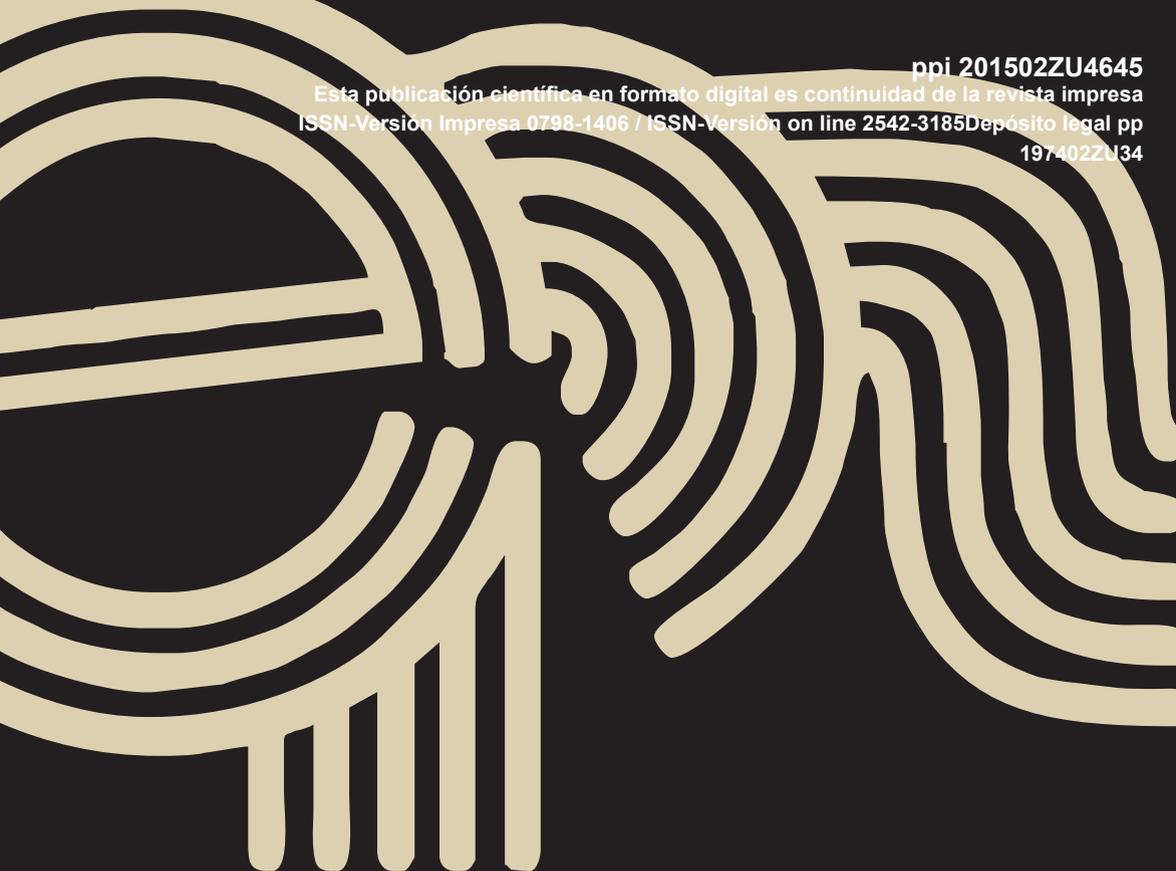


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Prevention of corruption offenses by public officials: Experience from European Union countries

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Abstract

The article analyzes the effectiveness of preventive anti-corruption measures in the countries of the European Union EU. The study involved comparison and forecasting methods. The results showed that the EU is leading its efforts to develop anti-corruption legislative initiatives and their implementation at national and international level. Whistle-blower protection laws adopted in EU countries are important tools for exposing illegal activities committed in organizations. Transparency of public administration in Denmark and Finland contributes to the maintenance of moral and legal standards in society. The Danish Code of Conduct in the Public Sector and the Finnish Anti-Corruption Guide for Small and Medium-Sized Enterprises have become documents that help promote corruption-free business relationships. The Finnish Harmaa (gray) project is an example of how data analytics helps law enforcement agencies process large volumes of data to prevent corruption offenses. It is concluded that the initiatives of EU countries to prevent corruption of officials can become an example for Ukraine during post-war recovery.

