

## Prevention of Crime in Economic Activity



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**Abstract.** The article focuses on the prevention of crimes in the sphere of economic activity, in particular, regarding the creation of a state law enforcement agency whose activities will be aimed at identifying, preventing, terminating, investigating and disclosing criminal offenses in the sphere of economic activity that are attributable to its jurisdiction that directly or indirectly cause damage, public finances, as well as fight against crime in the field of taxation, customs and budgetary spheres, and prevent their commission in the future.

In addition, approaches to the definition of types of criminal offenses that can be categorized as committed in enterprises, institutions and organizations by type of economic activity are analyzed.

It is stressed that among scientists there is no unanimous opinion regarding the interpretation of the essence of the concept of “economic crimes” and their classification. The lack of common approaches to the issue under discussion creates some difficulties in practice, which significantly reduces the level of crime prevention in the field of economic activity.

The article also states that the requirements of paragraph 26 of the Regulation on the procedure for conducting the Single Register of pre-trial investigations, approved by the order of the Prosecutor General of Ukraine of April 6, 2016, No. 139, according to which criminal offenses (persons who committed them) by types of economic activity are determined and are entered in the Register only with the use of the National Classifier of Ukraine “Classification of Types of Economic Activity”, need to be improved.

To this end, it is proposed to standardize the procedure for recording crimes committed at enterprises, institutions and organizations by types of economic activity, by the relevant legal act, to determine a clear list of articles of the Criminal Code of Ukraine. In determining the types of crimes that can be attributed to crimes in the field of economic activity, be guided by the following provisions: a crime committed by a special subject (official), which is related to the implementation of organizational and administrative or administrative functions, to be attributed to committed at an enterprise, institution or organization irrespective of the form of ownership; a crime the subject of which is a general subject to account for the Classifier of types of economic activity, provided that he is committed: an employee of an enterprise, institution or organization in the performance of labor duties, another person whose criminal actions are caused to damage the enterprise, institution, organization or a business entity. Thus, the specified list will determine a clear procedure for attributing criminal offenses to the number committed at enterprises, institutions and organizations by type of economic activity.

**Keywords:** crime prevention; types of criminal offenses; economic crime; classification of types of economic activity; the procedure for registering crimes; special-criminological activities.

**Problem statement**

The development of statehood in Ukraine, the change in its political and socio-economic structure, the conduct of the antiterrorist operation, and the reform of the law-enforcement system led to an increase in the level of crime, in particular economic.

This phenomenon also contributes to such negative phenomena as decline in production, inflation, lower living standards, rising unemployment, which leads to the creation of tension in society and the solution of people their problems by criminal means.

It should be noted that economic crime is an extremely dangerous phenomenon that has rooted in all spheres of state functioning and is a negative factor on the way to the development of a new European state. Therefore, preventing crimes in this area is an important task facing public authorities.

**Analysis of recent research and publications.**

The issue of prevention of economic crime, the formation of measures to prevent and prevent economic crime in Ukraine in the context of providing economic security and counteracting offenses in this area is the subject of research by many scholars. Significant contribution to the study of this problem was made by O. Bandurka, Yu. Baulin, M. Bazhanov, V. Bilous, V. Borysov, S. Cherniavskiy, I. Danshyn, V. Filonov, V. Holina, N. Hutorova, O. Kalman, M. Kamlyk, M. Korzhanskyi, O. Kostenko, Ya. Kurash, O. Lytvak, V. Mandybura, H. Matusovskyi, M. Melnyk, V. Navrotskyi, O. Perepelytsia, V. Popovych, V. Stashys, Ye. Streltsov, V. Tatsii, V. Tuliakov, I. Turkevych, V. Shakun, V. Shepitko A. Zakaliuk, V. Zelenetskyi and other researchers.

Therefore, despite a fairly significant number of publications, as well as taking into account the recent changes in the legislation on the identified issues, there is a need for additional discussion of the issue of common approaches to the definition of types of criminal offenses that can be classified as enterprises, institutions and organizations by economic activity.

