

Effectiveness of Legal Anti-Corruption Mechanisms in the Financial Sector

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Abstract

The relevance of the issue under research is determined by the growing corruption in the financial sector during the last decades. Combating corruption in this field will depend on the effectiveness of the legal anti-corruption mechanisms in the financial sector. The aim of the article is to analyse the effectiveness of legal anti-corruption mechanisms in the financial sector using the case of Ukraine and to provide recommendations for increasing such effectiveness. The factors that reduce the effectiveness of legal anti-corruption mechanisms in the financial sector of Ukraine were identified through content analysis, doctrinal approach, comparative methods, analysis of legal acts and abstract logical method. As a result of the research, directions for increasing the effectiveness of such legal mechanisms are proposed. The recommendations formulated in the work can be applied to the improvement of such mechanisms both in Ukraine and in other countries, in particular EU countries. Future research prospects may include providing recommendations for improving the effectiveness of legal anti-corruption mechanisms in the financial sector of other countries, taking into account their specifics.

Keywords: Anti-corruption legislation, corruption prevention, legal mechanisms, finance, financial sector.

Introduction

Over the past decades, the issue of corruption in the financial sector has become increasingly relevant. Numerous studies of ways of conceptualising or

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defining corruption have been conducted. The meaning of corruption varies, as it can refer to both a sector and a group of independent companies (Binhadab et al., 2021; Malik & Froese, 2022). Overcoming corruption is a priority among the sustainable development goals proposed by the UN.

The financial sector is crucial for adequately functioning micro- and macro-level economic agents (Prykaziuk et al., 2023; Paryzkyi et al., 2023). Corruption in the financial sector can take different forms. These include misappropriation and misuse of funds etc. (Colonnelli et al., 2022). Other types of criminal activity in the financial sector include breaches of confidentiality, distribution or receipt of criminal proceeds, and using private information for personal gain. In addition, a significant part of corruption in the financial sector can be associated with:

- organised crime or criminal behaviour of clients;
- submission of forged documents and attempts to intercept customer data for electronic banking (Ferris et al., 2021; Arayankalam et al., 2021).

The main causes of corruption in a financial organisation are often conditions, corporate structure, and nature (Krishnamurti et al., 2021; Nese & Troisi, 2019). The conditions may be related either to the personal desires or ambitions of the employees or managers of the organisation or to the pressures they face to achieve their goals (Prokopenko et al., 2022). The second group of factors contributing to corruption is the inadequacy of anti-corruption mechanisms. A third component is the impunity (Arayankalam et al., 2021).

Financial institutions try to limit or even stop illegal. The sustainable development goals in finance involve taking into account various factors in financing activities (Troisi & Alfano, 2022).

So, the three strategic pillars of combating corruption and ensuring the stability of financial institutions are:

- existence of a code of conduct;
- availability of a strategy to combat and ensure proper risk management;
- implementation of combating structures and processes.

However, the legal mechanisms are the basis of combating corruption in the financial sector. Therefore, combating corruption in this field will depend on the effectiveness of the legal anti-corruption mechanisms in the financial sector. On the other hand, the theory lacks modern studies of the effectiveness of legal anti-corruption mechanisms in the financial sector. All this necessitates the study of the mentioned issues.

The aim of this article is to analyse the effectiveness of anti-corruption mechanisms in the financial sector using the case of Ukraine and to provide recommendations for increasing their effectiveness.

Research Objectives

1. Determine the problems of the effectiveness of anti-corruption mechanisms in the financial sector of Ukraine;
2. Determine the factors for increasing the effectiveness of anti-corruption mechanisms in the financial sector of Ukraine;
3. Provide recommendations on improving the effectiveness of anti-corruption mechanisms in the financial sector of Ukraine.

Methods

Research Design

The research design is illustrated in Figure 1.

During January-February 2024, the author carried out a content analysis of the literature on the issue under research, as well as the aspects of the problem which have already been considered by the researchers. For this purpose, the author analysed academic articles by European and Ukrainian authors, more than 80% of which were published in 2018-2023. The focus was on publications on the effectiveness of anti-corruption mechanisms in the financial sector.

The author also carried out a content analysis of the current fundamental international legal acts, which are the regulatory and legal basis of combating corruption. The author used only official sources when analysing international acts, in particular official websites of international organisations.

