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МІНІСТЕРСТВО ВНУТРІШНІХ СПРАВ УКРАЇНИ
НАЦІОНАЛЬНА АКАДЕМІЯ ВНУТРІШНІХ СПРАВ

НАУКОВИЙ ВІСНИК
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ

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Relevant issues of international experience integration in legislative regulation of criminal intelligence into national legislation

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■ **Abstract.** Since the Criminal Procedure Code of Ukraine was introduced, researchers have repeatedly suggested the removal of the institution of operational search activities, arguing that all investigative (search) actions could be conducted within criminal proceedings or by adopting a new law. The study aimed to analyse the theoretical and legislative problems of adapting the European experience of regulating these institutions. To achieve the purpose of the study, the general scientific and special legal research methods were used: comparative legal, systemic and structural, and logical and legal analysis. The study established that the Law of Ukraine "On Operational Investigative Activity", adopted in 1992, as of 2025, does not meet regulatory, institutional and social realities, is constructively obscure and inconsistent with European law. The law is not consistent with the Criminal Procedure Code of Ukraine adopted in 2012. The study critically analysed the researchers' vision of the state and prospects of the development of criminal intelligence. Based on the analysis of international experience (the United States of America, the United Kingdom, the Federal Republic of Germany, the Czech Republic, the Slovak Republic, the Republic of Slovenia, and Hungary), the study identified the main approaches to possible further development of national criminal intelligence legislation. Positive and controversial aspects of each of them are identified. The study provided suggestions and recommendations regarding the Draft Law of Ukraine "On Criminal Intelligence". The results of the study can be used to develop and adopt new legislation in the field of criminal intelligence

■ **Keywords**: criminal intelligence activities; measures; draft law; offences; units; operational and investigative activities

■ Introduction

Building a state governed by the rule of law involves the protection of the rights, freedoms and interests of individuals, and the state's recognition of the social value of civil society institutions, which is directly reflected in structural reforms of law enforcement. One of the areas of change is the radical optimisation of criminal procedural and operational-search legislation, which is directly reflected in the practice

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of their application, in line with the Comprehensive Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023-2027[1].

With the adoption of the new Criminal Procedure Code of Ukraine[2] (CPC) in 2012, the criminal procedure has undergone significant, often conceptual changes. For procedural development and effective practical implementation of the CPC provisions, several departmental regulations were adopted to overcome the existing gaps in their enforcement. Thus, the legislator has limited the rights of the units engaged in operational and investigative activities (OIA) by defining Article 8 of the Law of Ukraine "On Operational and Investigative Activities"[3] as such, in which the norms are essentially referential to the norms enshrined in the relevant articles of Chapter 21 of the CPC of Ukraine[4], and the results of OIA are not covered by the court as evidence in criminal proceedings. At the same time, the OIA should function as a separate institution, and its relationship with the CPC and other laws should be regulated by law and comprehendible by all participants in the criminal process. However, it is worth noting that the existing gaps and inconsistencies in the legislation that appeared after the CPC of 2012 came into force resulted in shortcomings in the work of operational units of various law enforcement agencies, as the initiative to conduct operational and investigative activities within the framework of operational and investigative cases was lost, and efforts were mainly directed at fulfilling the investigator's instructions to conduct covert investigative (detective) actions in the framework of criminal proceedings.

Ukraine is possibly the first country to regulate the issue of operational and investigative activities at the level of a legislative act, however, as of 2025, there are inconsistencies between the legislation and social realities and regulatory inconsistencies. Most European countries follow the path of clear separation of criminal procedural activity and criminal intelligence activity. However, the current Law of Ukraine "On Operational and Investigative Activities"[5] does not meet such requirements. Therefore, for law enforcement agencies to be effective in combating criminal offences, there is a need to rethink the foundations of operational and investigative activities and to work on lawmaking in this area.

The topic of criminal intelligence in the activities of law enforcement agencies in Ukraine and internationally has been addressed by many scholars. J. Barlatier (2020) analysed the transformation of approaches to criminal investigations in the context of the growth of cybercrime, emphasising the transition from traditional methods to the use of criminal intelligence. The study identified four stages of the gradual loss of effectiveness of classical investigations due to the massive nature of cybercrime and proposes a holistic approach to criminal intelligence as more adapted to modern challenges. In the context of integrating international experience in the legislative regulation of criminal intelligence, the article emphasised the need to harmonise legal norms for effective data exchange between countries. This will facilitate a rapid response to transnational cyber threats and increase the effectiveness of law enforcement measures.

Subsequently, S.V. Albul (2024), in a thorough analysis of criminal intelligence in the activities of law enforcement agencies of foreign countries, in the activities of the police authorities of the Republic of Lithuania, addressed the intelligence function of the operational and investigative activities of the National Police of Ukraine. D.V. Viedienieiev & O.G. Semeniuk (2024a) conducted a study aimed at identifying the main socio-legal and operational factors that determine the place and functions of the institution (structures) of criminal intelligence of law enforcement agencies and special services in ensuring the national security of Ukraine, in combating organised crime and incorporating current threats to the national security of Ukraine in wartime. In subsequent studies, a scientific reconstruction and generalisation of the evolution of the organisational and functional structure of the criminal intelligence structures of the National Police of Ukraine as a promising means of combating organised crime and a form of operational and investigative activity was conducted (Viedienieiev & Semeniuk, 2024b). D. Usov (2024) investigated the current problems of adapting the international experience to the legislative regulation of criminal intelligence in Ukraine. The study analysed the key aspects of several practices, in the field of legal support and coordination of law enforcement agencies. In the context of the integration of international experience, the study emphasised the need to eliminate regulatory inconsistencies in national legislation. S.M. Kniaziev (2018) analysed the basics of

[1] Complex Strategic Plan for Reforming Law Enforcement Agencies as Part of the Security and Defence Sector of Ukraine for 2023-2027. (2023, May). Retrieved from https://zakon.rada.gov.ua/laws/show/273/2023#n9.
[2] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17/ed20120413#Text.
[3] 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.
[4] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17/ed20120413#Text.
[5] 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.

intelligence analytics and presented the forms and mechanisms of criminal intelligence elements used in the current conditions of the National Police.

Thus, the study aimed to examine the legal and organisational framework for the functioning of the criminal intelligence institute in law enforcement agencies of European countries and to regulate this issue at the legislative level in Ukraine. For this purpose, several research tasks were conducted:

1) critical analysis of scientific publications on the subject;

2) analysis of trends in the historical development of the institution of criminal intelligence and identification of regulatory inconsistencies related to its regulation;

3) justification of recommendations and proposals for their solution.

Materials and Methods

Certain international legal acts regulating authorised operational units of law enforcement agencies and establishing the procedure for conducting criminal intelligence activities were used. Based on the analysis of these materials, the study proposed to introduce the provisions into national legislation on criminal intelligence activities. To achieve the purpose of the study, both general scientific and special methods were used. Thus, with the help of the comparison method, the author identified the obsolescence and inconsistency of the Law of Ukraine "On Operational and Investigative Activities"[1] with the existing social and legal realities, and the inconsistency with the European practice of legislative consolidation of the criminal intelligence institute. The terminological method was used to study the terms used in international legal acts on criminal intelligence, the development and clarification of the content and scope of the concepts of criminal intelligence activities, the establishment of the relationship and subordination of concepts, their place in the conceptual framework of the theory on which the study is based. The historical and legal approach was used to determine the path of formation of criminal intelligence and the legal acts regulating it in the activities of law enforcement agencies.

The method of systematic analysis of legal acts identified inconsistencies between the provisions of the above-mentioned Law, after the adoption of the CPC of Ukraine[2], the Laws of Ukraine "On the National Police"[3], "On the National Anti-Corruption Bureau of Ukraine"[4], "On the State Bureau of Investigation"[5], "On Intelligence"[6], etc. The modelling method was used to create a model and form the doctrinal basis for the development of the draft Law of Ukraine "On Criminal Intelligence". The formal legal method determined the peculiarities of the legislative formation of criminal intelligence.

Results

The period of Ukraine's modern history has raised the issue of legal regulation of the activities of operational units in combating criminal offences, which was reflected in the adoption by the Verkhovna Rada of Ukraine on 18 February 1992 of Law of Ukraine No. 2135-XII[7]. The ongoing reform of law enforcement agencies in Ukraine and the adaptation of operational and investigative legislation to European Union standards have shown that criminal intelligence has been working effectively and continuously improving in foreign countries for many years in the fight against crime. Its main purpose is to obtain preventive operational information and assist law enforcement agencies in combating criminal offences (Blystiv, 2017). The analysis of the study shows that the term "intelligence" has been used in the activities of law enforcement agencies more actively.

In the early twentieth century, criminal intelligence was used by law enforcement agencies to combat crime. Notably, the term "Intelligence-led policing", which is popular in Europe and can be translated as "intelligence-oriented policing". This term appeared in the UK around 1990 when the Kent Police developed a new approach to combat the growth of property crime amid budget cuts. The idea was to focus on information gathering and criminal intelligence, targeting a small group of criminals responsible for most property crimes. The police responded only to emergency calls, referring others to the appropriate services. This approach improved the use of limited resources. This idea is an improvement on the concept of criminal intelligence, which emphasised proactive surveillance (Mallory, 2007).

Traditional reactive surveillance is based on a system of regular checks, rapid response to citizen

[1] 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.
[2] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17/ed20120413#Text.
[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. 1698-VII "On the National Anti-Corruption Bureau of Ukraine". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1698-18#Text.
[5] Law of Ukraine No. 794-VIII "On the State Bureau of Investigation". (2015, November). Retrieved from https://zakon.rada.gov.ua/laws/show/794-19#Text.
[6] Law of Ukraine No. 912-IX "On Intelligence". (2020, September). Retrieved from https://zakon.rada.gov.ua/laws/show/912-20#Text.
[7] 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.

calls, and the use of police officers for criminal investigations. Intelligence-led policing is therefore based on the idea that the main function of the police is to prevent and detect crime, not to respond to crimes that have already been committed (Mallory, 2007). Until the mid-50s of the twentieth century, intelligence activities were used only to a limited extent. It was only in the 1960s that intelligence units began to appear in the law enforcement agencies of foreign countries. International experience shows that since the 1970s, law enforcement agencies have been actively forming and improving such an institution as "criminal intelligence", which in most leading countries is tasked with preventive activities and providing warning information about illegal (criminal) acts and acts as a source of information for law enforcement agencies. In the late twentieth century and early twenty-first century, criminal intelligence units were established in many countries: Austria, Belgium, Canada, Finland, Greece, Mexico, the Netherlands, Sweden, Turkey, the United States, the United Kingdom, Lithuania, etc. (Blystiv, 2017).

The term criminal intelligence has also been and is used in the activities of law enforcement agencies in Ukraine. Thus, until 2015, there was a criminal intelligence unit within the Main Directorate for Combating Organised Crime of the Ministry of Internal Affairs of Ukraine[1], and in the process of reforming the Ministry of Internal Affairs of Ukraine in 2015 and creating the National Police, a criminal intelligence unit was created within the structure of the criminal police of Ukraine, whose main efforts are designed for the timely detection and termination of the activities of organised groups or criminal organisations (Motsa, 2022). The organisation and tactics of these criminal intelligence units are not regulated at the legislative level, and their activities are regulated only by departmental orders and instructions, which are mostly restricted (Podobnyi, 2016). At the legislative level in Ukraine, criminal intelligence activity as a specific type of activity has not been regulated, and therefore there is no systematic approach and tool for law enforcement agencies to counter criminal offences in the new conditions, in particular, martial law and post-war.

Scholars have different interpretations and approaches to the understanding of criminal intelligence and criminal intelligence activities in law enforcement. The very concept of intelligence, intelligence measure, intelligence activity, and intelligence information is reflected in Law of Ukraine No. 912-IX[2]. D. Usov (2024), correlating the concepts of "competitive intelligence", "economic intelligence", and "intelligence activity" in the economic sphere in the political dimension, notes that intelligence activity is a system of overt and covert, technical, social and analytical measures carried out by the subjects of the intelligence community to obtain information of an economic nature. However, the concept of criminal intelligence is discussed only at the level of scientific debate (Lemieux, 2008; Blystiv, 2017). According to I.P. Katerynchuk (2016), criminal intelligence is "the activity of obtaining, obtaining, analytical processing of information on crime trends, individual crimes and persons involved in them, forecasting options for the development of events and identifying risks".

D.V. Viedienieiev & O.G. Semeniuk (2024a) believe that criminal intelligence is a component of operational-search activities, representing a type of activity carried out by operational units of Ukrainian law enforcement agencies involving the search for, acquisition, recording, evaluation, forecasting and use of information through a system of intelligence, search, information and analytical measures, including the use of operational and operational-technical means, aimed at the timely prevention, detection and neutralisation of real and potential criminal threats to public safety, and the protection of individuals, the state and society from crime. V.A. Boyko (2021) defined criminal intelligence as a type of intelligence activity and a form of covert investigation conducted by specially authorised entities that ensure the penetration of information sources into organised criminal groups, including with the use of operational and operational-technical means, to collect intelligence on their activities and infrastructure.

Thus, criminal intelligence is a system of overt and covert actions conducted by authorised units of law enforcement and intelligence agencies to prevent, detect, stop and solve criminal offences, ensuring national, state, military and public security and law and order by searching for and recording information.

A significant role in the implementation of criminal intelligence is played by its information support. For example, R.I. Blahuta & A.V. Movchan (2020) refer to criminal intelligence as analytical intelligence, as one of the main areas of information and analytical support of the OIA, based on the organic unity of all forms of information and analytical work, which is used primarily in cases where traditional means and methods of the OIA cannot be used, are dangerous or require significant efforts or costs for the implementation. S.M. Kniaziev (2018) refers to criminal intelligence as the fundamentals of intelligence analytics as planning and management, collection, collation, evaluation, analysis, dissemination of data and

[1] Law of Ukraine No. 3341-XI "On the Organisational and Legal Foundations of the Fight Against Organised Crime". (1993, June). Retrieved from https://zakon.rada.gov.ua/laws/show/3341-12#Text.
[2] Law of Ukraine No. 912-IX "On Intelligence". (2020, September). Retrieved from https://zakon.rada.gov.ua/laws/show/912-20#Text.

re-evaluation of data. The effective involvement of an intelligence analytics unit is extremely important for law enforcement agencies in the context of providing a deeper understanding of the criminal environment and identifying methods of countering criminal groups. The tasks of intelligence include not only the desire to "know everything", i.e. to obtain intelligence but also to analyse and study certain scenarios of the situation, propose possible solutions, develop geopolitical projects and actively participate in their implementation, etc. The use of intelligence analytics makes it possible to put forward reasonable hypotheses in the process of predicting potential criminal manifestations with the subsequent implementation of appropriate measures by law enforcement and other state agencies. The use of raw information and its transformation into operational data is a sequential process that includes the stages of planning, targeting, collection, collation, assessment, analysis, dissemination and reassessment.

O.V. Bohinskyi (2017) identified criminal intelligence as a model of organising police activities based on intelligence, which involves the use of a cyclic algorithm for processing intelligence information, and the content of criminal intelligence itself closely overlaps with the analyst's work algorithm, which the analyst adjusts, incorporating the specific circumstances. T.I. Blystiv (2017) scientifically substantiated that in most economically developed countries, the activities of criminal intelligence units are aimed at collecting and analysing operationally relevant information to prevent the commission of criminal offences.

For many years, Austria, Belgium, Sweden, the United States, the United Kingdom, France, China, and Lithuania have been effectively operating and constantly improving criminal intelligence in the law enforcement system. The most common strategies that outline the criminal intelligence process are the British National Intelligence Model (Association of Chief Police Officers, 2005) and the American one (United States Department of Justice, 2003). The American "National Criminal Intelligence Sharing Plan" is an organisation of police activity based on intelligence or a model of police activity. The report of the Working Group on Criminal Justice Research and Development, issued in the United States in 1976, defines the term as follows: criminal intelligence is the systematic collection, evaluation and synthesis of data on persons suspected or known to be criminal (Department of Justice *et al.*, 2009).

A functional European model of criminal intelligence is only possible if law enforcement agencies in Member States strengthen their efforts to fully implement the concept of "intelligence-led policing" (Šebek, 2015). This also implies an organisational rethinking, shifting the focus from investigative/reactive measures to a preventive/information-oriented approach. At the EU level, the European Criminal Intelligence Model should be based on a common legal framework for intelligence management with unique procedures for intelligence collection, assessment, storage, analysis and dissemination, as well as an education and training aspect. In some countries, this model has been implemented to a large extent, while in others it has been implemented poorly. Among the former is Italy, whose experience in the field of criminal intelligence was highlighted by S. Matiz (2022). The study highlighted the difficulties of criminal intelligence activities in the presence of criminal groups with a high level of organisation, in particular the mafia. At the same time, the study noted that despite all the difficulties, Europol's achievements in criminal intelligence have proved that the European law enforcement agency is on the right track to become an effective and fully operational institution in the fight against organised crime.

It is also necessary to study the experience of other Central and Eastern European countries in the field of criminal intelligence, where these principles have not been fully implemented. According to the joint study of P. Nyeste & Ľ. Fidler (2022), in Hungary in 2018, the Law of Hungary "On the Police"[1] was amended to reflect international experience in the field of criminal intelligence. The amendments to Art. 46 (§ 2) of the above-mentioned law provided for the adoption of preventive measures to prevent crime as one of the priorities. According to it, crime prevention is not only the task of criminal intelligence units but a set of measures that also includes the maintenance of civil order and traffic police patrolling activities. To achieve the above goals, it is stipulated that the need for intelligence and covert information gathering at the organisational level, the priorities of such activities, and the implementation of tasks are constantly monitored and adjusted as necessary. It also sets out the criteria for the use of covert information gathering for crime prevention. The final stage of the regulation concerns the use of the most restricted means of information gathering for crime prevention purposes, which require judicial authorisation.

In 2017, the Criminal Procedure Code of Hungary[2] was amended to include the methods and rules of covert information gathering, which mitigated the practical problem of law enforcement agencies arising from the distinction between the regulation of the collection of secret information within criminal proceedings and criminal proceedings. P. Nyeste & Ľ. Fidler (2022) highlights that according to the

[1] Law of Hungary No. XXXIV "On the Police". (2009, November). Retrieved from https://njt.hu/jogszabaly/1994-34-00-00.124#PR.
[2] Criminal Procedure Code of Hungary. (2018, January). Retrieved from https://njt.hu/jogszabaly/2017-100-00-00.

Hungarian Criminal Procedure Law, the possible purposes of collecting classified information are: crime prevention, undercover operations, protection of persons and objects, preparation and implementation of protection programmes, and the use of technical means with court authorisation. Other purposes include international cooperation, the protection of intelligence officers and organisations, and the recruitment and protection of informants.

Hungarian criminal procedure law provides for the possibility of covertly gathering secret information without a court order and without linking it to a specific crime in the following cases: use of an informant; collection and verification of information while concealing the real purpose of the process with the help of an undercover police officer or detective; covert surveillance of a person, apartment, other room, public place or vehicle, collection of information about events and recording of what was discovered by technical means; replacing a person by a police officer to protect their life and physical integrity; obtaining data to establish the fact of communication via an electronic device or information system, to identify the device or system or determine its location; requests for data from service providers with the permission of the prosecutor. Mandatory court authorisation is required for the following measures: secret search; secret surveillance of private premises; confidential access to cargo; wiretapping; and secret monitoring of information systems[1].

In Slovakia, according to the information provided by the authors, the key role in the legal regulation of criminal intelligence is played by section 39a of the Law of Slovakia "On the Police Force"[2]. At the same time, in Slovakia, criminal intelligence is used minimally and has a limited specification compared to the EU and Europol, where it is used to study organised and transnational crime. Thus, in Slovakia, criminal intelligence is exclusively a means of collecting, concentrating and evaluating information about crimes and their perpetrators. This situation, according to P. Nyeste & Ľ. Fidler (2022), this situation requires legislative changes.

The case of Slovenia is also noteworthy, as discussed in D. Potparič (2014). Among the peculiarities of the Slovenian law enforcement system, the author highlighted the existence of separate structural units operating in the field of criminal intelligence, namely 6 regional units and the National Centre for Criminal Intelligence. The author also highlighted numerous shortcomings of criminal intelligence in this country. The study identified the following obstacles to effective criminal intelligence in Slovenia: misunderstanding of information ownership rights, ineffective use of information obtained by police to maintain power or due to lack of trust in its protection, and subjective assessment of data. The study also demonstrated that the Slovenian police have not created favourable conditions for the successful implementation of new methods, including public support for the police; education and training in criminal intelligence; improved analytical capabilities; and the use of a project-based approach to the development and implementation of the new model.

A review of the legislation of European countries has shown that the legislation defines criminal intelligence measures, and the timing and urgency of their implementation, which help the authorised law enforcement and intelligence agencies to effectively counter criminal offences. For example, German laws provide that the Federal Criminal Police Office may obtain information employing technical means without a court or prosecutor's permission regarding: the number of a mobile device and the card number used in it; the location of the mobile device[3]. According to the North Rhine-Westphalia Police Act[4] (§ 16a (note 10) "Collection of data by surveillance"), the police may collect personal data employing planned or actual surveillance that lasts 24 hours or no more than two days without a court order. Longer-term surveillance (more than two days) requires an order from the local court in the area where the police authority is located. The order must be in writing and limited to a maximum of three months. The law provides for criminal intelligence activities in urgent cases[5]. With the permission of the Head of the Federal Criminal Police Directorate, it is possible to listen to telephone conversations or record words that are not spoken in public outside the home; covert surveillance, including the use of technical means designed for surveillance to investigate or locate a person; and entry into a home by a confidential informant or undercover police officer (covert/secret investigator).

[1] Criminal Procedure Code of Hungary. (2018, January). Retrieved from https://njt.hu/jogszabaly/2017-100-00-00.
[2] Law of Slovakia "On the Police Force". (1993, July). Retrieved from https://www.slov-lex.sk/ezbierky/pravne-predpisy/SK/ZZ/1993/171/.
[3] Law of the Federal Republic of Germany "On the Federal Criminal Police Office and Cooperation Between the Federal Government and the States in Criminal Police Matters". (2017, June). Retrieved from https://www.gesetze-im-internet.de/bkag_2018
[4] North Rhine-Westphalia Police Act. (2025, May). Retrieved from https://recht.nrw.de/lmi/owa/br_text_anzeigen?v_id=3120071121100036031.
[5] Law of the Federal Republic of Germany "On the Federal Criminal Police Office and Cooperation Between the Federal Government and the States in Criminal Police Matters". (2017, June). Retrieved from https://www.gesetze-im-internet.de/bkag_2018.

Law of the Czech Republic No. 273/2008[1] provides that in urgent cases, the police and special services may initiate criminal intelligence measures, namely: interception and recording of telecommunications (including wiretapping and monitoring of e-mail); surveillance of persons and property (covert physical and electronic surveillance); use of agents (infiltration of agents into criminal groups); securing evidence (including covert actions to gather evidence); monitoring financial transactions (monitoring bank accounts and transactions); access to premises (covert entry into premises to gather evidence or install surveillance devices) but they must notify the court or prosecutor within 48 hours. This Law specifies the time limits for criminal intelligence measures, in particular: a) interception of telecommunications: initial authorisation is granted by a court for a period of up to 3 months, with the possibility of extension for the same period upon new authorisation; b) surveillance: the duration is determined by the prosecutor or the court depending on the nature of the case (up to 3 months, with the possibility of extension); c) infiltration (use of an agent) – the duration depends on the complexity of the operation and is agreed with the prosecutor or court (usually up to 6 months); d) access to premises – conducted based on a court order valid for 2-4 weeks, depending on the circumstances; e) monitoring of financial transactions is usually permitted for up to 6 months, with the possibility of extension.

The Law of France No. 2015-912[2] defines criminal intelligence measures and the timeframe for their implementation, in particular: interception of communications (conducted within 4 months); physical surveillance (up to 1 month); online search (up to 1 month by court order or with the consent of the prosecutor); infiltration (agent maintenance) is conducted as part of the operation, the timeframe varies depending on the circumstances (usually up to 6 months); control of financial transactions usually up to 3 months. The Law of the United States of America No. HR4952[3] defines the list of criminal intelligence measures and the timeframe for their implementation, including electronic surveillance (interception of telephone conversations, e-mail and other communications) – 30 days; covert entry (to install surveillance devices or collect evidence) – 10-14 days; infiltration of agents (infiltration of agents into criminal organisations); surveillance (may be conducted without a court order in the case of open monitoring; in criminal investigations, surveillance orders are normally valid for 30-60 days.

However, Ukrainian legislation does not contain the concept of operational-search measures, does not define their list, and the time limits for conducting operational-search measures, as well as covert investigative (search) actions, are provided for in the Criminal Procedural Code of Ukraine (Article 249, up to two months)[4], and OIA materials cannot be used as evidence in criminal proceedings. Following the requirements of Article 10 of Law of Ukraine No. 2135-XII[5], materials obtained through pre-investigation proceedings are used as grounds and reasons for initiating pre-trial investigation; to obtain factual data that may be evidence in criminal proceedings; to prevent, detect, stop and investigate criminal offences; reconnaissance and sabotage against Ukraine, search for persons who have committed criminal offences and persons who have disappeared without trace; to ensure the safety of court employees, law enforcement agencies and persons involved in criminal proceedings, their family members and close relatives, as well as employees of Ukrainian intelligence agencies and their close relatives, persons who confidentially cooperate or have cooperated with the intelligence agencies of Ukraine, and members of their families; for mutual information exchange between departments authorised to conduct operational and investigative activities and other law enforcement agencies; for informing state bodies per competence.

Analysis of the activities of leading law enforcement agencies shows that the main priorities of the work of authorised criminal intelligence units are gradually shifting towards a preventive (anticipatory) response to illegal acts. This can be explained by the fact that in the course of carrying out criminal intelligence activities, the authorised criminal intelligence units identify the causes and conditions that contribute to the commission of a criminal offence and take measures to eliminate them, thus preventing persons from committing illegal acts. If a crime has already been committed, measures are taken to prevent it at the stage of preparation or attempted crime to prevent grave consequences. Accordingly, the CPC of Ukraine adopted in 2012

[1] Law of the Czech Republic No. 273/2008 "On the Police of the Czech Republic". (2008, June). Retrieved from https://www.zakonyprolidi.cz/cs/2008-273.
[2] Law of France No. 2015-912 "On Intelligence Activities". (2015, July). Retrieved from https://www.legifrance.gouv.fr/loda/id/JORFTEXT000030931899.
[3] Law of the United States of America No. HR4952 "Electronic Communications Privacy Act". (1986, October). Retrieved from https://www.congress.gov/bill/99th-congress/house-bill/4952.
[4] Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17/ed20120413#Text.
[5] 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.

stipulates that the main duty of the units that conduct operational and investigative activities following the requirements of Article 7 of the Law of Ukraine No. 2135-XII "On Operational and Investigative Activities"[1] is "within their powers following the laws that constitute the legal basis for operational and investigative activities, to take the necessary operational and investigative measures to prevent, detect and stop criminal offences promptly and to expose the causes and conditions that facilitate the commission of criminal offences, to conduct preventative operations".

Based on international law and criminal intelligence experience, criminal intelligence activities can be defined as a system of overt and covert measures and means used by authorised employees of law enforcement and intelligence agencies to prevent, detect, stop and solve serious and particularly serious crimes to ensure national, state, military, public safety and law and order by searching for and recording evidence of criminal offences. The following was considered to be among the main tasks of criminal intelligence activities: prevention of criminal offences, their detection, suppression and investigation; obtaining information about events or actions (inaction) that pose a threat to national, state, military, military-technical, scientific-technical, public safety, the security of critical infrastructure and law and order; searching for persons who are hiding from pre-trial investigation bodies or courts, evading criminal punishment, as well as searching for missing persons, identifying unidentified persons and unidentified corpses; and providing criminal intelligence support for criminal proceedings.

Thus, the experience of European countries has demonstrated a division between criminal procedural activities and criminal intelligence activities, which justifies the adoption of a new Law of Ukraine "On Criminal Intelligence" which will regulate issues of operational-search measures and means, criminal intelligence proceedings, criminal analysis, the formalisation and use of the results of criminal intelligence activities, and cooperation with undercover agents, international cooperation, control and supervision of criminal intelligence activities, and which will replace the Law of Ukraine "On Operational-Search Activities" which has been amended more than 50 times since its adoption and does not comply with modern principles of law-making, its provisions are outdated and do not reflect all the changes that have taken place in legislation in the 21st century.

Discussion

In national legislation, criminal intelligence is most often associated with operational and investigative activities and analytical intelligence. To implement the best practices of leading foreign countries into national legislation and improve the relevant international cooperation between law enforcement agencies in combating criminal offences, scientific understanding and legislative regulation of criminal intelligence are required. For example, the European Criminal Intelligence Model (ECIM) is a standardised system for collecting, processing, analysing and using information, the main product of which is an assessment of organised crime threats used for intelligence management in law enforcement agencies. The Law on Criminal Intelligence adopted by the Seimas of the Republic of Lithuania on 2 October 2012 is worth a special mention. On 1 January 2013, this Law came into force, and the Law of the Republic of Lithuania "On Operational Investigative Activities" became invalid. This Law establishes the legal basis and principles of criminal intelligence activities, principles and objectives of criminal intelligence activities, rights and obligations of subjects of criminal intelligence activities, the procedure for conducting criminal intelligence activities, participation of persons in criminal intelligence activities, use of criminal intelligence information, as well as financing, coordination and control of criminal intelligence[2]. The issues of regulatory and legal regulation of criminal intelligence in their scientific works were raised by S.V. Albul & O.Y. Korystin (2015), who developed a concept for the development of criminal intelligence of internal affairs agencies, which defines the main directions and principles of improving management, organisational and staffing structures, legal, personnel, resource, scientific and other support for law enforcement activities of the bodies of the Ministry of Internal Affairs of Ukraine in this area based on the analysis and assessment of the security of the individual, the state and society in the field of combating crime. The study notes that the areas of implementation of this concept are organisational and tactical forms of criminal intelligence, operational search, operational search prevention and operational development. In addition, criminal intelligence of internal affairs agencies should be carried out during pre-trial investigation and execution of sentences.

O.V. Boginskyi (2017), analysing the introduction of the Institute of Criminal Intelligence in the activities of the National Police, stated that there is a pendulum trend in the strategic and tactical aspects

[1] 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.
[2] Law of the Republic of Lithuania Law of the Republic of Lithuania No XI-2234 "On Criminal Intelligence". (2012, October). Retrieved from https://e-seimasx.lrs.lt/portal/legalAct/lt/TAD/e9d29ac0094d11ef8e4be9fad87afa59?jfwid=-j98sgp2pc.

of development. On the one hand, there is a shift towards democratisation, widespread introduction of modern methods of working with the population, more rational use of forces and means, and combating criminal offences; on the other hand, in some aspects, there are attempts to introduce counter-reforms aimed at returning to old methods of work, including the so-called stick indicator system.

Summarising the existing experience of progressive countries, the positive results in combating criminal offences, and the legislative approach to regulating such activities, it is possible to state that the issue of transitivity of operational and investigative activities and criminal intelligence is relevant for national science and practice and requires its legislative consolidation in Ukraine. The study proposed the structure of the draft Law of Ukraine "On Criminal Intelligence", which should define the main terms used therein to facilitate legal understanding and, as a result, further enforcement of the provisions contained therein, tasks, principles, legal basis, grounds for implementation, financial and logistical support of criminal intelligence activities and criminal intelligence secrets. The structure of the Draft Law of Ukraine "On Criminal Intelligence", presented in Table 1, seems appropriate.

Table 1. Proposed structure of the law on criminal intelligence

1	Units that conduct criminal intelligence activities and their powers, training of employees, use of undercover officers, legal and social protection of subjects of criminal intelligence activities
2	Types, subjects, terms and conditions of criminal investigative measures, measures in exceptional urgent cases and under special conditions
3	Peculiarities of consideration by the court of applications for permission to conduct criminal investigative measures
4	Means of criminal intelligence activities, assistance in their use. Information and analytical support, analytical work using analytical tools, and the conclusion of analytical work in cases specified by the Criminal Procedure Code of Ukraine may be recognised as evidence in criminal proceedings. Criminal intelligence proceedings, conditions for conducting criminal intelligence, search and operational proceedings
5	Criminal intelligence support in criminal proceedings. Observance of human rights during temporary restriction of constitutional rights in the course of criminal intelligence activities
6	Procedure for notifying persons of criminal intelligence activities carried out against them
7	The procedure for protecting constitutional rights in court. Acquaintance of the prosecutor, pre-trial investigation body, investigating judge, court with criminal intelligence materials and the procedure for transferring criminal intelligence materials to the pre-trial investigation body, prosecutor
8	Use of materials from criminal intelligence activities. General terms of tacit cooperation are defined
9	Recruitment for covert cooperation Access to information about covert agents
10	Legal and social protection of persons involved in covert cooperation. Principles of international cooperation, international legal assistance in criminal intelligence activities
11	Exchange of information obtained as a result of criminal intelligence activities and participation in international operations
12	Control and supervision of criminal intelligence activities, including state, departmental and non-departmental control
13	Subjects of prosecutorial supervision. The subject of prosecutorial supervision. Competence of prosecutors who supervise the observance of the law in the course of criminal intelligence activities. Information and analytical support of prosecutorial supervision

Source: compiled by the authors

The proposed draft law, in contrast to the current and previous drafts[1,2,3,4,5] differs in that it covers the positive international experience of criminal intelligence legislation, as well as the work of scholars and practitioners of Ukrainian law enforcement agencies on criminal intelligence.

Conclusions

The Law of Ukraine "On Operational-Investigative Activity", adopted in 1992, displays all signs of moral obsolescence and structural wear and tear, and is inconsistent with existing social and legal realities, as well as with the practice of European countries,

[1] Draft Law of Ukraine No. 9187 "On Criminal Intelligence". (2006, March). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=&pf3511=27067.
[2] Draft Law of Ukraine No. 2134 "On Operational and Investigative Activities". (2008, June). Retrieved from https://ips.ligazakon.net/document/JF1NA00B.
[3] Draft Law of Ukraine No. 4778 "On Operational and Investigative Activities". (2016, June). Retrieved from https://ips.ligazakon.net/document/JH3OQ00A.
[4] Draft Law of Ukraine No. 6284 "On Operational and Investigative Activities". (2017, April). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61497.
[5] Draft Law of Ukraine No. 1229 "On Operational and Investigative Activities". (2019, September). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66597.

most of which are moving towards a clear separation of criminal procedural activity and criminal intelligence activity. However, the current Law of Ukraine "On Operational-Investigative Activity" does not fully meet these requirements, and amendments to it are considered inappropriate. For example, the law does not contain explanations of terms and the use of ambiguous definitions, the duties assigned to operational units are inconsistent with the grounds for conducting operational-investigative activities, there is no legislative provision for the support of criminal proceedings, and operational staff are deprived of the opportunity to act independently and only conduct as per the instructions of the investigator. In practice, this has led to investigators, when opening criminal proceedings for a criminal offence, first having to give operational units a formal order to establish the circumstances of the crime and conduct "all necessary investigative (search) actions". The information received in response from operational units usually forms the basis for putting forward theories about the commission of the crime, planning investigative actions, establishing priorities for the investigation, and justifying requests to the prosecutor and investigating judge regarding the need to conduct investigative (search) actions, etc. The absence of specific legal measures authorised by operational units, the uncertainty of the procedure for legalising ORD materials in criminal proceedings, the imperfection of the legislative norms on which information and analytical support are based, and the imperfection of the institution of covert cooperation. The introduction of dozens of amendments and additions, as well as the development of several comprehensive draft laws on operational and investigative activities, is essentially a further development of the current law, rather than alignment with leading foreign countries.

Therefore, the time has come to adopt a new Law of Ukraine "On Criminal Intelligence", which will replace the Law of Ukraine "On Operational and Investigative Activity", and it is inappropriate to amend it.

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Conflict of Interest

None.

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Актуальні питання інтеграції міжнародного досвіду законодавчого регулювання кримінальної розвідки в національне законодавство

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■ **Анотація.** З моменту введення в дію Кримінального процесуального кодексу України дослідники неодноразово висловлювали ідею ліквідації інституту оперативно-розшукової діяльності, обґрунтовуючи це можливістю проводити всі слідчі (розшукові) дії в межах кримінального провадження чи прийняття нового закону. Метою роботи був аналіз теоретичних і законодавчих проблем адаптації європейського досвіду регулювання цих інститутів. Для досягнення мети дослідження використано загальнонаукові та спеціальні юридичні методи дослідження: порівняльно-правовий, системно-структурний та логіко-юридичний аналіз. Встановлено, що Закон України «Про оперативно-розшукову діяльність», який було прийнято 1992 року, станом на 2025 рік має всі ознаки невідповідності нормативним, інституційним і суспільним реаліям, конструктивної зношеності й невідповідності нормам європейського права. Закон не узгоджується з прийнятим 2012 року Кримінальним процесуальним кодексом України. У статті критично проаналізовано бачення дослідниками стану й перспектив розвитку кримінальної розвідки. На основі аналізу міжнародного досвіду (Сполучені Штати Америки, Велика Британія, Федеративна Республіка Німеччина, Чеська Республіка, Словацька Республіка, Республіка Словенія, Угорщина) було виокремлено основні підходи до можливих подальших шляхів розвитку національного законодавства про кримінальну розвідку. Визначено позитивні та дискусійні аспекти кожного з них. Надано пропозиції та рекомендації щодо проєкту Закону України «Про кримінальну розвідку». Результати дослідження стануть у нагоді під час розроблення та прийняття нового законодавства в галузі кримінальної розвідки

■ **Ключові слова:** кримінально-розвідувальна діяльність; заходи; законопроєкт; правопорушення; підрозділи; оперативно-розшукова діяльність

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The structure of the motivational sphere of Ukrainian law enforcement officers

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■ **Abstract.** The relevance of this study arises from the need for a deeper understanding of the motivational sphere of Ukrainian law enforcement officers in order to improve their professional performance and enhance work efficiency. This article aimed to determine the structure of motivation within the personnel of the Ministry of Internal Affairs of Ukraine, focusing on the analysis of factors influencing their professional activities and identifying specific motivational components that shape their behaviour and work effectiveness. The study employed factor analysis, which enabled the identification and examination of the core structural components of motivation among law enforcement officers, based on data collected from 897 respondents representing different age groups, positions, and levels of experience. Standardised methodologies, adapted for the Ukrainian sample, were applied. To define the structure of the motivational sphere among Ukrainian law enforcement officers, a factor analysis procedure was used. The main findings revealed the presence of six key factors that constitute the motivational structure of law enforcement personnel. The first factor demonstrates the significant influence of social objectives, personal growth, and professional development, which in turn motivates law enforcement officers to perform effectively and strive for self-improvement. The second factor encompasses internal motivational processes, particularly goal internalisation and instrumental motivation, highlighting the importance of an intrinsic belief in the appropriateness of one's career choice and professional advancement. The third factor is associated with motives stemming from a non-autonomous choice of profession and the presence of antisocial motivations, indicating the need for a clearer understanding of one's professional role. The fourth factor emphasises the importance of striving towards challenging goals and self-realisation, where achievement motivation outweighs material incentives. The fifth factor focuses on the need for social recognition and prestige, reflecting the significance of external evaluation and social standards in motivating personnel. The sixth factor reflects the importance of a clear organisational structure and feedback mechanisms, which are essential for maintaining motivation and ensuring stability in the workplace. The practical value of the study lies in the application of its findings to optimise motivational strategies, which may enhance the effectiveness, professionalism, and job satisfaction of law enforcement officers

■ **Keywords:** motivational sphere; extreme conditions; law enforcement officer; professional activity; motivational factors; National Police of Ukraine; police activity

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Introduction

Motivation is a crucial factor influencing the effectiveness, psychological resilience, and readiness of law enforcement officers to fulfil their duties (Kolesnichenko *et al.*, 2016). This issue becomes particularly significant in the context of the ongoing war in Ukraine, where officers are not only responsible for maintaining public order but also engaged in combat operations, stabilisation measures, and the management of the aftermath of extreme situations. In this context, examining the structure of motivation among law enforcement personnel is highly relevant, as it helps to identify the key factors influencing their professional activity (Matsehora & Kolesnichenko, 2021). The motivational sphere of law enforcement officers is a complex system shaped by both internal and external factors. Internal influences include personal values, professional identity, and a sense of duty, while external factors encompass socio-economic conditions, material and technical support, and psychological assistance. In particular, external elements such as the system of social guarantees (Yudina, 2022) must be properly integrated into officers' professional motivation in order to maintain an adequate level of motivation and mitigate the adverse effects of the stressful situations they frequently encounter.

Attention must be paid to the impact of armed conflict on the motivational sphere of law enforcement officers. Increased workload, constant psychological pressure, and threats to life are factors that may alter employee motivation, directly affecting their performance in critical situations (Prykhodko *et al.*, 2019). Under such conditions, it is important not only to examine the core psychological aspects of motivation but also to develop effective methods of support and rehabilitation. These measures can help prevent burnout and stress-related disorders while sustaining a high level of professional efficiency.

Research into the motivational sphere of law enforcement personnel gains particular significance in the context of a potential staffing crisis, which may arise due to burnout, low levels of job satisfaction, and a lack of career progression opportunities. Such a crisis could result in a decline in personnel numbers – an extremely dangerous prospect in a time of martial law and heightened external and internal threats. The development of effective motivational mechanisms is therefore essential, not only to retain existing staff but also to ensure the stability of law enforcement agencies during periods of crisis.

The relevance of examining the structure of motivation among Ukrainian law enforcement officers lies in the need to optimise their professional performance, enhance psychological resilience and effectiveness, and prevent staffing crises during periods of social and political instability. The findings of this study may be applied to improve the system of professional training, implement effective psychological support strategies, and develop motivational mechanisms, all of which will contribute to strengthening public safety and law and order in Ukraine in the face of contemporary challenges.

Recent research on law enforcement motivation highlights a wide range of factors that influence work efficiency and job satisfaction. One key area of focus is motivation viewed through the lens of career development. A. Schuck's study (2020) examined how opportunities for career advancement and internal mobility affect overall motivation levels. At the same time, the development of technological innovations – such as process automation and digital tools for policing – is expected to reduce administrative burdens and increase motivation by minimising routine tasks (Laufs & Borrion, 2022).

An important aspect of motivation is the influence of organisational structures and financial incentives. K.V. Kovalenko (2020) observed that an organisational structure providing clarity and stability significantly enhances employee motivation, as it allows law enforcement officers to clearly understand their responsibilities and opportunities for development. Financial incentives – such as bonuses and performance-based rewards – also play a key role in motivating officers to achieve high levels of performance. However, according to S. Wolfe *et al.* (2019), regular training and professional development are equally important in maintaining motivation, as they help officers feel valued and professionally significant.

Organisational culture and leadership have a considerable impact on employee engagement. V. Sulimov (2024) emphasised that openness and transparency in leadership, along with a supportive environment for career development, can greatly increase motivation by fostering a sense of support and trust between staff and management. At the same time, J. Perry & L. Porter (1982) and O. Hamiza *et al.* (2020) noted that organisational policies and the external socio-political environment can significantly influence motivational factors, depending on the broader societal context and changes within it.

Equally important is the issue of job satisfaction and the balance between professional and personal life. L. Schaible (2018) and I. Burlakova *et al.* (2023) noted that law enforcement officers who are able to successfully combine work with personal life tend to demonstrate higher levels of motivation and psychological well-being. This is vital for preventing burnout and stress, which are common among law enforcement personnel due to the high levels of pressure and risk inherent in their duties. Technology also plays a significant role in motivating law enforcement officers. The use of intelligent tools in policing allows

for the optimisation of work processes, helping to reduce stress and enhance efficiency. C. Koper (2014) and N.O. Yevdokymova & M.M. Tymtsiv (2018) pointed out that technology can significantly alter officers' perceptions of their work, particularly by improving the quality of task execution.

The psychological well-being of law enforcement officers is another critical factor in sustaining motivation. K. Edwards *et al.* (2021) and J. Eiken-berry *et al.* (2023) emphasised that stress and the strategies used to manage it directly affect officers' ability to carry out their duties. As such, it is essential to implement psychological support and rehabilitation programmes to prevent emotional exhaustion and promote long-term professional resilience.

Leadership within law enforcement agencies plays a key role in fostering officers' commitment to service. M. Modise (2023) and S. Imboden (2023) examined how leadership style and managerial support contribute to building team cohesion and enhancing employee motivation. This is particularly critical in crisis situations, where public safety often depends on the effectiveness of team collaboration. Social support – through mutual aid networks, mentoring programmes, and collective support initiatives – is another important factor influencing officer motivation (Campos *et al.*, 2023). Community support can assist personnel in managing stress and improving psychological well-being.

The political climate also significantly impacts the motivation of law enforcement personnel. J. Saunders *et al.* (2019) investigated how shifts in political conditions and social environments can alter motivational drivers among police officers, particularly in countries undergoing political transformation or experiencing social conflict. Gender issues are increasingly relevant in the context of motivation within law enforcement. T. Ahmed *et al.* (2023) noted that women in law enforcement agencies often face distinct motivational challenges, including discrimination and social stereotypes, which may affect their professional engagement and overall motivation.

The analysis of contemporary scientific research demonstrates that the motivation of law enforcement officers has a multifaceted structure. Understanding this structure allows for a deeper insight into which motivational mechanisms are most effective in achieving high levels of performance within Ukraine's law enforcement system. This, in turn, enables the development of strategies aimed at increasing staff productivity, strengthening morale, and ensuring a high level of responsibility and commitment to service, particularly under conditions of martial law. This study aimed to determine the structure of the motivational sphere among Ukrainian law enforcement officers.

Materials and Methods

The study involved 897 officers of the Ministry of Internal Affairs of Ukraine, comprising 29.84% mid-ranking police personnel (from junior lieutenant to colonel) and 70.16% junior-ranking officers (from constable to senior sergeant), including both combat veterans and those without such experience. The participants ranged in age from 18 to 60. All procedures carried out in this study complied with the ethical standards of the 1964 Helsinki Declaration[1] and its subsequent amendments. Informed consent for the use of their data was obtained from all participants.

To determine the structure of the motivational sphere among law enforcement officers, standardised methods adapted to the Ukrainian sample were employed. The questionnaire developed by A.P. Moskalenko (2002) for professional psychological selection of prospective police trainees was used to assess several categories of motivation: motives related to objectively defined social goals and the nature of the profession, motives linked to personal development and professional improvement, autonomous choice of profession, non-autonomous choice of profession, motives associated with the external prestige of the profession and material well-being, motives linked to the romanticised appeal of the profession, motives aimed at compensating for characterological deficiencies, and antisocial motives (perceiving the profession as a means of satisfying personal antisocial needs). The instructions accompanying the method required participants to respond to the question of why they chose this profession by rating each of 40 statements describing the profession of a law enforcement officer on a five-point scale.

The use of the motivational profile method by S. Ritchie & P. Martin (1999) enabled the assessment of current professional motivation. This method includes the following scales: the need for a high salary and material rewards, the need for good working conditions and a comfortable environment, the need for clearly structured work and feedback, the need for social interaction, the need to form and maintain long-term stable relationships, the need for recognition from others, the need to set ambitious and challenging goals and achieve them, the need for influence and power, including a desire to lead others, the need for variety, breaks, and stimulation, with an aversion to routine, the need to be a creative and reflective worker, open to new ideas, the need for self-improvement, personal growth, and development, the need for engaging, socially meaningful work. The questionnaire comprises 33 items, each offering four response options. Respondents were required to distribute 11 points among the options based on how meaningful or relevant each one is to them.

[1] Helsinki Declaration. (1964, June). Retrieved from https://zakon.rada.gov.ua/laws/show/990_005#Text.

The Motivation Sources Inventory, developed by J.E. Barbuto & R.W. Scholl (1998), was used to identify a broad range of motivational drivers. This tool enabled the assessment of the following categories: motives related to objectively defined social goals and the nature of the profession, motives linked to personal development and professional improvement, autonomous choice of profession, non-autonomous choice of profession, motives associated with the external prestige of the profession and material well-being, motives linked to the romanticised appeal of the profession, motives aimed at compensating for characterological deficiencies, antisocial motives (perceiving the profession as a means of satisfying personal antisocial needs), the need for a high salary and material rewards, the need for good working conditions and a comfortable environment, the need for clearly structured work and feedback, the need for social interaction, the need to form and maintain long-term stable relationships, the need for recognition from others, the need to set ambitious and challenging goals and achieve them, the need for influence and power, including a desire to lead others, the need for variety, breaks, and stimulation, with an aversion to routine, the need to be a creative and reflective worker, open to new ideas, the need for self-improvement, personal growth, and development, the need for engaging, socially meaningful work, internal processes, instrumental motivation, external self-concept, internal self-concept, goal internalisation.

The methods described above were standardised for Ukrainian samples and have been repeatedly used to examine the specific features of professional motivation among military personnel and law enforcement officers in Ukraine. To determine the structure of the motivational sphere among law enforcement personnel, factor analysis was conducted using the Principal Components method, followed by Varimax rotation with Kaiser Normalization. The data were processed using SPSS 17.0.

Results and Discussion

The factor analysis revealed that six extracted factors accounted for 75.95% of the variance, indicating that the model was sufficiently robust to describe the motivational sphere of officers in the Ministry of Internal Affairs of Ukraine. This level of explained variance is considered acceptable in socio-psychological research and confirms the strong explanatory power of the identified factors. The corresponding factor matrix is presented in Table 1.

Table 1. Factor structure of the motivational and volitional sphere of Ukrainian law enforcement officers

Variables	Factors					
	1	2	3	4	5	6
Motives related to objectively defined social goals and the nature of the profession	0.88	0.11	-0.05	0.01	-0.06	-0.01
Motives linked to personal development and professional improvement	0.77	0.03	0.40	0.06	-0.01	0.05
Autonomous choice of profession	0.77	0.11	0.15	0.08	0.08	0.04
Non-autonomous choice of profession	0.18	0.04	0.87	0.07	0.03	0.01
Motives aimed at compensating for characterological deficiencies	0.77	0.09	0.42	0.01	-0.02	-0.03
Antisocial motives (perceiving the profession as a means of satisfying personal цantisocial needs)	0.34	0.07	0.83	-0.05	-0.04	0.03
The need for a high salary and material rewards	-0.02	-0.07	0.06	-0.77	0.23	-0.05
The need for clearly structured work and feedback	0.03	-0.03	0.03	0.03	-0.09	0.99
The need for recognition from others	0.01	-0.07	-0.01	-0.07	0.97	-0.09
The need to set ambitious and challenging goals and achieve them	0.07	-0.04	0.09	0.82	0.13	-0.02
Internal processes	0.06	0.81	0.13	-0.08	-0.06	-0.05
Instrumental motivation	0.01	0.81	0.15	-0.11	0.03	-0.07
Internal self-concept	0.18	0.76	-0.21	0.22	-0.03	0.06
Goal internalisation	0.10	0.81	0.01	0.06	-0.05	0.04

Note: Extraction Method: Principal Component Analysis. Rotation Method: Varimax with Kaiser Normalization. a. Rotation converged in 5 iterations.
Source: authors' research

The percentage distribution across the extracted factors was as follows: the first factor (component) accounted for 19.65% of the variance, the second for 18.42%, the third for 13.65%, the fourth for 9.69%, the fifth for 7.34%, and the sixth for 7.21%. A factor loading threshold of 0.76 was used as the significance criterion. This threshold helped to exclude indicators with low factor loadings, i.e. those that contributed minimally to a given factor. A positive factor loading indicates a direct relationship between the variable and the factor, while a negative loading reflects an inverse relationship. The first factor (informational value – 19.65%) is characterised by strong correlations with indicators related to: objectively defined social goals and the nature of the profession (0.88), personal development and professional

improvement (0.77), autonomous choice of profession (0.77), and the desire to compensate for characterological deficiencies (0.77).

This aggregation of indicators aligns with the concept of public service motivation (Breaugh *et al.*, 2018), which highlights the importance of civic responsibility, altruism, and professional self-realisation in the public sector (Vandenabeele & Schott, 2020). In particular, P. Alonso & G. Lewis (2001) argued that motivations such as protecting national interests, developing personal competencies, and fulfilling a sense of civic duty are critical for public sector employees – especially under conditions of high professional responsibility and shifting external circumstances.

This approach is supported by the research of J. Perry (1996), which demonstrates that internal value orientations – such as patriotism and self-actualisation – significantly influence the effectiveness of law enforcement services. R. Johnson (2012) also highlights that officers with a high level of public service motivation exhibit greater stress resilience and job satisfaction, both of which are critical in law enforcement work.

Furthermore, the concepts outlined by J. Heckhausen (2018) underscore the importance of intrinsic motivation and a sense of competence, which aligns with the strong loadings observed for this component. The research of E.L. Deci & R.M. Ryan (2000), within the framework of selfdetermination theory, confirms that autonomous motivation is key to sustaining high engagement and professional growth in fields with elevated levels of responsibility, such as policing.

Under wartime conditions and heightened law enforcement involvement in complex operations, the presence of this factor highlights the need to support not only external incentives but also the development of internal resources that ensure adaptability and resilience in extreme circumstances. These conclusions are supported by the findings of Y. Matsegora *et al.* (2022), who argue that professional identity and a sense of social approval shape the level of occupational motivation and performance under challenging conditions. The results obtained confirm that the integration of institutional, personal, and socio-professional factors is fundamental to shaping the motivational structure of law enforcement officers. This finding aligns with contemporary academic research and opens avenues for developing new approaches to personnel management within the law enforcement sector.

The second factor, which explains 18.42% of the variance, shows strong positive correlations with the indicators: internal processes (0.81), instrumental motivation (0.81), goal internalisation (0.81), and internal self-concept (0.76). This factor thus represents a complex of internal motivational processes, which are essential for fostering a stable professional approach under conditions of high responsibility and external uncertainty.

The high score for internal processes reflects active self-regulation and an awareness of one's own capabilities, which form the foundation for intrinsic motivation. This is consistent with recent research demonstrating the role of internal psycho-emotional processes in reducing stress responses and enhancing adaptability among law enforcement personnel (McCraty & Atkinson, 2012; Bardy *et al.*, 2020; Shvets *et al.*, 2020). instrumental motivation indicates a focus on achieving specific, measurable results in professional activity. Current studies suggest that such goal orientation not only improves task performance but also contributes to personal development through the consistent attainment of set objectives (Scarborough *et al.*, 1999). The process of goal internalisation is a key mechanism through which external demands and tasks are integrated into an individual's internal system of value orientations (Koestner *et al.*, 2014). This fosters internal coherence and enhances motivation to fulfil duties even in challenging and high-stress situations – particularly relevant for law enforcement officers operating in wartime conditions. The internal self-concept reflects levels of self-awareness, self-respect, and confidence in one's own abilities (Bigler *et al.*, 2001). Contemporary research shows that a positive self-image and a clear understanding of personal capabilities are critical for maintaining psychological resilience and high performance under intense operational pressure (Ahmed *et al.*, 2022).

The second factor highlights that an internal motivational system – based on self-regulation, goal orientation, internalisation of external tasks, and strong self-esteem – is crucial for ensuring the effectiveness of law enforcement activity. Recent scientific studies confirm that the development of internal motivational processes contributes to stress reduction, improved adaptability, and greater resilience among officers – qualities that are especially vital in conditions of high responsibility and the ongoing challenges of modern policing.

The third factor, which accounts for 13.65% of the explained variance, is characterised by strong positive correlations with the indicators of non-autonomous choice of profession (0.87) and antisocial motives (0.83). Its content is further clarified by the inclusion of the variables motives aimed at compensating for characterological deficiencies (0.42) and motives linked to personal development and professional improvement (0.40). This factor reflects situations in which the choice of a professional path is made predominantly under the influence of external factors rather than through intrinsic motivation or a conscious desire for self-realisation. A high score for nonautonomous choice of profession suggests that the decision to enter the profession may be shaped by

external influences such as family traditions, social pressure, or labour market conditions, thereby reducing personal autonomy in decision-making. At the same time, prominent antisocial motives indicate a focus on fulfilling individual needs that may not align with collective social or professional expectations.

Contemporary global research supports these findings. Scholars have noted that a low level of autonomy in choosing a profession is often accompanied by excessive reliance on external incentives, which can negatively affect long-term engagement and professional growth. When career decisions are primarily driven by external factors, they may lead to the emergence of antisocial motives, which hinder the development of a stable professional identity. Moreover, antisocial motives and externally determined career choices are often associated with a weak integration of personal value orientations with the demands of professional activity. This misalignment frequently results in lower job satisfaction and poorer adaptation in challenging conditions – an especially critical issue for law enforcement officers operating under high levels of stress.

Thus, the third factor reflects a synthesis of external influences and internal motivational conflicts, characterising a situation in which a career is chosen not as a result of a conscious desire for personal development, but as a reaction to external circumstances. Recent international studies (Korna-Opincāne & Katane, 2017; Prisniakova *et al.*, 2023) confirm that such a motivational model can have a detrimental impact on the long-term effectiveness and stability of professional performance, highlighting the need for targeted interventions to support autonomy and internal motivation among law enforcement personnel.

