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EU MEMBER STATES PRACTICES IN FIGHTING CORRUPTION IN SOCIAL STATE AID SPHERE: LESSONS FOR UKRAINE

In studying the current directions of further development of the Ukrainian state and society, including the anticorruption activity, a lot of attention is paid to improving the implementation of the Constitution of Ukraine of 1996, according to which Ukraine is proclaimed a welfare state. The article aims to study the EU and EU member states anticorruption practices in the field of state social aid and to argue whether or not to implement them in Ukraine. The object of the research is the corruption in the state social aid field. The subject of the research are the EU member states practices in fighting corruption in social state aid sphere and the possibility of their application in Ukraine. The following methods were used in the study: descriptive, method of analysis of normative documents, modelling, comparative, structural, predictive.

First section of the article gives the overview of the problems in the social sphere, with the welfare state building in the modern Ukraine. The authors concentrate their attention at the spheres, where the social state aid is the most massive and the most vital. Second section of the article shows, that Ukraine doesn't have so far special bodies, that would be responsible only for the anticorruption activity in the state aid sphere. The third section is dedicated to the overview of the bodies in EU member states fighting corruption in (social) state aid sphere, and the Conclusion is the section, where the recommendations for Ukraine are generalized.

As a result of the research, the author highly recommends for Ukraine to use the EU anticorruption experience in the field of the social state aid. Because a lot of principles, practices, approaches of anticorruption fight the EU and its member states use are already in use in Ukraine, it would be logical and wouldn't require long preparations.

Key words: state aid, corruption, social state aid, EU anticorruption practices, reception of the EU anticorruption experience.

Королевська Н. Ю. ПРАКТИКА КРАЇН-ЧЛЕНІВ ЄС У БОРОТБІ З КОРУПЦІЄЮ У СФЕРІ ДЕРЖАВНОЇ СОЦІАЛЬНОЇ ДОПОМОГИ: УРОКИ ДЛЯ УКРАЇНИ

При вивченні сучасних напрямів подальшого розвитку української держави та суспільства, у тому числі в антикорупційній діяльності, значна увага приділяється вдосконаленню виконання Конституції України 1996 року, згідно з якою Україна проголошена соціальною державою. Стаття має на меті дослідити антикорупційну практику ЄС та країн-членів ЄС у сфері державної соціальної допомоги та обґрунтувати, чи застосовувати їх в Україні. Об'єктом дослідження є корупція у сфері державної соціальної допомоги. Предметом дослідження є практики держав-членів ЄС у боротьбі з корупцією у сфері соціальної державної допомоги та можливості їх застосування в Україні. При дослідженні були використані такі методи: описовий, метод аналізу нормативних документів, моделюючий, порівняльний, структурний, прогнозування. У першому розділі статті дається огляд проблем соціальної сфери, пов'язаних з розбудовою соціальної держави в сучасній Україні. Автори зосереджують увагу на сферах, де соціальна державна допомога є наймасовішою та найважливішою. Другий розділ статті показує, що в Україні поки що немає спеціальних органів, які б відповідали лише за антикорупційну діяльність у сфері державної допомоги. Третій розділ присвячений огляду органів у країнах-членах ЄС, які борються з корупцією у сфері (соціальної) державної допомоги, а у Висновку узагальнено рекомендації для України. За результатами дослідження рекомендовано використовувати антикорупційний досвід країн – членів ЄС у сфері соціальної державної допомоги. Оскільки в Україні вже використовується багато принципів, практик, підходів боротьби з корупцією в ЄС та його державах-членах, це було б логічно і не вимагало б довгої підготовки.

Ключові слова: державна допомога, корупція, соціальна державна допомога, антикорупційна практика ЄС, рецепція антикорупційного досвіду ЄС.

