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The system of prevention of offences in the field of public procurement during martial law in Ukraine in comparison with the European Union

Olena Busol*

Doctor of Law, Senior Research Fellow
Interagency Scientific and Research Center on Problems of Combating Organized Crime
under the National Security and Defense Council of Ukraine
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0002-4713-4546>

Bohdan Romaniuk

PhD in Law, Associate Professor
National Transport University
01010, 1 M. Omelianovych-Pavlenko Str., Kyiv, Ukraine
<https://orcid.org/0009-0004-9674-1539>

■ **Abstract.** The issue of public procurement, particularly in the defence sector, has become especially pressing during the period of Russian aggression in Ukraine. The risk of corruption in this area is significant and can have fatal consequences for the state. The purpose of this article was to review the system for countering and preventing violations in the field of public procurement, which was created in response to the challenges of martial law in Ukraine. A comparison of this system with the corresponding mechanisms of the European Union was conducted. The methodological basis of the article was a dialectical approach to analysing the crime prevention system in the field of public procurement in Ukraine and worldwide. The study employed methods of formal logic, as well as systemic-structural, systematisation, generalisation, forecasting, phenomenological, comparative-legal, and comparative analysis. Scientific approaches to preventing offences in the field of public procurement in several foreign countries were examined, as well as the main rules and standards introduced in the European Union in this field. It was substantiated that the system for preventing offences in the field of public procurement under martial law in Ukraine is not optimal, and this also applies to EU countries, despite the collective international and national measures taken. It was argued that public procurement is inextricably linked with politics and is used as a tool for achieving the strategic objectives of a particular state. The issue of preventing corruption offences in the field of public procurement is extremely relevant for researchers, and the results of its thorough study will enable Ukraine to achieve significant progress in combating this phenomenon, in addition to the measures already taken by the state during martial law

■ **Keywords:** counteraction; Prozorro system; criminality; corruption; public procurement organisation

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■ *Corresponding author

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■ Introduction

In modern society, the demand for the inadmissibility of corruption has increased significantly. Accordingly, tolerance to corruption is decreasing. Public procurement is no exception in this context. Notably, an increase in high-profile cases of corruption committed by renowned top-ranked political actors is observed around the world, as stated by international organisations. This is why the present study is relevant, apart from the fact of absence of research papers that address the issues of public procurement in Ukraine as an integral system that cannot function effectively without considering the rules established in the European space.

Corruption in Ukraine is a systemic phenomenon that occurs in economic, financial, environmental, labour, and civil legal relations. Corruption crimes, despite the punitive measures taken by the government, have become a genuine threat to Ukraine's national security. They threaten the stability of society, causing severe damage to its socio-economic development and the country's political image on the global stage.

This is due to chaotic processes, specifically privatisation, which began in 1992, with the real banking reform starting only in 2014-2015, which is still underway. Therefore, Ukraine has not been able to become a rich country with a market economy and a prominent level of social security for its population, while analogous reforms in Poland, the Czech Republic, the Baltic states, and other countries of the former socialist camp were carried out in the main industries within only 2-5 years. For instance, in Poland, systemic changes to stabilise the economy began simultaneously with the introduction of well-known unpopular financial steps – the so-called “shock therapy” in the banking sector. However, Poland managed to achieve significant political and economic outcomes in a matter of some years and become a member of the European Union and NATO (Leszek Balcerowicz: the expression..., 2015).

Having started the fight against corruption, including as a response to the demands of Western countries, Ukraine directed its efforts towards introducing punitive measures, and combating this phenomenon at the domestic and bureaucratic levels. However, steps to tackle political corruption as the tip of the iceberg and the need to take systemic preventive actions were ignored. Being ignored, political corruption has strengthened over the years and considerably weakened the political foundations of the Ukrainian state, government authorities, economy, and state institutions for ensuring its security. As a result, Ukraine had become exposed to the threat of encroachment on its sovereignty and independence by a neighbouring aggressor state.

A.M. Cheredarchuk (2021b) addressed the issue of criminal law support for the protection of public

procurement. C. Falvo & F. Lichère (2023) investigated local public procurement in France with special reference to foods, namely, the tools that exist in French legislation. A. Iurascu (2023) described and compared the development of green public procurement (GPP) criteria in the EU, specifically in Italy. D. Rath *et al.* (2024) addressed gender issues in procurement. W. Janssen & R. Caranta (2023) offered an in-depth assessment of the shift towards mandatory sustainability requirements in EU public procurement legislation. M. Andhov & F. Muscaritoli (2023) addressed the issue of climate change in the context of public procurement in legal discourse. T. Karabin & A. Bilash (2021) considered public procurement in the context of special administrative law and concluded that the institute of public procurement's legal regulation in Ukraine is at the development stage. Various aspects of organised crime in public procurement were also considered by M. Fazekas *et al.* (2021), E. Bosio *et al.* (2022), D. Rath (2024). The findings of the cited researchers formed the basis for the present study.

To identify the key characteristics of the system of combating and preventing offences in public procurement in Ukraine, which was built in a short period of wartime, the novel approaches were compared with the established ones, as well as with the EU approaches that are undergoing improvement. The findings of this study will be helpful at the national level both today and in the future.

■ Materials and Methods

The methodology of this study was based on a dialectical approach, which helped to analyse and identify contradictions in the system of prevention of crimes in the field of public procurement in the world. The study employed the general scientific methods of analysis, synthesis, induction, deduction, analogy, and abstraction. Along with these methods of formal logic, the study also used systemic and structural methods, forecasting, comparative legal, synergetic, phenomenological, and comparative methods. The investigation of the effectiveness of the system of rules by identifying advantages and disadvantages in compliance with public procurement legislation was based on the concept of legal effectiveness adopted as a foundation in most European Union states. The content analysis used in the study of sources, the terminology established in the EU and Ukraine, and the phenomenological method revealed a paradox in the useful nature of corruption for some states.

The phenomenological method was employed to elucidate the mechanism of individual criminal behaviour among corrupt officials, the impact of factors corruption in individual states. The comparative method enabled the identification of commonalities

and differences between different socio-cultural systems through comparison. The comparative legal method was used to compare certain provisions of Ukrainian and international anti-corruption legislation. Based on the results of the study, its respective conclusions were formulated using the method of generalisation.

The method of generalisation and comparison emphasised the innovations that have been recently introduced in public procurement in Ukraine and highlighted the differences with EU approaches. The method of legal analysis outlined the ways of development of Ukrainian and international legislation in this area. The systematisation method helped to classify the types of state control over compliance with the requirements of legislation in public procurement in Ukraine. Thanks to the analysis of EU Directives^{1,2,3} regulating the procurement process, the effectiveness of the process of preventing offences in public procurement in EU countries was determined, with the rules and regulations vulnerable to corruption offences identified. The study also reviewed and analysed relevant scientific papers of Ukrainian and foreign researchers on the investigated subject. The conclusions drawn in previous studies have become the basis for comprehensive research of the effectiveness of anti-corruption in Ukraine. Furthermore, public information from official representations of state and international bodies and organisations on the respective websites provided the basis for the conclusions of this study.

