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## Legal tools of security of the financial sector of Ukraine

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### Abstract

The structure of crimes in the financial and economic sphere is analyzed by means of the dialectical method. Based on the analysis of the latest legislative and theoretical achievements, applied to the issues of legal regulation of the studied financial and legal relations, scientific approaches are substantiated and proposals for improvement of regulations in this area are developed. In particular, economic security is viewed through the prism of the state's potential to ensure independent development, stability of civil society and its institutions, sufficient defense potential and its ability to protect national economic interests from internal and external threats. It is proposed to supplement Article 1 of the Law of Ukraine "On National Security of Ukraine" with the term "economic security" as a state of the national economy providing resilience to threats (exogenous and endogenous), ensuring a high level of competitiveness in the global economic space, to strengthen the comprehensive development. In the conclusions of the case, the convenience of implementing macroprudential tools as one of the dominant primary sources of information for risk assessment activities in the policies of the Directorate of Economic Security is supported.

**Keywords:** financial security; criminal violations; macroprudential policy; financial risks; economic and legal relations.

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## Herramientas legales de seguridad del sector financiero de Ucrania

### Resumen

Mediante el método dialéctico se analiza la estructura de los delitos en el ámbito financiero y económico. A partir del análisis de los últimos logros legislativos y teóricos, aplicados en los temas de regulación jurídica de las relaciones financieras y jurídicas estudiadas, se fundamentan los enfoques científicos y se desarrollan propuestas de mejora de la normativa en esta materia. En particular, la seguridad económica se ve a través del prisma del potencial del Estado para asegurar el desarrollo independiente, la estabilidad de la sociedad civil y sus instituciones, suficiente potencial de defensa y su capacidad para proteger los intereses económicos nacionales de las amenazas internas y externas. Se propone complementar el artículo 1 de la Ley de Ucrania «Sobre la seguridad nacional de Ucrania» con el término «seguridad económica» como un estado de la economía nacional que proporciona resiliencia a las amenazas (exógenas y endógenas), garantizando un alto nivel de competitividad en el espacio económico mundial, para fortalecer el desarrollo integral. En las conclusiones del caso, se fundamenta la conveniencia de implementar herramientas macroprudenciales como una de las fuentes de información primarias dominantes para las actividades de evaluación de riesgos en las políticas de la Dirección de Seguridad Económica.

**Palabras clave:** seguridad financiera; infracciones penales; política macroprudencial; riesgos financieros; relaciones económicas y jurídicas.

### Introduction

At the present stage, Ukraine is in a state of financial instability, caused by some problems not only financial but also legal, political, social, martial law, and several external and internal factors that destroy the state's potential. However, government officials, the financial sector, and economists characterize this stage as a path to the national economy's development and transformation.

In today's conditions, the issue of choosing ways to ensure economic security ensuring sustainable financial and economic development is of particular importance. In Ukraine, there is a need not just for adjustment but for forming a new paradigm of financial and economic security at various levels of government. Due to the active development of the financial system, technological improvement of financial transactions, and the penetration

of transnational crime into national economies, the problem of preventing and combating economic crime is becoming global. By becoming a system of threats to financial markets, particularly national ones, economic crime becomes a problem for national economic security.

### **1. Methodology of the study**

The article is based on general and special methods of scientific knowledge. Based on general scientific dialectical approach, economic and legal nature of economic crime is considered. With the help of formal-legal analysis of the current legislation, the content was clarified, and shortcomings of normative-legal regulation were revealed; functional system method was used to analyze the main aspects of economic security; formal-logical – to monitor the peculiarities of legal regulation; technical and legal analysis – in the interpretation of procedural legal norms, the disclosure of the content of concepts, which allowed to identify certain gaps in the legal regulation of the object of study.

### **2. Analysis of recent research**

The category of «economic security» and its structural, functional components in Ukraine has been the subject of scientific research recently, since independence, the formation of a national security environment, and the formation of national economic interests.

Despite making a significant contribution to modern theory and practice of economic security by legal means (Vasylevych *et al.*, 2022; Derhaliuk *et al.*, 2022; Nusratullin *et al.*, 2022; Chernyavsky *et al.*, 2017; Savina, 2018; Orlov, 2015), the issue of implementing unified tools for regulating economic security issues, was considered in fragments or within a separate economic and procedural legal plane and required further investigation.