Prevention of crime is one of the priority directions of the state's activities, which are divided into general social, special and criminological and individual measures for the prevention of crime.

In the context of the problem under consideration, attention should be paid to special crime prevention measures. The subjects of such measures are traditionally considered state bodies, public organizations, social groups, officials and citizens who deliberately carry out the development and implementation of crime prevention measures, in connection

with which they have rights, responsibilities and responsibility for the implementation of the obligations imposed on their tasks [1, p. 93]. Depending on the goals and tasks, as well as the functional responsibilities, scientists divide the actors of counteracting crime into two groups: actors acting on the general social level, and special subjects [2, p. 167].

However, with a sufficient number of special actors who, under their legal status, are obliged to actively counteract economic crime, the issue of the necessity of developing an optimal and effective organizational and management structure and its legal support in combating economic crime, in particular the creation of a new state structure (special entity for the prevention of economic crimes).

Thus, the National Security Strategy of Ukraine, approved by the Decree of the President of Ukraine dated May 26, 2015, No. 287/2015, identified the economic crisis, the depletion of the financial resources of the state, and the decrease of the living standards of the population among the actual threats to the national security of Ukraine.

The main objectives of the Strategy are to establish the rights and freedoms of man and citizen, to ensure the new quality of economic, social and humanitarian development, to ensure Ukraine's integration into the European Union and to create conditions for joining NATO. To achieve it, it is necessary to form a qualitatively new state policy aimed at effective protection of national interests in the economic, social, humanitarian and other spheres, comprehensive reform of the system of ensuring national security and the creation of an effective security and defense sector of Ukraine.

Among the main directions of the state policy of national security of Ukraine, the system counteraction to organized economic crime and “shadowing” of the economy was determined on the basis of the formation of the advantages of legal economic activity and, at the same time, consolidation of institutional capacities of financial, tax, customs and law enforcement agencies, detection of assets of organized criminal groups and their confiscation.

It is noted that effective counteraction to the threats to the financial security of the state is possible provided that the special system of timely detection and elimination of systemic threats in the field of public finances is maintained, and the prevention of their occurrence in the future is maintained. This year, the Committee on Legislative Support of Law Enforcement Activities of the Verkhovna Rada of Ukraine developed a draft Law of Ukraine “On the National Bureau of Financial Security of Ukraine” (Reg. No. 8157 of March 19, 2018) [3].

The justification for its adoption states that the current system of countering financial security of the state, which includes the National Police of Ukraine, the Security Service of Ukraine, the Tax Police, the Prosecutor’s Office, the National Anti-Corruption Bureau of Ukraine, the State Financial Monitoring Service of Ukraine, the State Audit Office of Ukraine and the Accounting Chamber, has significant branching, in connection with which its work is very ineffective.

The purpose of the bill is to create the organizational and legal basis for the activities of the National Bureau of Financial Security of Ukraine (NBFS of Ukraine) as a state law enforcement agency, which, on the basis of criminal analysis and risk analysis, should rely on eliminating threats to the financial security of the state, including by preventing, detecting, termination, investigation and disclosure of criminal offenses in the area of economic activity that are attributable to its jurisdiction, which directly or indirectly cause damage to public finances, combating crime taxation, customs and fiscal areas, preventing their occurrence in the future [3].

Thus, an attempt has been made at the state level to create a single law enforcement agency whose task is to secure the state’s financial

security by protecting public finances at the entrance to the budget, allocating budget resources, combating money laundering, detecting assets derived from investigated economic crimes. The jurisdiction of the NBSE of Ukraine will include pre-trial investigation of crimes stipulated in art. 159<sup>1</sup>, 191, 204, 205, 205<sup>1</sup>, 209; 209<sup>1</sup>, 212, 212<sup>1</sup>, 216, 218<sup>1</sup>, 219, 220<sup>1</sup>, 220<sup>2</sup>, 222, 222<sup>1</sup>, 223<sup>1</sup>, 223<sup>2</sup>, 224, 231, 232, 232<sup>1</sup>, 232<sup>2</sup>, 233 of the Criminal Code of Ukraine.