■ Results and Discussion

Public procurement is defined as a monetary contract concluded between a public procuring entity and a private economic operator, which is intended to procure works, products, or services necessary to achieve institutional goals. The public procurement sector is characterised by one of the highest levels of corruption and other related criminal offences. Unlawful actions in this area lead to negative consequences for the state budget, namely the diversion of budget funds into the shadow economy. This represents a significant threat to the national security of the state, as defined in “Strategy for the Development of the Defence Industry of Ukraine”⁴. A study by the National Agency for the Prevention of Corruption revealed that in 2022, 12,345 public procurements

were made in Ukraine under the simplified procedure through the Prozorro system, with a total value of UAH 123 billion. Of these, 28% were related to the defence and security needs of the state. The NACP identified 456 violations in these procurements, including instances where the procurement item did not align with the contractor’s qualification criteria, where the terms of the contract were not adhered to, and instances of conflict of interest between the procuring entity and the contractor. Furthermore, the Office of the Prosecutor General of Ukraine reported that between January and August 2023, law enforcement agencies in Ukraine registered 132 criminal offences in the Unified Register of Pre-trial Investigations for committing offences under Article 191 of the Criminal Code of Ukraine, namely misappropriation, embezzlement, or seizure of property through abuse of office committed on a particularly large scale (Kolomiets, 2023). Ukraine’s modern public procurement system is implemented primarily through the Prozorro system, which has been recognised by the World Bank as meeting its transparency requirements. In 2023, the volume of procurement through this system increased and reached UAH 480 billion, a threefold increase compared to 2022. Thus, as of the beginning of 2024, over 80% of procurement funds were spent through the Prozorro system, even in the context of a full-scale war. The UK aid TAPAS project was the inaugural entity to utilise the Prozorro system for the tenders pertaining to procurement of donor funds. It is anticipated that the EBRD and other international partners will take part in this process and utilise the Prozorro system to facilitate the reconstruction of Ukraine. In 2022-2024, the system underwent certain changes caused by the influence of wartime requirements. This has involved a reduction in the duration of procedures, the ability to conceal sensitive information, and the scaling up of a procurement tool such as Prozorro (Ministry of Economy of Ukraine, 2023).

It can be observed that almost every case of a public procurement crime related to the Ministry of Defence of Ukraine during martial law becomes a high-profile case, falling under the scrutiny of a diverse range of active members of society, including journalists, non-governmental organisations (NGOs), and international partners. Despite the implementation of reforms, law enforcement agencies continue

¹ Directive of the European Parliament and of the Council No. 2014/23/EU “On the Award of Concession Contracts”. (2014, February). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0023>.

² Directive of the European Parliament and of the Council No. 2014/24/EU “On Public Procurement and Repealing Directive 2004/18/EC”. (2014, February). Retrieved from <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vjimy7tt61z3>.

³ Directive of the European Parliament and of the Council No. 2014/25/EU “On Procurement by Entities Operating in the Water, Energy, Transport and Postal Services Sectors and Repealing Directive 2004/17/EC”. (2014, February). Retrieved from <https://eur-lex.europa.eu/eli/dir/2014/25/oj>.

⁴ Resolution of the National Security and Defence Council of Ukraine No. 372/2021 “Strategy for the Development of the Defence Industry of Ukraine”. (2021, August). Retrieved from <https://zakon.rada.gov.ua/laws/show/372/2021#Text>.

to detect and investigate corruption offences in public procurement committed by senior officials during martial law. One example is the performance of the High Anti-Corruption Court, which placed the former First Deputy Head of the Economic Support Department of the Security Service of Ukraine under nightly house arrest. He is suspected of embezzling UAH 26 million for fuel procurement for the service in 2022. The Appeals Chamber of the High Anti-Corruption Court ordered that the former head of the Defence Ministry's Military and Technical Policy Department be held in custody until 8 April. He is one of the suspects in the embezzlement of UAH 1.5 billion for the purchase of ammunition for the Ukrainian Armed Forces¹.

Corruption in public procurement within the Ministry of Defence of Ukraine was already occurring prior to the imposition of martial law. However, the introduction of martial law made it easier for such acts to be committed, as a sizeable proportion of procurements are now conducted in secrecy. One illustrative example is the procurement agreement for catering services in 2023 between the Ministry of Defence of Ukraine and Active Company LLC. This agreement stipulates that the cost of certain food products for the needs of the military in some regions increased by 266% compared to 2021. This figure, even when adjusted for inflation at 26%, appears to be excessive. Furthermore, journalists and researchers are interested in the choice of the contractor (Active Company LLC) by the Ministry of Defence of Ukraine. Notably, this legal entity has a charter capital of one thousand hryvnias. Furthermore, in 2021, the tax service cancelled the VAT payer certificate of this legal entity due to the lack of supplies and failure to submit tax returns. In 2019, Active Company LLC was involved in a criminal proceeding when it allegedly submitted a forged certificate to take part in a tender for the supply of beef for penitentiary institutions and pre-trial detention centres of the State Criminal Enforcement Service (Nikolov, 2023).

The National Anti-Corruption Bureau of Ukraine (NABU) has corroborated the existence of a corruption scheme that permits the significant overpricing of specific product categories. In this manner, dishonest contractors can accrue excessive profits, which enable them to profit from the army during the full-scale aggression of the Russian Federation. According to official data of the National Anti-Corruption Bureau of Ukraine, certain goods were procured at prices that were considerably higher than the market value. Other categories of products that were procured

were not included in the military's diet. The current procurement system permits suppliers to engage in abusive pricing practices for popular product groups: eggs are sold at a premium price, while salmon and blueberries, which are not included in the military diet, are sold at prices that are several times lower than the market price (NABU, 2023).

In 2023, a scandal erupted concerning the purchase of summer jackets for the Ukrainian Armed Forces at the price of winter jackets. Journalists later discovered that one of the owners of the Turkish company that the Ministry of Defence of Ukraine had signed a contract with was the nephew of a member of parliament. In the wake of the revelation of billions of dollars in embezzled public funds in procurement, the Ministry of Defence of Ukraine established its own anti-corruption unit, the Department for the Prevention and Detection of Corruption. The primary objective of the recently established unit is to advocate and operationalise the tenet of absolute intolerance towards corruption (Romanyk, 2023).

On 29 December 2023, the NABU and the Specialised anti-corruption prosecutor's office submitted a case to the court on charges of abuse of power in the procurement of food services for the Armed Forces of Ukraine in 2021 (National Anti-Corruption Bureau of Ukraine, 2023). The case was submitted with the qualification of the crime under Part 2 Art. 28, Part 1 Art. 114-1, Part 2 Art. 28, Part 2 Art. 364 of the Criminal Code of Ukraine². The court determined that the state sustained damages amounting to UAH 12 million as a consequence of obstruction by officials of the activities of the Armed Forces of Ukraine during a specific period (State Bureau of Investigation, 2023).

On 23 January 2024, the National Anti-Corruption Bureau of Ukraine and the Specialised Anti-Corruption Prosecutor's Office concluded their investigation into the criminal proceedings concerning the misappropriation of funds belonging to the Ministry of Defence of Ukraine, amounting to over UAH 312 million (National Anti-Corruption Bureau of Ukraine, 2024). The suspects included a Member of Parliament of Ukraine of the 8th convocation and his assistant; a former First Deputy Chief of the General Staff of the Armed Forces of Ukraine; a director of a controlled company; two former and current senior and higher military officers. The classification of the crime was as follows: Part 5 Art. 191 and Part 3 Art. 209 of the Criminal Code of Ukraine³.

Corruption, in the form of bribery and embezzlement, can have a detrimental impact on a country's

¹ Decision of the High Anti-Corruption Court of Ukraine in Case No. 991/733/24. (2024, March). Retrieved from <https://opendatobot.ua/court/117209187-57e78619826cade12bd671fe90dfd166>.

² Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.

