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CRIMINALISATION OF ECONOMIC OFFENCES AS AN INSTRUMENT OF STATE ECONOMIC POLICY: LIMITS OF EFFECTIVENESS AND RISKS OF EXCESSIVE INTERVENTION

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Abstract. The present article examines the criminalisation of economic offences as an instrument of state economic policy in the context of ensuring economic security. The relevance of the study is driven by the need to effectively combat economic crime in Ukraine under conditions of martial law, a high level of the shadow economy, and ongoing European integration transformations, as well as the necessity to prevent excessive criminal law intervention in entrepreneurial activity. The objective of the present study is threefold: firstly, to elucidate the conceptual foundations of the criminalisation of economic offences; secondly, to determine the limits of its effectiveness; and thirdly, to identify the risks associated with the excessive application of criminal law mechanisms in the sphere of economic relations. The findings demonstrate that the criminalisation of economic offences can only be effective if based on the principles of proportionality, subsidiarity, legal certainty and ultima ratio. Its effectiveness has been shown to depend directly on the institutional capacity of the state, the likelihood of enforcement, and the quality of law enforcement practice. Furthermore, the study shows that excessive criminalisation can lead to the devaluation of criminal law, increased pressure on businesses, heightened corruption risks, a deterioration in the investment climate and an expansion of the shadow economy. The study's scientific novelty lies in conceptualising criminalisation as an element of state economic policy from the perspectives of economic and legal analysis. It also involves determining the limits of its effectiveness, taking international experience into account. The practical significance of the results lies in their potential application to improve the regulation of economic relations under criminal law, particularly with regard to revising economic crime provisions, developing compliance-oriented mechanisms and aligning Ukrainian legislation with European Union standards.

Keywords: criminalisation, economic offences, economic policy, economic security, decriminalisation, compliance, business environment.

JEL Classification: K14, K42, H11, D78, O17

1. Introduction

The issue of criminalising economic offences has long been at the intersection of legal and economic scholarship. In Ukraine, however, this issue has acquired particular urgency and direct practical relevance due to the conditions of martial law, the significant level of the shadow economy, the ongoing transformation of market relations and the challenges of European integration. According to data from Ukraine's Bureau of Economic Security and Office of the Prosecutor General, the number of criminal proceedings in the economic sphere remained consistently high between 2022 and 2025. Meanwhile, the distinction between criminal offences, administrative violations

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and civil delicts in this area continues to spark scholarly debate and pose practical challenges for law enforcement.

Criminalisation, which is defined as the state recognising certain socially dangerous conduct as a crime and imposing criminal liability, is a fundamental category of not only criminal law, but also state economic policy. By defining the scope of criminal law intervention, the state effectively shapes the boundaries of permissible economic conduct, distinguishing between legitimate entrepreneurial risk and criminally punishable behaviour, and between economic initiative and abuse.

At the same time, law enforcement practice shows that excessive criminalisation – namely, imposing criminal liability for behaviour that does not cause significant social harm – can have adverse systemic consequences. These include increased pressure on business entities, a decline in investment activity and heightened corruption risks within law enforcement institutions. Against this backdrop, the tension between adequately protecting economic relations from criminal encroachment and the risk of criminal law becoming an instrument of excessive state intervention highlights the importance of this study.

2. Literature Review

A review of the scholarly literature indicates that the issue of economic crime and the criminalisation of relevant conduct is the subject of a long-standing body of research within both domestic and international academic discourse. In Ukrainian criminology, A. P. Zakaliuk and A. F. Zelinskyi established the fundamental foundations for understanding economic crime as a socio-legal phenomenon. They substantiated its systemic nature and complex determinants, as well as the necessity of a comprehensive approach to counteraction that combines legal, economic, and social instruments.

The further development of research into economic crime as a specific form of criminal activity is associated with the work of O. H. Kalman and Ye. Streltsov. These scholars interpret economic offences not merely as legal violations, but as complex socio-economic phenomena closely linked to transformations in market relations, requiring specialised approaches to detection, analysis and prevention.

Contemporary Ukrainian scholarship has devoted considerable attention to studying economic crime as a threat to the state's economic security. This is reflected in the works of D. O. Hrytsyshen, A. P. Dykyi, V. A. Predborskyi and others. These studies conceptualise economic crime as a systemic phenomenon that affects financial stability, the investment climate and the functioning of market institutions. They also emphasise the need to improve the state's response mechanisms.