According to the author, the submitted legislative initiative may be supported, but certain provisions set out in the draft Law “On the National Bureau of Financial Security of Ukraine” (Reg. No. 8157), cause comments and need to be finalized, primarily in terms of certain powers that duplicate the powers The State Fiscal Service of Ukraine, the Security Service of Ukraine, the National Police of Ukraine, the National Anti-Corruption Bureau of Ukraine, the National Agency of Ukraine for the Detection, Investigation and Asset Management, Receipt and of corruption and other crimes, prosecutors, the State Service for Financial Monitoring of Ukraine, the State Audit Service of Ukraine, the Accounting Chamber of Ukraine and other organs.

At the same time, it is extremely important to take into account the European experience of the functioning of such structures. Economic crime in Europe for a long time (several decades) is the subject of scientific discussion. The need to effectively counteract its proliferation causes the task of practical reformation of the law-enforcement system. However, there is no single institutional model. The reason for this is not only the various legal systems and traditions of state construction, but also the complexity in determining the very phenomenon of economic crime.

In European countries, as well as in Ukraine, the system of combating economic crime consists of the following main elements: police authorities; specialized law enforcement agencies; tax services; customs services; financial intelligence agencies. The full integration of economic functions within a single law-enforcement structure is rather an exception than the rule [4].

Taking into account that the final institutional model of the system for combating economic crime is not yet formed, the definition of the

concept of economic crime and the definition of types of crimes that can be classified as “economic crime” remains extremely relevant, since it clearly depends on the formation of approaches to crime prevention actors in the sphere of economy, to a single procedure for accounting for crimes committed at enterprises, institutions and organizations by types of economic activity.

Note that the types of economic crime depend on the object of the attack, therefore, one should agree with the opinion of those scholars who believe that economic crime, regardless of the type, is complex and consists in criminal acts of subjects of entrepreneurial activity that infringe on the order of management economy, cause damage to the state, society or individual citizens. In addition, economic crime is characterized by close links with organized crime and corruption, which, in turn, causes its high latency. Latent economic crime is unrelated to the shadow economy. Indeed, it is in the illegal business sector that significant financial resources are accumulated through illicit trade, mediation, and concealment of tax revenues. Shadow enterprises receive income because they do not pay compulsory payments to the budget, enjoy uncompetitive benefits, thus undermining the legal economic activity of other economic entities [5].

There is no single definition of “economic crime” and types of crimes that can be attributed to this category. Thus, it is proposed to consider economic crime as an aggregate of intentional selfish crimes and those who committed them in the sphere of legal and illegal economic activity, the main direct object of which is property relations and relations in the sphere of production, exchange, distribution and consumption of goods and services [6].

The definition of economic crime as a crime that causes damage to social relations in the production, credit, financial and trading sectors also contributes to the unification of the concept of “economic crime”. Thus, N. Kuznetsova regards economic crime as a component of crimes against property and entrepreneurial crimes. According to A. Litvak, economic crime is an aggregate of intentional selfish crimes committed by officials, other employees of enterprises and institutions, regardless of their forms of ownership, by using their position and place of work [7].

V. Franchuk offers the following classification of economic crimes: crimes against property – appropriation, embezzlement or possession of property by abuse of status (articles 185, 186, 188–192 of the Criminal Code of Ukraine); crimes in the sphere of economic activity (articles 199–235 of the Criminal Code of Ukraine), the most dangerous of which are: smuggling (article 201), false entrepreneurship (article 205), legalization (laundering) of proceeds from crime (article 209) misuse of budget funds, implementation of budget expenditures (article 210), evasion of taxes, fees (mandatory payments) (article 212), fraud with financial resources (article 222); crimes in the field of the use of electronic computers (computers), systems and computer networks (article 361–363 of the Criminal Code of Ukraine); crimes in the sphere of official activity (articles 364–370 of the Criminal Code of Ukraine), in particular: abuse of power or official position (article 364), excess of authority or official authority by an employee of a law enforcement agency (article 365); official forgery (article 366); service negligence (article 367); acceptance of a proposal, promise or obtaining an unlawful benefit by an official (article 368); a proposal, a promise or an unlawful benefit to an official (article 369); provocation of bribery (article 370) [8].