³ *Ibidem*, 2001.

defence capability. This is due to the dangerous deterioration in the quality and effectiveness of military equipment and services that result from such practices. Such consequences endanger the lives of servicemembers and the security of the entire country (Bondarenko, 2023). Entities that are customers ordering goods and services are created by the state or the united communities to meet the citizens' needs, which must be provided with state budgetary and public financial resources channelled for the implementation of such orders (Karabin & Bilash, 2021).

The efficacy of anti-corruption measures in public procurement in Ukraine necessitates an appropriate and expedient response to instances of corruption, the formulation and implementation of efficacious countermeasures, and the foreknowledge of shifts in societal dynamics. Consequently, Ukraine needs a concrete plan for post-war reconstruction. In terms of the methods of preventing corruption in public procurement, which are likely to be effective in Ukraine during martial law and in the defence sector, there are two main approaches – repressive measures and the total use of information technology. It can be argued that the best solution to these problematic situations is to alter the legal consciousness of citizens towards corruption-free practices. This is a subject to be addressed in a separate study.

Innovations in defence procurement in Ukraine. Since its independence, Ukraine has sought to implement transparent public procurement procedures at the legislative level¹. However, this has not always been successful. In 2016, a fundamental reform of the procurement in Ukraine was implemented. Specifically, the term “state procurement” was replaced with “public procurement”, and the procurement process itself was transformed from a paper-based system to an electronic one, with the introduction of an electronic auction procedure, the qualification of participants, and the electronic verification of customer reporting documents². Consequently, novel approaches to the control of public procurement were necessitated.

According to L. Skalozub (2015) and A.M. Cheredarchuk (2021a), 50-75% of budget allocations during the public procurement procedure in Ukraine were used in a manner that contravened a series of regulations. Corruption in public procurement results in the loss of 10-15% of the state budget annually. According to the Federation of Employers of Ukraine, the amount of kickbacks and bribes that the entrepreneurs are obliged to pay to officials to take part in a particular tender is approximately UAH 80 billion per year.

Recently, Ukraine has revised the charters of two procurement agencies within the Ministry of Defence: The State Operator for Non-Lethal Acquisition and the Defence Procurement Agency (Ministry of Defence of Ukraine, 2024a). They stipulate the establishment of supervisory boards within the corporate structure. The supervisory boards will comprise independent members. According to the Ministry, this is a significant step towards the establishment of a modern and transparent corporate governance system for the enterprises of the Ministry of Defence of Ukraine. The next step is anticipated to be the formation of the personal composition of the supervisory boards with the involvement of independent recruitment agencies. Both these steps are positioned as part of the implementation of a new procurement system, which is comprised of two distinct tiers. The first tier comprises the Procurement Policy Department of the Ministry of Defence of Ukraine, which is responsible for developing the procurement policy, coordinating the financial activities of the agencies and developing regulations. The second tier is made up of the two newly created state-owned enterprises mentioned above, which are directly responsible for conducting procurement. The State Operator for Non-Lethal Acquisition is responsible for procuring logistical equipment for the army, including food, ammunition, fuel, and lubricants. In contrast, the Defence Procurement Agency is tasked with purchasing weapons and ammunition for the Armed Forces of Ukraine. Notably, in 2003, the Defence Procurement Agency was allocated a budget of UAH 335 billion for 2003. A further 2.75% of this amount, or UAH 9.7 billion, is allocated for the maintenance of the agency itself (Korohodskyi, 2023). This led to a lively debate in the wider society about the necessity of distributing such an outsize proportion of the budget to the maintenance of an agency with only 150 employees. According to O.S. Bondarenko (2023), such an approach may give rise to the emergence of corruption-prone factors in the activities of this agency and in the wider defence sector.

The regulation of public procurement in the defence sector in Ukraine has reached an international standard. The Defence Procurement Forum, which took place on 5 April 2024 in Kyiv, was organised by the Ministry of Defence of Ukraine, the Defence Procurement Reform Project, CIDS – a project of the Norwegian Ministry of Defence, the Office for Support of Change at the Ministry of Defence of Ukraine, and the State Operator for Non-Lethal Acquisition, with the assistance of the NGO “Foundation for

¹ Law of Ukraine No. 922-VIII “On Public Procurement”. (2015, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/922-19#Text>.

² Ibidem, 2015.

Support of Reforms”, within the framework of the support programme of the Special Adviser on Defence, funded by the UK Government. At the Defence Procurement Forum, the Ministry of Defence of Ukraine articulated transparency, enhanced oversight, and advantageous conditions for competition as the primary tenets of its procurement strategy (Ministry of Defence of Ukraine, 2024b).

The Defence Procurement Agency has signed a memorandum of understanding and cooperation in defence procurement with the Danish Ministry of Defence Acquisition and Logistics Organisation (DALO) (Ministry of Defence of Ukraine, 2024c). One of the primary objectives of the state-owned enterprise is the acquisition of contemporary weaponry in collaboration with international partners. On 23 May 2023, the Cabinet of Ministers of Ukraine adopted a resolution under which the Defence Procurement Agency has become a service of the Ministry of Defence of Ukraine. This resolution mandates that the Defence Procurement Agency will purchase weapons and military equipment for the Armed Forces of Ukraine. At the end of December 2023, the Ministry of Defence of Ukraine announced the launch of a new procurement mechanism based on NATO standards, which will completely replace the post-Soviet procurement system. For instance, the Defence Procurement Agency of the Ministry of Defence of Ukraine procured 20,000 unmanned aerial vehicles for approximately UAH 3 billion through the Prozor system for the first time.

Furthermore, the Ministry is endeavouring to establish a dedicated procurement role within military units. To achieve this, effective cooperation has been established with the Armed Forces of Ukraine, specifically with the General Staff and the Logistics Forces of the Armed Forces of Ukraine. The Procurement Policy Department believes that the procurement process should be professionalised and decentralised. Furthermore, it is their contention that a special procurement officer should become the institutional basis for implementing transparent and efficient procurement procedures in military units on an annual basis (Ministry of Defence of Ukraine, 2024b). Nevertheless, the concentration of procurement powers in

the hands of a single individual raises concerns about the potential for corruption.

Regulatory framework for public procurement in Ukraine. The principles of public procurement in Ukraine are governed by the Law of Ukraine “On Public Procurement”¹. The law defines ways to ensure efficiency and transparency in procurement. A prominent aspect of this Law is the provisions on ensuring fair competition and, admittedly, preventing corruption in this area. The law also considers the significance of adapting state legislation to the standards and requirements of the European Union following the Association Agreement² between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand.

The public procurement process in Ukraine was affected by the introduction of martial law due to the military aggression of the Russian Federation, which was established by the Decree of the President of Ukraine No. 64/2022 dated 24 February 2022³. According to Article 1 of the Law of Ukraine “On the Legal Regime of Martial Law”⁴, martial law is defined as a special legal regime that may be introduced in Ukraine or specific regions in response to armed aggression, a threat of attack, or a threat to the country’s independence and territorial integrity. This regime grants additional powers to state authorities, military command, military administrations, and local self-government bodies to counter threats, repel aggression, and ensure national security. It also allows for temporary restrictions on constitutional rights and freedoms of individuals and the rights and interests of legal entities, specifying the duration of such restrictions. Article 12-1 of the Law⁵ outlines the specifics of the Cabinet of Ministers of Ukraine’s functions during martial law. Specifically, Paragraph 5 of Part 1 of this Law mandates that the Cabinet of Ministers, when martial law is declared in Ukraine or in specific regions, must establish the details of defence and public procurement processes to safeguard state clients and customers from military threats.

