They possess a complex structure encompassing emotional, rational, and behavioural components. However, a legal attitude can only function as an effective internal driver if it is grounded in legal knowledge, positive legal sentiments, skills, and competencies. Collectively, these elements ensure readiness to engage in activities aimed at realising the law. A legal attitude can manifest as either a reluctance on the part of the subject to assert their lawful rights or a deliberate violation of existing legal prohibitions. The subject may acknowledge the illegitimacy of their actions, the social conditioning of laws, their objective expediency, and their alignment with personal interests, in addition to societal interests. Nevertheless, an individual's internal intuition, akin to their system of moral values, may not consistently orient towards socially beneficial conduct.

Value orientations constitute a unique complex of personal attitudes, formulated based on an individual's motives, goals, and needs (Kyslynska, 2015). Value orientations are manifested in conjunction with a worldview, enabling individuals to formulate a subjective stance towards their surrounding reality. It is these personal value orientations that dictate an individual's disposition towards legal reality. In this context, the law may serve as an instrumental value for an individual. In other words, under specific circumstances, it is valued because it facilitates the realisation of other personal values, such as material well-being. The law may also possess intrinsic value for subjects, as it fosters the stability of social relations and the proper realisation of human and civil rights and freedoms.

The primary factor influencing the formation of lawful behaviour is the conviction in the necessity of adhering to existing legislation, which is formed based on legal knowledge and a high level of legal awareness. Legal convictions are internally perceived and assimilated legal views that generate a readiness to act. "Awareness of the law and following the rules are two factors that contribute to law-abiding conduct. The emergence of legal consciousness stems from people's abstract concepts of the equilibrium between desired order and peace. There is a strong association between legal awareness and other values, including those of a social, political, economic, and legal nature" (Dong & Zeb, 2022). The formation of legal knowledge is one of how the level of education influences the reduction of crime rates (Hjalmarsson & Lochner, 2012).

Human legal awareness and legal behaviour, through a sociological approach, are linked to the concepts of "social justice/injustice" (Kearns & Sarat, 2009). The substantive basis of social injustice is formed by unjust, primarily unequal, social relations that provide advantages to certain individuals or communities, thereby degrading the human dignity of other individuals and communities and violating human rights. Important determinants of social injustice include the immorality of subjects' behaviour, egoism, aggressiveness, the dehumanisation of power, legal, political, and economic relations, low levels of social responsibility, and the understanding of freedom as a personal license. In general, the phenomena of justice and injustice at the level of individual consciousness and behaviour are extremely contradictory, a complex interplay of positive and negative aspects, vulnerability and human resources. The foundations for understanding injustice can be ideological or purely emotionally motivated, based on the set of values and orientations characteristic of an individual, a specific group, or society as a whole.

External circumstances, such as poverty and social inequality, also influence legal awareness and legal behaviour. According to the World Bank, the world is currently experiencing the largest increase in global inequality and poverty since the Second World War (Topchii, 2023; Abramova, 2023; Due to the war…, 2023). Social inequality and injustice are one of the causes of delinquent behaviour (Anser *et al*., 2020). High levels of poverty and unemployment tend to increase crime rates in a country (Stasiuk, 2022; Kostenko, 2023). The material situation of a legal subject is important, as is the social and (real or perceived) marginalisation of the population, especially those who have served sentences of imprisonment (Bedaso *et al*., 2020). The main role in the mechanism of unlawful behaviour belongs to individual legal awareness, which is a collection of legal and moral ideas formed over time with the decisive participation of a person's personal qualities.

Goals and motives are important components of individual legal awareness. A goal is what one strives for; it regulates human activity. Goals are formed when there is a need and interest. A goal, as a behavioural component of legal awareness, is a mental model of a future outcome. A motive is an incentive, a reason for any action. In the sphere of individual legal awareness, a motive is an internal impulse that evokes a readiness for activity. Motives can be positive (e.g., the realisation of rights) and negative (e.g., the desire to enrich oneself by committing a crime). Personality traits, such as a tendency to solve problems violently, a lack of empathy for others, and narcissism, are conditions of unlawful behaviour. In particular, narcissism, according to E. Jauk & P. Kanske (2021), is "associated with both grandiose

self-assuredness and dominance, as well as vulnerable insecurity and reactivity".

Legal awareness is of particular importance for the realisation of rights and freedoms, as the internalisation of the necessity to comply with legal norms, which becomes an internal attitude of the individual, is a factor that deters a person from unlawful behaviour and becomes an important element in crime prevention (Cheung & Jia, 2024). The forms of expressing legal awareness can vary: recognition, respect, compliance with legal norms, views and beliefs that aspire to be implemented in legislation, criticism of existing legislation, objections to certain provisions, protest that escalates to rejection and even resistance (if existing legislation violates human rights). This latter form falls under the category of distorted legal awareness.

Distorted legal awareness refers to a complex of negative changes in an individual's consciousness, views, beliefs, and ideas regarding the law, which are conditioned by the surrounding legal reality (Melnyk, 2019). Under its influence, the bearers of legal awareness develop ideological and psychological stereotypes that express a negative, biased attitude towards existing law, which manifests in behaviour. Distorted legal awareness can be a driving force in the formation of delinquent behaviour, which is most dangerous to society because it contradicts legal norms. In general, certain factors cause the behaviour of a legal subject to become delinquent, namely: external natural conditions of the environment in which a person lives and is influenced (these are influenced by climatic, geographical, and ecological features); social factors formed by the community to which a person belongs (this includes the influence of education, nationality, moral atmosphere in society, political processes in society and the state, etc.); internal biological characteristics of the individual that determine the strength and nature of a person's reactions to any environmental influences (gender, age characteristics, health status, etc.); personal psychological characteristics of a particular individual, such as impulsiveness, recklessness, etc.

## Overcoming distorted legal awareness

There are several well-known types of distorted legal awareness: legal fetishism (a biased attitude towards the law and its role in solving the problems of the state and society); legal infantilism (lack of information in the field of law); legal dilettantism (a careless attitude towards the law and legal values without mercenary or criminal intent); transformation of legal awareness (this is the maximum change and perversion of legal awareness, which involves achieving a criminal goal); legal nihilism (a conscious disregard for existing legislation, uncertainty in the ability of the law to fulfil its main task – the regulation of social relations) (Mukhin, 2007). A common form of distorted legal awareness is legal nihilism. This is a direction of socio-legal thought that denies the social value of law, cultivates a negative attitude towards it, especially intensifying during crisis periods of social development. The most negative result of distorted legal awareness, which manifests itself in concrete actions, is the commission of a crime. Therefore, activities to raise the level of legal awareness, to educate a person in attitudes of respect for the law and the law, will be an effective component of a comprehensive approach to the prevention of offences.

One of the most crucial directions in overcoming the distortion of legal awareness is raising the level of legal culture within the population, cultivating an internal need to comply with legal requirements and fostering socio-legal activity. The term "legal culture" denotes "a system of spiritual values created by the activities of legal subjects, functioning as a form (method) of implementing the progressive legal development of individuals, humanity, and the social conditions of their lives" (Makarenko, 2019). Essentially, it represents the qualitative state of legal life within a society, manifested in the corresponding level of development of legal reality, law-making, law implementation, and law enforcement (Szilágyi, 2023). Simultaneously, it is a value-normative system oriented towards legal convictions and perspectives that facilitate the understanding of the law and the ability to implement it correctly. An individual's legal culture comprises legal education, legal awareness, a profound understanding of legal principles, and confidence in the justice of laws, legal rights, and duties. A high level of legal culture contributes to achieving peace, stabilising the socio-political situation in a country, and success in combating corruption, particularly in ensuring the punishment of corrupt individuals.

Reducing the level of distorted legal awareness will also be facilitated by social and normative education, which is a comprehensive process that includes, in addition to legal education, moral, labour, physical, and aesthetic education, aimed at forming a harmonious, comprehensively developed personality as a key unit of society. It also involves stimulating the active position of the individual, developing in them a sense of positive legal responsibility, which helps to resist nihilistic attitudes in society and defend their own civic position. Social and normative education is not limited to the legal aspect. It also includes moral, labour, physical, and aesthetic education, which together contribute to the formation of a holistic understanding of values, norms, and rules of behaviour in society. Legal education is an integral part of social and normative education. It involves the formation of legal culture, respect for the law, and awareness of their rights and duties among citizens. Legal education contributes to the development of critical thinking, the ability to analyse legal situations, and make informed decisions. Moral education is aimed at forming moral values in a person, such as kindness, honesty, justice, and responsibility. Moral values are the foundation of legal awareness, as they

determine a person's attitude towards the law and their willingness to abide by it. Labour education fosters diligence, responsibility, and discipline. These qualities are important for the successful socialisation of an individual and their integration into society. Physical education aims to strengthen a person's health and develop their physical abilities. A healthy person is more active, energetic, and able to resist negative influences. Aesthetic education fosters a sense of beauty and develops creative abilities. Aesthetic education helps a person see beauty in the surrounding world and strive for harmony. An important aspect of social and normative education is the stimulation of an individual's active position and the development of a sense of positive legal responsibility. A person who is aware of their responsibility for their own actions and is willing to participate in society is less prone to delinquent behaviour. Social and normative education helps a person resist nihilistic attitudes in society and defend their own civic position. It contributes to the formation of an active life position, a willingness to fight for their rights and interests, as well as for the interests of society as a whole.

The specificity of legal awareness in offenders lies in the absence of generally accepted moral concepts and the presence of exclusively negative attitudes. An offender's knowledge of legislation is unsystematic and chaotic, based on personal experience or the experience of those in their social circle. By their behaviour, an offender denies a specific legal norm or group of norms that protect the social relations they have violated (Shimotsukasa *et al*., 2019). In this case, the preventive role of the law does not achieve its intended goal. Even if an offender perceives the existing legal norm under which they were convicted as "correct" and "just" in an abstract sense, they still consider the sentence unjust in their own case. It is the defects in legal awareness in the sphere of perceptions about criminal law that determine an individual's unlawful behaviour. Any defect in legal awareness, regardless of the sphere in which the offence is committed, is determined by an individual's attitude towards the law. Deviations in the legal awareness of offenders are most evident when they choose a particular course of action in a conflict. Moreover, antisocial groups have effective mechanisms for rewarding offenders, which reduces internal tension and allows them to feel part of something larger, achieve certain successes, and self-actualise. Criminal methods of self-actualisation, actively reinforced by the antisocial group, become the norm of behaviour, which is the final stage in the formation of a criminal personality. The chosen mode of behaviour demonstrates a distorted value system, in which legal principles are far from taking priority.

Legal education contributes to raising the level of legal awareness and preventing delinquent behaviour by reinforcing behavioural models in people's minds that need to be followed and respected (Adamski & Florczak, 2022). Legal education of the population in a criminological context is a targeted process organised specifically to achieve law enforcement goals. At the same time, it is a system of measures carried out by the state, citizens, and other organisations to form a positive legal awareness and legal culture of the individual and society as a whole. The goal of legal education is usually to raise the level of legal awareness and legal culture of an individual, public organisation, and society as a whole. That is, the goal of legal education integrates personal, social, state needs, and interests. In general, legal education of the population is carried out in the following main forms: using the capabilities of the mass media; working with small social groups; individual work with a citizen and their microenvironment (family). Methods of legal education can be: persuasion, assistance, encouragement, education, suggestion, and creating situations that promote education. Individual legal education measures are designed not only to eliminate or correct negative personality traits, to provide the necessary knowledge to ensure their own safety and reduce victimisation, but also to gradually form qualities that can ensure consistent adherence to social norms and rules.

Individual legal education is typically carried out for the following categories of individuals: persons with increased victimisation due to their behaviour, lifestyle, or physical or mental characteristics; actual or potential victims of crime; persons who systematically consume alcohol; pensioners, minors, people with disabilities, and certain other vulnerable categories of the population; schoolchildren and students; homeless people; minors detained in special institutions; persons who have been brought to administrative or criminal responsibility, persons who violate their duties to raise children; the social microenvironment of the above categories of persons. To obtain positive results from the process of legal education, it is necessary to consider the relationship between law and legal awareness. It is also important whether society or a specific individual treats the law as a value.

## Conclusions

Thus, in contemporary research, "legal awareness" is a concept understood as a conscious-volitional and intuitive (unconscious) environment in which the law is comprehended, and motives and impulses for legally significant behaviour are formed. Legal awareness is determined by external objective conditions and internal personal factors, individual psychophysiological characteristics, and the socio-cultural level of an individual. Research may conflate these levels, leading to inaccuracies in the interpretation of results. Value orientations, which reside within the structure of an individual's motivational sphere, play a significant role in this process, determining their activity in the legal system. The degree of actualisation of legal values at the

societal and individual levels is a determining factor in the dynamics of legal awareness and legal behaviour. Social inequality and injustice, as well as corruption, not only lead to a decline in the quality and standard of living of the population but also to an increase in the destructive and pessimistic potential of public consciousness, and distortions in value orientations and legal awareness. This poses a significant threat to the spread of delinquent behaviour and crime. Studies often focus on individual aspects, which complicates a comprehensive assessment of the impact of legal awareness on delinquent behaviour.

Research indicates that legal behaviour depends on the level and direction of legal awareness, which acts as a powerful behavioural regulator. The presence of distorted legal awareness is a significant risk factor for delinquent behaviour. The unity of natural characteristics and the social environment determines the level of legal awareness, and therefore the nature of human activity, including legal activity. Legal awareness is not a static formation; it changes under the influence of social, economic, and personal factors. Studies that do not take this dynamic into account may miss important aspects of the impact on behaviour. An important factor influencing the overcoming of delinquent behaviour is the conviction of the need to comply with the law, which can only be formed based on legal knowledge and a high level of legal awareness. An effective system for preventing delinquent behaviour is understood as one that should provide for the creation of conditions for the realisation of human and civil rights and freedoms, the formation of an effective, "just" system of sanctions that stop and punish violations of existing legislation, raising the level of legal culture and legal awareness, and focusing on the legal education of the population.

In contemporary studies of delinquent behaviour, a close relationship is observed between the concepts of "legal awareness" and "justice", which shapes the interpretive frameworks of these studies. These interpretive frameworks are defined by analysing legal beliefs, social norms, and the mechanisms of socialisation of the individual within the context of law and order. Legal awareness is often equated with legal culture, legal attitudes, or value orientations. This blurs the boundaries of research and complicates the comparison of results from different articles.

New approaches to organising the prevention of delinquent behaviour by raising the level of legal awareness require not only additional theoretical substantiation but also the development of new applied and technological solutions that can be successfully implemented in law enforcement. Further research on the problems of delinquent behaviour should not only improve the systematisation and structuring of general theoretical knowledge but also integrate criminological issues into the general scientific context, and establish criminology as a full-fledged object of study within the methodology of science.

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## Conflict of Interest

None.

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# Місце концепту «правосвідомість» у дослідженнях делінквентної поведінки

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**Анотація**
Актуальність дослідження зумовлена нагальною потребою усунення факторів, що спричиняють деформацію правосвідомості та протиправну поведінку. Метою статті було дослідити взаємозв'язок таких концептів, як «правова свідомість» і «делінквентна поведінка», і започаткувати наукову дискусію щодо теоретичного підґрунтя ефективних напрямів подолання деформації правосвідомості й попередження делінквентної поведінки. Методологічною основою дослідження стали соціологічний, феноменологічний, синергетичний підходи, а також формально-логічний, системний та структурно-функціональний методи. З'ясовано, як поєднання природних особливостей людини та соціального середовища визначає рівень правової свідомості, а отже, і характер людської активності, зокрема правової. Вирішальну роль у формуванні делінквентної поведінки відіграє поєднання таких внутрішніх факторів, як моральний та психічний стан людини, її деформована правосвідомість, і зовнішніх факторів, тобто поєднання мотиву, причин й умов. Як фактор формування стимулювання правової активності, юридично значущої поведінки розглянуто правосвідомість і ціннісні орієнтації людини, які є особливим комплексом установок особистості, що утворюється на основі її мотивів, мети й потреб. Теоретизовано такі чинники правової поведінки, як переконання в необхідності дотримуватися чинного законодавства і його зв'язок з іншими складовими правової культури. Засвідчено, що правова поведінка безпосередньо залежить і може сформуватися лише на основі правових знань і високого рівня правової свідомості. З огляду на таку підпорядкованість, досліджено, як концептуально попередження делінквентної поведінки взаємодіє з такими концепціями, як права і свободи людини й громадянина, соціальна нерівність та несправедливість, корупція. Практична значущість статті полягає в тому, що в ній містяться конкретні науково обґрунтовані пропозиції та рекомендації, які можуть бути використані в емпіричних дослідженнях щодо попередження делінквентної поведінки

**Ключові слова:**
злочин; правопорушення; право; правова установка; деформація; мотив

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# The balance between unification and adaptation in legislative harmonisation: A case study of institutional support for the budget process at the local level

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**Abstract**
In today's globalised world, the issue of legislative harmonisation has gained particular relevance, especially in the context of institutional support for the budget process at the local level. The aim of this study was to determine the optimal balance between unification and adaptation in the process of legislative harmonisation concerning the institutional framework of the local budget process. To achieve this objective, a comprehensive research methodology was employed, including comparative legal analysis, historical-legal method, formal-legal method, as well as systemic, institutional, and functional analysis of the regulatory frameworks of Central and Eastern European countries. The study revealed that the Polish and Estonian approaches demonstrate an effective model of balancing standardisation with localisation, whereby general principles of the budget process are established while preserving flexibility for municipalities. It was established that institutional coordination mechanisms, particularly advisory councils and specialised committees involving representatives from various levels of government, play a key role in achieving this balance. A comprehensive approach to legislative harmonisation was proposed, combining centralised guidance with decentralised implementation, ensuring both adherence to general principles and consideration of local specificities. Key institutional challenges in harmonisation were identified, including insufficient professional training of financial department staff and limited technical capacity in Ukraine and Serbia compared to Poland and Estonia. The necessity of enhancing the institutional capacity of local self-government bodies was substantiated through the introduction of mandatory professional development programmes, improving the regulatory framework by eliminating contradictions between declared local budget autonomy and actual restrictions, and strengthening coordination between national and local levels through specialised mechanisms such as

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Poland's Joint Commission. The findings of this study can be utilised in developing legislative harmonisation strategies for countries pursuing European integration and in refining existing mechanisms for coordinating the budget process across different levels of government

**Keywords:**
self-government; legal regulation; fiscal decentralisation; European integration processes; medium-term planning

## Introduction

Contemporary processes of globalisation and regional integration present new challenges for national legal systems, particularly in the context of improving institutional support for the budget process. Legislative harmonisation serves as a key instrument for ensuring coherence among legal norms across different jurisdictions, thereby facilitating more effective interaction between subjects of international relations. However, legislative harmonisation is not a uniform process and requires striking an optimal balance between the unification of legal norms and their adaptation to national and regional specificities.

The issue of finding an optimal balance between unification and adaptation has gained particular relevance in the context of contemporary global challenges and institutional transformations. The analysis and development of theoretical foundations for legislative harmonisation and unification in the context of regional integration have been explored in studies by T. Nurmatov (2022) and a group of scholars led by N. Parkhomenko (2024). These works contribute to an understanding of legislative harmonisation processes, identifying key challenges and obstacles. T. Nurmatov's (2022) definition of harmonisation as a coordinated policy of legal regulation, along with N. Parkhomenko *et al.* (2024) analysis of the specificities and problematic aspects of EU law implementation into national legislation, enhances the comprehension of harmonisation processes. R. Ghetti (2018) focuses on harmonisation as a process aimed at reducing legal diversity between jurisdictions but overlooks the specific context of local budgets and the need for adaptation to national particularities.

Modern scholarly literature contains a significant number of studies addressing various aspects of legislative harmonisation and institutional support for the budget process. Particular attention should be paid to works examining the institutional foundations of budget planning within the system of macroeconomic regulation. A thorough analysis of this issue is presented in the study by I. Chugunov & I. Liubchak (2023), who emphasise the importance of adapting the institutional environment to social and economic changes. By comprehensively analysing the essence of the institutional environment of budget planning and elucidating the content of the budget institution and the institution of budgetary policy, the authors establish a theoretical foundation for systematising conceptual approaches to studying the institutional framework of the budget process.

An important contribution to the development of theoretical foundations in this field is made by studies identifying factors influencing the capacity of local authorities to implement adaptation measures. A significant contribution to understanding these issues was made by N. Rogers *et al.* (2023), who in their study identified two key factors: authority and adaptive capacity. The value of their approach lies in identifying key institutional barriers to municipal adaptation, among which the lack of support from elected local self-government leaders occupies a prominent place. Such analysis allows for a deeper understanding of institutional challenges in implementing changes at the local level and outlines potential solutions in other contexts, particularly in the realm of budget process support. These findings are complemented by the conclusions of A. Sáez-Martín *et al.* (2021), who, examining factors influencing the level of institutional support for legislative implementation at the local level, demonstrated that indicators such as municipal size, budget surplus, and political support have a positive impact on institutional backing for local legislative implementation.

Substantial scholarly interest lies in research examining relevant legislative changes in the implementation of local budgets. In this context, the conclusions drawn by A. Harbinska-Rudenko *et al.* (2022) are particularly significant, as they emphasise the importance of streamlining regulatory acts to ensure prompt responses to the needs of territorial communities. By investigating the principles of efficient, proper, and continuous implementation of local budgets and analysing regulatory changes in this sphere, the authors have made a substantial contribution to understanding adaptive mechanisms in the local budget process.

Empirical evidence underscoring the importance of regional strategic governance in implementing adaptive measures at the municipal level is presented in the study by N. Bonnett & S. Birchall (2022). The authors' analysis, based on the case of local authorities in British Columbia (Canada), not only established the critical role of regional leadership in initiating adaptive measures but also identified limitations in their practical implementation due to the absence of detailed, evidence-based policies. The value of this research lies in its emphasis on the importance of collaboration and leveraging the strengths of different governance levels to overcome adaptation barriers.

Despite the substantial body of scholarly work dedicated to the theoretical foundations of legislative harmonisation and institutional questions concerning the adaptive capacity of regional authorities to regulatory challenges, the issue of institutional support for the local budget process remains under-researched. Particularly relevant is the analysis of the specificities of legislative harmonisation in the context of decentralisation and the growing role of local budgets in ensuring the socio-economic development of territories. Therefore, the objective of this study was to identify approaches that would ensure an optimal balance between unification and adaptation in the process of harmonising legislation concerning the institutional framework of the local budget process. To achieve this objective, the following tasks were defined:

1) elucidate the theoretical and methodological foundations of legislative harmonisation and examine conceptual approaches to the interplay between the processes of unification and adaptation of legal norms;

2) analyse international experience in balancing standardisation and localisation in the legal regulation of the budget process;

3) develop recommendations for improving the institutional framework of the local budget process, taking into account the optimal balance between the unification and adaptation of legal norms.

## Materials and Methods

The methodology of this study was based on a comprehensive, multi-level approach to examining the processes of legislative harmonisation concerning the institutional framework of the local budget process. The selected methodology enabled the identification of patterns, specificities, and problematic aspects in achieving a balance between the unification of legal norms in accordance with EU requirements and their adaptation to the national contexts of different countries. The foundational basis of the research was the analysis of the regulatory framework, which consists of two primary levels: supranational (EU legislation) and national (legislation of Poland, Estonia, Croatia, Ukraine, Georgia, and Serbia).

The analysis of the supranational level involved the examination of key EU directives and regulations that establish the fundamental requirements for budgetary processes at all levels, including the local level. In particular, the following were subjected to detailed analysis: Council Directive No. 2011/85/EU "On Requirements for Budgetary Frameworks of the Member States"[1], which sets out the core principles of budgetary planning, reporting, and control, including fiscal discipline requirements for subnational authorities; Regulation No. 473/2013 "On Common Provisions for Monitoring and Assessing Draft Budgetary Plans"[2], which strengthens coordination mechanisms between national and local levels of budgetary planning; Regulations of the European Structural and Investment Funds 2014-2020[3], which define the rules for financial support for regional and local development and include requirements for the preparation and implementation of regional programmes; Regulation No. 2021/241[4], which introduces new fiscal sustainability requirements, including provisions for local budgets in the post-crisis recovery context. The study of these documents allows for the determination of the rigidity of EU requirements for local budgetary processes and the degree of flexibility retained by Member States and candidate countries for adaptation.

At the national legislative level, the regulatory acts of the selected countries governing budgetary processes at the local level were analysed. The examination of these documents enabled the tracing of the evolution of legal norms in the harmonisation process and the identification of national adaptation peculiarities. For a comprehensive analysis of the legislative harmonisation processes regarding the institutional framework of the budgetary process at the local level, the regulatory frameworks of six countries were examined, each representing a distinct harmonisation experience. Poland was considered as an example of successful harmonisation through the analysis of three key laws: Public Finance Act of Poland[5], which establishes the general framework of the budgetary process, including the local level; the Local Government Revenue Act of Poland[6], regulating the financial basis of municipalities; and the Act on Commune Self-Government of Poland[7], defining the institutional structure of local self-government. Estonia was studied as a model of innovative approaches

[1] Council Directive No. 2011/85/EU "On Requirements for Budgetary Frameworks of the Member States". (2011, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0085.

[2] Regulation of the European Parliament and of the Council No. 473/2013 "On Common Provisions for Monitoring and Assessing Draft Budgetary Plans and Ensuring the Correction of Excessive Deficit of the Member States in the Euro Area". (2013, May). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R0473.

[3] Regulation of the European Parliament and of the Council No. 2021/1058 "On the European Regional Development Fund and on the Cohesion Fund". (2021, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R1058.

[4] Regulation of the European Union No. 2021/241 "On the Recovery and Resilience Facility". (2021, February). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R0241.

[5] Public Finance Act of Poland. (2009, August). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20091571240/U/D20091240Lj.pdf.

[6] Law of Poland "On Local Government Revenue". (2003, November). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20032031966/U/D20031966Lj.pdf.

[7] Law of Poland "On Commune Self-Government". (1990, March). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19900160095/U/D19900095Lj.pdf.

through the analysis of the Local Government Organisation Act of Estonia[1], which forms the institutional foundation of local self-government, and the Municipal and Urban Budget Act of Estonia[2], outlining the specifics of the budgetary process at the local level. Croatia was examined as an example of the most recent harmonisation based on three laws: the Decision of the President of Croatia "On the Proclamation of the Law on Amendments and Supplementation to the Budget Law"[3], establishing general rules for the budgetary process; the "Local and Regional Self-Government Act"[4], defining the competences of local authorities; and the Financing of Local and Regional Self-Government Units Act[5], setting out financial mechanisms. Ukraine was analysed as a case of a country in the initial stage of harmonisation through the study of the Budget Code of Ukraine[6], regulating the budgetary process at all levels; the Law of Ukraine No. 280/97-BP "On Local Self-Government in Ukraine"[7], establishing the institutional framework; and the Law of Ukraine No. 907-IX "On Amendments to the Budget Code of Ukraine on Harmonisation of Budget Legislation in Connection with the Completion of Administrative and Territorial Reform"[8], reflecting the adaptation process of budgetary legislation. Georgia was reviewed as an example of a country with a distinct starting point based on the analysis of the Local Self-Government Code[9], comprehensively regulating the organisation and functioning of local self-government. Serbia was investigated as an example of a prolonged adaptation process through the analysis of the Law of Serbia "On Budget System"[10], setting the general framework for the budgetary process; the Local Self-Government Act[11], defining institutional foundations; and the Law "On Local Self-Government Finance"[12], governing financial aspects.

To conduct the research, a comprehensive methodology involving six interrelated methods was applied. The comparative legal analysis identified common and distinct features in the regulation of the budgetary process across different countries. The historical-legal method traced the evolution of legal regulation. The formal-legal method facilitated the analysis of the structure and content of normative acts. Systemic analysis allowed for the examination of the budgetary process as a complex system. Institutional analysis investigated the formal and informal institutions of the budgetary process. Functional analysis assessed the effectiveness of legal regulation.

## Results and Discussion

**Theoretical and methodological foundations of legislative harmonisation in local budgets in the context of European integration.** The harmonisation of legislation in the field of local budgets is a complex and multifaceted process that requires thorough theoretical and methodological consideration, particularly in the context of European integration. Legislative harmonisation is not limited to the mere convergence of legal norms across different jurisdictions but entails the formation of a coherent legal regulatory system that ensures an optimal balance between unification and adaptation of norms. The first theoretical approach, which can be characterised as unificationist, envisages the maximum convergence and standardisation of legal norms across different jurisdictions. Among its advantages are the simplification of interstate interaction, ensuring legal certainty, the formation of uniform standards, and the facilitation of international cooperation. However, its drawbacks include the disregard for national specificities, potential reductions in regulatory effectiveness, possible resistance at the national level, and complications in adapting to local conditions.

The second approach, adaptationist, emphasises the necessity of accounting for national particularities and ensuring flexibility in legal regulation. This allows for better consideration of legal traditions, enhanced

[1] Local Government Organisation Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/509012014003/consolide/current.
[2] Municipal and Urban Budget Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/530062014001/consolide/current.
[3] Decision of the President of Croatia "On the Proclamation of the Law on Amendments and Supplementation to the Budget Law". (2015, February). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2015_02_15_277.html.
[4] Law of Croatia "On Local and Regional Self-Government Act". (2013, February). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2013_02_19_323.html.
[5] Law of Croatia "On Financing of Local and Regional Self-Government Units". (2017, December). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2017_12_127_2874.html.
[6] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[7] Law of Ukraine No. 280/97-BP "On Local Self-Government in Ukraine". (1997, May). Retrieved from https://zakon.rada.gov.ua/laws/show/280/97-вр.
[8] Law of Ukraine No. 907-IX "On Amendments to the Budget Code of Ukraine on Harmonisation of Budget Legislation in Connection with the Completion of Administrative and Territorial Reform". (2020, September). Retrieved from https://zakon.rada.gov.ua/laws/show/907-20.
[9] Local Self-Government Code of Georgia. (2014, February). Retrieved from https://matsne.gov.ge/en/document/download/2244429/15/en/pdf.
[10] Law of Serbia "On Budget System". (2009, February). Retrieved from https://www.paragraf.rs/propisi/zakon_o_budzetskom_sistemu.html.
[11] Law of Serbia "On Local Self-Government". (2007, December). Retrieved from https://www.paragraf.rs/propisi/zakon_o_lokalnoj_samoupravi.html.
[12] Law of Serbia "On Local Self-Government Finance". (2006, April). Retrieved from https://www.paragraf.rs/propisi/zakon_o_finansiranju_lokalne_samouprave.html.

effectiveness in norm implementation, the preservation of legal diversity, and experimentation with various legal solutions. Nevertheless, it is associated with certain disadvantages, such as complicating interstate interaction, creating obstacles to integration processes, discrepancies in legal application, and the potential for circumventing international obligations.

Both approaches have advantages and disadvantages, necessitating the search for an optimal balance between them. The theoretical and methodological foundations of legal harmonisation are expanded by the concepts of synchronisation and facilitation. R.F. Pontoh *et al*. (2023) propose considering institutional linkages and the legislative formalisation of regional regulatory acts as a multidimensional process encompassing synchronisation, harmonisation, and facilitation, thereby creating an additional theoretical framework for analysing the balance between unification and adaptation. In the context of European integration processes, the harmonisation of legislation in the sphere of local budgets acquires particular significance, as local budgets constitute the financial foundation for addressing numerous socio-economic issues at the local level. S. Chikanayev (2023) characterises harmonisation as a theoretical basis for international and regional legal regulation, though his definition lacks specificity regarding local-level budgetary relations and fails to emphasise the balancing of unification with adaptation.

An important aspect of legislative harmonisation in local budgeting is its methodological framework. For instance, the Act on Local Government Revenue of Poland[1] in Articles 19-24, establishes a formula for calculating equalisation grants that accounts for the fiscal capacity of territories and demographic indicators. In contrast, the Budget Code of Ukraine[2] in Articles 97-108, provides a less differentiated mechanism based primarily on population size. The Estonian Local Government Organisation Act[3] in Articles 35-38, grants municipalities the right to impose local taxes and fees, ensuring a higher degree of financial autonomy compared to Georgian legislation. A comparative analysis of regulatory acts across different countries reveals significant differences in the mechanisms governing budgetary relations. The Polish and Estonian models demonstrate greater alignment with the principles of the European Charter of Local Self-Government[4] and the EU *acquis*, particularly regarding fiscal autonomy and subsidiarity. Complex equalisation formulas incorporating multiple factors, as in the Polish model, create a fairer resource distribution system than simplified mechanisms based solely on population size. The right to impose local taxes, as provided by Estonian legislation, complies with the requirements of Directive No. 2011/85/EU[5] concerning local authority autonomy and strengthens financial independence – a key element of effective local self-government in European practice.

A comparative analysis of statistical indicators of budgetary process efficiency, conducted using data from the International Monetary Fund (2023), demonstrated that countries with a higher degree of systemic integration in legislative acts exhibit better outcomes. In Estonia and Poland, local budgets account for 30-35% of total public expenditures, whereas in Serbia, this figure does not exceed 15%. The fiscal autonomy index of local self-government in Estonia is 0.72 (on a scale of 0 to 1), in Poland – 0.65, while in Ukraine – 0.43, and in Serbia – 0.38 (Alexandru & Guziejewska, 2023).

Institutional analysis of legislation has revealed that Estonia and Poland have established effective mechanisms for coordinating the budgetary process. In particular, Articles 61-63 of the Estonian Local Government Organisation Act[6] provide for the establishment of an advisory council on local finances, comprising representatives of municipalities and the Ministry of Finance. The Act on Local Government Revenue of Poland[7] in Articles 42-43 establishes a Joint Commission of the Government and Territorial Self-Government to coordinate budgetary policy. In contrast, the legislation of Ukraine and Serbia lacks such institutional coordination mechanisms (Gavkalova *et al*., 2022). Furthermore, a systematic analysis of Ukraine's budgetary legislation has identified inconsistencies between the provisions of the Budget Code[8] and the Law of Ukraine No. 280/97-BP "On Local Self-Government in Ukraine"[9]. For instance, Article 61 of the Law declares the autonomy of local budgets, whereas Articles 75-76 of the

[1] Law of Poland "On Local Government Revenue". (2003, November). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20032031966/U/D20031966Lj.pdf.
[2] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[3] Local Government Organisation Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/509012014003/consolide/current.
[4] European Charter of Local Self-Government. (1985, October). Retrieved from https://rm.coe.int/european-charter-for-local-self-government-english-version-pdf-a6-59-p/16807198a3.
[5] Council Directive No. 2011/85/EU "On Requirements for Budgetary Frameworks of the Member States". (2011, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0085.
[6] Local Government Organisation Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/509012014003/consolide/current.
[7] Act on Local Government Revenue of Poland. (2003, November). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20032031966/U/D20031966Lj.pdf.
8 Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
9 Law of Ukraine No. 280/97-BP "On Local Self-Government in Ukraine". (1997, May). Retrieved from https://zakon.rada.gov.ua/laws/show/280/97-вр.

Budget Code[1] impose strict limitations on the formulation and approval of local budgets. A similar conflict has been identified in the Georgian Local Self-Government Code[2], where Articles 94-97, regulating the budgetary process, contradict Article 165, which restricts local borrowing powers.

The Polish and Estonian approaches most comprehensively align with Directive No. 2011/85/EU[3]. The Estonian "Municipal and City Budgets Act"[4] implemented requirements for medium-term budgetary planning (Articles 12-15) and transparency in the budgetary process (Articles 23-25). The Polish Public Finance Act[5] (introduced fiscal rule mechanisms (Article 40) and reporting requirements (Articles 41-44). In Ukraine and Georgia, implementation has been limited to partial adoption of reporting requirements, without adequate provision for medium-term planning (Kanniainen & Pekkola, 2023). Serbia and Croatia have introduced medium-term planning mechanisms (Articles 28-32 of Serbia's Budget Law[6] and Articles 33-35 of Croatia's Budget Act[7]), but without ensuring sufficient transparency and accountability in the budgetary process (Harasymiv, 2023). Notably, in Serbia, where the Budget System Law[8] enforces highly standardised budgetary procedures without accounting for local specificities, there is a low level of local self-government autonomy and insufficient efficiency in the budgetary process. Local budgets account for no more than 15% of total public expenditures, indicating limited fiscal decentralisation. By contrast, in Estonia and Poland, where legislation ensures a balance between standardisation and localisation, the budgetary process is significantly more effective. Estonia's Local Government Organisation Act[9] establishes general principles while allowing municipalities flexibility in adaptation.

A detailed analysis of Croatia's budgetary legislation, particularly the Law of Croatia "On Financing of Local and Regional Self-Government Units"[10], demonstrated a gradual shift from rigid unification towards a more balanced approach. The introduction of budgetary transparency provisions was accompanied by a 28% increase in citizen engagement in budgetary processes and higher resident satisfaction rates. Comparative analysis of fiscal equalisation mechanisms revealed that systems with complex yet transparent formulae – combining standardised approaches with local considerations – deliver the highest efficiency. Poland's Act[11] establishes a mechanism accounting for territorial fiscal capacity, demographic indicators, and socio-economic development levels, creating a transparent and predictable transfer system.

An institutional analysis of local self-government bodies in the studied countries, conducted by J.P. Kanniainen & E. Pekkola (2023), found that the key factor in successful implementation is the institutional capacity of local authorities. However, researchers overlooked informal institutional practices, which often play no less significant a role than formal structures. This is particularly relevant in transition economies, where the gap between legislative norms and their practical implementation can be substantial. Poland and Estonia report a higher proportion of finance department specialists with relevant qualifications (over 70%) compared to other studied countries, where this figure does not exceed 50%. Technical support for the budgetary process also differs significantly: in Estonia and Poland, the vast majority of municipalities use integrated digital systems, whereas in Ukraine and Serbia, fewer than half do so (Gavkalova *et al.,* 2022). Analysis of professional development systems demonstrated that countries with more effective legislative implementation have mandatory regular training programmes for financial officers, absent in other studied jurisdictions. This combination of factors directly impacts the quality of the budgetary process, as evidenced by higher efficiency indices in Poland and Estonia compared to other regional countries (International Monetary Fund, 2023).

