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Legal inconsistencies in the field of intelligence-gathering and their impact on the investigation of economic crime

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Abstract
The purpose of the study was to examine the influence of horizontal, vertical, and temporal legal inconsistencies on intelligence-gathering activity during the investigation of economic crime. The study employed content analysis to interpret doctrinal definitions of economic crime and the associated liability. A case study method was applied to assess the specific features of intelligence-gathering practices in Ukraine, Germany, and Italy. The comparative analysis demonstrated that Italy shows the highest effectiveness in investigating economic crimes, including transnational cases. The lower effectiveness observed in Germany and Ukraine is linked to the presence of legal inconsistencies, the most commonly documented being: insufficient harmonisation of legal frameworks concerning corporate liability for economic crimes; lack of standardised approaches to the criminal liability of legal entities; underdeveloped principles for interdisciplinary cooperation in economic crime investigations; and non-compliance of certain aspects of national legislation with universal standards. In response to these identified issues, the following strategic groups for addressing legal inconsistencies in the investigation of economic crime were proposed: the introduction of a unified model for investigating economic crime; the establishment of universal requirements for anti-corruption compliance; the creation of a central coordinating body to promote interdisciplinary cooperation among investigative authorities; the legislative consolidation of investigative procedures with a focus on human rights; and the harmonisation of Ukrainian legislation with European standards in the field of economic crime investigation. The findings may be utilised to improve the rate of successful investigations of economic crime in Ukraine and foster equitable and favourable conditions for conducting business activities

Keywords:
continental justice system; money laundering; cyber offences; implementation of best practices; integration

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Introduction

Given their impact on public morality, economic crimes undermine state development and restrict the prospects for sustainable growth. The rise in financial crime can be attributed to ineffective investigation processes, often hindered by horizontal, vertical, and temporal legal inconsistencies, which compromise intelligence-gathering. Considering the connection between economic crime and a nation's strategic development, it is appropriate to examine and compare the factors influencing intelligence-led investigations across different countries within the continental legal system, and explore how their experiences may be adapted to the Ukrainian context.

A systematic literature review conducted by J.S. Dote-Pardo & P. Severino-Gonzalez (2025) concluded that economic crimes, including money laundering, exert a considerable negative impact on the development of various countries worldwide. According to the cited study, such crimes are particularly prevalent in developing nations, where core institutions tend to exhibit greater instability. O. Vasylchyshyn *et al.* (2024) emphasised that economic crimes impede national development by fostering the shadow economy, encouraging capital flight, and diminishing the confidence of both current and prospective investors.

Another literature review, presented by K.A. Kinglsey *et al.* (2024), highlighted that economic crimes, particularly cybercrime, digital currency fraud, and falsification of financial reporting, expose systemic challenges at the national level, such as social inequality, unemployment, and a lack of economic stability. A similar view is reflected in the work of D.A. Kulmie *et al.* (2023), who conducted a survey among 200 respondents from the Ministry of Justice and Constitutional Affairs, the Ministry of Finance, the Ministry of Planning and Economic Development, and the Central Bank of the Republic of Somalia. Their findings showed a strong correlation between economic crime and corruption, which in turn erodes public trust, weakens the delivery of essential public services, reduces employment levels, lowers GDP, and adversely affects citizens' quality of life. Based on these findings, it may be inferred that intelligence-led investigative efforts and the prosecution of economic crimes are particularly vital in unstable regions.

Using the economy of China as a case study, F.D. Narulita *et al.* (2024) concluded that manipulations in accounting records, misinformation, and misapplication of accounting principles may hinder the investigation of economic crimes. These disruptions manifest as delays in proceedings, wrongful accusations, and a lack of accountability. Similar conclusions were reached by M.A. Bello *et al.* (2024), who examined the causal links between financial crimes and financial accessibility. According to their study, institutional factors shape the relationship between financial crime and financial inclusion. Financial regulators are therefore advised to continue strengthening anti-money laundering and anti-corruption strategies through enhanced compliance with existing legal frameworks and engagement with international cooperation practices.

The nature and legal framework surrounding the investigation of economic crimes were examined by O.S. Tuz *et al.* (2025), who assert that intelligence-gathering operations underwent several stages of development. These experts also emphasise that the adaptation of intelligence-gathering practices to the needs of an independent Ukraine remains ongoing. Recent changes within this domain have been driven by the full-scale military aggression against the country and the challenges arising as a result. Such challenges include the need to strengthen coordination among law enforcement agencies and the integration of innovative investigative methods. R.Ch. Sayypov (2024) underlined the increase in economic crimes across specific sectors, particularly the defence industry, under conditions of military uncertainty. The researcher advocated for a strengthened legal framework to support intelligence-gathering operations. He highlighted the tendency of certain economic sectors to conceal criminal activity by exploiting non-state business entities or engaging in corrupt networks. Further proposals for enhancing the effectiveness of intelligence-led investigations of economic crimes were put forward by D.O. Nykyforchuk & I.V. Yermolaev (2024), who conducted a comparative analysis of the regulatory frameworks of countries such as the United Kingdom, the United States, France, and others. Their findings suggest that the principal obstacles to conducting intelligence-gathering operations in the context of economic crime investigations in Ukraine include a lack of clarity in defining such activities and the absence of a commonly accepted concept concerning the nature and structure of intelligence measures.