The Cabinet of Ministers of Ukraine, in its Resolution No. 1178⁶, established the specific rules for

¹ Law of Ukraine No. 922-VIII “On Public Procurement”. (2015, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/922-19#Text>.

² Association Agreement Between Ukraine, on the one Hand, and the European Union, the European Atomic Energy Community and their Member States, on the Other Hand. (2014, March). Retrieved from <https://www.kmu.gov.ua/storage/app/sites/1/uploaded-files/ASSOCIATION%20AGREEMENT.pdf>.

³ Decree of the President of Ukraine No. 64 “On the Introduction of Martial Law”. (2022, December). Retrieved from <https://www.president.gov.ua/documents/642022-41397>.

⁴ Law of Ukraine No. 389-VIII “On the Legal Regime of Martial Law”. (2015, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

⁵ Ibidem, 2015.

⁶ Resolution of the Cabinet of Ministers of Ukraine No. 1178 “On Approval of the Specifics of Public Procurement of Goods, Works and Services for Customers, Provided for by the Law of Ukraine “On Public Procurement”. (2022, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1178-2022-%D0%BF#Text>.

public procurement of goods, works, and services under the Law of Ukraine “On Public Procurement”¹ during martial law and for 90 days following its termination or cancellation (“the Special Provisions”). The Resolution of the Cabinet of Ministers of Ukraine No. 1495² amended the special provisions for public procurement of goods, works, and services as outlined in the Law of Ukraine “On Public Procurement”³. The Special Provisions were amended to mandate that open tenders shall be held temporarily (until 3 July 2023) without the use of an electronic auction. According to Clause 23 of the Special Provisions⁴, the State Audit Service and its interregional territorial bodies are tasked with overseeing procurement procedures. This includes monitoring contracts for which reports are published in the electronic procurement system, even if those contracts were concluded outside of the electronic system, following the process outlined in Article 8 of the Law. In applying the data of automatic risk indicators, consideration must be given to these specific circumstances. From 19 October 2022, during the period of martial law, customers obliged to carry out public procurement of goods, works, and services are required to conduct such procurement following the Special Provisions⁵. Notably, the Special Provisions do not mandate the use of the negotiations in the procurement procedure. The instrument provides detailed information on the procurement methods that must be employed following the Special Provisions, depending on the anticipated value of the procurement item⁶.

For the territories of possible hostilities, as determined by the Resolutions of the Cabinet of Ministers of Ukraine No. 1364⁷ and No. 45⁸, there are no

restrictions on access to public electronic registers and auctions for the sale of small-scale privatisation objects. At the same time, in the territories of active hostilities and temporarily occupied territories, registers are blocked, and relevant tenders are prohibited (Zaiets, 2023). Depending on the frequency with which such control is carried out, it can be divided into three main types: preliminary, current, and subsequent. Preliminary control is carried out prior to the execution of a business transaction with the goal of preventing illegal actions, the inefficient use of funds, and unreasonable decisions. Preliminary control is a preventative measure, carried out by the customer’s internal services. Current control is operational and exercised in business operations. The current control is primarily exercised by the internal control services and the State Treasury Service (in relation to the utilisation of budgetary funds). Its function is to promptly identify and halt any violations or deviations that may occur during the course of business operations or production tasks.

One of the types of current control is procurement monitoring, which was introduced by the Law on Public Procurement⁹. Subsequent control is conducted after the conclusion of business operations, at the expiration of the specified reporting period. The objective of this process is to ascertain the legitimacy, legality, and economic viability of business transactions, as well as to identify any shortcomings in the company’s operations, instances of malpractice and instances of theft. Based on the results of the analysis, measures are developed to eliminate the identified deficiencies and to eliminate the causes and conditions of their occurrence.

¹ Law of Ukraine No. 922-VIII “On Public Procurement”. (2015, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/922-19#Text>.

² Resolution of the Cabinet of Ministers of Ukraine No. 1495 “On Amendments to the Peculiarities of Public Procurement of Goods, Works and Services for Customers Provided for by the Law of Ukraine “On Public Procurement” for the Period of Martial Law in Ukraine and within 90 Days from the Date of its Termination or Cancellation”. (2022, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1495-2022-%D0%BF#Text>.

³ Law of Ukraine No. 922-VIII “On Public Procurement”. (2015, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/922-19#Text>.

⁴ Resolution of the Cabinet of Ministers of Ukraine No. 1178 “On Approval of the Specifics of Public Procurement of Goods, Works and Services for Customers, Provided for by the Law of Ukraine “On Public Procurement”. (2022, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1178-2022-%D0%BF#Text>.

⁵ Ibidem, 2022.

⁶ Letter of the Ministry of Economy No. 3323-04/70997-06 “On the Peculiarities of Public Procurement for the Period of Martial Law and within 90 Days from the Date of its Termination or Cancellation”. (2022, October). Retrieved from <https://document.vobu.ua/doc/15435>.

⁷ Resolution of the Cabinet of Ministers of Ukraine No. 1364 “On Some Issues of Forming the List of Territories where Military Operations are (were) Conducted or Temporarily Occupied by the Russian Federation”. (2022, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1364-2022-%D0%BF#Text>.

⁸ Resolution of the Cabinet of Ministers of Ukraine No. 45 “On Amendments to Clause 1 of Resolution of the Cabinet of Ministers of Ukraine No. 1364 dated 6 December 2022”. (2022, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/45-2023-%D0%BF#Text>.

⁹ Law of Ukraine No. 922-VIII “On Public Procurement”. (2015, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/922-19#Text>.

Table 1. Control of public procurement in Ukraine

Accounting Chamber of Ukraine.	Control-analytical and expert activity on the implementation of the State budget. Scheduled inspection of the Authorised Body and Antimonopoly Committee of Ukraine.	Preliminary control. Current control.
State Audit Service.	Planned and ongoing audits of spending of state funds. Financial audit. Internal audit control of customers. Monitoring of purchases.	Subsequent control.
State Treasury Service.	Operational control during registration and payment of contracts. Monitoring the compliance of concluded contracts with the procurement plan and the report on procurement results in the electronic system.	Current control.
Antimonopoly Committee of Ukraine.	Complaints in the public procurement system, Operational control of detection of collusion at auctions based on complaints.	Current control; Subsequent control.
Ministry of Economic Development, Trade and Agriculture.	Implements state policy in the field of procurement as a specially authorised body.	Current control.
Law enforcement agencies (State Bureau of Investigation, NABU, Security Service of Ukraine, National Police).	Combating corruption and committing economic crimes.	Current control; Subsequent control.
Judicial bodies.	Review of complaints after completion of the procurement procedure. Reviewing the decision of the Antimonopoly Committee of Ukraine.	Subsequent control.
Public.	Analysis and monitoring of information at all stages of public procurement.	Preliminary control; Current control; Subsequent control.

Source: compiled by the author of this study based on public procurement legislation

The controlling bodies are defined in Article 7 of the Law of Ukraine No. 922-VIII¹. Specifically, this stipulation outlines that the Accounting Chamber, the Antimonopoly Committee of Ukraine, and the central executive body responsible for state financial control are to oversee public procurement within the scope of their authority as defined by the Constitution of Ukraine² and relevant Ukrainian legislation.