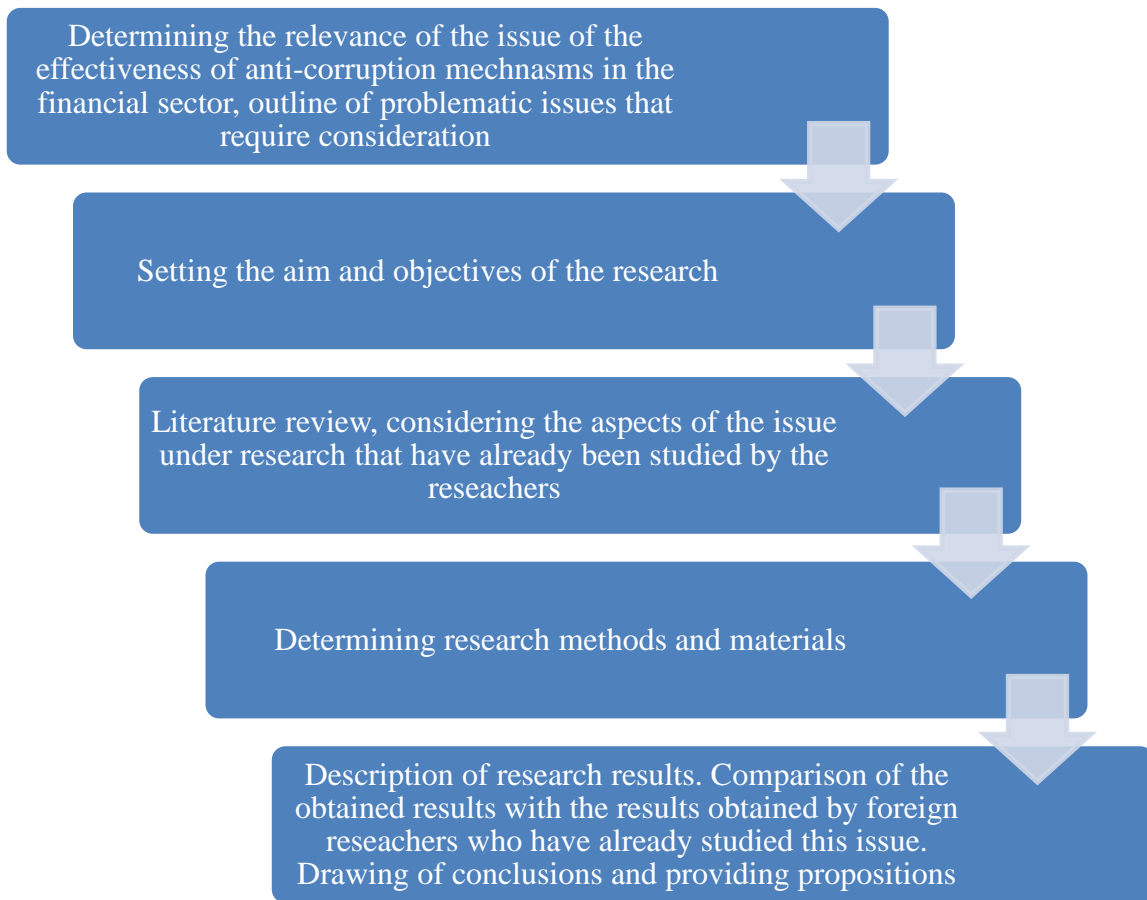


Figure 1. Research design

Methods

The research employs several methods, such as doctrinal approach, comparative method, analysis of legal acts and the method of abstract logic. Comparative method and doctrinal approach were used to study Ukraine's international and national anti-corruption regulatory acts. Special methods of scientific research were also used, particularly the method of interpreting legal norms to study the content of international and national acts of anti-corruption legislation. The method of content analysis was used to analyse literature on the aspects of the problem that have already been considered by the researchers. The method of abstract logic was used to make theoretical generalisations and draw research conclusions.

Sample

A content analysis of literature was carried out, academic articles by European and Ukrainian authors were analysed, more than 80% of which were published in 2018-2023. The main attention was paid to recent academic periodicals of the EU countries related to the phenomenon of corruption and the prevention and counteraction of corruption in the financial sector. An analysis of the fundamental international legal acts, the regulatory and legal basis for combating corruption was carried out. Acts of the national anti-corruption legislation of Ukraine were studied.