Based on the cited research, the investigation of economic crimes appears well-represented in the academic literature. Most of the referenced sources focus on institutional and socio-cultural factors that contribute to economic crimes, while legal inconsistencies in intelligence-gathering remain insufficiently explored. This observation underscores the relevance of the present study, which aimed to examine the principle of legal uncertainty in the context of intelligence-led activity concerning economic crimes. The objectives of the study included: to analyse economic legislation; to evaluate the experience of Ukraine in investigating financial crimes; to compare it with the experience of other countries within the continental legal system; and to formulate recommendations for resolving the legal contradictions that hinder the investigation and prosecution of economic crimes.

Materials and Methods

Fifteen articles of the Criminal Code of Ukraine[1] (CCU) were employed as the principal legal sources: Articles 369, 204, 358, 366, 368, 191, 209, 364, 367, 200, 361, 365, 362, and 212. These articles identify the main types of economic crimes and outline the legal responsibility for their commission. The following regulations were also examined: the Law of Ukraine "On Intelligence-Gathering Activity"[2], the Criminal Procedure Code of Ukraine[3]. The study further based on the statistical data provided by the National Agency of Corruption Prevention (2024). Among international sources, the study analysed the 2024 report of the Federal Office for Information Security (2024) and regulations governing intelligence-gathering procedures in criminal cases in Germany and Italy.

The methodology included content analysis and case study methods. Content analysis was applied to the selected CCU articles to enable doctrinal interpretation of economic crimes and the associated legal responsibilities. The aim was to explore notable violations of the CCU and their consequences. A key case study involved the criminal proceedings against M. Zlochevskyi[4], who was exposed for attempting to have bribery charges of 6 million UAH dropped. The case was examined in terms of the factors that influenced the investigation and the criminal prosecution process. Further case studies included the investigation and prosecution of financial misconduct by the leadership of Wirecard in Germany[5], and legal proceedings in Italy involving executives from Eni and Saipem, accused of corruption in the context of an oil contract[6]. A comparative analysis was conducted to examine the investigative practices of countries with a continental legal system. Germany and Italy were selected due to their established legal traditions and extensive experience in investigating economic crimes. The primary goal of this comparison was to identify effective investigative strategies and assess the feasibility of their adaptation within the Ukrainian legal context.

Results

Intelligence-gathering activities in the investigation of economic crimes in Ukraine. This study analysed the work of E.A. Akartuna *et al.* (2024), which defined economic crime as a type of criminal behaviour associated with money, financial services, or markets. According to the National Police of Ukraine (2024) report, 10,400 official crimes were recorded in 2023, 3,000 of which were related to obtaining illicit profits. The National Police of Ukraine, in collaboration with other institutions and law enforcement agencies, including the National Bank of Ukraine and the State Service for Special Communications and Information Protection of Ukraine, conducted measures to combat fraud and recover the damages incurred. The National Police of Ukraine's report indicates that, during the reported period, 44,800 phishing links were blocked, which had been created to obtain citizens' personal and banking information for criminal purposes. During the analysed period, 286.8 million UAH in damages caused by cybercrimes were also recovered, which is 6.4 times more than in 2022. According to the Economic Security Bureau of Ukraine (2024), 4,406 reports and statements about economic offences were registered in 2024, 22 intelligence and investigative cases were opened, and 11 criminal proceedings were initiated. Based on the cited data, it is evident that significantly more economic crimes of certain types were detected in 2023-2024, and, accordingly, a greater amount of damages was recovered. However, the reports show that not all registered economic offences were investigated, and suspects were not always provided with formal charges.

No more than 10% of detected economic offences result in the issuance of an indictment. This statement can be illustrated by the results of investigating corruption-related criminal offences. According to the National Agency on Corruption Prevention (2024), 25,791 corruption-related criminal offences were investigated in 2024, of which only 1.5% concluded with a guilty verdict resulting in actual imprisonment. In conjunction with the data from Transparency International (2024), it can be inferred that the low score of Ukraine (35 out of 100) in the organisation's assessment is a consequence of the low level of disclosure and accountability for corruption-related crimes. In comparison, Corruption Perception Index of Italy stands at 46/100, while Germany's is 75/100. The relatively low score of Ukraine in the international ranking points to ineffective investigations into economic crimes, diminishing the country's investment appeal and posing a serious barrier to sustainable national development.

