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Compliance of criminal legislation of the EU and Ukraine in the field of combating human trafficking with the *acquis communautaire*

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Abstract. The European course of Ukraine and the beginning of negotiations on its membership necessitate the implementation of the EU acquis into national legislation. One of such requirements is to amend the criminal law policy of Ukraine regarding the establishment of liability for human trafficking and bringing its principles closer to the requirements of a series of EU acts, including the Directive No. 2011/36/EU. The absence of the possibility of applying criminal sanctions to legal entities in connection with human trafficking in Ukrainian legislation is a drawback that will prevent Ukraine from obtaining EU membership. In this regard, the purpose of this study was to examine the forms of legal liability of legal entities for trafficking in human beings in the laws of EU Member States and candidate countries and to develop proposals for amending Ukrainian legislation to bring it into line with the requirements of Directive No. 2011/36/EU. The study employed the following methods: methods of analysis and synthesis, comparative legal method, and questionnaire method. The study analysed and summarised the legislation of all EU Member States and EU candidate countries in terms of establishing liability of legal entities for trafficking in human beings; the study also examined the specific features of criminal law means and forms of establishing such liability of legal entities in the above countries (in criminal codes, in separate regulations, or in the absence of such a provision). As a result of the analysis of the empirical base, the study concluded on the necessity of establishing the possibility of holding legal entities liable for trafficking in human beings in the current criminal legislation of Ukraine and proposed several options for implementing the requirements of Directive No. 2011/36/EU. The practical value of the findings lies in the fact that the legislators can further use one of the described options and amend the Criminal Code of Ukraine, enabling not only the application of criminal law measures to legal entities in connection with human trafficking, but also the fulfilment of the EU requirements and acquisition the EU membership for Ukraine

Keywords: criminal liability; criminal law measures against legal entities; legal entities; human trafficking; EU *acquis*

Introduction

By signing the EU-Ukraine Association Agreement (the Agreement), one of Ukraine's obligations is to bring its national legislation in line with the provisions of the EU *acquis* (Article 56(2)(i) of the Agreement) (Association Agreement Between…, 2014). The main purpose of such implementation is to bring Ukrainian legislation closer to EU standards, principles, and practices, which will result in a common legal space with other EU Member States. The signing of the Agreement (2014) served as the basis for legislative reforms aimed at bringing Ukrainian legislation closer to the EU *acquis*. The EU *acquis* itself is a rather complex and extensive system of regulations, the requirements of each of which must be addressed by the candidate state, which is subsequently verified by the Commission.

During the initial assessment of Ukraine's implementation of the EU *acquis*, it was found that the current legislation does not reflect certain tools for combating human trafficking, namely, there is no option to apply criminal law

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to a legal entity for committing human trafficking in its interests or by an entity authorised to act on its behalf. Failure to follow this requirement may be an obstacle to Ukraine's EU membership, which raises the need to explore the ways to stipulate this requirement in the legislation of states that have already become EU members and to formulate proposals to address this shortcoming.

Among modern Ukrainian researchers in the field of criminal law, there are a small number of publications devoted to the harmonisation of national criminal law with the requirements of the EU *acquis*. Specifically, I. Dir (2024) and Yu. Ponomarenko (2022) analysed approaches and methods of standardisation of criminal legislation with EU legislation, among which the researchers distinguished both the method of literal reflection of certain provisions and reflection of the provisions of the EU *acquis*, considering the practices of a particular country (such an approach would require a separate explanation to the Commission regarding the deviation from the provisions of the act).

There are also a few publications by researchers whose subject matter was the implementation of the EU *acquis* in the field of combating human trafficking. Such publications include the study by T. Syroid (2022), who analysed the regulatory framework for combating human trafficking in the EU and noted that stipulating the requirements of these acts in Ukrainian legislation would allow factoring in all the latest practices in this area.

Other publications have mostly focused on the analysis of objective signs of human trafficking. For example, Yu. Zabuha *et al.* (2022) analysed medical exploitation, which the researchers identified as a form of human trafficking. A. Ricard-Guay (2017) and A. Rose *et al.* (2021) proposed to distinguish such a form as domestic exploitation.

However, the area of liability of legal entities for committing criminal offences is also understudied. The doctrine of criminal law of Ukraine has a comprehensive study, including at the monographic level, on the liability of this subject (Grishchuk & Paseka, 2011), but the issue of applying criminal law measures to legal entities for committing human trafficking has stayed largely unaddressed by researchers, which only confirms the relevance of this subject.

The purpose of this study was to examine the EU *acquis* in the field of combating human trafficking, and to analyse the practices of the EU Member States in stipulating the possibility of applying criminal law measures to legal entities for committing human trafficking.

Materials and methods

The study consisted of the following stages: analysis of EU *acquis* legislation in the field of combating human trafficking; a survey among representatives of the legal community; analysis of the legislation of EU Member States regulating the application of criminal law measures to legal entities for committing human trafficking; formulation of conclusions and proposals. The purpose and algorithm of the study determined the choice of research methods. The methods of analysis and synthesis were employed to identify the key act which currently shapes the EU policy in the field of combating human trafficking – Directive of the European Parliament and of the Council No. 2011/36/EU (2011). The comparative legal method was used to analyse the legislation of the EU Member States and EU candidate countries on the possibility of applying criminal law measures to legal entities for committing human trafficking. This helped to identify three forms of stipulating the possibility of applying criminal law remedies to legal entities for committing human trafficking: 1) stipulated in the Criminal Code; 2) stipulated in other legal acts; 3) not stipulated.