Literature Review

Several researchers considered the problem of corruption in the financial sector and the legal anti-corruption mechanisms. The studied academic literature provides different definitions of the phenomenon of corruption, which focus on different aspects of the damage caused by the institutional and societal dimensions of corruption (Grundler & Potrafke, 2019; Akkoyunlu & Ramella, 2020) or on the procedural aspects of corruption mechanisms (Knack, 2007).

The authors note that the financial sector is fundamental in driving the growth of any society (Lim et al., 2023). Corruption is one of the main obstacles to the rule of law and human rights in the financial sector. It is currently a challenge for the entire financial sector, including financial markets, international finance, government finance, corporate finance, and personal finance. Corruption is the most persistent obstacle to sustainable development. Corruption in the financial sector distorts competition, discourages local and foreign investment, and reduces growth (Troian et al., 2023). Such activity creates obstacles to the activity and development of other companies that comply with the rule of law. Organised crime and corruption have a displacement effect. The situation is more alarming in developing economies, as job uncertainty, mistrust and dissatisfaction are widely observed between staff and employers (Lim et al., 2023). Corruption among financial institutions undermines trust in institutions and markets at home and abroad (Cole et al., 2021). This leads to a decrease in people's trust in the institute and may cause the company's decline.

Corruption in the financial sector and the mechanisms of combating it, as a multidisciplinary issue, are studied by researchers from various fields, including academic researchers of finance. As the economic and financial ecosystem is linked to globalisation, information technology (Lim, 2022), and the Internet, the researchers' academic interest has aligned with it, and a considerable amount of literature has accumulated since then. However, the research is fragmented, with articles discussing different topics in different contexts. There is no study that

would contain a discussion or review of the very issue of the effectiveness of anti-corruption mechanisms in the financial sector.

There are only a few examples of literature related to this area where certain aspects of this issue are considered. For example, Khelil et al. (2021) provide a review of empirical evidence on the economic impact of political connections and political corruption on auditors' behaviour in accounting and finance. Schnatterly et al. (2018) review the literature and provide insight into the antecedents of CEO misconduct.

The researchers of anti-corruption mechanisms in the financial sector note that establishing strong institutions is one of the key challenges of development and the main factor in preventing corruption. Higher financial control bodies are particularly important among them, as they play a key role in ensuring effective financial management and, therefore, accountable and transparent governance (Gustavson & Sundstrom, 2018). Independence is an important characteristic of control bodies and can determine their effectiveness in combating corruption. To achieve this effectiveness, they must be completely independent of national governments, although there are attempts to limit their independence.

Gustavson and Sundstrom (2018) point to the diversity of powers and the specific nature of audit duties of supervisory authorities in different countries and identify the differences in structure, professionalism, size, independence of resources and transparency. External public audit is mandatory to ensure public sector accountability (Cordery & Hay, 2019; Kurbatova et al., 2022). Control bodies can contribute to preventing corruption through detection or deterrence, depending on their organisation, strategy, political culture and perception of corruption. Their communication policy is important for increasing the transparency of information and its effectiveness. Effective communication with stakeholders, ensured by increasing the degree of transparency of information, is key for public and private organisations (Hategan, 2021). So, it is appropriate to build a critical review of the industry as a whole, and this study aims to provide a comprehensive and in-depth review of the current state of anti-corruption mechanisms in financial institutions using the case of Ukraine. Lim (2022) stated that providing a compelling case for closing existing gaps is equally important. Therefore, coverage of the effectiveness of anti-corruption mechanisms in the financial sector is also important.

Results

The conducted analysis showed that the main legislative act on combating corruption in Ukraine is the Law "On Prevention of Corruption" of 2014. This Law establishes the legal and organisational foundations for combating corruption in

Ukraine (Figure 2). The Law also contains regulations that directly affect the financial sector.