Introduction. The modern Ukraine is fighting the corruption very intensively. The country constantly modernizes anti-corruption legislation, studies modern foreign experience in the field, seeks for the international consultations, grants, other helpful resources (most of all, the EU-based, as Ukraine is on its way to the integration to this Union). The modern Ukraine is building the social (welfare) state very intensively. Both of the mentioned vectors of the Ukrainian development are very sharply observed now, because of the COVID-19 pandemic and the economic crisis, caused by it. So, the corruption is the most dangerous and severe in the field of the state aid. The negative effects of the cor-

ruption in this sphere affect both the Ukrainians and Ukraine as a state. That is why the recommendations, how the experience of the EU member states can be used are discussed more and more often.

Literature Review. In relation to Ukraine, the development of national legal science and practice on this issue is of the greatest interest. Researchers address the constitutional foundations of the welfare state, the right to health care (see, for example, [5]), as well as in the context of local self-government (see, for example, [6]). But practically no one studies the problems of corruption in this sphere.

Results and Discussion. *Modern Ukraine as a Social (Welfare) State: Main Spheres of State Aid.*

The COVID-19 pandemic has exacerbated not only the economic but also the social crisis in Ukraine. The connection between the economy and the social status of the majority of the population is a thesis that no one in modern economics disputes, and therefore – in times of economic crisis the state should pay special attention to social problems to solve the welfare state.

In Ukraine the main legislative provisions on the corruption are codified in the Law of Ukraine ‘On Corruption Prevention’ (2014). According to the Ukrainian legislation, corruption is ‘the use by a person referred to in this Law¹ of his / her official powers or related opportunities for the purpose of obtaining an illegal benefit or accepting such a benefit or accepting a promise / offer of such a benefit for himself / herself or others or a promise / offer, or providing an improper benefit to a person referred to in this Law², or at his / her request to other physical or legal persons in order to persuade that person to misuse his / her official powers or related opportunities’.

In this section it is also important to mention, that anticorruption reform of legislation, of the system of the relevant bodies is an ongoing reform since Ukraine proclaimed independence. It was underlined before, that Ukraine gets a lot of help in this area, – for example, now the EU Anti-Corruption Initiative is running – the comprehensive EU anti-corruption program in Ukraine financed by the EU and Denmark and implemented by the Ministry of Foreign Affairs of Denmark. This Program has various important goals further improvement of anticorruption legislation, further improvement of the Ukrainian Parliament’s control over ongoing reform, strengthening the civil society institutions, especially NGOs to help the anticorruption fight – but there are no special goals about fighting corruption in the social state aid sphere – like in the EU and its member states.

The Overview of the Bodies in Ukraine Fighting Corruption. It is important to start with the fact, that, when the independence of Ukraine was proclaimed, the country didn’t have any bodies of public power, specialized in anticorruption field (in 1991).

The modern Ukraine in 2022 has a branched system of anti-corruption bodies. This system grows and expands according to the advices and financial help of the international experts, NGOs – firstly, the EU ones.

It is important to underline, that all of the bodies – elements of this system – deal with the corruption cases related to the social state aid as well. So far Ukraine has no special bodies, that would deal only with such cases.

¹ The list includes mostly the officials of the bodies of state power and local government.

² Ibid.

The first and the main body of the public power with the relevant competence is the National Agency on Prevention of the Corruption. According to the title, the main function of this body is to prevent corruption. It has competence to ‘coordinate’, ‘control and check’, ‘cooperate’, ‘administer’. Nothing specific about the state (social) aid, though.

The investigations in the corruption sphere are mostly held by the National Anti-corruption Bureau of Ukraine. According to the Law of Ukraine ‘On National Anti-corruption Bureau of Ukraine’ (2014), it is a state law enforcement agency with the key objective of preventing, exposing, stopping, investigating and solving corruption-related offences committed by high officials, and averting new ones’. The slogan on this body is ‘Eradicate and prevent’.

The procedural activity in the researched field is mostly guaranteed by the functioning of the Specialized Anti-corruption Prosecution as the part of the Prosecutor’s General Office of Ukraine.