At the same time, most domestic studies primarily adopt a criminal law doctrine standpoint when approaching criminalisation, without sufficiently accounting for its economic implications and its role as an instrument of state economic policy. By contrast, international scholarship has developed approaches based on the economic analysis of law. Within this framework, criminalisation is examined as a regulatory tool that influences the behaviour of economic agents in terms of efficiency, costs and benefits.

A distinct line of contemporary research focuses on the phenomenon of overcriminalisation, which is associated with the decline in the effectiveness of regulation, the expansion of the discretionary powers of law enforcement authorities and the increasing regulatory pressure on businesses. In this context, scholars emphasise the importance of applying the ultima ratio principle and developing alternative legal response mechanisms.

Despite the considerable body of research on the subject, Ukrainian scholarship still lacks a comprehensive analysis of the criminalisation of economic offences as an instrument of state economic policy. Such an analysis would take into account the economic consequences, institutional constraints and risks of excessive criminal law intervention. It is this gap that makes the chosen topic relevant and shapes the focus of the present study.

3. Methodology

The study's methodological framework is based on combining legal and economic approaches to analyse the criminalisation of economic offences as a tool of state economic policy. This interdisciplinary approach enables criminalisation to be examined not only as an element of criminal law regulation, but also as a mechanism that influences the behaviour of economic agents and the way the market environment functions.

The study uses a systemic approach to ensure a thorough understanding of criminalisation within the context of the interplay between legal, economic and institutional factors. A comparative legal approach is adopted to analyse the criminalisation of economic offences in Ukraine, the European Union and the United States. The economic and legal approach allows for an evaluation of the effectiveness of criminal law sanctions in terms of the relationship between their costs and outcomes, and their effect on the business environment. Additionally, institutional analysis is employed to evaluate the effectiveness of law enforcement bodies in ensuring the efficacy of criminalisation.

The empirical basis of the research comprises the provisions of Ukrainian criminal legislation, international legal instruments, analytical reports from

international organisations and scholarly research findings in the fields of economic crime and criminal law policy.

The study's limitations stem from its predominantly theoretical and legal nature, as well as the absence of quantitative empirical analysis. This indicates the need for further research employing econometric and applied methods.

4. Results and Discussion

4.1. Criminalisation as a Legal and Economic Phenomenon

In general, criminalisation refers to the legislative recognition of certain behaviour as criminal and the establishment of criminal prohibitions backed by the threat of punishment.

As O. V. Popovych and L. V. Tomash rightly note, criminalisation is not merely a formal act of lawmaking, but rather a multi-layered process involving the identification and legal assessment of socially harmful behaviour, determining its compliance with the criteria of criminal prohibition and formally consolidating such prohibition in law (Popovych & Tomash, 2025).

In the context of economic relations, this process takes on further significance as it not only determines the type and extent of legal liability, but also serves as a normative signalling function, indicating the boundaries of acceptable behaviour for market participants.

From a criminal law perspective, criminalisation is considered justified when certain conditions are met. The conduct in question must cause a level of social harm that exceeds that of an administrative offence. It must also be widespread or have the potential to become so. Furthermore, it cannot be effectively addressed by other legal means and must be possible to prove adequately within criminal proceedings (Davlatov & Trunov, 2025). By contrast, within the framework of the economic analysis of law, the emphasis shifts towards efficiency considerations: criminalisation is considered justified when the social benefits of applying criminal sanctions are deemed to outweigh the associated costs. These costs include direct expenditures such as investigation, adjudication and enforcement of penalties, as well as indirect effects including impacts on the investment climate, business activity, public trust in legal institutions and incentives for lawful behaviour.

As A. P. Dykyi (2023) notes, economic crimes pose a threat to the economic security of the state. This is manifested through unlawful economic activity or violations of the established rules of legitimate economic conduct, which are aimed at satisfying the self-interests of individuals or groups. This understanding provides a clearer articulation of the functional role of criminalisation in the economic sphere. It is not an end in itself, but rather a tool used to ensure economic security. This is defined as a state in which the stability of economic circulation, the protection of property rights and the ability to engage in lawful entrepreneurial activity are effectively guaranteed.