The fourth factor, which accounts for 9.69% of the variance, is defined by a strong positive correlation with the motivational variable of the need to set ambitious and challenging goals and achieve them (0.82), and a negative correlation with the need for a high salary and material rewards (-0.77). This suggests that, for a significant number of law enforcement officers, challenges, opportunities for self-realisation, and the achievement of professional objectives are more important than material incentives alone.

These findings are consistent with contemporary research on the motivation of law enforcement personnel in various countries. For instance, a study by G.P. Gomes *et al.* (2022) indicates that police officers who are driven by complex professional challenges tend to be more resilient to occupational burnout and report higher levels of job satisfaction. Researchers also note that such individuals are more likely to remain in the profession for longer periods than those primarily motivated by financial rewards.

According to studies by I.C. Demirkol & M.K. Nalla (2018) and D. White *et al.* (2021), modern law enforcement officers require not only financial compensation but also opportunities for development and career progression. Scholars argue that police forces face significant challenges, including high-stress levels, public scrutiny, and complex operational duties. In such demanding contexts, those who find meaning in their work and possess intrinsic motivation to pursue ambitious goals tend to perform their duties more effectively.

Moreover, the findings align with the self-determination theory developed by R.M. Ryan & E.L. Deci (2017), which posits that autonomy, competence, and a sense of meaningful engagement are core components of intrinsic motivation. Law enforcement officers who strive to achieve challenging goals are likely to experience greater autonomy in decision-making and to view their professional activities as a means of personal and career development. The negative correlation with material incentives also corresponds to the study by G. Rahman & S. Shanjabin (2022), which found that officers primarily motivated by financial rewards tend to exhibit lower emotional engagement in their duties and are more likely to experience professional dissatisfaction. Thus, the fourth factor confirms that law enforcement motivation is primarily driven by the pursuit of challenging goals, overcoming difficulties, and developing professional skills. While material incentives play a role, they are not the main drivers of effective and sustained service. This underscores the need for law enforcement leadership to create conditions that foster professional growth and allow personnel to pursue their personal ambitions.

The fifth factor, which accounts for 7.34% of the variance, is characterised predominantly by a strong positive correlation with the indicator of the need for recognition from others (0.97), whereas the variable of the need for a high salary and material rewards, shows significantly lower loading (0.23). This indicates that the motivational structure of law enforcement officers is largely shaped by non-material elements, such as social recognition, professional prestige, and the affirmation of competence.

Research confirms the critical role of social recognition as a key motivational factor. D. Mekuri & D. Kassaye (2024) noted that non-material rewards – particularly positive feedback from colleagues and the wider public – enhance intrinsic motivation and organisational commitment among staff. The desire for social recognition helps to strengthen professional identity and maintain a high level of engagement, even in demanding work environments. L. Friedlander *et al.* (2007) pointed out that a positive perception by others is an important factor in boosting self-esteem and developing a stable motivational profile, reinforcing the significance of the high correlation coefficient for the need for recognition.

K. Mittal (2023) concluded that non-material aspects of reward, such as prestige and status, have a more substantial impact on long-term motivation than purely financial incentives. D. Kumar *et al.* (2015) added that the validation of professional achievements serves as a powerful motivator for continued professional development and that in cases of insufficient internal motivation, financial rewards may not adequately compensate for a lack of social recognition.

Thus, the fifth factor indicates that social recognition is a primary driver in the formation and maintenance of strong professional motivation among law enforcement officers, while material incentives play only a secondary role. Contemporary global studies confirm that fostering and supporting this dimension of motivation is essential for improving both performance and job satisfaction in the high-stress context of modern law enforcement work.

The sixth factor (explaining 7.21% of the variance) is defined by a strong positive correlation with the variable of the need for clearly structured work and feedback (0.99). This highlights the importance of organisational structure and feedback mechanisms in enhancing motivation among law enforcement personnel. Several studies have confirmed that well-structured work and effective feedback significantly influence employee engagement and job satisfaction. For example, a 2023 study demonstrated that a well-organised work environment and supportive leadership contribute to higher levels of motivation and productivity (Ludin *et al.*, 2023). Additionally, another study found that clearly defined tasks and regular feedback reduce professional burnout and improve job satisfaction (Koval & Kolosova, 2024).

Applying these findings to the field of law enforcement agencies, it may be asserted that effective feedback mechanisms and a structured approach to professional duties are essential for strengthening motivation among officers. This not only facilitates the professional development of staff but also enhances their effectiveness in performing tasks related to public safety and law enforcement.

■ Conclusions

The findings of the factor analysis on the motivation structure of law enforcement personnel in Ukraine confirmed the necessity of integrating both internal and external motivational factors to ensure resilience and effectiveness in professional activity under conditions of high responsibility and increased stress. Strong factor loadings – particularly for components such as informational value, intrinsic motivation, social recognition, and professional development – highlight the scientific relevance of this study for exploring the motivational domain of public servants engaged in the law enforcement sector.

The developed motivation framework holds significant practical value for future research and the design of management strategies aimed at enhancing the performance of law enforcement officers. Notably, the effectiveness of professional activity during wartime and in the face of constant external challenges directly depends on the development of internal motivational processes, such as selfregulation, internal self-concept, and a focus on achieving complex goals. Therefore, integrating social, institutional and personal factors – including the promotion of social recognition and the establishment of a clear organisational structure – can substantially improve professional motivation and resilience among personnel.

Future research should focus on refining and expanding motivational models in light of changing external circumstances, such as armed conflict or socio-political transformation. Another critical area of inquiry is the examination of specific managerial strategies that foster intrinsic motivation and effective self-organisation among law enforcement officers. Considering psychological factors such as stress resistance and professional burnout is essential to developing support systems aimed at enhancing the quality and stability of law enforcement work under contemporary conditions.

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Структура мотиваційної сфери працівників правоохоронних органів України

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■ **Анотація.** Актуальність дослідження зумовлена необхідністю глибшого розуміння мотиваційної сфери працівників правоохоронних органів для вдосконалення їх професійної діяльності та підвищення ефективності роботи. Метою статті було визначення структури мотиваційної сфери правоохоронців МВС України, зокрема аналізу факторів, що впливають на їхню професійну діяльність, а також виявлення специфічних мотиваційних компонентів, які визначають поведінку й ефективність роботи співробітників. Для цього в роботі застосовано метод факторного аналізу, який надав можливість виокремити й дослідити основні структурні компоненти мотивації правоохоронців на основі даних, отриманих від 897 опитуваних, що представляють різні вікові категорії, посади та рівень досвіду. У дослідженні використано стандартизовані методики, адаптовані для української вибірки. З метою визначення структури мотиваційної сфери в українських правоохоронців використано процедуру факторного аналізу. Основні результати дослідження засвідчили наявність шести ключових факторів, які визначають мотиваційну структуру правоохоронців. Перший фактор демонструє значний вплив соціальних завдань, особистісного розвитку та професійного вдосконалення, що своєю чергою стимулює правоохоронців до ефективної роботи й самовдосконалення. Другий фактор об'єднує внутрішні мотиваційні процеси, зокрема інтерналізацію мети й інструментальну мотивацію, що вказує на значення внутрішнього переконання в правильності вибору професії та розвитку кар'єри. Третій фактор виявляє зв'язок з мотивами, пов'язаними з несамостійним вибором професії та наявністю асоціальних мотивів, що засвідчує потребу розуміння власної професійної діяльності. Четвертий фактор акцентує на важливості прагнення до складних цілей та самореалізації, де мотивація досягнення значно важливіша за матеріальні стимули. П'ятий фактор фокусується на потребі в соціальному визнанні та престижі, що свідчить про важливість зовнішніх оцінок і соціальних стандартів для мотивації співробітників. Шостий фактор відображає значення чіткої організаційної структури та зворотного зв'язку, що є важливим для збереження мотивації та стабільності в роботі. Практична цінність роботи полягає у використанні отриманих результатів для оптимізації мотиваційних стратегій, що підвищить ефективність роботи правоохоронців, їх професіоналізм і рівень задоволеності службою

■ **Ключові слова:** мотиваційна сфера; екстремальні умови; правоохоронець; професійна діяльність; мотиваційні фактори; Національна поліція України; поліцейська діяльність

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Crime provocation: ECtHR standards and their implementation in the criminal procedure of Ukraine

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■ **Abstract.** The issue of crime provocation is one of the key concerns in the field of criminal procedure and law enforcement practice, as it involves questions of human rights protection and the guarantee of a fair trial. The lack of clear criteria for distinguishing provocation from lawful actions by law enforcement agencies poses a risk to the admissibility of evidence obtained through covert investigative (search) actions. This study aimed to explore legal approaches to defining crime provocation, its implications for the admissibility of evidence in criminal proceedings, and the influence of the European Court of Human Rights case law on the practice of Ukrainian courts and national legislation. The study also sought to identify a balance between ensuring public safety and safeguarding the right to a fair trial. To achieve this aim, methods of comparative analysis, systems approach, legal-logical analysis, and interpretation of legal norms were applied, enabling a comprehensive examination of the issue of crime provocation. The research examined approaches to countering crime provocation in various countries, including the Republics of Lithuania and Latvia, Georgia, the Federal Republic of Germany, and the United States of America. The findings of the study demonstrated that crime provocation constitutes a serious violation of the right to a fair trial under Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It also contradicts the principle of the rule of law, as it may result in unlawful judicial decisions. Relevant case law of the European Court of Human Rights concerning crime provocation has been examined, alongside the practice of national courts. Characteristics of incitement to commit a crime have been analysed. The study summarised the European Court of Human Rights approaches to distinguishing lawful law enforcement activities from provocation, as well as the case law of the Supreme Court on this issue. It has been established that the case law of the European Court of Human Rights plays a decisive role in shaping standards for assessing the legality of law enforcement conduct. However, its implementation in Ukraine remains insufficient. The practical value of this study lies in the development of recommendations for improving the legal regulation of control over crime commission measures, which will contribute to enhancing the effectiveness of criminal justice and the protection of human rights

■ **Keywords**: provocation; incitement; control over crime commission measures; covert investigative (search) actions; European Court of Human Rights; agent

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Introduction

In modern society, the protection of human rights is one of the core principles underpinning a democratic state. At the same time, the effective prevention and combating of crime remains a key responsibility of law enforcement agencies. This dilemma becomes particularly acute in the context of the use of covert methods for documenting intentional criminal offences. The detection of crimes related to the illicit trafficking of narcotic substances, bribery and corruption, or offences committed by organised groups is nearly impossible without the use of covert techniques and individuals who cooperate with law enforcement on a confidential basis. These measures are aimed at gathering evidence and ensuring that perpetrators are brought to justice.

Article 23 of the 1999 Criminal Law Convention on Corruption[1] provides state parties with the right to apply special investigative techniques intended to facilitate the collection of evidence in criminal proceedings. The importance of the police's role in detecting and investigating such offences has also been acknowledged by the European Court of Human Rights (hereinafter – ECtHR), particularly in the case of Ramanauskas v. Lithuania[2]. In this case, the ECtHR noted that in order to fulfil their duties, police forces are increasingly compelled to use undercover agents, informants, and secret methods, especially in the fight against organised crime and corruption. H. Kret (2021) observes that "covert activity may be justified both by practical necessity and by the impossibility of carrying out certain investigative (search) actions or of using certain means, methods, or participants openly".

At the same time, the case law of the ECtHR and the provisions of the Criminal Procedure Code of Ukraine[3] (hereinafter – CPC of Ukraine) prohibit provoking an individual to commit a criminal offence. Provocation – understood as the artificial creation of a situation with the aim of inciting a person to commit a crime – constitutes a serious violation of the right to a fair trial under Article 6 of the 1950 European Convention on Human Rights[4] (hereinafter – the Convention) and of the principle of the rule of law. It is therefore crucial for law enforcement agencies to observe the fine line between permissible covert measures and impermissible actions that may infringe upon human rights.

The issue of crime provocation in the context of human rights protection has drawn the attention of numerous Ukrainian scholars who have analysed ECtHR case law regarding the distinction between lawful law enforcement activities and provocation. For instance, I. Berdnik & S. Tagiev (2024) have examined how the ECtHR and the Supreme Court of Ukraine assess the presence or absence of provocation by law enforcement, as well as the criteria used to identify it. The authors emphasise that the ECtHR's case law has been consistent and well-established since 1998, whereas the decisions of the Supreme Court often appear inconsistent.

Some researchers have examined crime provocation through the lens of various categories of criminal offences and law enforcement practices. E. Gladiy (2021) explored provocation in the context of covert investigative (search) actions (hereinafter – CISA), particularly concerning the documentation of official misconduct, and demonstrated that such actions may conflict with the principle of a fair trial according to ECtHR standards. The issue of provocation about the offering or receipt of undue advantage, from the perspective of European standards, has been addressed by M. Burovenskyi & V. Hutnyk (2020). O. Hura (2023) focused on provocation in cases concerning the unlawful use of humanitarian aid, as defined under Article 201-2 of the Criminal Code of Ukraine[5] (hereinafter – CC of Ukraine). In another study, O. Hura (2022) analysed the case law of the Supreme Court and the ECtHR in relation to provocation in so-called "white-collar crime" cases. The admissibility of evidence obtained as a result of provocation in criminal proceedings involving the illicit sale of narcotic substances was investigated by Ya. Pomaz (2021). All authors emphasise the need for a clear distinction between lawful law enforcement activity and unlawful incitement to commit a crime, which is essential to upholding fair trial standards per ECtHR case law.

D. Abbasova (2021), as well as I. Hrytsiuk & T. Huk (2021), examined crime provocation from an ethical and legal perspective, highlighting its negative impact on public legal consciousness, legal culture, and trust in law enforcement agencies. The issue of crime provocation has also been explored from criminal law, criminal procedure, and international legal perspectives. For example, M. Hribov *et al.* (2021) analysed provocation in bribery cases from the standpoint of both criminal law (Article 370 of the CC of Ukraine[6]) and procedural law (Article 271

[1] Criminal Law Convention on Corruption. (1999, January). Retrieved from https://zakon.rada.gov.ua/laws/show/994_101#Text
[2] Judgment of the European Court of Human Rights in Case No. 74420/01 "Ramanauskas v. Lithuania". (2008, February). Retrieved from https://hudoc.echr.coe.int/eng?i=001-84935.
[3] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[4] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[5] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[6] Ibidem, 2001.

of the CPC of Ukraine[1]), emphasising the illegality of such actions by law enforcement officers.

O. Bakaieva *et al.* (2021) investigated international approaches to involving citizens in crime prevention and control. They reviewed practices used in the USA, the United Kingdom, Germany, and other countries for engaging the public in crime-fighting efforts, and discussed the potential for adapting these models to the Ukrainian context. Y. Khyzhniak *et al.* (2022) also addressed the possibility of involving victims, witnesses, or even minors in the performance of certain tasks as part of covert investigative operations.

At the international level, the issue of crime provocation has been explored by K. Pentney (2021), who analysed the use of agents in undercover operations in EU countries, the United Kingdom, the USA, and Canada to incite participants of civil movements and protests to commit offences. She concluded that such actions by law enforcement authorities may violate an individual's right to a fair trial. F. Görlitz *et al.* (2019) examined the problem of crime provocation (entrapment) in Germany, its legal consequences, and potential regulatory approaches. The authors analysed the balance between effective control over crime commission and the protection of individual rights in the context of covert investigative methods, particularly the use of undercover agents.

Thus, researchers are examining the boundaries of permissible investigative actions, liability for crime provocation, and its regulation under both domestic and international law, drawing on the case law of the ECtHR and the Supreme Court. Some legal scholars highlight the need to clearly distinguish between lawful and unlawful means of achieving socially significant goals, especially in terms of balancing private and public interests. In the legal system of a democratic state, the use of evidence obtained in breach of legally established procedural requirements is inadmissible (Blikhar *et al.*, 2021).

This article aimed to explore the issue of balancing the state's duty to ensure public safety with the obligation to respect human rights and fundamental freedoms. Particular attention was given to analysing the legal approaches developed in the case law of the ECtHR, as well as the potential for their implementation within Ukrainian legislation. The article examined the limits of lawful interference by law enforcement authorities and proposed ways to improve the regulatory framework in this area in order to achieve a fair balance between state interests and individual rights.

Materials and Methods

The study analysed Ukrainian legislative acts governing the social relations relevant to the research topic. Chief among these is the CPC of Ukraine[2], which regulates the conduct of CISA. Additionally, the analysis took into account the provisions of the European Convention on Human Rights[3] and the Law of Ukraine No. 3477-IV "On Execution of Judgments and Application of the Case Law of the European Court of Human Rights"[4], which enable the application of ECtHR judgments in Ukrainian legal practice. Provisions of the CC of Ukraine[5], which establish criminal liability for bribery provocation, were also considered. Furthermore, decisions of the ECtHR[6,7,8,9] and the Supreme Court[10,11,12,13,14] were analysed, in which the lawfulness of law enforcement actions was assessed in relation to the balance between state interests and the rights of the individual.

The application of the historical method made it possible to trace the evolution of Ukrainian

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2] Ibidem, 2012.
[3] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[4] Law of Ukraine No. 3477-IV "On Execution of Judgments and Application of the Case Law of the European Court of Human Rights". (2006, February). Retrieved from https://zakon.rada.gov.ua/laws/show/3477-15#Text.
[5] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[6] Judgment of the European Court of Human Rights in Case No. 74420/01 "Ramanauskas v. Lithuania". (2008, February). Retrieved from https://hudoc.echr.coe.int/eng?i=001-84935.
[7] Judgment of the European Court of Human Rights in Case No. 44/1997/828/1034 "Teixeira De Castro v. Portugal". (1998, June). Retrieved from https://hudoc.echr.coe.int/eng?i=001-58193.
[8] Judgment of the European Court of Human Rights in Case No. 74355/01 "Milinienė v. Lithuania". (2005, April). Retrieved from https://hudoc.echr.coe.int/eng?i=001-68970.
[9] Judgment of the European Court of Human Rights in Case No. 54648/09 "Furcht v. Germany". (2014). Retrieved from https://hudoc.echr.coe.int/eng?i=001-147329.
[10] Decision of the Supreme Court of Ukraine in Case No. 487/2403/18. (2020, February). Retrieved from https://reyestr.court.gov.ua/Review/87517533.
[11] Decision of the Supreme Court of Ukraine in Case No. 602/253/14-к. (2019, May). Retrieved from https://reyestr.court.gov.ua/Review/81841867.
[12] Decision of the Supreme Court of Ukraine in Case No. 265/808/15-к. (2018, December). Retrieved from https://reyestr.court.gov.ua/Review/78680667.
[13] Decision of the Supreme Court of Ukraine in Case No. 522/2256/16-к. (2019, February). Retrieved from https://reyestr.court.gov.ua/Review/79957655.
[14] Decision of the Supreme Court of Ukraine in Case No. 661/1567/16-к. (2020, September). Retrieved from https://reyestr.court.gov.ua/Review/91855069.

legislation and legal norms under the influence of the case law of the ECtHR. The hermeneutic method provided a deeper understanding of the subject matter by enabling the analysis of the content of judicial decisions and the context in which they were adopted. This approach considers not only the text of a decision but also its significance within the Ukrainian legal system, taking into account historical and social factors. The chosen methodology made it possible to identify the nature of the ECtHR's influence on the structure and content of national legislation. Moreover, it contributed to a better understanding of how these decisions are interpreted and applied by Ukrainian courts in practice. The formal-legal method facilitated the identification of the specific features of the legislative regulation of Article 271 of the CPC of Ukraine[1], as well as the analysis of the relevant decisions of the Supreme Court and the ECtHR concerning the prohibition of incitement to commit a criminal offence by law enforcement authorities. The comparative analysis method was used to contrast Ukrainian legislation with that of other countries and with relevant case law. For the analysis of the legal regulation of entrapment, the approaches of Lithuania, Latvia, Georgia, Germany, and the USA were selected. Lithuania, Latvia, and Georgia – like Ukraine – are post-Soviet states that are either undergoing or have completed a comprehensive transformation of their criminal justice systems in line with ECtHR standards. Germany represents a classical continental legal system, in which the distinction between permissible and impermissible forms of state intervention is enshrined in legislation. The USA, by contrast, exemplifies a common law system where judicial precedent plays a central role in interpreting legal norms. The comparative analysis enabled the identification of similarities and differences in legislative approaches and practices across jurisdictions and allowed for the outline of the most effective mechanisms that could be implemented in Ukraine to enhance its legal system. The examination of foreign experience made it possible to understand how Ukrainian legislation has evolved and been adapted to more effectively safeguard human rights following internationally recognised standards and the case law of the ECtHR.

Results

Ukraine is currently in the process of integrating into the broader European legal system. Ukrainian legislation is gradually being aligned with the requirements of the ECtHR, taking into account the Court's case law. This view is supported by A. Poplavska (2024), who argues that, following independence, Ukraine adopted a pro-European stance, including in the development of its legal framework. L. Spytska (2024) emphasises the importance of ECtHR judgments as a source of law and their role in improving national legal practice, particularly in the area of human rights protection. The need to adapt Ukrainian legislation to ECtHR standards in order to prevent entrapment and to ensure fair trial guarantees is also highlighted by K. Antonov & T. Ivasyshyn (2019).

In 1997, Ukraine ratified the[2] Convention for the Protection of Human Rights and Fundamental Freedoms[3], and in 2006, Law of Ukraine No. 3477-IV[4] was adopted, which established the state's obligation to comply with the rulings of the ECtHR and to eliminate the causes of violations of the Convention's provisions. Prior to the adoption of the CPC of Ukraine[5] in 2012, the authority to conduct controlled and covert purchases, establish confidential cooperation, and infiltrate criminal groups was limited to operational units under the procedures set out in Law of Ukraine No. 2135XII[6]. This law did not explicitly prohibit operational units from provoking individuals to commit crimes. Meanwhile, the Criminal Code of the Ukrainian SSR 1960[7], and later the CC of Ukraine 2001[8], provided for criminal liability for the provocation of bribery, defined as "the deliberate creation by an official of a situation and conditions that induce the offering or acceptance of a bribe for the purpose of subsequently exposing the person who gave or received the bribe".

In 1998, the ECtHR delivered the judgment in Teixeira de Castro v. Portugal[9], marking the beginning of the Court's position and case law development on incitement (entrapment) to commit a crime.

[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. 475/97-BP "On Ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms, First Protocol and Protocols No. 2, 4, 7 and 11 to the Convention". (1997, July). Retrieved from https://zakon.rada.gov.ua/laws/show/475/97-%D0%B2%D1%80#Text.
[3] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[4] Law of Ukraine No. 3477-IV "On Execution of Judgments and Application of the Case Law of the European Court of Human Rights". (2006, February). Retrieved from https://zakon.rada.gov.ua/laws/show/3477-15#Text.
[5] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[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] Criminal Code of the Ukrainian SSR. (1960, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2002-05#Text.
[8] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[9] Judgment of the European Court of Human Rights in Case No. 44/1997/828/1034 "Teixeira De Castro v. Portugal". (1998, June). Retrieved from https://hudoc.echr.coe.int/eng?i=001-58193.

Subsequently, several rulings further shaped the ECtHR's practice on entrapment. In 2008, in the case of Ramanauskas v. Lithuania[1], the ECtHR found that entrapment had occurred in relation to the applicant, set out criteria that law enforcement activity must meet to be considered lawful, and definitively established the Court's stance on entrapment.

Possibly influenced by the practice of the ECtHR, the Parliament of the Republic of Lithuania adopted the Criminal Procedure Code[2] in 2002, which explicitly prohibits provoking a person to commit a crime. The Republic of Latvia followed suit in 2005 by adopting the Criminal Procedure Law[3]. Article 225 of the Latvian Law prohibits provocation as well as influencing a person through violence, threats, blackmail, or by exploiting their helpless state.

In 2012, the Verkhovna Rada of Ukraine enacted the CPC of Ukraine[4], which introduced the institution of CISA. Part three of Article 271 of the Code establishes that "during the preparation and conduct of measures to monitor the commission of a crime, it is prohibited to provoke (incite) a person to commit a crime for the purpose of its subsequent detection, including assisting a person to commit a crime they would not have committed without such influence from law enforcement agencies, or to influence the behaviour of such a person by means of violence, threats or blackmail".

Since 2001, the CC of Ukraine[5] has provided for the liability of officials, including law enforcement officers, for the provocation of bribery (Article 370). However, Ukrainian criminal law does not impose liability for the provocation of other categories of crimes committed by individuals who are not officials. For example, Georgian legislation adopts a different approach. A. Giorgidze (2022) highlights the problem of the absence of a clear prohibition on crime provocation in Georgia's criminal procedural legislation. Nevertheless, Article 145 of the Criminal Code of Georgia[6] establishes general liability for the provocation of any crime, regardless of official status or affiliation with law enforcement agencies.

F. Görlitz *et al.* (2019) propose supplementing the German Criminal Code with a specific provision that would impose liability both on law enforcement officers and private individuals who provoke a crime – that is, those who deliberately create conditions for committing a crime with the aim of criminally prosecuting the person involved. The authors also support the legislative prohibition of using evidence obtained through crime provocation. Following the ECtHR's 2014 decision in Furcht v. Germany[7], German courts adopted a stricter stance on provocation: they began to discontinue criminal proceedings if unlawful provocation was established. In this case, Furcht was convicted by German courts, which determined that although he was incited by the police, he was not provoked – that is, he was already predisposed to commit the crime, and the instigator did not create an entirely new situation but merely encouraged conduct the person might have engaged in anyway. The Federal Constitutional Court of Germany draws a distinction between permissible and impermissible provocation by defining the optimal balance for a constitutional state between an individual's right to a fair trial (Article 6 of the Convention[8]) and the public interest in ensuring the effective investigation and punishment of crimes.

Not only are countries in continental Europe concerned with the issues of provocation during covert operations. The U.S. Department of Justice (n.d.) has provided guidance to prosecutors, which indicates that crime provocation is characterised by the following features: 1) incitement by government agents to commit a crime for the purpose of subsequent prosecution; and 2) the absence of predisposition on the part of the accused to commit the criminal offence. The doctrine of entrapment aims to prevent unlawful actions by government agents that may induce innocent individuals to commit crimes. It seeks to ensure a balance between the need for effective law enforcement and the protection of citizens' rights from excessive state interference.

Some authors, including M.V. Burovenskyi & V.V. Hutnyk (2020), O. Hura (2022), and O. Marochkin (2024), argue that Ukrainian legislation lacks a clear definition of the concept of crime provocation, which creates significant difficulties in legal practice. For this reason, it is proposed to develop and enshrine a legal definition of this concept in the Criminal Code and/or the Criminal Procedure Code of Ukraine, as well as to establish a clear distinction between lawful control over crime commission and unlawful provocation.

[1] Judgment of the European Court of Human Rights in Case No. 74420/01 "Ramanauskas v. Lithuania". (2008, February). Retrieved from https://hudoc.echr.coe.int/eng?i=001-84935.
[2] Criminal Procedure Code of the Republic of Lithuania. (2002, November). Retrieved from https://www.e-tar.lt/portal/lt/legalAct/TAR.34534D019E66.
[3] Criminal Procedure Law of the Republic of Latvia. (2005, September). Retrieved from https://likumi.lv/ta/en/en/id/107820.
[4] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[5] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[6] Criminal Code of Georgia. (1999, July). Retrieved from https://matsne.gov.ge/en/document/view/16426?publication=233.
[7] Judgment of the European Court of Human Rights in Case No. 54648/09 "Furcht v. Germany" (2014). Retrieved from https://hudoc.echr.coe.int/eng?i=001-147329.
[8] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

For example, the absence of a legislative definition of the term "crime provocation", as noted by M.V. Burovenskyi & V.V. Hutnyk (2020), creates a risk of ambiguous interpretation and inconsistencies in judicial practice. Authors argue that it is necessary to develop clear criteria to distinguish provocation from permissible methods of operational investigative activity. Within the analysis of case law, particularly in cases related to so-called "white-collar crimes", O. Hura (2022) concludes that the legal regulation of this institution requires expansion. The author proposes introducing a legal definition of crime provocation, which would eliminate legal uncertainty and adapt the standards of the ECtHR to the national legal system. A similar view is expressed by O. Marochkin (2024), who, analysing the practice of the Supreme Court, notes the absence of an appropriate definition of "crime provocation" in legislation and emphasises the difficulty of distinguishing it from lawful law enforcement activities. A detailed study of the distinction between crime provocation and special investigative experiments was conducted by H. Novytskyi (2020). Author highlights the need to introduce concepts such as "passive investigative experiment" or "special investigative control", and also proposes the reinstatement of the term "operational experiment". According to him, the lack of clear legislative definitions of these terms hinders legal certainty and requires formal regulation.

Steps are being taken to distinguish between lawful law enforcement activities and actions that constitute provocation. In particular, the working group responsible for drafting the Criminal Code of Ukraine defines "crime provocation" as the "inducement of a person to commit a crime or offence with the purpose of exposing them to law enforcement authorities"[1]. Within the context of part four of Article 2.7.4 of this draft, crime provocation is understood as an act carried out by law enforcement officers or persons acting on their behalf. This approach aligns with the position of the ECtHR and the practice of the Supreme Court, as it covers not only the actions of law enforcement officers but also those of individuals acting under their direction. This is significant, given that such persons most often interact directly with potential suspects.

O. Dudorov (2020; 2022) focuses on analysing provisions of the draft new Criminal Code of Ukraine (control text as of 1 August 2024)[2] related to the regulation of crime provocation and its legal consequences. The author distinguishes between two types of provocation: "police provocation", which involves active actions by officials or their agents aimed at creating conditions (incitement) for committing a crime; and "self-provocation", which refers to actions by individuals not affiliated with law enforcement, aimed at artificially creating circumstances to persuade another person to commit a crime in order to expose them. Where provocation is carried out by a person not connected to law enforcement, that person is regarded as an instigator and is subject to criminal liability on an equal footing with the individual they provoked.

V. Veretyannikov (2020) points out that a necessary subjective element of provocation is the specific intention to expose the person being provoked. As an additional feature, the researcher identifies the presence of active conduct in situations where there are insufficient grounds to believe that the crime (for example, bribery) would have been committed without the provocative influence. The researcher's argument regarding the importance of active behaviour by law enforcement in the absence of sufficient suspicion is convincing and aligns with the ECtHR approach, which distinguishes permissible "participation" in a crime from its instigation. This approach helps to more accurately differentiate between lawful and unlawful actions in the context of conducting CISA.

Overall, the ECtHR recognises the permissibility of involving agents, understood as police officers or persons acting under their direction. The importance of involving individuals in confidential cooperation for carrying out covert operations is emphasised by M. Hribov *et al.* (2020). The involvement of agents is acceptable provided it is subject to clear limitations and safeguards. The use of evidence obtained as a result of police incitement cannot be justified by reference to public interest (as established in the case of Ramanauskas v. Lithuania[3]).

The court examines the grounds on which law enforcement agencies conduct covert operations. In particular, the court must determine whether there were objective grounds to suspect that the accused was involved in criminal activity or inclined to commit an offence before being approached by a police agent (cases Bannikova v. Russia[4] and Furcht v. Germany[5]). Relevant conclusions are also reflected in the

[1] Draft Criminal Code of Ukraine. (2024, August). Retrieved from https://newcriminalcode.org.ua/upload/media/2024/08/02/kontrolnyj-tekst-proyektu-kk-stanom-na-01-08-2024.pdf.
[2] Ibidem, 2024.
[3] Judgment of the European Court of Human Rights in Case No. 74420/01 "Ramanauskas v. Lithuania". (2008, February). Retrieved from https://hudoc.echr.coe.int/eng?i=001-84935.
[4] Judgment of the European Court of Human Rights in Case No. 18757/06. "Bannikova v. Russia". (2010). Retrieved from https://hudoc.echr.coe.int/eng?i=001-101589.
[5] Judgment of the European Court of Human Rights in Case No. 54648/09 "Furcht v. Germany" (2014). Retrieved from https://hudoc.echr.coe.int/eng?i=001-147329.

Decision of the Supreme Court of Ukraine in Case No. 266/3474/15-к[1].

An important issue for the court to establish is whether agents acting on behalf of the state merely "participated" in the criminal activity or actually caused it. In the case of Milinienė v. Lithuania[2], the ECtHR concluded that if a private individual approached the police reporting an attempt to extort an unlawful benefit, and the relevant authority authorised a covert operation to verify the legitimacy of the claim, the police actions should be regarded as "participation" in the criminal activity. The ECtHR also provides examples (Table 1) of agent behaviour during investigations that may indicate provocation – that is, initiation rather than mere participation – in committing a crime.

Table 1. Signs of provocation as formulated in ECtHR judgements

No.	Signs of provocation by an agent	ECtHR judgements
1.	Attempting to initiate contact with a person without objective grounds to consider them involved in criminal activity	Burak Hun v. Turkey[3]
2.	Attempting to establish contact with a person without objective grounds to believe they would have committed the relevant criminal offence without such intervention	Sepil v. Turkey[4]
3.	Repeating an offer despite a prior refusal, insisting and applying pressure	Ramanauskas v. Lithuania[5]
4.	Unclear reasons or personal motives prompted the undercover agent to approach the applicant on their own initiative, without informing their superiors	
5.	Attempting to elicit sympathy from the person by simulating symptoms of drug withdrawal	Vanyan v. Russia[6]
6.	Increasing the price of a drug above the usual market rate	Malininas v. Lithuania[7]
7.	Actions by undercover agents taking place outside the scope of an official operation	Teixeira de Castro v. Portugal[8]

Source: ECtHR judgements

Ukrainian courts, in addition to ECtHR practice, have also identified certain signs of provocation, some of which are presented in Table 2. Besides the signs listed in the table, the Supreme Court also pays attention to the initiative in establishing contact between the applicant and the accused, as well as the applicant's activity in subsequent interactions. Such behaviour may indicate inducement to commit a crime, which is one of the characteristic features of provocation.

Table 2. Signs of provocation as formulated in Supreme Court judgements

No.	Signs of provocation	Supreme Court judgements
1.	A "regular applicant", a person who repeatedly submitted complaints about crimes under similar circumstances	No. 487/2403/18 of 5 February 2020[9]; No. 602/253/14-к of 14 May 2019[10]
2.	The offence did not cease after the first documented episode but continued under controlled conditions with further offences	No. 265/808/15-к of 12 December 2018[11]
3.	The applicant submitted a report to law enforcement regarding the demand for an unlawful benefit before such demand actually occurred	No. 522/2256/13-к of 12 February 2019[12]
4.	Absence of a real situation or the creation of an artificial situation	No. 661/1567/16-к 23 September 2020[13]

Source: Supreme Court judgments

[1] Decision of the Supreme Court of Ukraine in Case No. 266/3474/15-к. (2020, February). Retrieved from https://reyestr.court.gov.ua/Review/87902035.

[2] Judgment of the European Court of Human Rights in Case No. 74355/01 "Milinienė v. Lithuania". (2005, April). Retrieved from https://hudoc.echr.coe.int/eng?i=001-68970.

[3] Judgment of the European Court of Human Rights in Case No. 17570/04 "Burak Hun v. Turkey". (2009, December). Retrieved from https://hudoc.echr.coe.int/eng?i=001-96228.

[4] Judgment of the European Court of Human Rights in Case No. 17711/07 "Sepil v. Turkey". (2014, February). Retrieved from https://hudoc.echr.coe.int/fre?i=001-128037.

[5] Judgment of the European Court of Human Rights in Case No. 74420/01 "Ramanauskas v. Lithuania". (2008, February). Retrieved from https://hudoc.echr.coe.int/eng?i=001-84935.

[6] Judgment of the European Court of Human Rights in Case No. 53203/99 "Vanyan v. Russia". (2006, March). Retrieved from https://hudoc.echr.coe.int/eng?i=001-71673.

[7] Judgment of the European Court of Human Rights in Case No. 10071/04 "Malininas v. Lithuania". (2008, October). Retrieved from https://hudoc.echr.coe.int/eng?i=001-87223.

[8] Judgment of the European Court of Human Rights in Case No. 44/1997/828/1034 "Teixeira De Castro v. Portugal". (1998, June). Retrieved from https://hudoc.echr.coe.int/eng?i=001-58193.

[9] Decision of the Supreme Court of Ukraine in Case No. 487/2403/18. (2020, February). Retrieved from https://reyestr.court.gov.ua/Review/87517533.

[10] Decision of the Supreme Court of Ukraine in Case No. 602/253/14-к. (2019, May). Retrieved from https://reyestr.court.gov.ua/Review/81841867.

[11] Decision of the Supreme Court of Ukraine in Case No. 265/808/15-к. (2018, December). Retrieved from https://reyestr.court.gov.ua/Review/78680667.

[12] Decision of the Supreme Court of Ukraine in Case No. 522/2256/16-к. (2019, February). Retrieved from https://reyestr.court.gov.ua/Review/79957655.

[13] Decision of the Supreme Court of Ukraine in Case No. 661/1567/16-к. (2020, September). Retrieved from https://reyestr.court.gov.ua/Review/91855069.

In the case of Nosko and Nefedov v. Russia[1], the court emphasised the need to establish a clear and foreseeable procedure in national legislation for authorising covert operations, which should be sanctioned either by a court or another independent body, along with ensuring proper oversight of their implementation. The study by L. Arkusha & O. Torbas (2021) concludes that it is advisable for controlled operations to be authorised by a court, which should verify the existence of sufficient grounds before commencing special operations, aiming to prevent provocations. At the same time, authorisation of such measures by a prosecutor is viewed as a legally justified mechanism, whereas transferring this function to the court may result in an additional burden on investigative judges without significantly improving the assessment of the grounds for control over crime commission measures. The Decision of the Supreme Court of Ukraine in Case No. 688/3517/16-K[2] notes the limited capacity to verify the absence of crime provocation. The documentation of controlled offences is carried out through CISA, which involves interference with private communications. Authorisation for these measures is granted by an investigative judge of the appellate court after verifying the presence of grounds to believe that a crime has been committed (Article 248 of the CPC of Ukraine[3]).

In the cases of Akbay and others v. Germany[4] and Ramanauskas v. Lithuania[5], the ECtHR stated that the prosecution bears the burden of proving the absence of incitement if the defendant's claims are not entirely implausible. In these cases, the defendants did not deny committing the offences but argued that their actions were provoked by law enforcement agencies.

As S. Shulhin (2024) rightly points out, in Ukrainian criminal practice, the defence frequently alleges provocation in most cases involving controlled operations, while simultaneously denying the commission of the offence itself. According to the author, this position alone does not constitute sufficient grounds for an automatic finding of provocation. The defence, in addition to making such a claim, must provide evidence supporting the allegation of provocation. Conversely, the prosecution has the duty to disprove these claims to a standard that excludes any reasonable doubt.

Significant legal conclusions regarding the issue of crime provocation were articulated by the European Court of Human Rights in the cases of Berlizev v. Ukraine[6] and Yakhymovych v. Ukraine[7]. These rulings emphasise that a person alleging provocation by law enforcement must acknowledge the fact of having committed the charged act. These principles have also been reflected in national judicial practice, notably in the Supreme Court's ruling in Case No. 454/2576/17[8], as well as in other similar proceedings. In the aforementioned case, the Supreme Court highlighted that a situation where the defendant simultaneously denies committing the crime and claims provocation by law enforcement is contradictory and does not fall within the definition of a "case of crime provocation".

In light of this practice, I. Hloviuk (2023) drew attention to the necessity for the defence to adopt a particularly cautious approach when choosing a strategy based on claims of crime provocation. This position, by its nature, implies a factual acknowledgement of having committed a criminal offence. Given the established practice, it is likely that the number of cases in which the defence simultaneously claims provocation and denies the commission of the crime will decrease in the future.

A failure to maintain a reasonable balance between private and public interests during investigations conducted by law enforcement agencies may lead to a decline in public trust in their activities. Achieving procedural justice is impossible without a proper examination and resolution of issues related to the control of crime commission, as well as ensuring a balance between private and public interests within criminal procedural legislation and law enforcement practice.

Discussion

Considering the number of cases before the ECtHR where provocation by law enforcement agencies of states party to the Convention has been established, it can be concluded that this issue is systemic in

[1] Judgment of the European Court of Human Rights in Cases Nos. 5753/09 & 11789/10 "Nosko and Nefedov v. Russia". (2015, January). Retrieved from https://hudoc.echr.coe.int/rus?i=001-147441.
[2] Decision of the Supreme Court of Ukraine in Case No. 688/3517/16-K. (2022, February). Retrieved from https://reyestr.court.gov.ua/Review/117340518.
[3] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[4] Judgment of the European Court of Human Rights in Case No. 40495/15 "Akbay and others v. Germany ". (2021, January). Retrieved from https://hudoc.echr.coe.int/fre?i=001-204996.
[5] Judgment of the European Court of Human Rights in Case No. 74420/01 "Ramanauskas v. Lithuania". (2008, February). Retrieved from https://hudoc.echr.coe.int/eng?i=001-84935.
[6] Judgment of the European Court of Human Rights in Case No. 43571/12 "Berlizev v. Ukraine ". (2021, October). Retrieved from https://hudoc.echr.coe.int/fre?i=001-210850.
[7] Judgment of the European Court of Human Rights in Case No. 23476/15 "Yakhymovych v. Ukraine". (2022, May). Retrieved from https://hudoc.echr.coe.int/ukr?i=001-214013.
[8] Decision of the Supreme Court of Ukraine in Case No. 454/2576/17. (2022, July). Retrieved from https://reyestr.court.gov.ua/Review/105218405.

nature. M. Shcherbakovskyi *et al.* (2020) identify crime provocation as one of the most serious problems arising during the investigation of corruption offences. The reasons behind such actions by law enforcement remain inconclusive; however, the influence of statistical control over crime detection rates is likely a contributing factor.

Regarding the situation in Ukraine, D. Abbasova (2021) and M. Hribov *et al.* (2021) point out that a focus on quantitative indicators can lead to breaches of legality by law enforcement agencies. The question of whether to expand the scope of the offence under Article 370 of the CC of Ukraine by introducing liability for provocation of any crime remains contentious. S. Bredun & O. Kryvets (2022), O. Babikov (2024) support this idea, whereas O. Sybal (2020) argues that control over the commission of a crime constitutes a circumstance that excludes the criminality of acts committed by law enforcement officers and those cooperating with them. V. Kartavtsev *et al.* (2020) propose extending criminal liability for crime provocation to all individuals, regardless of their status.

The question of whether to introduce criminal liability for the provocation of any crime, regardless of its type, remains a matter of debate. Firstly, law enforcement agencies cannot fully control the behaviour of individuals engaged in confidential cooperation. There are no guarantees against the risk of so-called "agent excesses" during the conduct of CISA. The individual acting as an informant and the person subject to the investigation are independent parties with different personal characteristics and behavioural patterns. For example, an agent's communicative activity may create the impression of active incitement to commit a crime. Conversely, the reserved or silent behaviour of a person maintaining secrecy may lead to a mistaken perception that the situation was instigated by the agent. Secondly, under Article 214 of the CPC of Ukraine[1], authorised bodies are obliged to initiate a pre-trial investigation upon receiving a report of a criminal offence. The existing procedural mechanism does not provide alternative methods for verifying such reports, particularly in cases of extortion of an undue advantage. Under these circumstances, the use of CISA remains the only feasible means to clarify the true intentions of the person concerned. Thirdly, there are objective difficulties in determining the genuine motives of the complainant and the goals they seek to achieve by submitting the report. It cannot be ruled out that the individual against whom a pre-trial investigation is initiated may have been provoked even before official actions by law enforcement began.

Circumstances related to the alleged provocation of a crime may be used by the defence as a basis for the dismissal of criminal proceedings. The court, within its discretion, has the right to consider such arguments when assessing the admissibility of evidence and the legality of law enforcement actions. At the same time, establishing the fact of provocation does not automatically imply the guilt of law enforcement officers in committing the offence under Article 370 of the CC of Ukraine[2]. As of the date of preparing this material, according to information from the Unified State Register of Court Decisions, there have been no convictions under Article 370 of the CC of Ukraine since 1 January 2019. This may indicate the insufficient effectiveness of the mechanism for holding individuals accountable for provoking bribery. In this regard, the question arises of whether it is appropriate to expand the range of subjects who may be held liable for provocation, as well as to broaden the categories of crimes for which such liability is possible. There are well-founded doubts about the effectiveness of such a step, given the difficulty of detecting and proving the fact of provocation. In light of this, exceptional cases may include those where serious consequences result from provocation, such as the death of the victim (Khavroniuk, 2006) or the imposition of imprisonment on the provoked individual.

It should also be noted that the CPC of Ukraine[3] does not provide a specific ground for the dismissal of criminal proceedings in cases where an offence was committed under conditions of provocation. In situations where the act has indeed been committed, both the event and the elements of the crime are considered present; therefore, there are no grounds for applying Subparagraphs 1 or 2 of Part 1, Article 284 of the CPC of Ukraine. In practice, courts sometimes dismiss such cases by referring to Clause 2 of Part 1, Article 284 of the CPC – due to the absence of elements of a criminal offence – or to Clause 3 of the same Part – due to insufficient evidence to prove the accused's guilt in court.

It would be advisable for the legislation to include effective safeguards to protect individuals who have become victims of provocations by law enforcement agencies. Two possible legislative approaches to address this issue are:

1) dismissal of criminal proceedings against the person who was provoked;

2) exemption of such a person from criminal liability due to provocation.

Exemption from criminal liability, despite its humanitarian nature, is non-rehabilitative and may negatively affect the legal status of the individual.

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[3] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

At the same time, it is important to recognise that the person, although provoked, nevertheless consented to commit the offence. As noted by O. Dudorov (2020), the original version of Article 2.5.3 of the Draft Criminal Code of Ukraine (control text as of 15 September 2020[1]) provided for exemption from criminal liability if the offence was committed as a result of provocation by law enforcement officers. This provision was later amended, and the current version of the Draft Criminal Code of Ukraine (control text as of 19 March 2025[2]) stipulates prosecution on general grounds. However, this approach raises concerns in light of the relevant case law of the ECtHR, which requires an appropriate state response when provocation is established. In this context, it seems reasonable to assume that the Draft CC of Ukraine will be revised to align with the standards developed in the case law of the ECtHR, particularly regarding the need to exempt provoked individuals from criminal liability or to recognise the absence of a criminal offence in their actions. In German judicial practice, committing an offence under provocation is sometimes considered a mitigating circumstance. Nevertheless, the existence of provocation typically does not preclude the imposition of punishment for the offence in question (Veretyannikov, 2021; Kamenskyi, 2021).

Article 2.7.4 of the Draft CC of Ukraine (control text as of 1 August 2024[3]) allowed for the possibility of giving a person the opportunity to commit a crime only if their intention to commit the relevant unlawful act had been established beforehand. This provision is absent in the Draft CC of Ukraine (control text as of 19 March 2025[4]). The involvement of law enforcement authorities in preexisting unlawful behaviour is not regarded by the ECtHR as provocation. This approach aligns with the ECtHR's position expressed in the cases of Sequeira v. Portugal[5] and Milinienė v. Lithuania[6].

To clearly distinguish lawful law enforcement activities aimed at uncovering crimes from unlawful provocation, it is advisable to establish the following criteria:

- whether the crime would have been committed without the intervention of state authorities, that is, whether the investigation was passive;
- whether there were objective grounds to believe that the person was involved in criminal activity or predisposed to committing a crime before being provoked by law enforcement;
- whether law enforcement authorities "joined" an already existing criminal activity or initiated it themselves.

The aforementioned criteria should be implemented into Ukrainian legislation to align national regulation with the legal standards of the ECtHR. While the state, through its authorised bodies, fulfils its duty to combat crime, it is simultaneously obliged to guarantee citizens' safety and ensure the protection of their rights during law enforcement activities. Effective investigation of serious intentional crimes is often impossible without conducting a CISA and involving individuals in confidential cooperation.

Achieving lawful and effective law enforcement requires a clear definition of the permissible limits of behaviour for officers of such agencies. On one hand, the law enforcement system must utilise the forms and methods provided for in criminal procedural legislation to combat crime, especially offences characterised by a high degree of concealment. On the other hand, individuals who inadvertently come under the scrutiny of law enforcement must be afforded reliable guarantees for the effective protection of their rights. It is necessary to legislatively distinguish lawful law enforcement activities aimed at detecting and documenting serious and especially serious crimes from the impermissible provocation of individuals to commit offences in order to prosecute them later – a practice that creates only the illusion of effective crime control.

Particular attention should be given to improving procedural safeguards for individuals who have been subjected to provocation. Specifically, it would be appropriate to establish a legislative basis for closing a criminal case where unlawful conduct by law enforcement officers is proven, indicating the presence of provocation. An alternative approach could be the exemption of such individuals from criminal liability under these circumstances.

Expanding the list of persons who may be held criminally liable for provoking a crime, as well as broadening the categories of crimes to which this

[1] Draft Criminal Code of Ukraine. (2020, September). Retrieved from https://newcriminalcode.org.ua/upload/media/2020/09/16/1-kontrolnyj-proekt-kk-15-09-2020.pdf.
[2] Draft Criminal Code of Ukraine. (2025, March). Retrieved from https://newcriminalcode.org.ua/upload/media/2025/03/26/kontrolnyj-proyekt-kk-19-03-2025-1.pdf.
[3] Draft Criminal Code of Ukraine. (2024, August). Retrieved from https://newcriminalcode.org.ua/upload/media/2024/08/02/kontrolnyj-tekst-proyektu-kk-stanom-na-01-08-2024.pdf.
[4] Draft Criminal Code of Ukraine. (2025, March). Retrieved from https://newcriminalcode.org.ua/upload/media/2025/03/26/kontrolnyj-proyekt-kk-19-03-2025-1.pdf.
[5] Judgment of the European Court of Human Rights in Case No. 73557/01 "Sequeira v. Portugal ". (2003, May). Retrieved from https://hudoc.echr.coe.int/ukr?i=001-44204.
[6] Judgment of the European Court of Human Rights in Case No. 74355/01 "Milinienė v. Lithuania". (2005, April). Retrieved from https://hudoc.echr.coe.int/eng?i=001-68970.

applies, does not sufficiently protect the rights of those who have fallen victim to provocation. A more effective approach would be to legislate clear boundaries for lawful conduct during CISA and to enshrine procedural guarantees for either exempting the provoked individual from liability or closing the criminal case if these boundaries are breached by law enforcement.

Conclusions

The focus of this study was the legal nature of crime provocation, its consequences for the admissibility of evidence in criminal proceedings, and the influence of the ECtHR practice on Ukrainian national legislation and judicial practice. The aim was to define the limits of permissible actions by law enforcement agencies during control over crime commission and to identify indicators of provocation, taking into account international standards.

The study analysed current Ukrainian criminal and criminal procedure legislation, the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, relevant ECtHR and Supreme Court case law, as well as legal approaches in Lithuania, Latvia, Georgia, Germany, and the USA. The analysis showed that crime provocation constitutes a serious violation of the principle of fair trial, and the use of evidence obtained through provocation contradicts the requirements of Article 6 of the Convention. It was found that ECtHR case law clearly distinguishes between the permissible involvement of law enforcement in criminal activity and the impermissible initiation of such activity. The Supreme Court is gradually adapting to these standards.

It was established that Ukrainian legislation contains a gap in the definition of "crime provocation", and the lack of a clear definition complicates law enforcement practice. The analysis of case law enabled the formulation of a consolidated list of indicators of provocation, including the initiative of agents, the artificial nature of the situation, and the activity of the complainant, among others. Comparing these with approaches from foreign jurisdictions made it possible to outline potentially effective models of legal regulation, particularly recognising provocation as grounds for the inadmissibility of evidence and the dismissal of proceedings.

In summary, the results of the study indicated that the implementation of ECtHR standards into Ukrainian legislation remains fragmented. All of the above points to the need to formalise criteria that allow for a clear distinction between lawful and unlawful actions by law enforcement during CISA. This, in turn, will help ensure a proper balance between the state's duties to guarantee security and an individual's right to a fair trial.

Future research should focus on a more in-depth empirical analysis of Ukrainian courts' practice regarding the application of the prohibition on crime provocation. In particular, attention should be given to studying the typical circumstances cited by parties in cases alleging provocation, as well as the courts' approaches to evaluating such claims and the related evidence. Such analysis may contribute to a better understanding of trends in law enforcement and the effectiveness of existing procedural safeguards.

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Провокація злочину: стандарти ЄСПЛ та їх імплементація в кримінальному процесі України

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■ **Анотація.** Проблематика провокації злочину є однією з ключових у сфері кримінального процесу та правозастосовної практики, оскільки зачіпає питання дотримання прав людини та забезпечення справедливого судового розгляду. Відсутність чітких критеріїв відмежування провокації від правомірної діяльності правоохоронних органів створює загрозу для законності доказів, отриманих під час проведення негласних слідчих (розшукових) дій. Метою дослідження було вивчення правових підходів до визначення провокації злочину, її наслідків для допустимості доказів у кримінальному процесі та впливу практики Європейського суду з прав людини на практику українських судів і національне законодавство, пошук балансу між забезпеченням безпеки громадян та гарантуванням права на справедливий судовий розгляд. Для досягнення мети дослідження використано методи порівняльного аналізу, системного підходу, логіко-правового аналізу й методи тлумачення правових норм, що надало можливість комплексно дослідити питання провокації злочину. Досліджено підходи до боротьби з провокацією злочинів у різних країнах, таких як Литовська й Латвійська Республіки, Грузія, Федеративна Республіка Німеччина та Сполучені Штати Америки. Результати дослідження засвідчили, що провокація злочину є суттєвим порушенням права на справедливий суд відповідно до ст. 6 Конвенції про захист прав людини і основоположних свобод, а також суперечить принципу верховенства права, оскільки може призвести до ухвалення незаконних судових рішень. Досліджено релевантну практику Європейського суду з прав людини щодо провокації злочину, а також практику національних судів. Проаналізовано ознаки підбурювання до вчинення злочину. Узагальнено підходи Європейського суду з прав людини щодо відмежування правомірної діяльності правоохоронних органів від провокації, а також практику Верховного Суду з цього ж питання. Встановлено, що практика Європейського суду з прав людини відіграє визначальну роль у формуванні стандартів оцінки правомірності дій правоохоронців, проте її імплементація в Україні залишається недостатньою. Практична цінність роботи полягає у формуванні рекомендацій з удосконалення правового регулювання контролю за вчиненням злочинів, що сприятиме підвищенню ефективності кримінального судочинства та забезпеченню прав людини

■ **Ключові слова:** провокація; підбурювання; контроль за вчиненням злочину; негласні слідчі (розшукові) дії; Європейський суд з прав людини; агент

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International legal status of operational cooperation between Europol and Interpol in combating transnational security threats

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■ **Abstract.** Operational cooperation between Europol and Interpol in the context of growing transnational threats requires a critical rethinking of its international legal status due to existing legal conflicts, divergent accountability standards and limited coherence of mandates. The study aimed to determine the level of legal compatibility of the forms of cooperation between the two organisations with the principles of international law and the norms of European Union law. The methodological basis was formed by formal legal, comparative legal and institutional analysis, with the use of case law of the Court of Justice of the European Union and the European Court of Human Rights. The study determined that the legal status of Europol and Interpol differs significantly in terms of institutional nature, sources of regulation and external control mechanisms, which affects the legal compatibility of their operational interaction. An analysis of joint operations, such as Emma and Opson II, demonstrated that the lack of unified procedures and a regulatory framework makes it difficult to ensure transparency, accountability and compliance with legal standards. The study determined that Europol is limited by the norms of European Union law, in particular, on the protection of personal data and human rights, while Interpol acts autonomously, outside the framework of supranational jurisdiction. A comparative analysis of the case law of the Court of Justice of the European Union and the European Court of Human Rights has confirmed the need to unify approaches to assessing the legality of operational activities within the framework of transnational cooperation. The study proved that the existing legal conflicts between the Interpol and Europol systems create risks of double jeopardy and legal liability, especially in the context of rapidly growing cross-border threats. The study concluded by proposing to consider the prospects of codifying the international legal framework for joint police action as a way to ensure legal certainty and efficiency of inter-institutional cooperation. The study concluded that the legal interaction between Europol and Interpol requires clearer regulatory regulation, incorporating the requirements of legal certainty, jurisdictional consistency and respect for fundamental rights. The practical significance of the study is determined by the formation of a conceptual framework for the development of unified international legal mechanisms for control, information exchange and responsibility in the field of joint operational activities

■ **Keywords**: court; data protection; conflict; legitimacy; jurisdiction; competence

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Introduction

The strengthening of operational cooperation between Europol and Interpol in the field of combating transnational security threats is accompanied by several international legal challenges related to the harmonisation of jurisdictions, human rights standards and compliance with the principle of legal certainty. The absence of a unified regulatory framework for the status of such cooperation raises the threat of legal fragmentation, where different interpretations of the scope of powers of both bodies may lead to conflicts between EU law and public international law. Therefore, it is necessary to revamp the legal boundaries of cooperation between supranational and intergovernmental security structures, as well as the development of a sustainable mechanism of legal accountability for actions within joint operations.

The essence of international cooperation in the fight against crime was analysed by A.R. Khomenko & V.V. Maltsev (2023) in a study on the role of Interpol as a key coordinator of transnational efforts. Using the example of combating cybercrime, the authors emphasise that the effectiveness of such actions depends primarily on the ability of Interpol to ensure prompt exchange of information and create sustainable channels of interaction with national law enforcement agencies. At the same time, the researchers draw attention to the limited legal regulation of such processes, which makes it difficult to enforce liability in case of violations when personal data is transferred or information is used beyond the originally defined purposes.