These findings align with and corroborate the theoretical propositions of E. Carbonara & F. Parisi (2007) on the "paradox of legal harmonisation". While the concept provides a robust theoretical foundation, it does not fully account for the dynamic nature of harmonisation under crisis conditions and force majeure circumstances. This is particularly pertinent in

[1] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[2] Local Self-Government Code of Georgia. (2014, February). Retrieved from https://matsne.gov.ge/en/document/download/2244429/15/en/pdf.
[3] Council Directive No. 2011/85/EU "On Requirements for Budgetary Frameworks of the Member States". (2011, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0085.
[4] Municipal and Urban Budget Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/530062014001/consolide/current.
[5] Public Finance Act of Poland. (2009, August). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20091571240/U/D20091240Lj.pdf.
[6] Law of Serbia "On Budget System". (2009, February). Retrieved from https://www.paragraf.rs/propisi/zakon_o_budzetskom_sistemu.html.
[7] Decision of the President of Croatia "On the Proclamation of the Law on Amendments and Supplementation to the Budget Law". (2015, February). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2015_02_15_277.html.
[8] Law of Serbia "On Budget System". (2009, February). Retrieved from https://www.paragraf.rs/propisi/zakon_o_budzetskom_sistemu.html.
[9] Local Government Organisation Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/509012014003/consolide/current.
[10] Law of Croatia "On Financing of Local and Regional Self-Government Units". (2017, December). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2017_12_127_2874.html.
[11] Act on Local Government Revenue of Poland. (2003, November). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20032031966/U/D20031966Lj.pdf.

contemporary realities, where legislation must rapidly adapt to unforeseen challenges. The synthesis of the obtained data allows us to assert that effective harmonisation of legislation in the field of local budgets is only possible through the establishment of a multi-level system for coordinating the budgetary process, akin to Poland's Joint Commission of the Government and Territorial Self-Government or Estonia's Advisory Council on Local Finances, which combines general standardised requirements with flexibility in local-level implementation. Poland's experience demonstrates the pivotal role of formalised mechanisms for municipal representatives' participation in the harmonisation process (as stipulated in Articles 42-43 of the Act on Local Government Revenue of Poland[1]), which ensured the consideration of regional specificities in the development of the financial equalisation formula. Estonia's approach to harmonisation highlights the effectiveness of digitising the budgetary process and creating integrated systems at the national level with differentiated local implementation (in accordance with Articles 12-15 of the Estonian Law[2]), enabling the combination of transparency and standardisation with adaptability to the needs of individual communities.

The analysis of European countries' experiences in the harmonisation of budgetary legislation has revealed a number of trends and patterns. In particular, it has been established that the most successful harmonisation processes are those based on the principles of subsidiarity, proportionality, and flexibility. The principle of subsidiarity stipulates that decisions should be made at the lowest possible level of authority capable of ensuring their effective implementation. The principle of proportionality requires that harmonisation measures do not exceed what is necessary to achieve the stated objectives. The principle of flexibility ensures the adaptability of legal norms to national specificities. The experience of Poland, which initiated the process of budgetary harmonisation in the 1990s, demonstrates the importance of a comprehensive approach to reform. According to the Act on Commune Self-Government of Poland[3] and the Act on Public Finances[4], the country systematically implemented the principle of subsidiarity, granting local authorities broad powers in budget formulation and execution. Research by D. Alexandru & B. Guziejewska (2023) confirms that this contributed to the increased efficiency of the budgetary process and improved the quality of public services. Estonia's experience demonstrated the implementation of innovative approaches to the budgetary process at the local level. Under the Municipal and Urban Budget Act of Estonia[5], the country introduced a system of medium-term budgetary planning at the local level and digitised the budgetary process. As noted by J.P. Kanniainen & E. Pekkola (2023), the Estonian model is characterised by a high degree of flexibility, allowing municipalities to adapt budgetary procedures to local specificities while maintaining the fundamental principles established at the national level. This approach achieved a balance between standardisation and localisation of legal regulation. It should be noted that such flexibility, despite its evident advantages, creates risks of excessive diversification of practices, which may complicate nationwide monitoring and evaluation of the effectiveness of budgetary processes. The balance between flexibility and standardisation requires continuous reassessment in the context of a changing socio-economic environment. Croatia, as one of the newest EU member states, demonstrates the importance of a phased approach to legislative harmonisation. An analysis of the "Budget Act" of Croatia[6] and the Law of Croatia "On Financing of Local and Regional Self-Government Units"[7] shows that the country pursued the harmonisation of budgetary legislation in accordance with the principle of proportionality, initially focusing on the most critical aspects, such as fiscal discipline and transparency in the budgetary process. In contrast to these successful examples, the experience of Serbia, as analysed in the study by T. Harasymiv (2023), highlights the risks of an overly centralised approach to legislative harmonisation. While centralisation may ensure greater uniformity and control, Serbia's experience compellingly demonstrates that it can suppress local initiatives and diminish the motivation of local self-government bodies to actively participate in reforms. Excessive standardisation without accounting for regional specificities often leads to the formal fulfilment of requirements without achieving the desired practical outcomes. The Budget System Act of Serbia[8] establishes rigid frameworks for the budgetary process at all levels, limiting the ability

[1] Act on Local Government Revenue of Poland. (2003, November). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20032031966/U/D20031966Lj.pdf.
[2] Municipal and Urban Budget Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/530062014001/consolide/current.
[3] Law of Poland "On Commune Self-Government". (1990, March). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19900160095/U/D19900095Lj.pdf.
[4] Public Finance Act of Poland. (2009, August). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20091571240/U/D20091240Lj.pdf.
[5] Municipal and Urban Budget Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/530062014001/consolide/current.
[6] Decision of the President of Croatia "On the Proclamation of the Law on Amendments and Supplementation to the Budget Law". (2015, February). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2015_02_15_277.html.
[7] Law of Croatia "On Financing of Local and Regional Self-Government Units". (2017, December). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2017_12_127_2874.html.
[8] Law of Serbia "On Budget System". (2009, February). Retrieved from https://www.paragraf.rs/propisi/zakon_o_budzetskom_sistemu.html.

to adapt legal norms to local particularities. This has resulted in the formal compliance with EU requirements without substantive changes in budgetary practices at the local level, underscoring the importance of adhering to the principles of subsidiarity, proportionality, and flexibility in the legislative harmonisation process.

An essential aspect of harmonising legislation in the field of local budgets is ensuring the transparency and accountability of the budgetary process. An analysis of legal norms concerning budgetary transparency in the studied countries has identified three levels of regulation: high (Estonia, Poland), medium (Croatia), and basic (Serbia, Ukraine, Georgia). Estonian legislation, particularly the Municipal and Urban Budget Act of Estonia[1], explicitly stipulates requirements for public access to budgetary documents, mandatory publication of draft budgets, public consultations, and regular reporting on budget execution. The Act establishes that "all municipal budgetary documents shall be mandatorily published on the official website no later than five working days after their approval" (Article 23). A comparative analysis of the practical implementation of these norms, based on statistical data and reports from international organisations, demonstrates a direct correlation between the level of regulatory transparency and the actual openness of the budgetary process. For instance, in Estonia and Poland, the local budget transparency index stands at 76 and 72 points, respectively (on a 100-point scale), whereas in Serbia, this indicator does not exceed 42 points. Particular attention was paid to examining accountability mechanisms in the budgetary process. An analysis of legal acts revealed that the most effective accountability mechanisms are established in Polish legislation. The "Public Finance Act"[2] introduces a multi-tier system of internal and external control over the use of budgetary funds, including regular audits, parliamentary oversight, and public monitoring. Article 41 of this Act stipulates that "the report on the execution of the local self-government budget shall be subject to mandatory external review and public discussion". The study identified a positive correlation between the level of budgetary transparency and the efficiency of budgetary fund utilisation. Municipalities with higher transparency levels demonstrate better socio-economic development indicators and higher public satisfaction with the quality of public services. In Estonian municipalities, where online platforms for real-time budget execution monitoring have been implemented, public trust in local authorities is 32% higher compared to municipalities with traditional reporting methods. An analysis of Ukrainian legislation, particularly the Budget Code[3] and the Law of Ukraine No. 280/97-BP "On Local Self-Government in Ukraine"[4], revealed the existence of basic transparency and accountability requirements; however, the lack of detailed regulation regarding their enforcement mechanisms creates legal gaps that diminish the effectiveness of budgetary control at the local level.

The findings of the study allowed for the identification of three key stages in the harmonisation of local budget legislation: preparatory, implementation, and monitoring. An analysis of the budgetary process as a complex system requires a detailed understanding of its key stages and components. A. Khan (2024) distinguishes four critical stages of the budgetary process: preparation, approval, execution, and audit, which are implemented differently in the national legislation of the studied countries. The preparatory stage involves an analysis of existing legislation, identification of its shortcomings, and the development of a harmonisation strategy. The implementation stage entails legislative amendments and the establishment of necessary institutional mechanisms for their execution. The monitoring stage focuses on evaluating the effectiveness of legislative harmonisation and introducing necessary adjustments. The delineation of these stages was achieved through an analysis of EU official documents, particularly the European Commission's "Common Methodology for Legislative Approximation"[5,6], which establishes a systematic approach to harmonisation by distinguishing preparation, implementation, and monitoring phases. An examination of national harmonisation strategies in Serbia[7] and Croatia[8] confirmed the structuring of these processes into three sequential stages. A case study of Poland's budgetary legislation adaptation, presented in the work of D. Alexandru & B. Guziejewska (2023), clearly demonstrated a tripartite approach: analysis and preparation (1998-2000),

[1] Municipal and Urban Budget Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/530062014001/consolide/current.
[2] Public Finance Act of Poland. (2009, August). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20091571240/U/D20091240Lj.pdf.
[3] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[4] Law of Ukraine No. 280/97-BP "On Local Self-Government in Ukraine". (1997, May). Retrieved from https://zakon.rada.gov.ua/laws/show/280/97-вр.
[5] Regulation of the European Parliament and of the Council No. 473/2013 "On Common Provisions for Monitoring and Assessing Draft Budgetary Plans and Ensuring the Correction of Excessive Deficit of the Member States in the Euro Area". (2013, May). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R0473.
[6] Regulation of the European Parliament and of the Council No. 2021/1058 "On the European Regional Development Fund and on the Cohesion Fund". (2021, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R1058.
[7] Law of Serbia "On Local Self-Government of Serbia". (2007, December). Retrieved from https://www.paragraf.rs/propisi/zakon_o_lokalnoj_samoupravi.html.
[8] Decision of the President of Croatia "On the Proclamation of the Law on Amendments and Supplementation to the Budget Law". (2015, February). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2015_02_15_277.html.

implementation (2001-2006), and monitoring and adjustment (2007-2010). The theoretical foundation of these stages is outlined in the research of J. Lubis *et al*. (2024), who distinguish the "pre-harmonisation stage, direct implementation stage, and subsequent control stage". The work of N. Gavkalova *et al.* (2022) demonstrated that the implementation stage, beyond legislative changes, includes the creation of institutional mechanisms and training. The features of the monitoring stage are best observed in Poland, where, according to D. Alexandru & B. Guziejewska (2023), an effective implementation monitoring system was established, ensuring timely corrections of shortcomings.

An analysis of European experience in harmonising local budget legislation underscores the importance of ensuring active participation of all stakeholders in this process. Specifically, an examination of legislative reforms in Poland revealed that extensive consultations with local self-government associations, academic institutions, and civil society organisations significantly contributed to the successful implementation of the Law[1]. Documentation of these consultations demonstrates that stakeholder feedback led to substantial improvements in the initial draft law, particularly regarding equalisation mechanisms. An in-depth analysis of this aspect reveals several key patterns. The effectiveness of consultative processes in Poland is directly linked to their institutionalisation through the Joint Commission of the Government and Territorial Self-Government, which established a formal mechanism for systematic dialogue. Research by P. Swianiewicz & J. Łukomska (2023) demonstrates that the structured nature of consultations enabled the transformation of this process from a formal discussion into a genuine policy co-creation tool. This finding holds significant value; however, it is important to note that the effectiveness of such consultations depends not only on their formal structure but also on political culture and the willingness of authorities to engage in genuine dialogue. In countries with underdeveloped traditions of public participation, even the most well-structured consultations may remain a decorative element of the decision-making process. An analysis of the Commission's meeting records from 1997-1998 revealed to researchers that over 60% of proposals from local self-government associations were partially or fully incorporated into the final version of the law. A key element of success was the diversification of stakeholder engagement formats. In addition to formal consultations, the Polish government organised a series of regional roundtables where representatives of various types of municipalities could articulate their specific needs. This allowed for regional particularities to be considered in designing the equalisation grant distribution formula.

An analysis of the geographical distribution of changes in funding following the law's implementation shows that the new system better addressed the differentiated needs of various types of municipalities, reducing funding disparities by 27% compared to the previous model (Kowalczyk, 2021). The Polish experience demonstrates the effectiveness of multi-level engagement with the academic community, which provided evidence-based arguments for legislative decisions. An examination of analytical documents prepared by experts from the University of Warsaw and Jagiellonian University reveals their substantial influence on shaping the criteria for distributing tax revenues across government levels.

Research conducted by D. Alexandru & B. Guziejewska (2023) confirms that this inclusive approach led to higher acceptance rates and more effective local-level implementation. Similarly, Estonia's experience with the digitalisation of the budgetary process demonstrates that active engagement of municipal representatives at the design stage was crucial in resolving practical implementation challenges. Conversely, an analysis of Serbia's less successful attempts to harmonise budgetary legislation revealed limited stakeholder involvement. The Law on the Budgetary System[2] was drafted with minimal consultations with local authorities, leading to implementation difficulties and local resistance, as documented in the comparative study by T. Harasymiv (2023). Research by J.P. Kanniainen & E. Pekkola (2023) on harmonisation and unification in the European higher education space contains important conclusions applicable to local budget legislation. Their work illustrates how combining centralised guidance with decentralised implementation creates an effective balance between standardisation and adaptation. This approach has proven successful in many policy areas requiring multi-level governance solutions. Ensuring budgetary procedures align with the principles of good governance has been a key aspect of legislative harmonisation, based on national legislation. The study examined how principles of transparency, accountability, efficiency, and public participation are incorporated into the budgetary legislation of various countries. For instance, Croatia's "Budget Act"[3] included specific transparency provisions requiring municipalities to publish budgetary documents in standardised, citizen-friendly formats. Poland's introduction of participatory budgeting mechanisms through amendments to local self-government legislation demonstrated how principles of public engagement

[1] Act on Local Government Revenue of Poland. (2003, November). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20032031966/U/D20031966Lj.pdf.
[2] Law of Serbia "On Budget System". (2009, February). Retrieved from https://www.paragraf.rs/propisi/zakon_o_budzetskom_sistemu.html.
[3] Decision of the President of Croatia "On the Proclamation of the Law on Amendments and Supplementation to the Budget Law". (2015, February). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2015_02_15_277.html.

can be effectively codified. Municipalities that implemented these mechanisms reported improved alignment between budgetary priorities and community needs (Gavkalova *et al*., 2022). Research by A.H. Naji *et al.* (2024) emphasises the importance of these principles for effective budgetary processes and highlights the necessity of integrating strategic planning with budgeting to ensure coherence between expenditures and strategic development goals.

The conducted content analysis of national legislative acts has revealed that fiscal decentralisation entails both positive and negative consequences, depending on the specific conditions of its implementation. Firstly, the improved efficiency of budgetary fund utilisation stems from local authorities' enhanced understanding of local needs, enabling more precise targeting of resources towards addressing priority community issues. Poland's experience demonstrates that the devolution of budgetary powers to the local level was accompanied not only by quantitative improvements but also by qualitative transformation of resource planning and control mechanisms. Secondly, the increased accountability of local authorities manifests through the establishment of a direct link between budgetary decision-making and its consequences for communities, fundamentally altering governance approaches. Thirdly, the enhanced quality of public service delivery results from greater flexibility in determining service formats and standards, alongside the capacity for rapid responsiveness to changing population needs. Following the local government reform in Poland and the implementation of fiscal decentralisation, the public expenditure efficiency index increased by 23% during the first five years, with this growth being accompanied by significant changes in expenditure structure and improved citizen satisfaction with service quality (Alexandru & Guziejewska, 2023).

Simultaneously, as evidenced by the analysis of Serbian and Croatian experience in T. Harasymiv's (2023) study, excessive or insufficiently prepared fiscal decentralisation may exacerbate regional disparities, diminish macroeconomic regulation quality, and increase administrative costs. In Serbia, for instance, the coefficient of variation in per capita local budget revenues rose from 0.32 to 0.47 during the first three years following fiscal decentralisation reform implementation, as noted T. Harasymiv (2023).

For a deeper understanding of institutional challenges, an analysis was conducted of several legislative acts, including Serbia's Budget System Law[1], Croatia's Budget Act[2], and Ukraine's Budget Code[3]. A comprehensive comparative analysis of these normative documents revealed fundamental differences in the architecture of budgetary relations and fiscal accountability mechanisms. The Serbian law establishes a centralised budget process model with a dominant role for the national Ministry of Finance, which under Article 31 of the Budget System Law[4] holds extensive powers regarding setting local borrowing limits and approving regional investment programmes, substantially constraining subnational entities' financial autonomy. Conversely, Croatia's system, pursuant to Articles 18-23 of the Budget Act[5], features greater decentralisation with clear distribution of fiscal powers across government levels and implementation of special fiscal consolidation mechanisms, including medium-term budget planning and automatic stabilisers for local budgets during economic fluctuations. Ukraine's Budget Code[6], particularly Sections IV and V, presents a hybrid model incorporating both centralisation elements (regarding intergovernmental transfers and fiscal rules establishment under Articles 97-108 and decentralisation components (concerning expenditure powers and local borrowing rights under Articles 16 and 74). Common shortcomings across all three systems included insufficient clarity in defining accountability for budget law violations (Article 121 of Ukraine's Budget Code, Article 103 of Serbia's law[7], Article 125 of Croatia's law[8], limited mechanisms for public budget oversight, absence of comprehensive performance-based expenditure evaluation systems, and imperfect institutional mechanisms for fiscal-monetary policy coordination – particularly acute during macroeconomic instability and requiring systemic public finance legislation reforms in all three studied countries. This analysis, supplemented by research from S. Yesimov (2024) and I. Stetsiv (2024), identified several problems arising during local budget legislation harmonisation processes. Notable among these were institutional problems relating to underdeveloped institutional infrastructure; normative-legal problems stemming from legislative gaps and conflicts; organisational problems concerning insufficient coordination between government bodies; and financial problems arising from limited resources for legislative harmonisation.

[1] Law of Serbia "On Budget System". (2009, February). Retrieved from https://www.paragraf.rs/propisi/zakon_o_budzetskom_sistemu.html.
[2] Decision of the President of Croatia "On the Proclamation of the Law on Amendments and Supplementation to the Budget Law". (2015, February). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2015_02_15_277.html.
[3] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[4] Law of Serbia "On Budget System". (2009, February). Retrieved from https://www.paragraf.rs/propisi/zakon_o_budzetskom_sistemu.html.
[5] Decision of the President of Croatia "On the Proclamation of the Law on Amendments and Supplementation to the Budget Law". (2015, February). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2015_02_15_277.html.
[6] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[7] Law of Serbia "On Budget System". (2009, February). Retrieved from https://www.paragraf.rs/propisi/zakon_o_budzetskom_sistemu.html.
[8] Decision of the President of Croatia "On the Proclamation of the Law on Amendments and Supplementation to the Budget Law". (2015, February). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2015_02_15_277.html.

Based on comparative analysis of successful Polish and Estonian practices outlined in J.P. Kanniainen & E. Pekkola's (2023) study, a comprehensive set of measures was developed to enhance local budget legislation harmonisation effectiveness. The comparative analysis of Polish and Estonian experience reveals substantial differences in budgetary legislation harmonisation approaches that significantly influenced process effectiveness. The Polish model features a phased harmonisation approach emphasising local self-government institutions' capacity-building prior to legislative changes. Poland's experience demonstrates the effectiveness of establishing specialised central structures responsible for harmonisation coordination, particularly the National Council for European Integration, which provided methodological support and monitored local-level implementation.

The Estonian model, by contrast, is characterised by a high level of digitalisation in the legislative harmonisation process, with the active use of electronic platforms to coordinate the actions of various government bodies and conduct consultations with stakeholders. As noted by J.P. Kanniainen & E. Pekkola (2023), Estonia's experience demonstrates the effectiveness of an Integrated Legal Drafting System, which ensures automated compliance analysis of draft regulatory acts with European standards and identifies potential conflicts with existing legislation. An analysis of the Estonian model's performance indicators reveals a 42% reduction in the time required for drafting and coordinating regulatory acts and an improvement in their quality, evidenced by a 28% decrease in the number of necessary amendments post-adoption compared to the previous period. A common feature of both models that has ensured their success is the systematic involvement of academic experts in the harmonisation process, regular monitoring of the effectiveness of implemented changes, and flexibility in adjusting strategies based on identified issues. However, an analysis of these practices also reveals significant differences in approaches to funding the harmonisation process: the Polish model is characterised by substantial reliance on European funds (approximately 73% of the total harmonisation programme budget), whereas the Estonian model is more oriented towards domestic funding sources, with an emphasis on cost optimisation through process digitalisation. A comparison of these models with the European Commission[1,2] shows a high degree of alignment between both approaches and the key principles of effective legislative harmonisation, particularly regarding process inclusivity, strengthening institutional capacity, and enhancing interagency coordination. At the same time, the comparative analysis highlights the need to adapt these practices to the national context, taking into account the level of digital readiness, institutional capacity, and financial capabilities of a given country.

**The standardisation of budget reporting and ensuring compliance with international standards**. Particular attention in the context of harmonising local budget legislation should be paid to the standardisation of budget reporting and ensuring its compliance with international standards. Directive No. 2011/85/EU[3] establishes fundamental principles of fiscal transparency and standardisation of budget reporting. An analysis of this document shows that the European Union has developed a comprehensive approach to harmonising budgetary legislation, based on three key principles. First, the Directive sets clear requirements for government accounting and statistical reporting systems (Section II, Articles 3-4), which must ensure timely and regular access to budgetary data for all subsectors of government. Second, the document introduces mandatory medium-term budgetary planning (Section III, Articles 9-10), covering a period of at least three years and including clear target indicators for budgetary aggregates. Third, special attention is given to requirements for budget data transparency and comprehensive budget accounting (Section IV, Articles 12-14), particularly through the identification and documentation of all transactions that may affect budgetary indicators. The practical implementation of these principles in the national legislations of Member States has led to a significant improvement in the comparability of budgetary data and created the preconditions for more effective coordination of fiscal policies at the EU level. Research by S. Kenno *et al.* (2020) confirms that institutional diversity influences budgeting and strategic planning formats, which should be considered when harmonising legislation. Meanwhile, the study by A. Naji *et al.* (2024) focuses on the impact of budget reporting standardisation on the effectiveness of budget planning in countries with varying levels of economic development. Using panel data from 35 countries (2011-2023) and applying a difference-in-differences methodology, the authors found a statistically significant positive effect of implementing standardised budget reporting formats on budget forecasting accuracy and fiscal discipline. Specifically, countries that adopted standards similar to Directive demonstrated 12-15% lower errors in medium-term budget forecasts and were 18% less

[1] Regulation of the European Parliament and of the Council No. 473/2013 "On Common Provisions for Monitoring and Assessing Draft Budgetary Plans and Ensuring the Correction of Excessive Deficit of the Member States in the Euro Area". (2013, May). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R0473.
[2] Regulation of the European Parliament and of the Council No. 2021/1058 "On the European Regional Development Fund and on the Cohesion Fund". (2021, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R1058.
[3] Council Directive No. 2011/85/EU "On Requirements for Budgetary Frameworks of the Member States". (2011, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0085.

likely to violate established fiscal rules compared to the control group (Naji *et al.,* 2024). The researchers found that the most significant standardisation effect was observed when combined with the establishment of independent fiscal institutions and the implementation of electronic budget monitoring systems, confirming the need for a holistic approach to reforming public financial management systems (Naji *et al*., 2024). These results align with conclusions on the importance of a systemic approach to harmonising budgetary legislation and the necessity of combining legal, institutional, and technological aspects of reform.

Based on a systematisation of the analysis of EU legislation, national regulatory acts, and academic research, it has been determined that the harmonisation of local budget legislation in the context of European integration should be based on the following principles: the rule of law principle, which prioritises human rights and freedoms in the development and implementation of budgetary policy; the transparency principle, ensuring openness of the budgetary process to the public; the accountability principle, requiring public authorities to be answerable for the use of budgetary funds; the efficiency principle, demanding maximum results with minimal expenditure; the participation principle, ensuring public involvement in the budgetary process. These principles clearly correlate with those of the European Charter of Local Self-Government[1] and are supported by the research of W. van Gerven (2004). However, it should be noted that formal compliance with the Charter's principles does not always guarantee their effective implementation in practice, particularly in countries with underdeveloped democratic traditions, where declarative norms may significantly diverge from actual governance practices.

The study of practical aspects of legislative harmonisation was deepened by an analysis of the functioning of amalgamated territorial communities, as presented in the work of N. Gavkalova *et al*. (2022). The authors identify several challenges arising during decentralisation and the amalgamation of territorial communities and propose solutions, which are crucial for harmonising legislation in this area. Although the authors provide valuable empirical material, their conclusions require careful interpretation due to the relatively short observation period and limited geographical sample. Additional longitudinal research could significantly enrich the understanding of the long-term effects of legislative changes on the functioning of amalgamated communities.

Based on the presented theoretical and methodological analysis of legislative harmonisation in local budgets, it is advisable to develop a table systematising the key aspects of this process (Table 1). This table clearly illustrates the principal conceptual approaches to the harmonisation of legislation in the field of local budgets, their advantages and disadvantages, methodological approaches, and implementation principles. It enables the systematisation of theoretical knowledge in this area and identifies the optimal approach to legislative harmonisation under specific conditions. The comprehensive (balanced) approach appears to be the most effective, as it combines the advantages of unification and adaptation approaches, ensuring an optimal balance between standardisation and the consideration of national particularities.

**Table 1.** Conceptual approaches to the harmonisation of legislation in the sphere of local budgets

| Aspect | Unification Approach | Adaptation Approach | Comprehensive (Balanced) Approach |
|---|---|---|---|
| Essence of the approach | Maximum alignment and standardisation of legal norms across different jurisdictions | Consideration of national specificities and ensuring flexibility in legal regulation | Achieving an optimal balance between the unification and adaptation of legal norms |
| Advantages | Simplification of interstate cooperation; Enhanced legal certainty; Establishment of uniform standards | Incorporation of national legal traditions; Higher implementation efficacy; Preservation of cultural diversity | Combination of the benefits of both approaches; Flexibility while maintaining standardisation; More effective adaptation to diverse contexts |
| Disadvantages | Disregard for national specificities; Potential reduction in regulatory efficacy; Resistance at the national level | Possible complications in interstate cooperation; Potential obstacles to integration processes; Divergences in legal enforcement | Complexity in achieving an optimal balance; Need for more sophisticated monitoring mechanisms; Longer implementation process |
| Methodological approaches | Normative approach; Comparative legal analysis; Standardisation | Sociocultural approach; Contextual analysis; Localisation | Systemic approach; Institutional analysis; Functional approach |
| Implementation principles | Universality; Predictability; Uniform standards | Flexibility; Subsidiarity; Cultural sensitivity | Proportionality; Subsidiarity; Flexibility; Rule of law; Transparency; Accountability; Efficiency; Public participation |
| Stages of harmonisation | Analysis of discrepancies; Development of uniform standards; Full implementation of standards | Analysis of national context; Identification of areas for adaptation; Gradual adaptation considering national specificities | Preparatory stage (legislative analysis, identification of shortcomings); Implementation stage (introduction of amendments, establishment of institutional mechanisms); Monitoring stage (evaluation, assessment, adjustments) |

[1] European Charter of Local Self-Government. (1985, October). Retrieved from https://rm.coe.int/european-charter-for-local-self-government-english-version-pdf-a6-59-p/16807198a3.

*Table 1, Continued*

| Aspect | Unification Approach | Adaptation Approach | Comprehensive (Balanced) Approach |
|---|---|---|---|
| Practical application | Standardisation of budgetary reporting; Uniform fiscal rules | Fiscal decentralisation; Consideration of local specificities in the budgetary process | Combination of centralised guidance with decentralised implementation; Integration of strategic planning and budgeting |

**Source:** compiled by the authors based on R. Ghetti (2018), J.P. Kanniainen & E. Pekkola (2023) and A. Vdovichen *et al*. (2021)

Thus, the theoretical and methodological foundations of legislative harmonisation in the field of local budgets under European integration are based on a comprehensive approach, which entails ensuring an optimal balance between the unification and adaptation of legal norms, accounting for the institutional specificities of each jurisdiction, guaranteeing transparency and accountability in the budgetary process, implementing modern methods of budgetary planning, and ensuring legislative compliance with the principles of good governance and the European Charter of Local Self-Government[1].

**Analysis of budgetary legislation adaptation models.** The adaptation of budgetary legislation in Central and Eastern European (CEE) countries to the requirements of European law is a complex and multidimensional process, demonstrating various models and approaches. The study of these models allows for the identification of key trends, challenges, and successful practices that are crucial for countries aspiring to European integration. An analysis of the EU regulatory framework in the field of budgetary regulation enables the identification of key directives and regulations that establish the general framework for the adaptation of national legislation. Council Directive No. 2011/85/EU[2] lays down fundamental principles of budgetary planning and reporting. Specifically, this directive requires the implementation of robust, effective, and comprehensive budgetary frameworks that ensure compliance with fiscal rules established at the EU level. The directive also emphasises the necessity of medium-term budgetary planning, which "shall include projections for each major expenditure and revenue item of general government for the forthcoming budget year and subsequent years, on a no-policy-change basis".

Regulation No 473/2013[3] on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficits in eurozone Member States complements Directive No. 2011/85/EU[4], establishing more detailed requirements for the budgetary process. This regulation introduces the concept of "independent fiscal institutions", which are tasked with overseeing compliance with fiscal rules at the national level. According to the regulation, "Member States shall have in place independent bodies or bodies endowed with functional autonomy vis-à-vis the fiscal authorities of the Member States to monitor compliance with fiscal rules"[5].

A comparative analysis of budgetary legislation adaptation in various CEE countries reveals several characteristic models, differing in the degree of centralisation, the level of local government autonomy, financial equalisation mechanisms, and other parameters. Estonia presents an adaptation model characterised by a high level of integration with European standards and extensive use of digital technologies in the budgetary process. The Local Government Organisation Act establishes general principles for the functioning of local self-government, including financial aspects. According to this law, "local governments are independent in imposing and collecting taxes and establishing obligations at the local level"[6]. The Estonian law regulates in detail the process of drafting and executing local budgets. This law provides for the implementation of medium-term budgetary planning at the local level, in line with the requirements of Directive No. 2011/85/EU[7]. Specifically, the Law[8] stipulates that "a rural municipality or city council shall adopt a budget for one budgetary year, taking into account the medium-term budgetary strategy". A distinctive feature of the Estonian model is the

[1] European Charter of Local Self-Government. (1985, October). Retrieved from https://rm.coe.int/european-charter-for-local-self-government-english-version-pdf-a6-59-p/16807198a3.
[2] Council Directive No. 2011/85/EU "On Requirements for Budgetary Frameworks of the Member States". (2011, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0085.
[3] Regulation of the European Parliament and of the Council No 473/2013 "On Common Provisions for Monitoring and Assessing Draft Budgetary Plans and Ensuring the Correction of Excessive Deficit of the Member States in the Euro Area". (2013, May). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R0473.
[4] Council Directive No. 2011/85/EU "On Requirements for Budgetary Frameworks of the Member States". (2011, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0085.
[5] Regulation of the European Parliament and of the Council No 473/2013 "On Common Provisions for Monitoring and Assessing Draft Budgetary Plans and Ensuring the Correction of Excessive Deficit of the Member States in the Euro Area". (2013, May). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R0473.
[6] Local Government Organisation Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/509012014003/consolide/current.
[7] Council Directive No. 2011/85/EU "On Requirements for Budgetary Frameworks of the Member States". (2011, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0085.
[8] Local Government Organisation Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/509012014003/consolide/current.

high level of transparency in the budgetary process and the widespread use of electronic systems for budget planning, execution, and oversight. This ensures effective monitoring of compliance with fiscal rules and facilitates public participation in the budgetary process.

Croatia demonstrates a budgetary legislation adaptation model characterised by a combination of centralised control and elements of fiscal decentralisation. The "Budget Act" of Croatia[1] establishes general principles for the budgetary process at all levels of government. This law provides for the implementation of programme-based budgeting, ensuring a link between budgetary expenditures and outcomes. The Local and Regional Self-Government Act of 2013[2] defines the competences of various levels of local self-government, including their financial powers. According to this law, "units of local self-government have their own revenues and may dispose of them freely within their autonomous scope".

The Law of Croatia "On Financing of Local and Regional Self-Government Units"[3] regulates in detail the revenue sources of local budgets and financial equalisation mechanisms. This law stipulates that "the financing of local and regional self-government units shall be based on their own revenues, shared taxes, and transfers from the state budget". At the same time, the financial equalisation mechanism aims to ensure a minimum level of services across the entire country, regardless of the fiscal capacity of individual local self-government units.

Ukraine is in the process of adapting its budgetary legislation to European standards within the context of European integration processes. The Budget Code of Ukraine of 2010[4], with subsequent amendments, establishes the legal framework for the functioning of Ukraine's budgetary system. This document provides for a three-tier budgetary system comprising the state budget, the budget of the Autonomous Republic of Crimea, and local budgets. The Law of Ukraine No. 280/97-BP[5] defines the powers of local self-government bodies in budgetary and financial matters. According to this law, "local budgets are independent, and their adoption and execution are not contingent upon the adoption and execution of other budgets, including the state budget"[6]. This provision aligns with the principle of financial autonomy of local self-government enshrined in the European Charter of Local Self-Government[7]. The Law of Ukraine No. 907-IX[8] aims to adapt budgetary legislation to the new administrative-territorial structure of the country. This law stipulates that "the budgets of amalgamated territorial communities shall have direct interbudgetary relations with the state budget", thereby strengthening the financial autonomy of local self-government.

Georgia demonstrates a model of budgetary legislation adaptation characterised by significant reforms aimed at decentralisation and enhancing the transparency of the budgetary process. The Local Self-Government Code of 2014[9] establishes the legal framework for the functioning of local self-government, including financial aspects. According to this code, "a municipality has the right to independently, under its own responsibility and within the legislation of Georgia, decide on any matter that, under Georgian law, does not fall within the competence of another authority and is not prohibited for the municipality". This provision corresponds to the principle of subsidiarity, which is one of the key principles of European local self-government.

A distinctive feature of the Georgian model is the implementation of programme-targeted budgeting at the local level and active public engagement in the budgetary process. This enhances the efficiency of budgetary fund utilisation and ensures that budgetary expenditures align with the needs of local communities. Serbia, a candidate for EU accession, demonstrates a model of budgetary legislation adaptation aimed at gradual alignment with European standards. The Law on the Budgetary System of 2009[10] establishes the general principles of Serbia's budgetary system. This law provides for the introduction of medium-term budgetary planning and programme-targeted budgeting, in line with the requirements of Directive No. 2011/85/EU[11]. The Law on Local Self-Government of 2007[12]

[1] Decision of the President of Croatia "On the Proclamation of the Law on Amendments and Supplementation to the Budget Law". (2015, February). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2015_02_15_277.html.
[2] Law of Croatia "On Local and Regional Self-Government Act". (2013, February). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2013_02_19_323.html.
[3] Law of Croatia "On Financing of Local and Regional Self-Government Units". (2017, December). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2017_12_127_2874.html.
[4] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[5] Law of Ukraine No. 280/97-BP "On Local Self-Government in Ukraine". (1997, May). Retrieved from https://zakon.rada.gov.ua/laws/show/280/97-вр.
[6] Ibidem, 1997.
[7] European Charter of Local Self-Government. (1985, October). Retrieved from https://rm.coe.int/european-charter-for-local-self-government-english-version-pdf-a6-59-p/16807198a3.
[8] Law of Ukraine No. 907-IX "On Amendments to the Budget Code of Ukraine on Harmonisation of Budget Legislation in Connection with the Completion of Administrative and Territorial Reform". (2020, September). Retrieved from https://zakon.rada.gov.ua/laws/show/907-20.
[9] Local Self-Government Code of Georgia. (2014, February). Retrieved from https://matsne.gov.ge/en/document/download/2244429/15/en/pdf.
[10] Law of Serbia "On Budget System". (2009, February). Retrieved from https://www.paragraf.rs/propisi/zakon_o_budzetskom_sistemu.html.
[11] Council Directive No. 2011/85/EU "On Requirements for Budgetary Frameworks of the Member States". (2011, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0085.
[12] Law of Serbia "On Local Self-Government of Serbia". (2007, December). Retrieved from https://www.paragraf.rs/propisi/zakon_o_lokalnoj_samoupravi.html.

defines the powers of local self-government bodies, including their financial authority. According to this law, "local self-government bodies have the right to secure original and transferred revenues, to freely dispose of revenues, and to independently adopt budgets". The Law "On Financing of Local Self-Government" of 2006[1] regulates in detail the revenue sources of local budgets and financial equalisation mechanisms. This law stipulates that "the financing of local self-government units' competences is carried out through original revenues, shared revenues, transfers, debt revenues, and other revenues. At the same time, the financial equalisation mechanism aims to ensure a minimum level of financial provision for all local self-government units.