The purpose of the article is to monitor the economic and legal approach to interpreting the essence of economic security; analyze trends in criminal offenses in financial and economic relations; substantiate proposals for improving the relevant normative categorical-definitive apparatus.

### **3. Results and discussion**

New multi-vector challenges and threats to the security environment caused by endogenous and exogenous factors are increasingly heard in modern society. The COVID pandemic 2019 changed the approaches to the

interpretation of economic security and its level, encouraging deepening the analysis of this phenomenon in all its manifestations. As a social phenomenon, economic security is a platform for well-being because the state of stability and relative confidence is a certain motivator of social development.

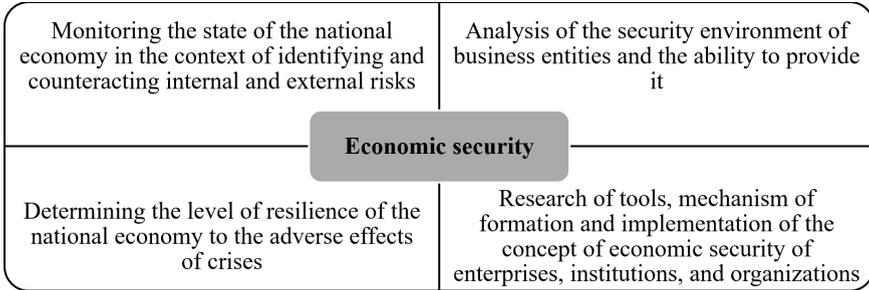
Article 3 of the Constitution of Ukraine (Constitution of Ukraine, 1996) defines a person, his life and health, honor and dignity, inviolability, and security as the highest social value. Since human activities directly affect all sectors of the national economy, the issue of economic security in the financial sector is important.

Economic security is the state economy, which is determined by a universal platform that reflects the protection of socio-economic relations at all levels of government, from the state to the citizen. Economic security of the financial sector should be based on certain priorities: ensuring the economic independence of the state, guaranteeing citizens a decent standard of living, etc.

The concept of economic security of Ukraine defines the essence of economic security as:

...the ability of the national economy to ensure its free, independent development and maintain the stability of civil society and its institutions, as well as sufficient defense potential of the country in case of adverse events, protection of national economic interests from external and internal threats (Concept of Economic Security of Ukraine, 1999: 56).

The Concept identifies the main threats to Ukraine's national security and reveals their essence, considers the security of real and financial sectors of the economy, functional and reproductive aspects of economic security, and provides integrated indicators of Ukraine's economic security (Concept of Economic Security of Ukraine, 1999). There is no single interpretation of the category of «economic security» in the scientific community. This phenomenon is considered in different areas (Figure 1).



**Figure 1. Interpretation of the category of economic security.**

In most scientific papers, the concept of “economic security” is seen as the ability of the economy to ensure its free and independent development, the stability of civil society and its institutions, as well as sufficient defense potential of the state under adverse conditions and scenarios; the ability of the state to protect national interests.

Economic security is a universal category that represents the protection of all subjects of socio-economic relations at all levels of government, from the state to each citizen.

Having analyzed the economic security systems of countries with a high level of economic development, we can conclude that the most effective economic security systems are Germany, France, Britain, Italy, and Spain. The peculiarities of the state policy have oriented in the vector of increasing the efficiency level of various spheres of the national economy, and the states mentioned above recognize the observance of a high level of security as a priority.

Following the current order of the Ministry of Economic Development and Trade of Ukraine №1277 of 29.10.2013, they approved Guidelines for calculating the level of economic security of Ukraine (On Approval Of Methodological Recommendations On Calculation Of The Level Of Economic Security Of Ukraine, 2013), which interprets economic security as “... state of the national economy, which allows maintaining resilience to domestic and external threats, ensuring high competitiveness in the global economic environment and characterizes the ability of the national economy to sustainable and balanced growth.

The components of economic security include industrial security, demographic security, energy security, foreign economic security, investment, and innovation security, macroeconomic security, food security, social and financial security. In turn, financial security contains

the following components: banking security; security of the non-banking financial sector; debt security; budget security; currency security; and monetary security.