Finding the assets and managing them is in the competence of the National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes (Asset Recovery and Management Agency).

There are two more bodies of the public power in this sphere to mention.

First, the analytic body – the financial intelligence service, like every country has – the State Financial Monitoring Service of Ukraine.

Second state body to mention belongs to the judicial branch of power. Established in spring 2019, the Ukrainian High Anti-Corruption Court is the element of the national court system with the specialization, reflected in its’ title.

Also, the problems with the corruption are so important for Ukraine, that the Head of the state created National Council on Anticorruption Policy as a consultative body to recommend the President what vectors of this policy’s development are the most important.

The Overview of the Bodies in EU Member States Fighting Corruption in Social State Aid Sphere. Across the European Union, Member State legislation defines corruption as “the use of public power for private gain”³. In the context of state aid, corruption in state aid occurs when the public official grants states aid (or allows state aid to be given) in order to further the person’s own private interests.

³ The European Union does not have an anti-corruption law *per se*. Instead, the Council Act of 26 May 1997 encourages EU Member States to adopt the two Council of Europe conventions and the OECD convention in fighting corruption. These conventions provide a legal definition of corruption which guarantees that legal definitions of corruption remain similar across jurisdictions. Ukraine is a signatory to the two Council of Europe conventions (which make bribery and corruption in Ukraine as elsewhere a criminal as well as civil offence).

In general, responsibility of preventing corruption in the giving of state aid, mostly social state aid (by the EU directly and Member States) does not fall to organizations responsible for considering state aid applications.

Figure 1 shows the various institutions responsible for preventing, detecting, investigating and prosecuting corruption at the Union and Member State levels. At the Union level (namely for state aid approved and dispersed by the Commission's Directorate General on Competition), the Internal Audit Service and the OLAF comprise the key pillars in the fight against corruption in state aid⁴. At the Member State level, fighting corruption falls to three echelons – Public Sector Bodies, Law Enforcement Agencies, and state aid Applicants themselves⁵. In neither case does the State Aid Agency (SAA) have the explicit obligation – or competence – to detect or fight corruption⁶.

At the risk of over-simplification, at both the supranational and Member State levels, the basic formula for reducing corruption in state social aid consists of the following formula: anti-corruption = member state internal audit + law enforcement structures. Internal audit detects most corruption in state aid as a result of other irregularities which auditors and inspectors find during their regular supervision of state aid. Recoveries of EU state aid proceeded according to Member State law and institutions. Under the law of almost all EU Member States, any administrative decisions endowing state aid as a result of corruption is automatically void and must be returned (along with damages paid for any distortions to competition arising from that aid).

Internal audit within public sector organisations – at both EU level and at the Member State level – represent one of the key ways of preventing corruption (and other types of fraud) in social state aid. Figure 2 shows the ways in which internal audit is used at each stage of the state social aid process

in order to reduce risks of corruption (and other types of fraud), see [9 – 10].

A key element of internal audit in the EU – at both the Union level and the Member State level – has been increasingly similar definitions of risk. While different member state Public Sector Bodies define risks differently, all Public Sector Bodies have (following internal audit methodologies) used quantitative methods of defining risk. In the context of corruption risk (particularly in state aid), **such a corruption risk would be defined and calculated as the probability of corruption occurring in any particular public sector activity multiplied by the true (rather than reported) financial value at risk**. For example, if €11,000,000 (11 million Euros) aid granted by the German Federal Ministry of Food, Agriculture and Consumer Protection (BMELV) had a 1% probability of being siphoned away in corruption – then the corruption risk would equal €110,000⁷.

Public Sector Bodies in EU Member States do not just wait for finance or accounting departments to do financial audits in order to detect corruption for several reasons⁸. First, financial audit does not check all financial transactions to ensure they are reported correctly. Instead, these financial auditors only provide “reasonable assurance” that the financial reports given by a Public Sector Body reflect reality. Second, financial controllers and auditors in EU Member States will not request a fraud audit to look for corruption unless specific evidence emerges suggesting that corruption has occurred. In practice, such evidence must almost always come from outside of the Body's financial records – as corrupt payments obviously are not recorded. As such, in the EU, a completely corrupt system of state aid can produce “clean” public sector financial audit reports, so it would be an absurdity for the system to rely entirely on their purported accuracy.