Within the state's economic policy system, criminalisation performs a number of interrelated functions. Firstly, it acts as a safeguard for economic relations, the financial system, property rights and the legitimate interests of economic actors, protecting them from unlawful interference. Secondly, criminalisation serves a regulatory function, establishing clear boundaries of permissible conduct in economic activity and preventing abuses. It also shapes standards of fair competition. Thirdly, criminalisation also performs an expressive function by demonstrating the state's willingness to respond to systemic violations, which ultimately influences the level of trust in legal institutions and the predictability of the economic environment.

At the same time, there is no clear boundary between appropriate criminal law regulation and excessive state intervention in economic processes. While criminal prohibition is widely recognised as an effective means of countering socially harmful conduct (Davlatov & Trunov, 2025), its effectiveness is not absolute. It must be assessed in light of the principles of proportionality, legal certainty, and the protection of economic freedom. Disregarding these principles can have the opposite effect, reducing regulatory effectiveness and distorting the economic behaviour of market participants.

It is also important to recognise that criminalisation is not a one-time legislative act, but rather a dynamic process that requires continuous reassessment in response to transformations in economic relations, the development of market institutions and evolving societal perceptions of what constitutes acceptable conduct. In this regard, criminalisation should be considered in close connection with decriminalisation, whereby certain acts are removed from the category of crimes if they no longer meet the required threshold of social harm, or if more effective alternative regulatory mechanisms exist. Maintaining a balanced relationship between criminalisation and decriminalisation in the economic sphere is a key aspect of state economic policy from a criminal law perspective.

4.2. Criteria of Justified Criminalisation of Economic Offences

One of the central tasks of both criminal law doctrine and legislative policy is determining the criteria under which a particular economic offence may be elevated to the level of a crime. A number of approaches to defining such criteria have been developed in both domestic

and international scholarship; however, consistent application requires systematic consideration of legal and economic factors.

The fundamental criterion of criminalisation is traditionally recognised as the social harm of the conduct, that is, its capacity to cause substantial harm to legally protected interests. In the sphere of economic relations, the harmful effects of corruption are multifaceted and may take various forms, including the direct financial loss suffered by individuals, business entities, or the state; the destabilisation of the financial and credit system; the facilitation of the shadow economy and the laundering of illicit proceeds; the violation of the principles of fair competition; and the creation of conditions that facilitate the financing of other forms of unlawful activity, including terrorism (Kharko, 2010). Concurrently, the specificity of the economic sphere establishes a heightened threshold for the perception of social harm. In contradistinction to offences against individuals, economic offences are evaluated with due consideration for the inherent risk associated with entrepreneurial activity. Consequently, the distinction between legitimate entrepreneurial risk and criminally punishable conduct represents one of the most complex and, concomitantly, pivotal challenges of criminal law policy in the economic sphere.

The prevalence and systemic character of the relevant conduct are no less important. Criminal law intervention is primarily justified where the issue concerns not isolated deviations from proper conduct, but rather stable or widespread practices that are capable of destabilising the economic environment. Individual instances of misconduct, even when accompanied by negative economic consequences, can generally be adequately addressed through civil or administrative liability. By contrast, systemic phenomena such as organised tax evasion schemes, fictitious entrepreneurship and the use of complex financial arrangements for asset diversion or money laundering pose a threat not only to individual actors, but to the economic order as a whole. This justifies the application of criminal law mechanisms (Dykyi, 2023; Baziaruk, 2008).

In contemporary conditions, particular importance is attached to the principle of the subsidiarity of criminal liability. The idea behind this is that criminal law should be applied as a last resort, i.e., only when other legal instruments have been found to be ineffective. This approach reflects the ultima ratio doctrine, which is characteristic of the legal systems of European Union Member States. It is also consistent with the proportionality and necessity requirements for interference with human rights, as set out in the European Convention on Human Rights (1950). Applying criminal sanctions without sufficiently justifying their indispensable nature can lead to criminal prosecutions being expanded to conduct that could be effectively addressed by less intrusive means. In Ukrainian practice, this often manifests as the establishment of criminal liability for violations that would be considered administrative offences or not offences at all in other jurisdictions. This results in the phenomenon commonly described as the "inflation of criminal law" and a decline in its regulatory effectiveness.