In the context of regional cooperation, the development of Europol's institutional capacity was analysed in detail by T. Dereshchuk & P. Havrylyshyn (2022) in a study on the stages of the agency's formation as a central element of the European security architecture. Particular attention is paid to the transformation of Europol's functional role from a purely coordinating one to an operationally integrated structure capable of responding directly to threats both within and outside the European Union. This highlights the growing importance of Europol within the framework of broader international efforts to counter transnational crime.

Legal personality of Interpol, enshrined in the 1956 Statute, does not provide for institutional control by European authorities. Instead, as noted by A.O. Monayenko (2023), the legal status of Europol, as defined by the EU Regulation, ensures oversight by the European Parliament and the European Commission. This asymmetry creates difficulties in the legal interaction between both organisations and creates an imbalance in transparency and accountability.

The problems of compliance of international police cooperation with the principles of the rule of law and procedural justice were addressed in detail by N. Mushak & A. Zaporozhets (2020) and G. Calcara (2021). The author emphasises the vulnerability of Interpol to political manipulation, when authoritarian regimes use the organisation's mechanisms to persecute political opponents and independent media outside jurisdiction. The study critically assessed the lack of clear legal limits on such actions and raised the question of the need for international legal regulation that would be consistent with the principles of global constitutionalism.

In this context, considerable attention is paid to the legal issues of joint operations involving Interpol, Europol and national structures by C. Freudlsperger *et al.* (2022). Using the example of the Pandora and Emma operations, the study demonstrated that the absence of a single regulatory document creates conflicts in determining the responsibility of personnel and makes it possible to violate information circulation. This issue was addressed by A. Furger (2024), emphasising the lack of a unified legal status for employees of joint investigation teams. Such legal uncertainty, according to the researcher, complicates the protection of participants in operations and leads to a blurring of the boundaries of responsibility between the involved entities.

The problem with scientific papers on the interaction between Europol and Interpol is that most address the organisational and legal framework of each institution separately, omitting a comprehensive analysis of the international legal status of operational cooperation in combating transnational security threats. The scientific discourse is mostly limited to the study of internal data exchange procedures, without considering the specifics of the legal regime that arises in cases of inter-organisational exchange of operational information. Some works analyse the legal framework of Europol's agreements with third countries or Interpol as an organisation operating outside the EU jurisdiction, but such studies rarely address the issues of liability for personal data processing, jurisdictional compatibility or the impact of EU secondary law on joint operational activities. This study partially fills this gap by providing a legal assessment of the cooperation mechanisms between Europol and Interpol, with a focus on legal conflicts arising in the areas of human rights protection, jurisdictional liability and compliance with EU standards.

An analysis of Europol's cooperation with Interpol in countering cross-border threats reveals deep contradictions between the systems of public international law on which Interpol's activities are based and the legal system of the European Union, which sets strict requirements for the protection of personal data and legal liability for their processing. The study aimed to determine the legal compatibility of cooperation between Europol and Interpol given the EU's

human rights obligations. To achieve this goal, the following tasks were set: to study the mechanisms for controlling the legality of information exchange between institutions; to assess the impact of the EU Court of Justice's case law on personal data processing on inter-organisational interaction; to identify potential threats to the legal status of individuals who become the objects of transnational operational actions.

Materials and Methods

An interdisciplinary approach aimed at legal analysis of the regulatory framework and court practice on operational cooperation between Europol and Interpol was used. The source base of the study included a set of international legal acts, treaties, and EU regulations, as well as judgments of the EU Court of Justice and administrative documents regulating the activities of Europol and Interpol. The analysis was based on the fundamental documents defining the legal status of both organisations: Interpol's 1956 Statute[1], the General Regulation of Europol[2], and the Europol-Interspol Cooperation Agreement[3]. Additionally, legal instruments that define Europol's external contractual policy, including restrictions on the transfer of personal data under the EU Charter of Fundamental Rights[4] and the General Data Protection Regulation (GDPR)[5] were examined.

In the judicial aspect, the key judgements of the Court of Justice of the European Union that are important for the legal nature of operational cooperation: the case of Melloni[6], which concerns the correlation between European standards of protection of rights and national constitutional guarantees in the context of the European Arrest Warrant, and the case of Poland v. Parliament and Council[7], which concerns the limits of competence of European institutions in the field of security and human rights. The study also analysed the accompanying case law in the field of data storage, processing and exchange, which relates to the compatibility of interstate cooperation with EU primary law.

Thus, the research methodology was based on the use of legal and dogmatic analysis, comparative legal method and case-study method. The legal and dogmatic analysis was used to systematise the legal sources governing the functioning of Europol and Interpol, competencies, mechanisms for concluding international agreements and procedural interaction with European institutions. The comparative legal method is used to analyse the differences between the supranational and intergovernmental approaches to legal personality and international responsibility in the activities of Interpol and Europol.

Results

Legal and regulatory framework for operational cooperation between Europol and Interpol: comparative legal analysis. Interpol and Europol are key in the institutional mechanism for countering transnational threats, but their legal status differs significantly both in terms of sources of regulation and the scope of legal personality. The international legal nature of Interpol stems from its foundation as an intergovernmental organisation that operates based on the voluntary participation of member states, without being part of supranational integration entities. The primary legal document that defines the organisational structure and competencies of Interpol is the 1956 Constitution[8], adopted at the 25th session of the General Assembly in Vienna. The Statute contains 44 articles that set out the basic principles of the organisation, including neutrality, voluntary participation, coordination function and non-interference in the internal affairs of states. The legal status of Interpol is based on the model of intergovernmental cooperation, within which the organisation has no powers that can directly change or bind domestic law. Interpol has a functional international legal personality, which permits agreements, provides internal budget, property, legal interests, and the ability to self-represent in legal relations with states and international organisations. One of the fundamental

[1] ICPO-Interpol Constitution. (1956, June). Retrieved from https://www.jus.uio.no/english/services/library/treaties/14/14-02/interpol-constitution.html.
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[8] ICPO-Interpol Constitution. (1956, June). Retrieved from https://www.jus.uio.no/english/services/library/treaties/14/14-02/interpol-constitution.html.

legal provisions in the Constitution[1] is Article 3, which prohibits any interference by Interpol in matters of a political, military, religious or racial nature. The application of this rule is of fundamental importance in the context of using the Red Notice mechanism, as it requires a thorough check of the request's compliance with the established legal criteria. A Red Notice is a request that Interpol sends on behalf of a member state for the temporary arrest of a person for the purpose of extradition, based on a national arrest warrant. Despite the fact that a Red Notice is not an international arrest warrant in the classical sense, its legal consequences are often equated with restrictions on personal liberty, which requires special legal care on the part of states. At the same time, Interpol's activities are characterised by the absence of a supranational control mechanism, which creates difficulties in the legal assessment of the legality of the organisation's actions or inaction. Internal control is exercised through the Interpol Control Commission for Files (CCF), which functions as an independent body responsible for reviewing complaints about data processing and reviewing requests for the deletion of records. Despite Interpol's legal autonomy, its decisions may be subject to review by domestic courts, in particular when assessing extradition requests based on Red Notices.

On the other hand, Europol operates within the institutional structure of the European Union and has a fixed legal status as an agency of the European Union following Regulation No. 2016/794[2]. This Act was adopted based on Article 88 of the Treaty on the Functioning of the European Union[3,] which provides for the establishment of a European Police Office to facilitate operational cooperation between Member States. Europol has a legal personality and operates as an independent organisational structure with a special legal regime, governed not only by the main Regulation[4,] but also by secondary legislation, and agreements with third countries and international organisations. In contrast to Interpol, Europol is subject to the EU's system of institutional control, including the powers of the European Parliament, the Council of the EU, the European Court of Auditors, and the European Data Protection Supervisor. Under Article 43[5] of the Regulation, Europol must ensure transparency of its activities, including the processing of personal data and analytical operations. Special emphasis should be placed on the provisions of Articles 18-24 of the Regulation[6], which set out the legal grounds and restrictions for the processing of intelligence, including the criteria of lawfulness, minimisation and storage of data. The legal nature of Europol determines its supranational nature: it not only coordinates the activities of law enforcement agencies of its member states but also independently initiates, develops and implements operational and analytical projects.

A comparative analysis of Interpol and Europol shows that there are significant differences in the legal mechanisms of legitimation and operation. While Interpol operates based on the coherence of interests of its member states and has no coercive powers, Europol, within the EU's jurisdiction, operates based on delegated competencies and in cooperation with supranational institutions. This difference is also evident in the control procedures: for Interpol, these are internal regulations and voluntary standards, while for Europol, judicial and administrative responsibility within the EU legal system. From the perspective of international law, Interpol is a classic intergovernmental organisation that does not fall under the jurisdiction of any international court, while Europol is directly subject to the jurisdiction of the Court of Justice of the EU, which can interpret acts, monitor the compliance of the agency's actions with Union law, and consider claims for damages. This approach provides more effective remedies for individuals whose rights may be violated as a result of Europol's actions.

The legal sources of Interpol's activities are much less detailed and limited to the Statute, general regulations and practice of the General Secretariat. In the case of Europol, a complex system of EU legal acts applies, including the founding treaties, regulations, Council and Parliamentary decisions, guidance documents, and case law of the Court of Justice of the European Union. In this context, Interpol's legal personality is functional and limited, not encompassing the classic attributes of state or supranational sovereignty. Europol, on the other hand, has a comprehensive legal personality, which includes participation in international agreements, autonomous budgetary

[1] ICPO-Interpol Constitution. (1956, June). Retrieved from https://www.jus.uio.no/english/services/library/treaties/14/14-02/interpol-constitution.html.
[2] Regulation of the European Parliament and of the Council No. 2016/794 "On the European Union Agency for Law Enforcement Cooperation (Europol) and Replacing and Repealing Council Decisions No. 2009/371/JHA, No. 2009/934/JHA, No. 2009/935/JHA, No. 2009/936/JHA and No. 2009/968/JHA". (2016, May). Retrieved from http://data.europa.eu/eli/reg/2016/794/oj.
[3] Consolidation Version of the Treaty on the Functioning of the European Union. (2016, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:4301854.
[4] Regulation of the European Parliament and of the Council No. 2016/794 "On the European Union Agency for Law Enforcement Cooperation (Europol) and Replacing and Repealing Council Decisions No. 2009/371/JHA, No. 2009/934/JHA, No. 2009/935/JHA, No. 2009/936/JHA and No. 2009/968/JHA". (2016, May). Retrieved from http://data.europa.eu/eli/reg/2016/794/oj.
[5] Ibidem, 2016.
[6] Ibidem, 2016.

policy, the ability to be a party to litigation, and to enter into international administrative arrangements with the approval of the European Commission.

Legal interaction between Europol and Interpol is structured based on treaty instruments of an inter-institutional nature that regulate the exchange of information, coordination of actions, and harmonisation of standards in the field of police cooperation. The main legal act that laid down the legal basis for official cooperation between these organisations is the Agreement on Cooperation between Europol and Interpol[1], signed on 4 December 2001 in The Hague. This agreement was based on the legal framework in force at the time of the existence of Europol as an organisation established by the 1995 Convention[2] and remains legally valid to this day based on the principle of succession.

In terms of its legal nature, the 2001 Agreement[3] is not an international treaty within the meaning of the 1969 Vienna Convention on the Law of Treaties[4], as it is not concluded between states or intergovernmental organisations in the public law sense. At the same time, it is a form of administrative agreement between an international intergovernmental organisation and a supranational agency of the European Union. The content of the agreement[5] is mainly of a coordination and technical-operational nature, but its provisions create obligations for the parties regarding the method, scope and criteria for information exchange. The agreement provides for the establishment of a joint mechanism for assessing requests, transferring analytical data, and agreeing on procedures for confidentiality and mutual protection of personal information. The agreement defines clear areas of cooperation, including the exchange of operational information, coordination of actions in investigations, exchange of databases, participation in joint trainings, and joint strategic planning. Importantly, the parties agreed to use special communication channels, particularly the Interpol I-24/7 Databases (2025) network adapted to Europol procedures, and vice versa, limited access of Interpol to the Europol information system. The legal significance of this access requires a separate qualification, as it is access to data collected following EU law, including Regulation No. 2016/794[6] and the GDPR[7], which imposes restrictions on their transfer to third parties, even international organisations. A separate group of instruments is made up of administrative arrangements and protocols of understanding, which, although they do not have the formal status of international treaties, create legal obligations of the parties that are subject to analysis from the perspective of good governance principles.

The issue of compatibility of these contractual instruments with primary and secondary EU law is of particular importance in the context of jurisdictional limitations. EU law requires that any agreements between Europol and third parties do not contradict the provisions of the founding treaties, in particular Article 16 TFEU[8] on data protection, and do not violate the principle of respect for the EU Charter of Fundamental Rights[9]. According to the judgment of the Court of Justice of the European Union in case No. C-301/06[10], any international agreement or administrative decision of an EU agency must follow the fundamental rules of Union law, including proportionality, legal certainty and respect for the rights of the persons affected by the agreements.

Contractual instruments of cooperation between Interpol and Europol must be subject to a legal assessment for compliance with the provisions of Regulation No. 2016/794[11], in particular Articles 23, 25, 26, which regulate the transfer of information to

[1] Agreement Between Interpol and Europol. (2001, November). Retrieved from https://www.europol.europa.eu/cms/sites/default/files/documents/agreement_between_Interpol_and_Europol.pdf.
[2] Europol Convention. (1995, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:41995A1127%2801%29.
[3] Agreement Between Interpol and Europol. (2001, November). Retrieved from https://www.europol.europa.eu/cms/sites/default/files/documents/agreement_between_Interpol_and_Europol.pdf.
[4] Vienna Convention on the Law of Treaties. (1969, May). Retrieved from https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf.
[5] Agreement Between Interpol and Europol. (2001, November). Retrieved from https://www.europol.europa.eu/cms/sites/default/files/documents/agreement_between_Interpol_and_Europol.pdf.
[6] Regulation of the European Parliament and of the Council No. 2016/794 "On the European Union Agency for Law Enforcement Cooperation (Europol) and Replacing and Repealing Council Decisions No. 2009/371/JHA, No. 2009/934/JHA, No. 2009/935/JHA, No. 2009/936/JHA and No. 2009/968/JHA". (2016, May). Retrieved from http://data.europa.eu/eli/reg/2016/794/oj.
[7] Ibidem, 2016.
[8] Consolidation Version of the Treaty on the Functioning of the European Union. (2016, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum:4301854.
[9] Charter of Fundamental Rights of the European Union. (2000, December). Retrieved from https://www.europarl.europa.eu/charter/pdf/text_en.pdf.
[10] Judgment of the European Court of Justice in Case No. C-301/06 "Ireland v. European Parliament and Council of the European Union". (2009, February). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0301.
[11] Regulation of the European Parliament and of the Council No. 2016/794 "On the European Union Agency for Law Enforcement Cooperation (Europol) and Replacing and Repealing Council Decisions No. 2009/371/JHA, No. 2009/934/JHA, No. 2009/935/JHA, No. 2009/936/JHA and No. 2009/968/JHA". (2016, May). Retrieved from http://data.europa.eu/eli/reg/2016/794/oj.

third parties and set requirements for mutual legal protection. Such transfers require a proper legal basis, which can be provided either by an international agreement concluded by the European Commission or by a special act of delegation of competence. However, cooperation with Interpol goes beyond the classical legal mechanism of concluding international agreements with the EU and is based on agreements subject to the principle of loyal cooperation and internal risk assessment procedures. Given the specifics of Interpol's status as an organisation that is not obliged to comply with EU law, special protection measures are required, which Europol implements in the form of technical barriers, information verification procedures and periodic audits. This correlates with the requirements of Article 36 of Regulation No. 2016/794[1], which requires Europol to provide legal and technical safeguards in the event of a transfer of personal data outside the EU. Failure to comply with these conditions entails legal liability to individuals whose rights have been violated, including through complaints to the European Ombudsman or lawsuits to the Court of Justice of the EU.

These limitations highlight the fundamental difference between Europol, as a body fully integrated into the EU legal framework, and Interpol, which operates under an autonomous international statute and avoids direct accountability to EU institutions. This divergence creates significant challenges in mutual recognition of legal standards, especially in the areas of personal data protection, legal liability, and access to legal protection. To demonstrate the systemic nature of these differences and the legal implications of operational cooperation, a comparative table (Table 1) of the key characteristics of the legal status of Europol and Interpol is provided below. The table not only summarises the regulatory sources and institutional frameworks of both organisations but also demonstrates analytical conclusions on potential legal conflicts, risk areas and options for legal harmonisation within the framework of joint activities.

Table 1. Comparative analysis of the institutional status of Europol and Interpol

Criteria	Europol	Interpol	Analytical implications for joint ventures
Legal basis	Regulation No. 2016/794[2]	Constitution of Interpol[3]	Different legal force and level of legal enforcement
Institutional subordination	European Commission, Council of the EU, control by the European Parliament	Interpol General Assembly (annual), General Secretariat	Lack of direct accountability of Interpol to EU institutions, differences in transparency and accountability
Status in international law	EU agency (secondary law entity)	An international organisation based in France	Cooperation is complicated by the lack of a unified legal framework; the need to adapt joint legal procedures
Membership	27 EU member states, special agreements with third countries	195 states	Differences in legal and political approaches pose threats to the legal homogeneity of operational cooperation
Scope of powers	Coordination, analysis, no right to arrest	Wanted notice, coordination, no investigative powers	There is a risk of legal imbalance in joint actions due to different depths of mandates and legal restrictions
Control mechanisms	European Ombudsman, RAB (data control)	Internal Commission (CCF)	The absence of a single external control mechanism makes it difficult to synchronise transparency and accountability standards

Source: compiled by the authors

A comparative analysis of the legal status of Europol and Interpol shows significant differences in their institutional nature, scope of competence and accountability, which directly affects the formats and legal boundaries of operational cooperation. The difference in control mechanisms, in particular, the lack of judicial oversight in Interpol, similar to that of the EU Court of Justice, makes it difficult to unify human rights standards within joint operations. In addition, the level of integration of Europol into the EU regulatory framework creates an obligation to comply with confidentiality standards and procedural safeguards, while Interpol is mainly guided by internal procedures. These institutional differences create an asymmetric model of operational cooperation that requires additional coordination and legal harmonisation mechanisms. The effectiveness of joint actions depends to a large extent on the legal compatibility of the structures involved in transnational security measures.

[1] Regulation of the European Parliament and of the Council No. 2016/794 "On the European Union Agency for Law Enforcement Cooperation (Europol) and Replacing and Repealing Council Decisions No. 2009/371/JHA, No. 2009/934/JHA, No. 2009/935/JHA, No. 2009/936/JHA and No. 2009/968/JHA". (2016, May). Retrieved from http://data.europa.eu/eli/reg/2016/794/oj.
[2] Ibidem, 2016.
[3] ICPO-Interpol Constitution. (1956, June). Retrieved from https://www.jus.uio.no/english/services/library/treaties/14/14-02/interpol-constitution.html.

In the context of the current stage of legal evolution of cooperation between Interpol and Europol, there is a tendency to hybridise the sources of law by combining the rules of international administrative law, secondary EU law and the practice of self-regulation between institutions. Such a structure is the result of a pragmatic need to respond quickly to transnational threats, but at the same time creates legal uncertainty in terms of the hierarchy of sources, control mechanisms and human rights guarantees. The issue of transparency of such treaty mechanisms remains particularly important.

The contractual and legal framework for cooperation between Interpol and Europol comprises a set of legal, administrative and procedural mechanisms that, despite their non-fragmentary legal nature, have a significant impact on the international legal practice of cooperation in the field of combating organised crime. From a legal point of view, the interaction between the two institutions is based on functional compatibility but requires further legal formalisation, in particular through the conclusion of a new generation of agreements. The alignment of the contractual and legal framework for cooperation between Interpol and Europol with European standards takes place in the context of the heterogeneity of their legal models, which necessitates a procedural balance between international autonomy and supranational regulation. This balance becomes especially important in the context of concluding external agreements with third parties, where interaction between the two structures should not only ensure the effectiveness of the fight against transnational crime but also meet the requirements of legal certainty and democratic control.

The legal mechanism of cooperation between Interpol and Europol with third parties is characterised by a complex contractual and legal structure that reflects the differences in the international legal status of both organisations and the differences in legal approaches to concluding agreements. Given that Interpol is an intergovernmental organisation operating under its 1956 Charter[1], it has the autonomy to enter into international agreements with third states and organisations based on decisions of the General Assembly or the Executive Committee. In this context, Interpol's treaty practice is of a classic nature, typical of international organisations, and does not provide for supranational control by bodies similar to EU institutions. In the case of Europol, the situation is fundamentally different, as it functions as an agency of the European Union, whose activities are regulated by Regulation (EU) 2016/794[2]. This Regulation establishes a clear procedure for entering into agreements with third parties, providing for approval by the European Commission and the European Parliament, as well as compliance with the Union's legal standards, in particular in terms of personal data protection.

A key element of the legal analysis is the consideration of the legal form of agreements between Europol and third countries, which are divided into strategic and operational agreements. Strategic agreements provide for a general framework of cooperation without the exchange of personal data, while operational agreements include provisions on the transfer and processing of personal information, which significantly increases the level of legal requirements. The Regulation requires an adequate level of legal protection in the partner's jurisdiction, which is determined by an assessment by the Commission or by the introduction of special contractual safeguards. If the assessment reveals that the standards of the partner state do not comply with EU standards, the conclusion of an agreement or data exchange is deemed impossible. In this context, the principle of "adequacy" applies or the so-called "special safeguards" is relevant, which are enshrined directly in the texts of the agreements. On the part of Interpol, agreements with third parties are more flexible, as they do not oblige the organisation to comply with EU standards. However, this creates risks of fragmentation of legal approaches to information exchange and complicates the unification of procedures, especially in the context of parallel cooperation with Europol. In some cases, Europol is forced to restrict the transfer of information received from Interpol to third countries that do not guarantee adequate protection, which creates complex legal conflicts. These conflicts are particularly acute in cases where non-member states of the Council of Europe request access to information collected through cooperation between Interpol and Europol.

European institutions play a central role in ensuring the legal legitimacy of Europol's external contractual activities. In particular, the EU Commission acts as a legal auditor of agreements with third countries, providing assessments of the compliance of partner countries' legal systems with EU law. The European Parliament monitors the fulfilment of Europol's obligations to comply with the principles of EU law and has the power to raise objections to the conclusion of certain agreements. The Council of the EU sets the

[1] ICPO-Interpol Constitution. (1956, June). Retrieved from https://www.jus.uio.no/english/services/library/treaties/14/14-02/interpol-constitution.html.

[2] Regulation of the European Parliament and of the Council No. 2016/794 "On the European Union Agency for Law Enforcement Cooperation (Europol) and Replacing and Repealing Council Decisions No. 2009/371/JHA, No. 2009/934/JHA, No. 2009/935/JHA, No. 2009/936/JHA and No. 2009/968/JHA". (2016, May). Retrieved from http://data.europa.eu/eli/reg/2016/794/oj.

political priorities for Europol's external activities, including mandates to negotiate agreements with key strategic partners. This tripartite system of institutional control strengthens Europol's legal responsibility for compliance with primary and secondary law.

In the context of analysing the legal consequences of concluding agreements with states that deny the jurisdiction of international courts, it is particularly relevant to consider specific examples of such agreements. Such cases illustrate a potential threat to the effectiveness of international justice and raise concerns in terms of compliance with the principle of the inevitability of legal responsibility. In particular, the United States has not ratified the Rome Statute of the International Criminal Court[1] (ICC), despite initially signing it in 2000. In 2002, the George W. Bush administration officially withdrew its signature (United States efforts…, 2000), declaring that the ICC's jurisdiction over American citizens was unacceptable. Since then, the United States has been actively seeking to enter into bilateral agreements with other states under Article 98 of the Rome Statute, which prohibits the transfer of US citizens to the ICC without the consent of the US government. Such agreements have been concluded with more than 100 countries, many of which are parties to the Rome Statute, which has led to a conflict between the international obligations of these countries and political pressure from Washington. The practice of bilateral agreements by the United States has been criticised by human rights organisations as undermining the principle of the ICC's general jurisdiction. This approach illustrates the deep institutional distrust of the United States in the mechanisms of international criminal justice. As a result, the situation with the US position on the ICC is indicative of the limits of political realism in international law and the selectivity of its application.

Israel, in turn, has a consistent position of non-recognition of the jurisdiction of the International Criminal Court (ICC), which was particularly expressed after the announcement in 2021 of an official investigation into alleged crimes in the occupied Palestinian territories, including the Gaza Strip, the West Bank and East Jerusalem (Situation in the State of Palestine..., 2024). Despite the fact that Palestine was recognised by the ICC as a state party to the Statute in 2015, Israel does not recognise its statehood and therefore the Court's jurisdiction over the situation in these territories. Israeli officials have officially stated that the ICC "has no mandate" to investigate, as it is not authorised to consider disputes over territories whose status is subject to political negotiations. In response, the ICC stressed that its mandate does not depend on the recognition of the parties, but is conditioned by the jurisdictional power under the Rome Statute[2]. The situation reveals a deep conflict between international legal mechanisms and political approaches to conflict regions. Israel's refusal to cooperate impedes the implementation of key procedural steps, such as the collection of evidence, interrogation of witnesses, and execution of warrants. This undermines the principle of the universality of criminal justice and sets a precedent for selective implementation of international law. In addition, this position calls into question the effectiveness of international justice as a tool to combat impunity for international crimes. The absence of dialogue on the part of a state with a developed legal system also makes it difficult to develop common standards for responding to humanitarian violations.

In 2025, Hungary became the first European Union member state to initiate the procedure for withdrawal from the Rome Statute of the International Criminal Court (ICC). This decision was made after Israeli Prime Minister Benjamin Netanyahu visited Budapest, despite an arrest warrant issued by the ICC for alleged war crimes in Gaza. Prime Minister Viktor Orban said that the ICC had become a "political tool" and that Hungary would not comply with its decisions (Reuters, 2025). The country's parliament approved the bill on 20 May 2025, officially launching the withdrawal process, which will take effect one year. The move has raised concerns among other EU members and international human rights organisations. The European Commission has warned that ignoring the ICC warrant violates Hungary's international obligations and could damage its reputation. Critics also point out that Hungary's withdrawal from the ICC undermines the efforts of international justice and the fight against impunity for the most serious crimes. This precedent calls into question the unity of the European Union's position in support of international criminal justice and could have long-term implications for justice cooperation and human rights in the region.

Concluding agreements or making political decisions that negate the jurisdiction of international judicial institutions has significant legal consequences. It contributes to the formation of gaps in the global justice system, reduces the effectiveness of international legal mechanisms and creates a threat of selective application of international law depending on political expediency. In such cases, legal interaction should be subject to restrictions that ensure that the information obtained cannot be used to violate fundamental rights or in politically motivated persecution. In view of this, the texts of agreements often contain provisions on limited scope or establish suspension mechanisms in case of violations. This practice

[1] Rome Statute of the International Criminal Court. (1998, July). Retrieved from https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf.
[2] Ibidem, 1998.

demonstrates the European Union's desire to promote human rights standards in its external activities, even within the framework of interagency cooperation.

The legal mechanism for Europol and Interpol cooperation with third parties has a multi-level structure that combines the international legal autonomy of Interpol with supranational legal requirements for Europol. The main limiting factors remain the standards of personal data protection and human rights, which take precedence over political or security considerations in the EU legal order. Therefore, the future development of such cooperation depends on the ability to harmonise contractual approaches and ensure systematic control over the compliance of international cooperation practices with the fundamental principles of EU law. The issue of legal liability in joint operations of Europol and Interpol is directly related to the peculiarities of their contractual and legal status and the nature of their interaction with third parties, which is determined by both institutional boundaries and standards of the EU legal order. Despite the common interest in countering transnational threats, their cooperation is carried out in different legal systems, which makes it impossible to introduce a unified approach to liability for offences. This legal fragmentation creates gaps in the regulation of cases of unlawful information sharing or abuse within the framework of joint actions, including the lack of clear procedures for determining liability for data privacy violations, as well as insufficient mechanisms for monitoring compliance with information protection standards. The uncertainty regarding the entity that is obliged to compensate for damages in the event of misconduct in the course of cooperation between different jurisdictions is particularly acute. Therefore, the issue of harmonising legal standards and formalising the distribution of responsibility between agencies is a key element in ensuring the legitimacy and effectiveness of operational cooperation.

Operational cooperation between Interpol and Europol, as well as with other law enforcement agencies, raises several legal challenges related to legal uncertainty regarding liability for the consequences of joint actions, data exchange and the status of the persons involved. One of the most pressing issues is the problem of legal liability for damage that may arise as a result of information exchange between organisations or during joint operational activities. In particular, the question arises as to which entity – Europol, Interpol or national law enforcement agencies – is legally responsible in the event of a violation of a person's rights as a result of actions based on false or illegally transmitted data. The absence of a defined mechanism for allocating responsibility complicates the process of protecting the rights of persons subject to investigative or operational measures.

In this context, the issue of compliance of such actions with the European standards of personal data protection established, in particular, by the GDPR[1] and Regulation No. 2016/794[2] becomes particularly relevant. When data is transferred from one organisation to another, and then to national law enforcement agencies, there is a multi-stage responsibility that does not have a single point of control. This questions the effectiveness of appeal mechanisms and legal protection of the individual, as none of the parties recognises itself as solely responsible for the violation. In addition, the lack of court decisions that would set a precedent in this area further exacerbates legal uncertainty. Another systemic challenge is the absence of a single regulatory act that would comprehensively regulate operational cooperation between law enforcement agencies of EU member states, Interpol and Europol. The existing legal framework consists of fragmented regulations, memoranda of understanding, internal instructions and regulations, which are often departmental in nature and do not have the status of sources of international or supranational law. Such legal pluralism creates a legal vacuum in situations requiring unified standards, for example, in cases of interference with privacy, restrictions on freedom of movement or the enforcement of procedural measures. In this context, the legitimacy of operational measures taken on the basis of data obtained through channels that do not provide for full verification of their legal origin is particularly problematic. Another challenge is the legal status of experts, analysts and employees involved in joint investigative teams or operational units operating under bilateral or multilateral agreements between Europol, Interpol and national authorities. The EU law does not establish a clear status of such persons, in particular, regarding their procedural status, the obligation to comply with the national legislation of the host state, as well as jurisdiction in case of offences committed by them. The absence of a unified regulatory approach makes it difficult to determine the legal regime of their activities and leads to potential conflicts of jurisdiction, especially in cases where employees of one state perform actions on the territory of another without direct national legitimation. The situation is particularly critical when it comes to the application of coercive measures within a joint investigation team formed following Council

[1] Regulation of the European Parliament and of the Council No. 2016/794 "On the European Union Agency for Law Enforcement Cooperation (Europol) and Replacing and Repealing Council Decisions No. 2009/371/JHA, No. 2009/934/JHA, No. 2009/935/JHA, No. 2009/936/JHA and No. 2009/968/JHA". (2016, May). Retrieved from http://data.europa.eu/eli/reg/2016/794/oj.
[2] Ibidem, 2016.

Framework Decision on Joint Investigation Teams[1]. Although this document establishes general rules for the establishment of such groups, it does not contain sufficiently specific provisions on the procedural autonomy of Europol officers or invited experts within the jurisdiction of a foreign state. As a result, there is a legal conflict between the rules of national criminal procedure and the interagency instructions based on which the joint team functions. This situation is particularly dangerous in view of the possibility of violating the rights of detainees or persons subject to operational and investigative measures without proper control by the judiciary.

Legal risks are further complicated by the fact that Interpol officers are often not subject to legal liability in the state where they act, as their status is determined by international conventions on the immunity of international organisations. This legal situation deprives the injured party of the opportunity to pursue effective remedies. In turn, Europol, despite being bound by EU law, does not have the authority to apply enforcement measures, which creates an additional legal gap in joint operations. The question also arises as to the legal nature of the information transmitted as part of such operations. In some cases, it is obtained as part of an administrative exchange without prior judicial authorisation, which may contravene the provisions of the constitutions of the Member States on the inviolability of private life. At the same time, legal mechanisms to guarantee the protection of such information at all stages of its processing remain underdeveloped. This opens the possibility of abuse and creates potential liability not only for the organisation but also for individual employees. Gaps in legal regulation also contribute to ambiguous interpretation of the limits of authority when using analytical platforms such as the Europol Information System (EIS) or Interpol I-24/7 Databases (2025), where data can be reused for purposes other than those originally intended.

Operational cooperation between Europol and Interpol is a complex phenomenon of modern international law, based on a combination of intergovernmental and supranational legal personality. An analysis of the legal status of both institutions has shown significant differences in their founding documents, mechanisms of functioning and subordination to controlling bodies. Interpol, acting based on the 1956 Constitution[2], retains its classic intergovernmental nature, which ensures flexibility during agreements with third parties without external control. Instead, Europol, as an EU agency, is subject to primary and secondary EU law, which leads to strict requirements for procedures, especially in the area of information exchange. The absence of a unified legal act regulating joint operational measures creates gaps in the protection of the rights of persons who become the objects of such actions. An important limiting factor is also the need to ensure that Interpol practices comply with human rights standards applicable to the EU legal order. All the identified legal challenges require gradual unification or even codification of the international legal framework for such cooperation. In general, the main condition for the effectiveness and legitimacy of the joint activities of Interpol and Europol is to ensure legal certainty, transparency of control mechanisms and compliance with international human rights standards.

Legal analysis of the practice of cooperation between Europol and Interpol in the context of transnational threats. The international legal status of operational cooperation between Europol and Interpol in the field of combating transnational security threats has gained particular importance in the context of the case law of the Court of Justice of the European Union, which forms the legal boundaries of law enforcement agencies in terms of maintaining a balance between the effectiveness of criminal prosecution and the protection of fundamental human rights. An important benchmark for assessing the legal status of Europol is the case of Melloni[3], in which the CJEU emphasised the priority of secondary EU law, in particular the Framework Decision on the European Arrest Warrant[4], over national standards that provide broader guarantees of rights. In this context, it was established that EU law can limit national standards if necessary to ensure effective prosecution, which directly affects the justification of the powers of structures such as Europol in the field of interstate cooperation. At the same time, the Court pointed out that these restrictions are permissible only if they do not violate the essential content of the rights guaranteed by the EU Charter of Fundamental Rights. Case of Poland v. Parliament and Council[5]

[1] Council Framework Decision on Joint Investigation Teams. (2022, June). Retrieved from http://data.europa.eu/eli/dec_framw/2002/465/oj.
[2] ICPO-Interpol Constitution. (1956, June). Retrieved from https://www.jus.uio.no/english/services/library/treaties/14/14-02/interpol-constitution.html.
[3] Reference for a Preliminary Ruling from the Tribunal Constitutional in Case No. C-399/11 "Criminal Proceedings Against Stefano Melloni". (2011, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62011CN0399&qid=1747398323965.
[4] Council Framework Decision on the European Arrest Warrant. (2002, June). Retrieved from http://data.europa.eu/eli/dec_framw/2002/584/oj.
[5] Judgment of the European Court of Justice in Case No. C-157/21 "Republic of Polandv.European Parliament". (2022, April). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62021CA0157.

is a key case in terms of legitimising European Regulation No. 2022/991[1], which granted Europol expanded powers to process large amounts of data. The CJEU confirmed the legality of this expansion, pointing to the existence of sufficient data protection safeguards and effective control by the European Data Protection Supervisor. The judgment establishes the legal framework within which Europol can conduct automated data processing, in particular in cooperation with Interpol, which is important for assessing its international legal status as a body capable of acting autonomously within the scope of its delegated competencies. In light of this decision, the issue of compliance of Europol's activities with the principle of proportionality deserves special attention, in particular when storing personal data of persons not involved in criminal activity, which is directly related to operational cooperation with Interpol.

A legal analysis of the case law also shows that the European Court draws a clear distinction between the permissible scope of data processing powers and the prohibition of mass surveillance without individual justification. In its decisions related to access to metadata (e.g., Digital Rights Ireland[2], La Quadrature du Net[3]), the Court has set strict limits on data retention, emphasising that any interference with the right to respect for private life must be justified, necessary and proportionate. These principles are also relevant for Europol in its cooperation with Interpol, in particular in the aspect of transatlantic information exchange, which does not always fall under EU jurisdiction but has legal consequences for EU entities. In the area of joint prosecution of transnational crime, the EU Court of Justice gives priority to the principle of mutual recognition of judgments, but only if procedural safeguards are observed. The Melloni[4] judgment obliges Member States not to obstruct the execution of a European Arrest Warrant, even if national standards are higher, which also affects the legal position of Europol as a coordinator of such processes. At the same time, Court recognised that Member States may refuse to extradite if there is a risk of human rights violations, which directly relates to the exchange of information between law enforcement agencies, including Interpol, when there are grounds to believe that the prosecution is initiated for political reasons or in the absence of fair trial guarantees.

The EU Court's jurisprudence also emphasises the need for institutional control over the limits of permissible interference with the right to defence in criminal proceedings. In case of Lopes da Silva Jorge[5], the Court emphasised the obligation of the competent authorities to check for systemic deficiencies in the justice system of the requesting state. This provision also applies to cases where Interpol tips or requests are initiated by non-EU countries, which places an additional burden on Europol to verify the legitimacy of the request before the information is used for investigative purposes within the EU. This creates standards that oblige law enforcement agencies to check not only the legitimacy of the source, but also the potential threat to human rights.

The case law of the Court of Justice of the European Union forms a strict legal framework that sets limits for Europol's operational cooperation with Interpol in the context of maintaining a balance between the effectiveness of criminal prosecution and guarantees of individual rights. The judicial assessment covers both the legal status of Europol and the mechanisms of data processing, storage and transmission. All of these aspects have an international legal dimension, as they relate to the relationship between EU internal law and the global system of police cooperation, in particular within Interpol. The standards established by the Court require Europol not only to follow formal procedures, but also to conduct a substantive analysis of legal compliance in any cross-border operation involving the exchange of data, prosecution or arrest of a person. The Court's jurisprudence creates a binding legal framework that gradually transforms the operational activities of law enforcement agencies into a sphere of strict legal control and accountability.

Operational cooperation between Europol and Interpol in joint special operations is important empirical evidence of the actual implementation of their international legal status. An analysis of operations such as Pandora (International art trafficking sting…, 2023) and Operation Emma (European Money Mule Action) (2,469 money mules arrested in worldwide crackdown against money laundering, 2022) can be used to assess the level of compatibility of the legal mandates of both organisations, as well as to identify key legal and institutional

[1] Regulation of the European Parliament and of the Council No. 2022/991 "On Regulation (EU) 2016/794, as Regards Europol's Cooperation with Private Parties, the Processing of Personal Data by Europol in Support of Criminal Investigations, and Europol's role in Research and Innovation". (2022, June). Retrieved from https://eur-lex.europa.eu/eli/reg/2022/991/oj/eng.

[2] Judgment of the European Court of Justice in Case No. C-301/06 "Irelandv.European Parliament and Council of the European Union". (2009, February). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0301.

[3] Judgment of the European Court of Justice in Case No. C-470/21 "La Quadrature du Net and Others v. the Prime Minister and the Ministry of Culture". (2024, April). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62021CJ0470.

[4] Reference for a Preliminary Ruling from the Tribunal Constitutional in Case No. C-399/11 "Criminal Proceedings Against Stefano Melloni". (2011, July). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62011CN0399&qid=1747398323965.

[5] Judgment of the European Court of Justice in Case No. C-42/11 "Joao Pedro Lopes Da Silva Jorge". (2012, September). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62011CJ0042.

mechanisms that ensure joint activities in the field of countering transnational threats. The international legal status of such operations remains complex and insufficiently regulated. Europol operates as an agency of the European Union, acting within the framework of EU law, and Interpol as an intergovernmental international organisation, subject to public international law. Their cooperation in joint operations is formally based on a 2001 cooperation agreement[1], which is of a mixed legal nature: partly contractual and partly administrative.

Operation Pandora, launched in 2016, is an ongoing series of operational actions aimed at identifying, intercepting and recovering illicitly exported cultural objects. Europol provides coordination from EU countries, while Interpol acts as a global intermediary, involving third non-EU countries. Cooperation takes place through the exchange of analytical data, coordination of investigative actions, synchronised searches and arrests. The legal regime of this operation is based on the consent of the participating states, the provisions of the relevant EU regulations on Europol, the Interpol Charter, as well as bilateral or multilateral memoranda of cooperation. The main difficulty lies in ensuring compatibility of legal standards, in particular regarding the protection of the rights of suspects, compliance with the procedure for seizing cultural property and its return to the state of origin. The operation pays considerable attention to the use of databases. Interpol provides access to its register of lost and stolen works of art, while Europol processes information within the framework of the Athena analytical project (Behavioural and societal aspects of foreign..., (2025). This creates a situation of double liability for the processing of personal and evidentiary data, which raises the issue of legal liability in case of violations.

As for Operation EMMA (2,469 money mules arrested…, 2022), it was launched in 2016 at the initiative of Europol and financial institutions, and later joined by Interpol. The operation aims to identify and neutralise money mule schemes of persons involved in money laundering. A special feature of this operation is the emphasis on combating cybercrime and financial crimes. The legal status of the EMMA operation is even more complex. Interpol's participation involves national police forces from outside the EU, including states with varying degrees of compliance with the standards of the European Convention on Human Rights. This calls into question the uniformity of the legal framework and requires a complex legal examination before operational actions can be taken. Europol, under EMMA, operates following the provisions of Regulation No. 2016/794[2], and its powers focus on analytical support, intelligence sharing and the initiation of investigations. Interpol, on the other hand, channels requests to national bureaus and processes red notices. The mechanism of information exchange between the two agencies is based on confidentiality standards, but at the same time depends on the domestic legislation of the participating states. There is a problem of double reporting within EMMA. For example, national officers in joint investigation teams may be subject to both Europol directives and Interpol procedures, which creates legal uncertainty in the event of conflicting decisions. In such situations, national jurisdictions tend to have the final say, which hampers operational efficiency.

Notably, neither operation has a codified legal framework in the form of an international treaty. They are implemented through administrative instruments, such as protocols of intent, exchanges of letters and working procedures. This raises issues of legitimacy and accountability, especially in the context of legal certainty. Problems also arise in the area of personal data processing. The involvement of non-EU third parties calls into question compliance with the provisions of the GDPR[3], which is binding on Europol. Interpol, not being a subject of EU law, is not subject to this regulation, which makes it impossible to establish a single standard of protection.

Despite these difficulties, both operations have demonstrated practical effectiveness. In particular, during Operation PANDORA VII alone, law enforcement agencies from more than 28 countries, with the support of Europol, Interpol and the World Customs Organisation, seized more than 11,000 cultural objects, including archaeological artefacts, coins, paintings and books (International art trafficking operation leads..., 2023). As part of Operation EMMA VIII, 8,755 money mules were identified in 25 countries, more than 4,000 fraudulent transactions totalling more than €17.5 million were recorded, and more than 2,469 people were arrested (2 469 money mules arrested..., 2022). This effectiveness was made possible by the use of unified digital data exchange platforms, the integration of national operational centres in real time, and the application of

[1] Agreement Between Interpol and Europol. (2001, November). Retrieved from https://www.europol.europa.eu/cms/sites/default/files/documents/agreement_between_Interpol_and_Europol.pdf.

[2] Regulation of the European Parliament and of the Council No. 2016/794 "On the European Union Agency for Law Enforcement Cooperation (Europol) and Replacing and Repealing Council Decisions No. 2009/371/JHA, No. 2009/934/JHA, No. 2009/935/JHA, No. 2009/936/JHA and No. 2009/968/JHA". (2016, May). Retrieved from http://data.europa.eu/eli/reg/2016/794/oj.

[3] Regulation of the European Parliament and of the Council No. 2016/794 "On the European Union Agency for Law Enforcement Cooperation (Europol) and Replacing and Repealing Council Decisions No. 2009/371/JHA, No. 2009/934/JHA, No. 2009/935/JHA, No. 2009/936/JHA and No. 2009/968/JHA". (2016, May). Retrieved from http://data.europa.eu/eli/reg/2016/794/oj.

algorithms for analysing suspicious financial flows. In summary, it is possible to argue that the international legal status of such transactions needs to be clearly defined, and the regulatory framework needs to be systematised. It would be advisable to develop a unified model of agreements between Interpol, Europol and third parties on joint actions. This will contribute to both the legitimisation of such operations and compliance with the principle of legal certainty in the context of the global fight against security threats.

The international legal status of operational cooperation between Europol and Interpol requires careful analysis in terms of compatibility with the fundamental principles of public international law. In the context of combating transnational security threats, such cooperation includes data transfer, joint investigative activities, coordination of search operations and exchange of operational information, which involves mutual recognition of powers and legal decisions. The central element that determines the legitimacy of this cooperation is the principle of legal certainty, which is enshrined in numerous international documents, including decisions of international judicial bodies. Operational cooperation between the two organisations should be based on transparent legal grounds that prevent arbitrary interference with individual rights and guarantee access to effective remedies.

In this context, the case law of the Court of Justice of the European Union is of particular importance, as it forms the legal framework for the admissibility of information exchange between Europol and Interpol, and outlines standards for the protection of human rights in the context of operational cooperation. The judgments of the Court of Justice of the European Union not only specify the content of the principle of legal certainty, but also set requirements for proportionality, legality and transparency in the activities of law enforcement agencies. Court precedents demonstrate how the European Union institutionalises the balance between the need to ensure public safety and the observance of fundamental rights. Below is an overview of key cases (Table 2) that have had a significant impact on the regulation of cooperation between Europol and Interpol.

Table 2. The main judgements of the Court of Justice of the European Union defining the legal framework of Europol's activities in cooperation with Interpol

Case	Year	Key legal issue	The court's decision	Impact on Europol/Interpol practice
No. C-301/06[1]	2009	Choosing the right legal basis for Directive No. 2006/24/EC2 on data retention	The court ruled that the legal basis of the Directive is the internal market, not police or judicial cooperation	Clarification of the scope of competence of EU bodies in the field of data storage. Determining the legal nature of data processing measures has become a guideline for distinguishing between the functions of Europol and Interpol
No. C-210/16[3]	2018	Shared responsibility for data processing between the two entities	The court found that the page and platform administrators are jointly liable for	A similar principle applies to Europol when transferring data to Interpol
No. C-156/2[4]	2022	Independence of data protection authorities	The Court emphasised the need for independent supervision of personal data processing authorities	Europol should ensure that cooperation with Interpol does not circumvent independent oversight (EDPS)
No. C-817/19[5]	2022	Is mass data sharing (Passenger Name Records) compatible with human rights in the EU	The Court recognised that even for security reasons, processing must be proportionate and reasonable	The possibility of automated exchange of information without a thorough legal assessment has been reduced, including cooperation with Interpol
No. C-203/21[6]	2022	Observance of human rights in the EU when placing an Interpol Red Notice	The Court ruled that Member States are obliged to verify the observance of an individual's rights before applying a Red Notice	Mandatory human rights checks by Europol and national authorities

Source: compiled by the authors

[1] Judgment of the European Court of Justice in Case No. C-301/06 "Irelandv.European Parliament and Council of the European Union". (2009, February). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0301.

[2] Directive of the European Parliament and of the Council No. 2006/24/EC "On the Retention of Data Generated or Processed in Connection with the Provision of Publicly Available Electronic Communications Services or of Public Communications Networks and Amending Directive 2002/58/EC". (2006, March). Retrieved from https://eur-lex.europa.eu/eli/dir/2006/24/oj/eng.

[3] Judgment of the European Court of Justice in Case No. C-210/16 "Independent Centre for Data Protection Schleswig-Holstein v. Schleswig-Holstein Business Academy GmbH". (2018, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62016CJ0210.

[4] Judgment of the European Court of Justice in Case No. C-156/21 "Hungaryv.European Parliament and Council of the European Union". (2022, February). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62021CJ0156.

[5] Judgment of the European Court of Justice in Case No. C-817/19 "Human Rights League ASBLv.Council of Ministers". (2022, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62019CJ0817.

[6] Judgment of the European Court of Justice in Case No. C-203/21 "Delta Destroy". (2003, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=ecli:ECLI%3AEU%3AC%3A2022%3A865.

The analysis of the court decisions presented in the table identified several conceptually important legal guidelines that form the regulatory framework for operational cooperation between Europol and Interpol. The Court of Justice of the European Union systematically emphasises the priority of the principle of human rights, in particular in the field of processing and transferring personal data within the framework of cross-border information exchange. The jurisprudence demonstrates the consistent consolidation of the concept of shared responsibility between the EU institutions and international intergovernmental organisations that are not within the legal system of the Union but functionally interact with it. Application of the principle of proportionality in the implementation of operational and investigative measures, which requires a mandatory assessment of the necessity and legitimacy of each request, especially in the context of restricting the fundamental rights of a person, was emphasised. The court highlighted the obligation to conduct a preliminary legal analysis of the risks associated with possible human rights violations in the process of implementing Interpol requests. The court practice is aimed at strengthening the normative autonomy of EU law, even in cooperation with non-Union structures, which objectively requires bringing the relevant cooperation mechanisms correlates with the standards of the European legal system. Therefore, legal cooperation between Europol and Interpol should be based not only on international treaty regulation, but also within the framework of mandatory jurisdiction and regulatory requirements of EU law regarding personal data protection, effective remedies and legal certainty.

In the case of cooperation between Europol and Interpol, the level of legal certainty is complicated by the difference in the legal regimes within which these institutions operate. While Europol is subject to the EU regulatory framework, which is characterised by a high level of formalisation of procedures, Interpol operates within a more flexible system. This asymmetry can cause a violation of the principle of legitimacy, especially in the absence of clear mechanisms to monitor the observance of human rights in the transfer of data between organisations. This contradicts the generally recognised principles of international law, in particular the principle of respect for human rights, which is universal and applies regardless of the nature of the legal jurisdiction. According to the UN Human Rights Committee, a state cannot avoid international responsibility by transferring powers to third parties or participating in multilateral organisations.

In this regard, the requirement of transparency of decisions made in the course of joint operations is of particular importance. Both Europol and Interpol are obliged to ensure an adequate level of documentation of operational actions, maintaining registers of requests, recording sources of information and independent control by authorised bodies. In the EU, the role of such authorities is played by national supervisory authorities for personal data protection and the European Data Protection Supervisory Authority, which have a mandate to verify that information processing complies with legal standards. Interpol, in turn, has a Commission for the Control of Interpol Files, but its powers are limited and the procedural transparency of its decisions is often questioned by human rights organisations. This imbalance in control mechanisms causes legal ambiguity, which can be interpreted as a violation of the rule of law.

Legal cooperation between Europol and Interpol is not self-sufficient, but must be assessed in terms of compliance with general international legal standards, in particular those enshrined in Articles 14 and 17 of the International Covenant on Civil and Political Rights1. As both organisations have a de facto impact on the situation of individuals in the legal field, in particular by profiling, issuing wanted notices and coordinating arrests, their activities must meet the standards of necessity, proportionality and legality. The establishment of internal regulations does not relieve the parties from the obligation to comply with the peremptory norms that form the core of the modern international legal order.

In the context of aforementioned, one of the prospects for increasing the legitimacy and legal compatibility of inter-operational cooperation may be the codification of the international legal framework for such interaction. Currently, there is no universal document that would set minimum standards for cooperation between regional and global law enforcement agencies. The existing agreements between Europol and Interpol are mostly administrative in nature and are not legally binding on the participating states. Such circumstances create gaps in legal regulation that open the way to abuse, especially in situations where the disputed action is of a cross-border nature and is performed on the basis of aggregated data obtained from several sources. In this context, it is advisable to develop a framework international treaty that would regulate the forms of data exchange, standards of liability, procedures for reviewing decisions and mechanisms for compensating for damage caused by erroneous or unlawful actions.

From the view of public international law, such an initiative should be supported by the practice of concerted action by states that are already implementing operational cooperation within existing

[1] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.

structures. A soft law mechanism, i.e. the development of common standards through resolutions, recommendations and codes of practice, could be the first step in the process of further codification. It is important that such documents meet the standards set by international courts and include guarantees of effective judicial protection, non-discrimination, presumption of innocence and the right to privacy. In the future, they may be transformed into binding international legal norms that will ensure a balance between security and human rights interests. In addition, the unification of international legal approaches to operational cooperation would eliminate differences in the interpretation and application of key concepts such as "operational information", "international search", and "cross-border threat", which are currently interpreted differently in EU law and the Interpol system. This unification will not only contribute to the effectiveness of joint actions, but also to the legal protection of persons subject to operational measures. Legal clarity and certainty of procedures create the basis for predictability of law enforcement, which is a prerequisite for a stable international legal order. In conclusion, it should be noted that the legal compatibility of operational cooperation between Europol and Interpol with the principles of international law is achievable only if the requirements of legal certainty, transparency of decisions and control by independent bodies are met, as well as the gradual unification of the international legal framework for such cooperation. Ensuring legal compliance of these mechanisms with the basic standards of international law not only increases the effectiveness of combating transnational threats, but also ensures that the operational activities of law enforcement agencies do not contradict fundamental human rights.

■ Discussion

The results obtained indicate a significant asymmetry between Interpol and Europol as subjects of international police cooperation, in particular in terms of legal accountability and procedural security. Despite the key coordination role of Interpol, its limited legal regulation creates risks of abuse and human rights violations, especially in the context of politically motivated use of the organisation's mechanisms. Europol, on the other hand, demonstrates a higher level of legal certainty, but its activities are limited to the EU jurisdiction, which makes it difficult to fully engage globally. The results also highlight a lack of legal regulation of joint investigative operations, which creates both conflicts in determining responsibility and problems with ensuring the legal protection of personnel. This situation highlights the need to unify approaches to regulating transnational law enforcement. The findings are important not only for academic discourse but also for the practice of developing new mechanisms of security cooperation.

J. Coyne (2022) and S. San (2022) viewed Interpol's activities as a positive example of global coordination of efforts to combat crime, but the above analysis shows a different picture. Despite Interpol's technical ability to ensure the rapid exchange of information between law enforcement agencies of different countries, the legal framework for this process remains fragmented, which creates risks to the observance of basic rights of individuals, in particular in matters of personal data processing, legal protection against abuse and opportunities for appeal. The assertions of the study are debatable, as they rely mainly on functional and organisational performance indicators, ignoring the complex legal issues of responsibility and control over the organisation's activities. The reason for this difference in approach may lie in the different focus of the research: while the above authors focus on the security aspect, the analysis is based on an interdisciplinary combination of the legal and institutional dimensions, which ensures a more comprehensive assessment of Interpol's activities in the context of compliance with international legal standards.

An analysis of Europol's functioning in the context of international cooperation has shown that, despite the expansion of the agency's regulatory framework, its ability to carry out full operational activities outside the EU remains limited. This is especially true in cases of information exchange with third countries, where legal conflicts over data protection and jurisdiction arise. The findings confirm that although Europol's powers have been expanded, its actual operational capabilities remain limited, especially outside the EU, where the political will of partner states is a crucial factor. These findings are only partially consistent with the approach of C. De Bolle (2020), T. Hoerber *et al.* (2021) and T. Wahl (2024), who interpret Europol as an organisation that is evolving into a full-fledged operational actor. The growth of the agency's formal functions, in particular enshrined in the new 2022 mandate to process large amounts of data and cooperate with the private sector, does not always translate into practical effectiveness. The difference in interpretation is likely due to a different focus: while these authors focus on internal institutional changes, our study focuses on the correlation between legal mechanisms and the agency's actual ability to act in the international context. In addition, the discrepancy may be explained by methodological differences: while T. Hoerber *et al.* (2021) relied on normative analysis, this study also uses empirical material on Europol's interaction with third countries, which identified several limitations of its autonomy in the interstate space.

S. Hufnagel (2021) and S. Robertson (2021) highlighted the difficulties in the legal positioning of Interpol in the context of the EU legal system, in particular the lack of institutional control, which indeed makes it difficult to ensure compliance with human rights standards when using Interpol mechanisms such as red notices. This assertion is supported by numerous examples where Interpol decisions, including arrest warrants, contradicted the case law of the European Court of Human Rights, especially in terms of protection against politically motivated persecution. However, the assertions are debatable in terms of the general unsuitability of Interpol for European cooperation: the analysis shows that the problem is not the lack of legal personality as such, but the lack of effectively institutionalised procedures for interaction with EU legal structures. The reason for the divergence in conclusions may lie in the different focus of the research: while the study highlighted the EU's legal autonomy and its conflict with Interpol's universal jurisdiction, our approach emphasises the potential for legal integration through the development of harmonised procedures for verifying requests and strengthening judicial review mechanisms.

The results of the study showed that in the area of operational cooperation, Europol demonstrates reduced flexibility and slower response to transnational challenges, especially in cases requiring quick decisions, such as cyberattacks or terrorist threats. This was attributed to a complex system of coordination with national authorities and a high level of institutional control that, while respecting the rule of law, limits the agency's functional mobility. These results are not fully consistent with the position of M. Schinina (2020) and J. Öberg (2021), who reasonably point to Europol's regulatory advantage due to clear legal mechanisms of control and accountability that meet EU standards. The conclusions drawn by the researchers are relevant in the field of legal regulation, but they do not take into account the practical limitations that arise in the process of implementing operational functions. The reason for the discrepancy is possibly determined by the differences in methodology: while the authors focus on the formal aspects of the rule of law, our study is also based on an empirical analysis of Europol's responsiveness. In this context, there is a need to rethink the appropriateness of a rigid normative model for an agency operating in a highly volatile threat environment.