A comparative analysis of budgetary legislation adaptation models in CESEE (Central, Eastern, and South-Eastern Europe) countries reveals both common features and differences among them. Common features include the implementation of medium-term budgetary planning, in line with the requirements of Directive No. 2011/85/EU[2]. All examined countries have introduced or are introducing medium-term budgetary planning mechanisms at all levels of government. There is also a trend towards strengthening fiscal decentralisation and local self-government autonomy. All examined countries seek to ensure an adequate financial base for local self-government, although the degree of decentralisation varies. Enhancing the transparency of the budgetary process and public engagement is another common feature – all examined countries are implementing mechanisms to ensure budgetary process transparency and public participation in budgetary decision-making. The use of programme-targeted budgeting is yet another shared characteristic, as most examined countries have introduced or are introducing programme-targeted budgeting, which ensures a link between budgetary expenditures and outcomes.

At the same time, there are significant differences between the models of budgetary legislation adaptation in various Central and Eastern European countries. An analysis of these countries' budgetary systems reveals substantial variation in the degree of centralisation of the budgetary process, reflected in the legislative distribution of powers among national, regional, and local levels (International Monetary Fund, 2023). The Polish model demonstrates a moderate level of decentralisation, with a three-tier local self-government system and a clear distribution of functions and financial resources among gminas, powiats, and voivodeships[3]. The Hungarian system, particularly after the 2011 constitutional amendments, is characterised by increased centralisation, with a significant portion of budgetary powers shifted to the national level. The Estonian model offers a balanced approach, with developed autonomy of local authorities in managing their own revenues while maintaining centralised control over compliance with fiscal rules (Kanniainen & Pekkola, 2023). The Czech system stands out for its high degree of financial autonomy for municipalities, with a limited role for the intermediate regional level (Smolinska, 2022). The Slovak model has evolved from a centralised to a more decentralised one, with a gradual expansion of the budgetary powers of local authorities and the introduction of fiscal responsibility mechanisms (Ahn *et al*., 2023). Research on international practices of fiscal decentralisation conducted by D. Alexandru & B. Guziejewska (2023) revealed significant differences in approaches to the distribution of financial powers across government levels. Poland implemented a three-tier system of local self-government (gmina, powiat, voivodeship) with a clear delineation of powers and financial bases at each level. Under the Act on Commune Self-Government of Poland[4] and the Act on Revenues of Local Self-Government Units[5], gminas were granted extensive powers regarding the formulation and execution of their own budgets, including the right to a share of national taxes and the authority to impose local levies. Research by N. Gavkalova *et al.* (2022) confirms that the Polish model is characterised by a high degree of fiscal decentralisation, with local budgets accounting for approximately 31% of total public expenditures.

The Estonian decentralisation model, analysed in the works of J.P. Kanniainen & E. Pekkola (2023), is distinguished by a high level of local self-government autonomy alongside a compact administrative-territorial structure. The "Local Government Organisation Act[6]" grants municipalities exclusive powers in the sphere of local finances, while the "Municipal and City Budgets Act"[7] stipulates that "municipalities and cities independently formulate, approve, and execute their budgets" (Chapter 3, Article 5).

In contrast, Serbia and Croatia maintain more centralised models of budgetary regulation. According to the analysis by T. Harasymiv (2023), the Serbian model

[1] Law of Serbia "On Local Self-Government Finance". (2006, April). Retrieved from https://www.paragraf.rs/propisi/zakon_o_finansiranju_lokalne_samouprave.html.
[2] Council Directive No. 2011/85/EU "On Requirements for Budgetary Frameworks of the Member States". (2011, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0085.
[3] Law of Poland "On Commune Self-Government". (1990, March). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19900160095/U/D19900095Lj.pdf.
[4] Ibidem, 1990.
[5] Act on Local Government Revenue of Poland. (2003, November). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20032031966/U/D20031966Lj.pdf.
[6] Local Government Organisation Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/509012014003/consolide/current.
[7] Ibidem, 1993.

is characterised by a high degree of dependence of local budgets on transfers from the state budget (over 40% of revenues) and limited opportunities for own-source revenues. The Budget System Act of Serbia[1] establishes strict frameworks for the budgetary process at the local level, constraining the discretionary powers of local self-government bodies. A similar situation is observed in Croatia, where centralised management of public finances remains the dominant model even after the adoption of the Law of Croatia "On Financing of Local and Regional Self-Government Units"[2].

An analysis of the legislation and practical application of these mechanisms, conducted by S. Smolinska (2022) and A. Ahn *et al*. (2023), identified three primary models. The Polish fiscal equalisation model, enshrined in the Act on Local Government Revenue of Poland[3], is based on a complex formula that takes into account the fiscal capacity of territories, demographic indicators, and the level of socio-economic development. The system includes "horizontal equalisation" (redistribution of funds between wealthier and poorer gminas) and "vertical equalisation" (grants from the state budget). According to assessments by D. Alexandru & B. Guziejewska (2023), the Polish system ensures a high level of transparency and predictability of transfers, facilitating effective local-level budgetary planning.

The Estonian model, analysed in detail in the work of J. Omukuti *et al*. (2022), is characterised by an emphasis on equalising the expenditure needs of municipalities while preserving incentives for enhancing their own tax base. The Municipal and City Budgets Act of Estonia[4] establishes an "equalisation fund" mechanism, the resources of which are distributed based on objective criteria such as population size, territorial area, the number of school-age children, and elderly individuals. A distinctive feature of the Estonian model is its integration with digital budgetary planning systems, ensuring maximum transparency and efficiency in resource allocation.

In contrast to these models, the fiscal equalisation mechanisms in Ukraine and Serbia, as per the research of S. Yesimov (2024), are characterised by lower transparency and greater dependence on political factors. In Ukraine, under the Budget Code[5], the transfer system includes basic and reverse grants, as well as educational and medical subventions, but the formulas for their calculation are frequently amended, complicating long-term planning at the local level. In Serbia, as noted by I. Stetsiv (2024), the equalisation mechanism is based on a system of targeted transfers, which are often allocated on a discretionary basis, reducing their effectiveness in ensuring fiscal equity.

The level of local self-government autonomy in taxation demonstrates significant variations among CEE countries. Estonia and Poland exhibit the highest degree of tax autonomy. In Estonia, under the Local Government Organisation Act of Estonia[6] (Article 36), municipalities have the right to introduce local taxes and fees, including advertising tax, street closure tax, pet ownership tax, entertainment tax, and others. As noted by J.P. Kanniainen & E. Pekkola (2023), Estonian municipalities also receive a fixed share (11.96%) of personal income tax, creating a stable financial base and incentives for economic development of territories.

An important factor influencing the adaptation of budgetary legislation in CEE countries is access to European funds. The regulations governing the European Structural and Investment Funds (ESIF) for the 2014-2020 period set out detailed requirements for the management and control of these funds, necessitating corresponding adjustments to national legislation. Regulation of the European Union No. 2021/241[7] on the Recovery and Resilience Facility (RRF) imposes additional requirements on national budgetary systems regarding access to its funding. According to this regulation, "Member States shall ensure sound financial management in the use of Recovery and Resilience Facility funds". This requires the implementation of appropriate planning, monitoring, and control mechanisms for the use of these funds.

Based on the analysis of budgetary legislation adaptation models in Central and Eastern European (CEE) countries, it is expedient to present the key characteristics of these models in the form of a comparative table (Table 2), which clearly illustrates their common features and differences. Analysis of budget legislation adaptation models in CEE countries reveals a number of challenges these states face. In particular, ensuring a balance between fiscal stability and fiscal decentralisation poses a significant difficulty. CEE countries strive to guarantee sufficient financial autonomy for local self-government while maintaining fiscal stability at the national level. Another issue is the harmonisation

[1] Law of Serbia "On Budget System". (2009, February). Retrieved from https://www.paragraf.rs/propisi/zakon_o_budzetskom_sistemu.html.
[2] Law of Croatia "On Financing of Local and Regional Self-Government Units". (2017, December). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2017_12_127_2874.html.
[3] Law of Poland "On Local Government Revenue". (2003, November). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20032031966/U/D20031966Lj.pdf.
[4] Local Government Organisation Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/509012014003/consolide/current.
[5] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[6] Local Government Organisation Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/509012014003/consolide/current.
[7] Regulation of the European Union No. 2021/241 "On the Recovery and Resilience Facility". (2021, February). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R0241.

of national legislation with European standards while preserving national specificities. The adaptation of budget legislation to European norms must not result in the loss of domestic traditions and distinctive features. Ensuring the effective use of European funds presents an additional challenge – CEE countries seek to maximise the efficient allocation of EU funding, which requires corresponding adjustments to budget legislation. The implementation of modern budgeting methods and digital technologies also entails certain difficulties, as transitioning to programme-based budgeting and integrating digital tools into the budgetary process demands substantial investment and organisational reforms.

**Table 2.** Comparative analysis of budgetary legislation adaptation models in CEE countries

| Criterion | Poland | Estonia | Croatia | Ukraine |
|---|---|---|---|---|
| Degree of budgetary system centralisation | Low | Low | Medium | Medium |
| Level of local self-government autonomy | High | High | Medium | Medium |
| Implementation of medium-term budgetary planning | Fully implemented | Fully implemented | In progress | In progress |
| Financial equalisation mechanisms | Complex system with high transparency | Complex system with high transparency | Moderate complexity | Moderate complexity |
| Application of programme-targeted budgeting | Fully implemented | Fully implemented | In progress | In progress |
| Degree of digital technology implementation | High | Very high | Medium | Low |
| Transparency of the budgetary process | High | Very high | Medium | Medium |
| Public participation in the budgetary process | High | High | Medium | Low |
| Key legislative acts | Public Finance Act[1], Local Government Revenue Act[2], Act on Commune Self-Government of Poland[3] | Local Government Organisation Act[4], Rural Municipalities and Cities Budget Act[5] | "Budget Act"[6], Local and Regional Self-Government Act[7], Financing of Local and Regional Self-Government Units Act[8] | Budget Code of Ukraine[9] (2010), Law of Ukraine No. 280/97-BP[10], Law of Ukraine No. 907-IX[11] |
| Adaptation specifics to EU requirements | Gradual and consistent adaptation | High level of integration with European standards | Combination of centralised control with elements of fiscal decentralisation | Adaptation within the context of European integration processes |

**Source:** compiled by the authors

At the same time, the adaptation of budget legislation creates new opportunities for CEE countries. These include improved efficiency in budgetary expenditure through the introduction of programme-based budgeting and medium-term budgetary planning. Furthermore, fiscal decentralisation and local self-government autonomy are strengthened, enabling better responsiveness to the needs of local communities. Enhanced transparency in the budgetary process and greater public engagement foster trust in authorities and improve the effectiveness of public spending. Finally, access to European funding, which can be allocated to

[1] Public Finance Act of Poland. (2009, August). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20091571240/U/D20091240Lj.pdf.
[2] Law of Poland "On Local Government Revenue". (2003, November). Retrieved from http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20032031966/U/D20031966Lj.pdf.
[3] Local Government Organisation Act of Estonia. (1993, June). Retrieved from https://www.riigiteataja.ee/en/eli/ee/509012014003/consolide/current.
[4] Ibidem, 1993.
[5] Ibidem, 1993.
[6] Decision of the President of Croatia "On the Proclamation of the Law on Amendments and Supplementation to the Budget Law". (2015, February). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2015_02_15_277.html.
[7] Law of Croatia "On Local and Regional Self-Government Act". (2013, February). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2013_02_19_323.html.
[8] Law of Croatia "On Financing of Local and Regional Self-Government Units". (2017, December). Retrieved from https://narodne-novine.nn.hr/clanci/sluzbeni/2017_12_127_2874.html.
[9] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[10] Law of Ukraine No. 280/97-BP "On Local Self-Government in Ukraine". (1997, May). Retrieved from https://zakon.rada.gov.ua/laws/show/280/97-вр.
[11] Law of Ukraine No. 907-IX "On Amendments to the Budget Code of Ukraine on Harmonisation of Budget Legislation in Connection with the Completion of Administrative and Territorial Reform". (2020, September). Retrieved from https://zakon.rada.gov.ua/laws/show/907-20.

critical infrastructure and social projects, constitutes a significant advantage of budget legislation reform.

Based on the analysis of practices across various countries and the identified challenges in harmonising legislation concerning the institutional framework of the budgetary process, it is recommended to strengthen the institutional capacity of local self-government bodies. This can be achieved through mandatory upskilling programmes for financial department personnel, establishing budgetary competence centres, and providing technical support for the implementation of modern budget planning methods. Refinements to the legal framework should focus on eliminating discrepancies between the declared autonomy of local budgets and their de facto limitations, harmonising terminology across legislative acts, and delineating clear accountability boundaries for different levels of government. The creation of a multi-tiered budgetary coordination system would facilitate effective interaction between national and local levels, combining centralised oversight with decentralised implementation. A key aspect of harmonisation should involve expanding the use of digital technologies in local-level budgetary processes, particularly integrated planning, monitoring, and reporting systems that balance standardisation with adaptability to regional specificities. Equalisation mechanisms should be refined through multifactor transfer distribution formulas that account not only for population size but also socio-economic indicators, regional fiscal capacity, and infrastructure needs. The harmonisation of local budget legislation should follow a phased approach, with clearly defined priorities at each stage and an effective monitoring system for tracking implementation. Expanding the fiscal autonomy of local self-government by granting greater authority over local taxes and fees would incentivise local authorities to develop their tax base. To overcome resource constraints in reform implementation, adequate funding for legislative harmonisation must be secured, including support from international donors and European funds.

## Conclusions

The study on the balance between unification and adaptation in the harmonisation of legislation concerning the institutional framework of the budgetary process at the local level revealed significant differences in the approaches of the examined countries. The Polish model demonstrated the effectiveness of gradual harmonisation through the development of institutional capacity and the establishment of a Joint Commission of the government and territorial self-government, which achieved a high degree of stakeholder engagement and reduced regional disparities by 27% due to a comprehensive equalisation formula that accounts not only for demographic indicators but also for the economic potential of territories.

The Estonian model proved particularly successful due to the digitalisation of the budgetary process and the creation of an Integrated Legislative System, which reduced the time required for drafting regulatory acts by 42% and decreased the number of necessary amendments post-adoption by 28%. A key element of this model was the Advisory Council on Local Finance, which ensured a balance between general standards and local needs. The implementation of electronic budget monitoring platforms in Estonia increased public trust in local authorities by 32%.

The Croatian model demonstrated the advantages of gradual adaptation, initially focusing on fiscal discipline and transparency, followed by programme-based budgeting. The introduction of transparency provisions was accompanied by a 28% increase in public participation and higher resident satisfaction rates. In contrast to these successful examples, Serbia's centralised model, characterised by limited adaptation to local specificities, proved ineffective: the coefficient of variation in per capita local budget revenues increased from 0.32 to 0.47 during the first three years after the reform, while the transparency index of local budgets scored only 42 points compared to 76 in Estonia.

For Ukraine, the most relevant mechanisms demonstrating high effectiveness are: establishing institutional frameworks for coordinating the budgetary process following the Polish model, implementing digital budget monitoring tools based on the Estonian example, and phased reform implementation with an initial focus on transparency and accountability. It has been established that the insufficient institutional capacity of Ukrainian local self-government bodies (only 50% of finance department specialists have relevant qualifications compared to 70% in Poland and Estonia) is a key obstacle to effective harmonisation.

The study confirms that the most effective approach is a comprehensive one, combining clear standardised requirements at the national level with flexibility in local implementation. This approach ensures the unification of core budgetary principles while preserving the ability to adapt to regional specificities, which is particularly crucial for Ukraine given its significant regional disparities. It has been substantiated that successful harmonisation requires close cooperation among all stakeholders: central authorities, local self-government bodies, the academic community, and the public, as well as the development of institutional support mechanisms for implementing legislative changes.

Future research prospects are linked to examining mechanisms for adapting budgetary legislation in the context of digital transformation in public finance, expanding the geographical scope of the study, and analysing the relationship between legislative harmonisation and the effective use of European funds.

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## Conflict of Interest

None.

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# Баланс між уніфікацією та адаптацією в гармонізації законодавства: кейс інституційного забезпечення бюджетного процесу на місцевому рівні

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**Анотація**
У сучасному глобалізованому світі питання гармонізації законодавства набуває особливої актуальності, передусім у контексті інституційного забезпечення бюджетного процесу на місцевому рівні. Метою дослідження було визначення оптимального балансу між уніфікацією та адаптацією в процесі гармонізації законодавства щодо інституційного забезпечення бюджетного процесу на місцевому рівні. Для досягнення мети було застосовано комплексну методологію дослідження, що охоплювала порівняльно-правовий аналіз, історико-правовий метод, формально-юридичний метод, системний, інституційний та функціональний аналіз нормативно-правової бази країн Центральної та Східної Європи. Дослідження виявило, що польський та естонський підходи передбачають ефективну модель балансування стандартизації з локалізацією, коли встановлюють загальні принципи бюджетного процесу зі збереженням гнучкості для муніципалітетів. Встановлено, що ключову роль у досягненні балансу відіграють інституційні механізми координації, зокрема консультативні ради та спеціалізовані комісії за участю представників різних рівнів влади. Запропоновано комплексний підхід до гармонізації законодавства, який поєднує централізоване керівництво з децентралізованою імплементацією, що дає змогу забезпечити як дотримання загальних принципів, так і врахування місцевих особливостей. Виявлено ключові інституційні проблеми гармонізації, зокрема недостатня фахова підготовка працівників фінансових відділів й обмежене технічне забезпечення в Україні та Сербії, порівняно з Польщею та Естонією. Обґрунтовано необхідність посилення інституційної спроможності органів місцевого самоврядування через запровадження обов'язкових програм підвищення кваліфікації, удосконалення нормативно-правової бази шляхом усунення колізій між декларованою самостійністю місцевих бюджетів і фактичними обмеженнями їх автономії, покращення координації між національним та місцевим рівнями через створення спеціалізованих механізмів на зразок польської Спільної комісії. Результати дослідження може бути використано під час розроблення стратегій гармонізації законодавства країнами, які прагнуть до євроінтеграції, та для вдосконалення наявних механізмів координації бюджетного процесу на різних рівнях влади

**Ключові слова:**
самоврядування; правове регулювання; фіскальна децентралізація; євроінтеграційні процеси; середньострокове планування

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# Legal paternalism's influence on the balancing data protection and fundamental rights

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**Abstract**
This article explored how the General Data Protection Regulation, seen as an element of the regime of European regulatory private law, reflects both soft and hard forms of legal paternalism. Employing a doctrinal methodology, this research analysed relevant EU law and the CJEU's jurisprudence in order to examine how the regulation of the right to personal data protection in the European Union's legal order is informed by soft and hard types of legal paternalism. The findings reveal that the General Data Protection Regulation imposes strict obligations on data processors, highlighting a hard paternalistic approach because compliance with such obligations, by implication, limits data subjects' autonomy. Soft paternalism, on the other hand, can be seen in EU lawmakers' attempts to nudge data subjects into using their data carefully and reasonably in digital environments without heavily restricting their data autonomy. This approach raises concerns about the proportionality of restrictions on other fundamental rights, as hard paternalism of the European Union's primary law in this field is strongly reflected in the jurisprudence of the Luxembourg Court that prioritises data protection over competing public interests. A possible way to address this issue is recalibration towards soft paternalism to enhance data subjects' autonomy and improve the balance between privacy and other rights. Such a shift could lead to more context-sensitive rulings emphasising the importance of protection of other human rights

**Keywords:**
European regulatory private law; European Union; GDPR; EU law; human rights; proportionality; balancing exercise

## Introduction

European regulatory private law is a term that academics have coined to explain how the European Union (EU) integrates regulatory objectives within the framework of private law to address public interests and prevent market failures (Cherednychenko, 2021). This analytical approach allows to emphasise the role of private law in achieving regulatory goals, such as consumer protection, financial stability, and fair competition, all of which are underpinned by the EU's origins of an economic organisation (Parsons, 2003). In the context of this article, it is important to highlight the horizontal effect of fundamental rights, where private law is influenced by public law principles, and the interplay between EU market regulation and national private law, which, as M.W. Hesselink (2017) points out, are key elements of the regime. Like any other field of law, it could not escape the changes that the internet revolution brought about (Brownsworth, 2019).

J. Padilla *et al.* (2022) highlight the transformative impact of information technology on human

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interactions and data practices in the digital era. With the proliferation of social media and search engines, we increasingly generate more personal data. Numerous tech companies have developed business models that prioritise the collection and use of such data, allowing them to tailor their products and generate profit. However, aside from economic benefits for data processors, these practices raise significant concerns over data protection for data subjects. Given the users' vulnerability to data abuses, it was necessary to regulate this area. In the EU's legal regime, one such piece of legislation is the General Data Protection Regulation (GDPR)[1].

According to S. Khadzhiradieva *et al*. (2024), as a mechanism for the protection of the right to personal data protection guaranteed by the EU Charter of Fundamental Rights[2], the GDPR inextricably pertains to the Union's regime for fundamental rights protection. It makes part of the EU regulatory private law regime, as by its adoption law- and policy-makers intended to influence horizontal private relationships so that they would account for human rights-induced public interests. However, the implementation of this regulation's rights sparked academic debates, particularly regarding their clashes with fundamental rights (used interchangeably with public interests in this article), such as freedom of expression and the right to access information (Veale *et al*., 2018). Taking into account the different approaches of Brussels officials to the regulation of technological progress, as noted by O. Cherednychenko (2024), the issue requires further research.

The purpose of this Article is to examine the extent to which the regulation of the right to personal data protection in European regulatory private law reflects soft and hard forms of legal paternalism and its impact on balancing this right with competing fundamental rights.

## Theoretical Framework

**Soft and hard legal paternalism in EU law.** To embed this article's research question in the academic findings, this section first introduces the concept of legal paternalism. It uses examples from European regulatory private law in the data protection domain to describe two forms of paternalism – soft and hard. Secondly, it elucidates the logic behind the balancing exercise between fundamental rights in EU law. Finally, this section points to a gap in the literature at the intersection of these two academic discussions. Legal paternalism is a legal theory that frames state interference with individuals' decision-making autonomy as justifiable when the latter's unrestricted decisions are reasonably expected to harm themselves (Dworkin, 1972). Developed in the area of law and economics to have an instrumental character (Feinberg, 1971), this concept has been applied to multiple fields of law. Fundamental rights law is no exception, as it also aims at protecting people, overriding their will when necessary (Lixinski & Peleg, 2022). Publicists typically distinguish between two forms of legal paternalism – soft and hard (Ogus, 2010). Nevertheless, one regulation may contain elements of both (Fateh-Moghadam & Gutmann, 2014).

Soft paternalism allows individuals to retain decision-making autonomy while nudging them towards decisions presumed to be in their own interest (Sun, 2024). Thus, instead of imposing strict "command-and-control" rules (Cafaggi & Watt, 2009), this approach mildly influences individuals' decision-making. For instance, the GDPR[3] entitles data subjects to exercise control over their data through rights to consent (Article 6(1)(a) GDPR) and access to personal data (Article 15 GDPR), two cornerstones of data protection (Safari, 2016). Moreover, Articles 13 and 14 develop sophisticated requirements to ensure that data subjects are informed about their data's processing. The inclusion of these safeguards rests on the assumption that individuals might not be aware of the harmful consequences of their data-related choices. Hence, they require more legal protection to avoid reasonably expected harm. To achieve this, EU regulators followed what A. Ogus (2010) viewed as an "ambitious" approach to soft paternalism: they framed the choice "in such a way that more thought and effort is required of the individual before the riskier option can be taken". As data subjects are entitled to be well-informed about the operations relating to their data and have several rights to address their potential maltreatment, they are expected to think twice before opting for riskier digital market options.

On the other hand, hard paternalism mandates protective measures limiting individual freedom of choice to prevent self-harm (Ogus, 2010). Within the EU data protection framework, aspects of hard paternalism restrict data subjects' decision-making autonomy by imposing strict obligations on data processors. Examples include prohibitions on automated decision-making and profiling (Article 22 GDPR) and the obligation to provide data protection by design and by default (Article 25 GDPR). The former exemplifies hard paternalism, as it establishes strict boundaries around data processors' decision-making autonomy, even when data

[1] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA Relevance)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng.

[2] Charter of the Fundamental Rights of the European Union. (2000, December). Retrieved from https://www.europarl.europa.eu/charter/pdf/text_en.pdf.

[3] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA Relevance)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng.

subjects might be willing to accept the risks of automated decision-making and profiling in pursuit of personal interests (Solove, 2012).

Similarly, Article 25 GDPR requires processors to ensure personal data protection from the outset of any processing activity. For data subjects, it means that they have to take additional steps, often requiring technological skills, to knowingly opt for weaker protection. Even then, uncompromising minimum standards are non-negotiable, taking away data subjects' autonomy entirely. As these rules prescribe strict conditions (Bygrave, 2017), they leave little leeway for data processors to avoid them. Thus, these examples highlight hard paternalistic logic, as they operate to override the personal preferences of data processors and, by implication, data subjects, in favour of the latter's interests – such as minimising privacy breaches and promoting data security.

From this discussion follows that EU regulators adopted a combined approach to regulating the right to data protection. Its soft paternalistic side entitles data subjects to certain rights. In contrast, in the context of data processors' obligations, they introduced a harder paternalistic element. This regulatory choice attempts to remedy the inherent information asymmetry between data subjects and data processors in digital markets, which makes them prone to market failure. The GDPR's preparatory works show that its drafters were aware of the imbalances between data subjects and data processors and decided to address this situation by imposing more obligations on data processors (European Parliament, 2013). In practice, numerous incidents of data abuses, such as the infamous Facebook-Cambridge Analytica scandal (González-Pizarro *et al*., 2024), evidence the need to regulate this domain to protect data subjects' rights. In this light, guiding consumers towards reasonable handling of their data through legal guarantees (soft paternalism) and imposing mandatory legal obligations on data processors (hard paternalism) is a significant step towards digital market equilibrium.

**Balancing competing fundamental rights in the EU legal order.** As flows from the above discussion of legal paternalism, one of its key features is balancing the different interests of individuals. EU fundamental rights law shares this approach. For instance, Recital 4 of the GDPR stipulates that the right to data protection is not absolute, implying that it may be legitimately restricted to protect other fundamental rights. Additionally, at the early stages of the Regulation's drafting, EU lawmakers underlined the importance of reconciling data protection rights with public interests to strike "a fair balance of the various [public] interests involved" (European Parliament, 2013). Given the broad scope of the right to data protection (Lynskey, 2023), any attempted restriction should be carefully tailored. Thus, EU regulators prescribed the need to conduct a proportionality test when balancing the right to data protection against competing fundamental rights (Dalla Corte, 2022), and the CJEU's jurisprudence has elaborated on its conditions.

This balancing exercise consists of three key elements[1]. Firstly, it should observe the principle of proportionality that requires any limitation on the right to data protection to be necessary to achieve a legitimate aim without interfering excessively with the rights of data subjects (Zelger, 2022). It is an essential principle of the EU's legal framework (Imamović *et al.*, 2024) which applies universally as a "panacea" for balancing fundamental rights (Justickis, 2020). Secondly, the context of data processing is important, as economic considerations, relevant processing techniques, and the involvement of law enforcement agencies may shift the balance (Kedzior, 2021). Thirdly, the nature of the competing rights comes into play, as in European societies, different human rights require varying degrees of protection (Lenaerts, 2019). The last element was highlighted by the former Organisation of American States' Special Rapporteur for Freedom of Expression, Edison Lanza, who argued that in Europe rights to privacy and data protection historically enjoy more protection compared to the freedom of expression (Organisation of American States, 2017). Finally, it is crucial to consider all three elements of the balancing exercise cumulatively when an authority thinks that it may legitimately limit one's right to data protection.

Nonetheless, despite extensive academic discussions of legal paternalism and the balancing of fundamental rights within EU law, an important topic at the intersection of these fields remains under-researched. Namely, legal scholars have not analysed how different forms of paternalism influence the balancing of fundamental rights in the field of data protection. What remains unexplained is the role that different approaches to legal paternalism can play in addressing conflicts between the digital age rights (under the EU Charter and the GDPR) and public interests, most prominently the right to freedom of expression and the public's right to information.

## Materials and Methods

This research employed doctrinal legal methodology, which implies a detailed examination of legislation and related jurisprudence to assess a legal framework governing a particular issue (Bhat, 2019). Following this method, it aimed at exploring the existing EU data protection regulatory framework to identify elements of

[1] Judgment of the European Court of Justice in Case No. C-210/00 "Käserei Champignon Hofmeister GmbH & Co. KG v. Hauptzollamt Hamburg-Jonas". (2002, July). Retrieved from https://curia.europa.eu/juris/showPdf.jsf;jsessionid=2304A21D519F98562C6EC55051260260?text=&docid=47091&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=27753201.

soft and hard paternalism therein and inquired into the extent to which it can effectively address the conflicts between the competing interests of data subjects, data processors, and the general public. This method is particularly suitable for this article's research question, as it provides an opportunity to comprehensively engage with judicial interpretations of relevant legal provisions in order to discern different forms of legal paternalism therein. From a normative perspective, the paternalist assumption that individuals often require protection to minimise self-harm, illuminates regulatory trade-offs between data subjects' decision-making autonomy and protection.

This Article analysed the two most relevant laws in this context – the EU Charter[1] and the GDPR[2]. Their examination was supported by relevant discussions from both laws' *travaux préparatoires*, as these documents can elucidate EU legislators' approach to data protection rights and their relationship with other fundamental rights. Moreover, to construct this thesis, attention is paid to the reasoning from the CJEU's (Court of Justice of the EU) and the ECtHR's (European Court of Human Rights) relevant judgments. This study resorts to the former's jurisprudence given that the Luxembourg Court is the best positioned judicial authority to interpret primary rules of EU law. The Strasbourg Court's case law was used because many of its judgments touch upon human rights whose content is essentially the same as of those protected by the EU regime for fundamental rights protection. The guiding criteria for selecting cases were their relevance and importance for the topic of this research.

## Results and Discussion

**Internal balancing exercise: Right to personal data protection in the EU.** Article 4(1) of GDPR provides more clarity to what is meant by "data" in the EU legal system through an all-encompassing definition (Clarke *et al.*, 2019), codifying it as "any information relating to an identified or identifiable natural person". Article 8(1) of the EU Charter[3] stipulates that "[e]veryone has the right to the protection of [their] personal data". As is often the case in human rights law (Trstenjak, 2023), the following provision of this Article provides more legal certainty by enumerating a list of conditions for lawful data processing. It should be done "fairly", "for specified purposes", and "on the basis of the consent of the person concerned or some other legitimate aims laid down by law" (Article 8(2)). Additionally, the inclusion of adjacent rights, the "right of access" and the "right to have [personal data] rectified" (Article 8(2)), clarifies the scope of this provision. As the subsequent practice of the European Parliament (2018; 2023) suggests, EU lawmakers attempt to ensure that the Union's regime for fundamental rights protection does not lag behind technological developments. Finally, Article 8(3) tasks independent authorities to monitor compliance with the obligations included therein.

Regarding soft paternalism, Article 8 of the EU Charter generally entitles data subjects to the protection of their data. This regulatory approach bears soft paternalist connotations, as it empowers individuals to exercise control over their personal data by facilitating access to data or their rectification. Moreover, the consent and fair processing requirements, developed into self-standing rights under the GDPR (Articles 5(1)(a), 7), ensure that data subjects have control over their data and can make informed decisions about their use. In the case of "Digital Rights Ireland", the CJEU highlighted the importance of making these legal guarantees effective to protect data subjects against potential abuses by data processors[4]. While data subjects might not pay attention to these requirements and decide not to invoke their rights, they cannot "consent away" the minimum protection of these principles (Quelle, 2017). This approach reflects soft paternalism because it aims to mildly influence data subjects' market behaviour by incentivising them to make informed decisions about their personal data without imposing restrictions on the autonomy of their actions.

On the other hand, this rule and its GDPR derivatives impose legal obligations on data processors that, by indirectly limiting data subjects' autonomy, reflect elements of hard paternalism. For instance, one may think of Article 9 on the processing of sensitive data. This provision places data processors under stringent obligations to justify sensitive data processing and to install safeguards against abuses (Quinn & Malgieri, 2021), particularly by demanding a special type of consent. However, it limits data subjects' ability to easily consent to the processing of their sensitive data, which can be problematic in the context of medical and health services or convenience in digital platforms. Although data subjects might want their sensitive data processed swiftly to satisfy personal interests (such as immediate access to healthcare or better digital

[1] Charter of the Fundamental Rights of the European Union. (2000, December). Retrieved from https://www.europarl.europa.eu/charter/pdf/text_en.pdf.
[2] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA Relevance)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng.
[3] Charter of the Fundamental Rights of the European Union. (2000, December). Retrieved from https://www.europarl.europa.eu/charter/pdf/text_en.pdf.
[4] Judgment of the European Court of Justice in Joined Cases Nos. C-293/12 & C-594/12 "Digital Rights Ireland Ltd v Minister for Communication, Marine and Natural Resources and Others". (2014, April). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0293.

services optimisation), strict obligations on data processors from Article 9 preclude this option. In a recent case, the CJEU confirmed the stringent nature of these obligations, requiring a solid legal basis and indicating specific conditions and limits for the processing of sensitive data[1]. The logic of these limitations highlights their hard paternalistic nature, as they aim at protecting data subjects from abuses of personal data and, in doing so, leave no room for manoeuvre for data processors and data subjects.

Unsurprisingly, in relevant cases before the CJEU, such as the Schrems saga, the issue at stake was big companies' unwillingness to grant access to, or delete, personal data because it would compromise their business models[2,3]. Additionally, in "La Quadrature du Net", the CJEU has emphasised that Article 8(2) of the Charter imposes strict obligations concerning the purposes of data processing, meaning that in the absence of the data subject's consent, the processor should put forward a solid legitimate basis for legitimising such processing[4]. The narrow scope of the consent as a legitimate basis for the processing of personal data, which the EU Court interpreted in "Bundeskartellamt", taking the GDPR into account, as "freely given, specific, informed and unambiguous"[5], limits the autonomy of data processors (and data subjects) even more, emphasising Brussels regulators' hard paternalism.

Furthermore, included in the GDPR and recently discussed in the CJEU's "RW v. Österreichische Post AG" judgment[6], requirements of accountability and transparency illustrate the hard paternalism of Article 8. They require data processors to adopt appropriate technical and organisational measures to ensure compliance with the rules on data processing, imposing a higher level of responsibility on them (de Hert & Lazcoz, 2022). As these measures are often costly to develop and implement because they require investments in research and development, the price that consumers pay for data processors' services increases. It is further facilitated by the fact that in modern digital markets, consumers face increasing difficulties in changing their service providers (Kanter, 2023). Hence, it indirectly limits data subjects' decision-making autonomy because financial considerations influence their digital market activities.

Finally, the existence of an independent authority that monitors compliance with Article 8 adds to the restrictions on data processors' autonomy. In multiple decisions, the CJEU considered the existence of such an independent authority a crucial component of the EU data protection regime[7,8,9]. It's very recent verdict in "TR v. Land Hessen" reiterates the importance of granting supervisory authority with effective powers to achieve "control" over the data processors' obligations within the meaning of Article 8(3) of the Charter[10]. As such authorities, operating both at national and EU levels, often fine data processors severely and order them to adjust their business models to comply with Article 8 and the GDPR[11] requirements, it places an additional burden on data processors (Tambou, 2019), which eventually results in more costs (financial and data-related) and fewer features (reduced personalisation and service availability) for consumers.

Therefore, we can conclude that EU regulators' approach to the right to personal data protection combines elements of soft and hard paternalism to address imbalances inherent to digital markets. By granting data subjects freedom of conduct with legal guarantees that aim at shaping their market behaviour (soft paternalism) and imposing mandatory legal obligations on data processors that indirectly shape consumers' decisions (hard paternalism), the EU strives to balance the market inequalities and protect individuals' fundamental right to data protection. In this context, we can see that

[1] Judgment of the European Court of Justice in Case No. C-667/21 "ZQ v. Medizinischer Dienst der Krankenversicherung Nordrhein, Körperschaft des Öffentlichen Rechts". (2023, May). Retrieved from https://eur-lex.europa.eu/leaagal-content/EN/TXT/PDF/?uri=CELEX:62021CA0667.
[2] Judgment of the European Court of Justice in Case No. C-498/16 "Maximilian Schrems v Facebook Ireland Limited". (2018, January). Retrieved from https://curia.europa.eu/juris/liste.jsf?num=C-498/16.
[3] Judgment of the European Court of Justice in Case No. C-311/18 "Data Protection Commissioner v. Facebook Ireland Ltd and Maximilian Schrems". (2020, July). Retrieved from https://curia.europa.eu/juris/liste.jsf?num=C-311/18.
[4] Judgment of the European Court of Justice in Joined Cases Nos. C-511/18, C-512/18 & C-520/18 "La Quadrature du Net and Others v. Premier Ministre and Others". (2020, October). Retrieved from https://curia.europa.eu/juris/liste.jsf?language=en&num=C-511/18.
[5] Judgment of the European Court of Justice in Case No. C-252/21 "Meta Platforms Inc, Meta Platforms Ireland Ltd and Facebook Deutschland GmbH v. Bundeskartellamt". (2023, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62021CJ0252.
[6] Judgment of the European Court of Justice in Case No. C-154/21 "RW v. Österreichische Post AG". (2023, January). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62021CJ0154.
[7] Judgment of the European Court of Justice in Case No. C-518/07 "Commission v. Germany". (2010, March). Retrieved from https://curia.europa.eu/juris/liste.jsf?language=en&num=C-518/07.
[8] Judgment of the European Court of Justice in Case No. C-614/10 "Commission v. Austria". (2012, October). Retrieved from https://curia.europa.eu/juris/document/document.jsf?docid=128563&doclang=EN.
[9] Judgment of the European Court of Justice in Case No. C-288/12 "Commission v. Hungary". (2014, April). Retrieved from https://curia.europa.eu/juris/document/document.jsf?docid=150641&doclang=EN.
[10] Judgment of the European Court of Justice in Case No. C-768/21 "TR v. Land Hessen". (2021, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2022_138_R_0009.
[11] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA Relevance)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng.