Another significant criterion for the legitimisation of criminalisation is the necessity of legal certainty and the foreseeability of criminal law norms. Participants in economic relations must possess the capacity to anticipate the legal ramifications of their actions and align their conduct with established prohibitions. The employment of evaluative or excessively vague formulations in criminal legislation – particularly those devoid of clear criteria for distinguishing lawful from unlawful conduct – engenders preconditions for extensive discretionary interpretation by law enforcement authorities. As D. O. Hrytsyshen rightly observed, the absence of sufficient clarity in legislative formulations gives rise to legal conflicts and complicates the effective enforcement of the law (Hrytsyshen, 2020). In the context of economic activity, such uncertainty has particularly adverse consequences, as it increases regulatory unpredictability, discourages investment, and creates risks of selective application of criminal law.

The identified criteria of justified criminalisation provide a basis for further analysis of the limits of its effectiveness in the economic sphere.

4.3. Limits of Effectiveness of Criminalisation in the Economic Sphere

An analysis of domestic and international experience suggests that the effectiveness of criminalisation in the economic sphere is neither straightforward nor boundless. Its effectiveness depends on a complex set of legal, institutional, economic and socio-cultural factors, and it demonstrates the property of diminishing marginal effectiveness. Beyond a certain threshold, expanding criminal law intervention not only fails to enhance effectiveness, but can also generate counterproductive outcomes.

For criminalisation to be effective, the state must have the necessary institutional capacity. For criminal law mechanisms to fulfil their functions, they must be supported by an effective law enforcement infrastructure. This includes independent and professional investigative bodies, a capable prosecution service, an impartial judiciary and advanced tools for financial analysis and gathering evidence in complex economic cases. In this context, the establishment of specialised institutions such as Ukraine's Bureau of Economic Security, National Anti-Corruption Bureau, National Agency on Corruption Prevention and

Specialised Anti-Corruption Prosecutor's Office reflects the state's institutional response to economic crime challenges. However, their effectiveness ultimately hinges on more than just their formal mandate; it also depends on their level of autonomy, professional capacity, analytical capabilities, and inter-agency coordination. As A. P. Dykyi (2022) argues, economic crime should be understood not merely as isolated offences, but as a systemic factor that destabilises the economy by undermining financial stability, distorting fair competition and expanding the shadow sector. However, addressing such threats requires not only criminal law instruments, but also a comprehensive, analytical, intelligence-based framework. Without this, even the most sophisticated legislation risks becoming largely declarative.

The limitations of criminalisation as a deterrent are equally evident. Classical deterrence theory assumes that the threat of punishment can influence the behaviour of potential offenders. However, contemporary research in criminology and behavioural economics shows that this assumption is limited, particularly with regard to economic offences. Many such offences are committed by rational individuals who consider the likelihood of sanctions being applied rather than their severity. In this context, a low probability of detection and conviction significantly undermines the potential of criminal law to deter crime. This issue is further complicated by the difficulty of proving financial crimes, the complex nature of economic transactions and the high number of latent offences. Consequently, severe sanctions often fail to have a tangible preventive effect.

This leads to an important practical conclusion: increasing the severity of criminal sanctions alone does not make criminalisation more effective. A more significant impact is achieved by enhancing the inevitability of liability through improved detection, investigation and adjudication mechanisms. Empirical observations suggest that relatively moderate sanctions can have a strong deterrent effect when there is a high probability of them being applied, whereas excessively severe sanctions that are rarely enforced lose their regulatory function.

At the same time, criminalisation in the economic sphere is not only effective in terms of its punitive or preventive impact. It also encompasses the expressive function of law, which shapes societal perceptions of the unacceptability of certain behaviours. The criminalisation of acts such as corruption, tax evasion and financial misreporting provides market participants with a normative reference point, indicating the boundaries of acceptable conduct. This effect is reinforced by reputational consequences, which, in the context of the modern economy, can be even more significant than formal legal sanctions. The mere initiation of criminal proceedings against a company, its owners or its management can result in significant reputational damage, limited access to financing, contract termination and business partner withdrawal, regardless of the outcome of the legal process.