S. Cherniavskiy divides economic crimes into the following principle: crimes in the sphere of property relations (articles 190–191 of the Criminal Code of Ukraine); crimes in the financial sphere (“financial” crimes) (articles 199–200, articles 207–212<sup>1</sup>, art. 215–224); crimes in the sphere of entrepreneurship, competitive relations and other activities of business entities (articles 202–206, art. 213–214); crimes in the field of protection against monopoly and unfair competition (article 228, art. 231–232<sup>1</sup>); crimes in the sphere of realization of consumer rights and service of the population (articles 225–227, article 229); crimes in the sphere of privatization of state or communal property (articles 233–235); crimes in the field of customs regulation (article 201) [9].

Taking into account the above said, it is seen that there are no unanimous approaches in the scientific literature to the interpretation of the concept of “economic crimes” and there are controversial views of researchers on the

question of the classification of economic crimes. Thus, the lack of common approaches to the discussed issue in science creates some problems in practice, which significantly reduces the level of prevention of crimes in the field of economic activity. That is why there is a need to standardize the types of criminal offenses that can be categorized as crimes in the field of economic activity.

It should be noted that according to the clause 26 of the Regulation on the procedure for conducting the Single Register of pre-trial investigations, criminal offenses (persons who committed them) by types of economic activity are determined and entered in the Register using the National Classifier of Ukraine "Classification of Types of Economic Activities" (CTEA), approved by the order of the State Statistics Service of Ukraine of December 30, 2013, No. 426 (as amended).

However, attention should be paid to the fact that the main purpose of the CTEA – is the definition and coding of the main and secondary types of economic activities of legal entities, separated divisions of legal entities and sole proprietors. In addition, the CTEA must provide statistical records of enterprises and organizations by type of economic activity; to conduct state statistical surveys of economic activity and analysis of statistical information at the macro level (to compile indicators of national accounts – production accounts and income generation, tables "cost-issue"); to compare national statistical information with the international one through application of uniform statistical terminology, statistical units and principles of definition and change of types of economic activity of enterprises and organizations.

That is, CTEA – is a statistical tool for streamlining economic information that does not always meet all user needs outside of the statistical system, which may lead to controversy regarding the legal use of the CTEA code. It should be borne in mind that the code of the type of activity does not create rights or obligations for enterprises and organizations, does not cause any legal consequences. The code of the type of activity is not necessarily a sufficient criterion for the fulfillment of the conditions stipulated by the normative acts. In

the application of regulations or contracts, the code of a type of activity is an assumption, but not a proof.

Thus, the record of criminal offenses and the introduction of data on these offenses into the Unified Register of Pre-trial Investigations using the CTEA is not perfect. Such a conclusion is based on the analysis of normative legal documents, which at one time standardized the issue under discussion.

So, in order to ensure a uniform procedure for assigning crimes to enterprises, institutions and organizations by types of economic activity, the reliability of statistical indicators characterizing the state and structure of crime in this area, the Office of the Prosecutor General of Ukraine together with the Ministry of Internal Affairs of Ukraine on September 12, 2011 Instruction No. 117 "On a Uniform Procedure for the Recording of Crimes committed at Enterprises, Institutions and Organizations by Types of Economic Activity" was introduced, which defined the list of articles of the Criminal Code of Ukraine for crimes that can be committed classified as enterprises, institutions and organizations of economic activity.

In determining the types of crimes that could be attributed to crimes in the field of economic activity, the following provisions should be guided: the crime committed by a special subject (official) that is related to the implementation of organizational and administrative or administrative and economic functions, attributed to be committed at an enterprise, institution or organization regardless of ownership; a crime the subject of which is the general subject, to account for the Classifier of types of economic activity, provided that he is committed: an employee of an enterprise, institution or organization in the performance of labor duties, another person whose criminal actions are caused by harm to an enterprise, institution, organization or a business entity. Thus, the list indicated a clear procedure for assigning criminal offenses to the number committed in enterprises, institutions and organizations by type of economic activity. According to this list, the number of articles of the Criminal Code of Ukraine, which directly related to those committed in the sphere of economic activity, amounted to 96, and the

number of alternatives, based on the type of the subject of the crime, was 98. Consequently, an effective mechanism for determining the types of crime was created, committed in the field of economy, which had a positive impact on law enforcement activities related to the prevention of economic crime.