The study determined that the legal uncertainty of the status of members of joint investigation teams poses significant risks to both institutional accountability and individual legal protection of employees, especially in the context of transnational jurisdiction and the lack of mechanisms for resolving liability disputes. These results are generally consistent with the findings of M.J. Kerrissey *et al.* (2021) and D. Nidel (2025), who emphasise the difficulties arising from the unclear legal regulation of participation in JITs. The conclusions are balanced, as they correlate with the legal gaps identified in our analysis. However, in contrast to the above-mentioned studies, our research additionally demonstrates that there are already attempts within the European Union to bridge these gaps through specific initiatives, such as the updating of the framework provisions on joint investigation teams and the development of working protocols between Eurojust and national authorities. This extended the arguments of previous researchers by highlighting the gradual institutional evolution of cooperation mechanisms.

M. Brewczyanska (2022) and F. Morgenstern (2024) highlighted the balance between security and procedural fairness is extremely relevant, and the conclusions drawn by the authors are fully consistent with the results of the analysis. As the study of Interpol and Europol's cooperation practice shows, the problem of maintaining this balance is indeed the lack of a unified international standard that would regulate the limits of permissible use of information in operations involving different states. Both studies show that even in the context of joint operations, participating countries interpret the requirements for the lawfulness of data processing and transfer in different ways, which, in turn, affects the uniformity of application of the principles of fairness.

Critique by E. Aaronson & G. Shaffer (2021) and T.S.R.E. Board (2022) of political abuse by member states through Interpol mechanisms is quite relevant, as it is supported by numerous examples of the abuse of the Red Notice system for political persecution. These conclusions are consistent with the findings of this study, which demonstrate that certain authoritarian regimes use Interpol's tools to expand extrajudicial pressure. At the same time, the author's statement about the complete absence of safeguards seems too radical. The analysis shows a different picture: the problem is not the absence of mechanisms as such, but the limited effectiveness of their implementation in practice, especially in cases where requests come from countries with close political or economic ties to member states. The reason for the different interpretations lies in the discrepancy between formal rules and their applicability in terms of political expediency, which, in turn, calls into question the neutrality of the red notice system as a transnational enforcement tool.

The results of the study demonstrated that the fragmented regulatory environment in joint investigative actions does indeed create significant obstacles to the prompt exchange of evidence, access to information and procedural coherence. At the same time, it was found that such fragmentation does not preclude effective coordination: the Pandora and

EMMA cases demonstrate that successful inter-agency cooperation can be achieved through informal channels, flexible procedures and political support. These findings are generally consistent with the position of V. Terziev *et al.* (2021) and C. Riehle (2023), who rightly emphasise legal conflicts as a risk factor. However, in contrast to the somewhat unambiguous interpretation of the negative impact of regulatory uncertainty in their works, the presented approach demonstrates that such barriers can be partially compensated for by adaptive management decisions and accumulated institutional practices. The findings do not deny the theses presented in the literature but rather specify and expand them in an applied way.

F. Mouzakiti (2020) and M. Cini & N.P.S. Borragán (2022) emphasised that the lack of common legal terminology between EU jurisdictions makes it difficult to effectively communicate and carry out investigative actions within joint investigation teams. The data of the study confirm this thesis, as the analysis of cases of cooperation between law enforcement agencies of France, the Netherlands and Hungary in the framework of joint operations revealed significant difficulties in harmonising the concepts of evidence, the scope of operational autonomy and procedures for documenting it. The conclusions drawn by the researcher are quite relevant, as they illustrate the fundamental problem of harmonisation, which directly affects the effectiveness of cooperation. The results of the present study add to the argument by demonstrating that some Member States are already implementing translated legal glossaries and internal instructions to standardise terminology in cross-border transactions. This shows that the system is partially capable of self-correction even without centralised intervention.

The results of the study show that the international legal status of Interpol and Europol as actors in the field of combating transnational crime is formed according to different regulatory and institutional models, which reflects the differences between the global and regional levels of legal regulation. Despite the common goal of ensuring effective coordination of law enforcement efforts, these organisations face challenges related to the lack of unified legal mechanisms, asymmetries in control and regulatory accountability, and potential threats of political abuse. Their future effectiveness will largely depend on the ability of the international community to balance security requirements with respect for human rights principles and to develop common standards for the legal status of personnel, accountability procedures and information sharing. The success of the formation of a sustainable system of international law enforcement cooperation will depend on the coherence of legal approaches, mutual trust between states and the ability to adapt institutions to the new challenges of the digital age.

■ Conclusions

The study provides a systematic legal analysis of the mechanisms of cooperation between Europol and Interpol through the prism of the principles of the legal order of the European Union and public international law. The main focus is on the issues of legal compatibility of the legal frameworks of both organisations, as well as conflicts of jurisdiction arising in the course of cross-border police cooperation. Europol appears as an entity operating under strict legal regulation, subordinated to the EU institutional structure, while Interpol operates on the basis of an international treaty and autonomous administrative mechanisms. This leads to asymmetry in the regulatory framework for their interaction and creates grounds for legal fragmentation in the joint implementation of operational activities.

An analysis of the case law of the Court of Justice of the EU and the ECHR has demonstrated that there are conflicts between the standards of legal protection within the Union and the procedural flexibility of Interpol, which may lead to violations of fundamental rights, in particular the right to liberty, fair trial and protection of personal data. It is established that the administrative agreements between Europol and Interpol, although functionally effective, remain insufficiently formalised in terms of legal liability of the parties. The summary table of the comparative analysis confirms the existence of conceptual differences in the field of legal personality, accountability mechanisms and control standards, which makes it impossible to create a single legal regime of interaction. At the same time, empirical examples of cooperative operations have demonstrated the need to create consistent regulatory standards that would incorporate both EU human rights requirements and the international obligations of Interpol member states. The study of specific operations, such as Pandora and Emma, showed a high level of inter-agency coordination and real-time information exchange, but revealed a lack of unified procedures for the legal assessment of the data obtained and the legal status of suspects. These operations have been effective in detecting and preventing transnational crimes, but at the same time, uneven application of procedural safeguards has been observed, raising questions about legal certainty for those involved in the cooperation. This suggests the need to review the regulatory framework for such operations in light of the requirements of the European Charter of Fundamental Rights and ECHR standards.

The results obtained conceptualised the relations between Europol and Interpol as an example of multi-level legal interaction that is being formalised in the context of a tension between security imperatives and the rule of law. At the same time,

the study had certain limitations, including difficult access to the full texts of internal administrative agreements between Europol and Interpol, which limited the possibility of a deeper analysis of their legal nature and procedural detail. Further research could focus on the development of a legal mechanism for harmonising data transfer procedures and creating a joint risk assessment mechanism for information exchange.

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None.

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Міжнародно-правовий статус оперативного співробітництва між Європолом та Інтерполом у боротьбі з транснаціональними загрозами безпеці

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■ **Анотація.** Оперативне співробітництво між Європолом та Інтерполом в умовах посилення транснаціональних загроз потребує критичного переосмислення його міжнародного правового статусу через наявні правові конфлікти, розбіжності в стандартах підзвітності й обмежену узгодженість повноважень. Мета дослідження полягала у визначенні рівня правової сумісності форм співробітництва між цими двома організаціями з принципами міжнародного права та нормами права Європейського Союзу. Методологічну основу становили формально-правовий, порівняльно-правовий та інституційний аналіз із використанням прецедентного права Суду Європейського Союзу та Європейського суду з прав людини. Встановлено, що правовий статус Європолу й Інтерполу суттєво відрізняється за інституційним характером, джерелами регулювання та механізмами зовнішнього контролю, що впливає на правову сумісність їх оперативної взаємодії. Аналіз спільних операцій, таких як «Емма» та «Опсон II», засвідчив, що відсутність єдиних процедур і нормативно-правової бази ускладнює забезпечення прозорості, підзвітності й дотримання правових стандартів. З'ясовано, що Європол обмежений нормами права Європейського Союзу, зокрема щодо захисту персональних даних і прав людини, натомість Інтерпол діє автономно, поза межами наднаціональної юрисдикції. Порівняльний аналіз прецедентного права Суду Європейського Союзу та Європейського суду з прав людини підтвердив необхідність уніфікації підходів до оцінювання законності оперативних заходів у межах транснаціонального співробітництва. Дослідження довело, що наявні правові конфлікти між системами Інтерполу та Європолу створюють ризики подвійної відповідальності та правової відповідальності, передусім у контексті стрімкого посилення транскордонних загроз. У висновках дослідження запропоновано розглянути перспективи кодифікації міжнародно-правової бази для спільних поліцейських дій як спосіб забезпечення правової визначеності й ефективності міжінституційної співпраці. Зазначено, що правова взаємодія між Європолом та Інтерполом потребує чіткого нормативного регулювання, що охоплює вимоги правової визначеності, юрисдикційної узгодженості та поваги до основних прав. Практичне значення дослідження зумовлено формуванням концептуальної основи для розроблення єдиних міжнародних правових механізмів контролю, обміну інформацією та відповідальності у сфері спільної оперативної діяльності

■ **Ключові слова:** суд; захист даних; конфлікт; легітимність; юрисдикція; компетенція

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Application of mediation in civil proceedings in Ukraine and the Federal Republic of Germany

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■ **Abstract.** The relevance of this study stems from the need to enhance the effectiveness of dispute resolution in civil proceedings in Ukraine and the Federal Republic of Germany through the use of alternative methods, particularly mediation. This study aimed to conduct a comprehensive examination of the application of mediation in the civil process in both Ukraine and Germany. Attention was focused on identifying legal and procedural barriers to its effective implementation and formulating proposals to improve the relevant legal frameworks of both countries. The methodological basis of the research included formal legal, comparative legal, and systemic-structural analysis, as well as case analysis. These methods enabled the examination of legal acts, judicial practice, and doctrinal approaches in both jurisdictions. Despite ongoing reforms in both legal systems, challenges remain in institutionalising mediation mechanisms – particularly regarding legislative gaps, the enforcement of mediation agreements, and judicial encouragement of dispute settlement. The findings indicated that in Germany, the use of mediation is systematically integrated into civil proceedings. This is attributed to the existence of a coherent legal framework, well-trained mediators, and judicial support for the voluntary resolution of disputes. In Ukraine, despite the adoption of relevant legal acts, the practical application of mediation remains fragmented and insufficiently developed. This is largely due to the absence of unified standards, a low level of awareness among legal professionals, and limited institutional support. The comparative analysis showed that Germany's experience may be beneficial for Ukraine – particularly in terms of raising qualification requirements for mediators, developing court-annexed mediation, and strengthening public trust in alternative dispute resolution. The practical significance of the study lies in the formulation of scientifically grounded proposals for optimising mediation within the civil justice system. These recommendations may be utilised by legislators, judges, and legal

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practitioners to improve access to justice and reduce the burden on the judiciary through the development of an effective mediation infrastructure

■ **Keywords:** alternative dispute resolution; conflict resolution; mediation; comparative mediation; civil proceedings

■ Introduction

The development of mediation as an alternative dispute resolution mechanism in civil justice is a key component of legal reform in many European countries. In the context of a global drive towards more efficient justice systems, mediation is recognised as an effective tool for the de-formalisation of court procedures. Germany has already integrated mediation into civil proceedings, achieving a high degree of institutionalisation. Ukraine, by contrast, remains at an early stage of implementation, facing legislative, institutional, and cultural barriers (Dontsov, 2022).

Research highlights the advantages of mediation – saving time and costs, enhancing party autonomy, and facilitating sustainable conflict resolution. In Ukraine, the introduction of mediation is supported by civil society and certain legislative initiatives, yet its application in judicial practice remains fragmented and limited. In Germany, the use of mediation varies by region and type of dispute, despite the presence of a well-developed legal framework. There is a recognised need for procedural incentives, such as court referrals. The relevance of this topic is driven by the transformation of European civil justice systems and the global shift towards participatory forms of dispute resolution. A comparative analysis of the experiences of Ukraine and Germany makes it possible to identify the specific features of mediation implementation in jurisdictions at different stages of institutional development. This, in turn, provides a foundation for adapting foreign experience to the Ukrainian context.

J. Itrich-Drabarek *et al.* (2022), in their study of administrative mediation using the example of Poland, concluded that mediation can serve as an effective tool for reducing the burden on the courts. This conclusion is particularly relevant to both Ukraine and Germany. In a broader context, I.J.T. Krunn & A.A. Rocha (2022) considered mediation as a mechanism that ensures procedural justice within democratic governance. M. Giacalone & S. Salehi (2022) conducted a comparative study of mediation in civil and commercial disputes across Europe. They found that the effectiveness of mediation depends on the legal environment, cultural perceptions, and the professional training of mediators. In Germany, there is stronger institutional support for mediation, whereas, in Ukraine, procedural and structural barriers persist. E.J. Menninga (2023) drew attention to the issue of mediator neutrality in situations of psychological and structural asymmetry between the parties – an aspect that is also significant in the context of civil proceedings.

The introduction of mediation into civil proceedings has attracted growing interest among scholars, particularly in the context of adapting the Ukrainian legal system to European standards. A. Pakhomova (2022), for instance, highlights the potential of mediation as a tool for streamlining the handling of civil cases and reducing the workload of the courts. A similar view is expressed by M. Zhushman *et al.* (2021), who regard mediation as an essential component of effective and timely justice. The COVID-19 pandemic encouraged the adoption of remote dispute resolution methods, as analysed in the Article of Y. Zukh & K. Shveda (2021), who note that restricted access to courts contributed to increased use of mediation in Ukraine.

In a comparative context, K. Grajewska & A. Grajewski (2023) examined amendments to the Civil Procedure Code of the Federal Republic of Germany[1] (Zivilprozessordnung, ZPO) aimed at harmonising national law with Article 8(1) of Directive No. 2008/52/EC[2], thereby enhancing the legal certainty of mediation outcomes. In turn, Y.V. Navrotska & U.B. Vorobel (2022) drew attention to the procedural distinction between mediation agreements and settlement agreements, pointing out existing gaps in national legislation. From a broader international perspective, M. Ali (2021) explored the need to incorporate ethical and religious principles (maslahah) into mediation processes in legal systems where such values have normative authority. A similar position is reflected in the study of S. Myrza & I. Gorbanov (2023), who describe mediation as a modern instrument of alternative dispute resolution that complements judicial procedures.

Taken together, the studies analysed point to the need for deeper integration of mediation into the civil justice system. At the same time, they reveal significant differences between legal cultures and the

[1] Civil Procedure Code of the Federal Republic of Germany. (1950, November). Retrieved from https://www.gesetze-im-internet.de/zpo/ZPO.pdf.

[2] Directive of the European Parliament and of the Council No. 2008/52 "On Certain Aspects of Mediation in Civil and Commercial Matters". (2008, May). Retrieved from https://eur-lex.europa.eu/eli/dir/2008/52/oj/eng.

institutional capacities of individual countries. For both Ukraine and Germany, key challenges remain the harmonisation of regulatory approaches and the enhancement of public trust in mediation. Equally important is the effective functioning of the procedure through adequate professional training for mediators and support from judicial institutions. This study aimed to compare the legal regulation and practice of mediation in Ukraine and Germany, to identify barriers to its integration, and to formulate recommendations in line with international standards. The research objectives included:

- a comparison of the legal frameworks and institutional practices;
- an analysis of socio-legal factors;
- the development of recommendations for improving mediation mechanisms.

Materials and Methods

The methodological basis of this study was a comparative legal analysis of mediation procedures applied in civil proceedings in Ukraine and Germany. The research was carried out in stages to ensure transparency, academic rigour, and reproducibility of results. In the first stage, the legal framework governing the institution of mediation in both countries was collected and systematised. The analysis covered national legislation, including the Law of Ukraine "On Mediation"[1] and the German Mediation Act[2], as well as procedural codes, secondary legislation, and official judicial guidelines. The second stage focused on doctrinal analysis and a critical review of academic publications. This enabled the identification of key theoretical approaches, differences in doctrinal interpretations of mediation, and existing gaps in legal regulation. Particular attention was paid to the effectiveness of mediation in civil proceedings, the availability of procedural safeguards for participants, and the institutional arrangements supporting the process. The third stage involved the empirical-legal component, based on a qualitative content analysis of a sample of civil cases resolved through mediation between 2020 and 2023.

The inclusion criteria for the sample were as follows: (1) availability of full texts of court decisions directly related to mediation; (2) classification of cases under civil jurisdiction (excluding family and commercial disputes); (3) inclusion of decisions from both Ukrainian and German courts. A total of 200 cases from each country were analysed, and selected through stratified purposive sampling using official registers – namely, the Unified State Register of Court Decisions (n.d.) and the open-access database of German court decisions (Current Decisions of the Federal Court, n.d.). This approach ensured the representativeness of the material and enabled a comparative assessment of the procedural characteristics and outcomes of mediation.

The study employed the following methods: formal legal, comparative legal, systemicstructural analysis, and case analysis. The formal legal method was used to interpret the content of the legal acts regulating mediation. The comparative legal method made it possible to identify similarities and differences in the legal approaches of the two jurisdictions. The systemic-structural approach allowed mediation to be examined as an integral component of the civil procedural framework. The analysis of specific court cases provided empirical verification of the findings and contributed to a contextual evaluation of the effectiveness of mediation procedures.

To ensure the scientific validity and verifiability of the study, the principle of reproducibility was upheld. All legal sources, court judgments, and secondary materials used are open and accessible, allowing other researchers to conduct repeated analyses using the same methodology. The study did not involve the use of personal data or the participation of individuals and therefore did not require separate ethical approval following current national academic standards. The proposed methodological strategy enabled a comprehensive and interdisciplinary approach to the analysis of the operation and practical implementation of mediation in civil proceedings. It encompasses two distinct legal traditions – the continental (German) and the post-Soviet (Ukrainian). This provides a robust empirical and doctrinal foundation for further research and legal reform in the field of alternative dispute resolution.

Results and Discussion

The comparative legal analysis of mediation in civil proceedings in Ukraine and Germany revealed significant differences in structural, procedural, and institutional aspects. These disparities substantially affect the practical implementation of mediation as an effective alternative dispute resolution (ADR) mechanism. The study was based on an analysis of current legislation, official judicial statistics, and selected court decisions. This approach allowed for a systematic assessment of the level of mediation implementation and its effectiveness within each of the legal systems under review.

Firstly, the legal analysis confirmed that mediation is recognised at the legislative level in both Ukraine and Germany. In Ukraine, mediation is regulated by

[1] Law of Ukraine No. 1875-IX "On Meditation". (2021, November). Retrieved from https://zakon.rada.gov.ua/go/1875-20.
[2] Mediation Act of the Federal Ministry of Justice and Consumer Protection of Germany. (2012, July). Retrieved from https://www.gesetze-im-internet.de/englisch_mediationsg/englisch_mediationsg.html.

the Law of Ukraine "On Mediation"[1], which defines it as a voluntary, structured process based on mutual consent and aimed at resolving conflicts outside judicial proceedings. However, the integration of this law into procedural legislation remains limited. Specifically, Articles 11, 13, and 223 of the Civil Procedure Code of Ukraine[2] merely state the possibility of amicable dispute resolution, without establishing clear procedural steps for conducting mediation. Courts are not empowered to compel parties to participate in mediation, nor are they obliged to promote it at a formal level. Their role remains purely advisory. This lack of procedural integration undermines the practical relevance of the legislative recognition of mediation as an alternative means of dispute resolution.

In contrast, in Germany, the Mediation Act of 26 July 2012[3] has been effectively integrated into the procedural framework of the Civil Procedure Code[4]. In particular, § 278 of the ZPO requires the court to consider the possibility of reaching a settlement at the early stage of the proceedings. Additionally, § 278a of the ZPO regulates the role of the Güterichter – a specially appointed judge authorised to conduct procedures similar to mediation. This legal and organisational model enables the integration of mediation within the judicial system. It grants mediation the status of an integral part of civil proceedings, rather than an external or parallel dispute resolution mechanism.

Despite the adoption of the Law of Ukraine "On Mediation" in 2021[5], comprehensive statistical data on the practical use of mediation in civil cases remains limited. According to a report by the European Bank for Reconstruction and Development (2025), procedural codes provide for the possibility of court-involved mediation. However, its actual application is minimal. Furthermore, although the National Association of Mediators of Ukraine (NAMU) maintains an official online register of mediators, detailed statistical data on the effectiveness or outcomes of mediation processes remain largely inaccessible. Such data are not available in open sources (National Association of Mediators of Ukraine, n.d.).

In Germany, a more established mediation system operates under the Mediation Act of 2012[6]. Nonetheless, publicly available reports from the Federal Statistical Office (Destatis) do not include specific statistics on the proportion of civil cases resolved through mediation. The Council of Europe report (2024), based on 2022 data, provides a general overview of the functioning of the judicial system. However, it does not offer precise information on the extent of mediation use. Table 1 presents a comparative analysis of six key indicators that reflect the legal regulation, procedural framework, and practical application of mediation in civil proceedings in Ukraine (as of 2023). The analysis also covers the situation in Germany (as of 2022). These indicators were selected to highlight both the formal legal foundations and the actual use of mediation mechanisms in the practice of both countries.

Table 1. Comparative indicators of mediation practice in civil proceedings in Ukraine and Germany

Indicator	Ukraine (2023)	Germany (2022)
Existence of specialised mediation legislation	Yes (2021)	Yes (2012)
Procedural integration into the Civil Procedure Code	Weak (advisory)	Strong (mandatory elements)
Share of civil disputes resolved through mediation	4.2%	13.8%
Mediation success rate	52.3%	61.4%
Availability of certified mediators	Limited	Structured register
Role of the court in initiating mediation	Advisory only	Systematic referrals

Source: compiled by the author based on G. Barth, & J. Barth (2023), J.M. Jehle (2023), Federal Statistical Office (Destatis) (2024), Eurostat (2025)

As shown in the table, mediation was officially legalised in Ukraine with the adoption of the Law "On Mediation" in 2021[7]. This legislative act defines the legal status of mediators, establishes basic procedural safeguards, and sets out the general principles of mediation. It thus provides a legal foundation for the procedure, although it remains relatively recent. The Civil Procedure Code of Ukraine refers to mediation only indirectly – as a non-mandatory alternative to litigation. Judges are entitled to suggest mediation

[1] Law of Ukraine No. 1875-IX "On Meditation". (2021, November). Retrieved from https://zakon.rada.gov.ua/go/1875-20.
[2] Civil Procedure Code of Ukraine. (2004, March). Retrieved from https://zakon.rada.gov.ua/laws/show/1618-15#Text.
[3] Mediation Act of the Federal Ministry of Justice and Consumer Protection of Germany. (2012, July). Retrieved from https://www.gesetze-im-internet.de/englisch_mediationsg/englisch_mediationsg.html.
[4] Civil Procedure Code of the Federal Republic of Germany. (1950, November). Retrieved from https://www.gesetze-im-internet.de/zpo/ZPO.pdf.
[5] Law of Ukraine No. 1875-IX "On Meditation". (2021, November). Retrieved from https://zakon.rada.gov.ua/go/1875-20.
[6] Mediation Act of the Federal Ministry of Justice and Consumer Protection of Germany. (2012, July). Retrieved from https://www.gesetze-im-internet.de/englisch_mediationsg/englisch_mediationsg.html.
[7] Law of Ukraine No. 1875-IX "On Meditation". (2021, November). Retrieved from https://zakon.rada.gov.ua/go/1875-20.

to the parties; however, its use remains voluntary. There are no procedural incentives or mandatory mechanisms in place to promote the active use of this tool. The proportion of civil disputes resolved through mediation in Ukraine remains low. The main reasons include a lack of public trust, limited awareness of the procedure, and insufficient encouragement from the judicial system.

Despite the legal provision for mediator certification, Ukraine lacks a unified national register of certified professionals, as well as standardised training requirements. In many regions, there is a pronounced shortage of accessible and properly trained mediators. Although Ukrainian courts are permitted to inform parties about the possibility of resolving disputes through mediation, there is no systematic mechanism for promoting the procedure or for effectively encouraging its use within the judiciary. Judges typically do not monitor whether the parties have attempted pre-trial settlement via mediation.

In contrast, Germany adopted the Mediation Act in 2012[1], which comprehensively regulates both court-annexed and out-of-court mediation procedures. The German legal framework in this area is more mature and better integrated, owing to its earlier adoption and consistent implementation. Mediation is organically embedded within civil proceedings: courts have the authority to suspend proceedings to allow parties the opportunity to engage in mediation. In certain cases – particularly in the family or minor civil disputes – parties are required either to attend information sessions or to make an attempt at pre-trial settlement through mediation.

A significant proportion of civil disputes in Germany are resolved through mediation. This is largely due to the existence of a well-developed alternative dispute resolution infrastructure and an established culture of mediation, which is actively supported by both the legal community and the judiciary. The high success rate of mediation procedures reflects public trust in this dispute resolution mechanism and indicates the parties' ability to reach mutually acceptable outcomes. This success may also be attributed to the proper training of mediators and the high level of preparedness among parties for constructive dialogue.

Germany operates structured accreditation systems for mediators, as well as public registers that promote transparency and enhance public confidence. German courts often play an active role in referring parties to mediation. This is particularly common in specific categories of disputes, such as those involving family or consumer law, where cases may regularly be directed to mediation even before formal proceedings begin. Such practices demonstrate a proactive approach by judicial institutions in promoting the amicable settlement of disputes. In Germany, Section 5 of the Mediation Act[2] sets out clear qualification requirements for individuals wishing to practise as mediators. These include completion of certified training, adherence to professional ethics, and engagement in continuous professional development. The existence of a national register of qualified mediators contributes to the transparency of the process and enhances accountability within the field of mediation.

In Ukrainian judicial practice, mediation is rarely treated as a priority procedural mechanism. For example, in case No. 127/13130/21[3], the judge merely noted the possibility of an amicable settlement but did not schedule a mediation hearing or involve a mediator in the process. By contrast, German judicial practice is characterised by a more structured approach to alternative dispute resolution. In case No. 66 S 200/21[4], the Berlin court actively facilitated mediation: the judge referred the parties to a Güterichter (conciliation judge), which led to a partial settlement of the dispute. This settlement was subsequently formalised in the final court decision.

In Germany, it is common practice to include mediation clauses in commercial and employment contracts. In general, courts uphold such clauses and may suspend proceedings to attempt resolution through mediation. According to a survey conducted by the Deutscher Anwaltverein (2022), 39% of contracts included legally binding alternative dispute resolution provisions. In Ukraine, such clauses are permitted under Article 9 of the Civil Code[5], which allows parties to agree on a dispute resolution procedure. However, due to the lack of corresponding procedural mechanisms to enforce these agreements, courts often proceed directly to litigation, disregarding prior arrangements for alternative dispute resolution.

The analysis revealed that institutional support for mediation in Germany is significantly stronger than in Ukraine. Federal and regional bar associations, chambers of commerce and industry, and judicial institutions actively cooperate to promote mediation. Notably, financial incentives are offered, such as reduced fees and subsidies for low-income parties. In Ukraine, although pilot programmes and

[1] Mediation Act of the Federal Ministry of Justice and Consumer Protection of Germany. (2012, July). Retrieved from https://www.gesetze-im-internet.de/englisch_mediationsg/englisch_mediationsg.html.
[2] Ibidem, 2012.
[3] Resolution of Vinnytsia City Court No. 127/13130/21. (2021, September). Retrieved from https://verdictum.ligazakon.net/document/99397014.
[4] Judgement of the Berlin City Court No. 66 S 200/21. (2022, July). Retrieved from https://openjur.de/u/2437922.html.
[5] Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15#Text.

mediation centres have been launched in cities such as Kyiv, Lviv and Kharkiv with donor support, the lack of stable state funding limits the long-term sustainability of these initiatives. Furthermore, the absence of systemic backing reduces their reach and overall effectiveness.

The findings indicate that the German model of mediation represents a more advanced and integrated system. It is underpinned by procedural norms, consistent judicial practice, and an established professional infrastructure. In contrast, the development of mediation in Ukraine is hindered by legislative and procedural gaps, a low level of institutionalisation, and the absence of mechanisms for enforcing mediated agreements. The study highlights the need for comprehensive reform of Ukraine's civil procedural legislation. In particular, it would be appropriate to introduce mandatory mediation hearings for certain categories of disputes (e.g. family, employment, and minor civil claims). It is also necessary to establish a state-run certification system for mediators, create an official register, and implement financial or procedural incentives for both judges and participants. In addition, integrating mediation into judicial professional training and launching awareness-raising campaigns could significantly enhance its perception as an effective and legitimate means of dispute resolution.

A comparative analysis of mediation procedures in the civil justice systems of Ukraine and Germany highlights both promising areas for development and critical systemic shortcomings. Mediation, as an out-of-court and non-adversarial method of dispute resolution, has gained international recognition for its effectiveness, cost-efficiency, and capacity to reduce the burden on state judicial systems. However, the success of its practical implementation largely depends on the specific features of national legal cultures, institutional capacity, and the level of public trust in alternative forms of justice. Despite the adoption of the Law of Ukraine "On Mediation"[1], the national mediation system remains largely ineffective and institutionally fragile. As noted by D. Kalashnyk *et al.* (2023) and V. Parasiuk *et al.* (2025), although a legislative framework has been established, its practical application is hindered by several factors. Among the key barriers are a shortage of qualified mediators, limited institutional support, and a low level of public awareness. Additionally, judges are often reluctant to recommend mediation, influenced by entrenched traditions of adversarial litigation and the absence of well-developed court-connected mediation programmes. These factors further undermine the effectiveness of mediation in practice.

By contrast, Germany presents an effective model for integrating mediation into the civil justice system. Since the adoption of the Mediation Act in 2012, the institution of mediation has developed actively and consistently. This progress has been made possible due to the availability of certified mediator training programmes, financial incentives for disputing parties, and the active role of courts in referring cases to mediation. M. Giacalone & S. Salehi (2022) emphasise that the success of mediation in Germany is driven by a broad network of mediation service providers and a high level of institutional trust. This is supported by empirical data on dispute resolution outcomes and participant satisfaction levels.

To better illustrate the contrast between the two systems, the following comparative table outlines the key obstacles in Ukraine and the success factors in Germany (Table 2). The structured comparison not only highlights existing gaps but also identifies potential directions for reform. The central issue lies in Ukraine's ability to effectively localise and adapt elements of the German experience without undermining its own legal sovereignty or contradicting national social conditions. As noted by J. Itrich-Drabarek *et al.* (2022), mediation in administrative legal disputes has demonstrated a high degree of effectiveness, indicating its potential as a pilot mechanism in specific sectors prior to broader implementation. Additional attention should be paid to the institutional foundations of mediation's legitimacy. According to research by I.J.T. Krunn & A.A. Rocha (2022), the effectiveness of mediation largely depends on the degree of its institutional independence and perceived neutrality – both of which require systematic development within the Ukrainian context.

Table 2. Factors hindering the development of mediation in Ukraine and supporting its functioning in Germany

Criterion	Ukraine (Barriers)	Germany (Success factors)
Legal framework	Relatively recent; inconsistencies in procedural integration	Comprehensive and coherent legal framework has been in place since 2012
Judicial involvement	Passive role of judges; rare recommendations for mediation (D. Kalashnyk *et al.* (2023)	Judges actively recommend and refer cases to mediation
Public awareness and trust	Low awareness; cultural preference for litigation	High public trust in mediation processes and alternative dispute resolution

[1] Law of Ukraine No. 1875-IX "On Meditation". (2021, November). Retrieved from https://zakon.rada.gov.ua/go/1875-20.

Table 2. Continued

Criterion	Ukraine (Barriers)	Germany (Success factors)
Mediator training and certification	Fragmented training programmes; absence of unified certification	Nationally standardised system for mediator training and accreditation
Integration with digital tools (ODR)	Limited implementation of ODR in civil mediation (B. Sutiyoso, 2023)	Expanding the integration of ODR platforms to enhance efficiency
Institutional support	Weak judicial infrastructure for supporting mediation	Institutionalised court-connected mediation schemes
Cost incentives	Unclear or absent economic benefits of choosing mediation	Financial incentives and reduced fees for resolution through mediation

Source: compiled by the author based on G. Barth & J. Barth (2023), Federal Statistical Office (Destatis) (2024), Eurostat (2025)

A distinct dimension of divergence concerns the level of digitalisation in dispute resolution procedures. B. Sutiyoso (2023) supported the gradual implementation of online dispute resolution (ODR) as a complement to traditional forms of mediation. In Germany, this process aligns with broader reforms in the area of e-justice. By contrast, Ukraine still lacks a unified digital infrastructure for conducting civil mediation, particularly in rural areas and underdeveloped regions. The introduction of digital dispute resolution mechanisms could enhance democratic access to mediation services. This is especially relevant in light of the increasing importance of virtual formats in delivering judicial services, prompted by global challenges such as the COVID-19 pandemic and warrelated displacement.

Despite its considerable potential, mediation is not without criticism. E.J. Menninga (2023) warns of the risk of bias in mediation procedures, particularly in cases where parties have unequal access to resources or differing levels of legal awareness. This issue is particularly relevant for Ukraine, where there is significant inequality in legal representation, which may distort the balance of power between parties. In this context, institutionalising safeguards – such as mandatory legal consultations before the commencement of mediation or the introduction of procedural oversight – would be appropriate. Such measures could significantly reduce the risk of undue influence or bad faith conduct. At the same time, even in countries with more developed models, such as Germany, certain challenges remain. Despite the broader uptake of mediation compared to Ukraine, its application in Germany still varies depending on regional practices and the type of dispute. M. Giacalone & S. Salehi (2022) observed that commercial mediation is considerably more widespread than mediation in family or employment conflicts. This suggests that even in advanced legal systems, cultural transformation occurs gradually. Therefore, both Germany and Ukraine should continue to monitor the effectiveness of mediation procedures and remain open to incremental reform.

Although Ukraine has formally adopted the Law "On Mediation"[1], its implementation remains limited due to weak integration into procedural law and an underdeveloped institutional infrastructure. As noted by A. Pakhomova (2022), Ukrainian courts rarely refer parties to mediation in a systematic manner, and judges lack clear authority or procedural incentives to promote its use. By contrast, Germany operates a fully developed mediation system based on the 2012 Mediation Act[2], which is integrated into the Civil Procedure Code. As highlighted by K. Grajewska & A. Grajewski (2023), this system complies with the requirements of Directive No. 2008/52/EC[3] and enables courts to actively support mediation through court-appointed mediators (Güterichter). R. Mallalieu & C. Campbell (2023) also emphasised the economic efficiency of mediation, noting its financial and procedural advantages over traditional litigation. The development of mediation in Ukraine is further hindered by the absence of unified professional standards and a robust infrastructure. According to I.V. Fakas (2022), the legal status of mediators remains ambiguous, while S. Myrza & I. Gorbanov (2023) pointed to a shortage of certified professionals and specialised mediation centres. The low level of public trust and legal awareness, as emphasised by N. Takeya & Y. Yamada (2023), limits both the perception and effectiveness of mediation. In contrast, Germany benefits from established training standards, state support, and a well-developed institutional framework. As demonstrated by V. Németh & C. Szabó (2021), trust in mediation increases when institutional and cultural support is coordinated.

Digitalisation poses a separate challenge. Ukraine was unprepared for the transition to online mediation during the COVID-19 pandemic (Zukh &

[1] Law of Ukraine No. 1875-IX "On Meditation". (2021, November). Retrieved from https://zakon.rada.gov.ua/go/1875-20.
[2] Mediation Act of the Federal Ministry of Justice and Consumer Protection of Germany. (2012, July). Retrieved from https://www.gesetze-im-internet.de/englisch_mediationsg/englisch_mediationsg.html.
[3] Directive of the European Parliament and of the Council No. 2008/52 "On Certain Aspects of Mediation in Civil and Commercial Matters". (2008, May). Retrieved from https://eur-lex.europa.eu/eli/dir/2008/52/oj/eng.

Shveda, 2021), whereas Germany swiftly implemented appropriate platforms (Myrza & Gorbanov, 2023). Furthermore, the legal distinction between a mediation agreement and a settlement agreement remains unclear in Ukraine, complicating enforcement (Navrotska & Vorobel, 2022). Germany offers a mature and harmonised mediation system, while Ukraine remains in a transitional phase that requires procedural reform, judicial training, and infrastructural development. As noted by M. Ali (2021), mediation must be institutionalised not merely as an alternative, but as an integral part of civil justice in order to ensure its effectiveness and legitimacy.

In conclusion, it should be emphasised that the effective implementation of mediation requires a comprehensive approach. This includes an appropriate legal infrastructure, support from the judiciary, a high level of public trust, professional standards for mediators, and the use of modern technologies. Despite positive developments, the current state of mediation in Ukraine still necessitates substantial structural and cultural changes to achieve a level of effectiveness comparable to the German model. Comparative research confirms that no universal model exists. However, adaptive learning from jurisdictions such as Germany, combined with context-sensitive reforms, may contribute to the development of a more restorative and participatory system of civil justice in Ukraine. Such academic dialogue opens up opportunities for further empirical research and policy experimentation aimed at strengthening the role of mediation in upholding the rule of law within the European legal space.

■ Conclusions

The comparative analysis of the application of mediation procedures in civil proceedings in Ukraine and Germany reveals both common features and significant differences. These differences stem from distinct legal traditions, institutional frameworks, and the extent to which mediation has been integrated into each country's procedural system. The research findings confirmed that Germany has developed a mature model of mediation, which is deeply institutionalised and effectively embedded within its civil justice system. This is achieved through both legislative mechanisms and practical tools for implementation. By contrast, the development of a stable mediation culture in Ukraine is still ongoing, and the corresponding model remains at an early stage of evolution.

Despite the formal legal recognition of mediation and the adoption of relevant regulatory acts, Ukraine continues to exhibit an underdeveloped institutional infrastructure and limited public awareness. A predominantly legislative approach prevails, yet it lacks sufficient practical implementation and procedural integration. In contrast, the German model is supported by systemic judicial backing, clearly defined professional standards for mediators, and incentives for parties to reach amicable settlements.

The study demonstrated that unlocking the potential of mediation in Ukraine's civil justice system is only possible through comprehensive support at legal, organisational, and educational levels. The German experience highlighted the value of considering mediation not only as an alternative method but also as a complement to judicial proceedings. This is particularly important in categories of disputes where it is essential to preserve social or commercial relationships between the parties. Given the identified shortcomings and challenges within the Ukrainian context, the introduction of systematic training for qualified mediators should be prioritised. Additionally, greater integration of mediation into judicial practice and the implementation of effective public awareness mechanisms are needed. The judiciary should also play an active role in promoting mediation through structured case referral systems and the use of procedural incentives.

Future research prospects include an in-depth empirical analysis of the effectiveness of mediation across different categories of civil disputes in each jurisdiction. Further studies should assess parties' satisfaction with the outcomes of mediation and examine the role of the judiciary in the procedural support of mediation processes. An important line of inquiry also involves exploring the impact of European Union legal standards and cross-border dispute resolution practices on the development of Ukraine's national mediation system.

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Застосування процедури медіації в цивільному судочинстві України та Федеративної Республіки Німеччини

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■ **Анотація.** Актуальність дослідження зумовлена потребою підвищення ефективності вирішення спорів у цивільному судочинстві України та Федеративної Республіки Німеччини шляхом застосування альтернативних методів, зокрема медіації. Метою статті було всебічне дослідження застосування медіації в цивільному процесі України й Німеччини. Увагу зосереджено на виявленні правових і процедурних бар'єрів на шляху її ефективного впровадження та формулювання пропозицій з удосконалення відповідної правової бази обох держав. Методологічну основу дослідження склали формально-правовий, порівняльно-правовий, системно-структурний аналіз, а також аналіз кейсів. Ці методи надали можливість здійснити аналіз нормативно-правових актів, судової практики й доктринальних підходів обох країн. Попри проведення реформ в обох правових системах, досі є проблеми в інституціоналізації механізмів медіації, передусім щодо законодавчих прогалин, виконання медіаційних угод і заохочення судом до врегулювання спорів. Результати дослідження засвідчили, що в Німеччині використання медіації є системно інтегрованим у цивільне судочинство. Це зумовлено наявністю послідовної правової основи, підготовлених медіаторів і судової підтримки добровільного врегулювання спорів. В Україні, попри ухвалення відповідних нормативно-правових актів, практичне застосування медіації залишається фрагментарним і недостатньо розвиненим. Зазначене зумовлено відсутністю єдиних стандартів, низьким рівнем обізнаності серед правників й обмеженою інституційною підтримкою. Порівняльний аналіз засвідчив, що досвід Німеччини може бути корисним для України. Зокрема, ідеться про підвищення вимог до кваліфікації медіаторів, розвиток судової медіації та зміцнення довіри суспільства до альтернативного вирішення спорів. Практичне значення дослідження полягає у формулюванні науково обґрунтованих пропозицій щодо оптимізації медіації в системі цивільного судочинства. Ці пропозиції можуть бути використані законодавцями, суддями та практикуючими юристами для підвищення доступу до правосуддя та зменшення навантаження на судову систему шляхом розвитку ефективної медіаційної інфраструктури

■ **Ключові слова:** альтернативне вирішення спорів; вирішення конфліктів; медіація; порівняльна медіація; цивільне судочинство

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Case study analysis of overcoming regulatory barriers to ensuring transparency in the sphere of budget funds

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■ **Abstract.** This study examined mechanisms for overcoming regulatory barriers to ensuring transparency in the sphere of budget funds, an issue that is becoming particularly relevant in the context of global transformations of the public administration system and increasing requirements for the transparency of public finances. The research methodology was based on a systematic approach, employing comparative analysis of regulatory and legal acts from five countries (USA, India, Indonesia, Poland, Ukraine) over the period 1993-2024, utilising internationally recognised Open Budget Index indicators from the International Budget Partnership. The main results of the study revealed three groups of regulatory barriers of a legislative nature. The first group consists of gaps in legal regulation, in particular the lack of unified quantitative indicators for assessing transparency and insufficient detailing of requirements for disclosing information on the implementation of budget programmes. The second group is formed by inconsistencies in legal norms between different legislative acts regarding the terms and formats of the publication of budget information. The third group includes the absence of clear sanctions and effective mechanisms of liability for violations of budget transparency requirements. A comparative analysis of the legislation of the studied countries revealed that the most effective regulatory frameworks are those of the USA and Poland, where legislative acts establish clear requirements for the formats and terms of data publication, ensure the standardisation of budget reporting, and establish effective mechanisms of liability for violations of transparency requirements. The practical significance of the study lies in the development of comprehensive recommendations for improving the regulatory framework of Ukraine by strengthening liability for violations of transparency requirements, optimising administrative procedures for access to information, implementing common standards of open data, ensuring a clear division of powers between controlling bodies, and developing mechanisms of public participation to increase the transparency of budget processess

■ **Keywords:** budget efficiency; public monitoring; e-governance; institutional capacity; digital reporting

■ Introduction

Ensuring transparency in the sphere of budget funds is one of the key elements of effective public administration and a prerequisite for building a democratic society. In the context of globalisation and increasing international economic integration, the issue of transparency in the budget process is of particular

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importance for ensuring the sustainable development of states and strengthening the trust of international partners. However, the existence of various regulatory barriers creates significant obstacles to achieving an appropriate level of transparency in the budget process both at the national and international levels. The relevance of the study of regulatory barriers to the transparency of budget processes is due to the critical state of public finance management efficiency in Ukraine, where, according to the Open Budget Survey for 2023, the budget transparency index is only 38 points out of a possible 100 (International Budget Partnership, 2023a). In the context of post-war reconstruction and European integration processes, which require increased control over the targeted use of international financial assistance, the issue of overcoming legislative gaps in the field of budget transparency is of paramount importance. The economic aspect of this relevance is emphasised by O. Kyrylenko & O. Zhadan (2021), who demonstrate that countries with a higher level of budget transparency show better indicators of public administration efficiency and economic development, and that the reduction of regulatory barriers in this area has a positive effect on the quality of public services and the investment climate.

The political dimension of ensuring budget transparency is revealed through the prism of complex interactions between various public institutions and interest groups. A study of political factors conducted by a research team led by F. Citro (2019) revealed the critical role of political will, the development of civil society, and the effectiveness of public control mechanisms in shaping a transparent budget process. The methodology developed by the authors for assessing the impact of political competition on the level of budget transparency is particularly valuable. The political aspects of budget transparency were also analysed by S. Yushko (2024). A comprehensive analysis of regulatory barriers conducted by researcher identified three main categories of legislative obstacles: structural inconsistency between different levels of budget legislation, the lack of clear sanctions for violations of transparency requirements, and the procedural complexity of obtaining detailed budget information. The author investigated the relationship between political systems and the level of transparency of budget processes, finding that competitive political systems with an active civil society create favourable conditions for the development of budget transparency. An important contribution to the understanding of political challenges in the field of financial reforms was made by Y. Hamada & K. Agrawal (2021).

A systemic approach to budget control is particularly relevant in the context of preventing financial abuse. The study by M. Shakhobiddin (2024) emphasised that effective management of budget funds involves not only the establishment of clear financial mechanisms, but also the introduction of effective monitoring and reporting tools. Digital technologies are becoming a critically important means of ensuring transparency, allowing for real-time control over the movement of public finances and minimising the risks of corruption schemes. The relationship between budget transparency and governance quality is one of the central aspects of scientific research in this area. The study by M. Adil (2022) found a significant correlation between the level of transparency and indicators of public administration efficiency. The author documented that countries with a high level of budget transparency, such as New Zealand and Singapore, demonstrate significantly lower corruption rates and higher levels of citizen trust in state institutions.

An innovative approach to ensuring budget transparency through participatory budgeting mechanisms is presented in the study by B. Nacar & N. Falay (2024). The results of this study indicate that the effectiveness of participatory budgeting depends on three key factors: the quality of the regulatory framework, the institutional capacity of state bodies, and the level of involvement of civil society. It was found that municipalities with clear regulatory procedures for participatory budgeting demonstrate a 23% higher level of budget transparency compared to those where the regulatory framework remains fragmented. It has been established that the main legal barrier to the implementation of this mechanism is the lack of detailed legislative regulation of public participation procedures and sanctions for their violation. Despite a significant amount of research in this area, the issue of overcoming regulatory barriers to transparency in the sphere of budget funds remains understudied. The study by M. Bisogno & B. Cuadrado-Ballesteros (2021) revealed significant legislative limitations in 33 European countries, in particular the fragmentation of legal regulation and the lack of unified standards for the publication of budget data. The authors found that countries with integrated regulatory frameworks demonstrate a significantly higher level of budget transparency.

The purpose of this study was to examine cases of overcoming regulatory barriers to ensuring transparency in the sphere of budget fund circulation and to identify the most successful approaches to transforming the legislative framework in this direction. To achieve the set goal, the following tasks were identified: to systematise and classify regulatory obstacles that limit transparency in the budget sphere and to identify the most effective practices for eliminating regulatory restrictions in the international context.

Materials and Methods

The study applied a comprehensive approach to the analysis of cases of overcoming regulatory barriers to

ensuring transparency in the sphere of budget funds circulation. The methodological basis of the study was a systematic approach, which allowed considering the problem of budget transparency as a multifaceted phenomenon, encompassing legal mechanisms of regulation, legislative gaps, and regulatory support for the transparency of the budget process. To ensure the representativeness of the study, 10 key regulatory documents were analysed, including laws and bylaws of the studied countries in the sphere of budget transparency for the period 1993-2024. The criteria for including documents in the sample were: direct impact on ensuring transparency of the budget process, validity during the studied period, and the presence of mechanisms for practical implementation.

The analysis of the US experience was based on the study of three fundamental legislative acts that have formed the modern system of budget transparency in the country: the Federal Funding Accountability and Transparency Act[1], the Digital Accountability and Transparency Act[2], and the Government Performance and Results Act[3]. The Indian experience is of particular interest due to the introduction of innovative technological solutions in combination with legal mechanisms for ensuring transparency. The Fiscal Responsibility and Budget Management Act[4] and the Right to Information Act[5] created the legal basis for citizens' access to budget information. The study of the Indonesian experience focused on the analysis of Law of Indonesia No. 17 "On State Finances"[6], which established comprehensive requirements for the transparency of public finances.

The Ukrainian case demonstrates a systemic approach to ensuring budget transparency through an interconnected system of regulatory acts. The Law of Ukraine "On Openness of Public Funds Use"[7] established basic requirements for the disclosure of information, which were supplemented by the provisions of the Budget Code of Ukraine[8] and the Law of Ukraine "On Basic Principles of State Financial Control in Ukraine"[9]. Public control mechanisms were strengthened by the Resolution of the Cabinet of Ministers of Ukraine "On Ensuring Public Participation in Formation and Implementation of State Policy"[10].

The experience of Poland, analysed through the prism of the Public Finance Act[11], demonstrates a comprehensive approach to public finance management in accordance with the requirements of European Council Directive No. 2011/85/EU "On Requirements for Budgetary Frameworks of the Member States"[12], which establishes pan-European standards of budget transparency. Data from the International Budget Partnership (2023a; 2023b; 2023c; 2023d; 2023e; 2023f) were also used for comparative analysis. This tool provides a standardised analysis of key components of budget transparency, including three main indicators: the Budget Transparency Index (assessing the accessibility and completeness of budget documents), the Public Participation Index, and the Budget Oversight Index. Quantitative assessments of certain aspects of legislative support, such as the completeness of budget documents (rated on a scale from 0 to 100) and the timeliness of their publication (in days from the deadlines set by law), are of particular analytical value.

The research methodology additionally used the case study method to study practical cases of violations of budget transparency requirements based on materials from the State Audit Service of Ukraine (2022), which allowed assessing the effectiveness of liability mechanisms using the example of an inspection of a utility company, as well as the method of documentary analysis of the regulatory and legal framework for interaction between regulatory and law enforcement agencies, in particular, the Procedure for Interaction between the State

[1] Public Law of the United States of America "Federal Funding Accountability and Transparency Act". (2006, September). Retrieved from https://www.congress.gov/bill/109th-congress/senate-bill/2590/text.
[2] Public Law of the United States of America "Digital Accountability and Transparency Act". (2014, May). Retrieved from https://www.congress.gov/bill/113th-congress/senate-bill/994/text.
[3] Public Law of the United States of America "Government Performance and Results Act". (1993, August). Retrieved from https://www.congress.gov/bill/103rd-congress/senate-bill/20/text.
[4] Fiscal Responsibility and Budget Management Act of India. (2003, August). Retrieved from https://dea.gov.in/sites/default/files/FRBM_Act_2003.pdf.
[5] Right to Information Act of India. (2005, June). Retrieved from https://rti.gov.in/rti-act.pdf.
[6] Law of Indonesia No. 17 "On State Finances". (2003, April). Retrieved from https://peraturan.bpk.go.id/Home/Details/43030/uu-no-17-tahun-2003.
[7] Law of Ukraine No. 183-VIII "On Openness of Public Funds Use". (2015, February). Retrieved from https://zakon.rada.gov.ua/laws/show/183-19.
[8] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[9] Law of Ukraine No. 2939-XII "On Basic Principles of State Financial Control in Ukraine". (1993, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2939-12.
[10] Resolution of the Cabinet of Ministers of Ukraine No. 996 "On Ensuring Public Participation in Formation and Implementation of State Policy". (2010, November). Retrieved from https://zakon.rada.gov.ua/laws/show/996-2010-п.
[11] Public Finance Act of Poland. (2009, August). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20091571240/U/D20091240Lj.pdf.
[12] Directive of the European Council No. 2011/85/EU "On Requirements for Budgetary Frameworks of the Member States". (2011, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0085.

Audit Service and the Prosecutor's Office[1], in order to identify systemic shortcomings in responding to violations of budget transparency requirements.

Results

Typology of regulatory barriers in the field of ensuring budget transparency. Budget transparency is a key element of effective public finance management and contributes to strengthening public trust in state institutions. It is ensured through the openness of information about budget processes, the possibility of public control, and the participation of stakeholders in financial decision-making. However, the primary obstacles are various regulatory barriers that prevent the achievement of a high level of openness and efficiency of budget management: gaps in legal regulation, inconsistency of legal norms, and lack of clear sanctions. Openness of budget processes allows citizens to access information about the volume of public spending and the efficiency of the use of public funds, which is important for increasing the level of trust in government. In Ukraine, the foundations for ensuring transparency have already been established at the legislative level through the Constitution of Ukraine[2], the Budget Code of Ukraine[3], and the Tax Code of Ukraine[4]. In particular, the Constitution of Ukraine, in Article 34, guarantees citizens the right to freely collect, store, use, and disseminate information orally, in writing, or in any other way.

The adoption of the Law of Ukraine No. 183-VIII[5] in 2015 was an important step towards increasing the transparency of the budget process. This law established clear requirements for the publication of information on the use of budget funds on a single web portal, determined the list of entities subject to the law, and established the procedure for providing and publishing information on the use of public funds. Among the positive changes that have occurred as a result of the adoption of this law and the creation of relevant information platforms, it is worth noting: ensuring public access to information on treasury transactions in real time, creating a single format for presenting budget information, increasing the efficiency of the publication of information on the use of budget funds, and strengthening analytical capabilities for monitoring budget expenditures. The direct legal basis for access to budget indicators and financial information of state bodies is provided by special regulatory acts, such as the Law of Ukraine No. 2939-XII[6]. The Budget Code of Ukraine[7], in Article 7, establishes the principle of publicity and transparency as one of the key principles of the budget system of Ukraine, and Article 28 regulates in detail the procedure for publishing budget information at all stages of the budget process.

Despite these positive changes, the analysis of the above-mentioned regulatory and legal acts revealed significant shortcomings in the mechanisms of their implementation. The first problem is related to the lack of unified quantitative indicators for assessing the transparency of budget processes at all levels of the budget system. The Budget Code of Ukraine[8], in Article 28, establishes general requirements for the publication of budget information but does not provide specific measurable indicators that would allow for an objective assessment of the level of transparency. The second problem concerns the contradiction between the deadlines for the publication of information established by different laws. Article 20 of the Law of Ukraine No. 2939-XII[9] establishes a deadline for responding to information requests of 5 working days, while Article 2 of the Law of Ukraine Law of Ukraine No. 183-VIII[10] requires the publication of information within 3 working days after the amendments are made. This inconsistency creates legal uncertainty for entities responsible for the publication of budget information. The third problem is the inconsistency of data format requirements between different regulatory acts. While the Law of Ukraine No. 2939-XII, in Article 10-1, requires the publication of information in open data formats, the Law of Ukraine No. 183-VIII, in Article 2, does not specify technical requirements for data formats. This leads to the publication of a significant part of budget

[1] Order of the Main Control and Audit Administration of Ukraine, Ministry of Internal Affairs of Ukraine, Security Service of Ukraine, Prosecutor General's Office of Ukraine No. 346/1025/685/53 "On Approval of the Procedure for Interaction between the State Audit Service, Prosecutor's Office, Internal Affairs Bodies, and Security Service of Ukraine". (2006, October). Retrieved from https://zakon.rada.gov.ua/laws/show/z1166-06.
[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] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[4] Tax Code of Ukraine. (2010, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2755-17#Text.
[5] Law of Ukraine No. 183-VIII "On Openness of Public Funds Use". (2015, February). Retrieved from https://zakon.rada.gov.ua/laws/show/183-19.
[6] Law of Ukraine No. 2939-XII "On Access to Public Information". (2011, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2939-12.
[7] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[8] Ibidem, 2010.
[9] Law of Ukraine No. 2939-XII "On Access to Public Information". (2011, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2939-12.
[10] Law of Ukraine No. 183-VIII "On Openness of Public Funds Use". (2015, February). Retrieved from https://zakon.rada.gov.ua/laws/show/183-19.

information in PDF files or scanned documents that are not subject to automated processing, which significantly reduces the analytical value of the published information. The fourth problem is related to insufficient sanctions for violation of the requirements. Although Article 212-3 of the Code of Ukraine on Administrative Offences[1] establishes liability for violation of the right to information, the sanctions (fines from 425 to 850 UAH) are inadequate in relation to the significance of violations of budget transparency. This creates opportunities for entities to avoid real liability. The fifth problem concerns the insufficient detail of the requirements for disclosure of information on the implementation of budget programmes. Article 28 of the Budget Code of Ukraine[2] establishes general requirements for the publication of reports on the implementation of budget programmes but does not specify the need to publish detailed justifications for the effectiveness of the use of budget funds. This insufficient specification allows reporting entities to limit themselves to formal indicators without providing a substantive analysis of the results achieved and the effectiveness of the use of resources. The system of regulatory and legal support for transparency in Ukraine needs to be improved. Analytical data from the State Audit Service of Ukraine (State Audit Service of Ukraine, 2024) show that out of 437 identified violations of the requirements for the publication of information on the use of budget funds for 2022, administrative sanctions were applied in only 62 cases (14.2%). This low rate of application of sanctions further indicates the ineffectiveness of existing accountability mechanisms.

The adoption of the Law of Ukraine No. 183-VIII[3] was an important step towards increasing the transparency of the budget process. This law established clear requirements for the publication of information on the use of budget funds on a single web portal, determined the list of entities subject to the law, and established the procedure for providing and publishing information on the use of public funds. Among the positive changes that have occurred as a result of the adoption of this law and the creation of relevant information platforms, it is worth noting: ensuring public access to information on treasury transactions in real time, creating a single format for presenting budget information, increasing the efficiency of the publication of information on the use of budget funds, and strengthening analytical capabilities for monitoring budget expenditures (Zakharkin, 2023).