⁴ Since the Lisbon Treaty, the European Communities have been consolidated into a single European Union. As such, talk about Union law – even though traditionally First Pillar topics like competition have been referred as Community law.

⁵ We refer to Public Sector Bodies (in capital letters) to refer to all state bodies authorised to give state aid. These may include local government institutions, semi-autonomous government agencies and departments, federal or national ministries and state enterprises and organisations. Applicants (again in capital letters) refers to any organisation – corporation, non-corporate company, or incorporated association or body – qualified to make (and receive) state aid.

⁶ State Aid Agency refers to the government agency (usually a department in a larger ministry) responsible for monitoring state aid. For example, the Department on Concentration and Aid in the French Ministry of Economic Affairs looks after state aid issues in France, while the Department for State Aid in the Bulgarian Ministry of Finance exercises surveillance over national state aid in Bulgaria.

⁷ Many EU Member States have specific regulations outlining how to conduct these risk assessments (which again we could not obtain due to lack of availability online). The example we give provides the simplest possible example (as not all the aid would be stolen). In order to arrive at a more accurate estimate, we would need to calculate the proportion of the aid used to seek the benefits of corrupt consideration and even consider *variances* in our 1% estimate of the probability of corruption. We leave these details for further work.

⁸ Almost all EU Member States have a Supreme Audit Institution which is responsible for providing *reasonable assurance* over the public sector's annual accounts. At the Union level, the European Court of Auditors serves as the Supreme Audit Institution for the EU institutions. We do not discuss the role of Supreme Audit Institutions at the Member State or Union levels as they play a minor (though important) role in the detection of corruption – particularly in state aid. We also avoid discussing them in order to focus on issues of greater relevance to the FAS.

Figure 1

Overview of European Union Institutions Responsible for Preventing Corruption in State Aid

Institution	How to Prevent Corruption?
<i>Union-Level⁹</i>	
(Commission) Internal Audit Service	conducts internal audits (involving Commission funds and Member State funds)
OLAF	works with Member State law enforcement agencies when corruption and/or fraud suspected.
European Court of Auditors	provides assurance for financial figures related to the EU's financial statements. Finds corruption only to extent that bribery and corruption affects other financial figures.
DG-Competition (EU's equivalent of State Aid Agency)	only considers corruption when apparent risk of fraud or corruption
<i>Member-State Level</i>	
Internal Audit	conducts performance, compliance, fraud and assurance engagements related to state aid (as one of many activities)
Internal Inspection in Public Sector Bodies	receives and investigates complaints and conducts internal investigations
Police	receives complaints and collects intelligence related to organised corruption and fraud
Civil Courts	serve as forum for unfair or illegal state aid given as a consequence of corruption. Addresses economic harms of corruption and provides remedies.
Criminal Courts	serve as forum for prosecuting corruption in state aid perpetrated by public officials, businesspersons, and third-parties.
"External" Auditors (in public sector)	considers corruption as part of assurance of government's financial statements. Finds corruption only to extent that bribery and corruption affects other financial figures.
State Aid Agency (SAA)	considers corruption only in cases where obvious corruption risk exists.

Note: The specific agency in charge of detecting corruption from asset declarations and conflict of interest declarations depends on the Member State. In some cases, a separate Commission hold the competence for supervising these declarations; while in other countries, the Public Sector Body itself will conduct initial oversight over these declarations. Source: authors.