**Figure 2. Components of financial security.**

Banking security	the level of financial stability of the country's banking institutions, which allows ensuring the efficiency of the country's banking system and protection from external and internal destabilizing factors, regardless of the conditions of its operation
Security of the non-banking financial sector	the level of development of stock and insurance markets, which allows to fully meet the needs of society in these financial instruments and services
Budget security	the state of ensuring the solvency and financial stability of public finances, which enables public authorities to perform their functions as effectively as possible
Debt security	the level of internal and external debt of the state, taking into account the cost of its services and the efficiency of internal and external borrowing based on optimality, is sufficient to meet urgent socio-economic needs that do not threaten the sovereignty of the state and its financial system
Monetary security	the state of the monetary system, which provides all subjects of the national economy with quality and affordable credit resources in amounts and conditions favorable for achieving economic growth of the national economy
Currency security	the state of exchange rate formation, which has characterized by high public confidence in the national currency its stability, creates optimal conditions for the progressive development of the domestic economy, attracting foreign investment, Ukraine's integration into the world economic system, and protects against shocks in international currency markets

(On Approval of Methodological Recommendations on Calculation of the Level of Economic Security of Ukraine, 2013).

Over the past ten years, the state of financial security (with the average value of financial security for this period at 42 percent of the optimal value)

was assessed as unsatisfactory due to persistent state budget deficits and associated significant debt burden, insufficient long-term development investment lending to the economy and the stock market. In 2019, the level of financial security decreased by four percentage points (compared to 2018) to 42 percent and by three percentage points to 38 percent in the first half of 2020 compared to the level in the first half of 2019 (Economic Security Strategy for the Period Until 2025, 2021).

The current state of economic development, globalization, and the pandemic of the acute respiratory disease COVID-19 caused by the coronavirus SARS-CoV-2 has led to reduced financial security and the formation of critical risks, including slowing global economic growth; rising prices for raw materials and energy; global acceleration of inflation; public debt growth trend; limited production resources; shadowing of the economy; escalation of the military conflict; cybersecurity; political and economic situation; popularization of legalization (laundering) of proceeds from crime.

According to the requirements of the current Criminal Code of Ukraine (Section VII) (Criminal Code of Ukraine, 2001) the main offenses that threaten financial security include:

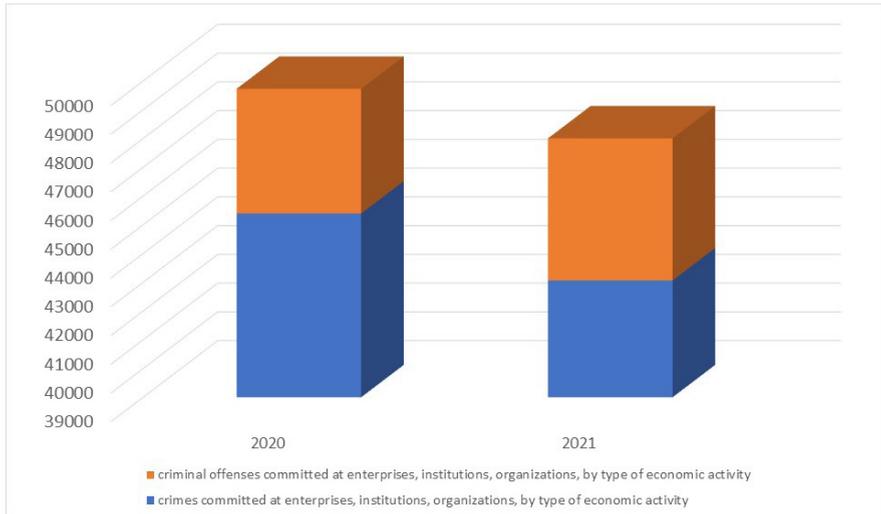
- Manufacture, storage, purchase, transportation, shipment, import to Ukraine for use in the sale of goods, sale of counterfeit money, government securities, state lottery tickets, excise tax stamps or holographic security features (article 199 Criminal Code of Ukraine).
- Illegal actions in respect of remittance documents, payment cards and other means providing access to bank accounts, electronic money and equipment for their production (article 200 Criminal Code of Ukraine).
- Smuggling (article 201 Criminal Code of Ukraine).
- Legalization (laundering) of property proceeding from crime (article 209 Criminal Code of Ukraine).
- Willful violation of the law on prevention and counteraction to legalization (laundering) of proceeds from crime, terrorist financing, and financing of weapons of mass destruction (article 2091 Criminal Code of Ukraine).
- Evasion of taxes, duties or other compulsory payments (article 212 Criminal Code of Ukraine).
- Bringing a bank to insolvency (article 2181 Criminal Code of Ukraine).
- Making bankrupt (article 219 Criminal Code of Ukraine).