The questionnaire method was employed to survey the representatives of the legal community on the need to introduce the above criminal law measures into national legislation and to identify shortcomings in the current legislation on combating human trafficking; the deduction method was used to formulate conclusions. Thus, a survey of 50 respondents was conducted, the selection criterion for which was their activity in the field of criminal justice. The questionnaires were sent to potential respondents both through electronic communication (based on contacts from scientific events) and by posting the questionnaire in the public domain on Facebook. This study was conducted in full compliance with the ethical principles set out in the Law of Ukraine No. 848-VIII "On Scientific and Technical Activities" (2015) (Article 7) and the Regulations on the organisation of scientific activity at Lviv State University of Internal Affairs (2017). All survey participants provided informed consent to take part in the study, and their confidentiality and anonymity were ensured following the established standards.

The survey itself was conducted online using Google Form. The respondents included 2 groups of people with a total of 50 people: 1) theoreticians (researchers and academics) and 2) practitioners (representatives of law enforcement agencies, prosecutors, judges, and lawyers). The first block of the questionnaire concerned the respondents' assessment of the effectiveness of current legislation in terms of combating human trafficking and the application of criminal law measures to legal entities. The second block included a series of questions related to amendments to the Criminal Code of Ukraine (2001) to implement the requirements of Directive of the European Parliament and of the Council No. 2011/36/EU (2011) and to predict the effectiveness of the application of these provisions in practice.

Results

Ukraine's path to EU membership began in 2007 with negotiations between Ukraine and the EU on a new agreement. The next major step in strengthening cooperation was the signing of the political part of the Agreement (2014), and the economic part of the Agreement on 27 June 2014. It was from the moment of its ratification that Ukraine began to perform its obligations, which were supposed to bring the country closer to EU membership.

The text of the Agreement (2014) repeatedly emphasises the significance of compliance of national legislation with the EU *acquis*. Specifically, the Preamble prescribes Ukraine's obligation not only to gradually adapt its legislation to the EU *acquis* in the relevant areas, but also to ensure its effective application. Such legislative approximation is carried out in the areas of economy, trade, energy, transport, crime, migration, and border management, etc. However, before proceeding to the review of acts in the field of combating human trafficking, it is necessary to analyse what exactly the term "EU *acquis*" covers.

The definition of "EU *acquis*", as stated in the Venice Commission's report "The impact of the enlarged European Union on new member states and prospects for further enlargement" (2005), is derived from two EU regulations,

namely Article 2 of the "Act Concerning the Conditions of Accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic and the Adjustments to the Treaties on which the European Union is founded" (2003) and Article IV-438 of the Draft Treaty Establishing a Constitution for Europe (2004). Summarising the texts of the above-mentioned regulatory provisions, it can be concluded that the EU *acquis* is a set of the following elements: 1) agreements on the functioning of the EU or the Community and other acts related to their activities; 2) declarations, directives, resolutions, and other acts of the EU institutions; 3) inter-institutional agreements; 4) agreements between the Member States concluded based on treaties and acts; 5) judicial practice of the Court of Justice (the Court). An identical definition of the EU *acquis* is given in the Glossary of the European Parliament (Glossary of summaries, n.d.), according to which the EU *acquis* should be understood as a set of common rights and obligations common to all EU Member States, covering the content and principles of EU agreements; legislation adopted based on these agreements; the judicial practice of the Court of Justice; EU declarations and resolutions; legal instruments of the Common Foreign and Security Policy; agreements between the Union and/or Member States, the subject of which is activity within the EU. Thus, the states applying for EU membership are obliged not only to harmonise their national legislation with the EU *acquis*, but also to consider the Court's judicial practice.

One of the areas that needs to be brought into line with the EU *acquis* is combating human trafficking. At the international level, this area has been repeatedly recognised as a priority and one that requires constant strengthening of international cooperation to prevent and investigate human trafficking. As rightly emphasised by A. Voytsihovskyi (2022) and J.J. Van Rij (2023), EU institutions have adopted an increasing number of regulations aimed at introducing new standards, mechanisms for preventing human trafficking, defining the limits of its punishability, etc.

The normative component of the EU *acquis* in the field of combating human trafficking is quite significant in terms of its number, as human trafficking has been repeatedly recognised by the European Council as a serious problem in the EU that requires increased attention, as this crime is characterised by cross-border nature, high level of latency, a large number of cases of its commission and, as a result, a large number of victims. It is the elevated degree of danger of this crime that has led to the adoption of a series of EU directives aimed at combating it, such as Directive of the European Parliament and of the Council No. 2011/36/EU (2011) or Directive of the European Parliament and of the Council No. 2012/29/EU (2012). S. Nordquist's (2024) study of individual EU directives allows stating the effectiveness of the legislation, with the researcher noting that the EU *acquis* in the field of combating human trafficking needs to be reformed and improved, including by addressing new forms of human trafficking and developing relevant means to counteract them.