At the same time, this dimension also highlights the significant risks associated with excessive criminalisation. The reputational consequences of criminal prosecution can be used to put indirect pressure on businesses. In the absence of adequate procedural safeguards, this can create conditions for potential abuse. Thus, while the signalling function may enhance compliance and discipline among market participants, it may also become a source of economic destabilisation in the context of weak institutional frameworks.

The inherent limitations of criminalisation mean that the risks associated with its excessive application must be carefully assessed.

4.4. Risks of Overcriminalisation

Although the protection of economic relations by criminal law is undeniably important, overcriminalisation poses a threat to the proper functioning of the economy that is no less significant than economic crime itself. Expanding criminal law intervention beyond what is objectively necessary leads to systemic dysfunction, affecting both law enforcement practice and the behaviour of market participants.

One of the most illustrative manifestations of this trend is the phenomenon commonly referred to as 'criminalisation creep', whereby the range of conduct classified as criminal gradually and not always sufficiently justified expands. In the Ukrainian context, this tendency has been observable for a long time: the provisions of the Ukrainian Criminal Code have repeatedly been supplemented with new economic offences without adequate consideration of their actual social harmfulness or the principle of subsidiarity (The Criminal Code of Ukraine, 2001). This results in a form of "inflation of criminal law", characterised by an increase in the number of prohibitions without an improvement in their effectiveness. When law enforcement institutions are overwhelmed with economic cases due to limited resources, investigations tend to become increasingly formalised. Plea agreements are concluded without proper compensation for damage and proceedings are terminated without achieving a meaningful preventive effect.

The impact of overcriminalisation on the business environment and investment climate is significant. Without clearly defined boundaries of criminal liability, the mere possibility of initiating criminal proceedings can become a means of exerting pressure, both within competitive markets and at the hands of unscrupulous officials. In these circumstances, criminal prosecution

effectively becomes a sanction in itself. According to assessments by business associations, the fear of unjustified criminal prosecution remains a key factor that constrains entrepreneurial activity and foreign investment (Transparency International, 2025). Of particular concern is the imposition of criminal liability for managerial decisions made in circumstances involving business risk, as this fosters risk-averse behaviour and inhibits innovation.

A broad and inadequately defined criminal law framework in the economic sphere creates favourable conditions for the abuse of law enforcement powers. The expanded discretion to qualify economic transactions as criminal increases the risk of corruption and facilitates the use of criminal proceedings as a means of informal influence. Empirical data in the field of anti-corruption policy confirms that a significant proportion of corrupt practices are associated with the activities of law enforcement and judicial institutions (NACP & Info Sapiens, 2024). Therefore, overcriminalisation not only fails to reduce the number of offences, it may also indirectly perpetuate a corrupt environment.

Particular attention should be paid to the problem of stigmatisation and the disproportionate consequences of criminal prosecution within the economic sphere. In this context, criminal liability can have significant extra-legal consequences, primarily in terms of reputational damage, which can be more severe than the formal punishment itself. Even in cases of acquittal or termination of proceedings, being involved in criminal proceedings can have a substantial impact on a business's reputation, limit its access to financial resources and complicate its relations with counterparties. Such consequences may be critical for small and medium-sized enterprises, potentially leading to the cessation of operations even before a judicial decision is reached. If the underlying conduct could have been adequately addressed through administrative or civil law mechanisms, a state response of this kind would appear to be manifestly disproportionate.

Finally, the phenomenon of overcriminalisation has the potential to contribute to the expansion of the shadow economy. Despite the long-standing view that economic crime is a driver of the shadow sector (Varnalii, Honcharuk, Zhalilo, 2006), there is also evidence to suggest that the relationship operates in the opposite direction. That is to say, an excessively restrictive and unpredictable legal environment may incentivise economic actors to move into the informal sector as a means of risk mitigation. When lawful economic activity carries a high risk of criminal prosecution, even for minor offences, some individuals may choose to engage in informal practices. In this way, overcriminalisation can have the opposite effect to that intended, leading not to a reduction in the shadow economy, but to its reproduction.