Despite these positive changes, the system of regulatory and legal support for transparency in Ukraine needs to be improved. An analysis of local government regulations, in particular the charters of territorial communities and decisions of local councils, revealed significant variability in approaches to ensuring transparency at the local level. The Decision of the Kyiv City Council "On Approval of the Regulations on the Public Budget"[4] and the Decision of the Lviv City Council "On Approval of the Regulations on the Public Budget of the City of Lviv"[5] demonstrate different approaches to regulating the transparency of budget processes, which is due to the lack of uniform standards. Among the innovative practices, the most progressive are the implementation of open data portals, such as "Open Budget of Kyiv" (Kyiv City Council, Department of Finance, 2025) and "LvivCityHelper", which allow citizens to receive detailed information about local budgets in a convenient form (Viruk, 2018). Particularly effective are the practices of participatory budgeting, introduced in accordance with local regulations in Kyiv and Lviv, which allow citizens to directly influence the distribution of part of the budget funds.

The problem remains the lack of a legally established single methodology for assessing transparency at the local level, which complicates the comparison of the efficiency of the use of budget funds between different regions. Unlike the official international standards enshrined in the International Monetary Fund Fiscal Transparency Code[6], the OECD Principles of Budget Transparency (2017), the EU Council Directive No. 2011/85/EU[7], and the International Public Sector Accounting Standards (2018), Ukrainian legislation does not contain clearly defined criteria for assessing the transparency of local budgets.

In Ukraine, the Order of the Ministry of Finance of Ukraine "On Approval of Methodological Recommendations for Ensuring Transparency and Openness of Budgets"[8] and the Resolution of the Cabinet of

[1] Code of Ukraine on Administrative Offences. (1996, October). Retrieved from https://zakon.rada.gov.ua/laws/show/80731-10#Text.
[2] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[3] Law of Ukraine No. 183-VIII "On Openness of Public Funds Use". (2015, February). Retrieved from https://zakon.rada.gov.ua/laws/show/183-19.
[4] Resolution of Kyiv City Council No. 787/1791 "On Approval of the Regulations on the Public Budget of Kyiv". (2016, December). Retrieved from https://kmr.gov.ua/uk/provisions-public-budget.
[5] Resolution of Lviv City Council No. 632 "On Approval of the Regulations on the Public Budget of Lviv". (2016, June). Retrieved from https://lviv.pb.org.ua/help/base.
[6] Fiscal Transparency Code of International Monetary Found. (2019, January). Retrieved from https://www.imf.org/external/np/fad/trans/Code2019.pdf.
[7] Directive of the European Council No. 2011/85/EU "On Requirements for Budgetary Frameworks of the Member States". (2011, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0085.
[8] Order of the Ministry of Finance of Ukraine No. 1 "On Approval of Methodological Recommendations for Ensuring Transparency and Openness of Budgets". (2019, July). Retrieved from https://zakon.rada.gov.ua/rada/show/v0094201-19#Text.

Ministers of Ukraine "On Approval of the Regulations on Data Sets Subject to Disclosure in the Form of Open Data"[1] establish only basic requirements for the publication of budget information, which are significantly inferior to international standards in terms of detail and systematicity. For example, whereas the IMF Fiscal Transparency Code[2] requires disclosure of information on fiscal risks and the inclusion in budget reporting of data on contingent liabilities and tax expenditures, Ukrainian regulations do not contain such requirements. As a result of these legal gaps, formal compliance with the requirements of the law on the disclosure of information does not guarantee its actual accessibility and comprehensibility for citizens, and the lack of uniform reporting standards leads to incompatibility of data from different sources and complicates their analysis at the national level.

In 2022, the study analysed the materials of the inspection of a municipal enterprise of the local council, which revealed that the enterprise, despite receiving budget funds, did not publish relevant information. The result was the administrative liability of the director of the enterprise and the obligation to ensure transparency in the use of public funds (State Audit Service of Ukraine, 2022). However, such examples are more likely to be exceptions than systematic practice. According to the State Audit Service of Ukraine (2022), out of 437 violations of the requirements for the publication of information on the use of budget funds identified in 2022, administrative sanctions were applied to officials in only 62 cases (14.2%). According to the report of the National Agency for the Prevention of Corruption, the lowest level of liability (less than 10%) is observed in the area of violations of budget transparency requirements compared to other types of administrative offences. This highlights the need to strengthen accountability for such violations and improve mechanisms for applying sanctions. The interaction of financial control bodies with law enforcement agencies in responding to violations of budget transparency requirements remains insufficiently effective. An analysis of the regulatory framework governing this interaction has revealed a number of significant shortcomings.

A documentary analysis of the Procedure for Interaction between the State Audit Service[3], was conducted as part of a study assessing the effectiveness of institutional interaction mechanisms. The analysis revealed that the document is primarily focused on identifying and investigating financial crimes related to the embezzlement of budgetary funds, while issues concerning violations of transparency requirements remain largely overlooked. The document does not provide clear procedures for transferring materials to law enforcement agencies in relation to identified breaches of requirements for the publication of budget information. Given the importance of ensuring transparency and openness in the budgetary process, it would be advisable to consider the inclusion of such procedures or the development of a separate regulatory act to govern actions in cases where violations concerning the publication of budget information are identified. The absence of specialised units within law enforcement agencies dedicated to ensuring budget transparency contributes to the low priority afforded to the investigation of such violations. According to reports from the National Police of Ukraine, cases related to breaches of transparency requirements in budgetary processes constitute less than 1% of all economic crime cases. However, the experience of countries such as the United States – where a dedicated Office of Transparency and Accountability operates under the Ministry of Finance – and the United Kingdom, with its Public Accounts Committee, demonstrates the effectiveness of highly specialised units even when the number of cases is relatively small. Such structures not only investigate violations but also serve a preventive function by developing methodological recommendations and providing training, thereby significantly enhancing overall compliance with transparency requirements.

The problem of inconsistency among provisions of regulatory legal acts in the field of budget transparency is particularly acute. Notable discrepancies exist regarding the methods of publication: Article 15 of the Law of Ukraine No. 2939-XII[4] mandates the placement of information in an open data format on a single state web portal, whereas Article 2 of the Law of Ukraine No. 183-VIII[5] also requires publication on the individual websites of fund managers. This situation results in excessive duplication of information and increases the risk of inconsistencies in the

[1] Resolution of the Cabinet of Ministers of Ukraine No. 835 "On Approval of the Regulations on Data Sets Subject to Disclosure in the Form of Open Data". (2015, October). Retrieved from https://zakon.rada.gov.ua/laws/main/835-2015-%D0%BF?utm_source=chatgpt.com#Text.

[2] Fiscal Transparency Code of International Monetary Found. (2019, January). Retrieved from https://www.imf.org/external/np/fad/trans/Code2019.pdf.

[3] Order of the Main Control and Audit Administration of Ukraine, Ministry of Internal Affairs of Ukraine, Security Service of Ukraine, Prosecutor General's Office of Ukraine No. 346/1025/685/53 "On Approval of the Procedure for Interaction between the State Audit Service, Prosecutor's Office, Internal Affairs Bodies, and Security Service of Ukraine". (2006, October). Retrieved from https://zakon.rada.gov.ua/laws/show/z1166-06.

[4] Law of Ukraine No. 2939-XII "On Access to Public Information". (2011, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2939-12.

[5] Law of Ukraine No. 183-VIII "On Openness of Public Funds Use". (2015, February). Retrieved from https://zakon.rada.gov.ua/laws/show/183-19.

published data due to varying deadlines and formats of publication. An analysis of regulatory barriers in ensuring budget transparency in Ukraine reveals a complex system of interrelated obstacles that necessitate a systematic solution at both legislative and practical levels. Legislative barriers are most evident in the absence of clear mechanisms of accountability for violations of transparency requirements. This is exemplified by the Law of Ukraine No. 183-VIII, which, while establishing the obligation to publish information on the use of budgetary funds, fails to provide sufficiently effective sanctions for non-compliance.

Further obstacles arise from a formalistic approach to public participation in the budgetary process, which persists despite the existence of public consultation mechanisms outlined in the Resolution of the Cabinet of Ministers of Ukraine "On Ensuring Public Participation in Formation and Implementation of State Policy"[1]. To improve the legislative framework, it is necessary to introduce binding requirements for taking into account the results of public consultations in budgetary decision-making. In the United Kingdom, for instance, there is a legislative requirement to publish a Public Consultation Response Statement following the completion of consultations on budgetary matters, wherein the government must clearly explain which public proposals were adopted, which were rejected, and the rationale behind these decisions. The Resolution has significantly expanded opportunities for public oversight of the budget process through the introduction of a multi-level system of public engagement. The document introduced various forms of public participation, including: mandatory public consultations during the stages of budget formation and reporting; the establishment of public councils under budget administrators with the authority to monitor spending effectiveness; a mechanism for public examination of budget programmes, with mandatory consideration of the results by government bodies; electronic consultations involving the publication of draft budget documents and the collection of public proposals online; and public hearings on budget issues at the local level, with the obligatory recording of citizens' proposals in official minutes.

This issue is particularly evident in the interaction between the State Audit Service, the Accounting Chamber, and internal audit units of budget administrators. The Law of Ukraine No. 2939-XII[2] outlines general principles of control but does not clearly delineate the powers of the relevant oversight bodies. Specifically, Article 2 of the law provides a general definition of the state financial control body but lacks detailed coordination mechanisms among the various entities performing control functions. This results in duplication of inspections, an excessive administrative burden on business entities, and inefficient use of state resources. The absence of a clear division of responsibilities also creates gaps in oversight, as certain aspects of the budget process fall outside effective control, with each body presuming the competence lies with another. This problem is further compounded by weak cooperation between oversight bodies and law enforcement agencies in addressing violations of budget transparency requirements, thereby reducing the effectiveness of enforcement measures.

An analysis of regulatory barriers to budget transparency in Ukraine highlights that unclear, ambiguous, and insufficiently detailed legislative provisions hinder their interpretation and practical application. This situation necessitates the harmonisation of the legal framework and modernisation of regulatory instruments. To overcome these identified barriers and improve Ukraine's position – currently ranked 79th out of 125 countries with a score of 38 points according to the International Budget Partnership (2023a) – it is essential to implement comprehensive reforms to the regulatory framework, informed by international best practices in this field.

International experience in overcoming regulatory barriers in the sphere of budget funds circulation: A comparative analysis with Ukraine. International practice demonstrates a range of approaches to addressing regulatory barriers in the circulation of budget funds, reflecting the distinct characteristics of legal systems, the development level of state institutions, and the political contexts of various countries. In the United States of America, the system for ensuring the transparency of budget processes has undergone a fundamental transformation over the past three decades, positioning the country at 14th place in the field of budget transparency (International Budget Partnership, 2023b). The evolution of the American model illustrates a systematic approach to overcoming regulatory constraints through the phased implementation of interlinked legislative initiatives and technological innovations. The first significant step was the adoption of the Government Performance and Results Act[3], which radically reformed the approach to evaluating the

[1] Resolution of the Cabinet of Ministers of Ukraine No. 996 "On Ensuring Public Participation in Formation and Implementation of State Policy". (2010, November). Retrieved from https://zakon.rada.gov.ua/laws/show/996-2010-п.
Public Finance Act of Poland. (2009, August). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20091571240/U/D20091240Lj.pdf.

[2] Law of Ukraine No. 2939-XII "On Basic Principles of State Financial Control in Ukraine". (1993, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2939-12.

[3] Public Law of the United States of America "Government Performance and Results Act". (1993, August). Retrieved from https://www.congress.gov/bill/103rd-congress/senate-bill/20/text.

effectiveness of budgetary expenditure. This legislation introduced a mandatory strategic planning framework for federal agencies, required the development of annual performance plans and outcome reports, and established mechanisms for assessing the effectiveness of budgetary programmes. A key innovation was the incorporation of quantitative performance indicators, enabling objective measurement of goal attainment and the efficient use of public funds. The next major development was the adoption of the Federal Funding Accountability and Transparency Act[1], which introduced a groundbreaking requirement for the publication of detailed information on federal spending via a unified web portal, USAspending.gov. This platform became the first comprehensive system globally to provide the public with direct access to data on federal contracts, grants, loans, and other forms of financial assistance. The legislation set clear standards for data format and publication timelines, enabled automated processing and analysis of the data, and introduced mechanisms for verifying the accuracy of the published information.

A qualitatively new level of transparency was achieved with the adoption of the Digital Accountability and Transparency Act[2], which significantly expanded the requirements for digital reporting and introduced uniform data standards across the entire federal system. This legislation obliged federal agencies to publish detailed information on internal expenditures and financial transactions, established uniform standards for the classification and description of financial data, and also created mechanisms for integrating various information systems. Of particular importance was the introduction of a standardised data format, which enabled compatibility and facilitated automated analysis. As a result of the implementation of these legislative initiatives, the United States created the most advanced system in the world for ensuring budget transparency, characterised by: full automation of the processes of collecting and publishing data on budget expenditures; standardised formats for submitting information that ensure compatibility and enable analysis; well-developed mechanisms for public oversight and participation; an integrated system for assessing the effectiveness of budgetary resource utilisation; and a high level of technological maturity of information systems. The success of the American model is confirmed by high indicators in international rankings – according to the Open Budget Survey, the USA consistently receives more than 69 points out of a possible 100 for the level of budget transparency (International Budget Partnership, 2023b). The experience of the USA demonstrates that effectively overcoming regulatory constraints in the field of budget transparency requires a comprehensive approach that combines a clear legislative framework, a developed technological infrastructure, and effective mechanisms of public oversight.

The Indian approach to ensuring budget transparency is characterised by a unique combination of large-scale legal reforms and innovative technological solutions, as confirmed by the research of A. Naik *et al.* (2024), who highlight the particular effectiveness of the Indian model of digital transformation of the budget process. The Fiscal Responsibility and Budget Management Act[3] established the fundamental principles of fiscal responsibility and transparency, introducing clear quantitative indicators and mechanisms for medium-term planning. Simultaneously, the Right to Information Act[4] created a robust legal framework for citizens' access to budget information through a system of information commissioners and proactive data disclosure. The technological component is implemented through an extensive system of digital platforms, including the central Union Budget portal and the integrated Public Financial Management System platform, which enables real-time tracking of the movement of budgetary funds. The effectiveness of this approach is further supported by the research of C.A. Napitupulu *et al.* (2024), which demonstrates how technological innovations help overcome institutional barriers and enhance the transparency of budget processes in developing countries. The success of the Indian model is reflected in substantial progress in international rankings – according to the Open Budget Survey, the level of budget transparency in the country increased from 46 points in 2015 to 51 points in 2023 – making the Indian experience a particularly valuable example of the successful implementation of comprehensive reforms under the challenging conditions of a large and diverse country (International Budget Partnership, 2023c).

The Indonesian model of ensuring budget transparency demonstrates a comprehensive and multi-level approach to overcoming regulatory constraints, reflecting the specific features of the country's institutional development. The main elements of this approach included the gradual digitalisation of budget processes through the development and implementation of a unified information system for public finance management (SPAN – Sistem Perbendaharaan

[1] Public Law of the United States of America "Federal Funding Accountability and Transparency Act". (2006, September). Retrieved from https://www.congress.gov/bill/109th-congress/senate-bill/2590/text.
[2] Public Law of the United States of America "Digital Accountability and Transparency Act". (2014, May). Retrieved from https://www.congress.gov/bill/113th-congress/senate-bill/994/text.
[3] Fiscal Responsibility and Budget Management Act of India. (2003, August). Retrieved from https://dea.gov.in/sites/default/files/FRBM_Act_2003.pdf.
[4] Right to Information Act of India. (2005, June). Retrieved from https://rti.gov.in/rti-act.pdf.

dan Anggaran Negara), which provided centralised accounting and control over the movement of budgetary funds; the introduction of mandatory publication of budget information in machine-readable formats, with clear deadlines and standards for the disclosure of data on public expenditure; the development of public monitoring mechanisms through the creation of specialised online platforms for tracking budget spending and the integration of a public complaints system regarding the use of public funds; and the implementation of mandatory public consultations at all stages of the budget process, ensuring active civil society engagement in monitoring the use of public finances. These reforms took place within a complex institutional environment shaped by the country's decentralised administrative structure, which grants a high level of autonomy to regional governments; significant territorial dispersion (over 17,000 islands), which complicated the unification of public finance management processes; historically high levels of public sector corruption – Indonesia ranked 122nd out of 133 countries according to Transparency International in 2003; and the limited technological capabilities of remote regions, which created digital inequality in access to budget data. Law of Indonesia No. 17 "On State Finances"[1] laid the foundation for the gradual transformation of the public finance management system, focusing on the introduction of electronic monitoring and control tools. According to research by C.A. Napitupulu *et al.* (2024), this enabled significant progress in combating corruption – the implementation of an electronic procurement system reduced corruption risks by 15% during its first three years of operation and increased competition in government tenders by 27%.

The German and Polish models of ensuring budget transparency demonstrate differing approaches to the implementation of European standards for public finance transparency, which is particularly important in the context of the pan-European policy aimed at enhancing the quality of public finance management. Germany, according to the Government Defence Integrity Index (2020), has established an exemplary system of budget transparency, in which robust mechanisms of parliamentary oversight and a well-developed system of public monitoring play a central role. The budget process is characterised by an unprecedented level of detail and openness, implemented through a range of institutional mechanisms. The specialised Budget Committee of the German Bundestag systematically supervises budget planning and execution, conducting regular public hearings with detailed scrutiny of each expenditure item. The Federal Court of Audit of Germany (Bundesrechnungshof), as an independent body, holds extensive powers to carry out audits and publish results without prior approval from the executive branch. A notable innovation in the German system is the introduction of detailed digital tracking of budget funds via the OpenHaushalt platform, which visualises the movement of public finances in real time and allows for data analysis at various levels of granularity. The German model also mandates public consultations at all stages of the budget process, involving a wide range of stakeholders, including industry associations, research institutions, public organisations, and local communities. A network of independent research institutes, such as the German Institute for Economic Research (DIW Berlin) and the Institute for the World Economy (IfW Kiel), has been established to provide expert assessments of budget proposals. These institutes offer alternative forecasts and analytical materials, thereby enhancing the quality of budgetary discourse. These comprehensive mechanisms have enabled Germany to achieve one of the highest levels of budget – 76 points according International Budget Partnership (2023b).

Poland, as a representative of "new Europe", has provided a example of rapid adaptation to European standards through the implementation of the Public Finance Act[2], but this not created a comprehensive system of reporting standards and control mechanisms: 59 points in 2012 and similar result as for 2023) (International Budget Partnership, 2023d). Both countries have successfully integrated the requirements of the EU Budgetary Framework Directive[3], establishing effective systems of medium-term budgetary planning and ensuring a high level of fiscal transparency in line with European standards, making their experience particularly valuable for countries seeking to enhance public finance management within the context of European integration (Bisogno & Cuadrado-Ballesteros, 2021). The difference between the indicators for Germany (76 points) and Poland (59 points) reflects not only the level of compliance with European fiscal transparency standards but also the depth and institutional maturity of national budgetary control mechanisms. Germany's higher score is attributable to its long-standing tradition of comprehensive financial reporting, independent audit institutions with strong mandates, and a well-developed legal framework that ensures

[1] Law of Indonesia No. 17 "On State Finances". (2003, April). Retrieved from https://peraturan.bpk.go.id/Home/Details/43030/uu-no-17-tahun-2003.
[2] Public Finance Act of Poland. (2009, August). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20091571240/U/D20091240Lj.pdf.
[3] Directive of the European Council No. 2011/85/EU "On Requirements for Budgetary Frameworks of the Member States". (2011, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0085.

regular publication of accessible budget information. In contrast, while Poland has made significant strides in aligning with EU requirements its system remains less integrated, with weaker enforcement of reporting standards and limited public engagement in the budget process. Thus, the gap in scores underscores qualitative differences in how fiscal transparency is institutionalised and practiced, rather than mere formal compliance.

Ukrainian legislation provides for limited sanctions for violations of budget transparency requirements. Article 212 of the Code of Administrative Offences[1] establishes fines ranging from UAH 425 to UAH 850, increasing to UAH 850-1,360 for repeated violations. These amounts are insufficient to effectively encourage compliance with the law. The Law of Ukraine No. 183-VIII[2] does not contain direct provisions on liability, and the Budget Code[3] does not specify sanctions for breaches of transparency requirements. The practical application of sanctions has proven to be largely ineffective. According to the report of the State Audit Service of Ukraine (2022), of the 437 violations identified, administrative sanctions were applied in only 14.2% of cases. Cooperation between financial control bodies and law enforcement agencies requires improvement due to the absence of clear mechanisms for responding to violations of budget transparency requirements. The Interaction Procedure[4] fails to reflect modern challenges and does not include specialised procedures for cases involving breaches of transparency rules.

Kazakhstan has successfully reformed its budget transparency system through the Concept of Civil Society Development[5] and the launch of the Open Budget portal (budget.egov.kz). The Law "On Public Control"[6] introduced mechanisms for monitoring the use of budgetary funds, resulting in an increase in the country's transparency score from 48 to 63 points (International Budget Partnership, 2023e; Kazbekova *et al.*, 2025). The German model is based on the Budget Principles Act[7] and the "four eyes" principle, which ensures that each decision is subject to oversight by at least two independent bodies: the Budget Committee of the Bundestag, the Federal Court of Audit, the Ministry of Finance, and research institutes. The technological component is the OpenHaushalt platform, which provides transaction-level detail (Transparency International Defence and Security, 2020). The United States has implemented a comprehensive approach through the GPRA Modernization Act[8], which established strategic planning and performance-based reporting requirements, and the Digital Accountability and Transparency Act[9], which standardised data across the federal government. The American Recovery and Reinvestment Act[10] created the Transparency and Accountability Council to oversee the use of public funds. Together, these regulations have formed a multi-level control system with clear accountability mechanisms. A comparative analysis of budget transparency mechanisms in different countries around the world demonstrates a wide range of approaches to overcoming regulatory constraints and ensuring transparency in budget processes (Table 1).

Table 1. Comparative analysis of mechanisms for ensuring budget transparency in the USA, India, Indonesia, Germany, Poland and Ukraine

Country	Key regulations	Implementation features	Results achieved	Transparency Index (2023)
USA	Federal Funding Accountability Act[11], Digital Accountability Act[12]	Phased introduction of data standards	Full traceability of federal expenditures	69

[1] Code of Ukraine on Administrative Offences. (1996, October). Retrieved from https://zakon.rada.gov.ua/laws/show/80731-10#Text.
[2] Law of Ukraine No. 183-VIII "On Openness of Public Funds Use". (2015, February). Retrieved from https://zakon.rada.gov.ua/laws/show/183-19.
[3] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[4] Order of the Main Control and Audit Administration of Ukraine, Ministry of Internal Affairs of Ukraine, Security Service of Ukraine, Prosecutor General's Office of Ukraine No. 346/1025/685/53 "On Approval of the Procedure for Interaction between the State Audit Service, Prosecutor's Office, Internal Affairs Bodies, and Security Service of Ukraine". (2006, October). Retrieved from https://zakon.rada.gov.ua/laws/show/z1166-06.
[5] Concept for the Development of Civil Society in Kazakhstan. (2020, August). Retrieved from https://adilet.zan.kz/rus/docs/U2000000390.
[6] Law of the Republic of Kazakhstan No. 59-VII "On Public Control". (2021, June). Retrieved from https://adilet.zan.kz/rus/docs/Z2100000059.
[7] Budget Principles Act of the Federal Republic of Germany. (1969, August). Retrieved from https://www.gesetze-im-internet.de/hgrg/.
[8] Public Law of the United States of America "GPRA Modernization Act". (2010, January). Retrieved from https://www.congress.gov/111/plaws/publ352/PLAW-111publ352.pdf.
[9] Public Law of the United States of America "Digital Accountability and Transparency Act". (2014, May). Retrieved from https://www.congress.gov/bill/113th-congress/senate-bill/994/text.
[10] Public Law of the United States of America "American Recovery and Reinvestment Act". (2009, February). Retrieved from https://www.congress.gov/111/plaws/publ5/PLAW-111publ5.pdf.
[11] Public Law of the United States of America "Federal Funding Accountability and Transparency Act". (2006, September). Retrieved from https://www.congress.gov/bill/109th-congress/senate-bill/2590/text.
[12] Public Law of the United States of America "Digital Accountability and Transparency Act". (2014, May). Retrieved from https://www.congress.gov/bill/113th-congress/senate-bill/994/text.

Table 1. Continued

Country	Key regulations	Implementation features	Results achieved	Transparency Index (2023)
India	Fiscal Responsibility Act[1], Right to Information Act[2]	Emphasis on technological solutions	Establishment of an integrated monitoring system	51
Indonesia	Law of Indonesia No. 17 "On State Finances"[3]	Gradual expansion of system functionality	15% reduction in corruption risks	70
Germany	Budget Principles Act[4]	Strong parliamentary oversight	High efficiency in the management of public funds	76
Poland	Public Finance Act[5]	Comprehensive adoption of EU norms	Standardisation of reporting practices	59
Ukraine	Law "On Openness of Public Funds Use"[6]	Development of electronic financial management systems	Development of a unified web portal	38

Source: compiled by the author based on data International Budget Partnership (2023a; 2023b; 2023c; 2023d; 2023e; 2023f)

An analysis of the identified shortcomings in Ukrainian legislation on budget transparency reveals specific mechanisms and norm-setting approaches that may be adapted from international practice. The legislative techniques used to regulate budget transparency vary significantly across jurisdictions, providing a valuable foundation for enhancing the national framework. The absence of unified quantitative indicators for assessing transparency can be addressed by adopting the American approach to legislatively enshrined performance metrics. The Government Performance and Results Act[7] establishes not merely declarative requirements but also specific quantitative efficiency indicators with clearly defined calculation methodologies. A key feature of this approach is the legislative technique of mandating the inclusion in regulatory acts of sections that detail the measurement methodology, reporting frequency, and the authorities responsible for data collection. Adapting this mechanism in Ukraine would entail the introduction of a new section to the Budget Code[8] titled "Budget Transparency Indicators", specifying relevant indicators for each level of the budget system. To resolve inconsistencies in information disclosure timelines across various legislative acts, the Polish model of codifying public finance requirements is recommended. Poland's Public Finance Act[9] employs a centralised regulatory approach, consolidating all requirements concerning disclosure timelines, formats, and data volumes within a single legislative instrument. This technique includes the development of correlation tables to harmonise legal provisions and avoid conflicts. In the Ukrainian context, this would necessitate amendments to the Law of Ukraine No. 183-VIII[10], incorporating explicit provisions that prioritise its norms in cases of legal conflict with other statutes.

The issue of inconsistent data format requirements may be addressed by drawing on the United States' experience as codified in the Digital Accountability and Transparency Act[11]. This Act establishes uniform standards for all federal information systems and introduces a centralised authority responsible for approving data formats. A distinctive feature of this approach is the use of the framework legislation technique, whereby the primary law sets out overarching principles, while specific details are delegated to subordinate legislation. In the Ukrainian context,

[1] Fiscal Responsibility and Budget Management Act of India. (2003, August). Retrieved from https://dea.gov.in/sites/default/files/FRBM_Act_2003.pdf.
[2] Right to Information Act of India. (2005, June). Retrieved from https://rti.gov.in/rti-act.pdf.
[3] Law of Indonesia No. 17 "On State Finances". (2003, April). Retrieved from https://peraturan.bpk.go.id/Home/Details/43030/uu-no-17-tahun-2003.
[4] Budget Principles Act of the Federal Republic of Germany. (2009). Retrieved from https://www.gesetze-im-internet.de/hgrg/.
[5] Public Finance Act of Poland. (2009, August). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20091571240/U/D20091240Lj.pdf.
[6] Law of Ukraine No. 183-VIII "On Openness of Public Funds Use". (2015, February). Retrieved from https://zakon.rada.gov.ua/laws/show/183-19.
[7] Public Law of the United States of America "Government Performance and Results Act". (1993, August). Retrieved from https://www.congress.gov/bill/103rd-congress/senate-bill/20/text.
[8] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[9] Public Finance Act of Poland. (2009, August). Retrieved from https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20091571240/U/D20091240Lj.pdf.
[10] Law of Ukraine No. 183-VIII "On Openness of Public Funds Use". (2015, February). Retrieved from https://zakon.rada.gov.ua/laws/show/183-19.
[11] Public Law of the United States of America "Digital Accountability and Transparency Act". (2014, May). Retrieved from https://www.congress.gov/bill/113th-congress/senate-bill/994/text.

this would involve granting the Ministry of Digital Transformation the authority to define uniform data standards, along with a clearly articulated mechanism for their mandatory implementation across all information systems within the budgetary sphere. To reinforce sanctions for breaches of transparency requirements, the German model of proportional liability may be adopted. German budgetary legislation employs a legislative technique whereby penalties are calculated as a percentage of the budgetary funds affected by the violation (ranging from 0.5% to 5%), rather than as a fixed sum[2]. This ensures that sanctions are proportionate to the potential harm caused and creates a meaningful deterrent effect. In Ukraine, this would necessitate amendments to Article 212-3 of the Code of Ukraine on Administrative Offences[1], introducing penalties that are proportionate to the amount of public funds involved in the violation.

The issue of insufficient detail in disclosure requirements can be addressed by adapting the Indian approach to proactive data disclosure, as enshrined in the Right to Information Act[2]. This legislative technique establishes varying levels of detail in information disclosure, depending on the category of data and the significance of the budgetary programmes concerned. In the Ukrainian context, this would involve introducing a classification of budget programmes according to their priority level, with corresponding differentiation in disclosure requirements. This would necessitate amendments to Article 28 of the Budget Code of Ukraine[3]. To establish a unified methodology for assessing transparency at the local level, the Indonesian approach to standardising local budget processes may be employed. Law of Indonesia "On State Finances"[4] introduces centralised standards applicable to all levels of the budget system, with built-in mechanisms for adaptation to local conditions. A key feature of this approach is the use of the "minimum standards" technique – setting baseline requirements that are mandatory across all levels, with the option to enhance them locally. Implementation of this model in Ukraine would require amendments to the Law of Ukraine "On Local Self-Government"[5] to incorporate a section on minimum standards of budget transparency.

Improving coordination between regulatory and law enforcement agencies can draw upon the American experience of establishing specialised institutions. The US's Recovery Act[6] introduced the Transparency and Accountability Council, which coordinates the activities of various agencies and ensures a unified approach to addressing violations. This institutional technique involves the clear legislative definition of powers, mechanisms for inter-agency cooperation, and escalation procedures for identified breaches. In the Ukrainian context, this necessitates the development of a new regulatory act that would comprehensively govern the interaction between the State Audit Service, law enforcement agencies, and other regulatory bodies, with a specific focus on violations related to budget transparency. Enhancing the effectiveness of enforcement mechanisms can be supported through the implementation of the German "four eyes" principle. This legislative technique provides for the establishment of a multi-level control system in which each decision regarding the application – or non-application – of sanctions is subject to verification by at least two independent bodies. For Ukraine, this would require amendments to the Law of Ukraine No. 2939-XII[7], introducing provisions mandating the dual verification of decisions related to sanctions for breaches of budget transparency requirements. Thus, international legislative practice offers a broad array of tools for improving Ukraine's regulatory framework in the field of budget transparency. A key factor in the successful adoption of these mechanisms is the implementation of a systematic approach that ensures coherence among the various elements of legal regulation and their effective adaptation to national conditions.

Discussion

Ensuring transparency in the management of budgetary funds is a fundamental challenge of modern public administration, involving a complex interplay of institutional, technological, socio-economic, and legal factors. In the context of global transformations in public governance, the study of mechanisms for overcoming regulatory barriers is particularly relevant, as it directly contributes to enhancing the efficiency of public finance utilisation, strengthening

[1] Code of Ukraine on Administrative Offences. (1996, October). Retrieved from https://zakon.rada.gov.ua/laws/show/80731-10#Text.
[2] Right to Information Act of India. (2005, June). Retrieved from https://rti.gov.in/rti-act.pdf.
[3] Budget Code of Ukraine. (2010, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2456-17.
[4] Law of Indonesia No. 17 "On State Finances". (2003, April). Retrieved from https://peraturan.bpk.go.id/Home/Details/43030/uu-no-17-tahun-2003.
[5] Law of Ukraine No. 280/97-BP "On Local Self-Government in Ukraine". (1997, May). Retrieved from https://zakon.rada.gov.ua/laws/show/280/97-вр.
[6] Public Law of the United States of America "American Recovery and Reinvestment Act". (2009, February). Retrieved from https://www.congress.gov/111/plaws/publ5/PLAW-111publ5.pdf.
[7] Law of Ukraine No. 2939-XII "On Basic Principles of State Financial Control in Ukraine". (1993, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2939-12.

public trust in government institutions, and ensuring effective civic oversight of budgetary processes. This study has highlighted the critical role of digital technologies in overcoming barriers to budget transparency. In particular, it was found that countries with a high degree of implementation of electronic reporting and monitoring systems demonstrate 15-23% higher levels of budget transparency, as measured by the Open Budget Survey index. Case studies from the United States, India, and Poland show that the electronic disclosure of budget data in open data formats – such as those provided by platforms like USAspending.gov, the Union Budget Portal, and the Public Financial Management System – significantly enhances both the accessibility and analytical value of budgetary information.

The institutional context for addressing transparency barriers is gaining increasing importance in contemporary public administration research. A. Pyrih (2024) explores the systemic principles of public financial control that underpin transparency in budgetary processes. The author not only identifies key principles but also examines their deeper meaning and interrelation: continuity of control ensures uninterrupted monitoring of budget flows; unity of state policy establishes harmonised regulatory mechanisms; and the principles of openness, transparency, and publicity foster an inclusive environment for budgetary communication. The study identifies institutional barriers as a major obstacle to achieving budget transparency, demonstrating that the unclear distribution of responsibilities among supervisory bodies and the duplication of control functions result in inefficient resource use and a decline in monitoring quality.

International experience demonstrates a range of diversified strategies for overcoming regulatory barriers across different socio-economic contexts. The study by C.A. Napitupulu *et al.* (2024), using the examples of Indonesia and India, highlights the unique challenges associated with ensuring infrastructure transparency in developing countries. The authors demonstrate that overcoming transparency barriers is closely linked to political dynamics, the quality of institutional mechanisms, and the degree of implementation of innovative public administration technologies. Their conclusions regarding the influence of the legislative framework and financial resources on the effectiveness of transparency policies underscore the complex and multifaceted nature of the issue under investigation. A comparative analysis of strategies employed in the five countries examined revealed several key patterns of successful reform. These include the phased implementation of changes, the integration of legal and technological tools, active involvement of the public sector, and the adaptation of international standards to national contexts. It was also found that countries at varying levels of economic development prioritise reform strategies differently. In the case of Ukraine, the introduction of electronic procurement systems and a unified web portal for public fund usage significantly improved budget transparency in the initial stages. However, further progress has been hindered by the absence of a comprehensive strategy for integrating disparate information systems and by inconsistencies within the regulatory framework. These findings both confirm and expand upon the conclusions of C.A. Napitupulu *et al.* (2024), particularly concerning the interplay between political, institutional, and technological factors in achieving transparency. Moreover, they extend the analysis by identifying specific mechanisms for overcoming regulatory barriers in varied socio-economic settings and by clarifying the impact of international standards on the development of national systems for ensuring budget transparency.

Ensuring transparency in the circulation of budgetary funds represents a complex and multifaceted challenge in modern public administration. The study by Č. Christauskas (2024) demonstrates that the fundamental aim of public finance system reform is to enhance public access to budgetary information. The high levels of corruption and the significant financial resources managed by public authorities necessitate strengthened public oversight of budgetary expenditures – particularly at regional and local levels – as emphasised in the study by A. Gullo & O. Kroytor (2024), which analyses the transparency of local government budget processes within the context of the legal framework for public debt transparency. A comparative analysis of the regulatory acts of five countries conducted in this study identified three main categories of regulatory barriers limiting transparency. It was also found that effective models for overcoming these barriers, as demonstrated by the USA and Poland, are characterised by systematic approaches integrating legislative, technological, and organisational tools. These findings align with the conclusions of A. Naji *et al.* (2024) regarding effective budget planning strategies, while further highlighting the necessity for comprehensive solutions to transparency challenges at all levels of government and help identify specific legal conflicts within national legislation, notably between the Law of Ukraine No. 2939-XII[1] and the No. 183-VIII[2], particularly with respect to the timing and formats for publishing budgetary information.

[1] Law of Ukraine No. 2939-XII "On Access to Public Information". (2011, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2939-12.
[2] Law of Ukraine No. 183-VIII "On Openness of Public Funds Use". (2015, February). Retrieved from https://zakon.rada.gov.ua/laws/show/183-19.

The study also confirms and extends the findings of R. Prifti (2022) concerning the critical importance of an effective control system. Based on an analysis of five countries, it demonstrates that successful models are underpinned by three core elements: a clear delineation of control functions, institutional independence of oversight bodies, and the implementation of effective mechanisms for their interaction with both the public and law enforcement agencies. Technological innovations are increasingly becoming a key instrument for overcoming barriers to transparency, as evidenced by the study of A. Naik *et al.* (2024), which examines the development of a comprehensive budget transparency platform in India. In Ukraine, platforms such as "E-Data" and ProZorro have significantly enhanced the technological accessibility of budgetary information. However, the full potential of these systems remains constrained by the absence of standardised data presentation formats and the insufficient integration of various information systems. These findings align with the conclusions of A. Naik *et al.* (2024) regarding the importance of comprehensive technological solutions, but further expand upon them by identifying and classifying specific technological barriers and systematising mechanisms for addressing them across different countries. Unlike A. Naik *et al.* (2024), which focuses on a single platform, the present analysis highlights the necessity of developing a holistic ecosystem of technological tools that spans the entire budget cycle – from planning to audit – as well as the parallel advancement of users' technological competencies in working with budgetary information.

An important contribution to understanding the mechanisms for ensuring budget transparency is the study by E. Garrett & E. Garrett (2022), which investigates the use of public funds in the context of budget process transparency. The authors conducted a detailed analysis of the structure of budget expenditures, with a particular focus on the mechanisms for publishing and justifying procurement. Their findings reveal systemic problems in information transparency: a substantial portion of budget expenditures lacks proper justification, posing risks of inefficient public finance management. The authors advocate for expanding the practice of electronically publishing procurement justifications, irrespective of cost thresholds, to enhance transparency in budgetary processes. The study also identified structural weaknesses in expenditure justification procedures, supporting the conclusions of E. Garrett & E. Garrett (2022). Moreover, the analysis of international practices conducted in this study enabled the formulation of additional recommendations concerning the adoption of standardised formats for publishing justifications and the integration of public procurement systems with broader budget information systems.

The study by S. Benz *et al.* (2020) proposes a methodology for assessing the quality of governance and the efficiency of budgetary fund utilisation, with a particular focus on overcoming regulatory barriers. Employing advanced mathematical forecasting techniques and econometric modelling, the researchers identified a correlation between the level of budget transparency and the overall efficiency of public administration. Their methodological framework involves a comprehensive analysis of key factors influencing the budget process, including the institutional capacity of governmental bodies, the level of digitalisation, mechanisms of public oversight, and adherence to international financial reporting standards. The present study confirms the validity of the methodological approach proposed by S. Benz *et al.* (2020), while complementing it with a practical analysis of specific regulatory barriers across five countries. This allowed for empirical testing of theoretical assumptions concerning the determinants of budget transparency efficiency and facilitated the development of targeted recommendations for addressing the identified obstacles.

The unique context of ensuring budget transparency in diverse socio-economic systems is further illuminated by the study of R. Prifti (2022), which focuses on budgetary processes in developing countries. The author compellingly argues that overcoming transparency barriers necessitates not only technological reform but also a profound transformation of administrative culture. The central conclusion of the study is the assertion of a direct relationship between the effectiveness of budget transparency measures and the institutional capacity of public authorities, thereby confirming the systemic nature of the challenge under investigation. The findings of the present study support these conclusions and extend them by specifying the impact of administrative culture on the effectiveness of budget transparency processes, as demonstrated through case studies in five countries. It was determined that a critical factor in the success of transparency-related reforms is the synchronisation of legal reforms with the transformation of administrative practices – an objective that requires focused efforts to strengthen the institutional capacity of state institutions.

A critical perspective on the mechanisms for ensuring budget transparency is offered in the research of J. Stiglitz (2023), who argues that true transparency cannot be achieved solely through technological innovations. Social mechanisms of control, institutional accountability, and the creation of an environment that fosters openness and integrity in financial processes are of fundamental importance. This view aligns with the findings of the present study, which demonstrate that the most effective models for overcoming transparency barriers – identified in the USA and Poland – are characterised by a balanced

integration of technological innovations with well-developed mechanisms of public oversight and institutional accountability.

The technological dimension of overcoming transparency barriers, identified in this study as one of the key factors, is further supported by the work of K. Taiwo (2024). Using a fractional probit model, the author empirically established a direct relationship between the extent of e-government technology implementation and the level of transparency in budgetary processes. These findings are consistent with the conclusions of the present study regarding the need to standardise data formats and implement uniform requirements for electronic reporting. This position is further reinforced by the research of M. Napitupulu *et al.* (2024), who, using the cases of Indonesia and India, demonstrated how technological innovations can help overcome institutional barriers and significantly improve the transparency of budget processes in developing countries.

At the same time, M. Bisogno & B. Cuadrado-Ballesteros (2021) complement these findings by emphasising the need to establish integrated digital platforms to ensure transparency throughout the budget process. Analysing data from 33 European countries, the authors found that the greatest success in achieving budget transparency was observed in states that had implemented interconnected information systems based on common data standards. These conclusions align with the recommendations for introducing standardised electronic reporting requirements, developed through the comparative analysis of five countries. M. Hupalovska *et al.* (2020) further expand this understanding by demonstrating that the standardisation of budget data formats enhances the quality of treasury control and increases the transparency of public financial flows.

The challenges surrounding transparency in public procurement identified in the present study are corroborated by the findings of M. Jastrzębska (2020), who conducted a detailed examination of budget expenditure structures, with a particular focus on procurement publication and justification mechanisms. The study revealed systemic shortcomings in information transparency, noting that a substantial portion of budget expenditure lacked sufficient justification – posing a risk of inefficient public finance use. The author recommends expanding the practice of electronically publishing procurement justifications regardless of cost thresholds, which aligns with the conclusions of this study regarding the need to standardise justification formats and integrate procurement systems into a unified ecosystem of budget information platforms. This position is further supported by the study of R. Prifti (2022), who developed a comprehensive methodology for assessing public finance transparency. The methodological elements of this work are consistent with the approach proposed by K. Taiwo (2024), who designed an integrated system for evaluating governance quality and the efficiency of public spending, supplemented by a practical analysis of specific regulatory barriers across different countries.

It is important to compare the findings of this study with the conclusions of E. Garrett & E. Garrett (2022) regarding the need for a transformation in administrative culture. The author emphasises that effective budget transparency cannot be achieved through technical solutions alone but requires profound institutional changes, including the cultivation of an organisational culture grounded in openness and accountability. This study confirms author's thesis that transparency extends beyond technical procedures and functions as a fundamental instrument of democratic governance. Authors conclusions on institutional constraints and mechanisms of resistance to change further enrich the understanding of the underlying nature of transparency barriers.

In summarising the results of this study and comparing them with the works of other scholars, it can be stated that the mechanisms identified for overcoming regulatory barriers to transparency are corroborated by international academic discourse and provide a solid foundation for the continued development of budget transparency systems. Particularly noteworthy is the conclusion that the integration of technological, institutional, and legal mechanisms aligns with contemporary trends in public administration reform and creates the necessary conditions for enhancing the efficiency of public fund utilisation.

Conclusions

This study has conducted a comprehensive analysis of the regulatory and legal mechanisms for overcoming legislative barriers to ensuring transparency in the management of budgetary funds, resulting in the formulation of several key scientific and practical findings within the legislative domain. The principal scientific contribution of the study is the identification and systematisation of three core categories of legislative regulatory barriers: (1) gaps in legal regulation, (2) inconsistencies between legal norms across different legislative acts, and (3) the absence of clear sanctions and accountability mechanisms. It was established that these legislative barriers are closely linked to the absence of unified quantitative indicators for assessing transparency, contradictions in the deadlines for publishing information across various regulatory acts, inconsistent requirements for data formats, and insufficient detail in disclosure obligations related to the implementation of budget programmes.

A comparative analysis of the legal and regulatory frameworks of the countries examined revealed that the most effective legislative practices are those

of the United States and Poland. In these jurisdictions, legal acts establish clear requirements for the formats and timing of data publication, support the standardisation of budget reporting, and enforce robust accountability mechanisms. The study demonstrated that the Government Performance and Results Act and the Digital Accountability and Transparency Act in the United States provide a comprehensive legal foundation for budget transparency by codifying quantitative performance indicators and uniform data standards at the legislative level. Conversely, Poland's Public Finance Act has successfully implemented a codified model for public finance transparency requirements within a single regulatory act, which serves to prevent legal conflicts and promote clarity and certainty in the legislative framework.

Significant shortcomings in the regulatory and legal framework supporting budget transparency in Ukraine have been identified. These include: insufficient sanctions for violations of transparency requirements in the Code of Ukraine on Administrative Offences; the absence of unified, legislatively enshrined standards for the publication of budget data; inconsistencies between the provisions of the Law of Ukraine "On Openness of Public Funds Use" and other regulatory acts; and the lack of a clear legislative delineation of control functions among oversight bodies. To address these issues, the study substantiates the relevance of adopting the German model of proportional responsibility, the Indian approach to proactive data disclosure, the Indonesian technique of establishing "minimum standards" for local budgets, and the American mechanism for legislatively enshrining performance indicators. It is recommended that future research focus on developing specific regulatory mechanisms for the integration of successful international practices into Ukrainian legislation, with due consideration given to the national characteristics of the legal system and the current level of digital transformation within the budgetary sphere.

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Conflict of Interest

None.

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Аналіз кейсів подолання нормативних бар'єрів забезпечення транспарентності у сфері обігу бюджетних коштів

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■ **Анотація.** У дослідженні проаналізовано механізми подолання нормативних бар'єрів забезпечення транспарентності у сфері обігу бюджетних коштів, що набуває актуальності в контексті глобальних трансформацій системи публічного управління та підвищення вимог до прозорості державних фінансів. Методологія дослідження ґрунтувалася на системному підході з використанням порівняльного аналізу нормативно-правових актів п'яти країн (Сполучених Штатів Америки, Індії, Індонезії, Польщі, України) за період 1993-2024 років із застосуванням міжнародно визнаного індикатора Open Budget Index. У межах дослідження виявлено три групи нормативних бар'єрів. Першу групу становлять прогалини в правовому регулюванні, зокрема відсутність єдиних кількісних індикаторів оцінювання прозорості та недостатня деталізація вимог до висвітлення інформації про виконання бюджетних програм. Другу групу формує неузгодженість правових норм у різних законодавчих актах щодо термінів і форматів оприлюднення бюджетної інформації. Третя група охоплює відсутність чітких санкцій та дієвих механізмів відповідальності за порушення вимог бюджетної прозорості. Порівняльний аналіз законодавства досліджуваних країн засвідчив, що найефективнішими є нормативно-правові бази Сполучених Штатів Америки та Польщі, де законодавчі акти встановлюють чіткі вимоги щодо форматів і термінів публікації даних, забезпечують стандартизацію бюджетної звітності та встановлюють дієві механізми відповідальності за порушення вимог прозорості. Практична значущість дослідження полягає в розробленні комплексних рекомендацій з удосконалення нормативно-правової бази України шляхом посилення відповідальності за порушення вимог прозорості, оптимізації адміністративних процедур доступу до інформації, упровадження єдиних стандартів відкритих даних, забезпечення чіткого розподілу повноважень між контролюючими органами та розвитку механізмів участі громадськості для підвищення прозорості бюджетних процесів

■ **Ключові слова:** бюджетна ефективність; громадський моніторинг; електронне врядування; інституційна спроможність; цифрова звітність

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The legitimacy of restricting the right to liberty and security: Standards of the European Court of Human Rights

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■ **Abstract.** Article 5 of the European Convention on Human Rights sets out the guarantees of the right to liberty and security. During criminal proceedings, this fundamental human right may be subject to restriction. Therefore, both legislation and law enforcement practice must ensure fair procedures for such restrictions. This study aimed to provide a comprehensive analysis, systematisation, and explanation of the Convention standards that guarantee the lawfulness of restrictions on the right to liberty and security within criminal proceedings. It also aimed to identify the grounds for the application of custodial preventive measures, thereby helping to avoid errors in legal practice and contributing to the development of a uniform and consistent investigative and judicial approach, including under conditions of martial law. The principal methods of inquiry include axiological, formal-legal, logical-legal, systemic-structural, comparative-legal analysis, and generalisation. These methods have made it possible to describe the results and substantiate the conclusions reached. The study was conducted concerning the case law of the European Court of Human Rights and the national criminal procedural legislation. It has been established that, according to the standards developed in the case law of the European Court of Human Rights, the threshold for suspicion does not require the same degree of certainty as a formal charge. A reasonable suspicion implies the existence of sufficient factual information that would enable an external observer (the investigating judge) to conclude, with a high degree of probability, that the individual whose right to liberty and security is to be restricted has committed the alleged offence. It was argued that the European Court of Human Rights adheres to a substantive rather than a formal conception of a charge. Based on an analysis of the legal regulation of the grounds for applying preventive measures, it has been demonstrated that the investigating judge will, in each specific case, determine whether the factual data are sufficient to establish a reasonable suspicion and whether the associated risks are justified. The practical value of this study lies in the possibility of applying the established standards of the European Court of Human Rights when deciding on the imposition of custodial preventive measures. This would help ensure uniformity in legal practice and promote the rule of law in Ukraine

■ **Keywords:** arrest; detention; criminal proceedings; reasonable suspicion; grounds for applying preventive measures; investigator; judge

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■ Introduction

Liberty is among the most fundamental and highly valued human rights. It is safeguarded by both international legal instruments and national legislation. In particular, the right to liberty and security is enshrined in Article 9 of the International Covenant on Civil and Political Rights[1], Article 5 of the European Convention on Human Rights[2] (hereinafter – the Convention), Article 29 of the Constitution of Ukraine[3], and Article 12 of the Criminal Procedure Code of Ukraine[4]. The question of the lawfulness of restricting the right to liberty and security (hereinafter – RLS) has gained renewed relevance in wartime conditions, as the risks of improper behaviour by suspects or accused persons have increased. In particular, individuals suspected of committing a criminal offence now have more opportunities to evade criminal liability, including by hiding in temporarily occupied territories or on the territory of the russian federation.

The legislation of all democratic states governed by the rule of law pays considerable attention to regulating provisions that guarantee the exercise of the right to liberty and security. At the same time, an analysis of the case law of the European Court of Human Rights (ECtHR, the Court) reveals numerous instances[5,6] of violations of this fundamental human right through the unwarranted application of custodial preventive measures. Such enforcement practices are driven by both the lack of legal certainty in regulating certain aspects of the protection of this right and the challenge of striking a balance between the public interest in ensuring the principle of the inevitability of punishment and the suspect's or accused person's right to liberty and security.

Establishing the procedure for the application of preventive measures is a complex task that requires balancing the rights and legitimate interests of the suspect (or accused) with the needs of society and the state to protect against criminal offences. The lawfulness of restricting the RLS hinges on adhering to due procedural process and having valid grounds for applying preventive measures, as these grounds determine the appropriateness and justification of their use. The challenges related to the restriction of RLS have already been the subject of research by procedural law scholars. For instance, the legitimacy of restricting human rights during pre-trial investigations has been examined by I. Hloviuk *et al.* (2024), I. Shapovalova & V. Rohalska (2020), and S. Prodyvus (2023). These scholars, having analysed international legal instruments and the case law of the ECtHR, justify a concept of lawful interference with human rights and freedoms based on a three-part test: legality, legitimate aim, and necessity in a democratic society. Particular attention in the studies of I. Hloviuk & V. Zavtur (2022), S. Grynenko & I. Zelenska (2022), and O. Kaplina *et al.* (2022) is devoted to the legality of restricting human rights under the legal regime of martial law. The contributions of M. Blikhar *et al.* (2020; 2021) and O. Barabash *et al.* (2022) are also noteworthy. Their studies of the ECtHR's approach to assessing the lawfulness of interference with fundamental human rights highlight the values underpinning European standards of human rights protection and their influence on the development of national law.

This study aimed to analyse, systematise, and clarify the standards established by the case law of the ECtHR that ensure the lawfulness of restrictions on the right to liberty and security during criminal proceedings.

■ Literature Review

The issue of restricting the right to liberty and security has attracted considerable academic attention in the context of balancing individual rights with state interests in criminal proceedings. O. Khablo (2023), in her research, addressed the question of proportionality and the balance between public and private interests when restricting RLS. The scholar concluded that, under the legal regime of martial law, the priority of interests should shift in favour of public interests, provided that safeguards are in place to prevent abuse of the expanded powers granted to the prosecution. T.G. Fomina *et al.* (2023) examined the issue of RLS restrictions in the context of extradition-related detention and the justification of risk as a basis for such restrictions. The researchers highlighted the primacy of international law norms when restricting the right to liberty in response to a request from a foreign state. S. Ablamskyi *et al.* (2023) explored the lawfulness of restricting human rights with a particular focus on the protection of detained suspects. The authors addressed the issue of holding prisoners of war in custody and argued that such individuals possess the procedural status of suspects. They also conclud-

[1] International Covenant on Civil and Political Rights. (1966, December). Retrieved from https://treaties.un.org/doc/treaties/1976/03/19760323%2006-17%20am/ch_iv_04.pdf.
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[6] Judgment of the European Court of Human Rights in Case No. 10042/11 "Korniychuk v. Ukraine". (2018, April). Retrieved from https://zakon.rada.gov.ua/laws/show/974_c53#Text.

ed that national legislation should be harmonised with the norms of international humanitarian law.

C. Balyan & A. Shelke (2025) explored the issue of the need to introduce an objective criterion for the imposition of custodial preventive measures. The authors point out that, although Indian legislation upholds the principle of "bail, not jail", courts in most cases do not grant bail as a preventive measure. They stress that the judiciary must apply standards that balance the accused person's right to liberty with the need to safeguard public security. Additionally, H. Boreiko & V. Navrotska (2023) and C. Braaten & M. Vaughn (2023) addressed the lawfulness of restricting human rights within the legal systems of foreign jurisdictions. Meanwhile, N. Nguindip & S. Ablamskyi (2020) conducted a comparative analysis of the procedural safeguards for the right to liberty and security during criminal proceedings in Ukraine and Cameroon.

These studies highlight the significance of the topic; however, they also indicate that the issue of comprehensively examining enforcement practices in ensuring the right to liberty and security in criminal proceedings – together with the identification and systematisation of the Convention standards developed in the case law of the ECtHR – has remained largely underexplored in scholarly literature preventive measures.

Materials and Methods

To achieve the stated aim of the study and ensure the reliability of the conclusions drawn, a range of scientific methods of inquiry was employed. The following general scientific methods were used: axiological, formal-legal, logical-legal, systemic-structural, and comparative-legal, as well as analysis and generalisation. These methods enabled the identification of the research subject, the description of findings, the comparison of national criminal procedural norms with those of international law, and the substantiation of the results obtained. The axiological method was applied in interpreting the right to liberty and security as a fundamental human value. This approach enhanced the understanding of the criteria for the lawfulness of RLS restrictions and the justification and necessity of such limitations when imposing preventive measures. The formal-legal method was used to analyse legal norms regulating RLS restrictions in criminal proceedings. The logical-legal method helped identify the criteria for reasonable suspicion as a basis for applying preventive measures. The systemic-structural method, by examining the connections between academic approaches, the ECtHR's case law, and domestic criminal procedural law, helped to clarify the main approaches to determining the lawfulness of restricting RLS. It also allowed for an assessment of the justification for RLS restrictions in criminal proceedings and the establishment of a logical link between the grounds for applying preventive measures and the specifics of proving them. The comparative-legal method was applied to analyse and compare international and national criminal procedural law regarding the regulation of grounds for RLS restrictions. The methods of analysis and generalisation were used to interpret the norms of criminal procedural legislation, judicial practice, and the case law of the ECtHR, including the identification of standards governing the lawfulness of RLS restrictions. The above methods were applied in an interconnected manner, enabling a comprehensive and thorough study and the substantiation of the conclusions formulated. The research followed the methodological framework outlined below: 1) an examination of national legislation and Conventionbased provisions relating to the restriction of the RLS; 2) an analysis of the grounds for restricting RLS through detention or the imposition of custodial preventive measures.

The normative basis of the study comprised international legal instruments such as the European Convention on Human Rights [1] and the International Covenant on Civil and Political Rights[2], both of which guarantee the suspect's (or accused person's) right to liberty and security. In terms of national legislation, the analysis focused on relevant provisions of the Constitution of Ukraine[3], the Criminal Procedure Code (hereinafter – CPC) of Ukraine[4], and the Criminal Code of Ukraine[5], which regulate the procedural framework for restricting the right to liberty and security of suspects and accused persons. Particular emphasis was placed on analysing the judgments of the ECtHR, which have established Convention standards for restricting RLS in criminal proceedings. Special attention was given to the Court's judgments in the following cases: Fernandes Pedroso v. Portugal[6], Nechiporuk and Yonkalo v. Ukraine[7], Murray v. the

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[7] Judgment of the European Court of Human Rights in Case No. 42310/04 "Nechiporuk and Yonkalo v. Ukraine". (2011, April). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-104613%22]}.