One of the key acts in the field of anti-trafficking policy is Directive of the European Parliament and of the Council No. 2011/36/EU (2011) (the Directive), which defines the forms of human exploitation, recommendations on the type and amount of punishment for trafficking in human beings, certain aspects of the use of arrest and confiscation of property for committing this crime, compensation for victims of trafficking, certain procedural aspects, etc. The provisions of the Directive relating to the prosecution of legal entities are of the greatest interest for the present study. Thus, Articles 5 and 6 regulate certain aspects of the liability of legal persons for trafficking in human beings. These provisions establish the obligation of the EU Member State (and candidate Member State) to provide for and take the necessary measures to legal persons liable for trafficking in human beings if such a crime was committed by a person in the interests or on behalf of a legal person. According to these articles, criminal law remedies may be applied to legal entities if human trafficking was committed by a person holding a managerial position based on authority 1) to represent such a person; 2) to make decisions on its behalf; or 3) to exercise control within the legal entity. At the same time, a legal person, according to the provisions of Part 4 of Article 5 of the Directive, is any legal person having legal personality under applicable law, except for three categories of entities: states, public authorities, and international organisations.

According to the provisions of Article 6 of Directive of the European Parliament and of the Council No. 2011/36/EU (2011), the sanctions to which a legal entity is subject may be both criminal and non-criminal (e.g., civil or commercial liability measures). Currently, the following types of sanctions against a legal entity are prescribed: 1) deprivation of the right to state benefits or support; 2) deprivation of the right to engage in commercial activities (fixed-term or indefinite); 3) placement under judicial supervision; 4) judicial liquidation; 5) closure of a legal entity (fixed-term or indefinite). Analogous provisions on the liability of legal entities are contained in Articles 4 and 5 of Council Framework Decision No. 2002/629/JHA "On Combating Trafficking in Human Beings" (2002). However, these types of penalties are not mandatory, and it is at the discretion of states to stipulate their list in national legislation. In this regard, the orientation function of this list should be noted since it defines only some types of means of influence on legal entities in case of committing this unlawful act. This suggests the possibility of EU states to define other criminal law measures, and not only, in relation to legal entities within the framework of national legislation.

These provisions, according to sub-section 3 of section 24 of the "The report based on the results of the initial assessment will become the implementation of the EU *acquis*" (A4U, 2022), are the ones that indicate incomplete implementation of the EU *acquis*, since the current criminal legislation of Ukraine does not prescribe the liability of legal entities for unlawful acts related to human trafficking. Admittedly, the grounds for which legal entities may be subject to criminal liability – Part 1 of Article 96-3 of the Criminal Code of Ukraine (2001) – do not mention the commission of the offence under Article 149 of the Criminal Code of Ukraine "Trafficking in Human Beings". At the same time, other provisions, specifically regarding the subjects (legal entities of private or public law) to whom such measures may be applied, and the list of sanctions, generally follow the requirements of the above acts. In the latter case, legal entities may be subject to such criminal law measures as fines, confiscation of property, and liquidation – part 1 of Article 96-6 of the Criminal Code of Ukraine (2001).

Considering the need to establish the position of representatives of the legal community on the effectiveness of legislation in the field of combating human trafficking, the advantages and disadvantages of the prospect of applying criminal law measures to legal entities for committing human trafficking, a survey was conducted, in which 50 respondents took part, including 37 academics and 13 practitioners (law enforcement officers, advocates, and prosecutors).

The survey revealed a lack of unanimity among respondents in assessing the effectiveness of current legislation in the field of combating human trafficking and the effectiveness of the application of criminal law measures to legal entities. Thus, 72% of respondents (36 people) see the need to amend the provisions of the Criminal Code of Ukraine (2001) and current legislation in the field of combating human trafficking, while 28% (14 people) consider the current legislation to meet the needs of practice.

However, the respondents' assessment of the effectiveness of the application of the measures under study to legal entities showed a predominant recognition of their ineffectiveness and inadequacy. The respondents were asked to assess the effectiveness of their application on a 5-point scale, where 1 is absolutely ineffective and 5 is completely effective. Most respondents (27 people) rated it as completely ineffective (Fig. 1). An analogous assessment of this institution was given by P. Fries (2015) in his publication, citing the following reasons for the ineffectiveness of the application of criminal law measures to legal entities: 1) superficial formation of the list of criminal offences for which remedies may be applied to legal entities, which do not include criminal offences that are most often committed in such cases in practice; 2) difficulty in proving the causal link between the act of an authorised person, the functioning of a legal entity, and the relevant consequences of the act; 3) too limited list of remedies that may be applied to a legal entity. To the question "Would it be effective to introduce criminal sanctions against legal entities for committing human trafficking?", 60% (30 people) of the respondents answered in the affirmative, while 40% (20 people) denied such expediency. Respondents were given the opportunity to provide arguments in favour of their position, which are summarised in table 1. Among the potential risks of implementing the requirements of Directive of the European Parliament and of the Council No. 2011/36/EU (2011) to the Criminal Code of Ukraine (2001), the respondents mentioned: 1) problems of proving the commission of a crime in the interests or on behalf of a legal entity; 2) mistakes in law enforcement due to the lack of relevant practice; 3) corruption component; 4) non-application of such a rule in practice.