4.5. EU and International Experience: Between Protection and Economic Freedom

A comparative analysis of the criminalisation of economic offences in European Union Member States reveals fundamental differences from the domestic model, particularly with regard to balancing the protective function of criminal law with the need to preserve economic freedom. In most European legal systems, criminalisation in the economic sphere is considered an exceptional response, subordinate to the ultima ratio doctrine, which assumes that criminal law measures should only be used when effective alternatives are unavailable.

Firstly, in EU countries, criminal liability for business offences generally arises only where the intentional nature of the offence – or at least gross negligence combined with significant harm – is established. This approach reflects the fundamental principle that criminal law should only respond to violations that pose a genuine threat to the economic order or the rights of others, and not to every deviation from regulatory requirements. Consequently, technical, procedural or formal breaches, even when they have adverse consequences, usually fall under administrative or financial liability.

Secondly, legal regulation at EU level, particularly in the form of anti-money laundering, tax offence and anti-corruption directives, establishes minimum criminalisation standards without imposing an overly broad range of criminal offences on Member States. This approach ensures a degree of harmonisation of core requirements while preserving national discretion in defining the specific boundaries of criminal liability. Crucially, the European model prioritises ensuring the effective enforcement of criminal prohibitions over expanding them, by improving the quality of investigations, refining evidentiary procedures, and strengthening the inevitability of liability (Lehan, 2021).

Thirdly, a notable feature of modern international practice is the active use of alternative mechanisms for addressing economic offences, such as deferred prosecution agreements and internal compliance programmes. These instruments can achieve the objectives of legal regulation – cessation of unlawful conduct, compensation for damage and prevention of repeated violations – without the need for full-scale criminal prosecution. They also encourage corporate self-regulation and strengthen standards of responsible business conduct. In the long term, these measures may be more effective than purely punitive ones (Lehan, 2021).

Comparing this with the practice in the United States further highlights the importance of procedural safeguards as a counterbalance to overcriminalisation. While the American concept of white-collar crime

encompasses a wide range of economic offences, its application is balanced by rigorous proof requirements and clear criteria for establishing the offence's subjective element. In particular, the doctrine of mens rea requires proof of criminal intent as a key element of the offence, while the standard of proof "beyond a reasonable doubt" significantly limits the possibility of liability in the absence of a sufficient evidentiary basis. When considered as a whole, these elements form an effective barrier against unjustified criminal prosecution in the business sphere (Polianskyi, 2015).

In the context of Ukraine's European integration trajectory, consideration of these approaches acquires not only theoretical but also practical significance. This suggests a necessity for a gradual rethinking of criminal law policy in the economic sphere, orientated towards European standards of proportionality, subsidiarity, and legal certainty. This involves, in particular, narrowing the scope of criminalisation to conduct that genuinely exhibits a high level of social harmfulness; developing alternative response mechanisms, such as administrative sanctions, civil remedies and corporate compliance tools; and ensuring the institutional independence of law enforcement bodies from private interests. Only under these conditions can criminal law effectively and appropriately influence state economic policy without undermining the foundations of entrepreneurial freedom.

4.6. Problems of Criminal Law Regulation in Ukraine

The current state of criminal law regulation of economic relations in Ukraine is characterised by a number of systemic problems that directly impact the effectiveness of combatting economic crime and the quality of the business environment. These issues are complex and stem from deficiencies in the regulatory framework and its practical implementation.

Firstly, it is crucial to acknowledge the significant number of criminal law provisions that govern the economic sphere. Additionally, these provisions are characterised by their substantive indeterminacy. The Criminal Code of Ukraine contains a considerable number of offences that directly or indirectly relate to business activity, including adjacent offences against property and in the sphere of official misconduct (The Criminal Code of Ukraine, 2001). Concurrently, a substantial proportion of these provisions is formulated using evaluative concepts that allow for broad interpretation and create a considerable scope for discretion on the part of law enforcement authorities. A significant example in this regard is the criminalisation of so-called "fictitious entrepreneurship", the provision on which, in its previous version, became an instrument of widespread application beyond its original purpose, ultimately leading to its revision and decriminalisation. This situation exemplifies a more extensive pattern: the failure of inadequately designed criminal law prohibitions to achieve their intended objectives, whilst concomitantly engendering additional risks of abuse.