Brussels regulators' and Luxembourg judges' approach to the implementation of the right to data protection is in itself an "internal" balancing exercise.

However, another important observation is that elements of hard paternalism seem to dominate this approach. The CJEU in numerous decisions interpreted and applied the right to data protection as increasingly imposing restrictions on data processors. By implication, these developments affect data subjects' decision-making autonomy, as they limit the latter's choices in the digital market. With this in mind, this author now proceeds to analyse how this logic informs the broader, "external", balancing exercise between the right to data protection and other fundamental rights.

**The role of soft and hard paternalism in the external balancing exercise**. This section argues that the internal balancing exercise between soft and hard paternalism in the EU legal framework for personal data protection shapes the external balancing of data protection against competing public interests. Most prominently, those are freedom of expression, access to information, and national security. To this end, the analysis delves deeper into the relevant legal provisions and case law to assess how the internal balancing of paternalism informs the external balancing of fundamental rights.

The CJEU's judgment in "Planet49" is an important starting point in this discussion. There, the Court ruled that pre-ticked[1] checkboxes are not an adequate measure of receiving the data subject's consent under the GDPR. While academics praised this decision as a significant step towards the protection of data subjects (Jabłonowska & Michałowicz, 2020), it can also be read as the CJEU recognising that data subjects are often overwhelmed by the informational overload in digital markets. Hence, we can reasonably argue that the soft paternalist side of the internal balancing exercise might be insufficient to ensure the effective protection of data subjects' right to data protection. Consequently, one may reasonably expect harder paternalist measures against the other side of the digital market to change this situation.

In several other cases[2,3], the CJEU had to address a specific element of the right to data protection, the right to be forgotten, and its relationship with conflicting public interests of freedom of expression and access to information. The right to be forgotten (Article 17 GDPR[4]) entitles data subjects to request the deletion of their personal data if their situation falls under one of the specified conditions (Bunn, 2015). Once the CJEU's decision in Google Spain arrived, it became evident that when the Court emphasises the autonomy of data subjects, it reinforces the dominance of data protection over other fundamental rights. In that case, EU judges prioritised data subjects' right to be forgotten over the public's right to be informed, arguing that when the data in question are excessive or no longer relevant to the aim of processing, the data subject's rights override the competing interests of the data processor and the general public[5].

Five years later, the Court reiterated the correctness of this logic in a related case about the conflict between rights to data protection and to receive information[6]. Furthermore, in "La Quadrature du Net"[7], where the competing interest at stake was that of national security, the CJEU argued that this interest could override the data subject's right to data protection only in specific circumstances, requiring states processing the data in the interests of national security to install an effective system of review of their decisions and limit the duration of data processing. This judicial approach supports the above-mentioned arguments of Special Rapporteur Lanza, according to which the EU data protection regime receives more preferences when compared to other fundamental rights, and prompts several observations.

Firstly, it reinforces numerous academic arguments about the CJEU's inclination towards offering more legal protection to privacy and data protection (Erdos, 2016; Ivanova, 2021). Indeed, when comparing the CJEU's approach to that of the ECtHR[8,9], it becomes clear that the

[1] Judgment of the European Court of Justice in Case No. C-673/17 "Bundesverband der Verbraucherzentralen und Verbraucheverbande–Verbaucherzentrale Bundesverband eV v. Planet49 GmbH". (2019, October). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62017CJ0673.

[2] Judgment of the European Court of Justice in Case No. C-136/17 "GC and Others v. Commission Nationale de L'informatique et des Libertés". (2019, September). Retrieved from https://curia.europa.eu/juris/liste.jsf?num=C-136/17.

[3] Judgment of the European Court of Justice in Case No. C-460/20 "TU and RE v. Google LLC". (2022, December). Retrieved from https://surl.lu/xhyllb.

[4] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA Relevance)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng.

[5] Judgment of the European Court of Justice in Case No. C-131/12 "Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González". (2014, May). Retrieved https://curia.europa.eu/juris/liste.jsf?num=C-131/12.

[6] Judgment of the European Court of Justice in Case No. C-507/17 "Google LLC, Successor in Law to Google Inc. v. Commission Nationale de L'informatique et des Libertés (CNIL)". (2019, September). Retrieved from https://curia.europa.eu/juris/liste.jsf?language=en&num=C-507/17.

[7] Judgment of the European Court of Justice in Joined Cases Nos. C-511/18, C-512/18 & C-520/18 "La Quadrature du Net and Others v. Premier Ministre and Others". (2020, October). Retrieved from https://surl.li/pirogp.

[8] Judgment of the European Court of Human Rights in Case No. 931/13 "Satakunnan Markkinaporssi Oy and Satamedia Oy v. Finland". (2017, June). Retrieved from https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-175121%22]}.

[9] Judgment of the European Court of Human Rights in Cases Nos. 60798/10 & 65599/10 "M.L. and W.W. v. Germany". (2018, June). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22002-12041%22]}.

former has a strong preference for data protection. This divergence in approaches can be partly because in the ECtHR's jurisdiction, the right to data protection is not a self-standing right but an element of the right to privacy (Kovalenko, 2022). Even in cases where EU judges acknowledge the possibility that competing fundamental rights may outweigh Article 8 and the GDPR[1] rights, like in "La Quadrature du Net" and "Tele2Sverige and Watson"[2], they prescribe very detailed rules to ensure that limitations of the right to data protection are minimal.

This approach inevitably influences the outcome of the proportionality test, a key element of the external balancing exercise, in favour of the right to data protection. This is particularly so given that the CJEU has interpreted the Union's data protection framework as imposing strict obligations on data processors regarding the aim and conditions of the processing. Additionally, one can find in the CJEU's argumentation references to the context in which data processing takes place, and this context is often employed to advance the data subjects' protection. For instance, in Privacy International, judges indicated the importance of the en masse nature of the data processing in question[3], and this contextual consideration shaped the final ruling which favoured data protection rights. The crucial role that data protection authorities play in the GDPR regime, enforcing data protection legislation, further shifts the balance in favour of the right to data protection[4,5].

Moreover, even the special nature of the competing rights, which shapes the ECtHR's balancing of the right to privacy (when balancing the rights to privacy and freedom of expression, the ECtHR has always reiterated the crucial importance of the freedom of expression for the functioning of democracy[6]), does not affect the EU Court's adamant preference towards the right to data protection. Such a strict approach to all three elements of the external balancing exercise emphasises that hard paternalism within the overall EU data protection framework sets a high bar for any other fundamental rights. The CJEU's message in this respect is, therefore, straightforward – it prioritises data protection unless the opposing public interest is compelling and provides guarantees against abuses.

Secondly, critical concerns should be raised as to whether the external balancing test, dominated by hard paternalism, is capable of accounting for the full range of contemporary public interests. Drawing another analogy with the ECtHR, the Strasbourg provision that encompasses the right to data protection acknowledges the following list of legitimate aims: "national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others"[7]. It is much longer than the number of accepted by the CJEU public interests.

Earlier drafts of Article 8 of the EU Charter were initially cautious about confrontations with other legitimate interests. As such, the very first version included a safeguard that the right to data protection should not "conflict with the rights of third persons" (Coghlan & Steiert, 2021). It also provided that "[r]estrictions shall be admissible by law only in the dominant general interest" (Coghlan & Steiert, 2021). Later on, amendments to define the scope of "the dominant general interest" and to incorporate the principle of proportionality were successfully adopted (Coghlan & Steiert, 2021). The final wording of Article 8 indicates that the list of legitimate bases to be invoked for data processing is non-exhaustive: "[...] or some other legitimate basis laid down by law".

Taken together with Recital 40 of the GDPR, it means that domestic legislators are, in principle, free to prescribe legal bases for the lawful processing of personal data. It will then be EU judges' task to decide whether these bases represent legitimate aims for restricting one's data protection rights. So far, the CJEU has acknowledged that public interests of being informed and national security may justify interference with the right to data protection. It also recognised the economic interests of data processors. However, the Court imposed stringent safeguards against potential data abuses, leading to the conclusion that sophisticated data protection should be the norm and derogations – the exception.

This approach is structurally rigid, as in the external balancing exercise data protection seems to occupy a paramount position, leaving little room for

[1] Regulation of the European Parliament and of the Council No. 2016/679 "On the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA Relevance)". (2016, April). Retrieved from https://eur-lex.europa.eu/eli/reg/2016/679/oj/eng.

[2] Judgment of the European Court of Justice in Joined Cases Nos. C-203/15 and C-698/15 "Tele2Sverige AB v. Post-och Telestyrelsen and Secretary of State for the Home Department v. Tom Watson, Peter Brice, Geoffrey Lewis". (2016, December). Retrieved from https://curia.europa.eu/juris/liste.jsf?num=C-203/15.

[3] Judgment of the European Court of Justice in Case No. C-623/17 "Reference for a Preliminary Ruling from the Investigatory Powers Tribunal – London (United Kingdom) Made on 31 October 2017 – Privacy International v. Secretary of State for Foreign and Commonwealth Affairs and Others". (2020, October). Retrieved from https://surl.li/hnbvxm.

[4] Judgment of the European Court of Justice in Case No. C-210/16 "Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein v. Wirtschaftsakademie Schleswig-Holstein GmbH". (2018, June). Retrieved from https://curia.europa.eu/juris/liste.jsf?num=C-210/16.

[5] Judgment of the European Court of Justice in Case No. C-311/18 "Data Protection Commissioner v. Facebook Ireland Ltd and Maximilian Schrems". (2020, July). Retrieved from https://curia.europa.eu/juris/liste.jsf?num=C-311/18.

[6] Judgment of the European Court of Human Rights in Case No. 25344/20 & 17 others "Friedrich and Others v. Poland". (2024, June). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-234267%22]}.

[7] Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://surl.li/cetvkq.

other fundamental rights to be successfully weighed against it. Moreover, it is difficult to reconcile with the above discussion of the evolution of the right to data protection in the EU Charter's preparatory works and raises questions regarding the role that the principle of fairness plays in EU data protection law (Clifford & Ausloos, 2018). The main reason is that the internal balancing exercise's hard paternalism, which the CJEU subsequently developed to apply to the external balancing exercise, led to very strict scrutiny of any public interest that data processors might advance to justify the processing of personal data.

## Conclusions

This Article highlighted that the EU's data protection regulatory framework strikes a balance between hard and soft forms of legal paternalism. In this light, the GDPR safeguards individual fundamental rights in digital environments and establishes a legal regime that compensates for the inherent power imbalances between data subjects and data processors. One can notice the prevalence of hard paternalism in this approach, as the Regulation imposes strict obligations on data processors which indirectly curb data subjects' autonomy. This leads to a situation where data subjects, as consumers in digital markets, are deprived of choices that they would otherwise want to take, either financially or quantitatively.

This inflexible paternalistic approach broaches critical questions about the future of the EU human rights law in the digital age. If Brussels' hard paternalistic policy spills over other regulatory domains where personal data play a role (financial regulation or electronic communications), the risk of solidifying data protection as an almost untouchable right raises concerns about the proportionality of restrictions on other fundamental rights. It has already become visible in the CJEU's strong preference towards the right to data protection, with the external balancing exercise taking high data protection standards almost as a default setting. In these circumstances, data processors struggle to have their potentially legitimate interests accepted to restrict data subjects' rights. It raises serious concerns about a potential hierarchy of EU fundamental rights, which would be difficult to reconcile with the mainstream approach of international human rights law that upholds the equal importance of different fundamental rights.

A practical recalibration towards soft paternalism could offer a solution. This recalibration would involve enhancing the autonomy of data subjects by refining information requirements and consent mechanisms. With more efficient techniques tailored to avoid information overload, data subjects will be able to make more informed choices about how their data are used. Additionally, with more granular options for consent, they could better balance their desire for privacy against competing interests. It would foster greater flexibility, allowing individuals to pursue their preferences without being confined to rigid protections.

In such an arrangement, soft paternalism would also play a more prominent role in the external balancing equation, allowing for a better degree of proportionality there. By efficiently "educating" data subjects and allowing them to exercise more control over their data, regulators could move away from imposing hard paternalistic measures as a default. This would open space for more context-sensitive rulings where judges could weigh other fundamental rights more equitably against privacy concerns. However, as the interpretation and application of the GDPR are technical legal matters, such a change should originate in the Luxembourg court.

Further research may explore how to institutionalise this shift in the EU's legal framework. One particular suggestion is a comparative analysis of the CJEU's and the ECtHR's approaches to balancing the right to data protection with competing fundamental rights. Such research, especially considering the EU's aspirations to accede to the ECHR, may indicate alternative options to incorporate the full spectrum of modern European public interests in the external balancing exercise without compromising the robustness of the EU data protection regime.

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## Conflict of Interest

The author of this study declares no conflict of interest. This research was conducted in the course of the author's postgraduate studies and does not represent the views of his current employer.

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# Вплив правового патерналізму на баланс між захистом даних і фундаментальними правами

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**Анотація**
У цій статті досліджено, як Загальний регламент про захист даних, що є елементом режиму європейського регуляторного приватного права, відображає м'які й жорсткі форми правового патерналізму. На основі використання доктринальної методології в цьому дослідженні проаналізовано відповідне право ЄС і практику Суду Європейського Союзу з метою вивчення того, як регулювання права на захист персональних даних у правопорядку ЄС ґрунтується на м'якому та жорсткому типах правового патерналізму. Результати засвідчують, що Загальний регламент про захист даних накладає суворі зобов'язання на обробників даних у межах жорсткого патерналістського підходу, оскільки дотримання таких зобов'язань обмежує автономію суб'єктів даних. М'який патерналізм, з іншого боку, наявний у спробах законодавців ЄС підштовхнути суб'єктів до обережного й розумного використання їхніх даних у цифровому середовищі без значного обмеження їхньої автономії даних. Цей підхід викликає занепокоєння щодо пропорційності обмежень інших основоположних прав, оскільки жорсткий патерналізм основного закону ЄС у цій сфері яскраво відображено в судовій практиці Люксембурзького суду, який надає пріоритет захисту даних над суспільними інтересами, що конкурують. Можливим способом розв'язання цієї проблеми є рекалібрування в напрямі м'якого патерналізму для посилення автономії суб'єктів даних і підтримання балансу між приватним життям й іншими правами. Таке зміщення може призвести до прийняття контекстно чутливіших рішень, що засвідчують важливість захисту інших прав людини

**Ключові слова:**
європейське регуляторне приватне право; Європейський Союз; GDPR; право ЄС; права людини; пропорційність; балансування

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# Validity of digital agreements and the legal relations of the parties in affiliate marketing

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**Abstract**
The development of digital technologies has led to the expansion of affiliate marketing as a crucial marketing strategy in the e-commerce ecosystem. However, the validity of digital agreements, which serve as the basis for legal relations between the parties in this practice, is subject to legal uncertainty. The purpose of this study was to analyse the validity of digital agreements in affiliate marketing from the perspective of positive law in Indonesia and their impact on the legal relationship between the parties involved – sellers and affiliates. Based on the regulatory approach, this study analysed the relevant regulations, such as the Law of Indonesia "On Electronic Information and Transactions" and the Civil Code of Indonesia, and assessed the existing legal gaps in the context of affiliate marketing. The study found that while digital transactions are legally recognised, key elements such as commission mechanisms, rights and obligations of the parties, and the use of electronic signatures are often insufficiently regulated, leading to legal uncertainty. This uncertainty affects the legal relationship between the parties, provoking the risk of contract abuse, an imbalance of legal positions between the seller and affiliates, and potential conflicts that may impede trust in the digital marketing ecosystem. The study demonstrated the need for more detailed and specific legal regulation to ensure the validity of digital agreements in affiliate marketing, provide legal certainty, and establish fair and sustainable legal relations for all parties involved

**Keywords:**
validity of digital agreements; legal relationships; legal uncertainty; e-commerce; imbalance of legal positions

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## Introduction

Technological developments affect various activities that now rely heavily on digital, including trade activities. Currently, much trade is done electronically or through e-commerce. The growth of e-commerce in Indonesia continues to increase. The Indonesian Ministry of Trade projects that the volume of digital transactions will reach IDR 1,730 trillion in 2025. The Minister of Trade 2019-2024, Zulfikli Hasan, stated that the potential for the digital economy has continued to increase rapidly in the last five years, with the value of the digital economy in 2024 estimated to reach IDR 1,292 trillion with e-commerce as the largest contributor (Candra, 2024). This is in line with the Global E-Commerce Market 2024 report from ECDB, a German e-commerce data analysis company, quoted by A.Z. Yonatan (2024), global e-commerce growth in 2024 is predicted to reach 10.4% with Indonesia projected to be the country with the highest e-commerce growth in the world at 30.5%, almost three times the global average, followed by Mexico, Thailand, Iran and Malaysia.

Amidst this phenomenon, digital-based marketing models, such as affiliate marketing, are increasingly prominent as innovative and effective strategies. Affiliate marketing is a digital marketing strategy where business actors work together with affiliates to promote products or services through links, in exchange for a commission on the resulting transactions. According to F. Husna (2023), this is an online activity to market other people's products for a commission from prospects or sales. In essence, affiliates direct visitors to the marketplace, if visitors make transactions, then the affiliate will get a commission on the results. In Indonesia, affiliate marketing is growing rapidly with a high number of internet users reaching 212.9 million, with 88.7% of them actively shopping online according to data from S. Kemp (2023). In addition, a survey by Nielsen (2023) revealed that 59% of consumers trust recommendations from affiliates more than conventional advertising and 55% of consumers prefer affiliate marketing because it makes it easier to evaluate brands or products through the content they see or hear.

In Indonesia, the development of digital technology has encouraged affiliate marketing practices as an effective marketing strategy in the e-commerce ecosystem (Jatmika & Widiarini, 2023). However, the validity of digital agreements that form the basis of legal relations between the parties in this practice still faces legal uncertainty. Although the ITE Law[1] provides a legal basis for electronic contracts, its provisions are general and do not yet cover specific needs in affiliate marketing. This creates uncertainty regarding the validity of important elements in digital agreements, such as commission mechanisms, the use of electronic signatures, and the regulation of the rights and obligations of the parties. This uncertainty can affect the legal relationship between the parties, including the risk of contract abuse, breach of agreement, or unfairness in the implementation of the agreement. If this is not addressed immediately, it can hamper the development of the digital marketing sector and reduce the trust of the parties in the e-commerce ecosystem. Therefore, an in-depth study is needed to understand and provide solutions to the legal uncertainty related to the validity of digital agreements in affiliate marketing practices.

Relevant previous findings include a study by A. Alfaqiih *et al*. (2023), which focused on the registration system within the electronic marketing affiliate programme. This study focused on minors taking part in electronic contracts under the marketing affiliate programme without parental consent. The researchers suggest that the registration system of the marketing affiliate programme contains a legal loophole that permits minors to take part without parental consent, thereby violating the requirements of legal capacity in electronic contracts. Consequently, a more accommodating system and more detailed legal regulations are necessary to ensure compliance with age limit requirements and parental consent, thereby ensuring that electronic contracts are legally valid under statutory provisions. W.T. Wahyuningsih (2023) noted that despite the rapid growth of the digital business, the existing consumer protection regulations do not fully meet the needs of the digital era, highlighting the need for specific regulations that ensure the rights of consumers and business actors with legal certainty. M.A. Syahputra (2023) discussed the civil law aspects of affiliate marketing, including the contractual relationship between affiliates and merchants and the application of civil law in this practice.

The present study employed a different approach, which was to investigate the overall concept of law in the relations between affiliates, sellers, and consumers in affiliate marketing. The focus of the study was on creating legal certainty through regulations that govern the legal relationship of the parties, offering a new perspective compared to previous studies that were more focused on consumer protection or civil law. The purpose of this study was to analyse the validity of digital agreements in affiliate marketing and how it affected the legal relationship between the parties, to create legal certainty in the digital era. This study was also relevant in answering the need for clear legal regulations and legal certainty in the field of affiliate marketing, so that it could provide the best legal protection for all parties involved.

[1] Law of Indonesia No. 1 "On Second Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions". (2024, January). Retrieved from https://peraturan.bpk.go.id/Details/274494/uu-no-1-tahun-2024.

## Materials and Methods

To analyse the stated problematic, the study determined the suitable research method following the research objectives. The regulatory approach was employed in this study by positioning the law as its object so that the truth can be found from the normative side. This type of research does not merely identify it with laws and regulations but also analyses its normative system in greater depth (Syahrum, 2022). The study employed a theoretical approach to examine the validity of a provision or legal rule. To understand the background of the significance of the validity of digital agreements in affiliate marketing practices, this study analysed the legal effects on the relationship between the parties involved in the agreement. The study examined the validity and enforceability of digital agreements in the context of affiliate marketing in e-commerce, as well as its implications for legal certainty for the parties. In this case, the study examined the legal relationship between merchants, affiliates, and consumers, by considering aspects of legal protection and legal certainty. The basic concept in this study referred to the theory of legal certainty, which is linked to the existence of clear regulations in legal relations between parties. In analysing this, the study employed a comparative approach with practices in other countries that already have analogous regulations, to provide a more comprehensive picture of the need for regulation in Indonesia.

The legal materials utilised in this study included primary legal sources or written legal provisions, consisting of the Laws of Indonesia "On Consumer Protection"[1], "On Second Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions"[2], "On Trade"[3], Civil Code of Indonesia[4], Government Regulations "On Implementation of Electronic Systems and Transactions"[5] and "On Trading Through Electronic Systems Government Regulation"[6], Minister of Trade Regulation "On Business Licensing, Advertising, Guidance and Supervision of Business Actors in Trading through Electronic Systems"[7], Financial Services Authority Regulation of Indonesia No. 42/POJK.04/2020[8]. These legal materials were reviewed descriptively and analytically to achieve a comprehensive understanding of the regulation concerning the validity of digital agreements in affiliate marketing and their impact on the legal relationships between parties.

## Results and Discussion

**Validity of digital agreements in affiliate marketing.** To support the potential growth of e-commerce, the Ministry of Trade of the Republic of Indonesia has issued a significant regulation, namely the Regulation of the Minister of Trade (Permendag) No. 31 of 2023 "On Business Licensing, Advertising, Guidance and Supervision of Business Actors in Trading through Electronic Systems"[9]. However, the challenges in e-commerce, especially related to affiliate marketing, are not only limited to the marketing aspect, but also regarding the legality of digital agreements that form the basis of the relationship between the parties.

In e-commerce activities and cooperation in affiliate marketing, it relies on contracts or agreements like conventional trade. Generally, contracts are made in writing or verbally. However, the presence of the Internet expands the form of agreements through electronic agreements or e-contracts as a new form in this digitalisation. According to Article 1 number 17 of Law Number 11 of 2008 "On Electronic Information and Transactions" (ITE)[10], an electronic contract is an agreement concluded through an electronic system. Electronic contracts are made without a direct meeting between the parties, unlike conventional contracts which are generally agreed on paper through face-to-face meetings. In digital agreements, a standard contract model is generally used, where only one party who has a more advantageous position will dominate in the drafting of the contract, while the other party can only agree to all clauses or none at all ("take it or leave it").

The preparation of this standard contract is applied in electronic contracts because it can cut time and costs

[1] Law of Indonesia No. 8 "On Consumer Protection". (2000, April). Retrieved from https://peraturan.bpk.go.id/Details/45288/uu-no-8-tahun-1999.
[2] Law of Indonesia No. 1 "On Second Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions". (2024, January). Retrieved from https://peraturan.bpk.go.id/Details/274494/uu-no-1-tahun-2024.
[3] Law of Indonesia No. 7 "On Trade". (2014, March). Retrieved from https://peraturan.bpk.go.id/Details/38584/uu-no-7-tahun-2014.
[4] Civil Code of Indonesia. (1847, April). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[5] Government Regulation of Indonesia No. 71 "On Implementation of Electronic Systems and Transactions". (2019, October). Retrieved from https://peraturan.bpk.go.id/Details/122030/pp-no-71-tahun-2019.
[6] Government Regulation (PP) No. 80 "On Trading Through Electronic Systems". (2019, November). Retrieved from https://peraturan.bpk.go.id/Details/126143/pp-no-80-tahun-2019.
[7] Regulation of the Minister of Trade of Indonesia No. 31 "On Business Licensing, Advertising, Guidance and Supervision of Business Actors in Trading through Electronic Systems". (2023, September). Retrieved from https://peraturan.bpk.go.id/Details/265202/permendag-no-31-tahun-2023.
[8] Financial Services Authority Regulation of Indonesia No. 42/POJK.04/2020. (2020, July). Retrieved from https://ojk.go.id/id/regulasi/Pages/Transaksi-Afiliasi-dan-Transaksi-Benturan-Kepentingan.aspx
[9] Regulation of the Minister of Trade of Indonesia No. 31 "On Business Licensing, Advertising, Guidance and Supervision of Business Actors in Trading through Electronic Systems". (2023, September). Retrieved from https://peraturan.bpk.go.id/Details/265202/permendag-no-31-tahun-2023.
[10] Law of Indonesia No. 1 "On Second Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions". (2024, January). Retrieved from https://peraturan.bpk.go.id/Details/274494/uu-no-1-tahun-2024.

(Riadi *et al*., 2022). In fact, according to Article 1320 of the Civil Code[1], the requirements for a valid agreement include agreement of the parties, legal capacity, good faith, and a specific object. When compared to the existing forms of electronic contracts, Article 9 of the ITE Law[2], which aims to regulate the use of information technology and electronic transactions so that they are carried out legally and responsibly, shows a lack of clarity in regulating the form and conditions of electronic contracts with certainty (Mokosolang *et al*., 2023).

The practice of agreements made through registered domain websites simplifies the proof that electronic contracts were agreed upon by the parties. However, since these agreements are conducted digitally, concerns arise regarding their compliance with legal standards. Globalisation has significantly affected technology and law, and in response to rapid technological advancements, the legal system must evolve to address emerging issues, especially those related to digital economic activities like affiliate marketing. In Indonesia, no comprehensive legal instrument regulates affiliate marketing practices, including the digital agreements that govern relationships between the parties. This lack of regulation poses legal risks for both merchants and affiliates, especially in case of a dispute. As globalisation progresses, various legal challenges have emerged, particularly concerning the validity and legality of digital agreements in affiliate marketing. The legal system must adapt to accommodate these changes and address potential issues that may arise in the digital economy.

Article 1329 of the Civil Code[3] states that everyone is eligible to conclude an agreement, unless otherwise specified by law. Therefore, Article 1330 of the Civil Code explains that incompetent parties include those who are minors, those under pardon and married women, and all people who are prohibited by law from concluding certain agreements. Article 1331 of the Civil Code states that an incompetent party can sue for the cancellation of an agreement that has been made, unless regulated by law. Thus, the Civil Code does not prohibit a person from making an agreement with any party they wish, as long as they are not included in the group of incompetents according to law. Even if an agreement is concluded with a party who is considered ineligible, the agreement stays valid as long as the party does not file for cancellation (Winarno *et al*., 2023).

In the context of electronic agreements, there is a series of principles that are the main basis for the preparation and implementation of legally valid agreements. This agreement made through electronic media, subject to basic principles that are analogous to conventional agreements, but with adjustments that are relevant to the characteristics of digital transactions. The principles of electronic agreements include:

a. Principle of freedom of contract. This principle is guided by Book III of the Civil Code[4], giving legal subjects the freedom to make contracts with anyone, determining the content and form, as long as it does not conflict with law, morality, or public order. This principle also allows the creation of new contracts such as electronic contracts, if they meet the requirements for a valid agreement.

b. Principle of consensualism. This principle states that an agreement is based on the agreement of the parties. In an electronic contract, an agreement occurs when the offeree accepts the offer.

c. Principle of binding power (*pacta sunt servanda*). This principle requires the parties to abide by all concluded agreements because the agreement is legally binding for the parties who conclude it. In the context of electronic contracts, agreements bind the parties if they do not conflict with laws, morality, and public order.

d. Principle of good faith. This principle emphasises that an agreement must be executed in good faith. The principle of good faith is divided into two, namely pre-contract, where the parties must be honest with each other during negotiations, and contract implementation, where the contents of the agreement must be rational and implemented seriously. In the context of electronic contracts, the seller must carry out the conditions of the object clearly, while the buyer must verify the suitability of the object of the agreement.

e. Principle of equity. This principle ensures that there is equality of rights and obligations between the parties. This principle also emphasises the significance of a balanced position between the parties in the contract, so that no party is too dominant. Each party hopes to create a balance in position and obligations (Ghassani *et al*., 2023).

Laws and regulations, such as Law Number 7 of 2014 "On Trade"[5] and ITE Law[6], do not specifically address the mechanisms or validity of agreements in affiliate marketing practices. While the Trade Law and the ITE Law outline certain prohibitions, they do not provide clear guidelines or regulations for affiliate marketing activities, making it challenging to supervise and ensure transparent, responsible practices, particularly regarding electronic contracts. The validity of electronic

[1] Civil Code of Indonesia. (1847, April). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[2] Law of Indonesia No. 1 "On Second Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions". (2024, January). Retrieved from https://peraturan.bpk.go.id/Details/274494/uu-no-1-tahun-2024.
[3] Civil Code of Indonesia. (1847, April). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[4] Ibidem, 1847.
[5] Law of Indonesia No. 7 "On Trade". (2014, March). Retrieved from https://peraturan.bpk.go.id/Details/38584/uu-no-7-tahun-2014.
[6] Law of Indonesia No. 1 "On Second Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions". (2024, January). Retrieved from https://peraturan.bpk.go.id/Details/274494/uu-no-1-tahun-2024.

contracts is recognised under the ITE Law, as stated in Article 1, number 17, but the law does not offer detailed explanations regarding supervision and mechanisms in the context of digital trade. Analogously, the Trade Law acknowledges the validity of electronic transactions in Article 1, number 24, and outlines the implementation of Trade Through Electronic Systems (PMSE)[1] in Article 65, but does not provide concrete regulations on the digital ecosystem or the use of electronic contracts in affiliate marketing and digital trade.

In addition to the Laws and Regulations, the preparation of Government Regulations related to Electronic System Trading (PMSE)[2] was ratified through Government Regulation Number 80 of 2019 concerning Electronic System Trading (PP PMSE)[3] as mandated by Article 66 of the Trade Law[4], "Further provisions regarding Electronic System Trading transactions are regulated by or based on Government Regulations". Provisions regarding electronic contracts in PP PMSE[5] are regulated in:

a. Article 50: "PMSE can use electronic contract mechanisms or other contractual mechanisms as a manifestation of the parties' agreement";

b. Article 51: "Regulates electronic contracts in the form of valid sales and purchase agreements";

c. Article 52: "Regulates provisions in electronic contracts that can be binding on the parties";

d. Article 53: "Regulates the provisions that information in electronic contracts must not contain lies, and must not include standard clauses that harm consumers";

e. Article 54: "The validity of electronic signatures in electronic contracts";

f. Article 55: "Provisions for using Indonesian in consumer electronics contracts in Indonesia";

g. Article 57: "Provisions that electronic contracts are considered null and void if a technical error occurs due to an unsafe or unreliable electronic system".

The articles in the PP PMSE[6] can be used as guidelines in digital agreements in the context of digital trade including affiliate marketing practices. The legal force of electronic contracts is regulated in Article 50 and Article 52 of the PP PMSE which confirms that electronic contracts have the same legal force as conventional contracts if they meet the legal requirements of Article 1320 of the Civil Code[7]. This provides legal certainty for the parties involved in affiliate marketing. The PP PMSE also regulates the legal requirements for agreements in the electronic context including regarding the conformity of information in the contract with the offer submitted, as well as the existence of an agreement between the parties involved (Huda, 2024). Although PP PMSE[8] provides a legal framework for electronic transactions, there are still some aspects that must be addressed, such as the lack of more specific regulations regarding affiliate marketing practices, as well as the dualism of the legal requirements of the agreement between PP PMSE and the provisions in the Civil Code, which can cause legal uncertainty. Therefore, harmonisation is needed between these two regulations so that digital agreements have stronger legal certainty. Therefore, the absence of explicit regulations concerning provisions related to the digital context results in a lack of legal certainty regarding electronic contracts within the laws and regulations governing electronic information and transactions. The creation of electronic contracts is often dominated by one party that has a stronger position, such as merchants in the context of affiliate marketing. This imbalance causes the failure to achieve equal justice for the parties, because the unequal position prevents one party from obtaining fair benefits following the provisions of the laws and regulations. This complicates the achievement of ideal legal certainty and justice for the parties. This is clearly contrary to the theory of legal ideals put forward by Gustav Radbruch, as cited by V. Maharani (2024), which emphasises that the law must be able to ensure justice, certainty, and expediency to function and benefit society and order. Gustav Radbruch argued that justice, benefit, and certainty are three elements that complement each other to form a positive legal system. The purpose of this theory is to create harmonious legal provisions, free from conflict, having clear meaning, and devoid of legal vacuum in their application.

**Legal relationship of the parties in affiliate marketing practices.** The affiliate marketing programme is a programme organised by an e-commerce platform as one of the marketing techniques carried out by someone through their active social media such as X, Instagram, and TikTok. This programme is attractive to affiliates because of the many benefits offered by the e-commerce platform, such as commissions. A. Putri Nabila & G. Djayaputra (2023) found that the principal reason for someone to join as an affiliate is because of the commission they receive. To become an affiliate,

[1] Government Regulation (PP) No. 80 "On Trading Through Electronic Systems". (2019, November). Retrieved from https://peraturan.bpk.go.id/Details/126143/pp-no-80-tahun-2019.
[2] Ibidem, 2019.
[3] Ibidem, 2019.
[4] Law of Indonesia No. 7 "On Trade". (2014, March). Retrieved from https://peraturan.bpk.go.id/Details/38584/uu-no-7-tahun-2014.
[5] Government Regulation (PP) No. 80 "On Trading Through Electronic Systems". (2019, November). Retrieved from https://peraturan.bpk.go.id/Details/126143/pp-no-80-tahun-2019.
[6] Ibidem, 2019.
[7] Civil Code of Indonesia. (1847, April). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[8] Government Regulation (PP) No. 80 "On Trading Through Electronic Systems". (2019, November). Retrieved from https://peraturan.bpk.go.id/Details/126143/pp-no-80-tahun-2019.

prospective participants must register through the e-commerce website or application, fill in the data correctly, and read and agree to the terms and conditions set. After the verification process by the e-commerce platform, prospective affiliates receive an approval notification via email and are officially registered as affiliates.

Article 1313 of the Civil Code[1] defines an agreement as an agreement where one party binds themselves to another party, becoming one of the sources of obligations other than law. The obligation from the agreement arises through consent, while the obligation from the law arises from the rights and obligations that were determined. Article 1338 of the Civil Code emphasises that a valid agreement applies as a law for the parties, thus creating a binding legal relationship. When an offer is made and accepted, an agreement is formed between the affiliate and the e-commerce platform, creating mutual rights and obligations. The affiliate is responsible for promoting the platform's products and is entitled to a commission for their successful marketing efforts. In turn, the e-commerce platform is entitled to have its products promoted by the affiliate and is obligated to pay commissions for sales generated through the affiliate's unique link. For example, if an affiliate shares a promotional link on social media and consumers make purchases through that link, the e-commerce platform is required to pay a commission to the affiliate. This obligation should be clearly outlined in the affiliate programme's terms and conditions. For instance, in Shopee's Affiliate Programme, Clause 2 specifies: "Shopee will provide Commissions and/or Bonuses (as applicable) to Participants when Participants upload Participant Links on Participant Media, in the manner and conditions specifically regulated in the Shopee Affiliate Programme Guidelines and that do not conflict with these Terms and Conditions, which are then clicked and/or accessed by Users and result in Completed Purchases that meet the provisions set by Shopee" (Shopee, 2020).

The standard agreement applied in this affiliate programme is included in the type of digital agreement. This means that the contents of the agreement are compiled digitally in the form of an electronic document designed unilaterally by the marketplace company. This document is then provided to be read and approved by other parties, namely prospective affiliates, who conclude agreements online (Gunawan & Waluyo, 2021). Electronic contracts, as defined in Article 1 point 17 of Law Number 1 of 2024[2], are agreements made through electronic systems. While analogous to conventional contracts, they are formed electronically. In affiliate marketing, electronic contracts establish the legal relationship between affiliates and marketplaces. Through offer and acceptance, both parties agree to mutual rights and obligations. Affiliates promote products according to the affiliate programme's terms, and when a consumer makes a purchase through a shared promotional link, the marketplace is required to pay the affiliate a commission. This demonstrates that electronic contracts formalise legal relationships and ensure both parties perform their rights and obligations (Rahman & Ardiansyah, 2023). Affiliates are required to promote products in the marketplace, following applicable provisions. In return, affiliates are entitled to a commission from each successful achievement. On the other hand, the marketplace company is entitled to receive product promotions, and is required to provide a commission according to the products successfully sold through a special link (Rafiqih, 2022).

The legal relationship between the parties of a cooperation agreement is established in a standardized manner by the marketplace company and accepted by the affiliate through electronic media, such as a website or a specific marketplace application. In this case, the marketplace acts as a service provider and the affiliate acts as a service marketer. The cooperation agreement made is considered valid if it meets the valid requirements of the agreement regulated by Article 1320 of the Civil Code[3] (Table 1).

**Table 1**. Requirements of the cooperation agreement

| | |
|---|---|
| Agreement of the parties | In affiliate marketing programmes, the marketplace applies a standard agreement, which can be understood as the freedom of one party, in this case the entrepreneur, to express their will in running the company's operations. Affiliates have the freedom to accept or decline the provisions that were set. Therefore, if an affiliate registers for the programme, they arguably agree to all applicable provisions. |
| Legal requirements | In affiliate marketing programmes, each party involved in an electronic contract is required to fill out a payment arrangement form that includes information such as a bank account, Identity Card (KTP), and Taxpayer Identification Number (NPWP). This provision is an effort to meet the legal capacity requirements. |
| Object of the agreement | An object of the agreement that was agreed upon by both parties. In the context of an affiliate marketing programme, the object refers to the rights and obligations that must be performed by each party. The specific object in this case is product promotion using a special link posted on social media by the affiliate. After successfully attracting buyers, the marketplace company must pay a commission to the affiliate according to the amount that was agreed upon. |

[1] Civil Code of Indonesia. (1847, April). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[2] Law of Indonesia No. 1 "On Second Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions". (2024, January). Retrieved from https://peraturan.bpk.go.id/Details/274494/uu-no-1-tahun-2024.
[3] Civil Code of Indonesia. (1847, April). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.