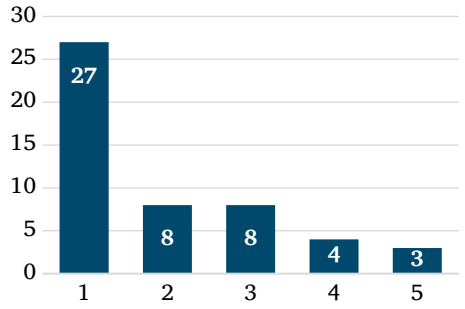

Figure 1. Evaluation of the effectiveness of the application of criminal law measures to legal entities
Source: compiled by the authors of this study based on the survey findings

Table 1. Results of respondents' answers to the question: "Will the introduction of criminal law measures against legal entities for trafficking in human beings be effective?"

Reasons for the objection (40%)	Substantiation for the affirmative answer (60%)
➨ Unnecessary criminalisation of means prescribed in the current legislation of Ukraine is sufficient to combat human trafficking and bring perpetrators to justice ➨ In practice, criminal remedies will not be applied to legal entities	➨ In most cases, legal entities are involved in human trafficking ➨ The number of cases of human trafficking will decrease ➨ Such measures will promote international cooperation and EU accession.

Source: compiled by the authors of this study based the survey findings

The problematic nature of the application of criminal law remedies is not new, and it is primarily conditioned by the specific content of this term, as well as by the established criminal law institutions for defining the elements and signs of a criminal offence. Other researchers also address this feature. Thus, D. Skromnyi (2022) noted that it is quite challenging, considering the provisions of various legal systems, to discuss the liability of legal entities, which are a kind of artificial entities, since the criminal laws of most countries of the world link criminal liability with physical behaviour and the corresponding mental state, which are either impossible to apply to legal entities at all, or if possible, then rather conditionally.

Considering this, the legislation of many countries of the world declares somewhat different models of liability of legal entities for committing criminal offences. The legislation of certain countries establishes options for bringing legal entities to criminal liability, others – to quasi-criminal liability, while others do not allow such a possibility, but the legislation prescribes the possibility of applying criminal law measures to legal entities. The latter option is reflected in Ukrainian legislation. Overall, all models of liability of legal entities for criminal offences make provision for a kind of substitution of actions of a legal entity by actions of its authorised individuals, provided that such actions are committed on behalf of the legal entity or in its interests. The introduction of such liability in the legislation of foreign countries, as well as the possibility of responding to criminal offences committed on behalf of a legal entity by criminal law in the legislation of Ukraine, has become a major step in the fight against crime and the implementation by EU Member States, as well as current or potential candidates for membership, of the requirements of a series of international legal acts and EU acts.

Despite the relative prevalence of liability of legal entities in the criminal legislation of the EU Member States,

its regulation sometimes differs rather substantially, which does not quite correspond to the EU's policy of harmonising the legislation of its members. On the one hand, a Member State or Candidate State factors in the general requirements of a particular directive. On the other hand, despite considering the legal traditions of the development of legislation of a particular state, there are substantial differences.

A review of the legislation of foreign countries, namely the European Union, shows that among the 27 Member States, all but Bulgaria, the legislation establishes the liability of legal entities (Belgium, Croatia, Cyprus, Denmark, Estonia, Finland, France, Greece, Ireland, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Hungary, Sweden, Hungary, Finland, and the Czech Republic) (Table 1). In this case, this refers to those EU Member States whose legislation specifically establishes criminal liability of legal entities. Furthermore, in some EU Member States, the legislation prescribes the so-called quasi-criminal (administrative-criminal) liability of these entities (Austria, Italy, Spain, Germany) (Table 2). Considering the above, 26 out of 27 EU states (96%) stipulate the possibility of applying criminal law measures to legal entities in one form or another (Table 2). At the same time, the possibility of applying criminal sanctions to legal entities for trafficking in human beings is also declared in the legislation of almost all of the listed states (in 25 out of 27 EU states – 93%). At the same time, a direct reference to the possibility of prosecuting a legal entity for human trafficking is contained in the legislation (usually in the criminal code, in rare cases – in a special law) of the following states: Estonia, Ireland, Lithuania, Poland, Portugal, Slovakia, France, and Spain. In other states, the legislator has defined the so-called "open" list of criminal offences, provided that such an act is committed on behalf of a legal entity, in its interests, in its favour, etc. This method of legislative establishment of the list suggests that a legal entity will also be subject to criminal liability for committing human trafficking. Considering the above, the legislation of the EU Member States, except for some of them, generally follows the requirements of the *acquis communautaire* in terms of establishing the liability of legal entities for human trafficking.