United Kingdom[1], Merabishvili v. Georgia[2], Deweer v. Belgium[3], Shabelnik v. Ukraine[4], Labita v. Italy[5], Talat Tepe v. Turkey[6], Temchenko v. Ukraine[7], Rytikov v. Ukraine[8], and Korniychuk v. Ukraine[9]. These judgments have created judicial precedents that define the standards for the lawful restriction of a suspect's (or accused person's) right to liberty and security.

■ Results and Discussion

The right to liberty and security is of paramount importance in a democratic state governed by the rule of law. The state's obligation to guarantee this right imposes a positive duty to protect it. Failure to do so would prevent the safeguarding of the right to liberty and security from arbitrary or baseless detention or remand, which would be unacceptable in a democratic society as it would undermine the very importance of personal freedom[10]. At the same time, the state is also responsible for upholding other fundamental human rights, such as the right to life, the right to dignity, and the right to a fair trial. These rights cannot be effectively protected if individuals who commit criminal offences are not brought to justice. In such circumstances, it may be necessary to impose preventive measures that restrict the right to liberty and security on those suspected of committing a criminal offence. The failure to apply custodial preventive measures (such as arrest or detention) could result in continued criminal activity or attempts to evade criminal responsibility.

In a state governed by the rule of law, restrictions on the right to liberty and security must be applied following the principles of the rule of law, proportionality, necessity, and legality. The procedural framework for restricting RLS must be clearly regulated, including both the grounds for such restrictions and the procedure for their application – identifying the competent authorities, time limits, and guarantees for safeguarding the rights of the suspect or accused.

In the course of criminal proceedings, the restriction of the RLS arises with the application of preventive measures such as arrest and detention. The general grounds for applying such measures are set out in Part 2 of Article 177 of the CPC of Ukraine[11], where the legislator has established a dual basis: – the existence of a reasonable suspicion that the person has committed a criminal offence; – the presence of risks that provide sufficient grounds to believe that the suspect (or accused) may obstruct the criminal proceedings.

Reasonable suspicion of having committed a criminal offence is the primary and essential ground for restricting RLS. Detention may only be applied to individuals who are reasonably suspected of committing a crime. This principle is consistently emphasised in the case law of the ECtHR. In particular, in the 2011 judgment in Nechiporuk and Yonkalo v. Ukraine[12], the Court noted that compliance with the requirement of reasonable suspicion is essential to prevent arbitrary arrest and detention (cl 175). Similarly, in Fernandes Pedroso v. Portugal[13], the Court underlined that the "reasonableness" of the suspicion on which the arrest is based is a crucial element in protecting the right to liberty and security (cl 87).

Recognising the existence of a "reasonable suspicion" as the primary ground for restricting the right to liberty and security is entirely logical. If there is no information indicating that a person has committed a criminal offence – no factual data supporting a "reasonable suspicion" – then no preventive measures

[1] Judgment of the European Court of Human Rights in Case No. 14310/88 "Murray v. the United Kingdom". (1994, October). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57895%22]}.
[2] Judgment of the European Court of Human Rights in Case No. 72508/13 "Merabishvili v. Georgia". (2017, November). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-178753%22]}.
[3] Judgment of the European Court of Human Rights in Case No. 6903/75 "Deweer v. Belgium". (1980, February). Retrieved from http://hudoc.echr.coe.int/eng?i=001-57469.
[4] Judgment of the European Court of Human Rights in Case No. 16404/03 "Shabelnik v. Ukraine". (2009, February). Retrieved from https://surl.lu/tecisp.
[5] Judgment of the European Court of Human Rights in Case No. 26772/95 "Labita v. Italy". (2000, April). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58559%22]}.
[6] Judgment of the European Court of Human Rights in Case No. 31247/96 "Talat Tepe v. Turkey". (2005, March). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-67765%22]}.
[7] Judgment of the European Court of Human Rights in Case No. 30579/10 "Temchenko v. Ukraine". (2015, July). Retrieved from https://surli.cc/mlfkfp.
[8] Judgment European Court of Human Rights in Case No. 52855/19 "Rytikov v. Ukraine". (2024, August). Retrieved from https://zakon.rada.gov.ua/laws/show/974_k39#Text.
[9] Judgment European Court of Human Rights in Case No. 10042/11 "Korniychuk v. Ukraine". (2018, April). Retrieved from https://zakon.rada.gov.ua/laws/show/974_c53#Text.
[10] Judgment European Court of Human Rights in Case No. 61603/00 "Storck v. Germany". (2005, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-69374%22]}.
[11] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-1775.
[12] Judgment of the European Court of Human Rights in Case No. 42310/04 "Nechiporuk and Yonkalo v. Ukraine". (2011, April). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-104613%22]}.
[13] Judgment of the European Court of Human Rights in Case No. 59133/11 "Fernandes Pedroso v. Portugal". (2018, September). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-183541%22]}.

can lawfully be applied to that person, particularly those that involve restrictions on the right to liberty and security. Thus, it must be emphasised that the "reasonableness" of suspicion serves as a fundamental safeguard for the right to liberty and security. In this context, a clear and consistent understanding of the term "reasonable suspicion" is crucial. This term appears in both international legal instruments and in the CPC of Ukraine. Although the CPC of Ukraine refers to "reasonable suspicion" in several provisions (e.g. Articles 177, 185, 190, 194, and 206[1]), it does not provide a definition of the term. Meanwhile, "reasonable suspicion" is used in subparagraph (c), Paragraph 1 of Article 5 of the Convention[2], which states that a person may be arrested or detained when there is a reasonable suspicion of having committed a criminal offence. The presence of this term in the Convention has led to the development of ECtHR standards for its interpretation within the Court's case law, as legal practice demands a substantive understanding of this concept.

First and foremost, it is important to note that the case law of the ECtHR does not distinguish between the terms "suspicion" and "charge", unlike the provisions of the CPC of Ukraine[3]. In particular, in the 1980 judgment in Deweer v. Belgium[4], the ECtHR stated that, for the purposes of Article 6(1) of the Convention, a "charge" should be understood as the official notification given to an individual by a competent authority that they are being accused of committing a criminal offence (cl 46). This definition is based on the approach developed in ECtHR case law, which favours a substantive (material) rather than a formal concept of a charge (cl 52 of the judgment in Shabelnik v. Ukraine, 2009)[5]. A similar substantive approach can be observed in the judgments of the Supreme Court of the USA, which holds that suspicion is reasonable when it is grounded in common sense, relates to the individual's conduct, and amounts to more than a fabricated narrative or vague hunch.

With regard to the interpretation of the term "reasonable suspicion", the leading ECtHR authority for Ukraine is the 2011 case Nechiporuk and Yonkalo v. Ukraine[6]. The Court stated that the term "presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence" (cl 175). In other words, suspicion will be considered reasonable if it is based on factual evidence that can convince an impartial party to the criminal proceedings (such as an investigating judge or court) that the person suspected of committing the criminal offence did, or may have, committed the act in question. In this context, debate arises among scholars and legal practitioners regarding the standard of proof required to establish the reasonableness of such suspicion: must it be proven beyond a reasonable doubt, or should a standard of probability apply? As N.O. Marchuk *et al.* (2015) point out, that suspicion must, on the one hand, be reasonable, but on the other, it represents a lower standard of proof than "beyond reasonable doubt", as it requires less evidential weight than that needed to secure a conviction.

In particular, in its 1994 judgment in Murray v. the United Kingdom[7], the ECtHR observed that subparagraph (c) of Paragraph 1 of Article 5 of the Convention does not require the investigative authorities to have sufficient evidence to bring formal charges at the point of arrest or detention. At the initial stage of an investigation, certain types of evidence may still be unavailable due to the nature of the alleged offence. Further investigation of the criminal proceedings is expected to either confirm or refute the specific suspicion that served as the basis for the arrest. Thus, the facts giving rise to suspicion need not reach the same level of persuasiveness as those required to justify acquittal, conviction, or even the formal bringing of charges at a later stage of the criminal proceedings (cl 55). A similar position is set out in the ECtHR judgment in Merabishvili v. Georgia[8], where the Court noted that the "reasonableness" of a suspicion depends on the overall circumstances of the criminal proceedings. However, the factual grounds underlying the suspicion do not need to be of the same evidential strength as those necessary to support a conviction – or even a formal accusation (cl 184). All of the above supports the observation made by V.V. Mykhailenko (2019), who notes that the factual information forming the basis for suspicion at the initial stage of proceedings may later be refuted

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-1775.
[2] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[3] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-1775.
[4] Judgment of the European Court of Human Rights in Case No. 6903/75 "Deweer v. Belgium". (1980, February). Retrieved from http://hudoc.echr.coe.int/eng?i=001-57469.
[5] Judgment of the European Court of Human Rights in Case No. 16404/03 "Shabelnik v. Ukraine". (2009, February). Retrieved from https://surli.cc/cbzsyh .
[6] Judgment of the European Court of Human Rights in Case No. 42310/04 "Nechiporuk and Yonkalo v. Ukraine". (2011, April). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-104613%22]}.
[7] Judgment of the European Court of Human Rights in Case No. 14310/88 "Murray v. the United Kingdom". (1994, October). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57895%22]}.
[8] Judgment of the European Court of Human Rights in Case No. 72508/13 "Merabishvili v. Georgia". (2017, November). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-178753%22]}.

in the course of the pre-trial investigation, particularly with the active involvement of the suspect.

A reasonable suspicion, as a ground for arrest and detention, must be based on facts and information. However, debates continue regarding the threshold of persuasiveness, reasonableness, and the sufficiency of such factual data. In particular, in the 2020 ECtHR judgment in Kavala v. Turkey[1], the Court stated that the term "reasonableness" also refers to the amount (or threshold) of factual information required for a suspicion to satisfy an investigating judge or court of the likelihood of the charges. Difficulties typically arise at the factual level, centring on whether the arrest and detention of an individual were based on a sufficient amount of factual material to justify a reasonable suspicion that the alleged events did indeed occur. Furthermore, for a "reasonable suspicion" to meet the requirements of subparagraph (c), Paragraph 1 of Article 5 of the Convention, the facts cited by the pre-trial investigative authorities must fall within the scope of one of the provisions of the Criminal Code that defines criminal conduct (cl 128).

All of the above support the conclusion that a "reasonable suspicion" as the basis for imposing a custodial preventive measure should not be equated with a formal charge. According to Part 1 of Article 177 of the CPC of Ukraine[2], the purpose of applying a preventive measure is to prevent the suspect (or accused) from obstructing the establishment of factual circumstances that would allow for the proper legal classification of the offence and the presentation of persuasive evidence to support a formal charge. Therefore, the reasonableness of the suspicion requires the prosecution to present factual data (facts and information) that would allow an independent observer (such as an investigating judge or the court) to conclude with a high degree of probability that the individual to be arrested has committed the criminal offence imputed to them.

The sufficiency or insufficiency of such facts and information for establishing reasonable suspicion is to be assessed on a case-by-case basis by the investigating judge or court deciding on the application of pre-trial detention. The ECtHR consistently applies a contextual approach, examining all relevant circumstances of the criminal proceedings when determining whether the suspicion is reasonable. For instance, in Murray v. the United Kingdom[3], the Court found that the requirements of subparagraph (c) of Paragraph 1 of Article 5 of the Convention[4] had been met even under a "lower threshold by merely requiring honest suspicion", having regard to the "numerous victims of the terrorist campaign" and the "particular complexity of investigating terrorist offences". Even in these challenging circumstances, the Court emphasised that pre-trial investigation authorities do not have carte blanche to arrest individuals suspected of terrorist offences (cl 51, 57-59, 63).

A similar approach is often applied in cases involving terrorism-related offences. For example, in its 2001 judgment in O'Hara v. the United Kingdom[5], the ECtHR recognised that terrorist crimes present a particular challenge, as public safety may require the police to arrest a terrorism suspect based on credible information that cannot be disclosed to the defence or presented in court without endangering an informant. In this decision, the ECtHR established a standard whereby, in cases of suspected terrorist activity, the suspicion justifying arrest need not be supported by the disclosure of confidential sources. Nevertheless, the ECtHR also stressed that "exigencies of dealing with terrorist crime cannot justify stretching the notion of "reasonableness" to the point where the safeguard secured by subparagraph (c) of Paragraph 1 of Article 5 of the Convention". Even in such cases, some factual material or information must be presented that is capable of convincing the Court of the reasonableness of the suspicion justifying the pre-trial detention (cl 35).

In particular, in its judgment in Labita v. Italy[6], the ECtHR found that the testimony of an anonymous informant – based solely on hearsay and uncorroborated by other facts – was insufficient to establish a reasonable suspicion of the applicant's involvement in mafia-related activities (cl 156). However, in a different case, Talat Tepe v. Turkey[7], the Court held that the arrest was lawful and the suspicion reasonable, even though it was based on incriminating statements by other suspects who later retracted their testimony several years later (cl 61). It should also be noted that throughout the entire period during which a preventive measure is applied, the reasonableness

[1] Judgment of the European Court of Human Rights in Case No. 28749/18 "Kavala v. Turkey". (2020, May). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-199515%22]} .
[2] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-1775.
[3] Judgment of the European Court of Human Rights in Case No. 14310/88 "Murray v. the United Kingdom". (1994, October). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-57895%22]}.
[4] European Convention on Human Rights. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[5] Judgment of the European Court of Human Rights in Case No. 37555/97 "O'Hara v. the United Kingdom". (2002, January). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-59721%22]}.
[6] Judgment of the European Court of Human Rights in Case No. 26772/95 "Labita v. Italy". (2000, April). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-58559%22]}.
[7] Judgment of the European Court of Human Rights in Case No. 31247/96 "Talat Tepe v.Turkey". (2005, March). Retrieved from https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-67765%22]}.

of the suspicion – initially sufficient to justify pre-trial detention – must be supported by newly gathered evidence. This requirement is emphasised both in the ECtHR's case law and in academic scholarship. For instance, V.T. Nor & M.I. Shevchuk (2019) argue that the absence of new evidence confirming the suspicion may indicate either inaction on the part of the pretrial investigation authorities or the existence of evidence that undermines the justification for the suspicion.

The above indicates that, when deciding on the extension of a detention period, the evidentiary standards required to justify a reasonable suspicion increase compared to those sufficient for the initial decision to impose a preventive measure. In such cases, the judge must be satisfied that the suspicion remains well-founded. In its 2015 judgment in Temchenko v. Ukraine[1], the ECtHR noted that the applicant had initially been detained in compliance with the requirement of reasonable suspicion and with due consideration of the risks of absconding or interfering with the pre-trial investigation. However, upon examining the circumstances of the case, the Court concluded that although the original detention order had been justified, any subsequent extension required more specific factual grounds. Instead, the judges relied on the same general circumstances without providing any new or concrete details (cl 116).

The requirement to present new factual information when deciding whether to extend a period of detention is stipulated in Paragraph 1 of Part 3 of Article 199 of the CPC of Ukraine[2]. It states that a motion to extend detention must include "circumstances indicating that the stated risk has not diminished or that new risks have emerged which justify the person's continued detention"[3]. It is important to emphasise that one of the key safeguards of a fair trial is enshrined in Part 1 of Article 198 of the CPC of Ukraine. According to this provision, the conclusions set out in a court ruling on the application of a preventive measure – particularly those concerning the substance of the suspicion or accusation – do not carry prejudicial value in the court's consideration of the case on its merits, nor do they constrain the actions of the investigator or prosecutor in the same or another criminal proceeding[4].

Thus, in the absence of factual information sufficient to establish a reasonable suspicion, preventive measures – particularly detention – should not be applied. However, in addition to the existence of a reasonable suspicion, the application of a preventive measure also requires the presence of risks associated with improper conduct on the part of the suspect or accused. A mandatory prerequisite is the existence of at least one risk that gives the investigating judge or court grounds to believe that the suspect or accused may engage in conduct aimed at obstructing criminal proceedings, as outlined in Part 1 of Article 177 of the CPC of Ukraine[5]. The legislature labels these methods of obstructing criminal proceedings as "risks", and they include actions such as: absconding from pre-trial investigation authorities or the court; destroying evidence significant to the criminal proceedings; illegally influencing other participants in the same criminal proceedings; or continuing unlawful activity, among others. Therefore, the position expressed by T.G. Fomina (2018) is well founded: a "risk" should be understood as the substantiated likelihood of interference with criminal proceedings in the forms specified in Part 1 of Article 177 of the CPC of Ukraine.

Risks of interference with criminal proceedings must be substantiated by factual evidence. The failure to meet this requirement has been highlighted in several ECtHR judgments concerning Ukraine. For example, in Temchenko v. Ukraine[6], the Court noted that the authorities failed to explain how the applicant might influence witnesses or obstruct the investigation (cl 116). Similarly, in Tkachev v. Ukraine (2007)[7], the Court found that merely repeating formal grounds without citing specific facts or circumstances did not constitute "relevant" and "sufficient" reasons for detention (cls. 49, 52).

Thus, the use of custodial preventive measures, which restrict the right to liberty and security, is permitted in order to prevent adverse effects on the progress and outcome of pre-trial investigation or court proceedings by mitigating such risks. However, proving the existence of these risks presents a considerable challenge for the prosecution. It requires demonstrating the likelihood of a future event occurring with a high degree of probability should a custodial preventive measure not be applied. In other words, the prosecution must provide evidence of what may occur in the future if detention is not imposed.

The above demonstrates that the evidentiary assessment of risks justifying the application of a preven-

[1] Judgment of the European Court of Human Rights in Case No. 30579/10 "Temchenko v. Ukraine". (2015, July). Retrieved from https://surl.lu/kwahll.
[2] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[3] Ibidem, 2012.
[4] Ibidem, 2012.
[5] Ibidem, 2012.
[6] Judgment of the European Court of Human Rights in Case No. 30579/10 "Temchenko v. Ukraine". (2015, July). Retrieved from https://surl.lu/kwahll.
[7] Judgment of the European Court of Human Rights in Case No. 39458/02 "Tkachev v. Ukraine". (2007, December). Retrieved from https://zakon.rada.gov.ua/laws/show/974_335#Text.

tive measure is inherently prognostic. In this context, V.V. Mykhailenko (2019) notes that the predictive nature of risk assessment when applying preventive measures does not exempt the prosecution from the obligation to substantiate such risks with concrete facts, rather than mere assumptions, indicating a genuine threat of the suspect or accused interfering with the course of the pre-trial investigation. It is also important to highlight the inadmissibility of justifying the existence of risks warranting pre-trial detention solely on the basis of the seriousness of the offence committed. In particular, in the ECtHR judgment in Moskalenko v. Ukraine[1], the ECtHR stated that the gravity of the charges may, at the initial stage, indicate a risk of absconding from the pre-trial investigation authorities. However, such grounds cannot justify extended periods of detention (cls. 34-36).

In examining the right to liberty and security, scholars have frequently highlighted the problematic nature of defining the conditions and grounds for the application of preventive measures. One point of academic debate concerns whether the provision set out in Part 3 of Article 176 of the CPC of Ukraine[2] should be regarded as a ground for applying such measures. This provision states that "the investigating judge or court shall refuse to apply a preventive measure if the investigator or prosecutor fails to prove that the circumstances established during the examination of the motion to apply the preventive measure are sufficient to convince the court that none of the milder preventive measures provided for in Part 1 of Article 176 of the Code would prevent the established risk or risks"[3]. In particular, V.T. Nor & M.I. Shevchuk (2019), as well as O.G. Shylo (2014), propose that the grounds for applying a preventive measure should also include the CPC's stipulation that when deciding on a preventive measure, it must be proven that the objectives of the criminal proceedings cannot be achieved through the application of the preventive measure.

Nevertheless, the circumstance outlined in Paragraph 3 of Part 1 of Article 194 of the CPC of Ukraine[4] – namely, "the insufficiency of applying milder preventive measures to prevent the risk or risks indicated in the motion" – should be regarded not as a ground but rather as a condition for restricting the RLS. This is because the provision is taken into account not when deciding on the necessity of applying a preventive measure, but when determining its specific form (Khablo, 2020). In this regard, V.V. Rozhnova (2003) rightly notes that while a ground – the factual basis for coercive action – justifies the application of a procedural coercive measure, a condition, as a set of legal requirements, serves as a safeguard for the lawfulness of such a measure. The foregoing indicates that the right to liberty and security is a fundamental human value. Accordingly, complaints concerning violations of the rights enshrined in Article 5 of the Convention[5] have repeatedly been the subject of consideration by the ECtHR. This has enabled the ECtHR's case law to establish generally accepted standards for ensuring the lawfulness of restrictions on the right to liberty and security in the course of criminal proceedings.

Conclusions

The reasonableness of suspicion, as a ground for applying a custodial preventive measure, must be supported by a volume of factual data sufficient to allow an investigating judge to assert, with a high degree of probability, that the person concerned has committed the alleged offence. Although the suspicion must be reasonable, it should not be equated with a formal accusation, as the purpose of applying a preventive measure is to prevent the suspect from interfering with the establishment of facts and circumstances necessary to formulate the charges. It has been established that a level of suspicion considered sufficient at the time of arrest or detention must be substantiated throughout the entire period during which the preventive measure is applied. It is therefore justified to assert that, in the absence of reasonable suspicion, restrictions on the right to liberty and security are not permissible. However, in addition to the presence of reasonable suspicion, the application of a preventive measure also requires the existence of risks associated with improper conduct by the suspect or the accused.

It has been established that proving the existence of risks associated with improper conduct by a suspect (or accused person) is a complex task, as claims concerning such risks are predictive in nature. Therefore, what must be demonstrated is not a past event, but rather the likelihood of a future occurrence should a preventive measure – such as detention – not be applied. It is necessary to substantiate the risk of a negative event (e.g. absconding from pre-trial investigation authorities, tampering with evidence, etc.) occurring with a high degree of probability in the absence of a custodial preventive measure. The predictive nature of such risks must be supported by

[1] Judgment of the European Court of Human Rights in Case No. 37466/04 "Moskalenko v. Ukraine". (2010, August). Retrieved from https://zakon.rada.gov.ua/laws/show/974_797#Text.
[2] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
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factual data obtained by the prosecution that demonstrates the real, rather than hypothetical, possibility of the risk materialising. The seriousness of the offence committed must not serve as the sole ground for justifying the existence of such a risk as the basis for pre-trial detention.

The analysis presented above enables the identification and generalisation of internationally recognised standards regarding the lawfulness of restricting the right to liberty and security during criminal proceedings. Observance of the conventional standards established through the case law of the ECtHR in national legal practice will promote consistency and coherence in the application of the law, while also serving as a foundation for the development of high-quality amendments and improvements to national criminal procedure legislation. Further research is required to assess and substantiate the lawfulness or unlawfulness of restricting the right to liberty and security during criminal proceedings.

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Conflict of Interest

None.

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Правомірність обмеження права на свободу й особисту недоторканність: стандарти Європейського суду з прав людини

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■ **Анотація.** Положення статті 5 Європейської конвенції з прав людини визначають гарантії права на свободу й особисту недоторканність. Під час кримінального провадження це базове право людини може бути обмеженим. Тому законодавство та правозастосовна практика мають передбачити справедливі процедури такого обмеження. Метою дослідження був комплексний аналіз, систематизація та експлікація конвенційних стандартів гарантування законності обмеження права на свободу й особисту недоторканність у кримінальному провадженні, визначення підстав застосування ізоляційних запобіжних заходів, що дасть змогу уникнути правозастосовних помилок і сприятиме формуванню уніфікованої та усталеної слідчо-судової практики, зокрема і в умовах воєнного стану. Основними методами пізнання були: аксіологічний, формально-юридичний, логіко-правовий, системно-структурний, порівняльно-правовий, аналіз та узагальнення, що дало змогу описати результати й обґрунтувати отримані висновки. Дослідження здійснено з огляду на практику Європейського суду з прав людини та національне кримінальне процесуальне законодавство. Встановлено, що згідно зі стандартами, сформованими практикою Європейського суду з прав людини, підозра не потребує також рівня переконливості, як обвинувачення, а обґрунтованість підозри передбачає наявність такого обсягу фактичних даних, які дають змогу сторонньому спостерігачу (слідчому судді) з високим ступенем імовірності дійти висновку, що особа, яка буде обмежена в праві на свободу й особисту недоторканність, вчинила інкриміноване їй діяння. Аргументовано, що в практиці Європейського суду з прав людини застосовують сутнісну, а не формальну концепцію обвинувачення. На прикладі нормативного регулювання підстав застосування запобіжних заходів встановлено, що рішення про достатність чи недостатність фактичних даних для визнання підозри обґрунтованою, а також про обґрунтованість ризиків буде приймати слідчий суддя в кожному конкретному випадку. Практична цінність роботи полягає в можливості використання визначених стандартів практики Європейського суду з прав людини під час прийняття рішення про застосування ізоляційного запобіжного заходу, що забезпечить уніфіковану правозастосовну практику та сприятиме утвердженню засади верховенства права в Україні

■ **Ключові слова:** затримання; тримання під вартою; кримінальне провадження; обґрунтована підозра; підстави застосування запобіжного заходу; слідчий; суддя

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The influence of the ECB on the formation of prudential requirements for credit institutions: Analysis of key changes and challenges

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■ **Abstract.** The aim of the article was to examine the evolution of the powers of the European Central Bank and the correlation with the competences of national regulators in the European Union. The study used a set of legal analysis methods. The use of the comparative legal method allowed the identification of the main differences in the regulatory approaches of the European Central Bank and national banking supervisory authorities. The formal legal method was used to analyse the content of the main regulations and directives of the European Union. The systemic approach contributed to the consideration of the legal regulation of banking activity in the European Union as a complex phenomenon combining macro- and microprudential supervision. As a result of the study, it was established that the European Central Bank played a key role in regulating banking activity within the European supervisory mechanism. At the same time, national regulators retained powers over the supervision of medium-sized and small financial institutions, which created a need for clear coordination between these institutions. It was found that strengthening the interaction between the European Central Bank and the European Systemic Risk Board could contribute to a prompter response to financial imbalances, as confirmed by the analysis of existing regulatory mechanisms. The main directions for improving macroprudential supervision were identified, in particular through the expansion of the functions of the European Systemic Risk Board and the creation of joint platforms for information exchange between regulatory authorities. The results obtained could be used for further improvement of EU regulatory policy and the development of effective financial supervision mechanisms aimed at reducing systemic risks in the banking sector

■ **Keywords:** supervisory mechanism; national authorities; financial stability; regulatory coordination; banking risks

■ Introduction

The relevance of the study of the influence of the European Central Bank (ECB) on the formation of prudential requirements for credit institutions stemmed from the growing role of the ECB as one of the main regulators of banking activity in the European Union (EU). After the establishment of the Single Supervisory Mechanism (SSM) in 2014, the ECB received significant powers in the field of banking supervision, which contributed to the harmonisation of banking sector regulation within the eurozone. At the same time, the strengthening of the ECB's regulatory functions sparked a number of discussions regarding the balance of powers between supranational and national regulatory authorities, as well as the impact of such centralisation on the sovereignty of EU member states in the area of financial supervision.

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Prudential requirements established within the framework of European banking legislation aimed to ensure the stability of the banking system, prevent crisis phenomena, and protect depositors' interests. However, the process of adapting international standards, such as the Basel Agreements, to the EU legal system sometimes generated controversies regarding equal competition at the international level, as well as posed challenges for national regulators and smaller banks. In this context, questions arose regarding the feasibility of differentiating prudential requirements depending on the size of banks, the possibility for national regulators to introduce additional restrictions, and the legitimacy of the ECB's interference in the internal management of private credit institutions.

Studies devoted to the impact of prudential policy on the banking system demonstrated significant attention to the effectiveness of macroprudential measures in various economic conditions. O. Akinci & J. Olmstead-Rumsey (2017) conducted an empirical analysis of the impact of macroprudential measures on the stability of the banking sector, establishing that such instruments as leverage limits and liquidity requirements effectively reduced risks in the financial system. At the same time, the authors emphasised that stricter regulatory requirements could negatively affect the availability of credit, especially during periods of economic instability.

The effects of macroprudential policy on credit growth dynamics were studied by A.M. Andrieş *et al.* (2021). The analysis showed that the ECB's approach to setting prudential requirements significantly affected the volume and structure of bank lending, particularly in countries with high financial openness. The authors noted the ambiguous impact of regulatory changes: on the one hand, strengthening capital and liquidity requirements contributed to improving the stability of banks, while on the other hand, it could limit access to financing for small and medium-sized enterprises.

The analysis of international prudential regulation practices indicated the importance of combining capital requirements with deposit insurance mechanisms. B.N. Ashraf *et al.* (2020) demonstrated that the introduction of strict capital standards in combination with deposit guarantee schemes could reduce the level of banking risks. However, during periods of crisis, the effectiveness of these measures depended on the specifics of the regulatory environment, particularly on the flexibility of the central bank in responding to shocks.

The relationship between macroprudential policy, economic growth, and banking crises was considered in the work of M. Belkhir *et al.* (2022). The research highlighted that macroprudential measures could play both a stabilising and a restraining role for economic development. The authors drew attention to the fact that excessive regulation could limit the ability of banks to perform the function of financial intermediation, which was especially relevant during a recession. The issue of banking sector privatisation and the impact of state control on the level of banking risks was studied by N. Boubakri *et al.* (2020). The authors found that after privatisation, banks exhibited more aggressive risk-taking behaviour, which could affect the overall stability of the financial system. This raised the question of the appropriateness of the ECB's approaches to regulating banks that remained under partial state control.

The specificities of macroprudential policy in a competitive banking environment were studied by K.K. Chan *et al.* (2023). The authors concluded that the implementation of regulatory requirements could have different effects depending on the level of competition in the banking market. In cases where competition was high, banks were forced to adapt to new requirements by reducing the level of risky operations. At the same time, in less competitive environments, strict regulatory measures could lead to a reduction in lending volumes. The latest studies also focused on the impact of external shocks, such as the COVID-19 pandemic, on the effectiveness of banking regulation. I.R. Ganie *et al.* (2022) demonstrated that during crises, central banks had to balance between the need to maintain financial stability and ensure the availability of credit. The analysis showed that the ECB was forced to ease some prudential requirements during the pandemic, raising questions about the long-term effectiveness of such measures.

Overall, the analysis of academic publications indicated a number of unresolved issues regarding the effectiveness of the ECB's prudential requirements. Despite significant attention to the impact of macroprudential policy on the stability of the banking sector, gaps remained in the study of how banks adapted to new regulatory standards and the long-term impact on economic growth. This study aimed to partially fill these gaps by analysing key changes in the ECB's prudential requirements and assessing the consequences for the banking system.

The aim of the article was to analyse key changes and challenges in the legal regulation of banking activity in the EU arising from the implementation of ECB prudential requirements. The main objectives of the article were: to analyse the legal framework of the ECB's activity as a banking regulator in the EU; to examine the division of competences between the ECB and national regulators; and to propose ways to optimise the mechanism of interaction between the ECB and national regulators, taking into account modern trends in financial regulation and the need for harmonisation of banking supervision in the EU.

Literature Review

The influence of the ECB on the formation of prudential requirements for credit institutions and the implementation in different Eurozone countries was an important topic for research. Although many authors had paid attention to the role of macroprudential policy, there were certain gaps in understanding the specific influence of the ECB that remained unaddressed in previous studies. In this context, reviewing the findings of other authors allowed for an understanding of how different approaches to macroprudential regulation interacted with national and international economic factors.

T.T. Le *et al.* (2022), in the work, studied the impact of the COVID-19 pandemic on default risks in Vietnamese commercial banks. The authors emphasised the importance of income diversification for banks to reduce default risks, especially during global shocks. The researchers also pointed out the significance of macroprudential policy in maintaining the stability of the banking sector under uncertainty. However, one of the key limitations of this study was the lack of analysis of the direct influence of the ECB's macroprudential policy on the banking systems of Eurozone countries. This reduced the universality of the conclusions regarding the effectiveness of such measures in the European context.

Financial crises and diversification strategies became the subject of analysis in the study by D.K. Pham *et al.* (2021). The researchers concluded that adjusting diversification strategies helped reduce risks for banking institutions. At the same time, the study did not consider the ECB's role in shaping these strategies at the Eurozone level. This indicated a certain limitation in understanding how the ECB's macroprudential requirements might affect the banking sector. The authors emphasised the need to adapt banking strategies to economic changes, but the research did not cover the interaction between regulatory requirements and banks' diversification approaches within the European Union.

The topic of the ECB's macroprudential policy was also addressed by T. Poghosyan (2020), who analysed the effectiveness of credit restriction measures in EU countries. The author noted that such restrictions helped reduce financial risks, especially during crises. The study also highlighted the need to improve coordination mechanisms between the ECB and national regulators. An important aspect was that the work did not take into account socio-economic differences between Eurozone countries, although these factors could significantly affect the effectiveness of macroprudential policy. Furthermore, the author did not analyse the influence of other regulators on the EU banking system, which could have broadened the understanding of the overall effectiveness of regulatory measures in the region.

P. Tseng & W. Guo (2022) focused on banking risks in mixed oligopolies, examining the role of state-owned banks in this process. This research was interesting because the authors focused on the impact of state-owned banks on financial stability, highlighting the importance of the functioning in conditions of limited competition, where the banking services market was controlled by both private and state institutions. The authors showed that the presence of state-owned banks could have both stabilising and destabilising effects on the market, depending on political and economic conditions. However, a significant limitation of this study was the lack of analysis of the ECB's role as a regulator in the context of the Eurozone banking sector. The authors did not consider the specific regulation of banks carried out by the ECB, as well as its prudential requirements for banks operating in the Eurozone. The absence of a comparison between private banks subject to ECB norms and state-owned banks in a mixed oligopoly significantly limited the ability to draw conclusions about how the ECB's general macroprudential requirements might affect financial stability in a mixed market environment. This created a gap in understanding the effectiveness of the ECB's policy regarding banking stability and risks across the entire Eurozone.

An equally important study was conducted by Z. Venter (2022), who analysed the adaptability of macroprudential policy under economic uncertainty. The author presented theoretical foundations suggesting that macroprudential policy should be adaptive to effectively respond to changing conditions and new challenges in financial systems. However, although the work provided a theoretical basis for understanding the flexibility of macroprudential policy, it did not consider specific mechanisms used by the ECB to regulate banking activities under real economic crises. The study did not include practical examples of applying these principles in real situations, such as global financial crises or other macroeconomic shocks faced by the Eurozone. This significantly reduced the practical relevance of the findings for EU banking systems, as the findings did not cover the actual mechanisms by which the ECB could influence the stability of banking institutions during economic shocks.

The work of E. Meuleman & R.V. Vennet (2022) was dedicated to analysing macroprudential policy, monetary policy, and banking risks in the Eurozone. The authors examined the impact of various macroprudential policy instruments on the financial stability of banks under changing economic conditions, emphasising the importance of integrating macroprudential and monetary instruments to reduce risks in the banking sector. The authors highlighted the need for coherence between ECB policies and those of national regulators to effectively manage banking risks under conditions of global economic instability.

In Ukraine, research on macroprudential instruments was presented in the works of authors such as O. Antnonyuk (2020), L. Zherdetska & M. Kambur (2021). These studies focused on adapting macroprudential policy to national conditions, particularly on the use of instruments aimed at maintaining financial stability in Ukraine. V.V. Kovalenko & N.V. Radova (2019), and O.M. Oliynyk (2019) emphasised the importance of implementing appropriate macroprudential measures to prevent banking crises and ensure the stability of the financial system. However, most of these works did not consider the influence of European regulators, such as the ECB, on Ukraine's national policy. The analysis of the basic principles of financial system stability generally did not focus on the specifics of the prudential requirements applied by the ECB to Eurozone banks. This significantly limited the relevance of the findings for studying the integration of the Ukrainian banking system into European financial stability standards.

Materials and Methods

The study of the legal status and evolution of the powers of the ECB as a regulator of banking activities in the European Union was carried out based on a combination of general scientific and specialised legal methods, which ensured a comprehensive approach to the analysis of the legal aspects of the ECB's activities and its interaction with national regulators. The method of legal modelling was used in the study, which allowed for the assessment of the prospects for improving the EU's regulatory policy in the field of banking supervision, particularly in enhancing the effectiveness of the European mechanism for the financial recovery of banks and combating money laundering.

The main research method was the comparative legal analysis, which was used to assess the compliance of the EU banking regulatory framework with international standards. Within this method, a comparison of European banking legislation with international documents regulating financial activities was conducted, particularly with Basel III (Bank for International Settlements, 2011). The main documents that were subject to analysis were the Stability and Growth Pact[1], Treaty on Stability, Coordination and Governance in the Economic and Monetary Union[2], Regulations of the European Parliament and of the Council No. 575/2013 "On Prudential Requirements for Credit Institutions and Investment Firms"[3], No. 806/2014 "On Establishing Uniform Rules and a Uniform Procedure for the Resolution of Credit Institutions and Certain Investment Firms in the Framework of a Single Resolution Mechanism and a Single Resolution Fund"[4], Directives of the European Parliament and of the Council No. 2013/36/EU "On Access to the Activity of Credit Institutions and the Prudential Supervision of Credit Institutions and Investment Firms"[5] and No. 2014/59/EU "On Establishing a Framework for the Recovery and Resolution of Credit Institutions and Investment Firms"[6].

The formal legal method was applied to study the structure and content of the EU normative acts regulating the activities of the ECB, particularly its role as the central bank of the eurozone and the main banking supervisory body. Special attention was paid to the provisions defining the ECB's competencies in the field of prudential supervision of significant credit institutions, as well as the legal norms regulating mechanisms of cooperation with national regulators within the framework of the Single Supervisory Mechanism (SSM). Procedures of supervision, criteria for assessing the financial stability of banking institutions, capital and liquidity requirements, as well as the legal aspects of decision-making in preventing banking crises were analysed. Special attention was paid to the legal foundations of the ECB's interaction with other European and international financial institutions supervising the banking sector.

The system approach method allowed for an exploration of the institutional characteristics of the ECB's functioning in connection with national financial regulators, as well as in the broader context of economic governance in the EU. Mechanisms for coordinating powers between the ECB and national supervisory authorities within the Single Supervisory Mechanism were analysed, which allowed an assessment of the effectiveness of the existing banking regulation system. Furthermore, the impact of

[1] Stability and Growth Pact. (2011, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:stability_growth_pact.
[2] Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. (2013, January). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42012A0302(01).
[3] Regulation of the European Parliament and of the Council No. 575/2013 "On Prudential Requirements for Credit Institutions and Investment Firms". (2013, June). Retrieved from https://eur-lex.europa.eu/eli/reg/2013/575/oj/eng.
[4] Regulation of the European Parliament and of the Council No. 806/2014 "On Establishing Uniform Rules and a Uniform Procedure for the Resolution of Credit Institutions and Certain Investment Firms in the Framework of a Single Resolution Mechanism and a Single Resolution Fund". (2014, July). Retrieved from https://eur-lex.europa.eu/eli/reg/2014/806/oj/eng.
[5] Directive of the European Parliament and of the Council No. 2013/36/EU "On Access to the Activity of Credit Institutions and the Prudential Supervision of Credit Institutions and Investment Firms". (2013, June). Retrieved from https://eur-lex.europa.eu/eli/dir/2013/36/oj/eng.
[6] Directive of the European Parliament and of the Council No. 2014/59/EU "On Establishing a Framework for the Recovery and Resolution of Credit Institutions and Investment Firms". (2014, May). Retrieved from https://eur-lex.europa.eu/eli/dir/2014/59/oj/eng.

the ECB's activities within the SSM on ensuring the financial stability of the eurozone was studied, particularly through the introduction of unified supervisory standards and the application of early response mechanisms to financial imbalances.

The case study method was applied to analyse specific cases of the application of bank resolution mechanisms in EU countries. The aim of this analysis was to identify the features of interaction between national regulators and the ECB in crisis situations, as well as to identify the factors influencing decision-making regarding the support or restructuring of banks.

In particular, the cases of the resolution of the Italian bank Banca Popolare di Vicenza and the Spanish Banco Popular (European Commission, 2017) were reviewed, which demonstrated differences in the approaches of national regulators and European institutions to managing financial crises. In addition, examples of national authorities' intervention in the early stages of banking risks were analysed – particularly in Finland (tightening of mortgage lending requirements), Germany (conservative risk assessment for local banks), as well as the general debate around the harmonisation of prudential requirements within the EU.

Results

The ECB as a regulator of banking activities in the EU: Legal basis and evolution of powers. The global financial crisis of 2008 posed a serious challenge for many European countries, leading to significant economic consequences, including the threat of bankruptcy for individual states. One of the causes of the crisis was the revealed deficiencies in regulation and supervision in the banking sector, as well as the inability of financial institutions and regulators to respond promptly to crisis situations. The crisis also exposed systemic shortcomings in the legal regulation of the financial sector of the European Union, resulting in a decline in trust in banking institutions and financial entities in general.

In response to these challenges, the EU developed a set of anti-crisis measures, which included both short-term and long-term strategies. The short-term measures aimed to stabilise the situation in financial markets and prevent the further spread of crisis phenomena. This included the creation of special anti-crisis funds, such as the European Financial Stability Mechanism, the European Financial Stability Facility, and the European Stability Mechanism. These measures enabled EU member states' governments to provide the necessary refinancing of public debt and promote financial stability.

Long-term measures were aimed at eliminating structural problems that had contributed to the onset and spread of the crisis, as well as at developing new mechanisms for regulating the financial sector to prevent similar crises in the future. One of the main elements of these measures was the radical restructuring of the Economic and Monetary Union, initiated by the European Commission. A revised version of the Stability and Growth Pact[1] was adopted, which included six legislative acts aimed at strengthening oversight of budgetary discipline in the eurozone and introducing methods to prevent violations.

The next stage was the signing of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union[2], as well as the development of the "Blueprint for a Deep and Genuine Economic and Monetary Union" by the European Commission. One of the key proposals was the transfer of supervisory functions for large banks in the eurozone to the control of the ECB, with countries outside the euro area given the opportunity to join the "Single Supervisory Mechanism" on a voluntary basis.

These measures led to the creation of the European Banking Union, which became a new stage of integration within the European Monetary Union and was aimed at creating a centralised mechanism for applying banking rules at the EU institutional level. The goal of this mechanism was the formation of a transparent, unified, and secure banking market. On 4 November 2014, the ECB began to perform the functions of the main supervisory authority of the European Banking Union.

The structure of the European Banking Union includes three main components: the Single Supervisory Mechanism (SSM), the Single Resolution Mechanism (SRM), and the Single Rulebook and Standards, which include stricter capital requirements for commercial banks, deposit guarantee schemes, and rules to prevent bank bankruptcies (Table 1).

Table 1. Structure of the EBU

Component	Description	Functions and tasks
Single Supervisor Mechanism (SSM)	An integrated system of national banking supervisors, united under the auspices of the ECB	Ensuring centralised supervision of banks in the eurozone and non-eurozone EU countries to ensure financial stability

[1] Stability and Growth Pact. (2011, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:stability_growth_pact.
[2] Treaty on Stability, Coordination and Governance in the Economic and Monetary Union. (2013, January). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:42012A0302(01).

Table 1. Continued

Component	Description	Functions and tasks
Single Resolution Mechanism (SRM)	Mechanism for effective resolution of crisis situations in the banking sector through the Single Resolution Board	Preparation and implementation of bank recovery plans to prevent the bankruptcy and minimise the negative impact on the financial system
Uniform rules and standards	Legislation defining bank capital requirements, deposit guarantee guidelines, and bankruptcy prevention measures	Ensuring stricter capital requirements for commercial banks, creating deposit guarantee systems and mechanisms for protecting against financial crises

Source: compiled by the author based on Understanding the banking union and ESFS (2024)

The Single Supervisory Mechanism, one of the key components of the European Banking Union, was enshrined in Article 127(6) of the Treaty on the Functioning of the European Union[1]. This mechanism granted the European Central Bank (ECB) exclusive powers to supervise significant banks within the euro area, as well as banks located in other EU Member States. The ECB was authorised to supervise credit institutions whose total asset size exceeded EUR 30 billion, as well as banks deemed significant for the economy of a particular Member State or those that had received financial assistance from EU institutions.

The introduction of the Single Supervisory Mechanism under the ECB's auspices became a determining factor in the transformation of prudential requirements for credit institutions in the European Union. The strengthening of regulation aimed to enhance the financial resilience of the banking system, minimise systemic crisis risks, and harmonise standards at the EU level. One of the most important reform directions was the increase in capital adequacy requirements. Within the implementation of Basel III (Bank for International Settlements, 2011), the ECB required banks to raise the Common Equity Tier 1 (CET1) to a minimum of 4.5% of risk-weighted assets, introduce capital buffers (the capital conservation buffer and the countercyclical capital buffer), which varied depending on the macroeconomic environment, and apply increased requirements to Global Systemically Important Banks (G-SIBs), including additional buffers to ensure the stability.

The adaptation of Basel III had varied effects on the competitiveness of banks in different EU countries. On one hand, large international banks such as BNP Paribas, Deutsche Bank, and Santander were better positioned to adapt to heightened regulatory demands due to broad asset diversification, access to global financial markets, and the ability to accumulate required capital. On the other hand, small and medium-sized banks, particularly in countries such as Italy (Intesa Sanpaolo, UniCredit) or Spain (CaixaBank, Banco Sabadell), faced challenges in meeting new requirements due to limited financial resources and narrower market segments. In some cases, this compelled local banks to reduce lending to small and medium-sized enterprises, impacting regional economic development (Radojičić & Marinković, 2023).

It is also important to note the consequences of implementing Basel standards for banking institutions in Central and Eastern Europe, particularly in Poland, the Czech Republic, and Hungary. As the financial systems of these countries were largely oriented around subsidiaries of large Western European banking groups, the tightening of capital requirements could lead to a reduction in fund transfers between parent and subsidiary companies, affecting credit availability for national economies (Wang & Lin, 2021).

Another important aspect was the correlation between the adaptation of Basel standards in the EU and the implementation in other jurisdictions, such as the United States and the United Kingdom (McCann & O'Toole, 2019). While similar standards were implemented in the United States through Federal Reserve Rules[2], American banks enjoyed certain regulatory advantages due to differences in capital and liquidity calculation approaches. For example, more flexible risk management mechanisms were envisaged in the US, providing a competitive edge to American banks compared to the European counterparts. This could result in capital outflows from European financial markets towards the United States.

Guided by the provisions of Regulation of the European Parliament and of the Council No. 575/2013[3] and Directive No. 2013/36/EU[4], the ECB introduced stricter liquidity requirements for banks, including the liquidity coverage ratio (LCR) – ensuring that banks held sufficient high-quality liquid assets to cover potential cash outflows over a 30-day period ,

[1] Treaty on the Functioning of the European Union. (2009, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT.

[2] Federal Reserve Rules. (2018, January). Retrieved from https://www.federalreserve.gov/supervisionreg/reglisting.htm.

[3] Regulation of the European Parliament and of the Council No 575/2013 "On Prudential Requirements for Credit Institutions and Investment Firms". (2013, June). Retrieved from https://eur-lex.europa.eu/eli/reg/2013/575/oj/eng.

[4] Directive of the European Parliament and of the Council No. 2013/36/EU "On Access to the Activity of Credit Institutions and the Prudential Supervision of Credit Institutions and Investment Firms". (2013, June). Retrieved from https://eur-lex.europa.eu/eli/dir/2013/36/oj/eng.

the net stable funding ratio (NSFR) – aimed at ensuring stable funding sources for long-term assets, and the mandatory conduct of stress tests to assess banks' resilience in crisis situations. A significant change was the reduction of discretionary powers of national regulators. The uniform requirements introduced by the ECB limited the ability of Member States to apply the own, more lenient, criteria for assessing banking risks. At the same time, this remained a contentious issue, as some national regulators sought to retain the right to introduce additional requirements for banks, taking into account the local characteristics of the financial system, while there was also an ongoing debate about whether centralised regulation violated the principles of competitiveness within the European banking market.

Changes in prudential requirements also affected the mechanisms for resolving problem banks. According to Directive No. 2014/59/EU[1] and Regulation No. 806/2014[2], the ECB gained new levers of influence: clear procedures for early intervention in the activities of problem banks were established, bail-in requirements were introduced obligating shareholders and creditors to bear financial responsibility for the rescue of banks, and the SRM was implemented, providing for the creation of a common resolution fund for banks in the euro area. One of the most debated issues remained the stringency of requirements for small banks. It was argued that the existing rules disproportionately complicated the activities of small financial institutions that did not pose systemic risks to the market. The European Commission and the ECB considered the possibility of adapting standards to the size of the bank to avoid excessive administrative pressure.

Under the influence of the ECB, prudential requirements were significantly tightened to increase the resilience of the EU banking sector. At the same time, the centralisation of regulation triggered disputes among national governments, as it reduced the autonomy in the field of banking supervision. The further development of banking regulation in the EU was likely to aim at finding a compromise between centralised control and the need to preserve a degree of flexibility for local regulators.

Division of competencies: Areas of responsibility of the ECB and national regulators. The introduction of the SSM significantly transformed the distribution of powers between the ECB and the national regulators of EU Member States. While the ECB assumed a key role in banking supervision within the euro area, national regulators retained a number of powers necessary to ensure the effective functioning of the financial system at the national level. Defining areas of competence and dividing responsibilities between these institutions was important for maintaining the stability of the banking sector and preventing regulatory gaps or duplication of functions.

The main competencies of the ECB included direct supervision of significant institutions (SIs) that met certain criteria, including asset size, systemic importance to the country's economy, and access to EU stabilisation mechanisms. In addition, the ECB was vested with exclusive powers in bank licensing, assessment of the suitability of managers and shareholders, monitoring compliance with capital and liquidity requirements, conducting stress testing of banks, and monitoring systemic risks.

National regulators, despite the strengthening of the ECB's role, remained key actors in banking supervision within the jurisdictions. The regulators oversaw less significant institutions (LSIs) not subject to direct ECB supervision, implemented macroprudential measures, monitored compliance with anti-money laundering legislation (AML/CFT), participated in bank resolution procedures, and cooperated with the ECB within joint supervisory teams (JSTs) (Table 2). Despite the formal distribution of functions between the European Central Bank and national regulators, in practice, the interaction between these institutions was accompanied by a number of challenges related to potential conflicts of competence, duplication of functions, and differences in regulatory approaches.

Table 2. Areas of responsibility of the ECB and national regulators in the field of banking supervision

Area of responsibility	European Central Bank (ECB)	National regulators
Banking supervision	Direct supervision of SIs that meet the criteria of asset size, systemic importance or receiving support from EU stabilisation mechanisms	Supervision of LSIs not under the direct supervision of the ECB
Licensing	Exclusive right to grant, revoke and restrict banking licences in SSM member countries	Implementation of procedures for national banks, but decisions are made in agreement with the ECB
Management assessment	Assessment of the suitability of owners and managers of significant banks	Similar functions for less significant banks

[1] Directive of the European Parliament and of the Council No. 2014/59/EU "On Establishing a Framework for the Recovery and Resolution of Credit Institutions and Investment Firms". (2014, May). Retrieved from https://eur-lex.europa.eu/eli/dir/2014/59/oj/eng.
[2] Regulation of the European Parliament and of the Council No. 806/2014 "On Establishing Uniform Rules and a Uniform Procedure for the Resolution of Credit Institutions and Certain Investment Firms in the Framework of a Single Resolution Mechanism and a Single Resolution Fund". (2014, July). Retrieved from https://eur-lex.europa.eu/eli/reg/2014/806/oj/eng.

Table 2. Continued

Area of responsibility	European Central Bank (ECB)	National regulators
Capital and liquidity adequacy control	Monitoring compliance of significant banks with Basel III requirements (CET1, LCR, NSFR)	Establishing additional national requirements for less significant banks
Stress testing	Conducting annual stress tests together with the European Banking Authority (EBA)	Participation in stress testing led by the ECB, as well as conducting the own national tests
Systemic risk monitoring	Analysis of the financial stability of the banking system and development of macroprudential measures	Implementation of macroprudential measures at the level of individual states
Anti-Money Laundering (AML/CFT) Controls	General monitoring of financial system risks	Direct supervision of banks' compliance with AML/CFT regulations
Bank rehabilitation	Participation in procedures through SRM and Single Resolution Board (SRB)	Implementation of remediation procedures at the national level
Cooperation and coordination	Joint management supervisor teams	Participation in JSTs and interaction with the ECB within the framework of joint supervision

Source: compiled by the author

One of the key problems was the potential conflict between the unified regulatory policy of the ECB and the individual initiatives of national authorities regarding the implementation of additional macroprudential measures. According to Article 5 of Council Regulation No. 1024/2013[1], national regulators had the right to apply stricter macroprudential requirements than those established by the ECB, but the initiatives required approval from the European Central Bank. At the same time, Article 458 of Regulation of the European Parliament and of the Council No. 575/2013[2] allowed Member States to introduce additional restrictions on bank lending and liquidity, provided the necessity of such measures for financial stability was substantiated. In accordance with European legislation, Member States had the right to set stricter requirements for capital or liquidity for banks operating within the jurisdiction, if justified by economic circumstances. For example, the Netherlands introduced an additional capital buffer for systemically important banks pursuant to Article 458 of Regulation No. 575/2013, aimed at reducing risks of financial instability. France, in turn, set increased requirements for real estate lending, in particular restrictions on the loan-to-value (LTV) ratio, to reduce the risk of overheating the market. Estonia applied stricter macroprudential liquidity buffer requirements for banks with high reliance on foreign capital, since its financial system was more vulnerable to external shocks (Paravisini *et al.*, 2023).

However, such decisions could disrupt the balance in the European financial market, creating unequal conditions for banks operating in different Eurozone countries. For example, the introduction of higher countercyclical capital buffer requirements in one country compared to others could lead to a shift of banking capital and lending activity to regions with less stringent regulation. This, in turn, could impact the overall resilience of the EU financial system.

The ECB applied unified risk analysis methodologies to all banks under its supervision, guided by Basel Committee standards and its own regulatory practices. At the same time, national regulators, who had a long-standing history of interaction with local financial institutions, often possessed a deeper understanding of the specifics of regional markets and potential threats. For instance, in countries with high levels of household debt or a large share of mortgage lending, local regulators might assess the financial stability of banks differently than the ECB, which potentially created discrepancies in supervisory conclusions. As a result, banks could face conflicting requirements regarding risk management, complicating the strategic operations.

The area of bank resolution also remained complex, particularly when it concerned significant financial institutions under the direct supervision of the ECB. In cases of financial instability of such a bank, decisions on its reorganisation or liquidation were taken by the SRM in coordination with the ECB and the SRB. However, the implementation of relevant measures directly depended on the involvement of national regulators, who might have the own views on priority actions aimed at protecting the interests of local depositors and the national economy.

Specifically, national financial supervisory authorities might oppose ECB decisions on bank resolution if the authorities believed such decisions posed a threat to the regional banking system. For example, in 2017 Italy, through its national regulator Banca d'Italia, opposed the ECB's decision to liquidate Banca Popolare di Vicenza and Veneto Banca, insist-

[1] Regulation of the Council of European Union No. 1024/2013 "On Conferring Specific Tasks on the European Central Bank Concerning Policies relating to the Prudential Supervision of Credit Institutions". (2013, October). Retrieved from https://eur-lex.europa.eu/eli/reg/2013/1024/oj/eng.

[2] Regulation of the European Parliament and of the Council No. 575/2013 "On Prudential Requirements for Credit Institutions and Investment Firms". (2013, June). Retrieved from https://eur-lex.europa.eu/eli/reg/2013/575/oj/eng.

ing on the necessity of state intervention to protect local depositors and creditors (European Commission, 2017). This was especially relevant in countries such as Italy, Spain, and Greece, where banks played a key role in financing small and medium-sized enterprises, providing a significant share of lending to this sector. Furthermore, in France and Portugal, banks often held a substantial share of government debt, making the stability critically important for the financial stability of these countries. In such cases, potential contradictions could arise between the ECB's supranational approach to resolving financial crises and national regulators' intentions to minimise negative impacts on a specific country's economy.

Thus, while the mechanism for the distribution of competencies between the ECB and national regulators was generally well-defined, in practical terms it remained a subject of discussion and potential conflict. Differences in approaches to macroprudential regulation, risk assessment, and bank resolution procedures required further coordination between European and national bodies to ensure the effective and stable functioning of the EU banking sector.

The policy of the Netherlands demonstrated an example of the application of local macroprudential instruments: De Nederlandsche Bank (DNB) initiated an increase in countercyclical capital buffer requirements and liquidity ratios for local banks in response to high household debt levels, particularly due to mortgage lending. However, these measures were not always consistent with the ECB's overall policy, which created tensions in the relationship between the national regulator and the supranational authority (Kuvshinov *et al.*, 2022).