Keywords: corruption; whistle-blower protection; international transparency; passive bribery; asset tracing.

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Prevención de delitos de corrupción por parte de funcionarios: Experiencia de países de la Unión Europea

Resumen

El artículo analiza la eficacia de las medidas preventivas anticorrupción en los países de la Unión Europea UE. El estudio involucró métodos de comparación y pronóstico. Los resultados mostraron que la UE dirige sus esfuerzos para desarrollar iniciativas legislativas anticorrupción y su implementación a nivel nacional e internacional. Las leyes de protección de denunciantes adoptadas en los países de la UE son herramientas importantes para exponer las actividades ilegales cometidas en las organizaciones. La transparencia de la administración pública en Dinamarca y Finlandia contribuye al mantenimiento de las normas morales y legales de la sociedad. El Código danés de conducta en el sector público y la Guía anticorrupción finlandesa para pequeñas y medianas empresas se han convertido en documentos que ayudan a promover relaciones comerciales libres de corrupción. El proyecto finlandés Harmaa (gris) es un ejemplo de cómo el análisis de datos ayuda a los organismos encargados de hacer cumplir la ley a procesar grandes volúmenes de datos para prevenir delitos de corrupción. Se concluye que las iniciativas de los países de la UE para prevenir la corrupción de los funcionarios pueden convertirse en un ejemplo para Ucrania durante la recuperación de la posguerra.

Palabras clave: corrupción; protección de denunciantes; transparencia internacional; soborno pasivo; rastreo de activos.

Introduction

Corruption affects both the public and private sectors. Corruption reduces investment, harms productivity and economic growth, which increases obstacles to the efficient allocation of public resources (Ceschel *et al.*, 2022). As a result, corruption can increase mistrust of government, weaken the strength of national climate policies, and harm sustainable economic development (Ma *et al.*, 2022). Peculiarities of corruption crimes cause difficulties in the course of their prevention.

A number of post-Soviet countries still have considerable legislative uncertainty in the issues of vagueness of law-making procedures, in the presence of norms that create additional opportunities for corruption. This is evidenced by the long-term separation from the closedness and lack of control of representatives of the authorities. This situation inevitably leads to corruption.

The growth of corruption literacy and confidence in the effectiveness of proven solutions harden anti-corruption activity (Matorera, 2022). Against this background, various countries have developed an interest in fighting corruption not only with the help of counter-policies to punish corruption. A preventive policy designed to limit the potential consequences is being developed.

Special attention should be paid to the prevention of corruption crimes during military conflicts. Martial law requires the improvement of preventive anti-corruption measures. The appropriate institutional system must meet international standards and best global practice (Shylo, 2022). It is also important to take into account the peculiarities of the country's legal system.

The results of the prevention and counteraction of corruption in Ukraine are adversely affected by the inadequately developed relevant legislative, organizational and functional component of the state mechanism, the uncompleted anti-corruption reform (Trepak, 2020; Prokopenko *et al.*, 2023). Systemic corruptors skilfully adapt to legislative novelties, new anti-corruption bodies of the country.

In view of the foregoing, the aim of the article is to analyse the implementation of preventive anti-corruption measures in the EU countries. The aim involved the fulfilment of the following research objectives: 1) summarize the main current components of the legislative regulation of the prevention of corruption crimes committed by officials in the EU and Ukraine; 2) analyse the current state and prospects for the prevention of corruption crimes committed by officials in a number of EU countries.

1. Literature review

The work of Trepak (2020) became the main instrument and background for this research. The research was focused on identifying and describing the main types of corruption. Special attention was paid to the types of corruption prevention methods. It was substantiated in the study that the prevention of corruption is the titular (primary and main) form of combating corruption. The work by Matorera (2022) had an influence on the author's position on the issue under research.