Table 2. Criminal liability concerning the legal entities and for the offence of human trafficking in the legislation of EU Member States

No.	Name of the country (EU Member State)	Availability of criminal liability/legal remedies for legal entities	Legal liability of legal entities for trafficking in human beings	Source
1	Austria[1]	+ (separate law on liability of legal entities)	+	Consolidated Federal Law of Austria (2005)
2	Belgium[1]	+ (Article 5 of the Criminal Code)	+	Criminal Code of Belgium (1867)
3	Bulgaria[2]	–	–	Criminal Code of Bulgaria (1968)
4	Greece[3]	+ (a series of laws on liability of legal entities)	–	Criminal Code of Greece (2019)
5	Denmark[1]	+ (Section V of the Criminal Code)	+	Criminal Code of Denmark (2009)
6	Estonia[4]	+ (Article 14 of the Criminal Code)	+ (Article 133(3) of the Criminal Code)	Penal Code of Estonia (2001)
7	Ireland[4]	+ (separate law on liability of legal entities)	+ (separate law on the liability of legal entities for human trafficking)	Companies Act of Ireland (2014); Criminal law (Human trafficking) act of Ireland (2008)
8	Spain[1]	+ (§ 31 bis 1 Criminal Code)	+	Criminal Code of Spain (1995)
9	Italy[1]	+ (separate law on liability of legal entities)	+	Legislative Decree of Italy (2001)
10	Cyprus[1]	+ (Article 2(78) of the Interpretation Act)	+	Criminal Code of Cyprus (1959); The Interpretation Act of Cyprus (1989)
11	Latvia[1]	+ (Article 12 of the CC and Chapter VIII-1 of the CC)	+	Criminal Law of 1995 and the updated Criminal Code of Latvia (1998)
12	Lithuania[4]	+ (Article 20 of the Criminal Code)	+ (Article 147(4) of the Criminal Code)	Criminal Code of the Republic of Lithuania (2000)

Table 2, Continued

No.	Name of the country (EU Member State)	Availability of criminal liability/legal remedies for legal entities	Legal liability of legal entities for trafficking in human beings	Source
13	Luxembourg[1]	+ (Articles 34-39 of the Criminal Code)	+	Penal Code of Luxembourg (1994)
14	Malta[1]	+ (Article 23B of the Criminal Code)	+	Criminal Code of Malta (1854)
15	Netherlands[1]	+ (Article 51 of the Criminal Code)	+	Criminal Code of the Netherlands (1881)
16	Germany[1]	+ (§ 14 of the Criminal Code)	+	Criminal Code of Germany (1871)
17	Poland[4]	+ (separate law on liability of legal entities)	+ (Article 189a)	Law of Poland No. 197 No. 88 (1997), Law of Poland No. 197 (1997)
18	Portugal[4]	+ (Article 11 of the Criminal Code)	+ (Article 160 of the Criminal Code)	Criminal Code of Portugal (2024)
19	Romania[1]	+ (Article 135 of the Criminal Code)	+	Criminal Code of Romania (2009)
20	Slovakia[4]	+ (separate law on liability of legal entities)	+ (§ 3 of the law)	Law of Slovakia No. 91/2016 (2015)
21	Slovenia[1]	+ (separate law on liability of legal entities)	+	Law of Slovenia "On the Liability of Legal Persons for Criminal Acts (LPCPA)" (1999)
22	Hungary[1]	+ (separate law on liability of legal entities)	+	Law of Hungary "On Criminal Measures Against Legal Persons" (2001)
23	Finland[1]	+ (section 9 of the Criminal Code)	+	Criminal Code of Finland (1889)
24	France[4]	+ (Article 225-24 of the Criminal Code)	+ (Articles 225-4-1 to 225-4-9 of the CC)	Criminal Code of France (1992)
25	Croatia[1]	+ (separate law on liability of legal entities)	+	Law of Croatia No. 114/23 (1997)
26	Czech Republic[1]	+ (separate law on liability of legal entities)	+	Law of the Czech Republic No. 146/2011 (2011)
27	Sweden[1]	+ (section VII of the Criminal Code)	+	Criminal Code of Sweden (1965)

Note: [1] – the legislation does not establish a clear list of criminal offences for which a legal entity may be subject to criminal liability but does not exclude the liability of this entity for human trafficking; [2] – the law does not prescribe the possibility of applying criminal law remedies to legal entities; [3] – the law prescribes the possibility of applying criminal law measures to legal entities, but there is no such possibility for human trafficking; [4] – the law clearly defines the possibility of applying criminal sanctions to legal entities for trafficking in human beings

Source: compiled by the authors of this study based on the review of the legislation of the listed countries

Within the framework of the current study, it is also essential to analyse the legislation of the EU Candidate States, including Ukraine. That the legislation of almost all EU Candidate States already prescribes the possibility of applying criminal law remedies to legal entities in case of a criminal offence committed in their favour or by entities authorised to act on their behalf, namely: Albania, Bosnia and Herzegovina, Georgia, North Macedonia, Moldova, Montenegro, Ukraine, Serbia, and Ukraine (Table 3). In most (seven out of eight) states, the legislation prescribes the possibility of applying criminal sanctions to legal entities for trafficking in human beings. In five of the seven states, this possibility is clearly defined by law (Bosnia and Herzegovina, Georgia, Moldova, North Macedonia, Serbia) (Table 3).