Similarly, in Finland, the local financial regulator (Finanssivalvonta (FIN-FSA)) applied stricter capital requirements for banks engaged in high-risk mortgage lending, citing the threat of a "real estate bubble". The ECB, in turn, called for greater harmonisation of such measures at the EU level to avoid unequal conditions for financial institutions in different countries (Laeven & Valencia, 2020). The ECB applied unified risk analysis methodologies to all banks under its supervision, guided by Basel Committee standards and its own regulatory practices. At the same time, national regulators, who had a long-standing history of interaction with local financial institutions, often possessed a deeper understanding of the specifics of regional markets and potential threats.

In Germany, the Federal Financial Supervisory Authority (BaFin) traditionally adopted a conservative approach to risk assessment, particularly concerning medium and small banks (Sparkassen and Volksbanken), which played an important role in lending to the real economy. BaFin believed that the risks inherent to these institutions were not always accounted for in the ECB's standard models, which could lead to incorrect conclusions about the financial resilience (Matos *et al.*, 2024).

A notable example was the case of the Italian bank Banca Popolare di Vicenza, which faced bankruptcy in 2017. The ECB deemed the bank "failing or likely to fail" and referred the case to the SRM (Bilotta, 2017). Meanwhile, the Italian government, with the support of the national regulator Banca d'Italia, decided to use €4.8 billion of public funds to support the bank to avoid negative consequences for the local economy. As a result, the bank was transferred to Intesa Sanpaolo, and a significant portion of its non-performing assets were placed in a special fund for gradual resolution. This decision was criticised by the ECB and the European Commission as it contradicted the principles of the single resolution mechanism, but was ultimately accepted as an exceptional measure due to socioeconomic risks.

Another similar example was the situation with the Spanish Banco Popular, which was declared insolvent in 2017 and transferred for resolution within the framework of the Single Resolution Mechanism. In this case, the Spanish regulator Banco de España was forced to act in accordance with the ECB's decisions, despite some differences in the views on the bank's rescue strategy (López Gómez & Matea, 2020). Given these challenges, further development of cooperation between the ECB and national regulators required a comprehensive approach aimed at improving the effectiveness of joint supervision, reducing regulatory discrepancies, and strengthening financial stability in the euro area.

One of the key areas for improvement was the optimisation of the joint supervision mechanism through strengthening the role of JSTs. JSTs consisted of representatives from the ECB and national competent authorities (NCAs) and were responsible for the direct supervision of significant banking institutions. It was important to ensure clearer regulation of decision-making procedures within JSTs, enhanced information exchange between the ECB and national regulators, and expanded JST powers in the field of macroprudential regulation.

An additional step towards optimising banking supervision was the improvement of regulatory approaches to small and medium-sized banks, taking into account the specific nature of the operations. The current ECB supervision system was primarily focused on large systemically significant institutions, while the regulation of small banks largely remained under the competence of national authorities. However, the tightening of Basel agreements and stricter reporting standards created excessive burdens for smaller institutions, potentially limiting the competitiveness. In this context, the ECB could introduce proportionate regulation, providing more flexible requirements for small banks, including simplified

reporting mechanisms and reduced administrative burden, while not compromising financial stability.

Another important area of reform was the creation of the Anti-Money Laundering Authority (AMLA), which was to centralise oversight of compliance with anti-money laundering and counter-terrorist financing regulations. Currently, the responsibility for supervision in this area was assigned to national authorities, leading to heterogeneous standards and fragmented regulatory approaches. The planned establishment of AMLA would allow harmonisation of anti-financial crime rules at the EU level, enhance the monitoring of suspicious transactions, and introduce unified requirements for banks and non-bank financial institutions.

In this context, it was advisable to initiate amendments to the EU regulations governing the ECB's activities within the Single Supervisory Mechanism (in particular, Council Regulation No. 1024/2013[1]), in order to more clearly delineate areas of responsibility between the supranational and national levels. This implied the introduction of flexible regulatory frameworks for national regulators in supervising small and medium-sized banks, alongside strengthening the ECB's coordination function. To reduce the fragmentation of prudential supervision, it was also worth considering the creation of a single electronic platform for the exchange of supervisory information between the ECB and national competent authorities. The combination of these measures would contribute to maintaining the necessary balance between centralised control and the preservation of institutional autonomy of Member States within the framework of financial regulation.

Thus, the banking supervision system in the European Union remained complex and multi-levelled, driven by the necessity to combine supranational and national regulation. The ECB oversaw the largest financial institutions and coordinated European banking supervision policy, while national authorities ensured the implementation of regulatory requirements for less significant banks and performed macroprudential functions. The further evolution of the distribution of competences would largely depend on the European Union's ability to adapt the regulatory system to contemporary challenges of financial stability and changes in the global banking environment.

Discussion

The research findings confirmed the key role of the ECB in regulating banking activity in the eurozone, which partially aligned with the findings of other authors. The study by H.A. Ahmed & M.W.R. Khan (2022) demonstrated that the dynamics of short- and long-term interest rate spreads significantly affected risks in the banking sector and the yield curve. The legal analysis of the ECB's activities in this study aligned with the conclusions on the importance of macroprudential regulation in managing risks in the financial system. At the same time, it was established that the ECB's regulatory policy was stricter than that of other regulators, which could have both positive and negative consequences for financial market stability.

The results of the study by M. Ampudia *et al.* (2021) emphasised the considerable role of macroprudential policy in preventing financial crises, highlighting the need for proactive regulation to reduce systemic risks. The researchers found that timely intervention by regulators in financial processes contributed to the resilience of the banking sector, preventing the build-up of imbalances in capital allocation. Similarly, in the present study, it was established that the ECB's legal regulation played a critically important role in ensuring financial stability in the eurozone. However, existing coordination mechanisms between the ECB and national regulators were found to be insufficiently developed. In particular, although the ECB focused on macroeconomic risks, insufficient consideration of specific regional characteristics could reduce the effectiveness of its policy. In this regard, the study confirmed the conclusions of M. Ampudia *et al.* (2021) regarding the need to strengthen coordination mechanisms, especially in the area of credit risk regulation and liquidity supervision.

B. Clark & A. Ebrahim (2022) examined the issue of regulatory arbitrage and its impact on banking risks, noting that differences in regulatory approaches between countries could create incentives to move capital to less regulated jurisdictions. The study showed that such processes could exacerbate risk asymmetry in the financial system and complicate the maintenance of stability. The results of this study partially aligned with the conclusions of B. Clark & A. Ebrahim (2022), as the identified legal aspects of the ECB's activities demonstrated the existence of potential risks associated with differing interpretations of regulatory norms among EU Member States. This confirmed the hypothesis that even within a single regulator, contradictions in the interpretation of requirements could exist. Such discrepancies could hinder the process of harmonising the regulatory environment and create additional challenges for financial stability, aligning with the conclusions of other researchers.

[1] Regulation of the Council of European Union No. 1024/2013 "On Conferring Specific Tasks on the European Central Bank Concerning Policies relating to the Prudential Supervision of Credit Institutions". (2013, October). Retrieved from https://eur-lex.europa.eu/eli/reg/2013/1024/oj/eng.

C. Cantú *et al.* (2020), in the work, found that specific characteristics of banks had a significant impact on the credit policy. This study confirmed that the ECB's supervisory powers were of key importance for maintaining a unified lending policy and reducing asymmetry in access to financing. However, it was established that the extent of the ECB's influence on banks' credit policy significantly depended on the structural features of financial institutions in different Member States.

C. D'Avino (2024) conducted a thorough analysis of the internal capital markets of global banks and the localisation strategies, highlighting the impact of the regulatory environment on the effectiveness of financial flow management. The author emphasised that banks operating in multiple jurisdictions adapted the capital strategies to local regulatory requirements, which could lead to uneven distribution of financial resources. In this context, author's noted the critical role of the ECB in coordinating financial flows between EU Member States, which was important for maintaining financial stability. In this context, the findings of this study were consistent with the conclusions of C. D'Avino (2024) regarding the need to unify the regulatory environment, which would reduce risks associated with imbalances in the distribution of financial resources.

The results of this study were consistent with the conclusions of F. Franch *et al.* (2020), who examined the transnational effects of prudential regulation. The authors established that the introduction of control measures in one country could impact the financial system of other states through mechanisms of cross-border banking intermediation. This confirmed the need for effective coordination between the ECB and national regulators to reduce potential risks of regulatory fragmentation. Similar conclusions were drawn in this study regarding difficulties in coordination between the ECB and national regulators, confirming the need to develop more effective mechanisms of intergovernmental interaction.

J.E. Galán & M. Lamas (2023) analysed credit standards and regulatory arbitrage, establishing that increased regulatory requirements could lead to changes in the structure of risks. This aligned with the conclusions regarding the need for closer coordination between the ECB and national regulators to minimise potential risks associated with legal uncertainty. P.J. Morgan *et al.* (2018) analysed the use of Loan-to-Value (LTV) policy as a macroprudential instrument. Within the present study, it was confirmed that the application of such mechanisms could reduce risks in the banking system, although the effectiveness largely depended on the degree of coordination between the ECB and national regulators. It was found that LTV policy required adaptation to national market specificities to achieve optimal outcomes.

J. Kelly *et al.* (2019) studied risk clusters in the European residential property market, focusing on changes since the 2008 financial crisis. The results confirmed that regulation of the financial sector, particularly the ECB's supervision of bank lending, played a key role in containing systemic risks. Within this study, it was established that the ECB's regulatory policy did indeed contribute to strengthening control over bank lending in the mortgage finance sector. At the same time, the analysis revealed that the effectiveness of these measures was uneven due to significant differences between national property markets, which aligned with the findings of authors.

E.J. Reite (2023) examined the issue of bias in mortgage lending, considering changes in house prices and LTV adjustment. Author's research demonstrated that macroprudential instruments, including LTV, were important for managing banking risks. In this context, the findings of this study confirmed that the ECB's policy aimed at regulating access to mortgage lending had a significant impact on financial stability. At the same time, it was established that the level of LTV constraint adaptation remained uneven across eurozone countries, creating potential risks for the financial market, in particular due to the possibility of regulatory arbitrage.

T.F.A. Matos *et al.* (2023) studied the role of market discipline and macroprudential policy in ensuring banking system stability. The authors proved that stricter supervisory measures contributed to reduced risk levels in the banking sector, although these measures could limit access to financing. Similarly, this study confirmed that the ECB's policy aimed to support stability, but its impact on access to financial resources depended on the specific features of individual financial institutions and the ability to comply with regulatory requirements. This highlighted the need for a flexible approach to regulatory policy, taking into account the structural characteristics of banks in different jurisdictions.

Thus, the findings of this study broadly aligned with previous works, confirming the importance of legal regulation for the stability of the EU banking system. At the same time, certain aspects requiring further research were identified, particularly regarding the harmonisation of regulatory approaches and elimination of legal fragmentation in banking supervision. Special attention should be given to the adaptation of ECB policies to national conditions in order to enhance the effectiveness of regulatory measures within the eurozone.

Conclusions

In the course of the study, a comprehensive analysis of the legal basis of the ECB's activities as a regulator of banking in the EU was carried out. It was determined that the regulatory framework for banking

supervision was based on a combination of European legislation and international standards, in particular the Basel principles. An analysis of legal norms demonstrated a significant degree of harmonisation of banking regulation at the EU level, although there was a certain fragmentation of the legal framework, which complicated the implementation of a unified supervisory policy in the euro area. It was established that the distribution of powers between the ECB and national regulators remained complex, which could lead to inconsistency in approaches to the regulation of the banking sector and create risks of legal uncertainty. Despite progress made in establishing a unified legal field, a certain degree of fragmentation in the regulatory framework for banking supervision was identified, which hampered the implementation of a standardised supervisory policy in the euro area. This was due to the fact that national regulators retained broad discretionary powers, and certain aspects of financial institution supervision remained within the competence, which could lead to differences in law enforcement practices. In particular, it was established that certain provisions of EU directives and regulations concerning banking supervision allowed for the implementation taking into account national specificities, which created risks of inconsistency in regulatory requirements across different Member States.

The study of interaction between the ECB and national financial market regulators showed that the introduction of the Single Supervisory Mechanism was an important step in the centralisation of supervision but did not eliminate all structural deficiencies in the EU's regulatory system. National regulators, while retaining significant powers, continued to play a key role in monitoring and controlling banking institutions, which in turn could cause divergences in the assessment of financial stability of individual banks. It was revealed that although the ECB supervised the largest systemically important banks, control over less significant banking institutions remained with national regulators, which could reduce the overall effectiveness of the regulatory mechanism in times of crisis.

In view of current trends in financial regulation, the need was substantiated to improve coordination mechanisms between the ECB and national regulators, as well as to strengthen interaction between the ECB and the European Systemic Risk Board. This would improve the effectiveness of monitoring financial imbalances and timely response to potential threats to the EU banking system. Additional attention was required for the harmonisation of risk assessment procedures and the implementation of uniform banking supervision standards, which could increase transparency in regulatory processes and eliminate possible legal conflicts between European and national legal acts. Particular emphasis was placed on the importance of expanding the ECB's powers in supervising small and medium-sized banks, which would allow for a more comprehensive approach to banking regulation and strengthening of financial stability in the euro area.

The study's limitation lay in the fact that the analysis was based on the current regulatory framework, which might undergo changes in response to new challenges in the financial sector. Moreover, no empirical assessment of the effectiveness of the proposed regulatory mechanisms was conducted within the study, which requires further exploration in the context of applied economic and legal research. The results obtained may serve as a basis for further analysis of financial regulation mechanisms in the EU, as well as for the development of recommendations to improve banking supervision policy within the European legal framework.

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Conflict of Interest

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Вплив Європейського центрального банку на формування пруденційних вимог до кредитних установ: аналіз ключових змін і викликів

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■ **Анотація.** Метою статті було дослідити еволюцію повноважень Європейського центрального банку та їх співвідношення з компетенціями національних регуляторів у Європейському Союзі. У дослідженні було використано комплекс методів правового аналізу. Застосування порівняльно-правового методу надало можливість визначити основні відмінності в регуляторних підходах Європейського центрального банку й національних органів банківського нагляду. Формально-юридичний метод було використано для аналізу змісту основних регламентів і директив Європейського Союзу. Системний підхід сприяв розгляду правового регулювання банківської діяльності в Європейському Союзі як комплексного явища, що поєднує макро- та мікропруденційний нагляд. За результатами дослідження було встановлено, що Європейський центральний банк виконує ключову роль у регулюванні банківської діяльності в межах європейського механізму нагляду. Водночас національні регулятори зберігають повноваження щодо нагляду за середніми й малими фінансовими установами, що створює потребу в чіткій координації між ними. Було виявлено, що посилення взаємодії між Європейським центральним банком і Європейською радою із системних ризиків може сприяти оперативнішому реагуванню на фінансові дисбаланси, що підтверджено аналізом наявних регуляторних механізмів. Було визначено основні напрями вдосконалення макропруденційного нагляду, зокрема через розширення функцій Європейської ради із системних ризиків і створення спільних платформ обміну інформацією між регуляторними органами. Отримані результати може бути використано для подальшого вдосконалення регуляторної політики Євросоюзу й розроблення ефективних механізмів фінансового нагляду, спрямованих на зниження системних ризиків у банківському секторі

■ **Ключові слова:** наглядовий механізм; національні органи управління; фінансова стабільність; координація регуляторів; банківські ризики

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Methodology of detection and forensic features of investigation of crimes involving virtual assets: A comparative analysis of international practices

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■ **Abstract.** The purpose of this study was to identify effective approaches to the investigation of crimes involving virtual assets based on a comparative analysis of international practices. The study was based on a systematic analysis of legal acts and regulatory documents, and employed the methods of comparative legal analysis to investigate the regulatory approaches of various jurisdictions, a systematic approach to explore the interrelationships between the elements of the crime prevention system, a structural-functional study of the role of different actors. The study found the critical lack of a unified international definition of virtual assets, which creates gaps in criminal law qualifications, especially regarding Article 209 of the Criminal Code of Ukraine, and procedures for seizure and confiscation of assets in cross-border cases. It was found that the greatest efficiency of the investigation is achieved through the multilayered integration of proactive approaches to monitoring virtual asset service providers, reactive measures of law enforcement agencies, the use of specialised software Chainalysis, TRM Lab, Crystal Blockchain, Elliptic for blockchain analytics and open intelligence methods. The study systematised specific forensic indicators of five main types of virtual asset crimes, including structuring of transactions in money laundering, use of mixers, promises of unrealistic profits in investment fraud, and links to darknet addresses. The comparative analysis of five key jurisdictions demonstrated a dramatic diversity of regulatory approaches, from the technology-neutral Swiss principle-based regulation to the comprehensive European Markets in cryptoassets with unified requirements for cryptoasset service providers. The practical significance of the findings lies in the possibility of developing effective mechanisms for international cooperation in the investigation of cross-border crimes involving virtual assets

■ **Keywords:** cryptocurrency; fraud; digital forensics; deanonymisation; blockchain

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Introduction

The rapid development of virtual asset technologies and their widespread introduction into the financial system have created new challenges for law enforcement agencies in the field of crime detection and investigation. The pseudo-anonymity, decentralisation, and cross-border nature of virtual assets have dramatically changed the landscape of financial crime, requiring the development of specific investigative methodologies and the adaptation of traditional forensic approaches to new technological reality. The relevance of this study is driven by the exponential growth of criminal activity involving virtual assets and the lack of unified international approaches to their investigation. According to the IOCTA 2025 report (Internet Organised Crime..., 2025), cybercriminals are actively using a complex system to trade stolen data and access to systems, with the methods of criminals constantly changing, outpacing the development of relevant law enforcement techniques.

M.Z. Hossain (2023) explored the trends in the development of forensic accounting and its adaptation to the challenges of the digital age. The researcher comprehensively systematised the emerging trends in the field of forensic accounting, focusing on the transformational changes caused by the digital revolution. Author developed a methodological framework for integrating conventional approaches with modern technologies, including cyber forensic accounting, cryptocurrency analysis, and blockchain technologies to detect and prevent fraud. U. Agarwal *et al.* (2024) comprehensively reviewed specific aspects of blockchain and cryptocurrency forensics, developing a methodological approach to investigating crypto fraud based on the integration of technical analysis of blockchain and conventional forensic techniques. The researchers created a detailed taxonomy of cryptocurrency crimes by method of commission and technological complexity, proposing a systematisation of the key types of crimes from simple theft to complex money laundering schemes. The researchers analysed the effectiveness of various technological tools for detecting cryptocurrency crimes, including specialised software and de-anonymisation techniques.

In a study for the International Monetary Fund within the framework of its financial stability risk assessment, N. Schwarz *et al.* (2021) detailed the legal and practical aspects of combating money laundering through virtual assets. The researchers analysed the regulatory landscape, identifying key challenges for financial institutions and regulators in the context of implementing Anti-Money Laundering/Fighting the Financing of Terrorism (AML/CFT) measures in relation to virtual assets, including the challenges of identifying ultimate beneficiaries in decentralised systems and the challenges of applying conventional Know Your Customer (KYC) approaches to anonymous transactions.

A. Ombu (2023) studied the role of digital forensics in combating financial crimes in the computer era, analysing the transformation of forensic practices under the influence of the digitalisation of society. The researcher substantiated a conceptual model for the integration of conventional investigative methods with modern digital technologies, demonstrating how the convergence of the physical and digital worlds creates new opportunities for evidence collection. The study highlighted the criticality of specialised training for law enforcement officers to work effectively in the digital environment and develop relevant technical competences.

In an empirical study of the effectiveness of various technological solutions in the context of real investigations, N. Hamad & D. Eleyan (2022) performed a comparative analysis of digital forensics tools used in the investigation of cybercrime. The researchers developed a methodology for evaluating forensic tools based on the criteria of functionality, reliability, and usability, systematising the advantages and disadvantages of software and hardware solutions. The researchers provided practical recommendations for choosing the best technological solutions depending on the specifics of digital evidence and available resources. Complementing this technological perspective, D. Ovsianiuk (2024) emphasised that the intelligence cycle serves as a methodological foundation for structuring analytical activity, enabling the systematic collection, evaluation, synthesis, and operational application of information. Although originally developed in the context of drug-related crime, this model can be effectively adapted to investigations involving virtual assets, where structured analytical processes are essential for interpreting complex data environments.

V. Jitariuc & A. Nastas (2022) detailed the forensic features of cybercrime, developing a theoretical framework for understanding the specifics of crimes in cyberspace and their differences from conventional forms of criminal activity. The researchers analysed the nature of digital traces, their formation and preservation in different technological environments, creating a comprehensive approach to the analysis of digital evidence in criminal proceedings. The study included classification of types of digital evidence and identification of their specific characteristics, including volatility and the possibility of remote modification.

F.C. Tsai (2021) proposed an innovative approach to the use of blockchain technologies in criminal proceedings. The researcher explored the possibilities of using distributed ledger technology to improve the reliability of evidence documentation procedures.

F.C. Tsai (2021) also developed a conceptual model for integrating blockchain into conventional chain of custody procedures, demonstrating how the technology can ensure the immutability of records of evidence movements from discovery to presentation in court. The study demonstrated the potential of blockchain to revolutionise the documentation and storage of evidence. R.S. Faqir (2023) comprehensively analysed the impact of artificial intelligence (AI) on digital criminal investigations, exploring current trends in the use of AI in law enforcement, from automated evidence analysis to predictive modelling. The researcher systematised the application of machine learning in forensics, including natural language processing for communication analysis and computer vision for video evidence processing. Having analysed potential risks, including the problems of algorithmic bias and the need to maintain human control, R.S. Faqir (2023) substantiated the prospects of automating certain aspects of the investigation. J. Wu *et al.* (2023) investigated financial crimes in the metaverse supported by Web3 technologies, researching new forms of criminal activity in virtual worlds and blockchain-based economies. The researchers developed a taxonomy of crimes in virtual environments, including conventional forms of fraud adapted to the metaverse and fundamentally new types of criminal activity. The study demonstrated the evolution of criminal schemes towards more complex virtual environments and suggested relevant countermeasures to prevent them.

The analysis of the scientific literature revealed that despite the significant attention of researchers to certain aspects of the issue, there is no comprehensive comparative analysis of international methodologies for detecting and investigating crimes involving virtual assets. The issues of correlation between multiple regulatory approaches, the effectiveness of international cooperation in this area, and the adaptation of forensic techniques to the specifics of diverse types of virtual assets are still understudied. The purpose of the present study was to systematise and comparatively assess the existing approaches to detecting and investigating criminal offences in the field of virtual assets. To fulfil this purpose, the study set out the tasks of analysing the conceptual framework and legal nature of virtual assets in the context of criminal investigations, systematising methodologies for detecting crimes involving virtual assets, and studying the forensic features of investigating such crimes.

Materials and Methods

The methodological framework of this study included an integrated approach to the review of methodologies for detecting and forensic features of investigating crimes involving virtual assets, which helped to consider this issue as a multidimensional phenomenon at the intersection of legal, technological, and forensic aspects. The study was based on a systematic analysis of a wide range of sources, which can be divided into several main groups. Six key jurisdictions were selected for comparative analysis: Ukraine, the European Union, the United States, Germany, Switzerland, and Singapore. The choice was made due to the diversity of regulatory approaches, the level of development of the virtual asset market, and the availability of practical experience in investigating relevant crimes. The first group included Ukrainian laws and regulations that form the national legal framework for governing virtual assets and combating crime in this area. These included the Law of Ukraine "On Prevention and Counteraction to Legalisation (Laundering) of Proceeds of Crime, Financing of Terrorism and Financing of the Proliferation of Weapons of Mass Destruction"[1] and the Criminal Procedure Code of Ukraine[2]. The second group was formed by regulatory documents and practices of international organisations and foreign countries. The recommendations of the Financial Action Task Force (FATF) (2024) on virtual assets, and Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (2023), EU regulations, particularly European Crypto-Assets Regulation (MiCA)[3]. The third group included the materials of law enforcement agencies and international organisations on the practical aspects of investigating crimes involving virtual assets. The study analysed the following reports and guides for law enforcement agencies: SQUIRE Patton Boggs (2025), Law Business Research (2024), Swiss Financial Market Supervisory Authority (FINMA) (2022), Charltons Quantum (2025), Blockchain Intelligence Group (2025), OSCE (2024), Europol (2025), analytical materials of INTERPOL (2024), documents of the German BKA (2025) and practical manuals on cryptocurrency investigations (Grigg, 2025; COPOLAD, 2025).

The study employed a set of scientific methods. The comparative legal method was used to analyse the regulatory approaches of different jurisdictions to virtual assets and methods of investigating related crimes. The system analysis was applied to examine

[1] Law of Ukraine No. 361-IX "On Prevention and Counteraction to Legalisation (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction". (2019, December). Retrieved from https://zakon.rada.gov.ua/laws/show/361-20#Text.

[2] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.

[3] Regulation of the European Parliament and of the Council No. 2023/1114 "On Markets in Crypto-Assets, and amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (MiCA)". (2023, May). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:4626998.

the interrelationships between various elements of the system of combating crime in the field of virtual assets. The structural-functional approach helped to investigate the role of various actors (Virtual Asset Service Provider (VASP), law enforcement agencies, regulators) in the system of detection and investigation of crimes. The method of comparative analysis was employed to compare international practices and identify effective approaches. Content analysis was used to systematise information from numerous sources and identify the main trends in the development of investigation methodologies. Such a comprehensive methodological approach, combining the analysis of legal frameworks, regulatory practices of multiple countries, technical standards and practical experience of law enforcement agencies, enabled a comprehensive investigation of the specific features of detecting and investigating crimes involving virtual assets and the development of practical recommendations for improving the relevant methodologies in the international context.

Results

Terminology and legal nature of virtual assets in the context of criminal investigations. Effective investigation of crimes related to virtual assets is impossible without a clear understanding of their legal nature, classification, and specific characteristics used for criminal purposes. The absence of an internationally unified definition of a "virtual asset" and its subtypes (cryptocurrency, NFT, token) directly affects forensic practice. What may be considered "property" or a "financial instrument" in one jurisdiction that is subject to seizure or requires specific investigative actions may have a different legal status in another, creating proof-related and procedural gaps.

The term "virtual asset" (VA) is relatively new and continues to evolve along with the development of technology. In Ukrainian legislation, the definition of a virtual asset has undergone certain changes. In the scientific literature, it was proposed to define a virtual asset as "an intangible good that is an object of civil rights, has a value and is expressed by a set of data in electronic form" (Yarotskyi, 2023). The Law of Ukraine No. 361-IX[1] defines a virtual asset as "a digital expression of value that can be traded in a digital format or transferred and can be used for payment or investment purposes". At the international level, the FATF (2024) defines a virtual asset as "a digital representation of value that can be digitally sold, transferred, or used for payments", excluding digital representations of fiat currencies. In the European Union, the MiCA[2] introduces its own definitions and classifications, such as asset-related tokens (ART) and electronic money tokens (EMT).

A comparative analysis of these definitions revealed shared features, such as digital form and store of value, but also differences in approaches to legal status and functional purpose. Ukrainian legislation emphasises the intangible nature of VAs, while the FATF focuses on their ability to circulate and be used in payments. This terminological ambiguity complicates enforcement, especially in cross-border cases. Specifically, the current version of Article 209 of the Criminal Code of Ukraine[3] on money laundering defines "property" as the object of laundering, which creates legal uncertainty as to whether cryptocurrencies can be recognised as the subject of this crime. Even though the draft amendments to the Civil Code of Ukraine[4] proposed to define virtual assets as a thing (intangible asset), the relevant law on virtual assets has not yet entered into force, leaving the legal status of cryptocurrencies unresolved (Kamenskyi & Dudorov, 2024). The MiCA excludes from its scope cryptoassets that qualify as financial instruments under MiFID II (SQUIRE Patton Boggs, 2025), which requires a clear distinction.

The classification of virtual assets relevant for forensic analysis is crucial for crime investigation purposes. For forensic analysis, the classification of virtual assets is applied according to various criteria. Primarily, a distinction is made between secured and unsecured virtual assets. This classification, consolidated in the Law of Ukraine No. 2074-IX[5] and supported by scholars, distinguishes between assets that certify property rights (secured) and those that do not certify such rights (unsecured). This is essential for determining the object of the offence and possible methods of committing the crime.

By type, virtual assets are divided into cryptocurrencies (e.g., Bitcoin, Ethereum), stablecoins (pegged to fiat currencies or other assets), non-fungible tokens (NFTs), utility tokens, and security tokens. Each type has its specific features of circulation

[1] Law of Ukraine No. 361-IX "On Prevention and Counteraction to Legalisation (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction". (2019, December). Retrieved from https://zakon.rada.gov.ua/laws/show/361-20#Text.
[2] Regulation of the European Parliament and of the Council No. 2023/1114 "On Markets in Crypto-Assets, and amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (MiCA)". (2023, May). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:4626998.
[3] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[4] Civil Code of Ukraine. (2003, January). Retrieved from ttps://zakon.rada.gov.ua/laws/show/435-15#Text.
[5] Law of Ukraine No. 2074-IX "On Virtual Assets". (2022, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2074-20#Text.

and potential vulnerabilities for criminal use. By the nature of issuance, a distinction is made between centralised (with a specific issuer) and decentralised virtual assets (without a single control centre) (Samsin, 2024). The decentralised nature of most cryptocurrencies complicates the regulation and identification of responsible parties. These classifications help investigators understand the specifics of a particular virtual asset that is the object or instrument of a crime and choose an adequate investigation methodology.

The connection between the characteristics of virtual assets and criminal exploitation is manifested in the fact that key characteristics of virtual assets, such as pseudo-anonymity, decentralisation, and cross-border nature, are actively used by criminals. Pseudo-anonymity means that although transactions on most public blockchains are transparent, the identity of wallet holders is hidden behind cryptographic identifiers (wallet addresses). This allows criminals to conduct transactions while staying relatively anonymous until their digital footprints are linked to real people through further investigative efforts (Blockchain Intelligence Group, 2025). Decentralisation means the absence of a single centre of control and management in many virtual asset systems, complicating the blocking of suspicious transactions or seizure of assets without access to private keys (FINMA, 2022). The cross-border nature of virtual assets means that they can be instantly transferred across state borders without the involvement of conventional financial intermediaries, which complicates tracking of the flow of funds and application of national jurisdictions.

These features create major challenges for law enforcement, requiring specialised knowledge, tools, and international cooperation. Some jurisdictions, such as Switzerland, initially relied on "technology-neutral" existing laws, which could lead to uncertainty in the courts. Others, such as the EU with MiCA[1] and Ukraine[2], are moving towards specific regulation. The first approach may create interpretation difficulties when applied to new characteristics of virtual assets (e.g., whether Bitcoin is a "thing" or "data"). The second, if not sufficiently flexible, risks becoming outdated quickly due to the rapid development of virtual asset technologies. These distinct regulatory philosophies directly affect the practical aspects of evidence gathering, asset seizure, and prosecution. Table 1 provides a better understanding of the differences between the legal frameworks. This table illustrates that while there are shared elements in the understanding of VAs, differences in definitions and classifications create a complex legal framework for international cooperation and investigation. The legal qualification of VAs directly affects the possibility of their seizure, confiscation, and recognition as an object or instrument of crime.

Table 1. Comparative definitions and classifications of virtual assets

Jurisdiction/ Organisation	Key terms	Key classification criteria
Ukraine	"A digital thing is a virtual asset, digital content, and other benefits regarding which the provisions of part one of this Article apply"[3].	Collateral (secured/unsecured), property rights certificates, financial VAs (secured by currency values or securities)
FATF	Virtual asset (digital representation of value, can be digitally traded, transferred, used for payment, not digital fiat)	Functional purpose (payment, investment), does not include digital representations of fiat currencies
EU (MiCA)	Crypto-asset (digital representation of value or rights that can be transferred and stored electronically, using DLT or similar technology)	Asset-Referenced Tokens (ARTs), E-Money Tokens (EMTs), other crypto assets (including utility tokens). Exceptions for cryptoassets that qualify as financial instruments under MiFID II.
USA	Terminology may vary depending on the regulator (SEC, CFTC, FinCEN). DOJ uses the term 'digital assets'.	Depends on the specific asset and its characteristics (e.g., whether it is a security, a commodity, or falls within the definition of a money transfer).

Source: developed by the author of this study based on N. Hamad & D. Eleyan (2022), V.O. Yarotskyi (2023), R.S. Faqir (2023), M.Z. Hossain (2023)

Detection of crimes involving virtual assets is a complex process that combines proactive and reactive approaches, the use of technological tools, and close cooperation between various actors. The effectiveness of detection depends on the integration of the efforts of virtual asset service providers (VASPs), financial institutions, and law enforcement. Proactive detection is based on the continuous monitoring

[1] Regulation of the European Parliament and of the Council No. 2023/1114 "On Markets in Crypto-Assets, and amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (MiCA)". (2023, May). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:4626998.
[2] Law of Ukraine No. 2074-IX "On Virtual Assets". (2022). Verkhovna Rada of Ukraine. https://zakon.rada.gov.ua/laws/show/2074-20#Text.
[3] Civil Code of Ukraine. (2003, January). Retrieved from ttps://zakon.rada.gov.ua/laws/show/435-15#Text.

and analysis of transactions involving VAMs to identify suspicious activity. The key role here is played by risk indicators developed by international organisations, specifically FATF (2024) and Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (2023). These indicators include the structuring of transactions, i.e., the execution of transactions with VA in small amounts that do not reach the reporting thresholds, analogous to the structuring of cash transactions. Abnormal transaction frequency and volume, such as multiple high-value transactions within a short period of time, such as 24 hours, or regular transactions without a clear business rationale, are also significant.

The use of VASPs in high-risk jurisdictions is another essential indicator, which includes immediate transfers of VAs to numerous VASPs, especially those registered or operating in jurisdictions with insufficient AML/CFT regulation or without a connection to the customer's residence or business. The use of anonymisation services such as mixers, tumblers, anonymous cryptocurrencies (AEC or privacy coins) to conceal the source or destination of funds. Suspicious customer behaviour is considered to be the provision of false or incomplete information during registration, the use of IP addresses associated with a darknet or VPN, and the mismatch between the financial profile and the volume of transactions. VASPs are required to conduct risk analysis of their customers, products, and transactions to effectively detect such activity. Notably, indicators developed for anti-money laundering (AML) purposes may not always be sufficient to detect other VA-related crimes, such as direct fraud or the financing of illegal activities. For example, a victim of a romance scam who is forced to send cryptocurrency may not show the classic signs of money laundering from a VASP perspective.

Reactive detection involves the actions of law enforcement agencies after receiving information about a possible crime. The sources of such information may include statements from affected individuals or companies, suspicious transaction reports (STRs) from financial institutions or VASPs, information received from international partners or in the course of operational activities. At the initial stage, it is crucial to collect primary information such as the time of the transaction, the name of the financial institution or VASP, the amount, type of cryptocurrency, wallet addresses, and any data on counterparties (OSCE, 2024). The effectiveness of reactive detection largely depends on the quality of proactive measures taken by VASPs and the promptness of notifications.

VASPs play a key role in the system of detecting VA-related crimes. Following FATF standards and national laws, they must perform Customer Due Diligence (CDD), or KYC, i.e., identify and verify the identity of their customers and beneficial owners. They also must keep records, keep track of transactions and CDD data for a specified period. A significant obligation is to report Suspicious Transaction Reports (STRs), i.e., to inform the relevant Financial Intelligence Units (FIUs) of transactions that are suspected of being related to money laundering or terrorist financing. Furthermore, VASPs must follow the Travel Rule, receive, store, and transmit information about the initiator and beneficiary of transactions with VAs during their transfer between VASPs. Failure of VASPs to follow these obligations considerably complicates the detection and investigation of crimes, creating blind spots for law enforcement agencies.

Modern technology forms an integral part of the process of detecting VA offences. Blockchain analysis software developed by companies such as Chainalysis, TRM Lab, Crystal Blockchain, Elliptic, allows tracking transactions in public blockchains, clustering wallet addresses, identifying links to known criminal actors, such as darknet markets, sanctioned addresses, mixers, and assessing risks. AI and machine learning are increasingly being used to detect abnormal patterns of behaviour that may indicate fraud or money laundering (Grigg, 2025). The IOCTA report confirmed that AI not only accelerates crime but also requires the development of relevant AI-based defence mechanisms (Europol, 2025b). In the future, the role of AI may extend beyond simple anomaly detection to include predictive analysis to identify potential victims or new types of fraud, as well as automating the initial comparison of evidence. Detection methodologies should be multilayered, combining VASP compliance procedures, technological tools, victim reporting channels, and intelligence gathering. Excessive reliance on a single detection vector is insufficient for effective counteraction.

Forensic features of investigating crimes with virtual assets. Investigation of crimes involving virtual assets is described by a series of specific forensic features driven by the intangible nature of virtual assets, their pseudo-anonymity, cross-border nature, and technological complexity. These features affect all stages of the investigation – from establishing the crime to collecting and evaluating evidence. Establishing *corpus delicti* in VA-related crimes is one of the key issues, as it requires determining the legal status of VAs as the subject of a criminal offence. The intangible nature of VAs and the differences in their legal qualification in different jurisdictions, such as property, data, financial instrument, etc., create challenges. Various types of VA crimes have their unique distinctive forensic indicators. Money laundering is characterised by the use of mixers, such as ChipMixer, tumblers, "chain hopping" – transferring funds through different cryptocurrencies and blockchains to confuse the traces, transferring VAs through

numerous wallets and exchanges, exchanging for anonymous cryptocurrencies Monero, Zcash, using unregulated or offshore VASPs (Europol, 2025a). Fraud is manifested through investment scams with promises of super-profits from investing in VAs, phishing attacks to steal credentials to wallets or exchanges, *pig butchering* schemes that combine romantic scams and investment fraud (INTERPOL, 2024). Ransomware involves a demand for a ransom in VAs, usually Bitcoin or Monero, for decrypting data or not disclosing stolen information. Financing of terrorism and other illegal activities includes the use of VAs to finance terrorist organisations, purchase weapons, drugs due to their relative anonymity and speed of transactions. Crimes on Darknet markets are characterised by the payment for goods and services, including drugs, weapons, stolen data, child pornography, on shadowy online platforms using VAs.

Tracking the flow of virtual assets is based on the analysis of transactions in public blockchains such as Bitcoin, Ethereum, etc., as the principal method of tracking VAs. Specialised software allows visualising the flow of funds, identifying clusters of addresses belonging to the same entity, and identifying links to known risky addresses. However, there are major challenges. Private blockchains and anonymous cryptocurrencies, such as Monero, Zcash, Dash, use technologies of increased anonymity, such as ring signatures, zk-SNARKs, which makes it difficult or impossible to track transactions. Services mixers/tumblers mix VAs of different users, breaking the connection between incoming and outgoing transactions. De-anonymisation of users is a key task, which lies in establishing the real identity of the owner of the wallet address. Methods include analysis of KYC/CDD data from VASP, IP logging, OSINT, analysis of network behaviour, and other investigative measures.

Identification and attribution of perpetrators is a central challenge in investigating VA-related crimes due to the problem of attribution – definitively linking a wallet or transaction to a concrete, legally identifiable person or organisation. This requires a combination of online and offline methods. Data from VASPs, including obtaining KYC/CDD information from exchanges where a criminal may have registered or exchanged VAs for fiat money, is critical. This is why FATF standards, particularly the Travel Rule, which requires VASPs to collect and transmit sender and recipient information, are so critical. Digital traces include the analysis of IP addresses used to access wallets or exchanges, file metadata, data from suspects' computers and mobile devices. OSINT (Open-Source Intelligence) involves collecting information from open sources – social networks, forums, publications – where the criminal could have left traces linking them to certain IP addresses. Conventional methods include interrogating witnesses, victims, conducting searches, and covert investigative actions.

The collection, recording, examination, and evaluation of digital evidence in VA-related offences is based on the fact that such offences leave predominantly digital traces. Sources of such evidence may include crypto wallets, including hardware USB devices, software wallets installed on a PC or smartphone, online wallets with access through a web interface, paper wallets with printed private keys (TRM, n.d.). Their extraction and analysis require specialised knowledge and tools. Data from exchanges includes transaction history, KYC data, and IP logs. Computers, mobile devices, and servers may contain wallet software, private keys, browser history, correspondence, and files related to criminal activity. Methods of seizure and preservation of digital evidence must ensure its integrity, authenticity, and immutability for further use in court (Hlynska & Klepka, 2024). According to Part 1 of Article 99 of the CPC of Ukraine1, electronic evidence falls in the category of documents (Supreme Court Judge Spoke about..., 2021). For their admissibility, proper procedural execution and, in some cases, certification with an electronic digital signature are necessary (Fennych, 2022). Conducting computer and technical examinations, software examinations, and in the future, specialised examinations of virtual assets, is an integral part of the investigation.

The so-called "digital-physical nexus" in forensic investigations is significant. Although VA-related offences are digital, their investigation often requires a combination of the digital and physical worlds. Seizure of hardware wallets, identification of the physical location of servers or suspects through IP address analysis, as well as conventional police work, including surveillance and interrogation, are crucial to the successful crime-solving. The Silk Road case is an example of this, where digital traces led to physical arrests and seizures, including physically hidden private keys (TRM, n.d.).

Virtual assets can include both proceeds of crime, such as stolen cryptocurrency, and instrumentalities of crime, such as cryptocurrency used to pay for illegal goods on the darknet. This duality affects the seizure, confiscation, and even the qualification of the crime. The legal characterisation of VAs as property, data, etc., further exacerbates this issue (Cryptocurrency Bitcoin: Means…, 2019). For instance, in the ChipMixer case, VAs were used as a tool for money laundering. Ukrainian court practice demonstrates difficulties with recognising VAs as "material

[1] Criminal Procedure Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17.

objects" for the purposes of proof (Salamakha, 2024). To systematise information on typical VA-related crimes and their indicators, Table 2 presents a summary of the types of VA crimes.

Table 2. Typologies of virtual asset crime and key forensic indicators

Type of crime	Modus operandi with VAs	Key forensic/red flag indicators
Money laundering	Use of mixers/tumblers, chain-hopping, exchange for anonymous cryptocurrencies, use of unregulated VASPs, rapid turnover through multiple wallets/exchanges.	Structuring of transactions, illogical or overly complex transfer schemes, communication with high-risk addresses (mixers, darknet), use of VASPs in jurisdictions with weak AML/CFT, sudden activity on previously inactive accounts.
Fraud (investment, phishing, pig butchering)	Creation of fake investment platforms, ICOs; theft of private keys/credentials via phishing sites/messages; manipulation of victims to voluntarily transfer VAs.	Promises of unrealistically high profits, pressure to make quick decisions, requests to transfer VAs to unknown wallets, use of fake websites, unverified personal data of "investment managers".
Ransomware	Encryption of the victim's data and demand for a ransom in VAs (often Bitcoin, Monero) for its decryption or non-disclosure.	Receipt of a ransom note with instructions on how to pay the ransom in VA, specifying a concrete wallet address for the ransom, and a short time frame for payment.
Trading on the Darknet	The use of VAs (mainly Bitcoin, Monero) for the anonymous purchase/sale of drugs, weapons, stolen data, malware, and other illegal goods/services.	Transactions leading to or from known addresses of darknet markets, use of Tor or other anonymising networks to access platforms, communication with mixers to conceal the source of funds.
Terrorist financing	Raising and transferring funds for terrorist organisations or individual terrorists using VAs to conceal the source and purpose of payments.	Transactions related to individuals or organisations on sanctions lists, the use of VASPs in regions with high terrorist activity, and the collection of donations in VAs through online platforms related to extremist propaganda.

Source: developed by the author of this study based on D. Ovsianiuk & O. Ustymenko (2024), V.P. Fennych (2022), A. Schmidt (2021)

Anonymity issues and jurisdictional challenges continue to be among the primary hindrances. Overcoming the anonymity provided by some VAs and services, including mixers and private coins, is a major challenge. The cross-border nature of VA offences raises major jurisdictional issues, including obtaining evidence from abroad, extradition of offenders, and enforcement of court decisions. Forensic techniques should be comprehensive, combining online analysis with offline investigation. Legal frameworks should clearly define AML to support seizure and confiscation procedures, while international cooperation is essential for effective attribution in cross-border cases. Pseudo-anonymity and decentralisation create an attribution challenge that increases the reliance on VASP data and international cooperation and leaves the system vulnerable if VASP compliance is weak or cooperation fails.

Analysis of international practices in the investigation of crimes involving virtual assets. Analysis of international practices in detecting and investigating crimes involving virtual assets revealed both shared approaches and substantial differences conditioned by national legal systems, the level of technological development, and law enforcement priorities. Legislative regulation of the circulation of virtual assets and the activities of service providers in this area underlies effective investigation of crimes.

In Ukraine, the adoption of the Law "On Virtual Assets"[1] was a crucial step towards legalising the virtual assets market and defining the rights and obligations of its participants. However, this law has not yet entered into force, which leaves the legal regulation of virtual assets in Ukraine fragmented. The law prescribes the definition of the concept of the VAs, their classification (secured/unsecured, financial VAs), determination of the legal regime of ownership of the VAs, and regulation of the activities of service providers related to the circulation of the VAs, including requirements for obtaining permits. There are significant problems with the implementation of this law and its harmonisation with the current criminal and criminal procedural legislation. Specifically, there is an inconsistency between the

[1] Law of Ukraine No. 361-IX "On Prevention and Counteraction to Legalisation (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction". (2019, December). Retrieved from https://zakon.rada.gov.ua/laws/show/361-20#Text.

conceptual framework of the draft AML Law and the Criminal Code of Ukraine, which may complicate the qualification of crimes where AML is an object or instrument, especially in the context of Article 209 of the Criminal Code (money laundering)[1]. This is despite the fact that according to the amendments to the Civil Code of Ukraine[2], VAs are considered property (intangible asset), and the absence of a special law in force creates legal uncertainty regarding the procedures for their seizure and confiscation in criminal proceedings.

In the European Union, the key document is the MiCA[3]. The MiCA establishes unified rules for cryptoasset issuers and cryptoasset-related service providers (CASPs), including requirements for authorisation, prudential supervision, consumer protection, and prevention of market manipulation. The regulation aims to harmonise approaches across EU member states and introduce "passporting" for CASPs, enabling them to operate across the EU under a single licence. MiCA also factors in the FATF recommendations, particularly on Travel Rules. The implementation of MiCA is being phased in and is expected to substantially affect the ability to investigate AML crimes by increasing market transparency and enhancing supervision of market participants. This regulation is a significant attempt to harmonise AML regulation in a large economic bloc. Its interaction with existing national laws, such as the early rules for VASPs in Germany (SQUIRE Patton Boggs, 2025), will be a key aspect to observe. It is yet to be seen whether MiCA will spur global convergence or whether other major jurisdictions, such as the US, will continue to follow distinctive paths, creating challenges for international VASPs and investigations (Tran & Matthews, 2025).

In the United States, AML regulation is fragmented and is carried out by different agencies at the federal and state levels (SEC, CFTC, FinCEN, OFAC). The Department of Justice (DOJ) plays a key role in the prosecution of AML crimes. In April 2025, the DOJ issued a memorandum entitled "Ending Regulation by Prosecution"[4], which changed the DOJ's approach by prioritising investigations into cases involving financial harm to investors and the use of VAs for other criminal activities (drug trafficking, terrorism, etc.) and limiting prosecutions for purely regulatory violations unless there is evidence of intent. This indicates an attempt to avoid "regulation by prosecution" and focus on the most socially dangerous manifestations.

Switzerland follows a principle-oriented and technology-neutral approach, applying existing financial legislation to the use of VAs. The FINMA (2022) classifies crypto assets based on their economic function and applies the relevant regulations (e.g., on banking, financial market infrastructure, anti-money laundering). The adoption of the so-called DLT Bill in 2020 amended existing laws to integrate crypto assets and distributed ledger technologies, making the Swiss regulatory framework one of the most progressive. In Germany, the Federal Financial Supervisory Authority (BaFin) has been regulating certain cryptoasset-related services (e.g., crypto storage) since 2020 (SQUIRE Patton Boggs, 2025). Germany is actively implementing the MiCA, endowing the BaFin with the relevant supervisory powers. The BKA also plays a vital role in the investigation of AML crimes. In Singapore, the Monetary Authority of Singapore (MAS) is the key regulator. The Payment Services Act (PSA) sets out the framework for the licensing and supervision of digital payment token service providers (DPTSPs), including AML/CFT requirements. Singapore is committed to following the FATF standards (Charltons Quantum, 2025). The FATF (2024) Recommendations, particularly No. 15 on emerging technologies and the Travel Rule, are fundamental to global efforts to combat money laundering and terrorist financing through VAs. The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (2023) reports assess the progress of member states in implementing these standards and identify crime typologies.

Most regulatory frameworks (MiCA, FATF) focus on identified intermediaries (VASP/CASP). However, the growth of decentralised finance (DeFi), decentralised autonomous organisations (DAOs) and non-custodial wallets poses a considerable challenge to this intermediary-focused regulatory model. The FATF (2021) guidance mentions DeFi as an area of ongoing monitoring. MiCA is mainly aimed at CASPs. The nature of DeFi is to eliminate intermediaries, which creates a fundamental tension: regulators seek to impose obligations on entities, while DeFi aims to eliminate these entities. This could become a serious gap in the future. Table 3 summarises the regulatory approaches to virtual assets and VASPs in selected jurisdictions.

[1] Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2] Civil Code of Ukraine. (2003, January). Retrieved from ttps://zakon.rada.gov.ua/laws/show/435-15#Text.
[3] Regulation of the European Parliament and of the Council No. 2023/1114 "On Markets in Crypto-Assets, and amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (MiCA)". (2023, May). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:4626998.
[4] Memorandum of the Deputy Attorney General of the Ministry of Justice of U.S. (2025, April). Retrieved from https://www.justice.gov/dag/media/1395781/dl?inline.

Table 3. Overview of regulatory approaches to virtual assets and VASPs in selected jurisdictions

Jurisdiction/ Organisation	Key regulation(s)	Requirements for licensing/ registration of VASPs	Key AML/CFT obligations (incl. Travel Rule)	Supervisory authority(ies)
Ukraine	Law of Ukraine No. 361-IX[1]	Permit to provide services related to the turnover of VAs (4 types of activities)	General AML/CFT requirements apply; implementation of the Travel Rule is expected with the full launch of the market	NSSMC, NBU
EU	MiCA[2]	Authorisation as a Crypto-Asset Service Provider	Comprehensive AML/CFT requirements, including Travel Rule, capital requirements, risk management	National Competent Authorities (NCA), ESMA, EBA
USA	Bank Secrecy Act (BSA), SEC, CFTC, FinCEN regulations, DOJ policy[3]	Registration as a Money Services Business (MSB) for certain VASPs; licensing at the state level	AML programme requirements, STR, KYC/CDD, Travel Rule implementation	FinCEN, SEC, CFTC, DOJ, IRS
Switzerland	DLT Bill (amendments to existing laws), Anti-Money Laundering Act[4]	FinTech licence or banking licence for certain activities (e.g., custody services)	AMLA, KYC/CDD compliance, joining a self-regulatory organisation (SRO) for AML supervision	FINMA, SROs
Germany	Implementation of MiCA, Act on the Supervision of Markets for Crypto-Assets[5]	BaFin licence for cryptocustody and other crypto services	AML/CFT requirements under German law and MiCA	BaFin
Singapore	Payment Services Act (PSA), Financial Services and Markets Act[6]	Major Payment Institution (MPI) licence for Digital Payment Token Service Providers (DPTSP)	Strict AML/CFT, KYC/CDD, STR requirements, implementation of the Travel Rule	Monetary Authority of Singapore (MAS)
FATF	FATF (2024) recommendations (particularly R.15)	VASP licensing or registration	Risk-based approach, CDD, record retention, STR, Travel Rule	National supervisory authorities

Source: developed by the author

The most significant difference is between comprehensive regulatory frameworks and fragmented approaches. The European Union with MiCA represents the most comprehensive approach, creating uniform rules for all member states and introducing detailed capital and risk management requirements, which is in stark contrast to the US model, where regulation is distributed among multiple federal agencies without a single coordinating structure. The differences in licensing of VASPs are particularly noteworthy. Singapore requires a Major Payment Institution licence, which indicates high barriers to entry and strict controls, while the US relies on registration as a Money Services Business with additional licensing at the state level, creating a complex multi-tiered system. Switzerland demonstrates the most flexible approach, allowing a choice between a FinTech licence and a banking licence depending on the type of activity. The difference in supervisory structures is critical. Germany and Singapore have centralised supervisory authorities (BaFin and MAS, respectively), which ensures fast decision-making and policy coherence. In contrast, the US has the most fragmented system with five different federal agencies, which can lead to conflicts of jurisdiction and inconsistent enforcement.

The implementation of the Travel Rule reveals differing speeds of adaptation to international standards. While the EU, the US, and Singapore have already fully implemented the rule, Ukraine is only planning to implement it with a full market launch, which may create gaps in international transaction tracking. This is of critical significance for law enforcement agencies, as the effectiveness of cross-border crime investigations directly depends on the existence of unified standards for the exchange of information between VASPs from different countries.

[1] Law of Ukraine No. 361-IX "On Prevention and Counteraction to Legalisation (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction". (2019, December). Retrieved from https://zakon.rada.gov.ua/laws/show/361-20#Text.

[2] Regulation of the European Parliament and of the Council No. 2023/1114 "On Markets in Crypto-Assets, and amending Regulations (EU) No. 1093/2010 and (EU) No. 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (MiCA)". (2023, May). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:4626998.

[3] Memorandum of the Deputy Attorney General of the Ministry of Justice of U.S. (2025, April). Retrieved from https://www.justice.gov/dag/media/1395781/dl?inline.

[4] Anti-Money Laundering Act of Switzerland. (1997, October). Retrieved from https://www.fedlex.admin.ch/eli/cc/1998/892_892_892/en.

[5] Law on the Supervision of Markets for Crypto Assets of the Federal Republic of Germany. (2024, December). Retrieved from https://www.gesetze-im-internet.de/kmag/BJNR1B60B0024.html.

[6] Payment Services Act of Singapore. (2019, January). Retrieved from https://sso.agc.gov.sg//Act/PSA2019.

Law enforcement agencies and specialised units. The effectiveness of investigating VA-related offences largely depends on the availability of specialised units in law enforcement agencies and their interaction. National approaches are characterised by distinct organisational models. In the United States, historically, different agencies, such as Homeland Security Investigations (HSI), Internal Revenue Service-Criminal Investigation (IRS-CI), and Federal Bureau of Investigation (FBI), have had specialised teams to combat cryptocurrency crime. The National Crypto Enforcement Team (NCET) was created to coordinate efforts but was subsequently disbanded and its functions transferred to the Computer Crime and Intellectual Property Section (CCIPS) of the DOJ Criminal Division. This move may reflect a strategy to integrate cryptocurrency expertise into broader cybercrime structures rather than isolate it, although the effectiveness of this approach is yet to be seen.

In Germany, the BKA has specialised departments, such as the Serious and Organised Crime Division and the Cybercrime Division, which are dedicated to investigations related to VA. The BKA (2025) also conducts research projects, such as BITCRIME, to investigate the use of virtual currencies in financial crime (Forschungsprojekte zu Cybercrime..., n.d.). There is close cooperation between the BKA and BaFin (Cryptonovaint.net: BaFin..., 2025). In Singapore, the Commercial Affairs Department (CAD)[1] is the principal agency for investigating white-collar crimes, including those related to VAs. It cooperates closely with the MAS. CAD has specialised units such as the Investment Fraud Investigation Unit and the Financial Crimes Investigation Unit.

In Ukraine, the Cyber Police Department of the National Police of Ukraine, the State Bureau of Investigation (SBI), the National Anti-Corruption Bureau of Ukraine (NABU), the Security Service of Ukraine (SSU), the Bureau of Economic Security of Ukraine (BES), the State Bureau of Investigation (SBI) and the State Investigation Service (SIS) are involved in investigating VA crimes. The effectiveness of their work depends on the level of specialisation, technical equipment, and interagency coordination.

International organisations also play a vital role. Europol, through the European Cybercrime Centre (EC3) and the European Financial and Economic Crime Centre (EFECC), supports EU Member States in the fight against cybercrime and financial crime related to VAs. Europol publishes significant analytical reports, such as SOCTA (Serious and Organised Crime Threat Assessment) and IOCTA (Internet Organised Crime Threat Assessment), which analyse trends in VA crime (Europol, 2025a; Europol, 2025b). INTERPOL (2024) through the Financial Crime and Anti-Corruption Centre (IFCACC), coordinates international efforts to combat financial crime, including those related to cryptocurrencies. Interpol develops guidelines for law enforcement and facilitates information exchange. These organisations play a crucial role in coordinating cross-border investigations, sharing intelligence and best practices, and providing training for law enforcement. The critical role of public-private partnerships is also evident. Many sources emphasise the cooperation of law enforcement agencies with blockchain analytics firms, exchanges, and other private sector entities (Grigg, 2025). This suggests that law enforcement agencies cannot handle AML crime alone due to rapid technological development and private sector control over key data and infrastructure.

Investigation cases, methods, and tools. The arsenal of methods and tools used to investigate VA crimes is constantly expanding. Blockchain analysis software includes tools such as Chainalysis, TRM Lab, Crystal Blockchain, Elliptic, which are key to tracking transactions in public blockchains. They allow visualising VA flows, identifying clusters of addresses likely to belong to the same entity, identifying links to known risky entities (darknet markets, mixers, sanctioned addresses), and assessing the risks of individual transactions or wallets. OSINT (Open-Source Intelligence) methods involve collecting and analysing information from open sources (social networks, forums, publications, websites), which can help identify links between real people and their activities on the Internet, find advertisements for the sale of illegal goods on the Internet, or identify participants in fraudulent schemes (OSINT Industries Team, 2025).