*Table 1, Continued*

| | |
|---|---|
| Lawful cause | A lawful cause in an agreement means that the content and purpose of the agreement do not conflict with public order, morality, and applicable laws and regulations. In the context of an affiliate marketing programme, the purpose of this agreement is to encourage people to buy products through special affiliate links. Thus, this agreement benefits both parties – the marketplace platform and the affiliate who gets a commission from the results of promotions and sales. |

**Source**: created by the authors of this study based on the analyses of Civil Code of Indonesia[1] and Shopee Affiliate Programme (Shopee, 2020)

According to Law Number 1 of 2024 (amending Law Number 11 of 2008)[2], electronic information and documents are considered valid legal evidence. In affiliate marketing, electronic agreements are binding if they meet the requirements of the ITE Law[3] and the Civil Code[4]. Once valid, these agreements are legally binding and cannot be cancelled unilaterally, as outlined in Article 1338 paragraph (1) of the Civil Code[5]. However, affiliate agreements, such as Shopee's, often favour the marketplace, creating an imbalance. To ensure fairness, these terms must be revised to offer equal protection for both parties. While digital agreements in affiliate marketing are not specifically regulated, the existing regulations like the ITE Law[6], UUPK[7], PP PMSE[8], and PP PSTE[9] address digital trade. Additionally, POJK Number 42/POJK.04/2020[10] relates to affiliate transactions but focuses on stock-related companies, not marketing. V. Aditiya *et al*. (2024) showed that influencers and affiliates significantly affect consumer purchasing, especially among the younger generation, emphasising the need for clear legal relationships to enhance consumer trust and sales

Overall, the legal relationship in affiliate marketing practices on e-commerce platforms such as Shopee is complex and requires serious attention. The principle of balance, legal protection for consumers, and the implementation of effective marketing strategies are essential elements to fulfil a mutually beneficial and sustainable relationship.

**Analysis of legal challenges in affiliate marketing.** The practice of agreements executed through restored domain websites simplifies proof that parties agreed to electronic contracts. However, the absence of specific regulatory frameworks tailored to affiliate marketing introduces major challenges. Globalisation and rapid technological advancement demand that the legal system adapts to address emerging complexities, especially in digital economic activities like affiliate marketing.

One primary challenge lies in the virtual, borderless nature of digital transactions, which complicates issues such as legal jurisdiction, designated forum, and applicable law. Contracts in affiliate marketing often exhibit an imbalance in contractual freedom, favouring merchants. Affiliates, with limited bargaining power, face terms dictated unilaterally, reflecting a shift from mutual autonomy to unilateral dominance. Such practices contravene the principle of freedom of contract articulated in Article 1338 of the Civil Code[11], which underscores equality and voluntariness in contractual agreements. Although frameworks like PP PMSE[12] offer guidelines for electronic contracts, their generality and lack of specificity for affiliate marketing exacerbate legal uncertainty. The dualism between PP PMSE[13] and the Civil Code further complicates matters, necessitating harmonisation to establish stronger legal certainty and equitable practices.

Affiliate marketing practices have challenges in determining legal jurisdiction, designated forum, and choice of applicable law. This is due to the characteristics of digital transactions which are virtual, limitless, and paperless, thus differing from conventional transactions. The agreement on legal clauses and forums has often been determined unilaterally in electronic contracts which can affect the validity of the agreement

[1] Civil Code of Indonesia. (1847, April). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.

[2] Law of Indonesia No. 1 "On Second Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions". (2024, January). Retrieved from https://peraturan.bpk.go.id/Details/274494/uu-no-1-tahun-2024.
[3] Ibidem, 2024.
[4] Civil Code of Indonesia. (1847, April). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[5] Ibidem, 1847.
[6] Law of Indonesia No. 1 "On Second Amendment to Law Number 11 Year 2008 on Electronic Information and Transactions". (2024, January). Retrieved from https://peraturan.bpk.go.id/Details/274494/uu-no-1-tahun-2024.
[7] Law of Indonesia No. 8 "On Consumer Protection". (2000, April). Retrieved from https://peraturan.bpk.go.id/Details/45288/uu-no-8-tahun-1999.
[8] Government Regulation (PP) No. 80 "On Trading Through Electronic Systems". (2019, November). Retrieved from https://peraturan.bpk.go.id/Details/126143/pp-no-80-tahun-2019.
[9] Government Regulation of Indonesia No. 71 "On Implementation of Electronic Systems and Transactions". (2019, October). Retrieved from https://peraturan.bpk.go.id/Details/122030/pp-no-71-tahun-2019.
[10] Financial Services Authority Regulation of Indonesia No. 42/POJK.04/2020. (2020, July). Retrieved from https://ojk.go.id/id/regulasi/Pages/Transaksi-Afiliasi-dan-Transaksi-Benturan-Kepentingan.aspx.
[11] Civil Code of Indonesia. (1847, April). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[12] Government Regulation (PP) No. 80 "On Trading Through Electronic Systems". (2019, November). Retrieved from https://peraturan.bpk.go.id/Details/126143/pp-no-80-tahun-2019.
[13] Ibidem, 2019.

and the legal relationship of the parties. Contracts in electronic transactions often put consumers in a weak bargaining position. Consumers have limitations in negotiating the contents of the contract and understanding complex provisions so that their protection is reduced. This imbalance shifts the principle of freedom of contract from party autonomy which is identical to the principle of freedom of contract to unilateral autonomy, where the dominant power is entirely in the hands of business actors. According to M. Isnaeni (2016), the principle of freedom of opinion in an agreement is reflected in Article 1338 of the Civil Code[1] which gives freedom to the parties to enter into an agreement. This freedom includes five main aspects, namely the freedom to conclude or not to conclude a contract, the freedom to choose the party to be invited to the contract, the freedom to determine the form of the contract, the freedom to regulate the contents of the contract, and the freedom to choose the dispute resolution forum. Article 1338 of the Civil Code embodies the principle of freedom of contract, allowing parties the autonomy to decide whether to enter into a contract, select its contents and stipulations, and define the subject matter of the agreement. In contract law, this freedom has two sides, namely, positive which means the freedom to draft a contract according to the free will of the parties, and negative which means freedom from obligations that are not regulated in the agreed contract (Handriani & Mulyanto, 2021). Although not explicitly regulated in law, this principle is central in the contract law and greatly influences contractual relationships. Freedom of contract derives from classical economics and emphasises free competition, thus reflecting the exercise of free will (Hutabalian, 2021).

Electronic contracts can be classified as obligations with legal consequences, because if the business actor fails to perform their obligations, the aggrieved party is entitled to claim compensation. This electronic contract is included in an anonymous agreement since it is not regulated in the Civil Code of Indonesia[2]. To ensure the certainty and validity of the contract, the agreement must meet the requirements for a valid agreement according to Article 1320 of the Civil Code (Hanifah & Koto, 2023). In addition to the Civil Code, Government Regulation Number 71 of 2019 concerning the Implementation of Electronic Systems and Transactions (PP PSTE)[3] also regulates the valid requirements for agreements in the digital scope, namely agreement of the parties, implementation by competent legal subjects, the existence of certain objects, and prohibitions on violating regulations, morality, and public order. The provisions in the PP PSTE do not explicitly address lawful cause, an essential element to protect parties from potential losses. Additionally, the valid requirements for agreements within the digital space are not clearly explained.

A standard agreement is a written contract that is created unilaterally by a dominant party. The terms, structure, and execution of the agreement are predetermined and standardised, making it applicable to many parties without considering their individual circumstances. The agreement is designed in such a way that the other party can either accept or reject it, without any room to negotiate or alter the terms (commonly referred to as "take it or leave it" contracts). According to A. Muhammad as quoted by A.Y. Lestari & E. Heriyani (2009), the key characteristics of a standard agreement include being written, either as an authentic deed or a private deed. A private deed is drafted by the parties involved without the presence of an authorised official but still holds legal validity. In contrast, an authentic deed is created in the presence of an authorised official and the involved parties, granting it full legal force and allowing it to be used as evidence in legal matters (Cowandy, 2021). However, electronic contracts are not included in any category of deeds because both private deeds and authentic deeds require direct meetings between the parties and are made manually, whereas electronic contracts are drawn up through digital media without any direct face-to-face meetings.

**Legal relationship of the parties in affiliate marketing practices.** In the practice of affiliate marketing in e-commerce such as Shopee, the legal relationship between the parties plays a crucial role. This relationship not only includes the contractual aspects between the product owner, affiliate, and e-commerce platform, but also involves legal protection for consumers and the responsibilities of each party. First, in the legal relationship between the product owner and the affiliate, the principle of balance is fundamental. D.A. Mochtar (2019) emphasised that the principle of balance in the agreement plays a significant role in maintaining the rights and obligations of each party. In affiliate marketing practices, affiliates act as intermediaries to promote products and are entitled to receive fair commissions on sales generated. However, the position of affiliates is often weak if the agreement does not allow for negotiation, analogous to the conditions in the agreement explained by D.A. Mochtar (2019). Therefore, a fair and transparent legal framework is needed from the e-commerce platform. Legal protection for consumers is also a prominent aspect. S. Jaang (2023) emphasised that it is the state's obligation to guarantee legal certainty in every transaction. In affiliate marketing, consumer protection from potential fraud by irresponsible affiliates is crucial. Therefore, clear regulations are needed regarding the responsibilities of

[1] Civil Code of Indonesia. (1847, April). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[2] Ibidem, 1847.
[3] Government Regulation of Indonesia No. 71 "On Implementation of Electronic Systems and Transactions". (2019, October). Retrieved from https://peraturan.bpk.go.id/Details/122030/pp-no-71-tahun-2019.

affiliates and product owners to prevent legal conflicts that can harm consumers. E.A. Virginila (2024) quoted R. Soeroso's opinion that a legal relationship is a relationship between two or more legal subjects who are interconnected by agreeing on their respective rights and obligations. Every legal relationship always has two main aspects that must be considered, namely the rights and obligations of each party.

According to Article 1 paragraph (1) letter d of Financial Services Authority Regulation Number 42/POJK.04/2020[1], affiliation refers to a relationship based on control between a company and another party. In affiliate marketing, affiliates are partners, not employees, aligning with Article 1 paragraph (13) of Law of Indonesia No. 20 of 2008[2], which emphasises cooperation based on mutual need and trust. This is also reflected in Article 1 paragraph (6) of Law Number 7 of 2014 concerning Trade[3], which includes promotional activities by affiliates for online marketplaces. The legal relationship between the marketplace and the affiliate is formalised through standard agreements. While these agreements allow companies to streamline operations, affiliates often find them less favourable as they are forced to accept pre-determined terms or reject participation entirely (Wijayanti, 2021). Affiliate is not categorised as a marketplace employee or business operator but rather an individual who facilitates product promotion within the marketplace and earns a commission based on their performance (Rachmat, 2024). This legal relationship between the marketplace and the affiliate can be understood as a partnership established through a standard cooperation agreement drafted by the marketplace and accepted by the affiliate

**Effects of legal imbalance.** Uncertainty in electronic contracts erodes trust among parties, increases the potential for disputes, and undermines consumer protection. Affiliates, for instance, may encounter challenges in claiming commissions due to vague terms. Consumers, analogously, face risks such as misleading promotions without clear avenues for recourse. This imbalance disproportionately benefits merchants and contradicts Gustav Radbruch's theory of legal ideals, which stresses justice, benefit, and certainty as pillars of a functional legal system. The inequities in standardised contracts, particularly in affiliate marketing, highlight the urgent need for interventions to balance the rights and obligations of all parties. Such contracts often impose unfair terms on affiliates and consumers, undermining the principle of fairness central to the doctrine of freedom of contract.

In the classical doctrine of French contract law, freedom of contract is based on the free will of the parties, where they have the autonomy to determine their own law, and their contractual obligations derive from their agreement. This doctrine emphasises individual freedom to make contracts, including anonymous contracts, provided they do not conflict with public order (Putri Nabila & Djayaputra, 2023). The application of the principle of freedom of contract as stipulated in Article 1338 paragraph (1) of the Civil Code of Indonesia[4] must be linked to other provisions, such as Article 1320 of the Civil Code of Indonesia[5] which requires "agreement of the parties" as a condition for the validity of an agreement. Without the agreement of one of the parties, the agreement is considered invalid and can be cancelled. In addition, agreement cannot be obtained through coercion, because coercion is contrary to the principle of freedom of contract. The *pacta sunt servanda* principle provides binding force to an agreement equal to the Law and provides legal protection against third party intervention. However, in practice, this principle can cause inequality if applied without considering the balance of rights and obligations of the parties, especially for the weaker party (Haris *et al*., 2024).

The effects of uncertainty in electronic contracts include reduced trust of the parties in the validity of the agreement, which can cause legal disputes if one party feels disadvantaged; the emergence of breach of contract, such as the failure of the product owner to pay commission to the affiliate, which can complicate the legal process due to the unclear terms and conditions of the contract; tension between the parties due to the lack of clarity of rights and obligations, which disrupts the cooperative relationship; risks to consumer protection, where irresponsible affiliate promotions can harm consumers without clear complaint channels, complicating legal efforts (Krisna, 2021). In the relationship between consumers and business actors, consumer contracts often place consumers in a weaker bargaining position. This imbalance is caused by standardised model contracts, where business actors have clauses prepared in advance (Hutagalung *et al*., 2021). As a result, consumers cannot negotiate because the contract was drafted electronically, limiting their ability to influence the content of the agreement, including in terms of choice of law. In such contracts, the freedom to make contracts and give consent is limited, unlike agreements that involve direct negotiation between the parties (Hanifah & Koto, 2023). Analogously, in the relationship between affiliates and merchants, the use of standard contracts

[1] Financial Services Authority Regulation No. 42/POJK.04/2020. (2020, July). Retrieved from https://ojk.go.id/id/regulasi/Pages/Transaksi-Afiliasi-dan-Transaksi-Benturan-Kepentingan.aspx.
[2] Law of Indonesia No. 20 "On Micro, Small and Medium Enterprises". (2008, July). Retrieved from https://peraturan.bpk.go.id/Details/39653/uu-no-20-tahun-2008.
[3] Law of Indonesia No. 7 "On Trade". (2014, March). Retrieved from https://peraturan.bpk.go.id/Details/38584/uu-no-7-tahun-2014.
[4] Civil Code of Indonesia. (1847, April). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[5] Ibidem, 1847.

prepared by merchants often limits the space for affiliates to negotiate the terms of the agreement, including regarding commissions, rights, and obligations. As a result, these contracts are "take it or leave it". Thus, this relationship also experiences an imbalance analogous to consumer contracts.

An unbalanced contractual relationship gives rise to implications of injustice for one of the parties, because an imbalance in position can cause a gap in rights and obligations (Nasaruddin & Erwin, 2023). The dominance of one party prevents the other party from being in an advantageous position. The aspect of justice in freedom of contract develops along with the regulation of contractual relations guaranteed by law, which is the basis for the agreement of the parties (Marlinah, 2021). This principle, which reflects the supremacy of law, is recognised by all countries, including Indonesia, as stated in Article 1338 paragraph (1) of the Civil Code[1], which states that a valid agreement applies as law for the parties who make it (Moh & Hernoko, 2019). In the partnership cooperation agreement for this affiliate marketing program, the agreement will remain binding and cannot be unilaterally cancelled if no party submits a claim regarding disagreement with the content of the agreement made in a standard manner or if there is no incompetence of an affiliate who has not met the requirements of adulthood (Wijayanti, 2021).

Uncertainty in electronic contracts in affiliate marketing practices can pose serious challenges in the legal relationship between the parties. To reduce the risk, a clear and comprehensive agreement is needed, as well as a thorough understanding of each party's rights and obligations. It is important to establish stronger regulations and clear legal protections to safeguard all parties and ensure the efficient functioning of business relationships.

## Conclusions

Based on the findings of the present study on the validity of digital agreements and the legal relationship of the parties in affiliate marketing practices in e-commerce, the validity of digital agreements and their effects on the legal relationship of the parties in affiliate marketing practices in e-commerce still require more attention. Although technological developments have driven rapid growth in digital marketing, especially affiliate marketing, there is still a legal vacuum that regulates digital agreements in this context. The validity of digital agreements in affiliate marketing practices is crucial to ensure legal certainty for all parties involved, namely companies, affiliates, and consumers. A valid digital agreement will strengthen the legal relationship between the parties and reduce the potential for disputes in the future. However, challenges related to the validity and implementation of digital agreements according to the principles of positive Indonesian law still need to be overcome. By implementing clear and structured legal regulations, the aim is to establish legal certainty that safeguards all parties involved in affiliate marketing practices, and to enhance the integrity of the digital market in Indonesia.

Affiliate marketing programme is a form of partnership in marketing based on a digital agreement between affiliates and e-commerce platforms. Although there are no specific regulations that regulate this programme in detail, several existing regulations, such as the ITE Law, UUPK, PP PMSE, and PP PSTE, provide a legal basis for digital transactions and electronic commerce. Although POJK Number 42/POJK.04/2020 regulates affiliate transactions in other sectors, the regulation does not specifically discuss affiliates in the context of marketing. In practice, the legal relationship between affiliates and e-commerce is formed through a digital agreement that regulates the rights and obligations of both parties. This agreement is binding and provides legal certainty provided that it meets the legal requirements according to legislation, as regulated in the Civil Code. With a clear agreement, especially in terms of commission payments, the position of the affiliate as a marketing partner is recognised, not as an employee or business actor.

While there are imbalances in some of the terms of the agreement that favour e-commerce platforms, improvements to the agreement are needed to achieve better balance and protection for affiliates. On the other hand, the significant influence that affiliates have in influencing consumer purchasing decisions, especially among the younger generation, suggests that clear and transparent legal relationships can increase consumer trust, which contributes to increased sales and customer satisfaction. Thus, although the regulations regarding affiliate marketing are not yet completely clear, the implementation of a valid digital agreement can provide a strong basis for legal protection, especially in regulating the rights and obligations between affiliates and e-commerce platforms.

Further research could focus on conducting comparative studies of international legal frameworks in affiliate marketing to analyse how different jurisdictions regulate electronic contracts, particularly in terms of their effects on the clarity of rights and obligations for affiliates, merchants, and consumers. This would offer valuable insights into how various legal structures address the challenges of transparency, accountability, and consumer protection in the digital marketing landscape, and could help in formulating more effective regulatory approaches for Indonesia.

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## Conflict of Interest

None.

[1] Civil Code of Indonesia. (1847, April). Retrieved from https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.

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**Анотація**
Розвиток цифрових технологій зумовив розширення партнерського маркетингу як визначальної маркетингової стратегії в екосистемі електронної комерції. Однак дійсність цифрових угод, які слугують основою правовідносин між сторонами в цій практиці, постає перед проблемою правової невизначеності. Метою цього дослідження був аналіз дійсності цифрових угод у партнерському маркетингу з позицій позитивного права Індонезії та їхнього впливу на правовідносини між залученими сторонами – продавцями й афілійованими особами. На підставі нормативно-правового підходу в цьому дослідженні проаналізовано відповідні нормативно-правові акти, такі як Закон Індонезії «Про електронну інформацію та транзакції» та Цивільний кодекс Індонезії, а також оцінено наявні правові прогалини в контексті партнерського маркетингу. Дослідження засвідчило, що, попри те, що цифрові угоди юридично визнані, такі ключові елементи, як механізми комісійної винагороди, права й обов'язки сторін, а також використання електронних підписів, часто недостатньо врегульовані, що призводить до правової невизначеності. Ця невизначеність впливає на правовідносини між сторонами, провокуючи ризик зловживання контрактом, дисбаланс правових позицій між продавцем та афілійованими особами, а також потенційні конфлікти, які можуть перешкоджати довірі в екосистемі цифрового маркетингу. Обґрунтовано необхідність детальнішого та конкретнішого правового регулювання для забезпечення дійсності цифрових угод у партнерському маркетингу, забезпечення правової визначеності та встановлення справедливих і стійких правовідносин для всіх залучених сторін

**Ключові слова:**
дійсність цифрових угод; правовідносини; правова невизначеність; електронна комерція; дисбаланс правових позицій

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# The meaning of the phrase "Protecting the interests of related parties" in depositing certificates with notaries

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**Abstract**
Notaries are following the legislation and the Code of Ethics. One of these obligations is to guard the interests of the relevant parties, which may include the deposit of certificates. However, depositing certificates is not explicitly part of the notary duties but rather a means of protecting the interests of the concerned parties. Consequently, there is a normative ambiguity in Article 16 Paragraph 1 letter h of the Notary Law. The study taked a normative legal approach, using primary, secondary and tertiary legal materials to analyse this inconsistency. The study aimed to provide legal certainty regarding the notary obligation in depositing certificates. The findings indicated that, at present, notaries do not have legal protection when accepting the deposit of ownership certificates as a means of safeguarding the interests of the related parties. According to Gustav Radbruch's theory, this causes legal uncertainty, which necessitates legal reform to ensure protection for notaries and to clarify each of their obligations. The absence of clear legal provisions creates a risk for notaries, as they may face legal consequences despite acting in good faith to protect the interests of the involved parties. Furthermore, this ambiguity can cause inconsistent interpretations of notarial duties, affecting both notaries and the parties relying on their services. Therefore, it is necessary to introduce legal reforms that provide explicit regulations regarding the deposit of certificates by notaries. Such reforms would establish a clear framework for notaries to operate within, ensuring their protection while maintaining their

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professional responsibilities. A more comprehensive legal framework would enhance legal certainty and ensure that notaries can fulfil their duties without fear of legal repercussions, ultimately reinforcing the integrity of the notarial profession

**Keywords:**
validity of digital agreements; legal relationships; legal uncertainty; e-commerce; imbalance of legal positions

## Introduction

Notaries are substantial in the legal system of Indonesian society, especially regarding compilation and ratification of authentic deeds related to land rights. From time to time, the need for notary services continues to increase along with the development of the property sector and increasing public awareness of the importance of legality in land transactions (Soraya, 2020). In this case, a notary acts as a public official who has the authority to make authentic deeds and provide legal protection for the parties to the transaction (Praminda Yona Mandela, 2019). In every transaction of buying and selling land, houses, apartments, shophouses, and other properties, a notary is central in ensuring that the entire process runs following applicable legal provisions (Saida Flora, 2021). One of the important stages in making a certificate of ownership is the sale and purchase agreement that must be conducted before the certificate can be issued. If the payment has not been paid in full, the certificate of ownership will usually be entrusted to a notary until all obligations are met. This is done to protect the interests of all parties involved in the transaction (Rizkia & Fardiansyah, 2022). Depositing a certificate with a notary is not an obligation explicitly regulated in laws and regulations, but rather a form of moral and professional responsibility of a notary in safeguarding the interests of the parties involved in a sale and purchase agreement. In this context, the phrase "protecting the interests of related parties" as regulated in Article 16 paragraph (1) of Law No. 30 of 2004 "On the Position of Notary"[1] becomes relevant, as it reflects the function of a notary as a party who acts neutrally and ensures that no party is harmed in a transaction.

T. Morina Ramadi (2022) identified that such deposits are used when buyers fail to fulfil obligations agreed upon in the sales contract. The study highlights that the process of certificate deposition involves cooperation with the National Land Agency (BPN) as part of the name transfer procedure. Furthermore, it evaluates the legal implications based on Articles 1694, 1706, and 1708 of the Indonesian Civil Code[2]. Emphasising that notaries or notaries act solely as custodians, holding the certificates as per agreement of parties without assuming ownership or additional obligations. Research conducted by N.M. Putri & H. Marlyna (2021) stated that notaries committing fraud, forgery, and violation of office bear the legal consequences and sanctions.

R. Amirullah (2021) explored the notary responsibility for the transfer of land title certificates deposited by prospective sellers to another notary at the request of prospective buyers. The study investigated the accountability of notaries in such transfers and the legal protection available to certificate owners. The study determined that notaries can be subject to administrative sanctions, such as warnings under Article 16 (1) of the Notary Law[3] and may also face civil liability for unlawful acts under Article 1365 of the Civil Code[4]. Legal protection for certificate owners includes these sanctions and compensation for any losses incurred. D. Triani (2019) stated that notary cannot be held criminally responsible as there are buyer rights that must be protected in the deed of sale and purchase agreement. When the certificate is deposited, the notary makes a receipt for the parties. However, the notary must also be trustworthy in conducting the transfer of land rights, as the notary could be held administratively or civilly responsible because there is a seller who feels disadvantaged due to the legal actions conducted by the notary. S. Wulan *et al*. (2023) discussed the reasons for depositing certificates at a notary as the legal process has not been completed and the payments in the sale and purchase agreement were not fulfilled.

Based on the previous research above, there are differences in the current research that will be conducted. Previous studies did not discuss the meaning of the phrase of the notary obligation according to Article 16 Paragraph 1[5] regarding guarding the interests of related parties. While this study aimed to examine the explanation of "safeguarding the interests of related parties" and the need for legal reform in the Notary Law[6]. As notarial practices evolve and legal transactions become increasingly complex, research on the meaning of the phrase "protecting the interests of related parties" in

[1] Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
[2] Civil Code of the Republic of Indonesia. (1847, April). Retrieved https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[3] Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
[4] Civil Code of the Republic of Indonesia. (1847, April). Retrieved https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[5] Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
[6] Ibidem, 2014.

Article 16(1) of the Notary Law in the context of certificate deposit is crucial.

## Materials and Methods

The normative legal research used in this study was based on an analysis of applicable legal norms, with a focus on the conceptual framework underlying certain regulations. This study used secondary data that included primary, secondary, and tertiary legal materials. Legal research had several approaches in research methods. The approach was used to obtain information from various sources regarding the legal issues that were answered. Normative legal research was used, therefore several approaches could be used as well, such as the statute approach and the conceptual approach (Marzuki, 2010). Primary legal materials consisted of laws and regulations as sources of law that had binding force. Primary legal materials in this study were related to the meaning of the phrase "Protecting the interests of parties who had special relationships" in the deposit of deeds with a Notary. Secondary legal materials, such as books and journals, were used to provide theoretical perspectives and support an understanding of legal politics and workers' rights.

The statutory approach was used as the main method, where the Law of the Republic of Indonesia "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary"[1], Civil Code of the Republic of Indonesia[2] and Government Regulation No. 18 "On Management Rights, Land Rights, Apartment Units and Land Registration"[3] were analysed. In addition, a conceptual approach in this study was used to identify and define the ideas and basic principles that underlay the formation of the legal norms being studied. With this approach, the research not only focused on the content of the regulations but also on the concepts that underlay the formation of these regulations, such as justice, legal certainty, and the protection of workers' rights. This approach described the relationship between applicable legal norms and the legal objectives that were to be achieved in the context of legal politics and workers' rights so that the research results could provide theoretical and practical contributions to understanding and developing related legal policies. The theoretical foundation of this study was based on G. Radbruch's (1961) theory, which emphasised legal certainty as a fundamental objective of law, alongside justice and expediency. G. Radbruch's (1961) perspective on the necessity of clear, accessible, and predictable legal norms provided a critical framework for analysing notarial responsibilities, particularly in guarding legal documents. The emphasis on stability and consistency in the application of laws aligned with the study's clarification of notarial duties to prevent disputes and enhance trust in the legal system. Thus, theory underpinned the conceptual approach of this research, guiding the examination of legal norms related to notarial practices and their role in ensuring legal certainty.

## Results and Discussion

The phrase "protecting the interests of related parties" in the context of depositing a certificate with a notary must be defined as a form of legal protection provided to the parties so that no one is harmed due to negligence or abuse of authority. With the deposit of a certificate, the buyer is confident that the certificate will not be handed over before payment is complete, while the seller gets certainty that the ownership rights remain safe until the transaction is completed. This reflects the strategic role of a notary in creating legal balance in a sale and purchase agreement.

However, along with the increasing need for notary services, various challenges regarding legal protection for notaries. Notaries must account for the limitations of their authority in storing certificates so that they are not misused by one party. In addition, the provisions in the Notary Law[4], the obligations of notaries in protecting the interests of related parties are still general and require further interpretation so as not to cause multiple interpretations in practice. Therefore, research on the phrase "protecting the interests of related parties" in depositing certificates with notaries is necessray. Notaries must obtain legal certainty regarding their limitations and obligations in storing certificates so that they do not face legal risks in the future. In addition, this research will also help in providing a deeper understanding of the role of notaries as protectors of the legal interests of the parties in land transactions.

With clarity regarding the duties and obligations of notaries in the context of depositing certificates, a better legal certainty could be created for all parties involved in land and other property sales transactions. This legal certainty will not only protect the interests of buyers and sellers but will also provide stronger legal protection for notaries. Therefore, the formulation of more stringent and comprehensive rules regarding the responsibilities of notaries in storing certificates is an urgent need to support a better land law system.

The obligations of a notary are comprehensively regulated under Notary Law and the Indonesian Notary

[1] Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
[2] Civil Code of the Republic of Indonesia. (1847, April). Retrieved https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[3] Government Regulation of the Republic of Indonesia No. 18 "On Management Rights, Land Rights, Apartment Units and Land Registration". (2021, February). Retrieved from https://peraturan.bpk.go.id/Details/161848/pp-no-18-tahun-2021.
[4] Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.

Code of Ethics[1]. A notary is entrusted with upholding integrity and trustworthiness in their professional duties, as mandated by Article 16(1) of the Notary Law[2]. This requires them to act honestly, impartially, and independently when dealing with legal documents and acts, ensuring that the interests of all related parties are protected. Their role as a public official necessitates neutrality, preventing conflicts of interest and maintaining public trust. Furthermore, notaries are prohibited from engaging in self-promotion or advertising, as stipulated in Article 4 of the Indonesian Notary Code of Ethics[3]. This restriction guards the dignity and credibility of the profession, ensuring that notaries remain impartial and committed to legal service rather than personal gain. A crucial responsibility of a notary is maintaining notary protocols, which involve securely storing original documents to prevent loss or damage. This obligation, outlined in Article 16(1) of the Notary Law, reinforces the importance of record-keeping and document preservation. Additionally, notaries must provide copies and extracts of deeds to those with legitimate interests, ensuring transparency in legal documentation. However, despite this duty to facilitate access to legal records, notaries are also bound by strict confidentiality requirements. They are obligated to safeguard all information obtained in the course of the duties, with legally mandated exceptions. This balance between accessibility and confidentiality reflects the delicate nature of the notary role in maintaining legal order. Another fundamental duty of a notary is ensuring that the deeds they draft comply with formal and material legal provisions. According to Article 16(1) of the Notary Law[4], notaries must meticulously verify that each deed meets legal standards, thereby safeguarding the validity of legal transactions. This responsibility extends to providing comprehensive explanations to the parties involved, ensuring that they fully understand the contents and legal consequences of the documents they sign. By doing so, notaries minimise disputes and potential legal conflicts. Moreover, they are expected to reject any requests to draft deeds or perform legal acts that contravene the law, morality, or public interest, further emphasising commitment to legal integrity.

Notaries are also required to adhere to professional standards that promote fairness and equal access to legal services. Article 3 of the Indonesian Notary Code of Ethics[5] explicitly mandates that notaries provide services without discrimination based on ethnicity, religion, race, social class, or background. This ensures that all individuals receive equitable legal assistance, reinforcing the principles of justice and impartiality. Furthermore, notaries are permitted to operate only within their designated jurisdiction, as stipulated in Article 18 of the Notary Law. Any violations of this territorial restriction may lead to legal sanctions, thereby maintaining order and accountability in notarial practice. Lastly, a notary bears full responsibility for the deeds they draft, ensuring both their content and legal validity align with the law. Their accountability extends beyond mere document creation, encompassing the broader duty of legal compliance and protection of public interest. To fulfil this obligation, notaries are expected to engage in continuous legal education and training, staying updated with legal developments as required by Article 16(1) of the Notary Law[6]. Additionally, strict adherence to both the Notary Law and the Indonesian Notary Code of Ethics is imperative, as non-compliance may result in administrative, criminal, or ethical sanctions. Through these professional obligations, notaries uphold the integrity of the legal system and reinforce public confidence in legal transactions.

In civil law practice in Indonesia, notaries are strategic as public officials who are authorised by law to make authentic deeds. One of the important functions of a notary is to receive and store important documents, including land certificates, which is part of his/her duties to ensure legal certainty. This is regulated in Article 16 paragraph (1) letter a of Notary Law.[7], which states that notaries are required to safeguard the interests of parties related to the deeds they make. The development of the era has made society more aware of the importance of evidence, this is indicated by the increasing need for notaries, especially in making authentic deeds. Article 1868 of the Civil Code[8] defines an authentic deed as writing whose form is determined by law and is made before a public official following the power of attorney held. Authentic deeds, in addition to being evidence, also protect and verify ownership rights so that they do not become a problem. Not only that, but authentic deeds can also function as a legal basis for an asset that has the rights and obligations of the owner of the rights (Rahman, 2019).

[1] Code of Notary Ethics of the Republic of Indonesia. (May, 2015). Retrieved from https://ini.id/uploads/images/image_750x_5bd7a3bde957f.pdf.
[2] Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
[3] Code of Notary Ethics of the Republic of Indonesia. (May, 2015). Retrieved from https://ini.id/uploads/images/image_750x_5bd7a3bde957f.pdf.
[4] Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
[5] Code of Notary Ethics of the Republic of Indonesia. (May, 2015). Retrieved from https://ini.id/uploads/images/image_750x_5bd7a3bde957f.pdf.
[6] Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
[7] Ibidem, 2014.
[8] Civil Code of the Republic of Indonesia. (1847, April). Retrieved https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.

Article 1 of the Notary Law[1] defines a notary as a professional whose main task is to do deeds and several other tasks following the Notary Law and the code of ethics. A notary is a profession that primarily provides services to the community related to their property, one of which is land. In Indonesia, land is the most complex thing because it is the source of every aspect of human life on earth. The problems related to land currently continue to occur along with the development and progress of development. Land rights can be obtained through sales transactions, leases etc. According to Article 1457 of the Civil Code[2], buying and selling is a process conducted by two or more people entering an agreement to pay and hand over goods that were mutually agreed upon. The buying and selling process is conducted by any goods transacted including land, if the land transfer process has been done, the buyer will receive proof in the form of a certificate of ownership. According to Article 32 Paragraph 1 of Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration[3], a certificate of ownership is a valid proof of physical data and legal data following the original measurement letter and land book. A certificate does not guarantee that someone will avoid disputes, but it can minimise the occurrence of thereof. Moreover, as noted by M. Dolynska (2023), the process of digitalisation in notarial activities is central in land transactions. The Unified State Electronic Notary System ensures secure registration and verification of ownership documents, thereby minimising disputes related to land ownership. The author emphasised that although having a certificate does not guarantee immunity from disputes, it significantly reduces their probability via digital technologies and unified registers, which act as reliable sources of information for both buyers and state authorities. Blockchain technology may be another option for solving the problems associated with escrow (Yao & Hui, 2021). Instead of physically storing certificates with a notary, documents could exist as digital assets on the blockchain (Dias Menezes *et al*., 2023). Given the global trends, there is potential for blockchain to increase transparency and security in notarial processes. The use of blockchain in the notary sector can provide immutability of records, transparency of transactions and process automation using smart contracts to automatically fulfil the terms of agreements. All this reduces the need for physical deposit of certificates with notaries, but as of 2025, such projects have not yet become widespread. In Sweden and Georgia, where land cadastres are well-developed and digitised, private blockchains are used as a complementary technology to support existing registration systems while maintaining public engagement. In addition to land management and cadastral services, Ukraine has introduced a decentralised system of electronic real estate auctions. In Estonia, it has been incorporated into the e-government building system since 2008, completing the overall blockchain public service system for state digital assets (Park & Noe, 2022).

Before the sale and purchase of land is carried out before an authorised Land Titles Registrar, the parties must first make a deed of land sale and purchase agreement before a notary. The sale and purchase agreement is concluded as there are requirements that were not met to conduct the sale and purchase process. This agreement is intended as a preliminary agreement of the main intention of the parties to transfer land rights to the parties. According to R. Ramadhani (2022) opinion, sale and purchase agreement is a preliminary agreement, therefore, a binding sale and purchase agreement usually contains promises of the parties that contain terms or conditions that if all such terms or conditions are fulfilled, the sale and purchase of the land rights agreed upon in the binding sale and purchase agreement may be completed. The agreement to bind the sale and purchase of land rights includes an innominate agreement (an unnamed agreement) which is then purchased. In principle, the agreement for binding a sale and purchase is subject to the provisions of Article 1313 of Book III of the Civil Code[4], which states that "An agreement is an agreement by which one or more persons bind themselves to one or more other persons".

A certificate of ownership is an important document and a vital state document owned by a person. The certificate of ownership can be issued by a designated institution, namely the National Land Agency. In addition to individuals, certificates of ownership can also be given to legal entities domiciled in the territory of Indonesia to provide legal certainty and their rights as users and utilise the land. In addition, the rights obtained are to resell, inherit, grant, transfer or charge. In the buying and selling process, of course, it begins with an Agreement. The agreement includes price, payment procedures, land area and dispute resolution between the two. Then from this agreement an agreement is born, in this case, the agreement in question is a land sale and purchase agreement. The agreement to bind the sale and purchase of land in general in the practice of contract, often occurs by storing the Land Rights Certificate related to the deed that is concluded in front of it, or the Building Rights which is then called Ownership Rights.