At the national level, a noticeable trend can be observed towards a decline in the number of prosecutions and actual punishments of executives prone to crimes such as corruption, financial fraud, and counterfeiting. Investigations into such offences are often resolved

[1] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2] Law of Ukraine No. 4651-VI "On Intelligence-Gathering Activity". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[3] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[4] Judgment of the Higher Anti-Corruption Court of Ukraine No. 991/1297/22. Retrieved from https://hacc-decided.ti-ukraine.org/en/documents/112569718.
[5] Judgment of the Munich Regional Court No. 5HK O 15710/20. (2021, December). Retrieved from https://www.wirecard.com/wp-content/uploads/2023/08/Judgment-of-the-Munich-Regional-Court-I-dated-05.05.2022-5-HK-O-15710_20.pdf.
[6] Judgment of the Milan Court No. 3055. (2021, March). Retrieved from https://www.eni.com/assets/documents/documents-en/opl-245-full-decision.pdf.

through the approval of a "plea agreement" established under Article 35 of the CCU[1], which typically results in the imposition of a fine as the principal form of punishment (Nykyforchuk & Yermolaev, 2024). An illustration of the consequences of implementing such an agreement is criminal proceedings initiated against a Ukrainian businessman, the owner of the gas production company Burisma and founder of the International Energy Security Forum. In the summer of 2020, NABU detectives documented the businessman offering a bribe of six million US dollars to NABU leadership and the head of the Specialised Anti-Corruption Prosecutor's Office. All four individuals implicated in the case admitted their guilt in the economic crime and agreed to cooperate with the investigation. As a result, three intermediaries received suspended sentences, while the principal figure was fined 68,000 hryvnias. This case highlights the disproportionality between the punishment and the scale of the economic crimes committed, suggesting deficiencies in intelligence-gathering.

Law enforcement agencies also rely on specific provisions of the CCU, particularly Chapter 35, which stipulates that an accused individual who admits guilt and agrees to cooperate with the investigation may receive a reduced sentence, frequently a suspended term or a fine. This procedural inconsistency is further demonstrated by the fact that approximately 60% of individuals accused of offering bribes agree to cooperate, resulting in fines of 17,000 hryvnias, often disproportionate to the potential financial damage caused (Nepomnyashchyy & Vorobyov, 2024). Horizontal inconsistencies also arise in the interpretation of Article 204 of the CCU, under which the production of certain illicit goods warrants imprisonment, whereas their sale does not. The majority of cases are classified as sale rather than production, and only 0.5% of defendants receive custodial sentences (Kuznetsov, 2024). The possibility of concluding a cooperation agreement is frequently exploited by individuals accused of accepting bribes, who see it as an opportunity to avoid imprisonment or the payment of substantial fines.

Thus, the cooperation agreement constitutes an ambiguous instrument that influences the effectiveness of intelligence-gathering during the investigation of economic offences. On the one hand, the signing of a guilty plea agreement expedites the intelligence process and increases the statistical rate of crime detection. However, the implementation of such agreements also results in the majority of accused individuals avoiding severe punishment and potentially committing new economic offences in the future. The risk of ineffective investigations and recidivism is somewhat mitigated by the existence of the anti-corruption vertical structure, wherein key institutions exercise mutual oversight, thereby enhancing the transparency of intelligence-gathering activities and accountability.

The conduct of intelligence-gathering during the investigation of official misconduct in Ukraine is hindered by horizontal, vertical, and temporal legislative conflicts. Horizontal conflicts emerge as contradictions between laws or subordinate acts of the same legal authority. An example is the conflict between the Law of Ukraine No. 2135-XII[2] and the Law of Ukraine No. 1280-IV[3]. The conflict arises because Article 8 of Intelligence Law permits the covert collection of information, including the interception of communication channels. In contrast, Article 40 "On Telecommunications" prohibits operators from transmitting information to third parties without a court order. As a result of this conflict, evidence collection is either impeded or conducted with procedural violations. Evidence obtained under such circumstances is questionable and may be excluded during judicial proceedings.

Vertical conflicts manifest as contradictions between subordinate acts or ministerial orders and regulations, such as laws or the Constitution of Ukraine. A pertinent example of a vertical conflict impeding intelligence-gathering during the investigation of official misconduct is the inconsistency between Order No. 761 of the Ministry of Internal Affairs[4] and Article 32 of the Constitution of Ukraine[5] and Article 8 of the European Convention on Human Rights[6]. The Ministry Order permits the use of informant networks without proper documentation and direct judicial authorisation. Nevertheless, the aforementioned constitutional and convention provisions guarantee the right to privacy and stipulate that any interference must be lawful, proportionate, and sanctioned by a court. Consequently, materials collected through informant networks may be classified as unlawful intrusions into private life and deemed inadmissible by the court.

Temporal conflicts arise from the simultaneous operation of old and new legal provisions when corresponding amendments to related laws have not been introduced. An example of a temporal conflict affecting intelligence-gathering during the investigation of

[1] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[3] Law of Ukraine No. 1280-IV "On Telecommunications". (2003, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1280-15#Text.
[4] Order of the Ministry of Internal Affairs of Ukraine No. 761 "On Amendments to the Instruction on Organisation of Operational and Investigative Activities and Covert Work by Operational Units of the National Police of Ukraine". (2020, October). Retrieved from https://zakon.rada.gov.ua/laws/show/z1114-20#Text.
[5] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80.
[6] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.

official misconduct is the inconsistency between the Criminal Procedure Code of Ukraine[1] and the Law of Ukraine No. 2135-XII[2,3]. Certain provisions of the more recent Criminal Procedure Code, including those governing covert investigative actions, conflict with "On Intelligence-Gathering Activitiy" law[4], which was adopted over three decades ago and contains generalised and ambiguous regulations. Parallel application of the provisions of the Criminal Procedure Code and the "On Intelligence-Gathering Activities" law increases the risk of unconstitutional practices, court decisions declaring certain evidence inadmissible, and state liability for violations of human rights, including those guaranteed by the European Convention on Human Rights[5].