According to the findings of S. Yaremenko (2017) on the DOZORRO monitoring portal, the following issues were identified in the activities of the authorities in supervision and control of public procurement and combating abuse of office and corruption:

- the absence of an efficacious mechanism for interaction between law enforcement and controlling authorities in combating corruption offences in public procurement;

- the lack of consistency in the activities of law enforcement agencies in conducting supervision and control in the procurement sector resulted in the duplication of functions by law enforcement agencies. This is exemplified by the initiation of criminal cases for the same types of offences by both the internal affairs and security services of Ukraine and prosecutors;

- the insufficient number of highly qualified employees with practical experience in procurement is also due to significant changes in the legislation in this area;

- the mechanism of procurement monitoring is unclear, which may lead to unjustified influence on procuring entities' decisions.

The National Agency for the Prevention of Corruption conducted a comprehensive analysis of the public procurement sector, identifying 25 distinct corruption risks. These risks are inherent in all customers of goods, works, and services required to meet the needs of the state and territorial communities (National Agency for the Prevention of Corruption, n.d.).

In Ukraine, most public procurements are conducted electronically via the Prozorro (n.d.) system. The purpose of this initiative is to minimise the occurrence of corruption schemes and to ensure fair competition. The Prozorro system has been identified as a leading example of best practice in global rankings of public procurement transparency. Conversely, while electronic procurement may appear to be a solution to corruption, it is not a complete solution. It is therefore clear that public procurement represents an area with an elevated level of corruption risks (Yemelianov, 2009).

One of the most striking examples of the consequences of crime in public procurement is the threat of unfair competition. It is the duty of the state to guarantee and maintain a competitive environment on the market following the rules and regulations it issues. Specifically, the Law of Ukraine "On Protection against Unfair Competition"³ is aimed at

¹ Law of Ukraine No. 922-VIII "On Public Procurement". (2015, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/922-19#Text>.

² Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

³ Law of Ukraine No 236/96-BP "On Protection Against Unfair Competition". (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/236/96-%D0%B2%D1%80>.

“establishing, developing, and ensuring trade and other fair competition practices in the conduct of business in a market environment”. Furthermore, the primary objective of the Law of Ukraine No. 922-VIII¹ is to “create a competitive environment in public procurement, prevent corruption in this area, and develop fair competition”. However, criminal offences committed in the field of public procurement and unfair competition are interrelated phenomena and are characterised by a cause-and-effect relationship.

Corruption in the public procurement system results in significant losses for the state. The estimated budget losses in this area amount to approximately 10-15% (UAH 35-52.5 billion) expenditure part of the state budget annually (Ivashova & Ivashov, 2019). The losses incurred by the state and society as a consequence of corrupt practices in placing a public procurement order can be categorised into four distinct types:

1. Financial losses may be incurred as a result of the conclusion of agreements on unfavourable financial terms for the state and society. Firstly, there is an overestimation of prices for the purchased products in comparison to the current market level. Secondly, there is an inclusion of prepayment instead of deferred payment in the terms of public contracts.

2. Quantitative losses may occur due to the overstatement or understatement of the amount of materials supplied or services rendered compared to what was actually required. This can also include cases where goods and services are purchased for the personal use of responsible officials instead of addressing public needs.

3. Qualitative damages may arise from entering into agreements that violate required technical conditions, leading to the supply of goods, performance of work, or provision of services of substandard quality. Additionally, factors such as inadequate warranty and post-warranty service conditions, insufficient quality control measures for work and services, and analogous issues can also be regarded as qualitative damages.

4. Political damage includes various negative impacts on the investment climate within the country, a decline in public trust in government agencies and the state overall, the weakening of the country’s economic and financial system, and breaches of competition principles, among other consequences.

Prevention of public procurement offences in EU countries. Irregularities in public procurement in the European Union (EU) represent a significant source of administrative errors and financial losses associated with the European Structural and

Investment Funds. Such irregularities are observed at all stages of the procurement process. According to C. Falvo & F. Lichère (2023), despite favourable European and French policies, one can still observe legal and institutional obstacles, especially in the area of public procurement. Concurrently, the EU underscores the susceptibility of public procurement to corruption, associating this phenomenon with the exploitation of public office for personal gain and the financing of political parties. In recent years, total expenditure on public works in the EU has increased, and together with goods and services, it accounts for a fifth of EU GDP annually (Beke, 2018).

The role of public procurement in the EU economy is significant, with public expenditure on works, goods, and services accounting for approximately 13.1% of EU GDP in 2015 (Neubauer *et al.*, 2017) and 29% of total public expenditures (OECD, 2016). Therefore, a well-functioning and efficient public procurement system is crucial for governments to prevent mismanagement and ensure the prudent use of public funds (OECD, 2016; Ravenda, *et al.*, 2020).

There is a broad consensus that public authorities should strive to achieve “value for money” in public procurement management (Zdyrko, 2020; Psota, 2021), what was discussed at the Congress of Local and Regional Authorities Council of Europe (2019). In this regard, the Ukrainian researcher A.M. Cheredarchuk (2021b) points out that the area of public procurement of goods, works and services should be studied not only as an independent economic structure, but also as an area that acts as an object of criminal encroachments on the part of criminals, including organised crime syndicates. Of particular danger are sophisticated technologies that involve long-term, multi-episode criminal activities of criminal groups and criminal organisations. Such groups are intentionally created from among the officers of budgetary institutions for the purpose of systematic stealing of budget funds.

Studies have proved that there is significant potential for cost-effective Green Public Procurement (GPP), especially in sectors where green products do not exceed the cost of non-green alternatives when considering the product’s life cycle cost. Since “greener” goods are evaluated based on their entire life cycle, GPP impacts the entire supply chain and encourages the adoption of green standards in private procurement as well². Yet, the significance of public procurement extends beyond its role as a financial instrument. It can also be regarded as a policy tool

¹ Law of Ukraine No. 922-VIII “On Public Procurement”. (2015, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/922-19#Text>.

² Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions No. COM(2008) 400 final “On Public Procurement for a Better Environment”. (2008, July). Retrieved from <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0400:FIN:EN:pdf>.

for achieving government strategic goals, such as promoting domestic economic growth, innovation, engaging small and medium-sized enterprises, social responsibility, and sustainability (Flynn, 2017). In this context, the EU Directives of 2014/23/EU¹, 2014/24/EU² and 2014/25/EU³ which came into force in April 2016, announced that social objectives, along with measures to ensure the highest levels of efficiency and transparency, would be incorporated into the national public procurement regulations of EU Member States (Baldi *et al.*, 2016).

These Directives constitute a single system for regulating the process of public procurement in the European Union states. Thus, Directive No. 23⁴ regulates the concession issues, Directive No. 24⁵ provides general rules for public procurement, which are recommended for compliance by bidders, whereas Directive No. 25⁶ contains recommendations to entities that conclude relevant contracts in such areas as energy, water supply, transport, postal, etc. However, not all the 28 countries started the process of implementing these Directives on time, according to the established date, which is before April 2016. The Kingdom of Spain, the Portuguese Republic, The Republic of Austria, and the Grand Duchy of Luxembourg were in no great hurry with the corresponding implementation until 2018, for assorted reasons that require separate research.

These three Directives^{7,8,9} directly apply to procurement procedures with a contract value exceeding the corresponding EU threshold, which, starting from 1 January 2024 makes up: EUR 5,538,000 for work contracts; EUR 143,000 for contracts concluded by central public authorities; EUR 221,000 for contracts concluded by local and regional administrations; EUR 750,000 for contracts stipulating the provision of social and other specific services. If such a threshold is lower than the established one, then the national rules are to be applied, which must follow the

general principles prescribed in the Directives. For contracts with the value exceeding EU thresholds, all tender announcements and contract award notices must be published on the Tenders Electronic Daily (TED) platform. Customers can also publish on the platform information about contracts that cost below EU thresholds. In 2020, over 640,000 messages regarding 226,000 public procurement procedures were published on the TED platform, with the total value of these contracts making up about EUR 800 billion. Therefore, Ukraine's objective is to place data from Prozorro electronic system on this platform under the EU Directives.