Figure 2

Stages and Ways in Which Internal Audit Helps Prevent Corruption⁸

Stage	Role of Internal Audit
Stage 1: Public Sector Body Collects Data The public sector organisation prepares data and report on state aid for submission to SAA.	Managers in Public Sector Body apply internal audit principles to ensure useful and accurate reporting and use of state aid information. More formal internal audit units in the Public Sector Body – based on possible risk – conducts <i>assurance audit</i> on reports. The assurance audit would uncover irregularities suggesting corruption or fraud. Internal audit reports suspicious activities to internal inspection or police (as appropriate or required by law).
Stage 2: SAA compiles all information SAA compiles all information for submission to EU Commission	Managers in SAA use internal audit principles to assess completeness, usefulness, and accuracy of information. Internal Audit in the SAA would – if the annual audit plan identifies this as a large risk – conduct <i>compliance audit</i> .
Stage 3: SAA refers all non-exempt requests to Commission	Internal audit in the SAA would – if the annual audit plan identified this as a risk or if this activity was chosen at random – look to see if decisions made correspond to legal regulations.
Stage 4: Commission considers state aid by all Member States	Internal Audit Service (IAS) audits Commission (DG-Competition) decisions based on risk to see if EU public officials bribed. OLAF may become involved if corruption suspected.
Stage 5: Corresponding financial data reported to Ministry of Finance	Supreme Audit Institution looks at accounts
Stage 6: Reports to EU on how money was spent	Court of Auditors looks at EU accounts

⁹ The 1995 Council "Anti-Corruption" Regulation provides the legal basis for prosecuting corruption in EU institutions. Council Regulation, *On the protection of the European Communities Financial Interests*.

¹⁰ Source: authors.

Figure 3

**Why Do EU Member States Not Rely Heavily on Accounts Chambers
In Order to Fight Corruption in State Aid?**

Across the EU, “performance-based budgeting” (linking actions to outcomes to judge cost-effectiveness) determines the way Public Sector Bodies budget and make expenditures. Such a system, at least in theory, broad objectives for state aid across government (and consequently for each Public Sector Body) are set. For example, across the EU in 2021, some of state aid’s main objectives focused on containing the effects of the financial crisis and facilitating adjustment in the coal mining, fishing, and agricultural industries¹¹. At the risk of over-simplification, as long as the Public Sector Body achieves its goals, the Body does not need to worry about corruption – as long as it takes reasonable measures to prevent corruption.

Any Member State’s system of public sector financial management obviously controls against fraud and ensures that no irregularities occur (now thanks to Information Technology which allows for more checking at the point of data entry). However, the main aim of financial control is that broad objectives are achieved and that controls provide reasonable assurance that fraud and corruption do not occur. In EU Member States, accounting, inspection and control bodies work more like advisors and consultants. They do not extensively check all financial and managerial decisions. Instead, they select transactions to inspect at random and according to risk. These audits aim to help managers – unlike the old inspection and control model which only threatened public sector managers.

Yet, one area where specialist financial accounting and audit skills are important relates to the way in which Public Sector Body managers record and report contingent liabilities – like soft loans, guarantees, and so forth. Contingent liabilities represent a significant risk because – at times – the Public Sector Body does not directly transfer any tangible resource. In a fairly weak public sector financial system, an administrator in a Public Sector Body can guarantee repayment of debts of a company (or support if prices of inputs change radically). Because no cash changes hands, administrators can avoid putting the liability on the books – particularly if the liability is hard to value.

The less-visible, hard-to-trace nature of such contingent liabilities make such forms of state aid particularly attractive to corrupt public officials. In some cases, public officials can tacitly (only verbally) collude with a businessman in order to engage in virtually untraceable corruption.

To fight the corruptive effects of such contingent liabilities, most EU member countries have three controls in place:

1) *official classification of contingent liabilities* – according to International Public Sector Accounting Standards Board (IPSASB) standards – public sector agencies must account for all contingent liabilities. The valuation of these contingent liabilities is done the same way discussed for estimating and valuing corruption risks (the probability of the contingency occurring multiplied by the market value of the services or benefits given if the contingency occurs.