[1] Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
[2] Civil Code of the Republic of Indonesia. (1847, April). Retrieved https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[3] Government Regulation of the Republic of Indonesia No. 18 "On Management Rights, Land Rights, Apartment Units and Land Registration". (2021, February). Retrieved from https://peraturan.bpk.go.id/Details/161848/pp-no-18-tahun-2021.
[4] Civil Code of the Republic of Indonesia. (1847, April). Retrieved https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.

This deposit occurs based on an agreement between the two parties who entered into a land rights sale and purchase agreement. The storage of this certificate by a notary is usually to provide a guarantee of legal certainty to the parties. In this case, the notary must always fulfil professional mandate and must be following the Notary's Professional Code of Conduct. The notary is obliged to guard the certificate that is deposited, with a sense of responsibility for the trust given by the parties who entered into a land rights sale and purchase agreement and there is no bias towards one of the parties. As an authorised official, a notary has a great responsibility to ensure legal certainty in every legal action taken. Article 16 paragraph (1) letter a of the Notary Law[1] stipulates that a notary must act in a trustworthy, honest, thorough, independent, impartial manner, and protect the interests of the parties involved. Although the Notary Law[2] does not provide an explicit definition of the meaning of "trustworthy" and "protecting the interests of the related parties", this principle is an ethical and legal guideline that must be adhered to by a notary. This principle shows the importance of integrity and neutrality in conducting the duties of a notary, especially in protecting important documents entrusted by the parties.

In practice, the trust vested in a notary often manifests through the act of depositing land title certificates. This process typically occurs following an agreement between parties, such as in land sale or purchase transactions or preliminary agreements. When the buyer cannot pay the agreed land price, the land certificate is frequently deposited with a notary to ensure its safekeeping until the transaction is finalised. This highlights the notary role as a neutral custodian tasked with safeguarding documents from potential conflict or misuse (Hamda *et al*., 2021). Depositing certificates with a notary involves not only legal considerations but also a significant element of trust among the parties. As a neutral third party, the notary bears the responsibility of maintaining the security of documents, remaining unbiased, and ensuring the protection of rights of all parties. In this context, the principle of "protecting the interests of related parties" forms a vital foundation, which must be defined to avoid multiple interpretations that could erode public trust in the notary profession.

The phrase "protecting the interests of related parties" fundamentally reflects the fiduciary role of a notary as a guardian of trust. In the context of certificate deposits, this phrase carries critical legal, ethical, and professional implications. Notaries are not only required to ensure the physical safety of documents but also to consider the legal consequences of breaches of trust or conflicts of interest that may harm the parties involved. However, the deposit of certificates is not explicitly stipulated as a legal obligation under the Notary Law[3]. Land certificates do not form part of the notary protocol, such as deed minutes, and thus, certificate deposits are an additional service developed through customary practice. Despite this, when accepting such deposits, the notary remains morally and legally accountable for ensuring the security and integrity of documents, acting in a trustworthy manner, and safeguarding the interests of related parties. Challenges arise from the absence of detailed provisions on the phrase "interests of related parties" within the Notary Law or its implementing regulations. This regulatory gap creates room for varying interpretations among legal practitioners. Depositing land certificates with notaries occurs in multiple contexts, such as sales transactions, inheritance distribution, or dispute resolution. In such situations, notaries are expected to act with neutrality and objectivity. However, instances of misuse or negligence in certificate deposits can lead to new disputes, such as allegations of abuse of authority or failure to safeguard interests of parties (Kamran *et al*., 2024).

One recurring issue is when notaries are perceived to have failed to protect the interests of related parties due to negligence, conflicts of interest, or abuse of authority. Such cases not only harm the affected parties but also damage the credibility of the notary institution, which is intended to uphold trust within the legal system. This situation underscores the pressing need for clearer definitions and regulations on the scope of "protecting the interests of related parties" in certificate deposit practices.

The analysis of the phrase "protecting the interests of related parties" is substantial in the context of the need to guarantee legal certainty for all parties involved. This is particularly relevant in safeguarding the rights of parties following the principles of prudence and trust within civil law. Moreover, this research could contribute to the development of technical regulations on the procedure for depositing certificates with notaries. In a broader legal context, this study is also pertinent to supporting the enhancement of notary accountability in performing their duties. By defining the boundaries and scope of notary obligations in protecting the interests of related parties, it is possible to achieve a balance between the rights of the parties and the professional responsibilities of notaries.

From a civil law perspective, an obligation of the notary to protect the interests of related parties should be regarded as part of the principles of prudence and good faith. Notaries bear legal, moral, and ethical responsibilities to safeguard the rights of parties relying

[1] Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
[2] Ibidem, 2014.
[3] Ibidem, 2014.

on the entrusted documents. Therefore, all notarial actions must adhere to the principle of justice to prevent future legal uncertainties. The absence of detailed regulations regarding this phrase also creates the potential for multiple interpretations in its application. For instance, the phrase "related parties" in Article 16(1) of notary law[1] concerning Notarial Positions include parties explicitly mentioned in the deed and may also involve third parties with legal interests in the document. Accurate interpretation of this phrase is necessary to ensure legal certainty, protect the rights of all parties, and uphold the accountability of notaries in performing their duties. Addressing this ambiguity is essential to prevent potential conflicts in practice.

The obligations outlined above emphasise that notary duties include more than administrative functions, as they are also entrusted with significant moral and legal responsibilities. Notaries are crucial in ensuring justice by acting impartially, upholding the integrity of the legal documents they handle, and protecting the interests of all parties involved. Their actions must be guided by a strong sense of ethical duty, as their work directly impacts the legal rights of individuals and the stability of legal transactions. Furthermore, notaries contribute to maintaining public trust in the notarial profession by demonstrating professionalism, accountability, and adherence to the law. These combined obligations ensure that notarial services remain reliable and respected, fostering confidence in the legal system.

A notary is a public official governed by notary law. One of the fundamental principles in the execution of their duties is the obligation to safeguard the interests of the related parties, as stipulated in Article 16(1) of the Notary law.[2]. This phrase reflects the ethical and legal responsibility of a notary to act with integrity, honesty, and impartiality, particularly in circumstances involving the safekeeping of documents such as land certificates. However, the interpretation of this phrase often becomes a topic of discussion, particularly concerning the principle of legal certainty. According to H. Adjie (2023), the duties and authorities of a notary are closely related to agreements, actions, and other formalities that give rise to rights and obligations between the parties, providing guarantees or evidence regarding such actions, agreements, and formalities so that the parties involved can obtain legal certainty. They must exercise caution to avoid errors in the deed, as they may be held liable under civil, administrative, or criminal law.

The phrase "safeguarding the interests of the relevant parties" can be interpreted as the notary duty to protect the legal interests of all parties involved in a particular legal act or document. This includes aspects of document protection, conflict prevention, and ensuring fairness among the parties. In the context of safeguarding land certificates, a notary not only physically stores the document but also bears the responsibility to ensure that the document is not misused or used against any party. The phrase "Safeguarding the interests of the relevant parties" is a fundamental principle that notaries must adhere to in their role as public officials. This principle encompasses the obligation to act neutrally, and fairly, and to ensure that the rights and interests of all parties involved in a legal act are equally protected. In this context, a notary acts as a custodian of the trust placed in them by the parties, whether through the creation of authentic deeds or in the safekeeping of important documents such as land certificates.

Although the meaning of "safeguarding the interests of the relevant parties" is not explicitly defined in the Notary Law, it can be defined as the notary responsibility to prevent potential losses or misuse of documents entrusted to them. Therefore, a notary must ensure that every action taken does not harm any party or violate applicable legal provisions. In fulfilling the obligations, notaries are required to adhere to principles of professionalism, as stipulated in Article 16(1) of the Notary Law[3]. Among these obligations are integrity, honesty, diligence, independence, impartiality, and safeguarding the interests of all concerned parties. This principle is also reflected in Article 4 of the Code of Ethics for Indonesian Notaries[4], which emphasises that notaries must carry out their duties with full responsibility and uphold the dignity of the profession.

The obligation to safeguard the interests of relevant parties also includes the duty to act transparently. Notaries must provide clear and comprehensive explanations to the parties regarding the content, legal consequences, and impact of the deeds they execute. This aims to ensure that the parties understand the implications of their legal actions, thereby avoiding potential disputes in the future (Fariyansa, 2016). In addition, notaries must maintain the confidentiality of information obtained in the course of their duties. Article 16(1) of the Notary Law[5] stipulates that notaries must keep confidential the contents of deeds and all information obtained concerning their creation, except as otherwise provided by law. This obligation

[1] Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
[2] Ibidem, 2014.
[3] Ibidem, 2014.
[4] Code of Notary Ethics of the Republic of Indonesia. (May, 2015). Retrieved from https://ini.id/uploads/images/image_750x_5bd7a3bde957f.pdf.
[5] Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.

is part of the principle of safeguarding the trust of the parties while ensuring that their legal interests remain protected. The principle of "safeguarding the interests of relevant parties" also requires notaries to exercise care and caution in storing important documents, such as land certificates. Notaries must ensure that entrusted documents are kept securely, not damaged, lost, or used for purposes contrary to the interests of parties. In this regard, notaries bear the responsibility to provide legal protection for the entrusted document (Oktaviany *et al*., 2022).

G. Radbruch's (1961) theory identifies legal certainty as one of the fundamental objectives of the law, alongside justice and expediency. Legal certainty ensures that laws are clear, accessible, and predictable, allowing individuals to understand their rights and obligations and to anticipate the legal consequences of their actions. According to the author, legal certainty also demands stability and consistency in the application of laws to foster trust in the legal system and maintain societal order. In the context of a notary's role, particularly regarding the safekeeping of documents such as land certificates, legal certainty is crucial. However, the absence of explicit regulations addressing this responsibility creates ambiguity, potentially leading to disputes and risks for both the notary and the parties involved. Without clear legal provisions, notaries may face liability for loss, damage, or misuse of entrusted documents, even when acting in good faith. This lack of clarity undermines the principle of legal certainty and increases the potential for conflicts. G. Radbruch's (1961) emphasised that clear and detailed laws are essential to prevent disputes, protect the rights of all parties, and ensure the proper functioning of legal institutions. In this case, the development of precise rules governing notarial duties and liabilities would strengthen legal certainty, reduce the risk of misunderstandings, and enhance public trust in the legal system.

The safekeeping of land certificates with notaries often occurs in land sale and purchase transactions, particularly when the buyer has not yet completed the payment or when the documents need to be held until the legal process is finalised. In such situations, the notary acts as a document custodian, serving to prevent the misuse of documents by any party. This safekeeping has legal implications, as notaries must ensure that their actions do not violate agreements or cause harm to any party (Borman, 2019). According to G. Radbruch's (1961) theory of legal certainty, it is one of the primary objectives of law, alongside justice and utility. Legal certainty aims to provide predictability in the application of the law so that individuals can understand their rights and obligations.

In the absence of clear regulations regarding the safekeeping of land certificates, notaries are in a vulnerable position due to the lack of legal guidelines protecting their actions in storing such documents. For instance, in cases of disputes between parties who entrust certificates or claims from third parties, notaries may be held liable for losses or misuse of the documents, even if they have acted following general professional principles. Research indicates that there are no specific legal provisions that explicitly regulate the obligation of notaries to store or accept the safekeeping of certificates from parties. The role of notaries under the Notary Law[1] is essentially limited to the creation of authentic deeds and providing certain legal services as requested by the parties. However, the practice of entrusting certificates to notaries has become a customary practice in society as a means of ensuring the security of documents and preventing misuse. This practice is based on trust in notaries as independent and credible public officials.

Nevertheless, this customary practice lacks a clear legal foundation, creating potential legal issues, such as the notary's liability in cases of loss or damage to untrusted certificates. This lack of clarity in regulations can cause legal uncertainty for both notaries and the parties entrusting their certificates. Therefore, more specific regulations are needed to govern the authority and responsibilities of notaries in accepting the safekeeping of certificates to provide better legal certainty and protection for all parties. The concept of safekeeping, or depositaries, is governed by Articles 1694 to 1739 of the Indonesian Civil Code.[2]. Safekeeping is defined as an agreement in which a person hands over an item to another party who agrees to receive the item for safekeeping and to return it in the same condition. Article 1694 states that safekeeping is a legal act involving trust, wherein the party receiving the item (depositaries) is obligated to safeguard the item with care and return it as agreed.

In the context of land certificate safekeeping with notaries, the Civil Code[3] provides a legal basis to ensure that certificates are securely stored and used only as agreed. However, the notary's role in safekeeping is unique because, in addition to being subject to the Civil Code, notaries also have ethical and professional obligations under the Notary Law, requiring them to act with integrity and safeguard the interests of relevant parties (Wulan *et al*., 2023). The phrase "safeguarding the interests of relevant parties" in the Notary Law[4] implies that notaries, as public officials, must perform their

[1] Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.
[2] Civil Code of the Republic of Indonesia. (1847, April). Retrieved https://www.refworld.org/legal/legislation/natlegbod/1847/en/77869.
[3] Ibidem, 1847.
[4] Law of the Republic of Indonesia No. 2 "On Amendments to Law Number 30 of 2004 Concerning the Position of Notary". (2014, January). Retrieved from https://peraturan.bpk.go.id/Details/38565/uu-no-2-tahun-2014.

duties while considering the legal interests of the parties using their services in a fair, objective, and professional manner. This includes ensuring that all documents and information related to the creation of authentic deeds are thoroughly examined and comply with applicable legal provisions. Providing additional clarification to Article 16(1)(a) of the Notary Law, particularly concerning the safekeeping of certificates, would enhance legal certainty and offer balanced protection for notaries and the parties concerned.

## Conclusions

The obligations of the notary position were regulated in Article 16 paragraph 1 of the notary law and the notary code of ethics. One of the obligations is to "protect the interests of the related parties". Notaries are responsibility for authenticity of deeds and legal protection for the parties involved in an agreement. One of the practices that often occurs in the process of buying and selling land, houses, apartments, shophouses, and other properties is the deposit of certificates with a notary. However, depositing certificates with a notary is not an obligation that is explicitly regulated in laws and regulations. This practice is more a part of the customs that have developed in the notary world as a form of protection for the rights of interested parties.

The ambiguity of the legal norm in the phrase "protecting the interests of the related parties" in Article 16 paragraph (1) of the notary law was one of the main problems in the study. This phrase is often interpreted broadly, leading to the assumption that depositing certificates is part of the notary obligations. As a result, notaries do not have adequate legal protection in the event of a dispute or legal risk related to the deposit of the certificate. The lack of studies discussing aspects of notarial law reform causes uncertainty for notaries in carrying out their duties. Therefore, it is necessary to conduct a clearer and more comprehensive legal reform regarding the phrase "protecting the interests of related parties". With the existence of specific limitations and classifications regarding the responsibilities of notaries in the deposit of certificates, legal certainty will be created for all parties involved as well as stronger protection for notaries in carrying out their duties as public officials. With the existence of stricter regulations, it is it is possible to provide legal certainty for all parties involved in the sale and purchase transaction and provide stronger protection for notaries in carrying out their duties as public officials. This legal clarity will also prevent potential disputes and ensure that the role of notaries remains following the principles of justice and legal certainty. Further research on the topic could identify and codify best practices for notaries working with certificates of deposit, minimising the potential for disputes.

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## Conflict of Interest

None.

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# Поняття «захист інтересів пов'язаних осіб» у контексті посвідчення договорів у нотаріуса

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**Анотація**
Нотаріуси мають обов'язки, викладені в законодавстві й Етичному кодексі нотаріуса. Одним із таких зобов'язань є захист інтересів відповідних сторін, що може охоплювати депонування сертифікатів. Однак зберігання сертифікатів не є прямою частиною обов'язків нотаріуса, а швидше засобом захисту інтересів зацікавлених сторін. Отже, наявна нормативна невизначеність у пункті «h» частини 1 статті 16 Закону «Про нотаріат». У цьому дослідженні застосовано нормативно-правовий підхід з використанням первинних, вторинних і третинних юридичних матеріалів для аналізу цієї неузгодженості. Воно було спрямоване на забезпечення правової визначеності щодо обов'язку нотаріуса зберігати свідоцтва. Результати дослідження засвідчили, що нотаріуси не мають правового захисту під час прийняття в депозит свідоцтв про право власності як засобу захисту інтересів зацікавлених осіб. Згідно з теорією Густава Радбруха, така ситуація призводить до правової невизначеності, що зумовлює необхідність проведення правової реформи для забезпечення захисту нотаріусів і роз'яснення їхніх обов'язків. Відсутність чітких правових норм створює ризик для нотаріусів, оскільки вони можуть постати перед правовими наслідками, попри те, що діють доброчесно, захищаючи інтереси залучених сторін. Крім того, невизначеність може призвести до непослідовного тлумачення нотаріальних обов'язків, що впливає як на нотаріусів, так і на сторони, які покладаються на їхні послуги. Тому необхідно провести правову реформу, яка передбачала б чіткі правила зберігання нотаріусами нотаріальних свідоцтв. Такі реформи встановлять чіткі межі для діяльності нотаріусів, забезпечать їх захист, водночас зберігаючи їхні професійні обов'язки. Комплексна правова база підвищить правову визначеність і гарантуватиме, що нотаріуси зможуть виконувати свої обов'язки, не побоюючись правових наслідків, що зрештою забезпечить доброчесність нотаріальної професії

**Ключові слова:**
зобов'язання; власність; відповідальність; публічний службовець; договір про надання послуг

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# Comparative analysis of dual citizenship legislation in Ukraine and other countries: Opportunities for adapting Ukrainian practice

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**Abstract**
The purpose of the study was to determine the state of Ukrainian legislation on dual citizenship, compare it with the provisions of legal acts of Canada and Germany, and identify possible ways to adapt Ukrainian practice to European norms. For an effective study of the topic, it was important to apply hermeneutical, comparative and historical methods. The publication highlighted the essence of dual (multiple) citizenship and argues for the need for its recognition by state governments. It analysed the urgent problem in Ukraine of the spread of bipatriotism and the relevance of amending the provisions prohibiting dual citizenship. The article examined the legislation of Ukraine, Germany and Canada on dual citizenship. Based on the results of the study, it formulated a legal definition of the concept of dual citizenship and outlines the positive and negative aspects of its acquisition. The legal norms regulating bipatriotism are compared. This helped to identify the main ways of legal regulation of this issue and to formulate recommendations for relevant reforms of the legislation on citizenship in Ukraine (recognition of dual citizenship by the State, creation of a unified State register of bipatriots and their cross-border movement, development of requirements for acquiring citizenship and provisions on certain restrictions for bipatriots (regarding their participation in the activities of public authorities), etc.). Importance of ensuring effective legal regulation of dual citizenship in Ukraine as a key element of integration into the global world is substantiated

**Keywords:**
legal act; citizenship; bipatriotism; multipatriotism; human rights and freedoms

## Introduction

The matter of dual citizenship has gained particular relevance in Ukraine due to the evolving legal landscape, geopolitical shifts, and increased mobility of its citizens. Under martial law, the growing discourse on dual citizenship at the national level reflects citizens' aspirations for greater stability and security. With a significant number of Ukrainians forced to leave the country, introducing dual citizenship would not only bolster the legal standing of these individuals and protect their interests but also promote a more cohesive and integrated society. Research on dual citizenship contributes to the advancement of legal science and underscores the necessity of an adaptive legal framework that aligns with evolving societal norms and international relations. A comparative analysis of Ukraine's experience alongside that of Germany and Canada could enhance

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the relevance and efficacy of legal systems in addressing contemporary dual citizenship issues.

V. Bereziuk (2024) examined the potential consequences of legally permitting dual citizenship in Ukraine. His analysis highlighted potential benefits for the state, such as increased national engagement of Ukrainians abroad and the retention of citizenship for those displaced by the armed conflict. However, author also identified significant risks, particularly concerning national security and legal conflicts under the current citizenship framework. Author emphasised the importance of a balanced approach, advocating for public discussions and constitutional clarifications (particularly regarding Article 4 of the Constitution of Ukraine[1], which stipulates that Ukrainian citizens may hold only Ukrainian citizenship). V. Bereziuk (2024) recommended resolving these issues before implementing legislative changes.

In a parallel study, Y.B. Kliuchkovskyi (2024) explored the current status and future prospects of Ukraine's citizenship laws, particularly in the context of post-war reconstruction. Author examined the key constitutional provisions regulating citizenship, referencing the Law of Ukraine No. 2235-III "On Citizenship of Ukraine"[2] and the Constitution of Ukraine. Researcher pointed out that the current legal framework lacks clear regulations on dual citizenship, despite its increasing relevance. Researcher advocated for reforms that align Ukrainian legislation with global trends, emphasising the advantages of dual citizenship for both individuals and the state. I.V.A. Örsel (2024) investigated the relationship between dual citizenship and immigrant integration, focusing on naturalisation rates. Drawing on the experiences of Sweden and the Netherlands, author observed that legislative changes permitting dual citizenship positively influenced immigrants' decisions to naturalise. Y.B. Kliuchkovskyi (2024) posited that allowing dual citizenship significantly boosts naturalisation rates, particularly among immigrants from less developed countries, while restrictive policies hinder societal integration. The findings suggest that adopting more open citizenship policies could foster greater immigrant integration.

P.J. Spiro (2024) analysed the global dynamics of dual citizenship, highlighting its recognition in many states while noting opposition from countries like China, Iran, and India. Author observed that the rise in states permitting dual citizenship occurred without coordinated international efforts, driven instead by the increasing prevalence of bipatrism among individuals seeking to maintain ties with multiple countries. P.J. Spiro (2024) noted that states recognising dual citizenship are often motivated by economic and social considerations, and international law grants them the autonomy to establish citizenship policies. Finally, L. van der Baaren (2024) developed a methodology for systematically comparing citizenship laws across legal systems. Author introduced the concept of "dual implementation", which demonstrates how one state's application of citizenship laws can depend on interpretations adopted in other states. This interdependence arises from differing political, legal, and cultural contexts, leading to varying practical outcomes in the enforcement of citizenship laws.

Despite the increasing relevance of dual citizenship in Ukraine, previous studies have primarily concentrated on theoretical aspects. As a result, practical applications of other countries' experiences and existing legislative gaps have received insufficient attention. Notably, there is a lack of comprehensive research analysing the experiences of countries with well-developed dual citizenship legislation and evaluating the potential for adapting these practices to Ukraine. The purpose of this study was to examine the legislative frameworks of Germany and Canada concerning dual citizenship and to explore opportunities for incorporating such norms into potential reforms of Ukraine's dual citizenship legislation. The main objectives of the study were as follows:

1) to define the concept of dual (or multiple) citizenship and assess its legal regulation in Ukraine;

2) to analyse the legislative provisions on dual citizenship in Germany and Canada;

3) to compare the current legal frameworks of Ukraine, Germany, and Canada on this issue, identifying potential reforms for Ukraine based on the experiences of the two other states.

## Materials and Methods

The study employed several methods of scientific inquiry, including hermeneutic, terminological, comparative, and historical approaches. The hermeneutic method was utilised to interpret and analyse the regulatory legal acts of Ukraine, Germany, and Canada accurately and comprehensively. The terminological method was applied to investigate the concept and essence of Ukrainian citizenship, as well as dual and multiple citizenship. A prominent role among the theoretical methods and research techniques was played by the comparative method. This approach involved a direct comparison of the regulatory legal acts of Ukraine, Germany, and Canada, chosen for their distinct approaches to recognising multiple citizenships (in Ukraine, dual citizenship is not recognised; in Germany, reforms have permitted citizens to hold citizenship in other countries; and in Canada, dual citizenship has been recognised and protected for several decades). By analysing these three fundamentally different approaches and

[1] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80#Text.
[2] Law of Ukraine No. 2235-III "On Citizenship of Ukraine". (2001, January). Retrieved from https://zakon.rada.gov.ua/laws/show/en/2235-14#Text.

their effectiveness, the study assessed the feasibility of citizenship reforms in Ukraine.

The comparison included examining the content of citizenship, the grounds and procedures for acquiring dual citizenship, and potential reforms to the regulatory framework on this issue. The comparative analysis also identified potential amendments to Ukrainian legislation by leveraging the experiences of Germany and Canada. It revealed significant differences in the legal approaches to dual citizenship and their implications for an individual's legal status.

The study of the legal regulation of dual citizenship in Germany and Canada was significantly informed by an analysis of key legislative acts in these countries, including: German Citizenship Act[1] (StAG); Basic Law for the Federal Republic of Germany[2]; Act on the Modernisation of Citizenship Law[3] (StARModG); German Income Tax Act[4] (EStG); Citizenship Act[5]; Income Tax Act[6]; and An Act to amend the Citizenship Act[7]. For Ukraine, the research focused on analysing the provisions of domestic legal documents concerning the concept and content of citizenship, the recognition of dual citizenship by Ukraine, and the potential introduction of dual citizenship in Ukrainian law. The analysed legislative acts included: the Law of Ukraine No. 2235-III "On Citizenship of Ukraine"[8]; the Constitution of Ukraine[9]; Draft Law No. 4142-IX "On Amendments to Certain Laws of Ukraine on Ensuring the Realisation of the Right to Acquire and Retain Ukrainian Citizenship"[10]; the Law of Ukraine No. 1135-IX "On the All-Ukrainian Referendum"[11]; and the European Convention on Citizenship[12].

Using the historical method, the research traced the evolution of the regulatory frameworks for dual citizenship in Germany, Canada, and Ukraine. This approach not only highlighted legislative changes but also clarified the conditions under which these changes occurred. This analysis is particularly relevant for dual citizenship, as its legal regulation has undergone significant transformations influenced by political, economic, and social factors.

## Results

**Legal regulation of dual citizenship in Ukraine.** According to paragraph A of Article 2 of the European Convention on Citizenship[13], the concept of citizenship refers to the legal relationship between a state and an individual, without regard to the individual's ethnic origin. Similarly, paragraph 1 of Article 1 of the Law of Ukraine No. 2235-III On Citizenship of Ukraine[14] defines Ukrainian citizenship as the legal relationship between an individual and the Ukrainian state, establishing mutual rights and obligations.

The legal regulation of dual citizenship in Ukraine remains ambiguous, as Ukrainian legislation does not explicitly prohibit its existence. This ambiguity extends to the broader concept of multiple citizenship, which refers to individuals holding more than one citizenship. Article 4 of the Constitution of Ukraine establishes the principle of single citizenship and provides that the conditions for acquiring and terminating citizenship are determined by national legislation. Paragraph 1 of Article 2 of the Law of Ukraine No. 2235-III[15] offers further clarification, stipulating that Ukrainian citizenship precludes the recognition of any other citizenship within the territory of Ukraine. Specifically, if a Ukrainian citizen acquires another citizenship, only Ukrainian citizenship is recognised by the state. Similarly, a foreigner who becomes a Ukrainian citizen will be regarded exclusively as a Ukrainian citizen in their legal relations with the state. This suggests that while a Ukrainian citizen may hold another citizenship, it will not be recognised by Ukraine (Kushnir *et al.,* 2021; Kalynovskyi, 2023). National legislation, therefore, frames citizenship as a legal relationship between the state and the individual, but it provides detailed clarification only regarding the state's perspective (Article 2

[1] German Citizenship Act (StAG). (1913, July). Retrieved from https://www.gesetze-im-internet.de/stag/BJNR005830913.html.
[2] Basic Law for the Federal Republic of Germany. (1949, May). Retrieved from https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html.
[3] Act on the Modernisation of Citizenship Law of Germany (StARModG). (2024, March). Retrieved from https://dip.bundestag.de/vorgang/gesetz-zur-modernisierung-des-staatsangeh%C3%B6rigkeitsrechts-starmodg/303313.
[4] Income Tax Act of Germany (EStG). (1934, October). Retrieved from https://www.gesetze-im-internet.de/estg/.
[5] Citizenship Act of Canada. (1985, March). Retrieved from https://laws-lois.justice.gc.ca/eng/acts/c-29/page-1.html#h-81636.
[6] Income Tax Act of Canada. (1985). Retrieved from https://laws-lois.justice.gc.ca/eng/acts/i-3.3/.
[7] An Act to amend the Citizenship Act. (2008, April). Retrieved from https://laws-lois.justice.gc.ca/eng/annualstatutes/2008_14/page-1.html.
[8] Law of Ukraine No. 2235-III "On Citizenship of Ukraine". (2001, January). Retrieved from https://zakon.rada.gov.ua/laws/show/en/2235-14#Text.
[9] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80#Text.
[10] Draft Law No. 4142-IX "On Amendments to Certain Laws of Ukraine on Ensuring the Realisation of the Right to Acquire and Retain Ukrainian Citizenship". (2024, August). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/44687.
[11] Law of Ukraine No. 1135-IX "On the All-Ukrainian Referendum". (2023, March). Retrieved from https://zakon.rada.gov.ua/laws/show/1135-20#Text.
[12] European Convention on Citizenship. (1997, November). Retrieved from https://zakon.rada.gov.ua/laws/show/994_004#Text.
[13] Ibidem, 1997.
[14] Law of Ukraine No. 2235-III "On Citizenship of Ukraine". (2001, January). Retrieved from https://zakon.rada.gov.ua/laws/show/en/2235-14#Text.
[15] Ibidem, 2001.

of the Law). The individual's rights or restrictions in holding another citizenship are not explicitly addressed in Ukrainian legal acts, effectively leaving the door open for additional citizenships to coexist under other legal systems. The principle of single citizenship in Ukraine emphasises the unitary nature of the state rather than explicitly prohibiting multiple citizenships (Kovalevska, 2024; Tomkina, 2024).

Given the concept and principle of single citizenship in Ukraine, Ukrainian legislation does not explicitly recognise the concepts of dual (or multiple) citizenship or bipatridism, resulting in legal uncertainty regarding their regulation. However, in compliance with its obligations under the European Convention on Citizenship[1], Ukraine has accepted the definitions established by the Convention. The Convention defines multiple citizenship as the simultaneous possession of citizenships from more than two states, which also encompasses dual citizenship (holding citizenships of two states) (Fenych, 2024). Article 14 of the European Convention specifies circumstances under which a person may hold multiple citizenships, including: 1) At birth, when a child acquires multiple citizenships simultaneously, the state must allow the individual to retain these citizenships. 2) Upon the automatic acquisition of citizenship resulting from marriage to a citizen of another state. These provisions are applicable to Ukraine. However, under Ukrainian law, individuals with multiple citizenships are recognised exclusively as Ukrainian citizens within the legal framework of Ukraine (Cherepenko & Kostenko, 2024). The concept of dual citizenship, also referred to as bipatridism, involves an individual acquiring citizenship of two states, thus becoming a bipatrid.

Part 1 of Article 19 of the Law of Ukraine No. 2235-III[2] specifies that Ukrainian citizenship is lost if a person voluntarily acquires the citizenship of another state. This provision applies only to individuals who have reached the age of 18. Furthermore, the Article outlines specific circumstances where voluntariness is not considered present, thereby exempting individuals from losing their Ukrainian citizenship. These circumstances include: multiple citizenship at birth, when an individual acquires citizenships of several states simultaneously at birth; adoption, when a child with Ukrainian citizenship is adopted by citizens of another state; automatic acquisition through marriage, when citizenship of another state is automatically acquired due to marriage with a citizen of that state; automatic acquisition at adulthood, when an individual automatically acquires the citizenship of another state upon reaching the age of majority, provided there is no supporting document confirming the existence of foreign citizenship. Part 2 of Article 19 stipulates that Ukrainian citizenship will also be revoked if it was obtained through fraudulent means, such as the forgery of documents. Part 3 adds that citizenship may be lost if a Ukrainian citizen voluntarily joins the military service of a foreign state, except when this service is considered a military obligation or alternative service under the laws of the foreign state.

The primary challenge in the legal regulation of dual citizenship in Ukraine lies in the absence of provisions for monitoring whether a Ukrainian citizen holds citizenship of another state. This gap makes it virtually impossible to identify cases of dual citizenship, enables individuals to avoid liability for failing to disclose such citizenship, and significantly limits the potential for revoking Ukrainian citizenship. Consequently, a Ukrainian citizen can acquire the citizenship of another state, and even if this is discovered by state authorities, the likelihood of losing Ukrainian citizenship remains low due to the procedural complexity involved (Derevyanko, 2024).

To address these challenges, the development of an effective regulatory and legal framework for dual and multiple citizenship is crucial for Ukraine. In 2024, the President of Ukraine proposed amendments to Draft Law No. 4142-IX[3]. These amendments aimed to facilitate the return of Ukrainian citizens who were forced to relocate to other countries due to the full-scale invasion. Specifically, they addressed cases where Ukrainian citizens acquired foreign citizenship to gain greater protection during the war, thereby encouraging their reintegration into Ukraine. An additional objective of the Draft Law was to simplify the process of obtaining Ukrainian citizenship for specific categories of individuals, thereby addressing broader citizenship issues in Ukraine.

Draft Law No. 4142-IX[4] introduces provisions for multiple citizenship under specific circumstances, including: 1) the simultaneous acquisition of Ukrainian citizenship and the citizenship of another state at birth; 2) acquisition of a foreign citizenship by a Ukrainian child as a result of adoption by foreign parents; 3) acquisition of foreign citizenship by a Ukrainian citizen through marriage to a foreign national; 4) automatic acquisition of another citizenship by an adult Ukrainian citizen based on the laws of the foreign state, provided that the individual has not timely obtained a document certifying their belonging to that state; 5) acquisition of Ukrainian citizenship by a foreign national through a simplified procedure (as outlined in Article 101 of the Draft Law), provided they are a citizen of a state included in the category of countries whose citizens are eligible for this procedure; 6) cases where a Ukrainian

[1] European Convention on Citizenship. (1997, November). Retrieved from https://zakon.rada.gov.ua/laws/show/994_004#Text.
[2] Law of Ukraine No. 2235-III "On Citizenship of Ukraine". (2001, January). Retrieved from https://zakon.rada.gov.ua/laws/show/en/2235-14#Text.
[3] Draft Law No. 4142-IX "On Amendments to Certain Laws of Ukraine on Ensuring the Realisation of the Right to Acquire and Retain Ukrainian Citizenship". (2024, August). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/44687.
[4] Ibidem, 2024.

citizen also holds citizenship of a state included in the category of countries eligible for the simplified procedure of obtaining Ukrainian citizenship (Who will be eligible for multiple citizenship…, 2024).

Additional amendments to Draft Law No. 4142-IX[1] include the removal of the provision allowing individuals to acquire Ukrainian citizenship based solely on the prior residence of their relatives in Ukraine. Citizenship will now be granted only if such relatives were not only residents but also born in Ukraine. Furthermore, the Draft Law eliminates the option for individuals with temporary residence permits to apply for Ukrainian citizenship. Previously, this provision allowed individuals who had resided in Ukraine for five years to qualify. The proposal also includes the introduction of mandatory language examinations for citizenship applicants. However, this requirement will not apply to individuals obtaining citizenship through the simplified procedure (Zatulko, 2024).

Despite proposals to expand Ukrainian citizenship legislation by simplifying the acquisition process and recognising dual citizenship, such draft laws remain illegal under the current legal framework of Ukraine. Most notably, these proposals violate Article 4 of the Civil Code[2], which stipulates the principle of single citizenship in Ukraine. Consequently, the adoption of Draft Law No. 4142-IX would necessitate amendments to the Civil Code and other legislative acts governing citizenship. This requirement presents a significant legal challenge: under Article 17 of the Law of Ukraine No. 1135-IX "On the All-Ukrainian Referendum"[3], amendments to Sections I, III, and XIII of the Civil Code require the approval of an all-Ukrainian referendum. However, holding such a referendum is prohibited during martial law, as stipulated in Part 1 of Article 20 of the same law. Therefore, during martial law, state authorities are unable to adopt projects requiring constitutional amendments. Furthermore, similar proposals have faced constitutional scrutiny in the past. For instance, two draft laws submitted by the President in 2021 and January 2024 were not adopted due to their incompatibility with the current legal framework (Katsimon, 2024). The legal regulation of citizenship in Ukraine undeniably requires substantial reforms to both simplify citizenship acquisition procedures and permit dual citizenship. While the proposed Draft Law has the potential to enhance the state's legal framework, any progress in this direction depends on the cessation of martial law.

**Dual citizenship legislation in Germany and Canada.** The primary legal acts regulating citizenship in Germany StAG[4] (Citizenship Act) and the Basic Law for the Federal Republic of Germany[5], which serves as the country's constitution. Notably, Article 16 of the Basic Law stipulates that a citizen of the Federal Republic of Germany cannot be deprived of their citizenship except under circumstances explicitly provided for by law. If such deprivation occurs against the individual's will, authorities must ensure that the person does not become stateless.

Until June 2024, German legislation strictly prohibited dual or multiple citizenship. However, systematic amendments to the German Citizenship Act (StAG)[6] have eliminated this prohibition. Since 2007, citizens of EU member states and Switzerland who naturalised in Germany were permitted to hold multiple citizenships. Moreover, as of June 27, 2024, with the entry into force of StARModG[7], individuals from any country who naturalise in Germany are allowed to acquire multiple citizenship. Prospective applicants for multiple citizenship are advised to confirm that the laws of their country of origin also permit multiple citizenship to avoid legal conflicts (Federal Foreign Office, 2024). A significant factor that facilitates Germany's adoption of multiple citizenship reforms is the absence of a constitutional provision similar to Article 4 of the Ukrainian Civil Code[8], which enforces the principle of single citizenship. This absence in Germany's Basic Law significantly simplifies the process of reforming the legal framework concerning multiple citizenship.