In two others (Albania, Montenegro), the legislation does not contain a list of acts for which legal entities will be held liable (Table 3). This means that legal entities can be held criminally liable for any criminal offence, including human trafficking, if all the necessary conditions are met. Only one state, Ukraine, despite the presence of Section XIV-1 of the Criminal Code of Ukraine (2001), which regulates criminal law measures against legal entities, does not prescribe the possibility of their application to this entity for trafficking in human beings. Accordingly, the criminal legislation of Ukraine does not fully meet the requirements of the *acquis communautaire*.

Table 3. Criminal liability for legal persons and for the offence of human trafficking in the legislation of the EU candidate countries

No.	Name of the state (EU Candidate)	Availability of criminal liability/ criminal law measures against legal entities	Legal liability of legal entities for trafficking in human beings	Source
1.	Albania[1]	+ (separate law on liability of legal entities)	+	Law of Albania No. 9754 (2007)
2.	Bosnia and Herzegovina[2]	+ (section XIV of the Criminal Code)	+ (Article 186 of the Criminal Code)	Criminal Code of Bosnia and Herzegovina (2003)
3.	Georgia[2]	+ (Section VI-1 of the Criminal Code, Chapter XVII-1)	+ (Article 143-1)	Criminal code of Georgia (1999)
4.	Moldova[2]	+ (Article 21(3) of the Criminal Code)	+ (Article 165 of the Criminal Code)	Criminal Code of the Republic of Moldova (2002)
5.	North Macedonia[2]	+ (Articles 28a-28c of the Criminal Code)	+ (part 6 of Article 418-a of the CC)	Criminal Code of the Republic of Macedonia (1996)
6.	Serbia[2]	+ (separate law on liability of legal entities)	+ (Article 2 of the Law)	Law on the liability of legal entities for criminal offences (2008)
7.	Ukraine[3]	+ (section XIV-1 of the Criminal Code)	–	Criminal Code of Ukraine (2001)
8.	Montenegro[1]	+ (Article 31 of the Criminal Code, as well as a separate law on liability of legal entities)	+	Criminal Code of Montenegro (2003)

Note: [1] – the legislation does not establish a clear list of criminal offences for which a legal entity may be subject to criminal liability but does not exclude the liability of this entity for human trafficking; [2] – the law clearly defines the possibility of applying criminal sanctions to legal entities for trafficking in human beings; [3] – the law prescribes the possibility of applying criminal law measures to legal entities, but there is no such possibility for human trafficking

Source: compiled by the authors of this study based on the review of the legislation of the listed countries

Considering the above, as well as Ukraine's choice of the European integration vector of its development, it is necessary to bring the provisions of criminal law into line with the EU *acquis* at the legislative level. In the doctrine of criminal law, the necessity of establishing the possibility of applying criminal law measures to legal entities for human trafficking has already been declared in the current Criminal Code of Ukraine (2001). Thus, V.K. Grishchuk and O.F. Paseka (2011), in the proposed wording of Article 2-1 of the Criminal Code of Ukraine (2001), in its part 2, considered it possible to bring legal entities to criminal liability for a fairly wide range of criminal offences, including human trafficking. Accordingly, this idea is not new in the scientific field.

Furthermore, the provisions of the EU *acquis* regarding the application of criminal law measures to legal entities for human trafficking are considered in the Draft of the New Criminal Code of Ukraine (2024), which was developed by the Working Group on the Development of Criminal Law. Thus, Article 3.11.2 (grounds for applying criminal law measures to a legal entity) stipulates that if, due to improper control of an authorised person of a legal entity under private law (since, according to the draft, legal entities under public law are not subject to such measures), one of the crimes against humanity prescribed in Articles 4.4.6, 4.5.4-4.5.9, 4.11.4 is committed, the legal entity will be subject to criminal law measures (item 2, part 1). Therewith, Article 4.4.6 of the document prescribes liability for human trafficking. Moreover, this item does not limit the application of criminal law measures to a legal entity for human trafficking, as item 1 of part 1 of Article 3.11.2 states that one of the grounds for applying criminal law measures to this legal entity is the commission of any of the crimes of 3-9 degrees of gravity by an authorised person on its behalf and in its interests. According to the provisions of the aforementioned Article 4.4.6. of the Draft of the New Criminal Code of Ukraine (2024), human trafficking is a crime

of the 5th degree of gravity, and therefore, if committed by an entity authorised to act on behalf of and in the interests of a legal entity, criminal law measures are also applied. Thus, the authors of the Draft of the New Criminal Code of Ukraine (2024) have addressed the requirements of the EU *acquis* in its provisions, and therefore the proposed changes should be considered by the legislature at least in this part.

Considering the above, it can be assumed that there are at least three possible solutions to this situation. The first solution is to supplement the list of crimes defined in the current version of Article 96-3 of the Criminal Code of Ukraine (2001) (grounds for application of criminal law measures to legal entities) with Article 149 of the Criminal Code of Ukraine (2001), which would allow applying such measures to legal entities. However, in this case, despite Ukraine's compliance with the requirements of the EU *acquis*, such a decision would not cover a comprehensive approach to the regulation of criminal law measures against legal entities, and, accordingly, the solution to one of these problems does not solve the host of others.