2) *income and asset declarations* – in many EU member states, public officials must make annual declarations of income, either as part of their tax declara-

tions or as a separate declaration (including the monetary value of gifts and benefits they receive such as vacations to Turkey)¹². More commonly, public officials must provide declarations of assets on a regular basis – and public official must explain any sudden changes in assets. These programs have been somewhat unsuccessful at *detecting* corruption, though useful in helping to prosecute public officials already under suspicion (and investigation) for corruption.

3) *conflict-of-interest-declarations* – in these declarations, public officials must report family members who also work for the government or personal relations who gain financially gain by the public officials’ decisions. Conflict of interest regulations in different Member States are extremely complex and varied – and cover circumstances in which the public official must recuse him or herself for particular decisions, sell stakes in companies and so forth¹³. While many of the *prohibitions* of conflict of interest regulation have effectively reduced corruption in EU Member States, the declarations *themselves* are difficult to draft and often so abstract as to be almost meaningless.

Conclusions. The EU experience shows, that the corruption can be minimized by the activities, that can be classified into 2 types: preventive and punitive. So far, the EU at the Union level and the EU state members balance this 2 types of the anti-corruption activities rather well, while Ukraine still seeks for such a balance. The problem is caused by the obvious weaknesses of the preventive activities – the civil

¹² Many EU Member States have strict rules prohibiting gifts to public officials.

¹³ The conflict of interest legal framework in EU Member States is very complicated. For a detailed overview, see Demmke [3].

¹¹ DG-Competition, *State Aid Control Overview*, 2021.

society institutions aren't very strong and influential, even when it comes about the cases of corruption related to the social aid. The citizens have the low trust to the anti-corruption bodies and their activity – so they also do not report, give feedback and other reactions, when it comes about the corruption in such an important sphere, as the social aid (even in case this social state aid is given to them personally!).

Some of the preventive activities, that are widely used in the EU by both the Union and member states, are grounded on the concepts, that aren't popular in the Ukrainian society, and therefore – aren't used in the national legislation. For example, translating the concept of “internal audit” into a Ukrainian constitutional context is extremely difficult – particularly given even large differences as between EU Member States' understanding of such audit and the Ukrainian approach. “Internal audit” differs from Former Soviet traditions of “control” and “inspection” in that internal audit – traditionally – has involved management observance of particular *principles* (which administrative law had traditionally imposed on Public Sector Body managers). These principles include the achievement of results (ends rather than means), obligations of risk management and control which have been increasing codified into standards such as the INTOSAI's Auditing Standards and – more usefully to the everyday internal auditor working in the public sector – the International Standards for the Professional Practice of Internal Audit as part of the International Professional Practices Framework (IPPF)¹⁴ [4]. For example, in France, French administrative law requires – and protects French civil servants from liability in cases where French civil servants take decisions which may contradict existing regulations in order to uphold the principles of equity and efficiency¹⁵.

¹⁴ See INTOSAI, Code of Ethics (2016). Due to the popularity of the IPPF – and the large global resources of the Institute of Internal Auditors – the IAASB standards have become commonplace among public sector internal auditors. In practice, very little difference exists between the INTOSAI standards and the IAASB Standards.

¹⁵ As could not cite specific EU Member State administrative regulations due to the difficulty in obtaining access to these administrative rules. For an practitioner overview though, see Brown (2008), particularly Chapter 8.7 which discusses the rights and obligations of French civil servants in fulfilling the mandate of their department.

So far Ukraine reforms the institutions, bodies of the public power – but not the procedures. It is important to underline, that all of the bodies – elements of this system – deal with the corruption cases related to the social state aid as well. So far Ukraine has no special bodies, that would deal only with such cases – as well, as no special procedures. It is highly recommended for Ukraine to use the EU anticorruption experience in the field of the social state aid as well. Because a lot of principles, practices, approaches of anticorruption fight the EU and its member states use are already in use in Ukraine, it would be logical and wouldn't require long preparations.

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