The main changes to German citizenship legislation include the following: 1) German citizens who voluntarily acquire the citizenship of another state will no longer lose their German citizenship, as was previously the case; 2) The provision requiring German citizens with multiple citizenships to choose a single citizenship upon reaching the age of 21 has been removed; 3) The process of being released from German citizenship upon naturalisation in another state has been abolished. Previously, individuals seeking naturalisation elsewhere had to apply for release from German citizenship, which was contingent on confirmation of naturalisation by the other state (Article 26, StAG[9],

[1] Draft Law No. 4142-IX "On Amendments to Certain Laws of Ukraine on Ensuring the Realisation of the Right to Acquire and Retain Ukrainian Citizenship". (2024, August). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/44687.
[2] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.
[3] Law of Ukraine No. 1135-IX "On the All-Ukrainian Referendum". (2021, January). Retrieved from https://zakon.rada.gov.ua/laws/show/1135-20#Text.
[4] German Citizenship Act (StAG). (1913, July). Retrieved from https://www.gesetze-im-internet.de/stag/BJNR005830913.html.
[5] Basic Law for the Federal Republic of Germany. (1949, May). Retrieved from https://surl.li/jxuvxc.
[6] German Citizenship Act (StAG). (1913, July). Retrieved from https://www.gesetze-im-internet.de/stag/BJNR005830913.html.
[7] Act on the Modernisation of Citizenship Law of Germany (StARModG). (2024, March). Retrieved from https://dip.bundestag.de/vorgang/gesetz-zur-modernisierung-des-staatsangeh%C3%B6rigkeitsrechts-starmodg/303313.
[8] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.
[9] German Citizenship Act (StAG). (1913, July). Retrieved from https://www.gesetze-im-internet.de/stag/BJNR005830913.html.

Release from German citizenship, 2024); 4) Individuals acquiring German citizenship are no longer required to renounce their previous citizenship (Articles 13 and 14, StAG). This change formally allows multiple citizenship in Germany (Faster naturalisation under stricter conditions, 2024); 5) A child born in Germany to foreign parents will automatically receive German citizenship if one parent has legally resided in Germany for over five years and holds a permanent residence permit; 6) Instead of requiring integration into German society, specific disqualifying conditions have been established. These include cases involving polygamy, disregard for gender equality, racism, anti-Semitism, and other inhumane actions that contradict German law and the principle of protecting human dignity; 7) For former migrant workers, oral proficiency in German will suffice for naturalisation, eliminating the need for a formal language test. In exceptional cases, the requirement for sufficient German knowledge may be waived entirely in favour of basic oral proficiency; 8) An accelerated and digitalised procedure for security checks has been introduced, accompanied by an expanded range of authorised bodies for consultations with security authorities (Faster naturalisation under stricter conditions, 2024).

StARModG[1] introduced significant changes to the naturalisation process in Germany – in the future, German citizenship can be obtained through the standard procedure after five years of residence in the country, rather than the previous eight years, provided all other requirements are met. These requirements include: the ability to provide for one's own financial needs, as well as proficiency in German language at a minimum level of B1 according to the Common European Framework of Reference for Languages. Additionally, candidates for German citizenship must commit to the principles of a free democratic system and acknowledge Germany's historical responsibility for the establishment and consequences of the inhumane National Socialist regime. This acknowledgment particularly emphasises the importance of protecting Jewish life as part of Germany's historical accountability (Many have been waiting for..., 2024).

The reform allowing multiple citizenship in Germany not only enhanced the existing legal framework governing citizenship but also fostered stronger integration processes within the country. However, the establishment and regulation of multiple citizenship in Germany present both advantages and challenges. The primary benefit of allowing multiple citizenship is its potential to enhance integration. Migrants can maintain a meaningful connection with their country of origin by retaining their original citizenship, which reinforces their cultural identity and sense of belonging. This dual connection facilitates their integration into German society while preserving ties to their homeland. Furthermore, multiple citizenship simplifies international mobility and provides access to rights and services across different countries. This aspect is particularly advantageous for professionals and students, who benefit from increased opportunities and flexibility. Despite these advantages, concerns about loyalty to the new homeland have been raised. Critics argue that holding multiple citizenships may lead to conflicts of interest or divided loyalties. Additionally, administrative and legal complications can arise in the international context. For instance, differences in the legal systems of the countries of citizenship may create uncertainty about which laws should apply in specific situations. This is particularly relevant in areas such as tax obligations, military service, and inheritance procedures, which often vary depending on citizenship (Fig. 1).

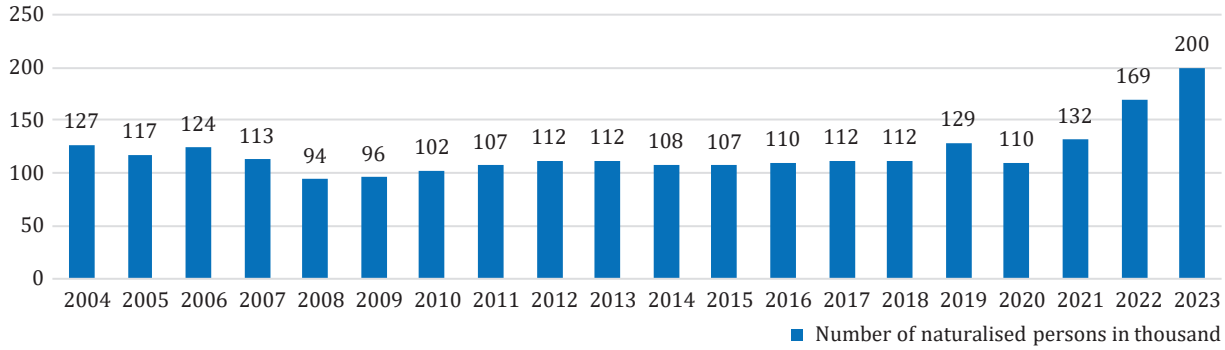


**Figure 1.** Number of naturalised persons for the period of 2004-2023 in Germany (before reforms)
**Source:** created by the author based on Naturalisations in 2023: Record high of the last 20 years! (2024)

To assess the effectiveness of the reforms, it is essential to analyse statistics that track the number of individuals acquiring citizenship in Germany. For example, figure 1 presents data on naturalised individuals from 2004 to 2023, a period preceding the implementation of the recent legislative reforms. According

[1] Act on the Modernisation of Citizenship Law of Germany (StARModG). (2024, March). Retrieved from https://dip.bundestag.de/vorgang/gesetz-zur-modernisierung-des-staatsangeh%C3%B6rigkeitsrechts-starmodg/303313.

to statistics from 2022 and 2023, the number of naturalised individuals has increased significantly over the past two decades, peaking at 200,000 in 2023. This growth reflects a consistent upward trend in citizenship acquisition in recent years. With the introduction of reforms aimed at further facilitating naturalisation and attracting more applicants, this trend is expected to continue (Naturalisations in 2023…, 2024). A comparative example is Canada, a country that also recognises and effectively regulates dual citizenship. The primary legal framework governing this issue in Canada is the Citizenship Act[1], which explicitly permits multiple citizenship. Under this Act, individuals can acquire the citizenship of another country without forfeiting their Canadian citizenship.

Section 3, Part 1 of the Citizenship Act[2] stipulates that individuals born in Canada automatically acquire Canadian citizenship, irrespective of their parents' citizenship. This provision also extends to children born abroad to Canadian parents, allowing them to inherit Canadian citizenship by descent. Consequently, such children may hold dual citizenship, provided the other state also recognises this right. However, this right to citizenship by descent is limited to the first generation born outside Canada. Specifically, if a person born abroad to a Canadian citizen has children outside Canada, those children will not automatically acquire Canadian citizenship unless one of their parents was born in Canada (Singer, 2024).

Another pathway to obtaining dual citizenship in Canada is through naturalisation, where a foreign national acquires Canadian citizenship. The main requirements for naturalisation are outlined in Article 6, Part 1 of the Citizenship Act[3] and include the following: 1) applicants must have resided in Canada for at least three of the last five years prior to submitting their application, demonstrating their commitment to living in the country; 2) applicants must meet the requirements set out in the Income Tax Act[4], including filing income tax declarations for three tax years within the qualifying period; 3) applicants must be at least 18 years old to submit their own application. Minors must be included in their parents' applications; 4) individuals aged 18 to 55 applying for citizenship must demonstrate knowledge of one of Canada's official languages (English or French); 5) applicants must show sufficient familiarity with Canadian history, values, and the rights and responsibilities of citizenship, and must be able to communicate this understanding in an official language; 6) the applicant must not be subject to a deportation order or have any ongoing application under Section 20 of the Citizenship Act submitted by the Governor in Council.

A significant advancement in the legal regulation of dual citizenship in Canada was the development and proposal of the An Act to amend the Citizenship Act[5]. The primary objective of this Act is to expand the grounds for acquiring Canadian citizenship, particularly in cases of citizenship by descent. The An Act to amend the Citizenship Act introduces provisions allowing individuals born abroad to one parent who is a Canadian citizen – but who was also born in another country – to acquire Canadian citizenship prior to the Act's entry into force. Additionally, it permits children born outside Canada and adopted by a Canadian parent to acquire Canadian citizenship, provided the adoption occurs within the first generation. A crucial condition for acquiring citizenship under these circumstances is that one of the Canadian parents must have resided in Canada for at least 1,095 days (three years) prior to the birth or adoption of the child. Without meeting this residency requirement, the child will not be eligible for Canadian citizenship. Moreover, An Act to amend the Citizenship Act addresses the restoration of citizenship to individuals known as "lost Canadians", who either lost or were unable to acquire citizenship due to outdated provisions in earlier citizenship legislation. This restoration also extends to their descendants born abroad in the second and subsequent generations (Government of Canada, 2024).

Canadian citizens with dual citizenship enjoy numerous rights and benefits that foster personal development and expand professional opportunities (Abu-Laban, 2023). One notable advantage is the right to vote in elections in both countries of citizenship, enabling these individuals to participate actively in the democratic processes of both nations. Another key benefit is access to social services in both countries, such as healthcare, education, and other government programs. This dual access ensures a higher level of security and convenience for individuals with dual citizenship. Additionally, dual citizens experience greater ease in international mobility. They can travel between the two countries without significant barriers, often benefiting from simplified visa procedures or the ability to stay in their country of citizenship for extended periods without requiring special permits. Economically, dual citizens, or bipatrids, enjoy the ability to own property and conduct business within the legal frameworks of both countries. This dual access opens up broader economic opportunities, provides financial flexibility, and facilitates cross-border investments and entrepreneurship (Singer, 2024).

[1] Citizenship Act of Canada. (1985, March). Retrieved from https://laws-lois.justice.gc.ca/eng/acts/c-29/page-1.html#h-81636.
[2] Ibidem, 1985.
[3] Ibidem, 1985.
[4] Income Tax Act of Canada. (1985). Retrieved from https://laws-lois.justice.gc.ca/eng/acts/i-3.3/.
[5] An Act to Amend the Citizenship Act of Canada. (2008, April). Retrieved from https://laws-lois.justice.gc.ca/eng/annualstatutes/2008_14/page-1.html.

Dual citizenship also entails specific obligations that must be carefully managed. One key responsibility is adherence to the laws of both countries, including tax compliance. This often requires dual citizens to fulfil tax obligations in both jurisdictions, potentially resulting in double taxation. In such cases, international agreements or solutions, such as tax treaties, may help mitigate the financial burden. Additionally, dual citizens must be mindful of travel regulations, particularly regarding the use of passports. They are typically required to use the appropriate passport when entering or exiting each country of citizenship. Legal conflicts can also arise from differing national laws on civic duties, such as military service or other obligations. This underscores the importance of thoroughly understanding the legal requirements in both jurisdictions to avoid potential issues. While dual citizenship in Canada provides significant advantages, it also requires careful navigation of rights and responsibilities across multiple legal systems (Dual citizenship Canada..., 2024).

Figure 2 presents statistics on the number of naturalised persons in Canada from 2011 to 2022. The data indicate a significant surge in citizenship acquisitions in 2022, marking a notable increase compared to the previous 11 years. In 2023, the number of naturalised persons decreased slightly but remained substantial at 354,000-154,000 more than in Germany for the same year. In 2024, during the first quarter, 121,758 individuals were naturalised, followed by an additional 134,138 in the second quarter. These figures highlight the ongoing effectiveness of Canada's approach to citizenship policies, underscoring its ability to attract and integrate new citizens successfully (Canada's population estimates..., 2024).

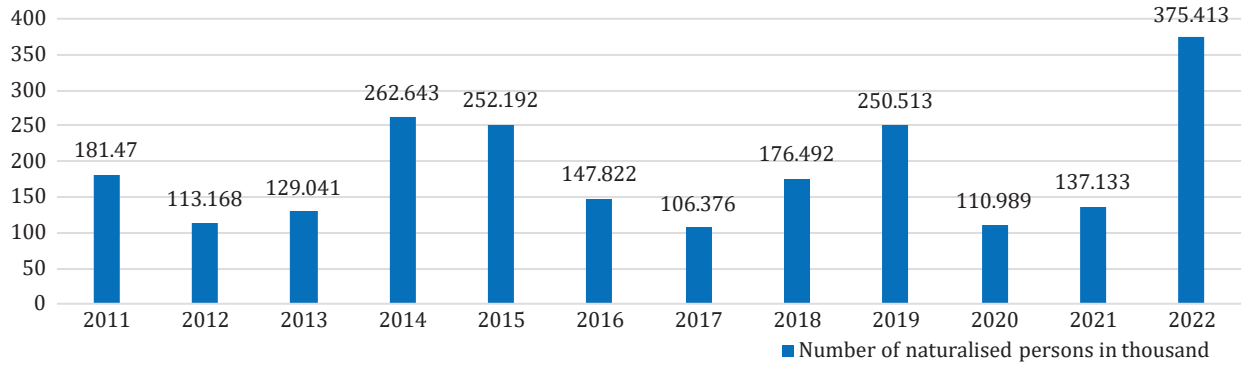


**Figure 2.** Naturalised persons in Canada for the period of 2011-2022
**Source:** created by the author based on Canada's population estimates, first quarter 2024 (2024)

In comparing naturalisation statistics for 2023, both Canada and Germany demonstrated a growing trend in naturalised citizens. However, Canada's significant advantage over Germany lies in its explicit policy allowing naturalised individuals to retain the citizenship of their country of origin, which has contributed to its higher naturalisation rates.

Despite the steady increase in the number of naturalised citizens, dual citizenship raises social issues, particularly concerning inequality within society (Schweers, 2024). Inequities may arise between dual citizens (bipatrids) and individuals with sole Canadian citizenship, and vice versa. These disparities are especially pronounced when one country involved in dual citizenship arrangements has a more advanced socio-economic system than the other. Such inequalities can manifest in several domains, including employment, access to public services, education, political activity, etc. For instance, when one country imposes stricter requirements for community service or military service, dual citizens may encounter conflicting obligations that can be difficult or even impossible to reconcile (Khan, 2021; Christou *et al.*, 2022). On the one hand, dual citizenship fosters equality in political participation. Dual citizens in Canada enjoy the same rights as sole Canadian citizens, including eligibility for civil service and political positions, such as membership in parliament. On the other hand, dual citizenship significantly influences social interaction and integration. Dual citizens bring diverse experiences and perspectives from multiple countries, enriching cultural diversity and promoting a more pluralistic societal environment (Citizenship in decline..., 2024). However, these cultural benefits can also pose challenges. Significant differences in values and customs between population groups may complicate efforts to achieve social cohesion and unity.

The approaches to multiple citizenship in the legislation of Germany and Canada reveal significant differences, shaped by the distinct political and historical development of each state. With the entry into force of StARModG[1] in Germany, citizens are now permitted to

[1] Act on the Modernisation of Citizenship Law of Germany (StARModG). (2024, March). Retrieved from https://dip.bundestag.de/vorgang/gesetz-zur-modernisierung-des-staatsangeh%C3%B6rigkeitsrechts-starmodg/303313.

hold multiple citizenships without the need to renounce their previous citizenship, a requirement that was in place before this reform. This legislative change has greatly simplified the naturalisation process, including a reduction in the required residency period from eight to five years, and under special circumstances, to three years. The primary aim of these changes is to enhance integration within German society, particularly for migrants who previously faced barriers due to the country's strict citizenship laws. The updated German approach to multiple citizenship is designed to attract skilled professionals and facilitate the integration of migrants, thereby enriching the demographic and economic fabric of the country. By removing restrictions on dual citizenship, Germany is expected to see a significant increase in demand for naturalisation, contributing to a more diverse and inclusive society. However, this approach also presents challenges, particularly in terms of public perception and the practical implementation of the rights and responsibilities associated with dual citizenship.

Since Canada has long embraced a liberal policy on multiple citizenship, allowing its citizens to hold citizenship in multiple states without requiring them to renounce their original citizenship. This approach preserves cultural ties and identity among immigrants while simultaneously fostering social cohesion in Canada's multicultural society (Bloemraad, 2022; Safdar *et al*., 2023). The Canadian approach to multiple citizenship is marked by inclusiveness. Dual citizens enjoy the ability to work, travel, and live freely across multiple countries. This policy not only strengthens their sense of belonging to Canadian society but also enables them to actively participate in public life in Canada while maintaining connections with their country of origin. However, challenges do arise from the legal obligations associated with holding multiple citizenships. These challenges are particularly evident in areas such as taxation and military service, where differing legal frameworks between countries can create complexities. Overall, Canada's approach to multiple citizenship serves as a valuable model for other countries considering reforms to their dual or multiple citizenship legislation.

**Comparing dual citizenship practices in Germany, Canada, and Ukraine and insights for improving Ukrainian citizenship policy.** The legal regulation of dual citizenship varies significantly among Ukraine, Germany, and Canada. While Germany and Canada have adopted more inclusive policies on dual citizenship, Ukraine adheres to the principle of single citizenship as enshrined in its Constitution. This principle prohibits Ukrainian citizens from holding citizenship in another state. Although cases of dual citizenship exist in practice, such as children born to a foreign father and a Ukrainian mother, dual citizenship is not legally recognised. In these cases, while the child may hold citizenship in both states, only Ukrainian citizenship is formally acknowledged within Ukraine. Current discussions in the Ukrainian parliament reflect an interest in aligning with global trends and considering dual citizenship policies. However, significant legislative and procedural obstacles remain. One of the main challenges is the need to amend the Civil Code[1], which requires an all-Ukrainian referendum under existing law. This process is further hindered by the ongoing martial law in Ukraine, which prohibits referenda and complicates the implementation of such reforms (Legal regulation of dual citizenship in Ukraine, 2024).

At the same time, Germany has made significant strides in implementing dual citizenship. Recent reforms have eliminated restrictions that required individuals to renounce their previous citizenship upon acquiring German citizenship. For instance, starting in 2024, individuals who have resided in Germany for five years will become eligible to apply for citizenship. Additionally, those who demonstrate active participation in integrating into German society will qualify to apply for citizenship after just three years. This reform is designed to attract skilled professionals and aligns with the broader European trend toward a comprehensive citizenship policy. The German government's approach stands in stark contrast to Ukraine's restrictive policy and reflects an increasing acknowledgment of the benefits that dual citizenship offers to both immigrants and the host country (Federal Foreign Office, 2024).

Another model for regulating dual citizenship is found in Canada, which is characterised by a favourable and expansive legal framework. Canadian law permits individuals to hold multiple citizenships concurrently without the requirement to renounce their original citizenship. This policy has positioned Canada as a leading example of utilising dual citizenship as a mechanism to cultivate a multinational and multicultural society (Chin & Reid, 2022). The Canadian approach underscores the dual objectives of preserving ties with one's country of origin while facilitating integration into Canadian society. This duality yields benefits not only for individuals but also for the broader social structure of Canada by enabling a more active exchange of cultural practices and knowledge resources (Singer, 2024). The divergent approaches to dual citizenship regulation observed in Canada, Germany, and Ukraine reflect distinct state priorities and historical contexts. Germany's recent reforms signify a strategic initiative aimed at addressing demographic challenges and labor shortages. Conversely, Canada's longstanding endorsement of dual citizenship aligns with its national identity as a multicultural society. Ukrainian legislation, however, continues to adhere to the traditional concept of single citizenship, wherein

[1] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.

national security considerations are prioritised over the facilitation of international mobility. The ongoing discourse within Ukraine concerning potential legal reforms indicates an increasing awareness of global trends in dual citizenship regulation. However, it also highlights the inherent difficulties in transitioning from an established legal framework to one that accommodates greater flexibility (Table 1).

**Table 1.** Comparative analysis of dual citizenship aspects in Ukraine, Germany, and Canada

| Comparative aspect | Ukraine | Germany | Canada |
|---|---|---|---|
| Legal status of dual citizenship | Citizenship other than Ukrainian is not recognised; the principle of single citizenship applies (Article 4 of the Civil Code) | Bipatrism was allowed as a result of the 2024 reforms, and naturalisation no longer requires renunciation of previous citizenship | It is allowed – the citizens can have multiple citizenships at the same time, without renouncing the previous one |
| State register of persons with dual citizenship | – | No centralised registry: government agencies record multiple citizenships during the naturalisation procedure | There is no centralised registry |
| Naturalisation procedure | The procedure is quite complicated and lengthy, and also requires renunciation of citizenship of another state (Article 9 of Law of Ukraine No. 2235-III) | The requirements for residence in the state have been simplified – the period of residence has been reduced to five years, or to three years in certain cases (e.g. for professional achievements in Germany, language skills, etc.) (Article 10 StAG; Article 6 (3) StARModG) | For naturalisation in Canada, important conditions are residence for 5 years, knowledge of the language, as well as the applicants' awareness of Canada (Article 5 of the Citizenship Act) |
| Rights and obligations of bipatrids | – | Bipatrids enjoy the same rights and obligations as German citizens with a single citizenship (there is no specific provision on the scope of their rights, however, Article 1 of the StAG establishes that bipatrids are Germans, it follows that they have the same rights and obligations) | Having the same rights and obligations as a person who is a citizen of Canada exclusively (based on the provisions of Article 6) |
| Tax payment | – | The obligation to pay taxes is determined depending on the place of residence (Article 1 EStG), in particular, binationals may be taxpayers in both states, but at the same time they have the right to avoid double taxation by agreement of the parties (Double taxation agreements..., 2024) | For persons with dual citizenship, taxation is based on residency (section 126 of the Income Tax Act), in particular, Canada has double taxation agreements that provide for the crediting of taxes paid abroad (section 248 (1) of the Income Tax Act) |
| Military duty | – | Military or alternative service (according to Article 12 (a) Basic Law for the Federal Republic of Germany). Article 28 StAG provides for the loss of citizenship in the event of voluntary military service in another state unless prior permission has been granted to such a person | There is no mandatory military service for bipatrids, as in other cases, bipatrids have the same rights and obligations as ordinary citizens |

**Source:** created by the author based on analyse Civil Code of Ukraine[1], Constitution of Ukraine[2], Law of Ukraine No. 2235-III On Citizenship of Ukraine[3], German Citizenship Act (StAG)[4], Basic Law for the Federal Republic of Germany[5], Act on the Modernisation of Citizenship Law (StARModG)[6], German Income Tax Act (EStG)[7], Citizenship Act[8], Income Tax Act[9]

A comparative analysis highlights the differing approaches to dual citizenship in Ukraine, Germany, and Canada, reflecting the unique historical contexts and political orientations of each state. In Ukraine, the principle of single citizenship is enshrined in law, alongside a provision that formally denies the recognition of dual citizenship. Although Ukrainian law does not explicitly prohibit dual citizenship, its non-recognition creates a legal contradiction, leading to inconsistencies in its application. This lack of recognition has significant implications. Ukrainian citizens who are compelled to seek asylum abroad often lose the ability to maintain formal ties with their homeland while simultaneously facing challenges in integrating into their host society.

[1] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.
[2] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80#Text.
[3] Law of Ukraine No. 2235-III "On Citizenship of Ukraine". (2001, January). Retrieved from https://zakon.rada.gov.ua/laws/show/en/2235-14#Text.
[4] German Citizenship Act (StAG). (1913, July). Retrieved from https://www.gesetze-im-internet.de/stag/BJNR005830913.html.
[5] Basic Law for the Federal Republic of Germany. (1949, May). Retrieved from https://www.gesetze-im-internet.de/englisch_gg/englisch_gg.html.
[6] Act on the Modernisation of Citizenship Law of Germany (StARModG). (2024, March). Retrieved from https://dip.bundestag.de/vorgang/gesetz-zur-modernisierung-des-staatsangeh%C3%B6rigkeitsrechts-starmodg/303313.
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[9] Income Tax Act of Canada. (1985). Retrieved from https://laws-lois.justice.gc.ca/eng/acts/i-3.3/.

In contrast, recent amendments to German citizenship legislation represent a gradual shift toward inclusiveness, allowing individuals to hold multiple citizenships without relinquishing their primary citizenship. Canada, which has long recognised dual citizenship, employs an approach that fosters cultural diversity and civic engagement among immigrants. This strategy facilitates integration into Canadian society without the fear of losing one's original citizenship. Neither Germany nor Canada maintains an official registry of dual citizens, reflecting a reliance on personal responsibility rather than comprehensive state monitoring. However, both countries do track whether their citizens hold the citizenship of another state. Germany's approach is more structured compared to Canada, which has not clearly specified such a registry. While this tracking helps prevent potential issues, it also raises concerns about effectively managing potential security risks. In the context of reforming Ukraine's citizenship legislation, adopting elements of both the Canadian and German models would be advisable. Specifically, Ukraine could develop and implement a more inclusive legislative framework that permits dual citizenship while safeguarding national interests and ensuring the loyalty of its citizens to the state. By incorporating these elements, Ukraine could enhance its investment attractiveness as a destination for migrants and strengthen its diaspora's sense of belonging and connection to their homeland.

To successfully adapt its dual citizenship policy, Ukraine would benefit from examining the experiences of Germany and Canada. By analysing how these countries have integrated dual citizenship into their legal systems while safeguarding national interests, Ukraine can identify reform strategies that balance the protection of its citizens' rights abroad with the resolution of challenges associated with multiple dual citizenships within its borders. Such adaptations could enhance Ukraine's investment attractiveness by positioning it as a desirable destination for skilled migrants while also fostering stronger connections with its global diaspora (Ivanov, 2024). To improve its legal framework on dual citizenship, Ukraine should prioritize the development of a clear and comprehensive legal structure and accelerate procedures for both acquiring and relinquishing dual citizenship. Drawing on Germany's recent reforms, Ukraine could streamline its citizenship application process by reducing bureaucratic hurdles. Measures such as introducing specific time frames for processing applications and establishing transparent, well-defined criteria for eligibility would increase efficiency and fairness. Furthermore, implementing incentives for individuals who serve in the Ukrainian Armed Forces (UAF) or actively contribute to the protection of national interests would align the reforms with broader state priorities. These reforms would not only address existing issues but also simplify the dual citizenship process.

The introduction of a hybrid model of dual citizenship in Ukraine holds particular significance. Such a model would enable dual citizenship for Ukrainians, which is especially relevant in the context of martial law, as well as for foreigners seeking to acquire Ukrainian citizenship. This approach would be particularly applicable to states with a significant Ukrainian diaspora, such as Canada or Poland. It would facilitate the free movement of individuals between their countries of citizenship while maintaining ties with both states. This model would mirror Canada's inclusive policy, which allows individuals to preserve connections with their country of origin while integrating into Canadian society. By establishing conditions for dual citizenship with select countries, Ukraine could enhance its investment appeal to professional migrants and reinforce relationships with its global national community. However, such a policy must address key challenges, particularly those related to fulfilling citizens' obligations to the state. This includes tax compliance and military service. To address these concerns, a comprehensive legal framework must be developed to ensure that dual citizens meet these obligations equitably. For instance, mechanisms could be implemented to allow dual citizens to pay a unified tax and perform a single compulsory military service obligation, thus avoiding duplication of responsibilities (Bagan, 2018; Boldyriev, 2024).

It is imperative that Ukraine implement measures to safeguard national security in the context of dual citizenship. A key priority should be the establishment of a unified register of individuals with dual citizenship, drawing inspiration from practices observed in other countries. Although Germany and Canada have not yet implemented centralised registers, both states have mechanisms for monitoring citizenship status. In Germany, citizenship status is documented during the naturalisation process (Dual citizenship in Germany 2024…, 2024), while in Canada, it is tracked through citizenship documentation and the requirement for dual citizens to disclose their status when applying for government positions (Dual citizenship, 2024). The creation of such a register in Ukraine would serve as an effective tool for monitoring and mitigating potential security risks posed by dual citizens. This system would also surpass the monitoring capabilities currently in place in Germany and Canada. Furthermore, introducing regulations to restrict dual citizens' access to public office and military service could address concerns about loyalty and national security. These measures would ensure that individuals with single citizenship maintain priority in sensitive positions and serve as a preventative measure in conflict scenarios (Denysiuk *et al.,* 2024). By leveraging the experiences of Germany and Canada, Ukraine could develop a robust legislative framework that protects its national interests while fostering international cooperation. However, it is essential to acknowledge that not all aspects of foreign

models are directly applicable to Ukraine. For instance, Canada's inclusive approach, which imposes minimal restrictions on dual citizenship, aligns with Ukraine's aspirations to create a more inclusive citizenship policy. This approach could strengthen cultural ties, enhance immigrant engagement in public life, and encourage the return of Ukrainians who fled due to the ongoing hostilities. Additionally, it would ensure reliable legal protection for Ukrainian citizens both domestically and abroad. Nevertheless, such an inclusive model carries potential risks, particularly for individuals with close affiliations to states deemed hostile, such as Russia or Belarus (these risks must be carefully considered when designing a dual citizenship framework for Ukraine).

In contrast, recent changes in German legislation, which permit dual citizenship under specific conditions, reflect a more cautious approach that balances integration with the preservation of national identity. However, this approach may not align with Ukraine's current context, where Russian aggression necessitates a more restrictive citizenship policy. The introduction of such a system in Ukraine risks complications, particularly in the naturalisation of individuals from states with adversarial relations. A more suitable model for Ukraine would be a hybrid framework that selectively recognises dual citizenship. This model would allow bipatrism in relations with allied or friendly states while prohibiting it with adversarial states, such as Russia and Belarus. Such an approach would help mitigate risks while fostering connections with the global Ukrainian diaspora.

At the same time, introducing dual citizenship in Ukraine carries inherent risks that must be carefully considered. The ongoing geopolitical conflicts raise concerns about dual loyalty, particularly among individuals with ties to states whose interests conflict with Ukraine's. Additionally, there is a potential for dual citizenship to exacerbate societal tensions, especially if it is perceived as a privilege available only to certain groups. This perception could lead to feelings of inequality and dissatisfaction, ultimately undermining social cohesion (Verkuyten *et al*., 2023; Iannario, 2024). Moreover, administrative challenges are likely to arise, including the complexity of processing dual citizenship applications and ensuring compliance with both national and international legal frameworks. To address these risks, Ukraine should adopt a phased approach to implementing dual citizenship. This strategy could include experimental pilot programs, initially granting dual citizenship rights to specific categories of individuals, such as Ukrainians who were compelled to leave the country due to martial law (Multiple citizenship in Ukraine…, 2024). This incremental approach would enable Ukraine to monitor the outcomes, address emerging issues, and refine its policies before implementing a broader dual citizenship framework.

## Discussion

The primary regulation governing dual citizenship in Ukraine is its Constitution[1], which explicitly establishes the principle of single citizenship as outlined in Article 4. According to this provision, individuals who voluntarily acquire the citizenship of another state automatically lose their Ukrainian citizenship. This strict interpretation, however, results in significant legal uncertainty, particularly under the current conditions of martial law. Martial law in Ukraine has intensified debates over dual citizenship, as many Ukrainians seek to maintain ties with other countries to enhance their security and economic opportunities. The absence of clear and transparent legal provisions addressing dual citizenship exacerbates confusion and exposes individuals with dual citizenship (bipatrids) to potential legal consequences. This lack of regulatory clarity complicates the ability of bipatrids to fully exercise their rights and fulfill their obligations under Ukrainian law (Kalnytskyi & Havryltsiv, 2023).

Thus, C. Gathmann & J. Garbers (2023) investigated the interaction between citizenship policies and integration outcomes in different countries. The authors conducted a comparative analysis, focusing on how different citizenship laws affect the social and economic integration of immigrants. They emphasised the importance of legal status for access to rights and social resources. In particular, they emphasised that more comprehensive citizenship policies contribute to better integration outcomes. In addition, the researchers noted that countries that allow and enshrine dual citizenship have demonstrated an increase in the level of civic engagement among immigrants. This, in turn, has had a positive impact on the social cohesion of society. Comparing this study with the study by C. Gathmann & J. Garbers (2023), both emphasised the important role of citizenship laws in shaping the integration experience. However, this study focuses directly on the study of the legislative framework in Ukraine and the possibility of its adaptation to the practice of dual citizenship observed in Germany and Canada. While C. Gathmann & J. Garbers (2023) analysed the general consequences of integration in different states, this study narrowed down the potential for reforming dual citizenship policies specifically in Ukraine. In addition, the results of their study indicated a direct connection between the inclusiveness of citizenship and the success of integration. And this coincided with the arguments in favour of legislative changes in Ukraine that should expand the opportunities for obtaining dual citizenship.

I. Harbers & A. Steele (2023) conducted an analysis of the consequences of policies that prohibit the renunciation of citizenship in various states. Their study examined the impact of such bans on human rights and the relationship between individuals and the state. The

[1] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80#Text.

authors concluded that these policies create significant obstacles for individuals with dual citizenship, limiting their mobility and complicating their legal status. They emphasised that the inability to renounce citizenship can lead to complex legal conflicts for individuals attempting to hold multiple citizenships. Furthermore, the researchers noted that such restrictions often reflect a broader socio-political attitude of the state toward immigration and issues of national identity. While both studies address dual citizenship, I. Harbers & A. Steele (2023) focused specifically on the challenges posed by bans on renouncing citizenship. In contrast, the present study concentrates on the legislative framework that facilitates dual citizenship, offering practical recommendations for Ukraine. This distinction allows for an exploration of potential legislative pathways for Ukraine in this area. If Ukraine's provisions on dual citizenship remain unchanged, the state might consider introducing a ban on renunciation as a deterrent. However, this study prioritises identifying legislative adaptations that would support Ukrainian citizens seeking to acquire dual citizenship while protecting national interests. The analysis by I. Harbers & A. Steele (2023) employed a conceptual framework to examine the relationship between the state and its citizens. Conversely, this study adopts a comparative and practical approach, aiming to propose actionable solutions for Ukraine. This distinction underscores the differences in focus between the two works: one is primarily analytical and theoretical, while the other is comparative and practical.

J. Schultz & D. Nakache (2024) analysed the impact of immigration policies in Canada and Norway, emphasising how these policies, despite their reputations for security, have created conditions of permanent instability for individuals. The authors identified several key trends: the implementation of stricter and less predictable requirements for permanent residence and citizenship; the fragmentation of protection regimes, which complicates the ability of individuals to secure their rights and access the benefits of dual citizenship; and an increasing emphasis on the termination of citizenship. The researchers argued that these policies undermine the legal security traditionally associated with permanent residence and citizenship. This not only heightens vulnerability to deportation but also imposes restrictions on individuals' ability to fully integrate into society. While both studies address the complexities of immigration status and the legal frameworks regulating it, J. Schultz & D. Nakache (2024) focused on the concept of probationary immigration to explore how temporary legal statuses create instability and their broader consequences. In contrast, this study highlights the importance of establishing dual citizenship as a mechanism to enhance legal security and facilitate the integration of Ukrainian citizens abroad. Additionally, author's analysis centres on the domestic policies of Canada and Norway. Conversely, this study examines the legal regulation of dual citizenship across multiple states, with the goal of leveraging their experiences to develop practical recommendations for Ukraine.

The study by S.A. Cherepenko & I.V. Kostenko (2024) offers a comprehensive analysis of the state of dual citizenship in Ukraine and other countries worldwide. The authors examined current legislation and highlighted the challenges faced by individuals with dual citizenship, particularly in Ukraine, where regulatory provisions do not recognise dual citizenship and mandate exclusive Ukrainian citizenship for its nationals. The researchers concluded that there is an urgent need to adapt Ukrainian legislation and practices to align with more progressive models. Their study underscored the importance of legislative reform in Ukraine, particularly in light of the global trend toward embracing dual citizenship. While both studies identify the restrictive nature of Ukrainian legislation, this study focuses on analysing how other countries effectively manage dual citizenship and identifying adaptable methods for Ukraine. In particular, this research highlights Germany's integration policies and Canada's more flexible approach to citizenship as exemplary models. It also emphasises specific aspects that could inform improvements in Ukrainian legislation. By contrast, S.A. Cherepenko & I.V. Kostenko (2024) focused primarily on identifying existing challenges in Ukraine's legal framework regarding dual citizenship. This study, however, centers on practical recommendations derived from the experiences of leading international models.

S.W. Goodman (2023) conducted an in-depth study on dual and multiple citizenship, comprehensively analysing the legal frameworks and consequences associated with this issue. The author explored how dual citizenship enables individuals to function as full members of multiple states, granting them corresponding rights and obligations at the international level. The study highlights that while dual citizenship enhances personal freedoms and opportunities, it also introduces complex legal challenges related to state loyalty and its influence on national policies. S.W. Goodman (2023) emphasised the necessity for states to adopt a thoughtful approach to address these challenges, ensuring a balance between individual rights and national interests. When comparing S.W. Goodman's (2023) study with this research, both examine the multifaceted nature of legal norms governing citizenship but from differing perspectives. Author study focuses on the broader global implications of dual citizenship, providing a theoretical and large-scale analysis. In contrast, this study addresses the practical and contextual challenges Ukraine faces in adapting its citizenship legislation. The key distinction lies in their focus: S.W. Goodman's (2023) work is theoretical and international in scope, while this research is pragmatic and localised, aimed at shaping potential reforms specific to Ukraine's legal framework.

Overall, the analysis of the aforementioned studies underscores common aspects of dual citizenship and highlights its importance for modern states. Specifically, the findings advocate for the implementation of dual citizenship in Ukraine, drawing on the experiences of leading nations such as Germany and Canada. This approach would not only help individuals maintain strong ties with multiple states but also contribute to increasing the number of future citizens and promoting their integration into society.