The effectiveness of intelligence-gathering during the investigation of economic crimes depends upon the timely identification and elimination of legislative conflicts. The complexity of this task lies in the existence of conflicts at different levels: horizontal, vertical, and temporal. Legislative conflicts may be addressed, among other means, through the analysis and adaptation of intelligence-gathering practices from countries operating under the continental system of justice.

International experience of intelligence-gathering in the investigation of economic crimes. Countries with continental legal systems and well-established practices in investigating economic crimes were selected as the basis for comparative analysis. Certain elements of this international experience may be adapted to improve intelligence-gathering activities in Ukraine. As of 2023-2024, Germany witnessed a surge in economic crime, partly attributable to the emergence of advanced technological tools facilitating cybercrime (Achim & Clement, 2023). This trend is illustrated by the Federal Office for Information Security (2024) report, which recorded that the number of new malicious programmes capable of enabling economic offences reached 350,000 in 2024. These data support the assertion that effective intelligence-gathering is critical for the timely detection and prosecution of economic offences. Intelligence-gathering activities in Germany are conducted in accordance with the laws and regulations analysed below.

Particular attention in the conduct of intelligence-gathering activities in Germany is devoted to cooperation, including at the international level. Cross-border cooperation is regulated by international legal instruments, facilitating the timely collection of data, minimising the risk of data loss, and enhancing transparency in intelligence operations across various levels.

The existence of an extensive legal framework, focused on interdisciplinary and international cooperation, does not, however, guarantee the avoidance of vertical and temporal legal conflicts, as illustrated by the Wirecard case[6]. In 2020, it was discovered that €1.9 billion, allegedly held in Philippine accounts by the German fintech company, in fact did not exist (Jo *et al*., 2021). Intelligence-gathering activities were conducted under the Criminal Code of the Federal Republic of Germany (§263, §266, §129)[7], the Code of Criminal Procedure of the Federal Republic of Germany[8] (authorising searches, telecommunications surveillance, asset freezes, the use of undercover agents, and technical surveillance tools), and the GwG (the Anti-Money Laundering Act)[9]. These activities uncovered fictitious transactions through shell companies in Asia, falsified reporting, and money laundering. Following large-scale intelligence-gathering efforts, which involved special units of the German police and customs service alongside international structures in the Philippines, Dubai, and Singapore, Wirecard's CEO Markus Braun was arrested. Wirecard's Chief Operating Officer, Jan Marsalek, remains internationally wanted, indicating shortcomings in the effectiveness of the intelligence-gathering response. Key criticism centres on the fact that the intelligence-gathering activities were initiated belatedly, allowing the company to deceive regulators and auditors over an extended period. The case nonetheless served as a catalyst for financial regulatory reform and for strengthening economic liability for criminal acts. The aftermath also saw the expansion of the powers of the Federal Financial Supervisory Authority (BaFin).

According to S. Mocetti & L. Rizzica (2023), the relatively high level of economic offences in Italy, compared with the European average, is partly attributable to socio-cultural factors such as the entrenched presence of mafia organisations at various levels of governance. The existence of the mafia may, however, also be regarded as a factor prompting the development of effective strategies for investigating and prosecuting economic crimes.

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[3] Law of Ukraine No. 1280-IV "On Telecommunications". (2003, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1280-15#Text.
[4] Law of Ukraine No. 4651-VI "On Intelligence-Gathering Activity". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[5] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.
[6] Judgment of the Munich Regional Court No. 5HK O 15710/20. (2021, December). Retrieved from https://www.wirecard.com/wp-content/uploads/2023/08/Judgment-of-the-Munich-Regional-Court-I-dated-05.05.2022-5-HK-O-15710_20.pdf.
[7] Criminal Code of the Federal Republic of Germany. (1871, May). Retrieved from https://www.gesetze-im-internet.de/stgb/.
[8] Code of Criminal Procedure of the Federal Republic of Germany. (1950, September). Retrieved from https://www.gesetze-im-internet.de/stpo/.
[9] Act of the Federal Republic of Germany "On the Tracing of Profits from Serious Crime". (2017, June). Retrieved from https://www.gesetze-im-internet.de/gwg_2017/BJNR182210017.html.