However, on June 21, 2013, the Prosecutor General of Ukraine, together with the Head of the Security Service of Ukraine, the Minister of Internal Affairs of Ukraine and the Minister of Income and Assembly of Ukraine, signed an instruction letter No. 80/11228 / 3r / 292, which abolished the joint instruction dated September 12, 2011 No. 117 “On the Uniform Procedure for Criminalization of Crimes committed at Enterprises, Institutions, Organizations by Types of Economic Activities, and List of Articles of the Criminal Code of Ukraine, which may be classified as belonging to enterprises, establishments and organizations for kind we economic activities” and introduced a new procedure for keeping this category of crime. Thus, prosecutors of all levels, investigating units of the prosecutor’s office, the bodies of internal affairs, security

organs, bodies supervising the observance of tax legislation, when filling in line 26 “Types of economic activities in which a criminal offense was committed” was obliged to be guided by a national classifier Of Ukraine “Classification of Types of Economic Activity”, approved by the Order of the State Committee for Consumer Rights of Ukraine dated October 11, 2010 No. 457, as amended by the order of the State Committee of Ukraine for Technical Regulation and Consumer Policy of 29 November 2010 number 530. This approach creates significant problems in practice, since records of criminal offenses and entering data on these offenses to the Unified Register of pre-trial investigations using only CTEA is highly controversial.

Summarizing the above, it should be noted that the definition of types of criminal offenses that can be categorized in the sphere of economic activity requires clear regulatory consolidation, which will facilitate the proper qualification of these acts, the reasonable introduction of information to the Unified Register of Pre-trial Investigations and increase of efficiency in the prevention of crimes this category.

#### References:

1. Kurs lekcij po kriminologii: ucheb. Posob. / pod red. prof. I. Dan'shina (Obshhaja chast') i prof. V. Goliny (Osobennaja chast'). Har'kov: Odissej, 2006. 280 s.
2. Kriminologija. N. Kuznecova (red.), G. Min'kovskij. M.: BEK, 2003. 556 s.
3. Pro Natsionalne biuro finansovoi bezpeky Ukrainy: proekt Zakonu Ukrainy vid 19 bereznia 2018 roku № 8157. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=63676](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63676)
4. Yevropejskyi dosvid orhanizatsii systemy protydii ekonomichnii zlochynnosti: analitychna zapyska. Natsionalnyi instytut stratehichnykh doslidzhen, 2012. URL: <http://w.w.w. niss.gov.ua>
5. Monitorynhovyi kryminolohichniy analiz zlochynnosti v Ukraini (2009–2013 roky): monohr. Blazhivskyi Ye., Koziakov I., Knyzhenko O., Lytvak O., Yarmysh O. ta in. Kyiv: Vydavnychiy tsentr Natsionalnoi akademii prokuratury Ukrainy, 2014. 488 s. S. 237.
6. Kalman O. Ekonomichna zlochynnist i sumizhni z neiu poniattia. Problemy zakonnosti. 2002. Vyp. 55. S. 133–141.
7. Lytvak O. Zlochynist: yii prychny ta profilaktyka. Kyiv: Ukraina, 1997. 167 s.
8. Ekonomichna bezpeka: navch. posib. V. Franchuk, L. Herasymenko, V. Honcharova ta in. Lviv: Lvivskyi derzhavnyi universytet vnutrishnikh sprav, 2010. S. 54–64.
9. Cherniavskyi S. Finansove shakhraistvo: metodolohichni zasady rozsliduvannia: monohr. Kyiv: Khai-Tek Pres, 2010. 624 s.