## Conclusions

During the study, the concept of multiple citizenship was repeatedly referenced. Although multiple and dual citizenship are not identical, they share a fundamental component that justifies the use of these terms when addressing potential reforms in Ukraine. This shared component is the possession of more than one citizenship by an individual, which results in similar legal and societal consequences for both dual and multiple citizenship, differing only in the number of states involved. A distinctive feature of Ukrainian legislation on dual citizenship is its strict adherence to the principle of single citizenship, enshrined in the Constitution of Ukraine, which precludes the recognition of any other citizenship for its nationals. However, contradictions arise as there is no explicit prohibition against Ukrainians holding multiple citizenships, nor is this phenomenon systematically monitored or regulated. This lack of regulation has the potential to foster intercultural relations and enhance the participation of immigrants in public life. Moreover, it could facilitate the return of Ukrainian citizens who were compelled to leave the country due to martial law and provide robust legal protection for them. Conversely, Canada employs a more liberal approach that permits dual citizenship without restrictions, thereby promoting greater mobility and integration for its citizens. This inclusive policy not only enhances the social inclusion of immigrants but also fosters diversity and multiculturalism within Canadian society. Canada's model serves as a compelling example for Ukraine, illustrating how an open citizenship policy can strengthen societal unity and cultivate a cohesive national identity. Germany, on the other hand, has adopted a regulatory framework for dual citizenship, removing previous restrictions and allowing individuals to retain German citizenship while acquiring another. By permitting dual citizenship under specific conditions, Germany has effectively adapted to the challenges posed by globalisation and migration. For Ukraine, incorporating elements of Canada's inclusive policy and Germany's recent legislative reforms could significantly enhance its dual citizenship framework. However, any modifications must be approached with caution, ensuring careful consideration of their implications for national security and societal perceptions of loyalty among citizens. The proposed initiatives for reforming Ukraine's citizenship policies reflect a clear intention to balance these issues while modernising the legal framework.

Future research could involve analysing the experiences of additional countries, such as Australia and the United Kingdom. Another potential direction for investigation could focus on a detailed comparison of the constitutional provisions on single citizenship in Ukraine with the legal frameworks of these states.

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## Conflict of Interest

None.

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# Порівняльний аналіз законодавства про подвійне громадянство в Україні та інших країнах: можливості для адаптації української практики

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**Анотація**
Метою дослідження було визначити стан українського законодавства з питань подвійного громадянства, порівняти його з положеннями нормативно-правових актів Канади та Німеччини, а також встановити можливі шляхи адаптації української практики до європейських норм. Для ефективного дослідження теми важливим було застосування герменевтичного, порівняльного й історичного методів. У публікації висвітлено сутність подвійного (множинного) громадянства, аргументовано необхідність його визнання урядом держав. Проаналізовано нагальну проблему в Україні щодо поширення випадків біпатризму, актуальності внесення змін до положень щодо заборони подвійного громадянства. Розглянуто законодавство України, Німеччини й Канади з питань подвійного громадянства. За результатами дослідження сформульовано правове визначення поняття подвійного громадянства, а також окреслено позитивні й негативні аспекти його набуття. Зіставлено законодавчі норми, що регламентують біпатризм. Це сприяло виокремленню основних способів правового регулювання цього питання та формуванню рекомендацій щодо відповідних реформ законодавства про громадянство в Україні (визнання державою подвійного громадянства, створення єдиного державного реєстру біпатридів та їх транскордонного переміщення, розроблення вимог щодо набуття громадянства й положень щодо певних обмежень для біпатридів (стосовно їх участі в діяльності державних органів) тощо). Обґрунтовано значущість забезпечення ефективного правового регулювання подвійного громадянства в Україні як ключового елемента інтеграції в глобальний світ

**Ключові слова:**
нормативно-правовий акт; підданство; біпатризм; мультипатризм; права і свободи людини

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# Legal implications of the Indonesian President's Regulation accelerating development at IKN

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**Abstract**
This study aimed to investigate changes in the duration of land-use rights before and after the issuance of Presidential Regulation No. 75 of 2024 and to identify normative conflicts arising in Indonesian agrarian regulations. The research employed a normative approach, focusing on laws, regulations, legal doctrines, and relevant legal theories. This study identified a normative conflict between the restrictions in the Basic Agrarian Law of Indonesia and the provisions of Regulation No. 75, which significantly extends the duration of land-use rights. Before the issuance of Regulation No. 75 of 2024, the granting of land-use rights was regulated by Law No. 5 of 1960 "On Agrarian Principles", which stipulated a grand period of 35 years, extendable for the same period, with a maximum duration of 50 years. However, Regulation No. 75 now stipulates a grant period of 95 years, extendable for another 95 years, allowing for a maximum total of 190 years. This discrepancy creates a misalignment between existing legal provisions and the policies introduced by the Presidential Regulation, leading to legal uncertainties in its enforcement. The findings highlighted the application of the principle *lex superior derogat legi priori*, meaning that higher-ranking regulations override lower-ranking ones. Accordingly, this study emphasised the need for harmonisation between agrarian regulations and other sectoral policies to mitigate conflicts and ensure sustainable and efficient land management aligned with established legal principles

**Keywords:**
land-use rights; grant period; capital city; legal conflict; agrarian legislation

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## Introduction

Indonesian Capital City (IKN) stands for the State Capital, which is the capital city of the Unitary State of the Republic of Indonesia. This definition aligns with Article 1, Paragraph (1), of the Law of the Republic of Indonesia No. 3 "On the State Capital"[1]. In an official statement from the Ministry of State Secretariat, President Joko Widodo outlined the reasons for constructing the IKN during his remarks at the opening ceremony of the XVIII Congress of the Central Board of Muhammadiyah Youth, held at the Balikpapan Sport and Convention Centre in February 2023. According to the President, the primary reason for developing the IKN is to promote equality in terms of economic growth, population distribution, and development.

The development of the IKN is part of the National Strategic Plans, with construction taking place in Sepaku, Penajam Paser Utara Regency, East Kalimantan Province. The legal basis for implementing the National Strategic Plan is established in Law No. 3 of 2022[2], along with its derivative regulations, including Regulation of the President of Republic of Indonesia No. 75 of 2024[3] and Government Regulation of the Republic of Indonesia No. 12 "On the Granting of Business Permits, Ease of Doing Business and Investment Facilities for Business Actors in the IKN"[4]. Following Article 33, Paragraph (3), of the 1945 Constitution of the Republic of Indonesia[5], the state controls the earth, water, and natural resources for the greatest benefit of the people. The IKN possesses significant land potential, making it a key component of national development. Land plays a crucial role in various aspects of human life, including economic, social, political, cultural, and legal domains. Beyond serving as a place of residence, land is also a fundamental source of livelihood, supporting agricultural activities, infrastructure, and other economic sectors (Labibah *et al*., 2024). The concept of state control means that the government, as the highest authority, has the power to regulate land-related matters but does not own the land itself (Suhariningsih, 2009). In the context of IKN development, land serves as the foundation for establishing modern, sustainable areas that prioritise community welfare. With both strategic and social significance, land management in the IKN must balance development objectives with the rights of local communities. The regulation of land rights, including the right to cultivate (HGU), is essential for ensuring equitable and sustainable growth. A legal conflict has emerged between the Agrarian Law, which limits HGU to 25 years, and Presidential Regulation No. 75 of 2024, which extends this period to 95 years, contravening the principle of legal hierarchy and creating regulatory uncertainty.

Research by I.A.T.R. Ayunungtyas *et al*. (2024) highlights concerns regarding the extended duration of the HGU in the IKN without a mechanism for revocation or termination, which contradicts Law No. 5 of 1960[6]. The study focuses on the clarity of procedures for obtaining and extending HGU, as well as the status of land rights after the expiry of the HGU period. A. Safik's & M. Ewinda (2023) discuss the implementation of land rights in the IKN based on Presidential Decree No. 65 of 2022[7] and other related regulations. However, their study, limited to normative aspects, does not analyse the social and legal consequences. A.K. Murti *et al*. (2023) examine normative conflicts related to the HGU duration in the IKN and emphasise the need for regulatory harmonisation to prevent legal conflicts that could obstruct development.

Unlike previous studies, which focused on normative conflicts, implementation, and legal clarity, this study analyses significant changes in the HGU duration before and after the enactment of Presidential Regulation No. 75 of 2024[8], including its legal implications for protecting local community rights, ensuring environmental sustainability, and optimising strategic land management in the IKN. This study also provides legal recommendations to balance the interests of the state, land managers, and the community. C. Chaerudin (2023) argues that development for national strategic projects frequently conflicts with human rights, particularly regarding the eviction of Indigenous Peoples and urban populations who lack formal land ownership documents.

The case of the Rempang Island community illustrates that 16 traditional villages, including Sembulang Village, which was established in 1834, are threatened with losing their ancestral land. The community perceives itself as being more disadvantaged than benefiting from the development. Therefore, the state must

[1] Law of the Republic of Indonesia No. 3 "On the State Capital". (2022, February). Retrieved from https://peraturan.bpk.go.id/Details/198400/uu-no-3-tahun-2022.
[2] Ibidem, 2022.
[3] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.
[4] Government Regulation of the Republic of Indonesia No. 12 "On the Granting of Business Permits, Ease of Doing Business and Investment Facilities for Business Actors in the IKN". (2023, March). Retrieved from https://peraturan.bpk.go.id/Details/244908/pp-no-12-tahun-2023.
[5] Constitution of the Republic of Indonesia. (1945, August). Retrieved from https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf/.
[6] Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960.
[7] Decree of the President of the Republic of Indonesia No. 65 "Land Acquisition and Land Management in the Capital City of the Archipelago". (2022, April). Retrieved from https://peraturan.bpk.go.id/Details/207621/perpres-no-65-tahun-2022.
[8] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.

protect their rights, and the community has proposed that the development project be carried out outside the traditional village area. This issue has been examined by R. Dewi *et al*. (2024), whose research highlights that land rights violations often involve collusion between government authorities and private sector entities, weak law enforcement, and the legal uncertainty faced by landowners. In addition, victims seeking justice encounter numerous obstacles, including a long and complex bureaucratic process and an imbalance of power between the conflicting parties.

Based on this context, this study aimed to comprehensively analyse the differences in the duration of Rights to Cultivate allocations before and after the issuance of Presidential Regulation No. 75 of 2024[1], as well as its legal implications for land management in the Indonesian Capital City (IKN) and the rights of affected communities. This study focused on reforming the regulation governing the HGU allocation period, given that Presidential Regulation No. 75 of 2024 introduces significant changes to the land management system, especially within the IKN, which is a priority for national development. This regulatory shift not only affects administrative arrangements concerning the HGU allocation period but also has far-reaching legal implications for safeguarding local community rights, promoting environmental sustainability, and enhancing land use as a strategic asset. This study was intended to provide a clear understanding of the direction of policy development in the field of land management after the Presidential Decree came into force, and to propose legal recommendations that would help balance the interests of the state, land managers and local communities.

## Materials and Methods

The normative legal research conducted in this study was based on an analysis of applicable legal norms, with a focus on the conceptual framework underlying specific regulations. This study relied on secondary data, which comprised primary, secondary, and tertiary legal materials. Legal research employed several methodological approaches. These approaches served as a means of obtaining information from various sources regarding the legal issues addressed in this study. Since this research adopted a normative legal framework, several approaches were applicable, including the statutory approach and the conceptual approach (Marzuki, 2010). Primary legal materials consisted of laws and regulations as sources of law with binding force. The primary legal materials in this research, relating to the right to cultivate in the capital city of the archipelago, included Regulation of the President of the Republic of Indonesia No. 75 "On the Acceleration of the IKN"[2], Law of the Republic of Indonesia No. 5 of 1960 "On Agrarian Principles"[3], and Law of the Republic of Indonesia No. 3 "On the State Capital"[4]. Secondary legal materials, such as books and journals, were utilised to provide theoretical perspectives and support the understanding of legal policy. Meanwhile, tertiary legal materials, such as the Great Dictionary of the Indonesian Language (Lukman, 1991), served to clarify the terminology used.

The primary approach adopted was the statutory approach, whereby this study conducted an indepth examination of the laws and regulations relevant to its theme. Additionally, a conceptual approach was employed to identify and understand the ideas and fundamental principles underpinning the formation of the legal norms under investigation. With this approach, the study did not merely focus on the content of the regulations but also examined the concepts underlying their formation, such as justice, legal certainty, and the protection of workers' rights. This approach enabled an analysis of the relationship between applicable legal norms and the intended legal objectives within the context of legal politics and workers' rights, ensuring that the research findings offer both theoretical and practical contributions to the understanding and development of relevant legal policies.

## Results and Discussion

Land possesses strategic value not only due to its physical aspects but also because of its social and defence-related functions (Sulistio, 2020). In the social dimension, land serves as an identity marker for local communities, particularly Indigenous groups who have historical and emotional ties to it as an ancestral heritage (Nurahman, 2022). In the defence dimension, effective land management can support national stability by facilitating strategic infrastructure and ensuring sustainable spatial management (Sakarwi, 2014). Therefore, land management in the IKN must maintain a balance between development requirements and the protection of local community rights. From a legal perspective, land is regulated through various rights, such as ownership rights, cultivation rights, building usufructuary rights, and use rights, which provide a legal basis for its use (Novitasari *et al*., 2023). The regulation of land rights in the IKN is particularly significant given the complexity of developing the new national capital, which involves multiple stakeholders, including the government, local

[1] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.
[2] Ibidem, 2024.
[3] Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960.
[4] Law of the Republic of Indonesia No. 3 "On the State Capital". (2022, February). Retrieved from https://peraturan.bpk.go.id/Details/198400/uu-no-3-tahun-2022.

communities, and investors. With prudent management, land in the IKN can support equitable, sustainable, and inclusive development, while also serving as a symbol of Indonesia's progress as a nation that upholds sustainability and social justice (Safik & Ewinda, 2023).

HGU can only be granted to Indonesian citizens and legal entities incorporated under Indonesian law and domiciled within Indonesian territory. Land that is eligible for HGU must be state-owned, and if it falls within a designated forest area, the right can only be granted after the land has been reclassified (Sari, 2020). The ownership of HGU is directly linked to legal protection for its holders, as land ownership disputes are prevalent in Indonesian society. As a constitutional state guided by the 1945 Constitution of the Republic of Indonesia[1], the government bears the responsibility of providing legal protection to ensure fair access to land ownership, use, and enjoyment for all citizens. However, the duration of HGU allocations has frequently been criticised for disproportionately benefiting large business actors at the expense of local communities affected by development (Lapasian, 2023).

HGU, which is regulated under Law No. 5 of 1960 "On Agrarian Principles"[2], grants the holder the authority to utilise the land for a specified period. Article 29 of the Agrarian Law, Paragraph 1, states that HGU may be granted for a maximum period of 25 years. Paragraph 2 stipulates that if a company requires a longer period, it may be extended to a maximum of 35 years and further extended for an additional 25 years upon expiry. This provision aims to maintain a balance between the need to utilise the land for investment and the principle of state-controlled land management for the greatest prosperity of the people, as mandated by Article 33, Paragraph (3), of the 1945 Constitution of the Republic of Indonesia[3]. Meanwhile, under Article 9, Paragraph 2, of Presidential Regulation No. 75 of 2024[4] HGU is initially granted for a maximum of 95 years in the first cycle and may be extended for a further 95 years in the second cycle. In comparison to the Agrarian Law, the HGU period stipulated in Presidential Regulation No. 75 of 2024 is significantly longer. The HGU concession period, as outlined in Presidential Regulation, appears misaligned with the fundamental purpose of law-making. According to R. Baldwin *et al*. (2012), well-designed regulations must prevent disparities in resource ownership, curb short-term exploitation, and ensure equitable access to resources in accordance with the principles of social justice. Furthermore, regulations should facilitate the redistribution of resources and enhance community access. Effective regulations must uphold justice by safeguarding the interests of all parties, providing legal certainty through clearly defined rights and obligations, and generating substantial benefits for society (Abidin, 2017). This highlights the necessity for regulations governing the HGU concession period to be carefully structured in alignment with the principles of justice, legal certainty, and public benefit.

The legal conflict between the duration of the HGU under the Agrarian Law and Presidential Regulation No. 75 of 2024[5] constitutes a violation of the principle of *lex superior derogat legi inferiori* – the doctrine that emphasises that lower regulations must not conflict with higher ones. Article 28 of the Agrarian Law[6] as the primary legislation, sets the maximum HGU term at 25 years, extendable by up to 35 years. This aligns with Article 33, Paragraph (3), of the 1945 Constitution[7], which emphasises land management for the people's prosperity. However, Presidential Regulation No. 75 of 2024[8] extends the HGU period to 95 years, potentially reaching a total of 190 years if renewed in the second cycle – a substantial deviation from the provisions of the Agrarian Law[9]. This creates legal uncertainty and undermines the principle of justice in land resource management. Such a violation of the principle of *lex superior derogat legi inferiori* highlights a fundamental legal conflict between different levels of legislation.

As a lower-ranking regulation, the Presidential Regulation[10] lacks the authority to alter or override the provisions of the Agrarian Law, which holds higher legal status. This inconsistency also threatens the state's flexibility in land management, rendering it misaligned with the fundamental objective of state-controlled land governance for the greatest prosperity of the people.

[1] Constitution of the Republic of Indonesia. (1945, August). Retrieved from https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf/.
[2] Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960.
[3] Constitution of the Republic of Indonesia. (1945, August). Retrieved from https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf/.
[4] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.
[5] Ibidem, 2024.
[6] Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960.
[7] Constitution of the Republic of Indonesia. (1945, August). Retrieved from https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf/.
[8] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.
[9] Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960.
[10] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.

Thus, the provisions in the Presidential Regulation require review to prevent regulatory disharmony and ensure compliance with the established legal hierarchy. The government argues that granting HGU for up to 95 years in the IKN aims to maximise investment attractiveness, both domestically and internationally. This policy is expected to enhance investor confidence by offering long-term business certainty. However, the exceptionally long HGU period raises concerns about potential land monopolisation by certain entities, leading to concentrated land control by large-scale investors. This not only restricts local communities' access to land and resources but also poses risks of exacerbating social inequality, disregarding environmental sustainability, and contradicting the principle of social justice in Article 33, Paragraph (3), of the 1945 Constitution[1], which mandates equitable land management for the collective prosperity of the people.

The enactment of Presidential Regulation No. 75 of 2024[2] has far-reaching legal implications for land management and the investment framework of Indonesia's new capital city. One of the most notable changes concerns the regulation of land rights duration, particularly the right to cultivate, which has been significantly extended. Previously governed by the Agrarian Law, the HGU framework now faces new provisions that may conflict with existing regulations. The discrepancy between the regulations governing the duration of HGU is a key issue in the revised legal framework. Table 1 presents a comparison of the provisions for granting HGU under the Agrarian Law and Presidential Regulation No. 75 of 2024.

**Table 1.** Comparison of the granting of the HGU period between the Agrarian Law and Presidential Regulation No. 75 of 2024 on the acceleration of the Indonesian Capital City

| Agrarian Law[3] | President Regulation No 75 of 2024[4] |
|---|---|
| Article 29.<br>(1) The right to cultivate is granted for a maximum term of 25 years.<br>(2) For companies requiring a longer period, the HGU may be granted for a maximum of 35 years.<br>(3) Upon the request of the rights holder, and considering the circumstances of the company, the HGU period specified in Paragraphs (1) and (2) may be extended for a maximum of 25 years. | Article 9.<br>(1) The Indonesian Capital Authority guarantees certainty in the duration of land rights through 1 initial cycle, which may be renewed for 1 second cycle for Business Actors, as specified in the agreement.<br>(2) The cycles referred to in Paragraph (1) are as follows:<br>a. business use rights may be granted for a maximum of 95 (ninety-five) years through 1 initial cycle, with the possibility of renewal for 1 second cycle, extending for up to 95 years, subject to evaluation criteria and phased implementation. |

**Source:** developed by the authors

Article 29 of the Agrarian Law[5] regulates the right to cultivate with a more restrictive maximum term of 25 years, which may be extended to 35 years for companies requiring a longer duration. Additionally, there is an extension of up to 25 years that may be granted upon request by the rights holder, subject to an assessment of the company's condition. This regulation reflects a cautious and measured approach to land-use rights allocation. By contrast, Presidential Regulation No. 75 of 2024[6] substantially expands the HGU period for business actors. Article 9 of the regulation grants an nitial cycle of up to 95 years, with the option of renewal for a second cycle of equal duration, contingent on an evaluation of specified criteria and phased implementation. This revision aims to provide long-term legal certainty for business actors and enhance Indonesia's investment appeal.

The normative conflict between the Agrarian Law and Presidential Regulation No. 75 of 2024[7] can be classified as a vertical normative conflict, which arises when a lower-level regulation contradicts a higher-level regulation within the legal hierarchy. In the Indonesian legal system, the hierarchy of laws and regulations is governed by the principle of *lex superior derogat legi inferiori*, meaning that higherranking laws take precedence over lower-ranking regulations. Consequently, the Agrarian Law[8], as a higher legal authority, should serve as the primary reference, taking precedence over Presidential Regulation No. 75 of 2024. The inconsistency between the Agrarian Law and Presidential

[1] Constitution of the Republic of Indonesia. (1945, August). Retrieved from https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf/.
[2] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.
[3] Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960.
[4] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.
[5] Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960.
[6] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.
[7] Ibidem, 2024.
[8] Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960.

Regulation No. 75 of 2024 raises concerns regarding regulatory harmonisation. This conflict undermines the legal legitimacy of the Presidential Regulation, particularly given that Article 33 of the 1945 Constitution of the Republic of Indonesia[1] explicitly mandates that natural resource management must adhere to the principles of justice and sustainability. If the provisions of the Presidential Regulation contradict the Agrarian Law, its implementation may be deemed legally invalid.

Therefore, any regulation that conflicts with the fundamental norm or a higher-ranking norm loses its legal validity. The normative conflict between the Agrarian Law and Presidential Regulation No. 75 of 2024 can be classified as a vertical normative conflict, which arises when a lower-ranking regulation contradicts a higher-ranking regulation within the legal hierarchy. In the Indonesian legal system, the hierarchy of laws and regulations is governed by the principle of *lex superior derogat legi inferiori*, meaning that higher-ranking laws take precedence over lower-ranking regulations. Consequently, the Agrarian Law as a higher legal authority, should serve as the primary reference, taking precedence over Presidential Regulation No. 75 of 2024[2]. The inconsistency between the Agrarian Law and Presidential Regulation No. 75 of 2024 raises concerns regarding regulatory harmonisation. This conflict undermines the legal legitimacy of the Presidential Regulation, particularly given that Article 33 of the 1945 Constitution of the Republic of Indonesia explicitly mandates that natural resource management must adhere to the principles of justice and sustainability. If the provisions of the Presidential Regulation contradict the Agrarian Law, its implementation may be deemed legally invalid.

According to H. Kelsen's (1999) theory, the validity of legal norms is determined by their conformity with the fundamental norms or "Grundnorm" applicable within a legal system. In this context, the fundamental norm is the principle of justice and legal certainty enshrined in the Constitution. Therefore, any regulation that conflicts with the fundamental norm or a higher-ranking norm loses its legal validity. Article 29, Paragraph (1), of the Agrarian Law[3] establishes that limiting the HGU period serves to preserve land function and prevent monopolisation of natural resources. This regulation aligns with the principle of justice outlined in Article 33 of the 1945 Constitution of the Republic of Indonesia[4], which emphasises the necessity of managing natural resources for public welfare. Accordingly, the regulation of HGU in the Agrarian Law has a strong legal foundation and cannot be disregarded by a Presidential Regulation. Conversely, the regulation in Presidential Regulation No. 75 of 2024[5], which extends the HGU period to a maximum of 190 years, represents a divergent approach – one that prioritises greater flexibility for HGU holders.

However, this flexibility has the potential to conflict with the principles of justice and sustainability enshrined in the Constitution. If an excessively long period is granted without adequate regulatory oversight, the risk of natural resource exploitation by certain entities may increase, ultimately harming national interests. This conflict of norms also shows that the regulatory framework governing HGU requires further harmonisation. Resolution of this conflict may involve revising Presidential Regulation No. 75 of 2024[6] to align with the Agrarian Law[7] or pursuing judicial review at the Supreme Court to determine its legal validity. Such measures are essential to ensure that all policies concerning natural resource management uphold the principles of justice, legal certainty, and sustainability. From a legal perspective, the principle of *lex superior derogat legi inferiori* is fundamental to resolving normative conflicts. As a statutory law, the Agrarian Law holds greater legal authority than Presidential Regulation No. 75 of 2024. Therefore, the provisions in the Presidential Regulation must conform to those of the Agrarian Law, particularly regarding the HGU term. This alignment is crucial for maintaining coherence within the national legal system and ensuring that natural resource management adheres to the principles of justice and sustainability.

Additionally, the government must consider the long-term consequences of excessively extended HGU regulations. Granting HGU for up to 190 years could lead to the monopolisation of land use by specific entities, exacerbating inequalities in natural resource management. Thus, the HGU limitations set out in the Agrarian Law[8] must be upheld to guarantee equitable and sustainable natural resource governance. As a state governed by the rule of law, Indonesia bears the responsibility of ensuring that all aspects of public life are regulated through consistent and coherent legal in-

[1] Constitution of the Republic of Indonesia. (1945, August). Retrieved from https://surl.li/hmmvxf .
[2] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.
[3] Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960.
[4] Constitution of the Republic of Indonesia. (1945, August). Retrieved from https://surl.li/ebzhqu.
[5] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.
[6] Ibidem, 2024.
[7] Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960.
[8] Ibidem, 1960.

struments. The normative conflict between the Agrarian Law and Presidential Regulation No. 75 of 2024[1] underscores the need for regulatory harmonisation to safeguard the principles of justice, legal certainty, and sustainability as mandated by the Constitution.

The right to cultivate is a key instrument in the governance of natural resources, regulated within a national legal framework to ensure sustainability and public welfare. An analysis of the Law of the Republic of Indonesia No. 5 "On Agrarian Principles" and Regulation of the President of Republic of Indonesia No. 75, reveals significant differences in HGU tenure regulations, which could impact the national legal order. As a higher-ranking law, the Agrarian Law[2] restricts HGU to an initial maximum of 25 years with the possibility of gradual extensions, whereas the Presidential Regulation[3] permits an initial term of 95 years, extendable to 190 years. This disparity gives rise to a normative conflict that requires harmonisation to uphold the rule of law.

Article 33 of the 1945 Constitution of the Republic of Indonesia[4] asserts that natural resources must be controlled by the state and utilised to maximise public welfare. The HGU limitations in the Agrarian Law reflect a precautionary approach, ensuring the land's social function is preserved and preventing monopolisation of management by specific entities. Conversely, the extended tenure allowed under Presidential Regulation No. 75 of 2024[5] raises concerns about the potential for unchecked natural resource exploitation, which could negatively impact communities in the long term. This analysis underscores the need for regulatory synchronisation to maintain policy alignment with the principles of justice, sustainability, and legal certainty.

Within Indonesian positive law, the principle of *lex superior derogat legi inferiori* establishes that subordinate regulations must not contradict higher-ranking laws. Accordingly, Presidential Regulation No. 75 of 2024[6] must conform to the provisions of the Agrarian Law so as not to prevent legal uncertainty. Such harmonisation is essential to ensure that HGU policies remain aligned with the constitutional mandate of managing natural resources for the collective prosperity of the people. This study recommends revising the regulation and enhancing oversight mechanisms to ensure better legal integration in land and natural resource governance.

Other normative conflicts arise from provisions that require HGU holders to follow the principles of sustainable environmental management, which may at times conflict with the commercial objectives of long-term land management (Yahya, 2024). For example, some industrial sectors that rely on land for business expansion may find that the stricter environmental provisions in Presidential Regulation No. 75 of 2024 are inconsistent with those in other investment policies that comply with Agrarian Law[7], which prioritise efficiency and rapid expansion without adequately considering sustainability concerns. On the other hand, although the extension of the HGU period is considered a step towards mitigating the conflict between investment needs and existing legal restrictions, it can exacerbate issues related to equitable land use (Sahrul, 2024). A longer period risks widening land ownership inequality, while new land management norms may not have been sufficiently disseminated or widely accepted by stakeholders in the local regions. This creates a gap between the long-term objectives of agrarian policies and their implementation on the ground, as well as potential conflicts with regional policies that impose stricter land use regulations.

The issuance of Presidential Regulation No. 75 of 2024[8] governs land acquisition for the development of the IKN, giving rise to various legal implications related to state land control rights and the protection of affected communities. Land management by the state in the context of IKN development refers to the highest level of land control rights vested in the state. This authority not only applies to land controlled by the state but also includes mechanisms to regulate and utilise land for the public interest. In this context, land acquisition for the development of the IKN is intended to serve the public interest following the principle of "public prosperity" as stipulated in Article 33 of the 1945 Constitution[9]. The government, through Presidential Regulation No. 75 of 2024, is responsible for organising and facilitating the transfer of land rights to support broader development objectives. To achieve the aims of IKN development, land acquisition must be

[1] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.
[2] Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960.
[3] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.
[4] Constitution of the Republic of Indonesia. (1945, August). Retrieved from https://surl.li/fdkrmr.
[5] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.
[6] Ibidem, 2024.
[7] Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960.
[8] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.
[9] Constitution of the Republic of Indonesia. (1945, August). Retrieved from https://surl.lu/snlrhl.

carried out with due consideration for the public interest, including providing fair compensation to those who hold land rights.

As stipulated in Constitutional Court Decision No. 001-0021-0022/PUU-1/2003[1], the interpretation of Article 33 of the 1945 Constitution[2] mandates that the state regulate and administer natural resources, including land, to maximise public prosperity. One key implication arising from the issuance of this Presidential Regulation concerns land management, which has traditionally been part of the rights of Indigenous Peoples. Within customary law, land holds economic, cultural, and social significance essential to the survival of Indigenous Peoples. Certain Indigenous groups, such as the Kaili Tribe in Central Sulawesi, maintain a system of land ownership that differs from state law, potentially leading to conflicts in the land acquisition process. This aligns with the argument made by R. Paputungan & A. Bakhri (2023) that such processes must be carefully regulated to safeguard Indigenous land rights. Furthermore, the government should provide solutions to ensure the long-term security of land rights held by Indigenous Peoples.

The development of the Indonesian IKN, although aimed at improving community well-being, also presents environmental challenges that require careful consideration. Such a large-scale project risks contributing to deforestation, habitat destruction, and ecological disruption. Therefore, Presidential Regulation No. 75 of 2024[3] must be complemented by environmental policies that support the sustainable management of natural resources. It is essential that this development not only prioritises economic growth but also ensures long-term environmental sustainability. The concept of state control over land, as outlined in the Agrarian Law[4], grants the state ultimate authority over land use. This means that, although land may be owned by individuals or community groups, the state retains the power to regulate, manage, and, where necessary, reallocate land rights for the public interest. In the context of IKN development, land acquisition is undertaken in the public interest, as regulated in the Law of Republic of Indonesia "On Land Acquisition for Development in the Public Interest"[5]. This legal framework authorises the state to reassign land rights from individuals or legal entities for projects intended to enhance public welfare.

Legal implications of land ownership. Presidential Regulation No. 75 of 2024 provides a legal basis for the state to control and transfer land rights for the development of the IKN. However, the transfer of land rights must be carried out through clear procedures that adhere to the principles of justice. Communities affected by land acquisition must receive fair compensation reflecting the market value of the land taken. Protection of Indigenous Peoples' rights. In Indonesia, various Indigenous groups hold land rights by their customary legal systems (Wibowo, 2022). For Indigenous communities, land is not merely an economic resource but also holds significant cultural and spiritual value. Therefore, land acquisition for INK development must consider the inherent rights of Indigenous Peoples, whose identities and traditions are closely tied to the land.

Conflict with the Indigenous Peoples' rights. One of the challenges in acquiring land for IKN development is the potential for conflict with Indigenous Peoples who claim ownership based on customary land tenure systems (Murti *et al*., 2023). The transfer of land rights held by Indigenous Peoples must be handled with sensitivity, respecting cultural values and ensuring that compensation aligns with established customary rights. The development of IKN will inevitably impact the environment, particularly due to the large-scale land use involved. Key concerns include deforestation, habitat destruction, and loss of biodiversity, all of which require careful consideration. Thus, sustainable environmental management policies must be implemented throughout the development process to minimise negative impacts on natural ecosystems (Mykytyuk, 2022).

Land acquisition for IKN development faces complex challenges under civil law, particularly concerning the rights of Indigenous communities and private landowners under customary legal frameworks. The process of transferring land rights must be conducted fairly, ensuring transparency and adequate compensation that aligns with recognised civil law principles. Ownership disputes may arise in the absence of legal certainty regarding the land designated for IKN development, necessitating clear regulatory provisions and legal safeguards to protect the civil rights of landowners (Orinton *et al*., 2023).

In civil law, compensation plays a crucial role in land acquisition. The government is obligated to provide fair compensation, either through monetary payment or land replacement of equal value. The principle of fairness must be upheld to prevent undue disadvantage to any party, particularly those who have long

[1] Judgment of Constitutional Court of the Republic of Indonesia No. 001-0021-0022/PUU-1/2003. (2003, December). Retrieved from https://mhn.bphn.go.id/index.php/MHN/article/download/168/84/

[2] Constitution of the Republic of Indonesia. (1945, August). Retrieved from https://jdih.bapeten.go.id/unggah/dokumen/peraturan/116-full.pdf/.

[3] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.

[4] Law of the Republic of Indonesia No. 5 "On Agrarian Principles". (1960, September). Retrieved from https://peraturan.bpk.go.id/Details/51310/uu-no-5-tahun-1960.

[5] Regulation of the President of Republic of Indonesia No. 75 "On the Acceleration of the IKN". (2024, July). Retrieved from https://peraturan.bpk.go.id/Details/291821/perpres-no-75-tahun-2024.

inhabited or cultivated the land. The compensation process must also follow legally recognised deliberative mechanisms, ensuring that landowners are allowed to assert their rights through a fair negotiation process. Presidential Regulation No. 75 of 2024[1] carries significant legal implications for land management in IKN. This regulation outlines the procedures for obtaining and extending HGU and ensures legal certainty regarding land status upon the expiration of these rights. The policy is designed to provide clarity for landowners and business entities while safeguarding the rights of local communities against arbitrary land seizures. With a more transparent and inclusive legal framework, the risk of agrarian conflicts can be minimised, ensuring fairness in the management of land assets within the IKN project.

## Conclusions

The National Capital is being developed to ensure equitable development across Indonesia. To support this objective, specific regulations governing the National Capital have been established. However, inconsistencies have emerged regarding the duration of land use rights within the National Capital, leading to discrepancies between existing regulations. These inconsistencies present a potential threat to Indigenous communities who have long relied on and managed these lands. Furthermore, the environmental impact must be a central consideration, particularly given that the land has been in use for over a century and has developed an established ecological balance. A normative conflict arises because the Agrarian Law holds a superior legal position compared to other regulations, yet the provisions concerning the duration of HGU land tenure rights in the National Capital are governed by a government-issued regulation.

The legal principle of *lex superior derogat legi inferiori* dictates that lower-tier regulations must conform to higher legal norms. Therefore, a normative review is essential to assess whether the regulations governing land tenure in the National Capital align with overarching legal principles and do not infringe upon the rights of affected communities. The absence of such a review could lead to legal disputes, social instability, and complications within the implementation of land policies in the National Capital. Before implementing this policy, the government must carefully consider the legal, social, and environmental implications to ensure that it does not lead to injustice or adverse long-term consequences.

A balanced approach is necessary to ensure that land management policies are not only legally valid but also socially responsible and environmentally sustainable. To uphold social justice and human rights, the government must provide fair compensation and alternative solutions for affected communities. Moreover, environmental sustainability must be safeguarded through stringent land management policies that mitigate ecological risks and promote responsible resource utilisation. Given the significant implications, revising existing regulations is crucial to ensuring fairness and sustainability in land governance. Legal reforms should aim to harmonise conflicting regulations, strengthen legal protections for Indigenous land rights, and establish clear environmental safeguards. By adopting comprehensive and inclusive legal policies, the government can promote balanced and equitable land governance that respects human rights while preserving ecological integrity for future generations. Future research should explore legal conflicts between national and local regulations on land rights and assess their impact on social justice and environmental sustainability.

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## Conflict of Interest

None.

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# Правові наслідки Указу президента Індонезії про пришвидшення розвитку IKN

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**Анотація**
Метою цього дослідження було вивчення змін у наданні прав на землекористування до і після видання Указу президента Індонезії від 2024 року № 75, а також виявлення нормативних колізій, які виникають в аграрному регулюванні Індонезії. У цьому дослідженні використано нормативний метод, застосований для вивчення законів і підзаконних актів, правових доктрин та відповідних правових теорій. Це дослідження виявило нормативний конфлікт між положеннями Основного аграрного закону Індонезії, які є обмеженішими, й Указом № 75, що подовжує термін дії прав на землекористування. До видання Указу від 2024 року № 75 термін «надання права користування землею» було регламентовано Законом Індонезії від 1960 року № 5 «Про принципи землекористування», у якому було зазначено, що право користування землею надають строком на 35 років, його може бути подовжено на такий самий строк, щоб загальний термін становив 50 років. Водночас Указ № 75 передбачає, що право користування землею надають строком на 95 років, який може бути продовжено ще на 95 років з максимальним загальним строком до 190 років. Це створює невідповідність між положеннями, передбаченими в нормативно-правових актах нижчого рівня, і політикою, визначеною в Указі президента, що створює правові проблеми в його реалізації. Результати дослідження засвідчили необхідність застосування принципу *lex superior derogat legi priori*, тобто вищих нормативних актів до нижчих. У дослідженні акцентовано на необхідності гармонізації аграрного законодавства з іншими галузевими політиками для зменшення потенціалу конфліктів і забезпечення сталого, ефективного управління земельними ресурсами відповідно до застосовних правових принципів

**Ключові слова:**
права землекористування; період дії дозволу; столиця; правовий конфлікт; аграрне законодавство

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**ЮРИДИЧНИЙ ЧАСОПИС**
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