A further problematic phenomenon is that of cumulative (double or even multiple) liability for the same conduct. In a multitude of instances, infringements within the domain of economic activity give rise to administrative, financial, and criminal liabilities. Consequently, a business entity may encounter a scenario in which a single set of actions results in the imposition of regulatory fines, the initiation of criminal proceedings, and the initiation of civil claims for damages. This legal response model is overly burdensome, particularly for small and medium-sized enterprises, and may, in certain cases, conflict with the principle of ne bis in idem. Furthermore, it diminishes the predictability of the legal environment, thereby complicating business planning.

One aspect of these issues relates to the impact of martial law on criminal law policy in the economic sphere. The armed conflict has objectively increased the risk of economic crime, including the misappropriation of humanitarian aid, defence procurement abuses, the illicit transfer of assets, and other unlawful activities. According to the United Nations Office on Drugs and Crime, the war in Ukraine has had a considerable impact on the structure and modus operandi of organised crime, necessitating a suitable and prompt criminal law response (Shaposhnikova, 2025). Conversely, the intensification of criminal law regulation under martial law should not result in an expansion of criminalisation beyond objectively necessary limits. It is imperative to emphasise the provisional nature of these measures, with a view to averting their subsequent transformation into enduring constraints on economic liberty in the post-war era.

A key component of the current institutional framework for tackling economic crime is the Ukrainian Bureau of Economic Security, which was set up as a specialised body focusing on an analytical approach to identifying offences. The Bureau was intended to be a new type of institution, oriented not towards the mass initiation of criminal proceedings, but towards identifying systemic schemes and conducting comprehensive analyses of economic risks. In practice, however, the transition from a traditional law enforcement model to an analytically oriented one remains incomplete. Both academic and professional discourse highlight a number of challenges, including selective enforcement, an insufficient focus on complex systemic offences and limited effectiveness in cases involving a high level of economic complexity (Dykyi, 2022). These issues highlight the need for further institutional development and improved methodological approaches to the activities of the relevant bodies.

To summarise, the issues of criminal law regulation in the economic sphere in Ukraine are systemic and interrelated. The combination of factors, including the sheer number and indeterminacy of criminal law provisions, the cumulative nature of liability, the challenges posed by wartime conditions, and the incomplete nature of institutional reforms in the field of combating economic crime, collectively engender an environment characterised by heightened legal uncertainty. Addressing these issues necessitates a comprehensive approach aimed at improving the quality of legislation, ensuring its alignment with European standards, and strengthening the institutional capacity of law enforcement bodies.

4.7. Directions for Improving Criminal Law Policy in the Economic Sphere

The results of this study provide a basis for formulating systemic guidelines for improving criminal law policy in the economic sphere. This involves more than just incremental legislative amendments; rather, it necessitates a more profound rethinking of the role of criminalisation as an instrument of state influence. The focus should shift from the quantitative expansion of criminal prohibitions to enhancing their quality, justification, and effectiveness. It is the contention of the present study that the contemporary trajectory of reform should be defined by a reorientation from formal intensification of liability to ensuring its actual effectiveness.

In this regard, a priority is the comprehensive revision of economic offences as set out in the Criminal Code of Ukraine. This review should aim to eliminate outdated or ineffective provisions, distinguish clearly between criminal offences and administrative violations, and narrow overly broad and evaluative formulations that allow for arbitrary interpretation. This process should be conducted through open dialogue involving representatives of the business community, academia and civil society to ensure balanced consideration of public interests and the needs of economic development.

It is equally important to consolidate the ultima ratio principle legislatively in the sphere of economic relations. This requires the creation of clear statutory criteria for criminalisation, including a mandatory assessment of the social harmfulness of the conduct in question, whether alternative (non-criminal) measures are insufficient, and whether there is a societal consensus regarding the necessity of criminal prohibition. In this context, it seems sensible to adopt approaches similar to Regulatory Impact Assessment, adapted to the particular demands of criminal law policy.

It is recommended that alternative, non-criminal mechanisms for addressing economic offences be developed. The introduction of a compliance-oriented model, under which a business entity is given the opportunity to remedy violations, compensate for damage, and implement internal prevention mechanisms in exchange for mitigation or waiver of criminal prosecution, aligns with contemporary international practices and ensures a more sustainable regulatory effect. This approach fosters a culture of voluntary compliance, thereby reducing the level of conflict between the state and business.