One of the most high-profile corruption scandals in Italy is the case involving Eni and Saipem[1]. The core of the case revolves around allegations that Eni and Saipem paid multi-million-dollar bribes to officials in Nigeria, Algeria, and other countries to secure advantageous contracts in the oil and gas sector between 2007 and 2010 (Hock, 2020). The intelligence-gathering activities were conducted with the involvement of agencies such as the Milan Public Prosecutor's Office, Finance Guard, National Anti-Corruption Authority, Financial Intelligence Unit (Italy), and international agencies from the United States and the United Kingdom. The large-scale intelligence-gathering effort encompassed multiple areas, including a financial investigation aimed at uncovering suspicious transactions through offshore entities. Other efforts involved wiretapping phones and emails to gather evidence of internal coordination of illicit activities and international cooperation with the United States, France, Algeria, and Nigeria for evidence sharing. In addition to these measures, the investigation involved the use of undercover agents to confirm the bribery channels and financial monitoring to investigate money laundering through front companies. As a result of the ongoing investigation, some officials from Saipem were convicted in Algeria. In 2021, an Italian court acquitted top managers from Saipem and Eni, but both companies suffered reputational damage and were forced to reform their policies to mitigate the losses. Eni, for instance, restructured its internal control system to ensure compliance with responsible business practices.

The examined case highlighted the effectiveness of intelligence-gathering tools in combating transnational corruption. The use of legislative mechanisms such as Legislative Decree 231/2001[2] – a piece of Italian legislation that introduced criminal liability for legal entities for certain offences committed in their interest or for their benefit – helped avoid horizontal conflicts in determining responsibility for both individuals and legal entities. The Saipem-ENI case also demonstrated the potential for resolving vertical legal conflicts in managing international knowledge exchange during the investigation of economic crimes.

Recommendations for improving economic crime investigations. The experiences of Germany and Italy in investigating high-profile economic cases provide insights into strategies for avoiding legal conflicts in the field of intelligence-gathering activities. One recommended strategy involves harmonising the legal frameworks for corporate responsibility in cases of economic crimes. This strategy is based on the recognition that, until 2023, Germany lacked a specific law on the criminal liability of legal entities (although the new Law "On Strengthen Integrity in the Economy"[3] had already been drafted), while Italy had Legislative Decree No. 231/2001[4] in effect since 2001, which allows for the prosecution of companies. Drawing on the experience of various European countries**,** it is recommended to introduce a unified model of corporate responsibility based on the principles of Legislative Decree No. 231/2001[5], with clear standards for due diligence, management accountability, and compliance systems. In Ukraine, such a model could be established based on the Criminal Procedure Code or the Law of Ukraine No. 2135-XII[6] It is also recommended that the provisions of the Law[7] be aligned with the Criminal Procedure Code of Ukraine[8]. The existence of a temporal legislative conflict is due to the emergence of new technologies and methods of pre-trial investigation, the use of which requires clear legal regulation. Establishing a unified model would help avoid horizontal legislative conflicts and ensure impartial investigations and fair accountability for both individuals and legal entities.

The analysis also demonstrates the lack of unified approaches to corporate criminal liability, which creates conditions conducive to high-profile economic scandals. In Ukraine, the absence of a unified mechanism for responsibility is manifested in the limited range of sanctions under Article 96-3 of the CCU[9] for economic crimes. The creation of a unified approach to corporate criminal liability involves adapting European experience, particularly the adoption of a law on corporate criminal liability, akin to Italy's Legislative Decree No. 231/2001[10]. It would also be beneficial to implement requirements for anti-corruption compliance as grounds for mitigating or exempting liability for committed crimes.

[1] Judgment of the Milan Court No. 3055. (2021, March). Retrieved from https://www.eni.com/assets/documents/documents-en/opl-245-full-decision.pdf.
[2] Legislative Decree of the Republic of Italy No. 231. (2001, June) Retrieved from https://www.fbmhudson.com/wp/wp-content/uploads/2021/03/231.ENG_.pdf.
[3] Law of the Federal Republic of Germany "On Strengthen Integrity in the Economy". (2020, August). Retrieved from https://dip.bundestag.de/vorgang/gesetz-zur-st%C3%A4rkung-der-integrit%C3%A4t-in-der-wirtschaft/265689.
[4] Legislative Decree of the Republic of Italy No. 231. (2001, June) Retrieved from https://www.fbmhudson.com/wp/wp-content/uploads/2021/03/231.ENG_.pdf.
[5] Ibidem, 2001.
[6] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[7] Ibidem, 1992.
[8] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[9] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[10] Legislative Decree of the Republic of Italy No. 231. (2001, June) Retrieved from https://www.fbmhudson.com/wp/wp-content/uploads/2021/03/231.ENG_.pdf.