The author conducted a comprehensive analysis of corruption, its causes, driving forces, hiding strategies. Attention was paid to the growing anti-corruption activity and the key success factors.

Amendments were taken into account during the study (Duri, 2021; Nikitenko *et al.*, 2023). The importance of using modern tools to prevent and fight corruption and economic crime was emphasized. The author

focused on the need to use the public register of beneficiaries of property rights, the development of international cooperation in the investigation and prosecution of corruption schemes, economic crimes.

Abazi (2020) studied the main components of the EU Whistle-blower Directive. The author concluded that it is based on best practice in many respects. The author emphasized that the Directive contains a broad definition of who can be a whistle-blower, covering a wide range of policy areas.

The findings of Vian *et al.* (2022), who analysed the volume and type of evidence on whistleblowing as an anti-corruption strategy, is worth noting. The author concluded that research on the detection of violations can help increase the effectiveness of efforts to prevent and fight corruption. The work of Berendt and Schiffner (2022) was used when shaping the author's position. It emphasizes that the whistleblowing has a major impact on democracy and business. They concluded that modern technologies can provide a truly anonymous message.

Adam and Fazekas (2021), Halai *et al.* (2021) analysed academic and professional studies in the field of digitalization of anti-corruption activities and substantiated the impact of IT technologies on combating and preventing corruption. The authors summarize modern technological achievements, their implementation in various national legal systems, and provide an idea of information technology as a tool for preventing and combating corruption. The evidence of both the anti-corruption effectiveness of ICT and the misuse of technology for corrupt purposes was carefully studied.

The article by Shylo (2022) analysing changes and amendments to the current legislation of Ukraine regarding the prevention of corruption under martial law deserves attention. The author emphasized that the novelties are aimed at the preventive strike against corruption, which is cooperation with the enemy under martial law. The author carried out an analysis of the implementation of the functioning of the institute of authorized units for the prevention and detection of corruption during martial law in Ukraine.

In their work, Luna-Pla and Nicolás-Carlock (2020) analysed the indicators of the company's corruption risk, in particular, in the ownership and management structures. The authors outlined such relevant vectors as objectivity, subjectivity, implementation in practice. They substantiated the need to expand the exchange of information, with the help of which the public and private sectors can collect relevant data for the creation of effective networks for the prevention of corruption.

An active study of the issues under research confirms the fact that special attention must be paid to the prevention of corruption crimes committed by officials. The diversity of scientific research in this field is also noted.

Therefore, it is urgent to carry out research according to new research criteria.

2. Methods

The conducted research was based on a complex use of a set of methods and research techniques that enabled the coverage of the chosen research topic. Figure 1 illustrates the architecture of applying scientific and methodological tools.

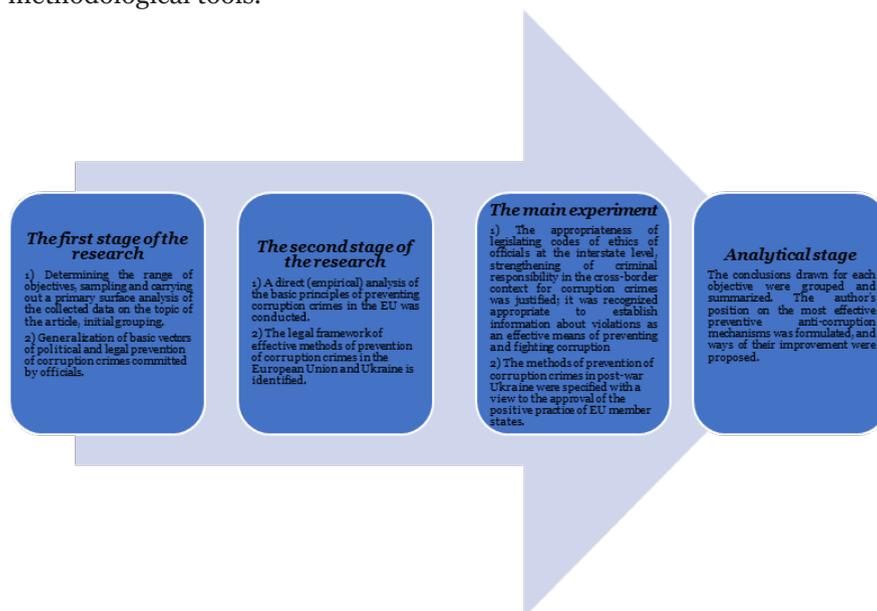


Figure 1. Research design. Source: prepared by the authors.