The Public Procurement Reform of 2014 was supposed to streamline the access of small and medium-sized enterprises to procurement, make the rules and requirements for transparency and integrity more effective to reduce corruption risks. To avoid mistakes in this area on the path to membership in the European Union, Ukraine should take into consideration the Report of the European Court of Auditors (2023). An audit was conducted on the strategic use of public procurement, streamlining of its procedure, and increasing accessibility for small and medium-sized small enterprises for 2011-2021.

The report shows that the established standards may not work when applied in the absence of implementation mechanisms, i.e., the EU has both a positive experience in public procurement, and a negative one. By using the established standards, Ukraine has acquired the potential to demonstrate its certain positive experience to the EU countries. The findings of the analysis made by the Court's auditors establish the following:

- reduced competition in EU public procurement over the past decade;
- the presence of differences in customer approaches to public procurement in different EU member states and regions and in different sectors of the economy, which is a negative trend;

¹ Directive of the European Parliament and of the Council No. 2014/23/EU "On the Award of Concession Contracts". (2014, February). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0023>.

² Directive of the European Parliament and of the Council No. 2014/24/EU "On Public Procurement and Repealing Directive 2004/18/EC". (2014, February). Retrieved from <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vjimy7tt61z3>.

³ Directive of the European Parliament and of the Council No. 2014/25/EU "On Procurement by Entities Operating in the Water, Energy, Transport and Postal Services Sectors and Repealing Directive 2004/17/EC". (2014, February). Retrieved from <https://eur-lex.europa.eu/eli/dir/2014/25/oj>.

⁴ Directive of the European Parliament and of the Council No. 2014/23/EU "On the Award of Concession Contracts". (2014, February). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0023>.

⁵ Directive of the European Parliament and of the Council No. 2014/24/EU "On Public Procurement and Repealing Directive 2004/18/EC". (2014, February). Retrieved from <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vjimy7tt61z3>.

⁶ Directive of the European Parliament and of the Council No. 2014/25/EU "On Procurement by Entities Operating in the Water, Energy, Transport and Postal Services Sectors and Repealing Directive 2004/17/EC". (2014, February). Retrieved from <https://eur-lex.europa.eu/eli/dir/2014/25/oj>.

⁷ Directive of the European Parliament and of the Council No. 2014/23/EU "On the Award of Concession Contracts". (2014, February). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0023>.

⁸ Directive of the European Parliament and of the Council No. 2014/24/EU "On Public Procurement and Repealing Directive 2004/18/EC". (2014, February). Retrieved from <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vjimy7tt61z3>.

⁹ Directive of the European Parliament and of the Council No. 2014/25/EU "On Procurement by Entities Operating in the Water, Energy, Transport and Postal Services Sectors and Repealing Directive 2004/17/EC". (2014, February). Retrieved from <https://eur-lex.europa.eu/eli/dir/2014/25/oj>.

■ low percentage of cross-border purchases. Thus, in 2011-2021, only three countries transferred more than 10% of the total number of orders to foreign companies, namely: the Kingdom of Belgium – 10%, the Republic of Ireland – 15%, the Grand Duchy of Luxembourg – 30%.

According to the auditors' findings, it is impossible to determine the extent to which the decline in competition affected the prices of public procurement for works, goods, and services, since the European Commission does not monitor price data. The 2014 Directive Reform¹ has not yet led to significant improvements in the way customers conduct procurement procedures. The introduction of the European Single Procurement Document² and electronic forms speaks for the fact that the European Commission is committed to simplifying public procurement procedures and reducing the administrative burden. However, to make the procedures implemented effective, they must be widely used, which requires the European Commission to provide ongoing support.

Other objectives of the 2014 Reform have not been achieved as well. An analysis of the data conducted by the auditors showed that the situation differed between member states. For example, in the Republic of Austria and the Republic of Lithuania, the number of small and medium-sized enterprises taking part in procurement procedures increased, while in the Kingdom of Sweden and the Republic of Finland it decreased. However, in most member states, the relevant indicators stayed unchanged. For example, A. Iurascu (2023) concluded that the use of the inefficiency of the contract as a general and well-established remedy has proven to be an effective method for ensuring the enforcement of minimum environmental criteria (MECs).

Considering the system of regulating the process of public procurement in the EU states, we should also emphasise the significance and need for Ukraine to consider such new and innovative documents as “On the Professionalisation of Public Procurement – Building an Architecture for the Professionalisation of Public Procurement”³; “On Public Procurement Rules in Connection with the Current Asylum Crisis”⁴; Guidance on Innovation Procurement⁵. An in-depth analysis of the effectiveness of the application

of these EU documents will be the purpose of our further research.

Global trends in researching and combating crimes in public procurement. Considering the potential financial damage, the European Union is promoting various initiatives to address and prevent corruption. This encompasses training for officials, the utilisation of e-procurement, and the imposition of conditions for public procurement with the goal of enhancing administrative capacity. Specifically, in terms of the combating corruption, the EU promotes the use of the ARACHNE tool (ARACHNE risk scoring..., n.d.), which helps public authorities in assessing control systems and identifying red flags in public procurement.

The ARACHNE project aims to offer national and local authorities managing Structural Funds an operational tool to identify high-risk projects. It supports the implementation of management and control systems for operational programs (OPs) to reduce error rates and improve fraud detection. Additionally, ARACHNE promotes the ongoing monitoring and review of both internal and external data concerning projects, beneficiaries, and contracts/contractors. Furthermore, the EU is seeking to engage civil society organisations in the promotion of transparency in public procurement. To achieve this objective, the European Commission is seeking to identify a suitable tool known as Integrity. The European Commission has commissioned regional development organisations to pilot the Integrity Pact for European Structural and Investment Funds (New guidelines for a better..., 2015).

First adopted in 2013, the Commission's Action Plan on Public Procurement (2020) outlines a series of concrete actions designed to increase the efficiency of administrations and beneficiaries in using public procurement for cohesion policy investments. For the 2021-2027 programming period, the plan supports strategic policy objectives by contributing to the European Green Deal through the promotion of strategic procurement (green, social, and innovative) within Cohesion policy programs. It also includes the monitoring of Horizontal Enabling Conditions for Public Procurement across all policy programs for 2021-2027.

¹ Directive of the European Parliament and of the Council No. 2014/24/EU “On Public Procurement and Repealing Directive 2004/18/EC”. (2014, February). Retrieved from <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vjimy7tt61z3>.

² Implementing Regulation of the European Commission No. (EU) 2016/7 “On Establishing the Standard form for the European Single Procurement Document”. (2016, January). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016R0007>.

³ Recommendation of the European Commission No. (EU) 2017/1805 “On the Professionalisation of Public Procurement – Building an Architecture for the Professionalisation of Public Procurement”. (2017, October). Retrieved from <https://op.europa.eu/en/publication-detail/-/publication/94421013-ab20-11e7-837e-01aa75ed71a1/language-en>.

⁴ Communication from the Commission to the European Parliament and the Council No. COM (2015)454 final “On Public Procurement Rules in Connection with the Current Asylum Crisis”. (2015, September). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0454&from=EN>.