The Wirecard case[1] further highlighted that although interdisciplinary cooperation is a key factor in effective intelligence-gathering activities, the absence of clear functional distinctions between investigative bodies creates confusion, increases the risk of information loss, and prolongs the investigation process. In the Wirecard case, for instance, there was confusion over the responsibilities between the financial regulator BaFin, the prosecutor's office, and the financial monitoring service. In contrast to their German counterparts, Italian law enforcement agencies demonstrated coordinated interaction between national and international intelligence-gathering agents, leading to the effective investigation of the high-profile transatlantic scandal. At the national level, this interaction took place between the Milan Public Prosecutor's Office – the primary body leading the investigation on behalf of the nation and initiating criminal proceedings against the top management of ENI and Shell – and the Italian Financial Police (Guardia di Finanza), which conducted searches at ENI offices, seizing documents and electronic correspondence[2]. At the international level, interdisciplinary cooperation was documented between Guardia di Finanza and law enforcement agencies in Nigeria, notably the Economic and Financial Crime Commission, and the United Kingdom, including the Serious Fraud Office. Access to witnesses and data exchange was also facilitated through cooperation with the International Criminal Police Organization (INTERPOL). Based on the analysis of the Italian experience, it is recommended to establish a unified coordinating structure that clearly defines the roles of control, supervision, pre-trial investigation, and intelligence-gathering. This approach was successfully implemented in Italy through the collaboration between the Guardia di Finanza and the prosecution. In Ukraine, this interaction should be ensured between the National Police[3], the Security Service of Ukraine (SBU)[4], the NABU[5], and the Bureau of Economic Security.

It is also recommended that the procedures for intelligence-gathering activities be legislatively enshrined while safeguarding human rights. This recommendation is based on the understanding that the use of certain intelligence-gathering procedures, such as phone tapping, surveillance, or access to banking data, increases the risk of abuse by law enforcement. In cases of human rights violations, specifically those guaranteed by the Constitution[6] and the ECHR[7], authorities conducting intelligence-gathering activities would gain access to evidence that could not be deemed inadmissible in court. In Ukraine, the collection of evidence within the framework of intelligence-gathering activities is primarily regulated by the Law "On Intelligence-Gathering Activities"[8] which is morally outdated and does not consider the realities of the digital age, such as the emergence of cloud storage or messaging applications. In the Ukrainian context, the legislative enshrinement of intelligence-gathering procedures would require updating the laws governing such activities in line with European standards, clearly defining permissible search methods, establishing mechanisms for law enforcement accountability, ensuring basic human rights, and aligning with the practice of the European Court of Human Rights. The proposed changes are influenced by the analysis of the German experience, where intelligence-gathering activities are regulated by §§ 100a-100g of the Criminal Code of the Federal Republic of Germany[9], focusing on proportionality and judicial control. The experience of Italy was also considered, where the Code of Criminal Procedure of Italy[10] clearly defines the admissibility of covert measures under the supervision of the prosecutor. Given legislative realities of Ukraine, the adoption of a single, specialised law on intelligence-gathering activities, harmonised with the Criminal Procedure Code and the conventional standards of the ECHR[11], is recommended. Establishing an independent control mechanism for wiretapping using European standards is also advised. Avoiding both horizontal and vertical legislative conflicts could be achieved by developing a wiretapping control mechanism based on the German model.

In addition to the recommendations already discussed, it would also be prudent to harmonise the powers of financial intelligence and investigation to prevent

[1] Judgment of the Munich Regional Court No. 5HK O 15710/20. (2021, December). Retrieved from https://www.wirecard.com/wp-content/uploads/2023/08/Judgment-of-the-Munich-Regional-Court-I-dated-05.05.2022-5-HK-O-15710_20.pdf.
[2] Judgment of the Milan Court No. 3055. (2021, March). Retrieved from https://www.eni.com/assets/documents/documents-en/opl-245-full-decision.pdf.
[3] Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19#Text.
[4] Law of Ukraine No. 2229-XII "On the Security Service of Ukraine". (1992, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2229-12#Text.
[5] Law of Ukraine No. 1698-VII "On the National Anti-Corruption Bureau of Ukraine". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1698-18#Text.
[6] Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80.
[7] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.
[8] Law of Ukraine No. 2135-XII "On Operational and Investigative Activities". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[9] Criminal Code of the Federal Republic of Germany. (1871, May). Retrieved from https://www.gesetze-im-internet.de/stgb/.
[10] Code of Criminal Procedure of Italy. (1988, September). Retrieved from https://www.gazzettaufficiale.it/sommario/codici/codiceProceduraPenale.
[11] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.

vertical conflicts. The analysis of the M. Zlochevskyi[1] case indicated a low level of practical interaction between financial monitoring services and law enforcement agencies. Improved interaction can be achieved by granting procedural status to analytical units, similar to the UIF in Italy or the FIU in Germany. It is also recommended that a mechanism for rapid response to suspicious transactions identified within the framework of financial monitoring be developed.

Avoiding vertical conflicts can also be achieved through strengthening international agreements and harmonisation with European Union law, particularly in cases involving international crimes. The implementation of provisions of EU Directive No. 2014/42/EU[2] on the confiscation of assets related to economic crimes is recommended. Freezing and confiscating instruments and proceeds from crime before a judicial verdict will enhance the effectiveness of investigations into offshore schemes, fraudulent contracts, or the non-appearance of suspects. It is also proposed to use mechanisms for mutual recognition of decisions and evidence within EU cooperation and INTERPOL, the effectiveness of which was proven in the Saipem-ENI case.

Thus, the existence of horizontal, vertical, and temporal conflicts reduces effectiveness and prolongs the investigation of economic crimes in Ukraine. The cases under study indicate the need to revise the regulatory and legal framework governing intelligence-gathering activities in the investigation of economic crimes. The analysis of experiences in certain European countries, including Germany and Italy, provides insights into the necessary changes in Ukrainian legislation and its further harmonisation with European standards.