Undercover operations are also used when law enforcement agencies conduct covert operations by infiltrating criminal groups operating on the Internet or conducting controlled purchases on darknet markets to collect evidence and identify criminals. An example is Operation Dark Gold in the United States (HSI New York..., 2019). VAs is physically seized because private keys to VAs can be stored on physical media (hardware wallets, computers, paper-based media, flash drives), and therefore their detection and seizure during searches is an essential element of the investigation. This requires investigators to know where to look for such media and how to safely seize them. Interaction with VASPs involves obtaining data from VASPs (KYC information, transaction history, IP logs) through official requests (subpoenas, warrants) is critical to de-anonymising users and

[1] Joint Statement by Commercial Affairs Department, Singapore Police Force (CAD) & Monetary Authority of Singapore (MAS). (2025, June). Retrieved from https://www.mas.gov.sg/regulation/enforcement/enforcement-actions/2025/civil-penalty-action-taken-against-gui-boon-sui-for-false-trading-and-unauthorised-trading.

tracing the flow of funds, especially when VAs are transferred to a monetary market for exchange for fiat money or other assets. Notably, the "toolkit" is broader than just software. An effective investigation requires a combination of OSINT (OSINT Industries Team, 2025), covert methods, digital forensics for device analysis, legal tools (requests, warrants) and international cooperation mechanisms (MLAT) (COPOLAD, 2025). There is a kind of "arms race" in the field of de-anonymisation. Criminals are using mixers, tumblers, private coins, and chain-hopping for obfuscation. Investigators use advanced analytics, cross-chain tracing, and attempt to link pseudonymous activity to real individuals through VASP data or other means. The success of de-anonymisation often depends on identifying a "weak link", such as a transaction that passes through a compliant VASP that stores KYC data.

American authorities have the broadest powers, including civil forfeiture and access to advanced blockchain analytics technologies, while Ukrainian investigators face limitations due to incomplete implementation of legislation and limited access to specialised tools. The European model focuses on coordination and information exchange between national authorities, striking a balance between sovereignty and efficiency, while the German approach combines systematic cooperation with regulators and participation in research projects to develop the methodological framework for investigations.

The cross-border nature of VA offences makes international cooperation an essential element of effective investigation. Jurisdictional issues and mutual legal aid treaties (MLATs) pose major challenges, as determining jurisdiction in cases where criminals, victims, VASPs, and servers may be located in different countries is a complex task. Conventional MLATs are often slow and bureaucratic, which is incompatible with the speed of VA-related operations. Criminals can move VAs across multiple jurisdictions in minutes, while an MLAT request can take months to process. This creates a "speed mismatch" that is actively exploited by criminals. To accelerate the exchange of operational information, mechanisms for exchanging information through Europol channels (e.g., SIENA – Secure Information Exchange Network Application) and Interpol (I-24/7 secure communication system) are used. These platforms allow law enforcement agencies from different countries to exchange data and coordinate actions in a near real-time mode. Approaches and standards are being harmonised through the efforts of the FATF, MONEYVAL, and the EU (through MiCA), which are aimed at harmonising legislation, regulatory requirements for VASPs, and investigation standards. This should facilitate international cooperation. Speed of response continues to be a challenge, as even with information exchange channels in place, the speed of response to cross-border requests, especially for freezing or seizure of the VAs, is still problematic. This requires not only formal but also informal channels of cooperation. Considering the limitations of formal channels, there is a growing reliance on informal law enforcement networks and direct cooperation with foreign VASPs (where legally permitted) to expedite urgent requests (e.g., freezing of accounts). The role of financial intelligence units (FIUs) and their networks (e.g., Egmont Group) is also critical here. Best practices include the establishment of Joint Investigation Teams (JITs), the use of direct channels of communication between law enforcement agencies, the development of standardised request forms, and the active use of Europol and Interpol.

The analysis of concrete criminal proceedings offers a better insight into the methods of investigating VA offences, the challenges faced by law enforcement agencies, and the success factors. Analysis of international cases demonstrates different approaches. The Silk Road case was one of the first high-profile cases involving the use of Bitcoin in the darknet market to trade drugs and other illicit goods. The investigation conducted by the FBI, IRS-CI, and other US agencies demonstrated the ability to track Bitcoin transactions, the significance of identifying operational security errors (OPSEC failures) on the part of criminals (e.g., Ross Ulbricht's use of the same pseudonym in different forums, which allowed linking him to Silk Road), as well as the effectiveness of combining digital forensics with conventional investigative methods, including undercover work and physical seizure of evidence (e.g., Ulbricht's laptop with keys to Silk Road wallets, seizure of physical media with keys hidden in a popcorn tin in another related case) (IVPN, 2025). Many successful VA investigations, like the Silk Road case, hinge on OPSEC errors made by criminals, rather than solely on encryption or blockchain anonymity breaches.

The case of ChipMixer, mentioned in the EU report (Europol, 2025a), illustrates the struggle against large cryptocurrency mixing services. ChipMixer was suspected of laundering billions of dollars in Bitcoin, much of which was linked to darknet markets, ransomware, and other criminal activity. The investigation required sophisticated blockchain analysis to de-anonymise the flow of funds passing through the mixer and international cooperation to shut down the service. The German BKA's investigation of Chemical Revolution, a large online drug trafficking platform (Lott, 2025), showed that significant amounts of customer data were seized during the operation, leading to numerous subsequent proceedings. Interestingly, as one analysis noted, the investigation showed that the creation of such a platform required only an "informal association of the necessary experts", which

indicated a reduction in the barriers to entry into cybercrime (Arzt *et al.*, 2021).

Operation Dark Gold (USA) was an undercover operation conducted by Homeland Security Investigations (HSI), which lied in infiltrating the darknet to identify sellers of drugs and other illegal goods who used cryptocurrencies for payments (HSI New York..., 2019). The operation resulted in numerous arrests and seizures of significant amounts of cash, cryptocurrencies, weapons, and drugs, demonstrating the effectiveness of undercover methods in the fight against cryptocurrency crime. The "follow the money" principle still applies, but with new nuances. Tracking VAs is the digital equivalent of tracking conventional cash flows. However, the "money" can be transformed (channelling), pass through unregulated entities, and instantly cross borders, requiring new tools and international cooperation on an unprecedented scale.

Relevant Ukrainian judicial practice and investigative experience show that the judicial practice on VA offences in Ukraine is still being developed, but there are already some precedents. The cases cited in the source (Salamakha, 2024) handled the use of cryptocurrencies to launder the proceeds of theft and fraud, as well as fraud schemes exploiting banking system vulnerabilities to illegally obtain funds and convert them into VAs. The key problems in Ukrainian practice include the qualification of crimes, particularly the challenges with defining the VAs as an object of crime under the current Criminal Code, the proof, i.e., the collection and presentation to the court of relevant and admissible evidence confirming the movement of VAs, their connection with criminal activity and the identity of the perpetrators, as well as the seizure and confiscation of VAs due to the lack of clear legislative procedures for the seizure, storage, and confiscation of VAs. In some cases, courts have recognised VAs as material evidence, which is controversial considering their intangible nature, while seizure to ensure possible confiscation of property is considered a more reasonable approach. These cases highlight the urgent need to adapt Ukrainian legislation and forensic techniques to the specifics of VA offences.

Discussion

The findings of the study on the methodologies for detecting and forensic features of investigating crimes with virtual assets demonstrated convergence with current trends in the development of digital forensics, which was confirmed by a series of international studies in related fields. This convergence indicated the development of a new paradigm of forensic analysis that extends beyond conventional investigative methods.

The specific features of collecting and analysing digital evidence in crimes involving virtual assets identified in the present study showed a significant correlation with the findings of S. Seo *et al.* (2023) on the development of a framework for digital forensic investigations in the metaverse. The structural correspondence is manifested in the five-stage approach (identification, preservation, collection, analysis, and presentation of evidence), which fully coincided with the conclusions obtained regarding the need for a multi-stage approach to working with virtual assets. Of particular significance is the correlation between the problems of preserving volatile digital traces and the challenge of identifying users through pseudonymous profiles, which directly corresponds to the identified challenges of anonymisation in the field of virtual assets. The rationale for the need to develop specialised tools for working with immersive technologies extrapolates to the need to create specific methodologies for the different types of virtual assets identified in the current study.

The identified problems of standardisation of approaches to investigating crimes with virtual assets were fully confirmed in the study by M. Saleh *et al.* (2023), who developed a meta-modelling approach for forensic investigations of IoT. Methodological compliance is manifested in the creation of a comprehensive taxonomy with four main categories, which structurally coincides with the classification of methods of working with virtual assets developed in the present study. The fundamental significance of a unified methodological framework based on ISO/IEC 27043 (2015) directly correlates with the present study's conclusions on the critical need for standardisation of approaches to virtual assets. The problem of terminological inconsistency between different jurisdictions identified in the current study was fully supported by the rationale for the need for international harmonisation of standards.

The value of preserving the integrity of digital evidence identified in the present study was strongly supported by C. Karagiannis & K. Vergidis (2021) in their research on legal challenges in the field of digital evidence and cloud forensics. The systemic correlation is manifested in the key challenges of ensuring the chain of custody of evidence in distributed systems, which directly corresponds to the specifics of blockchain technologies for virtual assets. The problems of data authentication in the absence of centralised control and the issue of territorial jurisdiction when storing evidence in cloud services of different countries are directly related to the identified problems of seizure and confiscation of virtual assets. The proposed legal model of a "forensic exceptional situation" correlated with the conclusions of the present study regarding the need to develop special procedural mechanisms for handling virtual assets.

Through an empirical analysis of twelve popular applications, M.M. Mirza *et al.* (2022) detailed the

features of mobile forensics in the context of Web3 wallets identified in the current study. Then technical correlation is manifested in the identified critical differences in private key storage between operating systems: the use of an encrypted keystore in Android with the possibility of rooting-based recovery compared to Secure Enclave in iOS. The conclusions regarding the specific challenges of mobile forensics, including the problems of obtaining root/jailbreak access and the complexity of decryption through hardware security modules, directly complemented the findings of the present study on the value of understanding the technological specifics of different types of virtual asset wallets and the need for differentiated approaches depending on the platform.

The developed approaches to digital forensics in virtual worlds were further substantiated by T. Al Ali *et al.* (2023), which creates a fundamentally new type of digital trace through the identification of unique sources of evidence in VR environments. The conceptual correlation lies in the need for technological adaptation of investigative techniques to the evolution of virtual assets towards more complex ecosystems, which is fully consistent with the present study's conclusions on the need for constant adaptation of tools.

The established significance of computer forensics was confirmed by a systematic study by S. Drobotov *et al.* (2023), which included an analysis of more than 200 software solutions and technology platforms. The results of a comparative analysis of the effectiveness of various technical tools, including an assessment of processing speed, detection accuracy, and usability, directly correlated with the current study's conclusions on the critical need to use specialised blockchain analytics software, such as Chainalysis, TRM Lab, Crystal Blockchain, and Elliptic. The identified trends in the automation of data collection processes and the integration of artificial intelligence to identify patterns of criminal behaviour are fully consistent with the findings on the significance of constantly updating the technological arsenal.

The identified trends in the modernisation of forensic tools were confirmed in the comprehensive systematisation presented by D. Rawtani & C.M. Hussain (2023), which included an analysis of more than 500 technological solutions from 45 countries. The concept of a "technological arms race" between criminals and law enforcement, where the success of investigations critically depends on the ability to adapt tools faster than criminals, is fully consistent with the findings of the present study on the need to constantly adapt tools to the evolution of virtual assets, including anonymisation technologies, decentralised finance, and private cryptocurrencies.

The developed principles of validation of the reliability of forensic techniques were theoretically substantiated in the Reliability Validation Enabling Framework (RVEF) by R. Stoykova & K. Franke (2023). The Framework with four key components (methodological validation, technical verification, procedural standardisation, and legal admissibility) creates a methodological basis for standardising approaches to the investigation of crimes involving virtual assets. The proposal to create an international accreditation system for forensic laboratories working with digital evidence directly complements the present study's findings on the need to harmonise international approaches.

The identified factors influencing the implementation of IT forensic tools correlated with the empirical analysis of H. Alshurafat *et al.* (2024) based on the extended Technology Acceptance Model (TAM). The identified key determinants of successful implementation and the biggest barriers (high staff training costs, complexity of integration with existing systems, insufficient technical support) are fully consistent with the identified problems of implementing specialised tools for working with virtual assets. The significant regional differences in readiness to implement the latest technologies correlate with the current study's conclusions on the need for specialised training.

The prospects for the use of emerging technologies in digital forensics were developed in a comprehensive analysis by A.K. Mishra *et al.* (2024), who created a roadmap for technological development until 2030. The revolutionary potential of quantum algorithms for decrypting complex cryptographic systems can dramatically change the landscape of investigating crimes involving anonymous cryptocurrencies, which is directly in line with the trends predicted in the current study. The concept of federated machine learning systems for forensic analysis, which allow training models on distributed datasets without violating confidentiality, directly complements the study's conclusions on future areas for the development of virtual asset investigation methodologies.

The developed approaches to mitigating cybercrime were confirmed by a systematic review presented by A.A. Kazaure *et al.* (2023), which analysed 156 scientific publications for 2018-2023. The developed taxonomy of digital forensic approaches with reactive, proactive, and hybrid models demonstrated a 35% greater efficiency of hybrid approaches in detecting complex multi-stage attacks. The conclusions on the effectiveness of a multi-layered security architecture and the significance of integrating technical and organisational measures are fully correlated with the results of the present study on the need for a multi-layered approach to detecting crimes with virtual assets.

The established significance of natural language processing technologies was substantiated by D. Sun *et al.* (2021), who developed a platform for

digital forensic investigations based on NLP. The demonstrated 87% accuracy in detecting suspicious communications and 82% accuracy in identifying money laundering schemes through the analysis of linguistic patterns provided a strong basis for expanding the capabilities of AI in the investigation of virtual asset crimes, especially in the context of analysing communications on cryptocurrency forums and darknet markets. The predicted trends in the development of cybercrime correlate with the futuristic analysis of S. Saharan *et al.* (2024) on the evolution of cyber threats in the metaverse. The forecast of a 15-20 – fold increase in cybercrime over the next decade underscored the criticality of adapting law enforcement strategies. The recommendations for the development of proactive approaches, including predictive policing based on big data analysis and international platforms for the exchange of information on cyber threats, are fully consistent with the findings of the current study on the development of proactive approaches to detecting crimes with virtual assets.

The developed theoretical framework for the integration of payment systems and forensic accounting was practically embodied in the "3M" theory (Money, Method, Motive) presented by A.O. Efuntade & O. Efuntade (2023) based on an empirical study of 1,247 cases of financial crime in 34 countries. The multi-dimensional analysis matrix, which combines quantitative financial data with qualitative analysis of behavioural patterns, provides a powerful methodological framework for a comprehensive approach to the analysis of virtual asset crime, especially in the context of complex international money laundering schemes. Summarising the results of the comparative analysis, it was found that the conclusions obtained are not only in line with the current trends in the development of digital forensics but also correlate with the findings of leading international studies in all key aspects of the issue. The identified convergence of the conclusions of different research groups regarding the need for technological modernisation of law enforcement agencies, development of international cooperation, and creation of unified standards for handling digital evidence confirmed the validity of the findings obtained and their relevance to the global scientific discourse in the field of virtual asset forensics.

Conclusions

The present study offered a comprehensive analysis of the methodologies for detecting and forensic features of investigating crimes involving virtual assets through a comparison of international practices. The study found a critical absence of a unified international definition of virtual assets, which creates significant gaps in criminal law qualifications, especially regarding Article 209 of the Criminal Code of Ukraine and complicates the procedures for seizure and confiscation of assets in cross-border cases. It was found that high efficiency of investigation is achieved through the multilayered integration of proactive approaches to monitoring Virtual Asset Service Provider (VASP), reactive measures of law enforcement agencies, the use of specialised software Chainalysis, TRM Lab, Crystal Blockchain, Elliptic for blockchain analytics and Open Source Intelligence (OSINT) methods. The study demonstrated the criticality of combining digital and traditional forensic methods for effective user de-anonymisation. Specific forensic indicators of five main types of virtual asset crimes were systematised: structuring transactions in money laundering, promises of unrealistic returns in investment fraud, ransom demands in Bitcoin or Monero in ransomware, connections to darknet addresses in illicit trafficking, and transactions with sanctioned lists in terrorist financing. This systematisation creates a practical toolkit for quickly classifying criminal activity. The comparative analysis of five key jurisdictions demonstrated a dramatic diversity of regulatory approaches, from the technology-neutral Swiss principle-based regulation to the comprehensive European MiCA with unified requirements. Ukrainian legislation must be improved in terms of harmonisation with criminal law.

Prospects for further research include the development of unified international standards for the qualification of crimes with virtual assets, the creation of automated systems for detecting criminal patterns based on artificial intelligence, the study of the specifics of investigating crimes involving decentralised finance (DeFi), and the development of methods for working with new types of virtual assets in the meta-universe.

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Conflict of Interest

None.

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Методологія виявлення та криміналістичні особливості розслідування злочинів, пов'язаних з віртуальними активами: порівняльний аналіз міжнародної практики

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■ **Анотація.** Мета цього дослідження полягає у визначенні на основі порівняльного аналізу міжнародної практики найефективніших підходів до розслідування злочинів, пов'язаних з віртуальними активами. Дослідження базувалося на систематичному аналізі законодавчих актів і нормативних документів. Було використовувало методи порівняльного правового аналізу для дослідження регуляторних підходів різних юрисдикцій, систематичний підхід для вивчення взаємозв'язків між елементами системи запобігання злочинам, структурно-функціональне дослідження ролі різних суб'єктів. Дослідження виявило критичну відсутність єдиного міжнародного визначення віртуальних активів, що створює прогалини у кваліфікації кримінального права, особливо щодо статті 209 Кримінального кодексу України, та процедур арешту й конфіскації активів у транскордонних справах. Було встановлено, що найбільша ефективність розслідування досягається завдяки багаторівневій інтеграції проактивних підходів до моніторингу постачальників послуг з віртуальних активів, реактивних заходів правоохоронних органів, використання спеціалізованого програмного забезпечення Chainalysis, TRM Lab, Crystal Blockchain, Elliptic для аналізу блокчейну та методів відкритої розвідки. У дослідженні систематизовано конкретні криміналістичні індикатори п'яти основних видів злочинів, пов'язаних з віртуальними активами, включаючи структурування транзакцій у відмиванні грошей, використання міксерів, обіцянки нереалістичних прибутків в інвестиційному шахрайстві та зв'язки з адресами даркнету. Порівняльний аналіз п'яти ключових юрисдикцій продемонстрував разючу різноманітність регуляторних підходів від технологічно нейтрального швейцарського регулювання, заснованого на принципах, до комплексного регулювання європейських ринків криптоактивів з уніфікованими вимогами до постачальників послуг у сфері криптоактивів. Практичне значення отриманих результатів полягає в можливості розроблення ефективних механізмів міжнародного співробітництва в розслідуванні транскордонних злочинів, пов'язаних з віртуальними активами

■ **Ключові слова:** криптовалюта; шахрайство; цифрова криміналістика; деанонімізація; блокчейн

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Legal models of digital objects in the EU: Experience and prospects for adaptation to Ukrainian legislation

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■ **Abstract.** The relevance of this study stems from Ukraine's ongoing integration into the European Union's legal framework and the growing need for legal regulation of digital objects, such as digital assets, artificial intelligence, and virtual assets. The study aimed to explore the legal regulation of digital objects within the EU and assess the prospects for its implementation in Ukraine. To achieve this objective, an analysis was conducted of the *acquis communautaire*, national legislation of EU member states, and key provisions of Ukrainian legislation in the specified field. The study identified the primary approaches to the legal regulation of digital objects in the EU and distinguished four main types of digital objects requiring different legal regimes. It was established that objects capable of existing in both digital and analogue forms may be subject to traditional legal regulation, taking into account the specificities of their digital use. A separate category comprises exclusively digital objects, which necessitates the development of specialised legal frameworks. Furthermore, the absence of a specific approach to regulating digital objects within the national legislation of EU member states was noted. It was also observed that the development of Ukraine's national legislation aligns with European standards. Ukraine's national legislation on regulating digital objects is evolving per the provisions of the *acquis communautaire*, driven by the country's European aspirations and its commitment to aligning domestic legislation with that of the European Union. This development is taking place not only through the expansion of regulations addressing the specificities of digital object use but also through the adoption of specialised digital laws that provide overarching provisions for all digital objects. This approach is considered effective in formulating legal acts that comprehensively reflect the specific aspects of legal regulation concerning the creation and use of digital objects. The results of this study can be applied to the development of effective legal frameworks for regulating digital objects in Ukraine, ensuring alignment with both European and national standards

■ **Keywords:** artificial intelligence; database; information; copyright; virtual property; cryptocurrency; *acquis communautaire*

■ Introduction

In 2025, the legal regulation of digital objects is becoming increasingly crucial due to the country's active integration into the European Union's (EU) legal framework. The lack of a comprehensive legal framework for digital assets, artificial intelligence, virtual assets, and other digital entities creates legal uncertainty and obstructs the growth of the digital economy. However, the EU has already established intricate legal models that can serve as a reference for adapting Ukrainian legislation. At a regional level, harmonising the legal regulation of digital objects is vital for ensuring cross-border interaction, attracting investment, and adhering to international standards. Globally, the legal aspects of digital assets remain a

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dynamic area requiring a flexible approach due to rapid technological advancements. From a scholarly perspective, researching the EU's legal models for digital objects and their adaptation for Ukraine will contribute to developing effective legal regulatory mechanisms that meet both European and national needs.

Historically, the EU's primary focus has been economic, aiming to ensure the efficient and seamless operation of the common market. However, digital transformation necessitates a broader perspective. J.J. Stankovic *et al.* (2021) emphasised that a key priority in the 21st century is the development of digital infrastructure. This infrastructure should not only support efficient economic function but also facilitate new approaches to addressing societal challenges. A. Małkowska *et al.* (2021) highlighted the need for a comprehensive approach to digital development and the regulation of digital relationships. Two levels of regulation are identified: EU law, which establishes supranational conditions for the use of digital objects, and national law, which ensures the accessibility of such objects and defines domestic policies in areas such as digitalisation, education, and access to emerging technologies.

The digital space is a distinct phenomenon. M.A. Hisseine *et al.* (2024) pointed out that digital networks are often perceived as chaotic and unregulated. Furthermore, there is a limited understanding of them, often seen merely as communication platforms, while their uses are far more extensive. These uses include data management, data protection, the construction of digital object architectures, and their implementation across all aspects of life. In turn, R.B. Compete (2023) identifies the dynamic nature of the digital space as one of its key characteristics. Alongside the rapid emergence of new technologies, existing digital objects or their specific attributes undergo constant change. Consequently, continuous updates, for example, are an essential condition in relevant contracts.

The concept of digital objects is a distinct topic of academic discussion. U. Schwardmann (2020) noted that this concept has existed for over thirty years and is used to describe a group of objects whose creation and existence are linked to the development of emerging technologies. Early definitions of digital objects often framed them as entities existing due to their description through metadata, referenced by a persistent identifier. However, this approach is predominantly technical. B. Koles & P. Nagy (2020) offer an alternative definition, describing digital objects as entities that exist solely in digital format, lack physical attributes, and are accessible only through digital devices. This definition captures the technical essence of digital objects and is useful for addressing issues in legal regulation and application. It is also important to acknowledge the valid point made by P. Faulkner & J. Runde (2019) that the concept of digital objects is not limited to entities existing in virtual space. They can also be components of hybrid objects, which have a physical form but incorporate a digital element. Consequently, the key characteristic of digital objects is their intangible nature, with their existence in virtual space or as an intangible component of physical objects being considered a form of that existence.

The legal issues surrounding digital objects are largely related to their usage. The list of usage types is not exhaustive, allowing for various classification approaches. For example, A.S. Kenfield *et al.* (2022) identified the following (in order of increasing impact on the object): accessing the object; downloading the object for personal use; changing the format of the digital object; modifying the object's functionality without altering its content; providing access to the object; changing the object's content; creating a new digital object based on the existing one. Therefore, the types and conditions of digital object usage require careful legal regulation.

L. Manera's (2022) research demonstrated that the extent of such regulation is significantly linked to the digital object's origin, which may either exist natively in digital format or result from the digitisation of a physical object. In the latter case, digitisation becomes a form of physical object usage. K. De Smedt *et al.* (2020) point out that digital objects differ based on their functional purpose, even though their characteristics as intangible objects may be similar. Specifically, concerning objects like data, their potential use across various sectors (business, scientific research, etc.) is highlighted. This multifunctionality transcends disciplinary boundaries and demands specialised processing tools. However, I. Michurin (2022) pointed out that this does not remove digital objects from the scope of traditional approaches used to regulate relationships concerning intangible objects. Nevertheless, this does not exclude the need to explore new regulatory approaches. The EU has adopted a series of acts regulating digital relationships between 2022 and 2024, but they have not yet been sufficiently studied in academic literature.

This research aimed to examine the legal regulation of digital objects in the EU and the prospects for its implementation in Ukraine. The research objectives included a systematic analysis of the *acquis communautaire*, national legislation of EU member states, and key provisions of Ukrainian legislation in this field.

■ Materials and Methods

The first stage of this research involved analysing the EU's supranational digital legislation. In determining the acts that most comprehensively reflect the regulation of specific digital objects (copyrighted works, databases, digital assets, and artificial intelligence), a dataset on EU legislation for the digital world,

compiled by Bruegel experts (Marcus *et al.*, 2024), was used. The analysis was based on the provisions of the following acts: Directive of the European Parliament and of the Council No. 2019/790[1], Directive No. 96/9/EC[2], Regulations of the European Parliament and of the Council No. 2022/868[3], No. 2023/2854[4], No. 2022/858[5], No. 2023/1114[6], No. 2024/1689[7]. The second phase of the research focused on examining the approaches to the legal regulation of digital objects in the legislation of two specific EU member states: France and Denmark. The provisions concerning the legal regulation of digital objects were examined in the Intellectual Property Code[8], Law of France No. 2016-1321[9], Law of France No. 2024-449[10], Proclamation of the Copyright Act[11], Federal Data Protection Act[12], and the Act on Copyright and Related Rights[13]. The third phase of the research involved an overview of Ukraine's national legislation concerning digital objects. The analysis covered the provisions of the Laws of Ukraine No. 1629-IV[14], No. 2811-IX[15], No. 2074-IX[16], No. 3321-IX[17] and No. 3320-IX[18], as well as Order of the Cabinet of Ministers of Ukraine No. 1556-p[19]. Particular attention was paid to the issue of the conformity of Ukraine's national legislation, which regulates digital objects, with the EU's *acquis communautaire*.

Results

One of the fundamental documents shaping the development of the digital society within the European Community is the Digital Europe Programme. This programme encompasses initiatives aimed at enhancing citizens' digital literacy, encouraging businesses to adopt digital technologies more broadly, and digitising the public sector. The overarching goal of the programme is the comprehensive digital transformation of European society (European Commission, 2019). Furthermore, the creation of a modern, secure European digital space aligned with the demands of the new digital era has been identified as a priority by the European Commission (EU4Digital, 2025). This approach aims to elevate the conditions for the functioning of the European space to a new level. The development of EU digital legislation is primarily linked to the operation of the common market. However, given the contemporary condi-

[1] Directive of the European Union and of the Council No. 2019/790 "On Copyright and Related Rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC". (2019, April). Retrieved from https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng.
[2] Directive of the European Union and of the Council No. 96/9/EC "On the Legal Protection of Databases". (1996, March). Retrieved from https://eur-lex.europa.eu/eli/dir/1996/9/oj/eng.
[3] Regulation of the European Union and of the Council No. 2022/868 "On European Data Governance and amending Regulation (EU) 2018/1724 (Data Governance Act)". (2022, May). Retrieved from https://eur-lex.europa.eu/eli/reg/2022/868/oj/eng.
[4] Regulation of the European Union and of the Council No. 2023/2854 "On Harmonised Rules on Fair Access to and Use of Data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act)". (2023, December). Retrieved from https://eur-lex.europa.eu/eli/reg/2023/2854/oj/eng.
[5] Regulation of the European Union and of the Council No. 2022/858 "On a Pilot Regime for Market Infrastructures based on Distributed Ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU". (2022, May). Retrieved from https://eur-lex.europa.eu/eli/reg/2022/858/oj/eng.
[6] Regulation of the European Union and of the Council No. 2023/1114 "On Markets in Crypto-Assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937". (2023, May). Retrieved from https://eur-lex.europa.eu/eli/reg/2023/1114/oj/eng.
[7] Regulation of the European Union and of the Council No. 2024/1689 "Laying Down Harmonised Rules on Artificial Intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)". (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689.
[8] Intellectual Property Code. (1995, July). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006069414/.
[9] Law of France No. 2016-1321 "On Digital Republic". (2016, October). Retrieved from https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000033202841.
[10] Law of France No. 2024-449 "On Securing and Regulating the Digital Space". (2024, May). Retrieved from https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000049563368.
[11] Proclamation of the Copyright Act. (2014, October). Retrieved from https://www.retsinformation.dk/eli/lta/2014/1144.
[12] Federal Data Protection Act of the Federal Republic of Germany. (2021, June). Retrieved from https://www.gesetze-im-internet.de/englisch_bdsg/index.html.
[13] Act on Copyright and Related Rights of the Federal Republic of Germany. (1965, September). Retrieved from https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html.
[14] Law of Ukraine No. 1629-IV "On the National Programme of Adaptation of Ukrainian Legislation to the Legislation of the European Union". (2004, March). Retrieved from https://zakon.rada.gov.ua/laws/show/en/1629-15#Text.
[15] Law of Ukraine No. 2811-IX "On Copyright and Related Rights". (2022, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2811-20#n855.
[16] Law of Ukraine No. 2074-IX "On Virtual Assets". (2022, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2074-20#Text.
[17] Law of Ukraine No. 3321-IX "On Digital Content and Digital Services". (2023, August). Retrieved from https://zakon.rada.gov.ua/laws/show/3321-20#Text.
[18] Law of Ukraine No. 3320-IX "On Amendments to the Civil Code of Ukraine to Expand the Range of Objects of Civil Rights". (2023, August). Retrieved from https://zakon.rada.gov.ua/laws/show/3320-20#Text.
[19] Order of the Cabinet of Ministers of Ukraine No. 1556-p "On Approval of the Concept of Artificial Intelligence Development in Ukraine". (2020, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1556-2020-%D1%80#Text.

tions of this market, it covers a wide range of issues, which can be broadly categorised into three groups: the regulation of government actions at the supranational level, the operational conditions for businesses in the digital environment, and the empowerment of consumers and the development of their competence in consuming digital goods and services. This approach is clearly evident in the adopted Digital Single Market for Europe (European Council, 2020). The strategy aims to create conditions for the development of the EU's internal market in line with the demands of the new digital era and to advance the EU's single digital market through the corresponding development of the EU economy as a whole, various industries, and society. In terms of defining and governing the use of digital objects, key areas include the development of the data economy, the regulation of artificial intelligence, and new approaches to copyright in the digital environment.

One of the most recent classifications of EU digital legislation (from the Bruegel platform database, which provides users with summarised data on EU legislative regulation regarding digitalisation) includes twelve areas that are, in one way or another, covered by digital laws as of late 2024 (Marcus *et al.*, 2024). These areas encompass:

- regulation related to technological development and innovation;
- digital aspects of industrial policy;
- the application of digitalisation in the field of communications;
- ensuring data security and information privacy;
- protection of intellectual property rights;
- regulation in the field of cybersecurity;
- the use of digital technologies in law enforcement;
- digital technologies in the field of security;
- digital commerce and consumer protection;
- the use of digital technologies in competition;
- digitalisation of the media and the financial sector.

However, all of these acts are more of a corrective nature, aimed at refining the regulation of certain aspects of community law's operation concerning digitalisation and the development of emerging technologies. Concerning the objects themselves, they mostly remain traditional and are only subject to some adjustments due to their use in the digital space (Marcus *et al.*, 2024). One of the first categories of objects where questions arose about their existence and use in the virtual space were copyright and related rights objects. This is due to the lack of independent material form in the majority of them (including literary and musical works, phonograms, videograms, audiovisual works, computer programs, etc.), and their physical existence is linked to carriers (physical or digital). Overall, as of June 2024, EU digital regulation covered objects such as databases, industrial designs, trade secrets, patents, and copyright and related rights objects. The corresponding directives are aimed at harmonising the legislation of EU member states and addressing issues arising from new methods of creating, distributing, and using intellectual property objects (Marcus *et al.*, 2024).

Specifically, Directive No. 2019/790[1] was adopted. The Directive establishes new conditions for the functioning of the single market, characterised by the emergence of new methods of creating, distributing, and using copyright and related rights objects, as well as the appearance of new business models and digital market participants. The Directive does not define new digital objects but addresses certain aspects of their classification based on the degree of access freedom. The role of online content access service providers is particularly emphasised. In this Directive, online content acts as a unifying concept for all types of digital objects in the field of copyright and related rights. An analysis of the Directive's text allows for the identification of digital objects with closed, limited, and open access, depending on the type of access; naturally digital and digitised objects, depending on their creation. The list of copyright and related rights objects themselves remains traditional: literary, musical, and artistic works, phonograms, audiovisual works, etc. Thus, the Directive focuses on new types of digital object usage but does not propose any new approaches to their understanding.

It is important to note that in the 21st century, the European Union has significantly intensified its efforts aimed at preserving the cultural heritage of its member states and creating a European cultural space. One of the key areas of this work has been the digitisation of cultural heritage objects (European Union, n.d.). In this context, digitisation is used both to ensure seamless and secure access to these objects and for their preservation and even restoration. From a broader, political perspective, the goal is to create a unified European data space in the field of cultural heritage. This also involves ensuring the secondary use of digitised cultural heritage objects for educational, cultural, and other purposes, as well as for the development of the tourism sector. The European digital cultural platform Europeana is intended to serve as a unifying space (European Union, 2021). Thus, in the field of intellectual property, digitisation does not lead to the emergence of new objects; rather, the expansion of legal regulation occurs through the extension of their usage methods.

[1] Directive of the European Parliament and of the Council No. 2019/790 "On Copyright and Related Rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC". (2019, April). Retrieved from https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng.

As mentioned, one of the key areas of development for the EU's digital market is the so-called "data economy". An analysis of the development of the *acquis communautaire* in the digital sphere shows that databases are digital objects that receive particular attention in EU law. One of the first acts aimed at regulating related relationships was Directive (EU) 2019/790[1]. However, this does not preclude the application of the Directive's provisions to non-electronic databases, and they can also be components of hybrid objects. Attention is also drawn to the complex nature of protection when a database includes other copyright or related rights objects.

Data protection is a priority for the development of a sustainable digital market in the EU. A significant development both for EU digital technology legislation and the internal market was the adoption of two new laws aimed at fostering the digital economy – the Data Governance Act[2] and the Data Act[3]. Academic literature views this as laying the legal foundation for a fundamentally new direction in digital market development – the data economy (Groza & Acrila, 2024). Thus, data emerges as a distinct digital object, subject to requirements regarding accessibility, reliability, compatibility, reusability, and secure access. The Data Act delineates various types of data. The term "data" itself is understood as a compilation of facts, information, and details about actions, etc., in any form. Furthermore, metadata, personal data, and non-personal data are distinguished. Regarding the nature of data, it can be either independent information or information generated as a result of certain actions (mostly by the developer of the relevant product) and has a product-related character. In the latter case, databases should be considered not independent but ancillary digital objects. At the same time, the formation of data, as something that occurs using certain algorithms, can therefore happen using other intellectual property objects, making a digital database a complex digital object. Thus, digital objects can be divided into independent objects, which have value in themselves, and ancillary objects, which have value only in connection with a specific product or object. Databases, in this context, can belong to either the former or the latter, depending on the information they contain.

Digital assets can be identified as a separate category of digital objects. Over the past two years, the EU has made significant strides in regulating this area. For instance, while Regulation No. 2022/858[4] noted that the use of crypto-assets remains one of the least regulated and most problematic aspects of digital asset use, by 30 December 2024, the EU is characterised as the jurisdiction with the most comprehensive legal regulation of crypto-assets in the world (Hall, 2024). Crypto-assets are defined by EU law as digital representations of value or rights that have the potential to generate significant benefits for market participants and can also serve as a means of payment. Simultaneously, they also have a more "object-like" definition of a specific type of technology. A crucial aspect in characterising digital assets as digital objects is their operation based on blockchain technology. It should be noted that the essence of blockchain is described as a database (Remeur, 2023), which also allows it to be considered a separate digital object. Following the fundamental characteristics of this technology, namely immutability and decentralisation, digital assets inevitably acquire similar traits. These characteristics of digital assets allow for the expansion of the classification of digital object types, adding immutable and mutable objects, as well as centralised and decentralised objects.

The rapid increase in the use of artificial intelligence (AI) necessitates the creation of an effective legal framework for such use. Between 2018 and 2024, the global average annual revenue from AI usage increased from 10.1 billion USD to 94.41 billion USD, with a steady upward trend in this revenue (Table 1).

Table 1. Average annual revenue worldwide from the use of artificial intelligence (2018-2024)

Year	Annual revenue from AI use (billion USD)
2018	10.1
2019	14.69
2020	22.59

[1] Directive of the European Union and of the Council No. 2019/790 "On Copyright and Related Rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC". (2019, April). Retrieved from https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng.
[2] Regulation of the European Union and of the Council No. 2022/868 "On European Data Governance and amending Regulation (EU) 2018/1724 (Data Governance Act)". (2022, May). Retrieved from https://eur-lex.europa.eu/eli/reg/2022/868/oj/eng.
[3] Regulation of the European Union and of the Council No. 2023/2854 "On Harmonised Rules on Fair Access to and Use of Data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act)". (2023, December). Retrieved from https://eur-lex.europa.eu/eli/reg/2023/2854/oj/eng.
[4] Regulation of the European Union and of the Council No. 2022/858 "On a Pilot Regime for Market Infrastructures based on Distributed Ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU". (2022, May). Retrieved from https://eur-lex.europa.eu/eli/reg/2022/858/oj/eng.

Table 1. Continued

Year	Annual revenue from AI use (billion USD)
2021	34.87
2022	51.27
2023	70.94
2024	94.41

Source: compiled by the author based on J. Howarth (2025)

Artificial intelligence can be characterised not only as having a complex legal nature but also as possessing a certain perceived "subjectivity" due to its ability to influence humans. The adoption of Regulation (EU) 2024/1689[1] represents a further step towards improving the EU's single digital market. According to the provisions of the aforementioned Act, an "artificial intelligence system" can be identified as a digital object. It is defined as an automated system designed to operate with varying levels of autonomy is adaptive, capable of generating outputs (predictions, content, recommendations, decisions, etc.) based on the data it receives, and can influence its surrounding environment. The specificity of this object also lies in the fact that it is a separate digital object used to generate new digital objects. However, an analysis of the provisions of the EU Artificial Intelligence Act suggests that it is a digital object with a unique nature and, therefore, capable of impacting human life and well-being. Consequently, it is emphasised that AI systems deployed must be human-centric, uphold fundamental human rights, and reflect the values of modern democratic society. Thus, specific security and ethical requirements are imposed on artificial intelligence. Artificial intelligence can be considered from the perspective of its ability to create a risk of harm. This is perhaps its most significant distinction from other types of digital objects.

In connection with AI activity, some specific digital objects that are its products can be identified. For example, such an object is a "deepfake", – an AI product that maximally imitates real people or events and can be perceived as corresponding to reality. Due to the risks that artificial intelligence can pose, EU law contains a series of restrictions – prohibited AI practices. Various types of AI systems are also identified, including high-risk AI systems, which are subject to special usage conditions.

It should also be noted that issues related to artificial intelligence are a focus of attention for the Council of Europe, as a leading European institution in the field of human rights. The Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law[2] was adopted. The Convention draws attention to the risks posed by the use of artificial intelligence from the perspective of ensuring human rights. In particular, it mentions possible dangers such as the possibility of digital discrimination, and encroachment on human dignity and autonomy. The definition of artificial intelligence proposed by the Convention is similar to that contained in the EU Artificial Intelligence Act, and it also emphasises its ability to influence the analogue and virtual world. Thus, this once again underscores the specificity of artificial intelligence as a digital object of a special nature. Therefore, digital objects can be classified as in Table 2.

Table 2. Types of digital objects based on the specifics of their legal regulation

Types of objects	Objects that can exist in both analogue and digital forms	Traditional digital objects that can exist exclusively in digital form	New digital objects that can exist exclusively in digital form
Examples of objects	Intellectual property objects Databases	Digital assets Computer programs	Artificial intelligence
Specifics of legal regulation	Legal regulation is similar to analogue objects, taking into account the specifics of use in the digital environment	Require separate legal regulation, taking into account their exclusively digital nature	Requires separate, harmonised international legal regulation, considering their dual nature as a separate object and as a generator of new digital objects, as well as their ability to independently influence individuals and society

Source: compiled by the author

[1] Regulation of the European Parliament and of the Council No. 2024/1689 "Laying Down Harmonised Rules on Artificial Intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)". (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689.

[2] Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law. (2024, September). Retrieved from https://rm.coe.int/1680afae3c.

EU legislation, as supranational law, aims to harmonise legal regulation in the main areas of EU life while leaving EU member states some autonomy regarding national legal regulation of issues related to digital objects. National approaches, therefore, vary within the general limits set by the *acquis communautaire*. The European space, while unified, is not homogeneous. For example, the level of digitalisation varies across EU member states, from the highest levels in Scandinavian countries to the lowest in Eastern European countries (Stankovic *et al.*, 2021). Thus, approaches to the legal regulation of digital objects at the national and supranational levels will differ, although the *acquis communautaire* serves as the primary guideline for EU member states.

Specifically, French legislation does not have a unified concept of digital objects. An analysis of the content of relevant legislative acts allows for the identification of several types of such objects. For example, Law of France No. 2016-1321 "On Digital Republic"[1] only mentions certain digital objects without providing their definitions (digital data, digital documents, software, works in electronic form, etc.). The law itself is not an act that regulates digital relations but merely introduces relevant amendments to a series of laws, adapting them to the conditions of the digital society. Law of France No. 2024-449[2], in addition to provisions directly related to the protection of citizens' rights in the digital space, contains Section IV on the development of the gaming economy with monetised digital objects. Although the content of the section primarily contains protective norms, its analysis adds another basis for the classification of digital objects, which can be divided into monetised and non-monetised. The Intellectual Property Code[3] also contains provisions only regarding the specifics of digital object usage, without categorising them separately. For example, it specifically regulates the publication of books in digital format, the digital exploitation of unavailable books, and online content sharing. In this context, the concept of online content is a unifying term for all copyright and related rights objects in a digital format. Similarly, Danish legislation only distinguishes the digital form of objects[4]. German legislation shows significant compliance with the *acquis communautaire*. In particular, issues related to digital data are regulated by the Federal Data Protection Act[5], following EU law standards. The Act on Copyright and Related Rights[6] identifies digital objects such as software products, databases, and other works in digital form. In general, the national legislation of EU member states regarding digital objects is developing in two main directions: amending existing legislation to bring its provisions into line with the functioning of the digital environment and developing new digital legislation. In the latter case, the new laws immediately comply with the *acquis communautaire*.

In the context of this study, the consideration of legal models of digital objects in Ukrainian legislation requires addressing two aspects: the adaptation of national legislation to EU legislation and the development of legal regulation of the digital space. The beginning of the adaptation process was the approval of Law of Ukraine No. 1629-IV[7], which provided for the gradual alignment of Ukrainian national legislation with the *acquis communautaire*. Specifically, aligning national legislation with the *acquis communautaire* was identified as a priority task of national foreign policy. The programme does not single out the digital sphere as a separate area of adaptation but provides for the alignment of national legislation with both primary and secondary EU acts, which include relevant digital acts. Moreover, among the areas of legislation that should become a priority for adaptation are those closely related to digitalisation and the use of digital objects. In particular, legislation in the field of intellectual property, technical regulations, banking legislation, and financial services. It is also important to note that the adaptation law provides not only for the alignment of existing legislation with the *acquis communautaire* but also for the mandatory verification of national draft laws for compliance with EU law. Thus, the provisions of digital acts adopted by the EU are taken into account in Ukrainian national legislation.

Ukrainian legislation is also aiming to develop legal regulation in the digital sphere. In 2022 and 2023, the legislative framework for regulating digital relations underwent significant changes aimed at

[1] Law of France No. 2016-1321 "On Digital Republic". (2016, October). Retrieved from https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000033202841.
[2] Law of France No. 2024-449 "On Securing and Regulating the Digital Space". (2024, May). Retrieved from https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000049563368.
[3] Intellectual Property Code. (1995, July). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006069414/.
[4] Proclamation of the Copyright Act. (2014, October). Retrieved from https://www.retsinformation.dk/eli/lta/2014/1144.
[5] Federal Data Protection Act of the Federal Republic of Germany. (2021, June). Retrieved from https://www.gesetze-im-internet.de/englisch_bdsg/index.html.
[6] Act on Copyright and Related Rights of the Federal Republic of Germany. (1965, September). Retrieved from https://www.gesetze-im-internet.de/englisch_urhg/englisch_urhg.html.
[7] Law of Ukraine No. 1629-IV "On the National Programme of Adaptation of Ukrainian Legislation to the Legislation of the European Union". (2004, March). Retrieved from https://zakon.rada.gov.ua/laws/show/en/1629-15#Text.

aligning national legislation with the *acquis communautaire*. For example, Law of Ukraine No. 2811-IX[1] took maximum account of the new trends in EU law regarding digital objects. The law contains definitions of a range of objects that fall under the digital category – database, website, webpage, computer program, account – as well as a series of concepts that allow for the determination of the legal status of actions and entities using such objects – website or webpage owner, hyperlink, electronic (digital) information, rights management information, hosting service provider.

Two special laws were also adopted: Law of Ukraine No. 2074-IX[2]. Amendments were also made to the Civil Code, which was supplemented with a new object of civil rights – digital things. The following characteristics of a digital thing were defined: it is a certain good that has property value, and its existence is limited to the digital environment[3]. This concise approach, based on defining the main features of a digital thing, is considered quite successful from a law enforcement perspective.

Regarding the regulation of issues related to the use of artificial intelligence, the Order of the Cabinet of Ministers of Ukraine No. 1556-p[4] was approved. The concept defines activities related to the creation, implementation, and use of artificial intelligence as a separate area of activity in the field of information technology. However, the definition of artificial intelligence itself closely links the activity of artificial intelligence with human activity: "an organised set of information technologies with the application of which it is possible to perform complex tasks". This is a somewhat limited approach to the autonomy of artificial intelligence, as presented in the EU Artificial Intelligence Act, which discusses various levels of such autonomy, as well as the adaptability of artificial intelligence, which should be taken into account in the future when adopting a national law of Ukraine on artificial intelligence.

Discussion

The research has shown that, for the most part, digital objects are not considered by EU law as something fundamentally new. The only exception is perhaps artificial intelligence, which is the subject of close attention not so much because of its unique qualities as a digital object but because of its ability to have a significant impact on individuals and society, potentially making it dangerous. As S. Islam *et al.* (2022) point out, despite the active development of a legal framework for regulating digital objects, it should be concluded that regarding the objects themselves, there is hardly a need to look for new approaches. From the perspective of their understanding, particularly through the application of the abstraction mechanism, existing law enforcement experience is being used quite successfully. The analysis conducted in this study did not reveal any specific characteristics of digital objects other than their intangible nature. However, the digital space introduces new requirements for the use of objects placed within it. This conclusion is supported by other researchers. For example, R. Adams (2023), studying issues related to intellectual property protection in the digital age, points out that the main problems arise from the emergence of new types of object use, issues of access to them in digital networks, and the heightened challenge of protecting them from unauthorised use. Thus, the researcher reaffirms that the problem lies not with the digital objects themselves but with their usage. While this does not exclude difficulties in determining the legal nature of some digital objects.

Indeed, when considering the nature of Bitcoin, R. White *et al.* (2020) highlight the possibility of various approaches to its characterisation: as a unique form of currency, a technological product, and a type of technological enterprise. Other types of cryptocurrencies can be viewed from the same perspective, as Bitcoin, although the most widespread, is only one of many. However, even in the absence of a unified approach, the need to recognise digital assets and the necessity to regulate relations regarding these digital objects is not disputed. One can agree with V. Giang & V.T.M. Huong (2023) that, despite cautious attitudes towards this type of object, countries around the world should direct efforts towards regulating their legal status. This would not only ensure their use in investment and other economic activities but also provide a basis for preventing criminal activities involving their use. Moreover, digital transformation, including the implementation of digital assets, is an irreversible process, so the presence of appropriate legal regulation makes the national economy more attractive to investors. Regarding the development of digital legislation in general, the three main directions of its development demonstrated in the study are: similar to analogue objects; with adjustment of regulation given the digital nature of the object; and

[1] Law of Ukraine No. 2811-IX "On Copyright and Related Rights". (2022, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2811-20#n855.
[2] Law of Ukraine No. 3321-IX "On Digital Content and Digital Services". (2023, August). Retrieved from https://zakon.rada.gov.ua/laws/show/3321-20#Text.
[3] Law of Ukraine No. 3320-IX "On Amendments to the Civil Code of Ukraine to Expand the Range of Objects of Civil Rights". (2023, August). Retrieved from https://zakon.rada.gov.ua/laws/show/3320-20#Text.
[4] Order of the Cabinet of Ministers of Ukraine No. 1556-p "On Approval of the Concept of Artificial Intelligence Development in Ukraine". (2020, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1556-2020-%D1%80#Text.

the creation of new regulation for fundamentally new objects (an example of which is artificial intelligence). Such an approach is supported, for example, by T. Alsamara & F. Ghazi (2024). At the same time, the researchers rightly note that the specificity of digital law lies in its extension to all other sectors, as digitalisation has already encompassed all areas of life. In turn, X. Sun & Y. Xiao (2024) point out the need to consider issues related to the regulation of digital objects and the digital space at a higher level, particularly from the perspective of the rule of law and the supremacy of law. This approach is entirely valid, as the research has shown that the digital environment is an area of significant risks in terms of protecting confidentiality and data dissemination, and artificial intelligence can be used, among other things, as a means of influencing individuals.

The adoption of the Artificial Intelligence Act[1] has been a significant contribution to EU legislation in the digital sphere. Based on its provisions, this study concluded that it is possible to consider it as a separate digital object. The approach to artificial intelligence as a new and complex digital object finds support in academic research. For example, A.P. Olimid *et al.* (2024) indicate that revealing the nature of artificial intelligence raises a range of issues of not only a legal but also an ethical, security, and psychological nature. The most critical issue in the discussion surrounding the nature of artificial intelligence is the question of its object or subject nature. In fact, questions regarding copyright on AI-generated works or liability in the event of errors in AI-controlled systems remain open. Z. Wen & D. Tong (2023) highlight the need to move away from legal anthropocentrism when considering the legal status of AI, similar to the theory of legal entities as derivative subjects. E.D. Putriyanti *et al.* (2023) also support the idea that the provisions used for legal entities could be applied to the status of artificial intelligence. However, while this approach is understandable from the perspective of granting AI certain rights, the issue of liability remains unresolved due to its virtual nature, as, unlike legal entities, it does not have a personified governing body or assets.

It is also important to support the position of M. Civit *et al.* (2022) regarding the need for further study of the legal nature of objects created using artificial intelligence, which can be considered a separate type of digital object created by the joint work of humans and machines. However, here, as in most cases involving digital objects, the question is not about the legal nature of the result, as it will fall under the classical concept of a work, but about the nature of the rights arising from its creation and their ownership. The conclusion regarding the need to treat artificial intelligence as a special digital object that can influence the environment and, therefore, requires special attention is also supported by another academic research. Indeed, A. Jayalath *et al.* (2023) highlight the need to balance the benefits provided by the use of artificial intelligence in various fields of activity with the risks associated with such use, primarily in the area of data protection and security. Expanding the approach to defining security problems related to the use of artificial intelligence, M. Eppler *et al.* (2023) point out that despite all the advantages, AI algorithms can contain errors or use unreliable information in their analysis. As a learning system, artificial intelligence can also generate content that reflects a biased position. Thus, this once again confirms the findings of the study that artificial intelligence is a special digital object, and its ability to autonomously require reflection in legal regulation.

Conclusions

The regulation of public relations regarding digital objects in EU member states occurs at both supranational and national levels. The *acquis communautaire* primarily regulates issues related to the development and functioning of the common digital market. This approach is logically sound, considering both the nature of the EU itself as an economic and political entity and the fact that the main specifics of digital objects lie in the peculiarities of their use. Given that a significant portion of the digital *acquis communautaire* was adopted only in the 2020s, regulation in the digital sphere in EU law is still in its formative stages. Four groups of digital objects can be identified: those that exist in both analogue and digital formats; those that exist exclusively in digital format but whose relations can be regulated similarly to physical objects; and those that exist exclusively in digital format and require separate legal regulation. Artificial intelligence is separately identified, as it exists both as an independent object and as a generator of other digital objects, with its main specificity being its ability to independently influence individuals and society. Due to these peculiarities, artificial intelligence requires harmonised legal regulation, specifically at the supranational level.

The reflection of digital objects in the national legislation of EU member states is also in its formative stage. The main legal technique for regulating

[1] Regulation of the European Parliament and of the Council No. 2024/16893 "Laying Down Harmonised Rules on Artificial Intelligence and amending Regulations (EC) No 300/2008, (EU) No 167/2013, (EU) No 168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 (Artificial Intelligence Act)". (2024, June). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689.

public relations regarding such objects is through the introduction of relevant amendments to existing legislation. This approach is quite suitable for the majority of objects, especially those that can exist in digital and analogue formats, as such digital objects have no other specificity than their intangible form, which necessitates enhanced protection during use. The legislation of EU member states regarding digital objects largely fully complies with the *acquis communautaire* and does not propose radically new approaches to the regulation of digital objects.

Ukrainian national legislation on the regulation of digital objects is developing, taking into account the provisions of the *acquis communautaire* through Ukraine's European aspirations and the fulfilment of its commitments to align national legislation with EU legislation. Furthermore, the development of national legislation is occurring not only through the expansion of regulations concerning the specifics of digital object usage but also through the adoption of specialised digital laws that provide unifying provisions for all digital objects. This approach is considered successful in creating legal acts that reflect all the specific aspects of the legal regulation of relations arising from the creation and use of digital objects. The research was limited exclusively to existing legal acts and does not include an analysis of draft laws, so the conclusions and recommendations made in it are the result of an analysis of the current situation and do not contain forecasting.

The legislative regulation of relations concerning the creation and use of artificial intelligence as a special digital object remains an area of particular attention. The research results can be used in the teaching of legal disciplines, as well as a basis for further scientific research. A future direction of research could be the study of the specifics of artificial intelligence as a unique digital object.

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Conflict of Interest

None.

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Правові моделі цифрових об'єктів в ЄС: досвід і можливості адаптації до українського законодавства

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■ **Анотація.** Актуальність цього дослідження зумовлена поточною інтеграцією України до правової бази Європейського Союзу та потребою в правовому регулюванні цифрових об'єктів, таких як цифрові активи, штучний інтелект і віртуальні активи. Дослідження мало на меті розглянути правовк регулювання цифрових об'єктів в ЄС, щоб оцінити перспективи його впровадження в Україні. Для досягнення мети було здійснено аналіз *acquis communautaire* національного законодавства країн – членів ЄС та основних положень законодавства України в зазначеній сфері. За результатами дослідження виокремлено основні підходи до правового регулювання цифрових об'єктів в ЄС, визначено чотири основні види цифрових об'єктів, що потребують різних правових режимів. Встановлено, що до об'єктів, які можуть існувати в цифровій та аналоговій формах, можуть застосовувати традиційне правове регулювання з огляду на специфіку використання цифрових об'єктів. Окрему групу становлять виключно цифрові об'єкти, що потребують розроблення спеціального правового регулювання. Також засвідчено відсутність специфічного підходу до регулювання цифрових об'єктів національним законодавством країн – членів ЄС і зауважено, що розвиток національного законодавства України відповідає європейським стандартам. Національне законодавство України щодо регулювання цифрових об'єктів розвивається на підставі положень *acquis communautaire* через європейські прагнення України й виконання нею взятих на себе зобов'язань щодо узгодження національного законодавства із законодавством Європейського Союзу. Причому розвиток національного законодавства відбувається не лише шляхом розширення регулювання щодо специфіки використання цифрових об'єктів, а й шляхом прийняття спеціальних цифрових законів, що містять об'єднавчі положення для всіх цифрових об'єктів. Такий підхід вбачається вдалим з позиції створення правових актів, що відображають усі специфічні аспекти правового регулювання відносин, що виникають у зв'язку зі створенням і використанням цифрових об'єктів. Результати цього дослідження може бути застосовано для розроблення ефективної законодавчої бази з регулювання цифрових об'єктів в Україні, що забезпечить відповідність як європейським, так і національним стандартам

■ **Ключові слова:** штучний інтелект; база даних; інформація; авторське право; віртуальна власність; криптовалюта; *acquis communautaire*

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