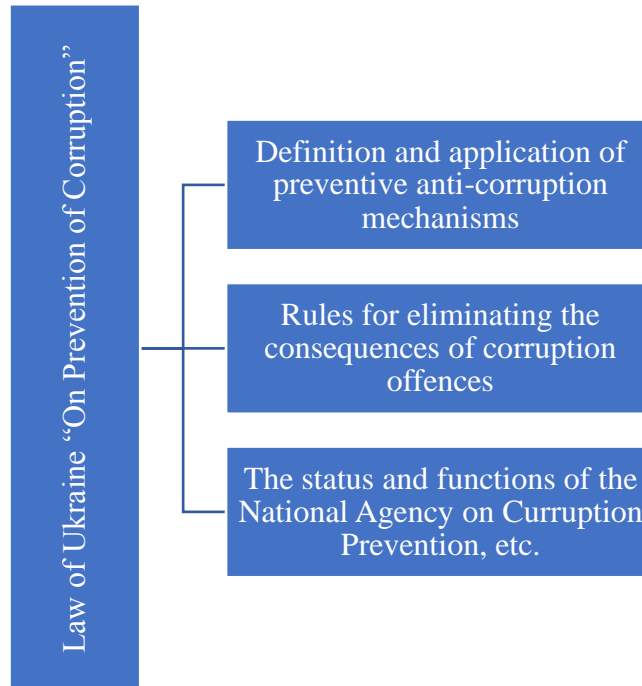


Figure 2. Anti-corruption mechanisms in the financial sector of Ukraine

It should be noted that one of the important events for ensuring the effectiveness of combating corruption in the financial sector of Ukraine is the adoption in 2015 of the Law of Ukraine “On Transparent Use of Public Funds” (Verkhovna Rada of Ukraine, 2015). The Law regulates the creation of the portal for open use of public funds — E-Data, which is the largest open database of public finances in Ukraine. Such databases allow the Ukrainian public to:

- have access to information about budget expenditures and thus control this process;
 - conduct journalistic investigations for journalists and present the results to the public;
 - initiate prosecution of offenders through law enforcement agencies
- (Figure 3).

Despite the progressiveness of the new Law of Ukraine “On the Accounting Chamber”, which regulates the state’s external financial audit, it contains shortcomings. In particular, the powers of the Accounting Chamber do not extend to local budgets unless there is a request by the relevant local self-

government bodies to verify the implementation of local budgets. This also applies to all participants in budgetary legal relations, authorised in the distribution and spending of budget funds, particularly regarding their effective and targeted use. There are gaps and contradictions in the legislation that regulates state control in the budgetary sphere. They relate to the interaction of the Accounting Chamber (the state external financial audit body) and the State Audit Service (the state internal financial audit body) and the procedures and forms of their cooperation, which are not properly regulated.