At the same time, the effectiveness of criminal law policy depends largely on the quality of its enforcement. In this regard, it is particularly important to strengthen the analytical and investigative capacities of specialised bodies, such as the Bureau of Economic Security of Ukraine and the National Anti-Corruption Bureau of Ukraine, and to ensure their genuine institutional independence. This encompasses not only the provision of adequate staffing and technical resources but also the implementation of contemporary approaches to the detection of complex economic offences. These approaches are oriented towards the analysis of systemic risks rather than formal responses to isolated incidents. The augmentation of the proportion of completed investigations and convictions should be regarded as one of the key indicators of effectiveness.

Another priority area is ensuring the transparency and predictability of law enforcement practices. Systematically publishing generalised approaches to qualifying economic offences and developing consistent judicial practice that is accessible to business entities can significantly reduce legal uncertainty. Introducing mechanisms for officially clarifying law enforcement positions, similar to tax rulings, would minimise the risk of legal norms being interpreted arbitrarily.

In the context of Ukraine's European integration, particular importance should be attached to harmonising criminal law approaches with those of the European Union. This includes implementing the principles of proportionality and subsidiarity of criminal liability, establishing clear requirements for proving the subjective element of an offence, distinguishing between criminal and administrative sanctions, and creating effective procedural safeguards against unjustified criminal prosecution. Such adaptation should not be purely formal, but carried out with due regard to the best European practices.

In summary, optimising criminal law policy in the economic sphere requires transitioning to a model in which criminalisation is a balanced, justified and subsidiary instrument integrated into a broader system of legal and economic regulatory mechanisms. Only under these conditions can criminalisation effectively fulfil its protective function without undermining the foundations of economic freedom and entrepreneurial initiative.

5. Conclusions

The study provides a basis for formulating a set of generalised conclusions of theoretical and practical significance regarding the role of criminalisation within the state's economic policy system and the limits of its effectiveness.

Above all, it has been established that the criminalisation of economic offences is an important means by which the state can influence economic relations, performing protective, regulatory and signalling functions. However, its effectiveness is limited by the state's institutional capacity, the quality of legal regulation, the degree of legal certainty, and the likelihood of detecting and prosecuting the relevant offences.

It has been demonstrated that overcriminalisation poses a systemic threat to economic development that is comparable to the consequences of economic crime itself. Expanding criminal law prohibitions beyond what is objectively necessary leads to the devaluation of criminal law, the distortion of law enforcement practices, an increased risk of corruption, a deterioration of the investment climate and the stimulation of the shadow economy. Therefore, criminal law, which is intended to protect economic relations, can, under certain conditions, become a factor in their destabilisation.

It is evident that an optimal model of criminal law policy in the economic sphere should be founded upon a set of interrelated principles: ultima ratio (the utilisation of criminal law as a measure of last resort), proportionality between the degree of social harmfulness and the severity of sanctions, legal certainty and foreseeability, subsidiarity of criminal liability, and the maintenance of a balance between the protection of public interests and the freedom of entrepreneurial activity. A deviation from these principles has been shown to result in a reduction of the effectiveness of criminal law regulation, and to undermine trust in the legal system.

It has been established that improving the criminal law component of Ukraine's state economic policy requires a comprehensive approach. This should include the systematic revision of economic offences, the development of alternative response mechanisms, enhancing the quality and independence of specialised law enforcement bodies, and harmonising national legislation with European Union standards. In this context, successful reform should be judged not by the number of criminal law prohibitions, but by their ability to ensure the effective and proportionate protection of economic relations.

In the context of martial law and the subsequent post-war reconstruction of Ukraine, particular emphasis is placed on ensuring a balanced approach to criminalisation. The state must effectively counter genuinely dangerous economic offences, such as the misappropriation of public resources, fraud and money laundering, while simultaneously guaranteeing a stable, predictable and secure legal environment for legitimate business activity.

Further research could focus on developing a methodology to assess the effectiveness of criminal law norms in the economic sphere, conducting a more in-depth comparative analysis of criminalisation models in the context of European integration processes, and studying the potential of corporate compliance mechanisms as an alternative to criminal prosecution within the domestic legal system.

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