The authors used the method of comparison to determine the criteria of similarity of preventive mechanisms in the field of eradicating the corruption component from the activities of officials, transforming the discretion of their powers on the territory of Europe. This method made it possible to determine the effectiveness of the mechanisms for preventing corruption crimes committed by officials declared by the EU member states. The method of abstraction was used to track the reformation in the field of corruption crimes in connection with the digitization of the powers of officials, the limitation of communication with those requesting certain services.

The forecasting method was applied to cover the issue of the intensification of corruption crimes committed by officials on the territory of the EU by analysing the retrospective development of this criminal phenomenon. Based on the research results, this method made it possible to build a reasonable assumption about the further need to test the European tools for fighting corruption among officials during the post-war recovery of Ukraine.

The grouping method was used to arrange data and make a ranking based on the level of corruption perception in the EU member states. The historical legal method made it possible to track the formation of the legal framework for combating corruption crimes in the EU in stages. The implementation of anti-corruption declarations and programmes was analysed using a comparative analysis of documents in different jurisdictions.

The universal preventive anti-corruption mechanisms were described through a synergistic approach. The elementary theoretical synthesis was used to establish the basic essence of complex means and methods of preventing corruption crimes on the basis of scientific positions and well-founded assumptions derived by representatives of law schools. The relative and average indicators of the development of the corruption component among officials in Europe were taken into account in the research.

The authors considered the general principles of preventing corruption crimes as a system that involves the competences of different levels of government and informants connected by exchange relations in their various combinations. This approach made it possible to consider the preventive anti-corruption activities through the prism of declared international principles and systemic internal conditions of states.

The statistical method was indispensable at various stages of the research. It was used to analyse the dynamics of various aspects of the implementation of the preventive anti-corruption measures at the national and subnational levels, as well as to study a significant volume of information on the results of the actions of the studied states.

3. Results

According to Eurobarometer (Armstrong, 2022), an average of 68% of 26,509 respondents to a 2022 pan-European survey said that corruption is widespread in their country (Table 1).

Table 1. Corruption Perception Index for 2018-2022 according to Transparency International 2022.

Place in the classification of EU countries	EU country	2018 Corruption Perception Index	2019 Corruption Perception Index	2020 Corruption Perception Index	2021 Corruption Perception Index	2022 Corruption Perception Index
1	Denmark	88	87	88	88	90
2	Finland	85	86	85	88	87
3	Sweden	85	85	85	85	83
4	Netherlands	82	82	82	82	80
5	Germany	80	80	80	80	79
6	Ireland	73	74	72	74	77
6	Luxembourg	81	80	80	81	77
7	Estonia	73	74	75	74	74
8	Belgium	75	75	76	73	73
9	France	72	69	69	71	72
10	Austria	76	77	76	74	71
11	Lithuania	59	60	60	61	62
11	Portugal	64	62	61	62	62
12	Spain	58	62	62	61	60
13	Latvia	58	56	57	59	59
14	Czech Republic	59	56	54	54	56
14	Italy	52	53	53	56	56
14	Slovenia	60	60	60	57	56
15	Poland	60	58	56	56	55
16	Slovakia	50	50	49	52	53
17	Cyprus	59	58	57	53	52
17	Greece	45	48	50	49	52
18	Malta	54	54	53	54	51
19	Croatia	48	47	47	47	50
20	Romania	47	44	44	45	46
21	Bulgaria	42	43	44	42	43
22	Hungary	46	44	44	43	42

Source: Transparency International 2022.