- Violation of the procedure for maintaining a database of depositors or the procedure for reporting (article 2201 Criminal Code of Ukraine).
- Falsification of financial documents and reporting of a financial organization, concealment of insolvency of a financial institution or grounds for revocation (cancellation) of a financial institution's license (article 2202 Criminal Code of Ukraine);
- financial fraud (article 222 Criminal Code of Ukraine).
- Counterfeit of documents submitted for registration of securities (article 2231 Criminal Code of Ukraine).
- Production, sale and use of counterfeit non-government securities (article 224 Criminal Code of Ukraine).
- Illegal collection for the purpose of use or use of information that constitutes banking or trade secrets (article 231 Criminal Code of Ukraine).
- Disclosure of trade or banking secrets (article 232 Criminal Code of Ukraine).

Economic crime in Ukraine and some of its types have been characterized by a steady increase in latency, the spread and improvement of shady schemes of misuse of budget funds, manifestations of corruption by government officials and management within the exercise of their powers, and more.

Due to the active development of the financial system, technological improvement of financial transactions, the penetration of transnational crime into national economies, the problem of preventing and combating economic crime is becoming global. By becoming a system of threats to financial markets, particularly national ones, economic crime becomes a problem of national economic security.

The criminalization of economic relations appears as one of the main threats to Ukraine's economic security. Effective law enforcement is a crucial factor in neutralizing this threat (Chernyavsky *et al.*, 2017).

**Figure 3. Dynamics of criminal offenses in the economic sphere in 2020-2021.**

(Report on criminal offenses committed at enterprises, institutions, organizations by type of economic activity, n/y).

The marker is reducing the so-called “economic crime,” as there has been an evident trend in the total number of registered offenses since 2018 (2018 - 58606; 2019 - 56903; 2020 - 49728; 2021 - 48005). However, in our opinion, this positive trend is entirely conditional because the implementation of control measures by law enforcement agencies in the conditions of the declared quarantine, in particular, is limited.

If we analyze the trend of criminal offenses in the financial sector, the dynamics remain similar.

**Table 1. Criminal offenses in the financial sector**

Type of	2017		2018		2019		2020		2021	
	number	%								
monetary intermediation	916	21,97	1271	27,48	1127	35,19	868	24,06	853	27,69
activities of holding companies	5	0,12	3	0,07	1	0,03	3	0,08	6	0,19

trusts, funds, and similar financial entities	43	1,03	10	0,22	17	0,53	9	0,25	15	0,49
provision of other financial services, except insurance and pension provision	2762	66,25	2746	59,39	1729	53,98	2432	67,41	1897	61,57
insurance, reinsurance, and private pension provision	54	1,3	185	4,0	137	4,28	104	2,88	32	1,04
ancillary activities	389	9,33	409	8,84	192	5,99	192	5,32	278	9,02
<b>Together</b>	<b>4169</b>	<b>100</b>	<b>4624</b>	<b>100</b>	<b>3203</b>	<b>100</b>	<b>3608</b>	<b>100</b>	<b>3081</b>	<b>100</b>

\* (Report on criminal offenses committed at enterprises, institutions, organizations by type of economic activity, n/y).

In general, offenses' number in the financial sector is decreasing, but there is some volatility in their structure by type of economic activity.

A financial investigation has prevented the risks of economic crime and minimized its destructive impact on the stability of the national economy. Financial investigations are activities related to the monitoring, collection, analysis of information on the commission of criminal offenses related to the financial activities of enterprises, institutions, and organizations.

The methodology of financial investigations is regulated by current legislation, in particular, the Criminal Procedure Code of Ukraine, Recommendations FATF «Operational Issues Financial Investigations Guidance» (On the Bureau of Economic Security of Ukraine, 2021).

The mission of the financial investigation is to identify, analyze, capture risks and threats to economic security. The challenge to achieve the purpose of a financial investigation is to establish correlations between the risks and the factors that caused them.

Financial investigations can be a means of identifying predicate socially dangerous acts that were previously unknown and make it possible to identify other persons involved. It is imperative to make the most of financial intelligence throughout such an investigation. It necessitates disseminating

financial information among all law enforcement and other competent authorities by applicable law and should obtain results (Chernyavsky *et al.*, 2017).