The next solution is to define in the provisions of Article 96-3 of the Criminal Code of Ukraine (2001) the entire list of acts for which a legal entity may be subject to criminal liability, including trafficking in human beings. This solution is one of those most commonly found in the criminal legislation of EU Member States, but it is not without its drawbacks, at least considering the fact that criminalisation or decriminalisation of an act will always require amendments to the Article containing the grounds for applying criminal law measures to legal entities.

The last and most optimal solution, which is also reflected in the legislation of a series of EU countries and the Draft of the New Criminal Code of Ukraine (2024), is the possibility of applying criminal law measures to legal entities for committing any of the crimes (in the draft – crimes of 3-9 degrees of gravity), provided that the conditions specified by legislation are met (the act is committed by an authorised person, on behalf of and in the interests of a legal entity, etc.)

Discussion

As noted at the outset, the issue of applying criminal law measures to legal entities, specifically for committing human trafficking, has been understudied. The researchers have repeatedly investigated the EU anti-trafficking policy and its fundamental principles. For instance, E. Symeonidou-Kastanidou (2016) and M.-A. Huemer (2023) analysed the provisions of Directive of the European Parliament and of the Council No. 2011/36/EU (2011), which is the primary focus of this study. These researchers concluded that, despite the fundamental significance of this act for the EU's anti-trafficking policy, it requires major improvement, particularly in terms of criminal law. They noted that the number of crimes committed is not decreasing, while the number of persons (including legal entities) avoiding responsibility is growing. S. Marchetti *et al.* (2022) also concluded that the provisions of the Directive must be improved after analysing 10 years of experience in applying the act in practice. The researchers noted that, although the Directive established a certain framework for combating trafficking in human beings, it has not been effective enough in practical application. They emphasised that stricter measures and control mechanisms must be introduced to ensure that all perpetrators, including legal entities, are effectively held accountable.

In the context of the Lithuanian practices of implementing the provisions of Directive of the European Parliament and of the Council No. 2011/36/EU (2011), A. Urbelionytė (2012) fairly noted that the provisions of this act considerably increase the penalty for committing human trafficking, which is aimed at minimising the commission of this crime. This opinion was also supported by other researchers, including D. Corina (2021), who emphasised the significance of a tougher approach to punishment for this type of crime. Supporting the concept of toughening the punishment, as well as bringing legal entities to criminal liability, it appears even more reasonable to stipulate this provision in the criminal legislation of Ukraine. This will ensure a more effective fight against human trafficking and strengthen the legal basis for bringing to justice those who commit this crime.

In terms of improving the international and national legislation of EU Member States and EU Candidate States, according to V. Shcherbatiuk *et al.* (2024), the scientific potential was most often directed towards the investigation of more precise aspects of human trafficking, namely its forms. Thus, in their study of more common forms of human trafficking, such as sexual, labour, and child exploitation, K. Bracy (2021) and G. Martinho *et al.* (2022), while emphasising the key role of criminalising these acts, also highlighted the shortcomings in the policy to combat them.

Other researchers, such as A. Ricard-Guay (2017), A. Rose *et al.* (2020), and Yu. Zabuha *et al.* (2022), identified new forms of human trafficking, such as medical exploitation and domestic exploitation. Undoubtedly, the study of certain forms of human trafficking helps to understand the vector of development of criminal legislation to combat human trafficking. At the same time, a legal entity may be involved in any form of human trafficking (including those that have emerged in recent years), which only underscores the expediency of developing and introducing provisions on its liability into the national legislation of Ukraine.

Studies also show that the involvement of legal entities in human trafficking is not uncommon. For example, large corporations can be involved in labour exploitation by providing jobs with inadequate working conditions and insufficient pay. In the area of medical exploitation, legal entities may be involved in the illegal donation of organs or the exploitation of vulnerable groups for medical purposes. Analogously, in cases of domestic exploitation, private employment agencies may act as intermediaries, facilitating the labour exploitation of domestic workers.

Thus, considering the expansion of forms of trafficking in human beings and the involvement of legal entities, the need to improve legislation and include provisions on the liability of legal entities is evident, as emphasised by S. Rodríguez-López (2017), S. Marchetti *et al.* (2022), and T. Muhammad Safar *et al.* (2024). This will ensure a more comprehensive approach to combating human trafficking and help bring all perpetrators to justice, regardless of their status or form of involvement in the crime. The most relevant to the topic of this the present study is the monographic study by V.K. Grishchuk and O.F. Paseka (2013), who repeatedly emphasised the necessity of expanding the list of criminal offences (as of the date of publication – crimes) for which criminal law remedies can be applied to a legal entity by officials. Researchers proposed to include human trafficking (Article 149) as one of such crimes in the Criminal Code of Ukraine (2001). Notably, these studies consider a wider

range of issues that only partially include the subject matter of this study. At the same time, it is advisable to support such proposals of scientists because human trafficking must be included in the list of criminal offences for which legal entities may be subject to criminal law measures. Furthermore, this will enable Ukraine to perform all the requirements for adapting its legislation to the requirements of the EU *acquis* and to become a member in the future.