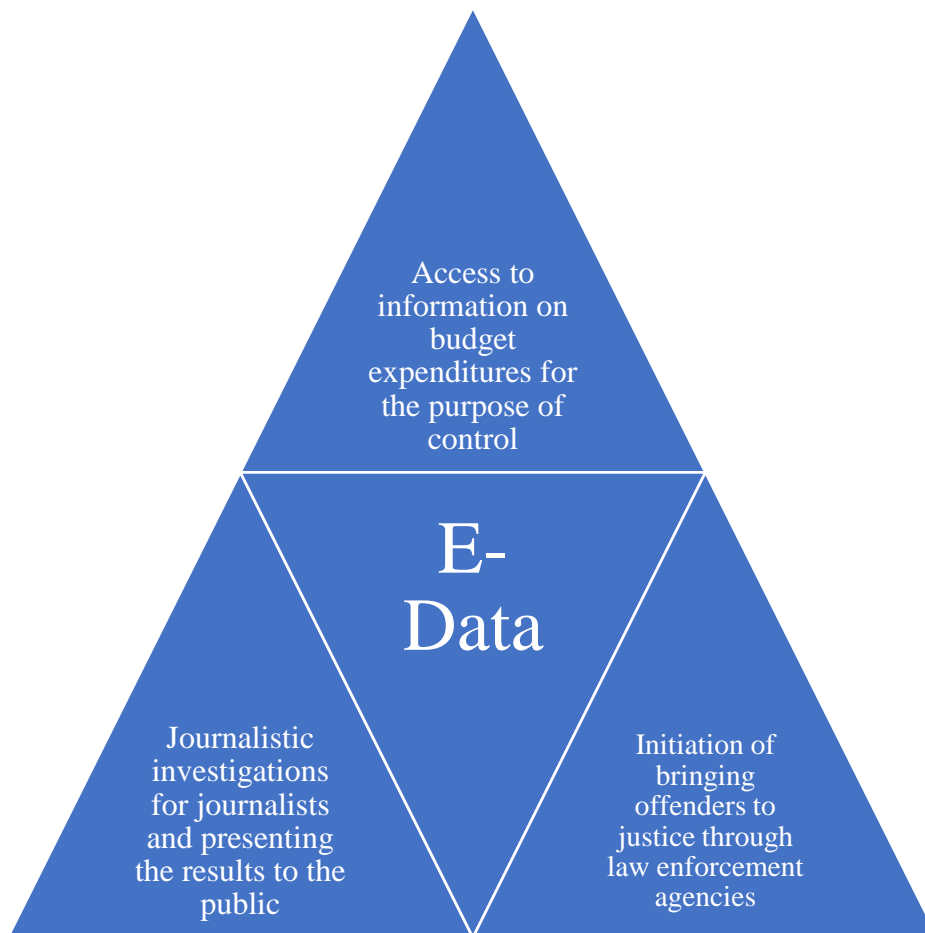


Figure 3. Possibilities of the E-Data portal for the Ukrainian public in combating corruption

They relate to the interaction of the Accounting Chamber (the state external financial audit body) and the State Audit Service (the state internal financial audit

body) and the procedures and forms of their cooperation, which are not properly regulated.

Important factors that reduce the effectiveness of anti-corruption mechanisms in the financial sector of Ukraine are:

- problems in the legislative process, in particular, the untimely adoption of laws on the State budget and decisions on local budgets, which lead to corruption risks in the distribution of funds;
- the general nature of the budget expenditure items, which gives managers of budget funds the opportunity to make subjective decisions regarding their use, which creates corruption opportunities;
- specifics of the implementation of the annual budget, which consists in mandatory compliance by the manager or recipient with the terms of receipt (transfer) of budget funds, which may contribute to corruption risks;
- insufficient bringing of officials to administrative and criminal responsibility for corruption offences;
- lobbying and support of the interests of certain political groups in the Verkhovna Rada of Ukraine, which leads to corrupt actions during the distribution of budget funds.

The ineffectiveness of the legislative provisions relating to the legal responsibility of private law subjects for illegal actions in the budget sphere caused by corruption conspiracies, proposals or the demand for undue benefit, reduces the effectiveness of the anti-corruption activities. More legal entities under private law enter into budgetary legal relations as recipients of budget funds for implementing programmes or recipients of targeted loans from the budget. Among them, officials are involved in corruption crimes defined by the Criminal Code of Ukraine and related to the budget sphere. Such crimes are investigated by investigators of the Economic Security Bureau of Ukraine, who have access to limited information, mainly regarding providing subsidies to citizens or controlling tax legislation.

Limited public participation in the budget process and ignoring the opinion of citizens regarding financial problems are not effectively solved in Ukraine. Compared to other countries, such as Great Britain, the United States, France, and Germany, which participated in the Open Budget project, the E-data portal, which contains the largest database of public finances, is not efficient enough. This does not allow citizens to receive up-to-date information and participate in the budget process, which can increase the corruption rate in public finances.

The following factors can increase the effectiveness of anti-corruption mechanisms in the financial sector of Ukraine as a subject of the international legal order:

1. Ukraine's accession to universal international conventions on the problem of corruption. This will be a key step for the country's integration into the international community as a subject of the anti-corruption legal order. Several international documents have been adopted internationally during the last decades. The UN was an important forum for discussing and adopting such decisions. In particular, these conventions include:

- The 1997 United Nations Convention against Transnational Organized Crime (Verkhovna Rada of Ukraine, 1997): this convention contains provisions requiring parties to take measures to criminalise various crimes, including counterfeiting and bribery of public officials, that may be related to the budget process (LIGA 360, 1997).
- The 2000 United Nations Convention against Transnational Organized Crime. The purpose of this convention is to promote cooperation between states in combating transnational organised crime. This is important because corruption can be a problem not only within the country but also abroad (Verkhovna Rada of Ukraine, 2000).
- The 2003 United Nations Convention against Corruption. This convention aims to apply and improve measures to effectively prevent corruption. It obliges states to take action to prevent corruption in public finances (Verkhovna Rada of Ukraine, 2003).