⁵ Notice of the European Commission No. 2021/C 267/01 “Guidance on Innovation Procurement”. (2021, July). Retrieved from [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC0706\(03\)&rid=6](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC0706(03)&rid=6).

According to W. Janssen & R. Caranta (2023), mandatory “green” and social requirements mean that to achieve the sustainable development goals and mitigate the consequences of climate change, the EU restricts this discretion of state buyers, encouraging them to purchase more sustainable goods and services. That is, in Ukraine, when making public procurement and assessing the life-cycle cost, it is important to consider not only the prices of goods (services), but also the “green” criteria used in EU countries. To reduce the problems with greater involvement of contractors in conducting simplified public procurement, it is advisable to increase the threshold of simplified public procurement annually, according to inflation rates.

The overarching goal of this EU initiative is to cultivate a positive reputation for contracting authorities, conserve resources, and facilitate competition through improved procurement practices. In terms of anti-corruption, the rules include a series of measures. In addition, Member States are obliged to comply with monitoring and submit reports to the EC¹. Therefore, some of the objectives of the 2014 Reform do not promote growth and even hinder competition. Some aspects of the public procurement’s effectiveness are simply ignored by the system.

These decisions can be expected to take the form of a pan-European action plan. Notably, the deadline for completing the reforms is the end of 2025. As a positive thing for Ukraine, the effectiveness of the tool for collecting and organising procurement data should be highlighted – bi.prozorro, which is considered beneficial to be implemented in all EU countries. Instead of the previous excessive duration of procurement procedures in Ukraine, now the minimum period for open bidding makes up 7 calendar days, which is not enough to have a high-quality offer prepared by all potential participants.

Low level of competition at bidding is a common drawback for all EU countries and Ukraine. The latter should especially focus on this area. Overall, the state’s approach to system construction and public procurement regulation is primarily driven by economic considerations, with the objective of securing the lowest tender price. However, this method of procurement has gradually evolved to permit the integration of additional non-economic objectives, including social and environmental considerations. This approach, as outlined by L. Treviño-Lozano & O. Martín-Ortega (2023), appears to be an intriguing and hitherto understudied topic. Human rights due diligence (HRDD) is a set of business processes for addressing, preventing, and accounting for human

rights impacts that companies may have or contribute to (Bonnitcha & McCorquodale, 2017). This approach gave rise to the term “sustainable public procurement”. As for the close relationship between Human Rights and Environmental Due Diligence (HREDD) and public procurement, HREDD is a means of ensuring sustainable procurement. Apart from eliminating the negative impact on human rights and the environment, HREDD contributes to its protection. L. Treviño-Lozano & E. Uysal (2023) note an ongoing debate about incorporating human rights and environmental due diligence into public procurement, highlighting that this area is still underdeveloped.

In summary, the UNGPs include six key steps that companies must take to integrate human rights and environmental considerations into their operations. This process includes identifying, assessing, and addressing any adverse human rights and environmental impacts, and monitoring, transparency, and reporting on the entire process (OECD, 2023). D. Rathi *et al.* (2023) highlight that gender issues are a pressing concern in procurement research, with current studies falling into four main themes. Research on the glass ceiling effect has shown that gender-related disadvantages hinder career advancement in organisations and pose barriers to procurement. These barriers include poor job design, male-dominated environments, negative stereotypes, extensive travel demands, and a competitive procurement culture. The glass ceiling continues to exist, with men often holding higher management roles, while women face obstacles in reaching senior positions. Additionally, female entrepreneurs, especially those in smaller businesses, struggle to secure financial resources and support, limiting their market access and productivity. Discrimination in credit terms, along with a lack of experience, knowledge, and awareness of opportunities, further impedes women’s success as suppliers. Addressing these challenges and promoting gender equality in procurement requires dedicated efforts and supportive policies. At the same time, empirical evidence shows that gender plays a role in shaping perceptions, preferences, and negotiation dynamics in buyer-seller relationships. Overall, the inclusion of both women and men in procurement teams has positive consequences, as women have advantages in dealing with supply chains and demonstrate a greater commitment to ethical standards.

In Ukraine in 2012 the socio-demographic profile of individuals who perpetrated criminal acts reveals a clear gender imbalance, with 70% of offenders being male and 30% female (Rufanova, 2012), in 2021 – 87.6% of offenders being male and 12.4%

¹ Directive of the European Parliament and of the Council No. (EU)2019/1153 “On Laying Down Rules Facilitating the Use of Financial and Other Information for the Prevention, Detection, Investigation or Prosecution of Certain Criminal Offences, and Repealing Council Decision 2000/642/JHA”. (2019, June). Retrieved from <https://eur-lex.europa.eu/eli/dir/2019/1153/oj>.

female (PGO provides gender statistics..., 2021). This is because in Ukraine, men are predominantly the heads of regional and district administrations, heads of state-owned enterprises and contractors, which is relevant now and indirectly arise from the research (Makeiev, 2023). According to the World Economic Forum (2022), the gender gap in Ukraine in 2022 was 29%. In the gender gap index, Ukraine ranks 81st out of 147 countries surveyed. Thus, the problem of gender inequality is still relevant for Ukrainian society, which naturally affects the public procurement sector. In terms of intellectual level of development, educational level, life experience, and the range of interests of the perpetrators of crimes in the field of public procurement, it can be argued that men can be classified as the most “intellectual” criminals, considering that most of them have higher education (Cheredarchuk, 2021b).

As correctly observed by D. Rathi (2024), the diversity within the EU indicates that there is no single, universal approach to combating corruption. Nevertheless, agent-based anti-corruption measures may prove effective in some countries or sectors where corruption is less prevalent, whereas collective action initiatives may be more appropriate in others where corruption is more systemic. The EU’s funding structure enables EU member states to combat corruption in public procurement more effectively through collective action. In his doctoral research, M.B. Beke (2018) identified the following elements, which are difficult to dispute and are reproduced here with abbreviations.

The integrity pacts cover several key criteria for fighting corruption in the field of public procurement, including transparency, professionalism, and accountability (Arrowsmith *et al.*, 2010). These objectives align with the goals of public procurement in the EU, which aim to ensure fair competition among participants and deliver value for money by preventing corruption. As a result, businesses operating in corrupt environments face the challenge of competing with companies that are likely to engage in bribery (Arrowsmith *et al.*, 2010), giving those companies an unjust advantage over those that adhere to ethical practices. The typical reaction from businesses is to disavow responsibility, arguing that if they refrain from bribery, others will exploit the opportunity. The Integrity Pact is designed to eliminate the corrupt practices employed by companies. A company may find itself in a quandary when it decides to operate a clean business on its own, while its competitors continue to pay bribes (Beke, 2018).

Considering that the potential for dishonesty exists throughout the entirety of the public procurement process, it is imperative to adopt a comprehensive approach to the prevention of corruption to mitigate the associated risks. Consequently, transparency

represents a pivotal instrument employed by the OECD to advance good governance within the public sector. The OECD Recommendation on Public Procurement (OECD, 2015) suggests that countries that have signed up to the document should ensure a suitable degree of transparency in their public procurement system at all stages of the procurement cycle.