Discussion

The relevance of this study lies in the fact that resolving legislative conflicts will improve the financial crime investigations and contribute to the economic development of the country. The relevance of the study is confirmed by P. Maweu *et al.* (2024), who conducted a statistical analysis of the impact of anti-money laundering policies on economic crime statistics in a sample of 39 commercial banks in Kenya. According to the researchers, the implementation of various investigation strategies reduced the number of economic crimes in the country's banking sector by 33.1%. The relevance of the study is also confirmed by P. Gerbrands *et al.* (2022), who emphasised that the use of modern investigative methods is effective in combating systemic economic issues, such as money laundering. The alignment between this study and previous research indicates that economic crime investigations can prevent recidivism in the sector if certain conditions are met. According to S. Shah (2024), these conditions include the factors involved in the investigation, particularly the tools used and the level of awareness of investigators regarding the application of these tools. A certain correspondence exists between S. Shah's (2024) ideas and the perspective proposed in this study, which argues that the current system of intelligence-gathering activities in Ukraine for investigating economic crimes is insufficiently effective and requires further enhancement.

The study also noted the importance of resolving conflicts and strengthening cooperation among various bodies conducting intelligence-gathering activities, a point confirmed by previous research. The importance of such cooperation was highlighted by O. Uliutina (2021), who concluded that international collaboration is an effective tool in the fight against transnational organised crime, including in the economic sphere. J. Socher (2022) analysed the German experience and concluded that, despite certain national differences, efforts to create an international legal framework are effective for investigating economic crimes and providing equal access to justice. S. Ohinok & M. Kopylchak (2024) examined the Ukrainian experience and concluded that cooperation with international initiatives and organisations, such as MONEYVAL, FATF, and the European Banking Authority, contributes to the effective investigation and combating of financial crimes, such as money laundering. A. Golonka (2024) argued that such cooperation is of particular importance in developing countries, as, without a clear legal framework, they can easily become hubs for economic crime. The ideas presented in previous studies underscore the importance of recommendations for resolving institutional conflicts at the national and international levels.

Apart from the factors already mentioned, this study examined the notion that certain horizontal conflicts, particularly the abuse of "plea agreements" affect subsequent intelligence-gathering efforts, increasing the risk of recidivism. Based on the M. Zlochevskyi case, the conclusion was made that the absence of irreversible punishment encourages further violations. C. Yarana (2023) presented a similar perspective, analysing data from 317 companies listed on the Thai stock exchange between 2015 and 2020. According to the findings, which were based on a sample of 1,855 observations, four main groups of factors influenced economic crime investigations: pressure, opportunity, rationalisation, and capability. In the context of this study, the imperfection of Ukrainian economic legislation can be viewed as an opportunity, as the motivation to commit economic crimes increases when the severity of potential punishment is lower. S. Patel *et al.* (2023) highlighted the need for legislative changes and the

[1] Judgment of the Higher Anti-Corruption Court of Ukraine No. 991/1297/22. Retrieved from https://hacc-decided.ti-ukraine.org/en/documents/112569718.

[2] Directive of the European Parliament and of the Council No. 2014/42/EU "On the Freezing and Confiscation of Criminally Derived Funds and Proceeds in the European Union". (2014, April). Retrieved from https://zakon.rada.gov.ua/laws/show/en/984_049-14?lang=en#Text.

introduction of new initiatives aimed at reducing the risk of economic offences, including money laundering. A correlation was noted between the quoted recommendation and the idea presented in this study regarding changes in legislation and judicial processes, alongside an increased focus on accountability for committed crimes. K. Alblowi (2023) emphasised that changes at the regional level, aimed at the effective investigation of economic crimes, could stimulate greater competitiveness and sustainable development both nationally and internationally. This idea is particularly relevant for Ukraine, which is striving to integrate into the international legal framework.

The study also proposed the need to harmonise Ukrainian legal frameworks regarding the investigation of economic crimes with European standards. The relevance of this recommendation was confirmed in previous studies, particularly by T.R. van Roomen & B. De Jonge (2024). According to the cited researchers, the existence of unified investigation models facilitates cross-border access to and exchange of data between law enforcement agencies, which is crucial for mapping and preventing economic crimes, punishing suspects, and confiscating criminally obtained assets. The importance of harmonising national legal frameworks with European standards was also emphasised by M. Šalčius (2024), who argued that European comprehensive strategies, including asset confiscation and the return of illegally obtained profits, are a powerful tool in reducing the number of financial crimes at national and transnational levels. Further comparison with previously conducted studies demonstrates some limitations of this study, including an insufficient analysis of the moral and ethical aspects of the proposed legal harmonisation. An overview of the moral and ethical foundations of intelligence-gathering activities in the investigation of economic crimes is of paramount importance, as the right to dignified and fair treatment of the individuals involved in a case is emphasised in many previously cited documents. The strategy proposed in this study for harmonising investigative actions with the requirements of the ECHR[1] lacks practical recommendations, which constitutes a considerable limitation. In contrast to this study, practical strategies for harmonisation had been thoroughly examined, notably by D. Casaburo & I. Marsh (2024). According to the cited experts, harmonisation involves shifting the focus from punishing those guilty of committing financial crimes to supporting the victims. This shift means that greater attention should be paid to preventive strategies aimed at eliminating the root causes of specific economic crimes.