Conclusions

The impossibility of applying criminal law measures to legal entities for committing human trafficking in Ukrainian legislation is a major obstacle to Ukraine's EU membership. This study analysed the approaches to establishing liability of legal entities for human trafficking in the laws of EU Member States and Candidate States.

The study of the criminal legislation of the EU Member States and candidate countries, including the legislation of Ukraine, in terms of establishing the possibility of applying criminal sanctions to legal entities for human trafficking, showed that it generally follows the requirements of the *acquis communautaire*. Except for certain states (specifically Belgium), most EU Member States and candidate states stipulate the possibility of applying criminal law measures to legal entities, including for human trafficking.

It was found that among all the EU Candidate States, only Ukraine has not performed the requirements of the EU *acquis* in this part, since the Criminal Code of Ukraine (particularly, Section XIV-1) does not prescribe the possibility of applying criminal law measures to legal entities for human trafficking. This issue is an essential aspect of harmonising Ukrainian legislation with European standards. The necessity of establishing such remedies in the Criminal Code of Ukraine, as well as the benefits of this legislative solution, were confirmed by the results of a survey involving experts (theoreticians and practitioners). Most respondents stressed the relevance of introducing liability for legal entities, as this would contribute to a more effective fight against human trafficking, ensure adequate punishment for crimes committed, and strengthen Ukraine's international standing as a state governed by the rule of law and ready for EU integration.

To some extent, the issue of applying criminal sanctions to legal entities for human trafficking is regulated in the New Criminal Code of Ukraine. At the same time, the presence of this provision in the draft law will unfortunately not have any consequences when assessing the adaptation of Ukrainian legislation to the EU acquis, as only existing regulations are subject to assessment.

The purpose of the analysis of European legislation WAS to make a comparative analysis of different regulatory models and, based on this, to determine the best model of Ukraine's compliance with the requirements of Directive No. 2011/36/EU in the implementation of the EU *acquis* and to harmonise it with EU standards. Thus, the study proposed that national legislation (the Criminal Code of Ukraine) should establish general conditions for the application of the investigated remedies to legal entities, such as the commission of a criminal offence in the interests of a legal entity or by a person authorised to act on its behalf, which will enable the application of these remedies to legal entities.

Promising areas for further research include an in-depth comparative analysis of legislative approaches to criminal liability for both human trafficking and other criminal offences, an assessment of the implementation of the requirements of the EU *acquis* into Ukrainian legislation, as well as a study of the effectiveness of the application of these regulatory frameworks in practice, considering the challenges and prospects for their further improvement to harmonise with European standards.

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Conflict of interest

The authors of this study declare no conflict of interest.

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Відповідність кримінального законодавства держав ЄС та України в сфері протидії торгівлі людьми до *acquis communautaire*

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Анотація. Європейський курс України та початок перемовин щодо набуття нею членства зумовлює необхідність впровадження *acquis* ЄС в національне законодавство. Однією з таких вимог є внесення змін в кримінально-правову політику України щодо встановлення відповідальності за вчинення торгівлі людьми і наближення її засад до вимог ряду актів ЄС, одним з яких є Directive No. 2011/36/EU. Відсутність в законодавстві України можливості застосування щодо юридичних осіб засобів кримінально-правового характеру у зв'язку із вчиненням торгівлі людьми є недоліком, що стане перепоною отриманні Україною статусу держави-члена ЄС. У зв'язку із цим метою цього дослідження було вивчення форм закріплення в законодавствах держав-членів та держав-кандидатів у члени ЄС відповідальності юридичних осіб за вчинення торгівлі людьми та розроблення пропозицій щодо внесення змін в законодавство України з метою приведення його до відповідності вимог Directive No. 2011/36/EU. Протягом дослідження використовувались наступні методи: методи аналізу і синтезу, порівняльно-правовий метод, метод анкетування. В межах статті було проаналізовано та узагальнено законодавство всіх країн-членів ЄС та країн-кандидатів в члени ЄС в аспекті закріплення відповідальності юридичних осіб за вчинення торгівлі людьми; було досліджено особливості кримінально-правових засобів та форм закріплення такої відповідальності юридичних осіб в наведених країнах (в кримінальних кодексах, в окремих нормативно-правових актах або відсутність такого закріплення). В результаті аналізу емпіричної бази було зроблено висновок про необхідність встановлення в чинному кримінальному законодавстві України можливості притягнення до відповідальності юридичних осіб за вчинення торгівлі людьми та запропоновано декілька варіантів щодо впровадження вимог Directive No. 2011/36/EU. Практична цінність результатів обумовлена тим, що подальше використання законодавцем одного з описаних варіантів та внесення змін до Кримінального Кодексу України дозволить не тільки застосовувати до юридичних осіб засоби кримінально-правового характеру у зв'язку із вчиненням торгівлі людьми, а й виконати вимоги ЄС та набути Україною статусу держави-члена ЄС

Ключові слова: кримінальна відповідальність; засоби кримінально-правового характеру до юридичних осіб; юридичні особи; торгівля людьми; *acquis* ЄС