These conventions create a theoretical background for adapting national legislation and defining the principles of anti-corruption policy of the participating states. They are an important legal instrument.

2. Joining regional anti-corruption conventions. In particular, participation in regional anti-corruption conventions is important for Ukraine. Cooperation between states at the regional level is currently deepening, which has led to the adoption of a significant number of international treaties under the Council of Europe, the OECD, the European Union, the African Union, and the Organization of American States. Conventions concluded under the Council of Europe and the Organisation for Economic Co-operation and Development (OECD) are particularly important for Ukraine:

- Council of Europe: in 1999, the Council of Europe adopted the Criminal Law Convention on Corruption, which criminalises bribery of national and foreign public officials. The convention also obliges member states to create effective legal remedies for victims of corruption;
- OECD: in 1999, the OECD Anti-Bribery Convention entered into force. This convention establishes criminal liability for corruption in international commercial affairs and is monitored by the OECD working group.

3. Implementation of international anti-corruption standards developed by intergovernmental and non-governmental organisations. These international documents, which are advisory in nature but recognised as powerful guidance, include the UN Resolution on Crime Prevention and Criminal Justice, the International Code of Conduct for Public Officials and the UN Declaration on Combating Corruption in International Business Transactions. These documents became the basis for the creation of international regulatory acts, establishing standards for preventing corruption, including the sphere of public finances.

In 1997, the Council of Europe adopted twenty guiding principles against corruption, which became one of the first international documents setting anti-corruption standards. Later, the Model Code of Conduct for Public Servants (2000) and the Uniform Rules for Combating Corruption in the Financing of Political Parties and Election Campaigns (2003) were adopted. These principles, although a source of “soft law”, required the creation of special state bodies to prevent and combat corruption, and their main provisions became the basis of the Criminal Law Convention on Corruption.

4. Adaptation of national legal anti-corruption mechanisms to European standards under the signed 2014 Association Agreement between Ukraine and the EU (Verkhovna Rada of Ukraine, 2014a). The European integration course of Ukraine determines not only the internal but also the external country’s financial strategies. The agreement envisages a gradual rapprochement with the EU in combating corruption, recognising this problem as one of the key problems. The document establishes the principles of cooperation, particularly in combating corruption, and introduces new methods, including administrative assistance and legal support. In this context, Ukraine is obliged to bring its legislation in line with the requirements of Annex XLIII to Chapter VI of the Agreement, which deals with financial cooperation and combating fraud.

5. Intensive cooperation with international organisations in developing and implementing anti-corruption policy at the international level. The activities of these organisations involve carrying out various measures to prevent and counter corruption. One such organisation is the Anti-Corruption Network for Eastern Europe and Central Asia, which promotes the region’s exchange of experience and anti-corruption reforms. In this context, an anti-corruption action plan was developed and signed for several countries, including Ukraine.

Furthermore, in 1999, the Group of States against Corruption (GRECO) was established within the Council of Europe to monitor the implementation of anti-corruption standards. Ukraine became a member of GRECO after the entry into force of the Convention against Corruption in 2006. This group assists member states in strengthening anti-corruption standards and monitors their implementation.

By joining GRECO, Ukraine undertook participation in the process of mutual evaluation in this group.

6. The active work of international non-governmental organisations, particularly Transparency International, is an important element of the international anti-corruption legal order. Transparency International, which has more than 100 national offices, investigates and combats corruption around the world. Its Corruption Perceptions Index, based on data from independent financial and human rights experts, is an important tool for assessing the corruption rate. Moreover, the organisation provides a forum for sharing experiences and identifying shortcomings in national anti-corruption strategies. It also encourages states to carry out the necessary reforms.

7. Protection of Ukraine's financial interests in cooperation with international financial organisations. The terms of Ukraine's financing, particularly from the IMF, are defined in Letters of Intent and Memorandums, including Ukraine's obligations to combat corruption and carry out reforms. According to the Memorandums, Ukraine undertook to strengthen the system of asset declaration, fight against money laundering and the financing of terrorism, and prevent any manifestations of corruption. The Memorandums also emphasise the transparency of the electronic declaration of assets of politically significant persons and the provision of access to these declarations to the National Anti-Corruption Bureau of Ukraine.