Thus, numerous correspondences were found between the ideas presented in this study and those put forward earlier. These correspondences confirm the relevance and feasibility of the strategies suggested in this paper to improve the effectiveness of intelligence-gathering activities in the investigation of economic crimes. Previous research also provides an understanding of the factors that determine the implementation of these strategies within the Ukrainian context. However, the analysis conducted also indicated some discrepancies between the current paper and earlier studies. The key discrepancy is the absence of a detailed analysis of the moral and ethical aspects of harmonising the legal framework for investigating economic crimes with European standards. The lack of understanding of the moral and ethical aspects led to an absence of practical recommendations for harmonising the legal framework of Ukraine for investigating economic crimes with the broader European framework.

Conclusions

The study found that legislative conflicts of a horizontal, vertical and temporal nature significantly complicate the process of investigating economic crimes in Ukraine. Such conflicts not only slow down the collection of evidence, but also create preconditions for the inadmissibility of evidence in court, which, in turn, allows offenders to avoid liability. An important factor is the lack of consistency in legislation on the liability of legal entities, the weak standardisation of mechanisms for bringing them to criminal liability, and the lack of clearly defined approaches to interdisciplinary cooperation in the investigation of economic crimes. A separate problem is the gap between Ukrainian norms and European standards, which complicates international cooperation and reduces the effectiveness of combating transnational crimes.

A comparative analysis of the experience of Germany, Italy and Ukraine shows that Italy demonstrated the highest efficiency in the field of intelligence and investigation of economic crimes. This is explained not only by a more harmonised legal framework, but also by a clear division of powers between competent authorities, a coordinated structure focused on international cooperation, and the effective application of special laws, such as Legislative Decree No. 231/2001, which provides for criminal liability of companies. Ukrainian practice, despite the existence of institutions to combat economic crimes, such as NABU, NAPC, SBU and BES, continues to demonstrate a low level of effectiveness. This is evidenced by the low conviction rate, the large number of plea bargains that often result in fines, and the low corruption perception index. As a result, there is a risk of recurrence of crimes, reduced trust in the law enforcement system, and undermined investment attractiveness of the state. In this context, the

[1] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.

adaptation of foreign experience aimed at eliminating regulatory contradictions, improving interagency coordination, legislating procedures for collecting intelligence in a human rights-compliant manner, and updating Ukrainian legislation to meet the requirements of the digital age is of particular relevance. Implementation of such changes will help to increase the effectiveness of investigations, strengthen the rule of law and create a favourable environment for doing business.

Future research should concentrate of socio-cultural factors affecting financial crime and the introduction of innovative technologies in the fight against economic crimes are also promising areas.

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Conflict of Interest

None.

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Законодавчі колізії в галузі оперативно-розшукової діяльності та їх вплив на практику під час розкриття економічних злочинів

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Анотація
Представлене дослідження мало на меті проаналізувати вплив горизонтальних, вертикальних і темпоральних колізій на проведення оперативно-розшукової діяльності під час розслідування економічних злочинів. Для цього було використано метод контент-аналізу для доктринального тлумачення економічних злочинів і відповідальності за їх учинення, а також метод кейс-стаді для вивчення особливостей проведення оперативно-розшукової діяльності в Україні, Німеччині та Італії. На підставі результатів порівняльного аналізу сформульовано висновок, що в Італії забезпечено найвищу ефективність розслідування економічних злочинів, зокрема транснаціональних. Нижча ефективність у Німеччині й Україні обумовлена наявністю законодавчих колізій, з яких найчастіше документованими були: недостатня гармонізація правових меж щодо корпоративної відповідальності за вчинені економічні злочини, відсутність уніфікованих підходів до кримінальної відповідальності юридичних осіб, неопрацьованість засад міждисциплінарної взаємодії в розслідуванні економічних злочинів і невідповідність аспектів національної нормативно-правової бази універсальним стандартам. З огляду на виокремлені проблеми, запропоновано такі складові стратегії уникнення законодавчих колізій у розслідуванні економічних злочинів: упровадження уніфікованої моделі розслідування економічних злочинів; формулювання універсальних вимог до антикорупційного комплаєнсу; створення єдиної координаційної структури на заохочення міждисциплінарної взаємодії між органами розслідування; законодавче закріплення процедур розслідування з акцентом на права людини; гармонізація українського законодавства з європейським у розслідуванні економічних правопорушень. Отримані результати може бути використано для покращення статистики розслідування економічних злочинів в Україні та створення рівних і сприятливих умов для ведення господарської діяльності

Ключові слова:
континентальна система правосуддя; відмивання грошей; кіберпорушення; імплементація досвіду; інтеграція