So, corruption is the least common in Denmark and Finland as of 2022. Undue influence on decision-making, poor enforcement of integrity guarantees, and threats to the rule of law continue to undermine the effectiveness of lower-rated EU governments.

On June 24, 2021, Denmark passed the Whistleblower Protection Act (Retsinformation, 2021). This law requires private and public employers with more than 50 employees to set up a hotline for reporting violations. It is worth noting that the Act (Retsinformation, 2021) does not state that whistleblowers may be able to report information anonymously. Reports can be about violations of EU law, Danish national law, and violations related to bribery, corruption, sexual harassment. Therefore, the scope of the Directive on the protection of persons who report breaches of Union law (European Parliament, 2019) is expanded.

The Government of Finland adopted the first National Anti-Corruption Strategy in May 2021. The short-term goal of the strategy is to strengthen the prevention and fight against corruption. The long-term goal of the strategy is to build a society in which corruption cannot take hold. Prevention and fight against corruption in Finland should focus on such forms of corruption as favouritism of friends and acquaintances, unethical mutual aid, conflicts of interest.

Companies, especially small and medium-sized enterprises, should promote good business practices and corruption-free business relations both in Finland and abroad (Figure 2). This can be implemented with the help of the developed anti-corruption guide for small and medium-sized enterprises (Ministry of Economic Affairs and Employment of Finland, 2020).



Figure 2. The mechanism of combating corruption at enterprises (grouped by the author on the basis Finnish Anti-corruption Guide for SMES).

In Finland, the Whistleblower Protection Act (Finlex, 2022) also entered into force on January 1, 2023. Small private sector organizations

from different groups of companies with less than 250 employees can share resources related to whistleblowing channels. Organizations with fewer than 50 employees are exempt from the obligation to establish a breach notification channel, but may create one voluntarily. The new law applies to reports of serious violations of EU law.

The Finnish Harmaa (Grey) project (Finnish Government, 2020) developed as part of the National Strategy and Action Plan for Combating the Shadow Economy and Financial Crime for 2020-2023 is worth noting. The main goal of the Finnish Harmaa (Grey) project is to develop methods based on data analytics.

The project was created to process large data volumes for law enforcement systems, and identify cases that require more detailed information for investigation. The data analysis tool was created to strengthen Finland's capacity to prevent corruption, fight the shadow economy and financial crimes.

Non-transparent rules for financing political parties and insufficient enforcement of foreign bribery laws remain problematic points in Denmark. Structural corruption still exists in Finland. High-risk sectors include the construction sector, public procurement, public planning and politics. Enforcement of foreign bribery laws is also inadequate in Finland.

According to the 2022 Corruption Perception Index (CPI), the level of corruption in Ukraine is assessed at 33 points (Transparency International, 2022). This shows that there is still a high level of corruption in the country. One of the reasons for this situation in the country is the legislation that was created according to Soviet approaches. Ukraine still has parallel structures of administrative and criminal responsibility for corruption-related offenses.

This results in the duplication of anti-corruption measures and their reduced effectiveness. For example, there was a difficult situation regarding the differentiation of the composition of the administrative offense provided for in Article 172-2 of the Code of Ukraine on Administrative Offenses and the composition of the crime provided for in Article 368 of the Criminal Code of Ukraine (Verkhovna Rada of Ukraine, 1984; Verkhovna Rada of Ukraine, 2001). Both articles establish responsibility for receiving benefits or bribes for the commission or omission of actions using the official position.

The result was the exclusion of Article 172-2 from the Code of Ukraine on Administrative Offenses. The introduction of this change was justified by the need to bring national legislation into compliance with the standards of the EU Criminal Law Convention on Corruption ratified by Ukraine. Corruption in Ukraine should be fully criminalized taking into account the international experience in this field.

The sanctions of Part 3 of Article 172-4, Part 2 of Article 172-5, Part 3 of Article 172-6, Part 2 of Article 172-9-1 of the Article provides for the imposition of penalties in the form of a certain amount of fine with confiscation of the received income or remuneration. Deprivation of the right to hold certain positions or engage in certain activities for a period of one year is also provided. In other words, establishing enhanced liability for qualified offenses, the legislator implies the imposition of three types of sanctions on persons.