The Bureau of Economic Security (On the Bureau of Economic Security of Ukraine, 2021) is the subject of counteraction to offenses in the sphere of the national economy. In turn, the State Financial Monitoring Service of Ukraine is the body responsible for implementing state policy in preventing and combating legalization (laundering) of proceeds from crime, terrorist financing, and financing the proliferation of weapons of mass destruction (Regulations on The Civil Service of Financial Monitoring of Ukraine, 2015).

The Bureau of Economic Security of Ukraine is the central body of executive power entrusted with counteracting offenses that infringe on the functioning of the state economy.

Pre-trial investigation and inquiry had carried out by detective units of the Bureau of Economic Security of Ukraine and the relevant units of inquiry (Article 38 of the CPC of Ukraine). According to Article 41 of the CPC of Ukraine, the Bureau of Economic Security had also assigned to operational units that carry out investigative (investigative) and covert investigative (investigative) actions in criminal proceedings, on the investigator's written instructions prosecutor (Criminal Procedure Code, 2012).

The Bureau of Economic Security of Ukraine operates based on a risk-oriented approach. Risk criteria (article 12) (Macroprudential Policy Strategy of The National Bank of Ukraine), however, are determined depending on: the type of offense, type of illegal action and its nature; features of financial processes; the number of financial losses, etc.

Macroprudential policy tools had used in financial activities to minimize systemic risks in the financial sector.

Macroprudential policy is a set of measures to identify and assess systemic risks for financial stability and mitigate them (Macroprudential Policy Strategy of The National Bank of Ukraine).

The purpose of macroprudential supervision is to ensure financial stability, the ability of the financial system to counter exogenous and endogenous risks, promote economic growth.

An essential feature of macroprudential policy is the permanent use of tools because, in the period of global challenges, crises are cyclical, the probability of their occurrence is evident.

The macroprudential policy cannot eliminate systemic risks but may prevent their excessive accumulation and reduce the likelihood of their implementation. Thus, it increases the economy's stability reduces GDP volatility, which confirms the results (Boar *et al.*, 2017).

A characteristic feature of macroprudential policy is its cyclical nature, which is determined by the economic cycle, in particular:

- determination of systemic risks with the help of quantitative indicators of monitoring the activities of financial-industrial groups, stress testing;
- a sampling of macroprudential tools;
- macroprudential response (risk warning, implementation of macroprudential tools);
- evaluation of the effectiveness of the macroprudential policy.

Macroprudential supervision in the context of permanent systemic risks in the global financial space serves as an effective tool for ensuring financial stability.

In our opinion, it is advisable to implement macroprudential tools as one of the primary sources of information for risk assessment activities.

## **Conclusions**

Economic security is a universal category that reflects the protection of socio-economic relations at all levels of government, from the state to each citizen, by forming a development strategy, increasing competitiveness, financial stability, the invulnerability of the state to these threats. Economic security represents the state's potential to ensure independent development, stability of civil society and its institutions, sufficient defense potential of the state, its ability to protect national economic interests from internal and external threats.

So far, there are no unified approaches to defining economic security, its categorical apparatus, which, in our opinion, is a negative factor because economic security is a component of national security, and its interpretation should acquire a normative format.

We propose to supplement Article 1 of the Law of Ukraine "On National Security of Ukraine" with the term "economic security" as a state of the national economy that provides resilience to threats (exogenous and endogenous), guarantees a high level of competitiveness in the global economic space and represents economic development.

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In our opinion, it is also advisable to implement macroprudential tools as one of the dominant, primary sources of information for risk assessment activities in the Bureau of Economic Security activities.

Paragraph 4 of Article 13 of the Law of Ukraine “On the Bureau of Economic Security of Ukraine” “Complex of measures to assess risks in the economy” should be supplemented with the plot “Macroprudential tools,” amend this article as follows: In the field of economics, there are, in particular, reporting on combating criminal offenses and preventing threats to economic security, analytical reviews, and references of participants in a set of measures to assess risks in the economy (using macroprudential tools), responses questionnaires of the Bureau of Economic Security of Ukraine, the results of a sample analysis of court decisions in criminal proceedings, the results of scientific research, the results of public opinion monitoring.

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