While there is a close relationship between civil service transparency and integrity and anti-corruption, it is not absolute. To ensure effective accountability, it is necessary to consider several conditional factors. For individuals and organisations to fulfil the role of a watchdog, it is necessary to consider the availability of data in conjunction with the timeliness, quality, processing capacity, effectiveness of reporting channels and whistleblowers (Effective measures in..., 2016). The combating of crimes in public procurement is a matter of national concern that has both economic and socio-political implications. The pervasive involvement of organised criminal groups in this domain signifies the erosion of social and legal control over the situation in Ukraine, which is confirmed in the works of such researchers as M.A. Dzhelilova (2023), as well as in the study of the Global Initiative Against Transnational Organized Crime (2023). Causes and conditions of organised crime under martial law: regional aspect also reflects the convergence of representatives from the executive, legislative, and judicial branches with criminal entities, which is indicative of challenges in the management sphere.

Considering the above, the international practice has developed four main approaches that have proven to be effective in combating corruption. These include psychological methods; technical methods; process regulation; and repressive measures. Psychological methods are employed to influence the root cause of corruption, namely the desire of employees to enrich themselves illegally at the expense of their employer, or alternatively, at the expense of the state and, consequently, all citizens. Technical methods serve to eliminate or significantly reduce the likelihood of collusion between procurement departments and sellers. This is achieved by eliminating the possibility of personal contacts between the parties to the transaction or increasing the risk of a corrupt official being caught. Regulatory (procedural) methods are designed to ensure that all procurements are conducted according to formalised internal rules and procedures, thereby reducing the risk of corruption. Repressive measures are employed with the objective of creating conditions under which the corrupt actions of employees responsible for placing public orders are disadvantageous.

In conclusion, international defence cooperation can play a pivotal role in reducing corruption for several reasons. 1. Increased transparency. 2. Joint implementation of financial monitoring in the

defence sector; 3. Harmonisation of the legislative framework. 4. Strengthening institutional capacity. 5. International cooperation can create a collective “pressure” on countries to adhere to higher standards of integrity and transparency. 6. Combating transnational networks. Corruption in the defence sector often involves transnational networks that exploit the weaknesses inherent in governance systems and cross-border operations. International cooperation enables countries to collaborate in the investigation and dismantling of transnational networks engaged in illicit activities such as money laundering, the illicit arms trade, and corruption. International cooperation creates the conditions for joint action, knowledge sharing and mutual support in the fight against corruption in the defence industry. Such cooperation strengthens the integrity of defence personnel, promotes transparency in procurement processes, and creates an environment where corruption is less likely to occur (Bondarenko, 2023).

The problem of cross-border participation may lie in the language barrier and different requirements for tender-related documentation for each country. Strategic procurement practices outlined by the European Commission in the articles “Making socially responsible public procurement work – 71 good practice cases” (European Commission *et al.*, 2020) and “Public procurement in the context of Ukraine’s European integration” (Mykhailyk, 2022) could also be helpful for Ukraine. The European Commission is creating an electronic opportunity to exchange practices through tools such as the Public Buyers Community Platform. The Ministry of Economy of Ukraine can also perform such a function for interaction between the EU and customers from Ukraine. It is quite clear that after the implementation by Ukraine of all international documents regulating the area of public procurement, a necessary prerequisite to acquire the EU membership will be the cessation of hostilities and the abolition of martial law.

■ Conclusions

The subject of this study was the system of prevention of offences in public procurement during martial law in Ukraine as compared with the approaches of the European Union states. Overall, the regulatory framework in public procurement in Ukraine meets the basic needs of participants, and it has been actively developing with due regard for the best practices of the EU. The scientific originality of this study is that it is the first study in Ukraine to outline the system of counteraction and prevention of offences in public procurement during martial law for 2022-2024. A comparison of the national system with the methods of preventing offences in the field of public procurement in foreign countries enabled the identification of both its advantages and disadvantages.

Based on a comparison of this system’s functioning for compliance with the EU approaches, and the efficiency and effectiveness of international documents, specifically, using the comparative method, the following conclusions were drawn.

EU researchers are already considering the problems of corruption in public procurement in a new context, namely that of social, environmental, gender, and human rights. There is no truly uniform approach to preventing corruption in public procurement, although attempts are being made to standardise such approaches for use by all EU Member States. This is hampered by the different historical conditions and levels of development of each Member State. Therefore, the influence of the dominant international organisation on these countries is fundamentally different and does not always meet the interests of some countries. The paradox is that sometimes corruption is useful and becomes a choice for some EU member states to solve national problems. In the European Union, public procurement is regarded as a political instrument for the achievement of the strategic objectives of the state. The European system is confronted with significant challenges in ensuring an adequate degree of transparency in procurement at all stages of the procurement cycle.

In general, we may claim the effectiveness of the Ukrainian public procurement system, although Ukraine and the EU have both shortcomings and best practices that can be taken as an example, with due accommodation of the specific national aspects. There is a lack of official published information and data in Ukraine regarding high-ranking officials who committed crimes in public procurement as part of organised crime syndicates, which would provide more accurate results of the study. The absence of court rulings or judgments and some procedural findings regarding officials who hold responsible positions in Ukraine and who have committed crimes in public procurement from the Unified State Register is partly explained by the specific features of maintaining the Register during martial law, and mostly by restricting access based on the decisions of investigative agencies. Promising areas for further research on public procurement include countering organised criminal groups with international ties and mafia structures.

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■ Conflict of Interest

The author of this study declares no conflict of interest.

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Система запобігання правопорушенням у сфері публічних закупівель в умовах воєнного стану в Україні та в Європейському Союзі

Олена Бусол

Доктор юридичних наук, старший науковий співробітник
Міжвідомчий науково-дослідний
центр з проблем боротьби з організованою
злочинністю при Раді національної безпеки і оборони України
03035, пл. Солом'янська, 1, м. Київ, Україна
<https://orcid.org/0000-0002-4713-4546>

Богдан Романюк

Кандидат юридичних наук, доцент
Національний транспортний університет
01010, вул. М. Омеляновича-Павленка, 1, м. Київ, Україна
<https://orcid.org/0009-0004-9674-1539>

■ **Анотація.** Питання державних закупівель, передусім в оборонному секторі, гостро постали в період російської агресії в Україні. Ризик корупції в цій сфері є значним і може мати фатальні наслідки для держави. Метою цієї статті був огляд системи протидії та запобігання правопорушенням у сфері публічних закупівель, яку було створено у відповідь на виклики воєнного стану в Україні. Проведено порівняння цієї системи з відповідними механізмами Європейського Союзу. Методологічною основою статті став діалектичний підхід до аналізу системи запобігання злочинам у сфері публічних закупівель в Україні та світі. У дослідженні використано методи формальної логіки, а також системно-структурний, систематизації, узагальнення, прогнозування, феноменологічний, порівняльно-правовий та компаративний. Досліджено наукові підходи до запобігання правопорушенням у сфері публічних закупівель у низці зарубіжних країн, а також основні правила та стандарти, запроваджені в Європейському Союзі в цій сфері. Обґрунтовано, що система запобігання правопорушенням у сфері публічних закупівель в умовах воєнного стану в Україні не є оптимальною, що стосується і країн Євросоюзу, попри вжиті колективні міжнародні та національні заходи. Аргументовано, що публічні закупівлі нерозривно пов'язані з політикою, їх використовують як засіб досягнення стратегічних завдань конкретної держави. Проблематика запобігання корупційним правопорушенням у сфері публічних закупівель є надзвичайно актуальною для науковців, результати її ґрунтовного дослідження дадуть змогу Україні досягти значних результатів у протидії цьому явищу додатково до вже вжитих державою заходів під час воєнного стану

■ **Ключові слова:** протидія; система Prozorro; злочинність; корупція; організація публічних закупівель