8. Participation in international conferences and summits on combating corruption. The PACE (Parliamentary Assembly of the Council of Europe) Anti-Corruption Platform, launched in 2014, creates an opportunity for dialogue and promotes transparency and honesty in government activities. It brings together parliamentarians from 47 member countries of the Council of Europe and non-member countries, experts and other interested parties to share experiences and discuss methods of combating new forms of corruption.

9. Cooperation with other countries in preventing and countering corruption and in returning funds and property that were illegally acquired. Ukraine's legislation defines international cooperation in this area, including the Law on the Prevention of Corruption and ratified anti-corruption conventions (Verkhovna Rada of Ukraine, 2014b).

The selected factors for increasing the effectiveness of legal anti-corruption mechanisms in the financial sector of Ukraine are as follows: First, the role of Ukraine as a participant in the international anti-corruption legal order, which cannot leave its policy unchanged in accordance with international norms. Second, despite a wide range of international documents in the field of anti-corruption, it cannot be said that they have been effectively implemented in Ukraine. The budget

area is a special concern, as it is of great importance for the financial system and the economy as a whole.

Discussion

The anti-corruption mechanisms in the financial sector and problems of their effectiveness are the subject of many studies in the scientific community. Researchers recognise that corruption is a crime and a pandemic with various consequences for the sustainable development of the regional and global economy and note the importance of anti-corruption legislation (Beesley & Hawkins, 2022; Troisi & Alfano, 2022; Teichmann et al., 2020). Only effective legal mechanisms within the global anti-corruption strategy can prevent it (Prodan, 2023).

Researchers do not deny the need for effective anti-corruption mechanisms in the financial sector. However, different country-specific ways of increasing its effectiveness may be offered (Prodan, 2023). In particular, Gustavson and Sundstrom (2018) emphasise establishing strong institutions to successfully combat corruption in the financial sector. Among them, higher financial control bodies are of particular importance, and they play a key role in ensuring effective financial management and, therefore, accountable and transparent governance. Gustavson and Sundstrom (2018) point to the diversity of powers, the specific nature of audit duties of supervisory authorities in different countries, and differences in structure, professionalism, size, independence of resources, and transparency. Other researchers, Cordery and Hay (2019), distinguish external public audit as mandatory for ensuring public sector accountability. Control bodies can contribute to preventing corruption through detection or deterrence, depending on their organisation, strategy, political culture and perceptions of corruption (Hategan, 2021). At the same time, it is undeniable among the scientific community that the development of legal anti-corruption mechanisms is an important tool in the fight against corruption in all aspects of the financial system (Arayankalam et al., 2021).

Conclusions

So, effective anti-corruption mechanisms in the financial sector are the basis of combating corruption. The analysis of the effectiveness of anti-corruption mechanisms in the financial sector of Ukraine identified factors that reduce the effectiveness of such mechanisms. They include the problems in the legislative process, in particular, the untimely adoption of laws on the State budget and decisions on local budgets, the general nature of budget expenditure items, etc.

The above-mentioned recommendations for improving the efficiency of the anti-corruption mechanisms in the financial sector of Ukraine can be applied to improving such mechanisms both in Ukraine and in other countries, particularly EU

countries. Research prospects may include the provision of recommendations for improving the effectiveness of legal anti-corruption mechanisms in the financial sector of other countries based on their specifics.

Recommendations

- Ukraine's accession to universal international corruption-related conventions;
- joining regional anti-corruption conventions;
- implementation of international anti-corruption standards developed by intergovernmental and non-governmental organisations;
- adaptation of national anti-corruption legal mechanisms to European standards within the scope of the Association Agreement signed in 2014;
- intensive cooperation with international organisations in the development and implementation of anti-corruption policy at the international level;
- the active work of international non-governmental organisations, in particular Transparency International, as an important element of the international anti-corruption legal order;
- protection of Ukraine's financial interests in the context of cooperation with international financial organisations;
- participation in international conferences and summits on combating corruption;
- cooperation with other countries in preventing and countering corruption and returning illegally acquired funds and property.

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