This situation conflicts with Part 2 of Article 25 of the Code of Ukraine on Administrative Offenses. It contains the provision that a person may be charged with a basic or basic and additional penalty for one administrative offense. So, the inconsistency of the provisions of the Code on Administrative Offenses leads to a violation of the principle of legality.

The National Agency on Corruption Prevention (NACP) was established in Ukraine. The NACP is responsible for the development of anti-corruption policy and prevention of corruption. As of February 2023, there are 44,891 entries in the Unified State Register of Corrupt Officials or corruption-related offenses. They include 14,147 records for criminal offenses, 28,897 for administrative and 1,783 for disciplinary offenses (National Agency for the Prevention of Corruption, 2023).

In June 2022, Ukraine adopted the Anti-Corruption Strategy for 2021-2025 (Verkhovna Rada of Ukraine, 2022a). The main principles of anti-corruption policy are to optimize the functions of the state and local self-government in order to minimize corruption risks. They also include the digital transformation of the exercise of powers by state authorities and local self-government bodies.

In 2014, the National Anti-Corruption Bureau of Ukraine (NABU) was established in Ukraine, which is the central executive body with a special status. The NABU is tasked to combat corruption and other criminal offenses committed by high-ranking officials authorized to perform the functions of the state or local self-government. As of December 31, 2022, 716 proceedings are in progress, 413 persons have been notified of suspicion, 799 persons have been charged, 414 indictments have been issued, and 99 guilty verdicts have been issued (NABU, 2023).

Under martial law, there was a need to make the necessary changes to the anti-corruption legislation. Targeted anti-corruption gift restrictions were introduced (Verkhovna Rada of Ukraine, 2022b). The provision became necessary for the participation of public servants in charitable, volunteer, other activities aimed at helping the Armed Forces of Ukraine and affected persons. Provision is made for the introduction of a temporary regulatory model of behaviour of a public servant, only on the condition that the purpose of the gift itself and the subject of its receipt are combined.

In 2021, separate issues of whistle-blower protection were legislated in Ukraine (Verkhovna Rada of Ukraine, 2021). In addition to the head, the whistle-blower can now report a violation to an authorized division (person) of the body, legal entity in which the whistle-blower works, is serving or training, or on whose behalf he performs work. It is worth noting that whistle-blowers can use internal, regular or external channels to report possible facts of corruption or corruption-related offenses. The possibility of sending anonymous messages is legislated.

It was not possible to complete several tasks that were important for the implementation of the anti-corruption reform in the pre-war period. As of February 2023, Ukraine has not reformed the Constitutional Court with a view to the amendments of the Venice Commission. The state anti-corruption programme for 2023-2025 has not been adopted. The obligation of political parties to submit reports to the NACP has been suspended.

The risk of the adoption of draft laws that remove procurement from the scope of the Law of Ukraine “On Public Procurement” is being minimized in part. The scandal with overpayments for food for the military indicates the existence of such abuses. It is necessary to restore the declaration of officials, to strengthen the autonomy of the SAP. Military aggression on the part of the Russian Federation has suspended the implementation of the Unified Portal for Whistle-blowers of Corruption or Corruption-related Offenses.

In July 2022, the National Council for the Recovery of Ukraine from the War developed the Draft Plan for the Recovery of Ukraine (Anti-corruption policy, 2022). It provides for the development and application of a comprehensive anti-corruption policy. The Plan envisages fulfilment of Ukraine’s international anti-corruption obligations, independence and effective work of anti-corruption bodies. Efforts will also be aimed at promoting a culture of integrity, eliminating corruption risks during the martial law and the post-war reconstruction of Ukraine.

4. Discussion

It can be stated that the reform on the prevention and counteraction of corruption should be aimed at combating the forms, manifestations, and dynamics of corruption in particular countries. It must correspond to the country’s institutional mechanisms and procedures. UNCAC reports from different countries can help identify good practices that can be spread and adopted (Huter and Scaturro, 2021). The researchers also emphasize that the supporting documents of the UNCAC can be a guide to ensure an effective anti-corruption policy.

Current studies on corruption should focus on defining, measuring and forecasting this phenomenon. This must be done in such a way that the mechanisms and methods of its prevention can be implemented adequately (Luna-Pla and Nicolás-Carlock, 2020; Petkov, 2020). According to researchers, these goals, organize the strategies that should be implemented to study this phenomenon. They also serve as a guide for evaluating previous approaches to corruption prevention, their limitations, and their potential for further improvement.

The EU Whistle-blower Protection Directive fills an important gap in legislation. Its adoption is the result of several decades of gradual change in Europe aimed at strengthening the whistle-blower protection. The EU Whistle-blower Directive is an important legal development, but it is only on the way towards real protection, rather than changes the rules for whistle-blowers in the EU (Abazi, 2020).

The interpretation of whistle-blower definitions of reported abuse is important. There is also a need to reduce the burden of proof on whistle-blowers. The imposition of strong sanctions to protect whistle-blowers against retaliation is necessary for their effective protection (Iwasaki, 2023; Kopotun, 2023). Whistleblowing and anonymous reports should be based on the three pillars of whistle-blower protection and incentives (Berendt and Schiffner, 2022). They should combine anonymity in a formal and technical sense, whistle-blower protection through laws, other norms and practices, including organizational culture. Documents on policies, factors associated with whistleblowing, and whistleblowing outcomes should be spread (Vian *et al.*, 2022). According to the researchers, this can help countries make whistleblowing a sectoral strategy to prevent and fight corruption.

The considered corruption prevention instruments include innovative tools for reporting violations, transparency portals, and distributed ledger technology. Information and communication technologies can also provide new opportunities for corruption through the dark web, cryptocurrencies or misuse of such technologies as centralized databases (Adam and Fazekas, 2021).

According to the researchers, the impact of using such tools depends on their relevance to the local context, including support and skills to use technology. A list of factors that should be taken into account when implementing relevant innovative systems was made as a result of studying the anti-corruption experience of countries with different legal systems (Halai *et al.*, 2021).

The need for further implementation of measures aimed at spreading the global anti-corruption standard of behaviour in Ukraine was stated. It is advisable to create expert groups with the interaction of the scientific community, government agencies, business and representatives of civil

society (Topchii *et al.*, 2021). They should deal with the detection of corrupt practices, their assessment and classification.

The targeted nature of anti-corruption gift restrictions is directly related to the legal regime of martial law. This confirms the innovative nature of such restrictions. They provide for maintaining a “filter” for possible illegal acts by public officials even during martial law in Ukraine (Kolomoets *et al.*, 2022).

It can be concluded that the prevention and the fight against corruption offenses should be effective. But the public authorities should not act through violating the principles and rights of a person who is brought to administrative responsibility (Solovyova, 2022).

Conclusions

International conventions, standards and guiding principles adopted by the UN, OECD, and the Council of Europe to govern the prevention of corruption are global cooperation tools. The EU corruption prevention initiatives are similar because of the legislation integration processes, active international coordination of corruption prevention measures.

Information and communication technologies can contribute to the prevention of corruption crimes by influencing public control in various ways. They enable reporting of corruption, promote transparency and accountability, facilitate citizen participation and interaction between government and citizens.

The public administration and data transparency in Denmark and Finland ensure that citizens have the opportunity to participate in the development of society and preventing corruption. The public administration bodies of EU countries, such as Denmark and Finland, realize the importance of their actions for the welfare of society in implementing their powers. They consider management activities prestigious, and value their reputation.

Ukraine failed to complete several tasks that were important for the implementation of the anti-corruption reform before the war. The necessary changes to the legislation on the prevention of corruption are being made under martial law in the country. At the same time, the initiatives of the EU countries in the field of prevention of corruption crimes committed by officials can become an example for Ukraine in the post-war recovery.

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