**I N C R E A S I N G**

the Institutional Capacity Report of the ESBU

The Economic Security Bureau of Ukraine (ESBU) has been established as a unified investigative body for economic crimes and provided by the political obligations of Ukraine, under paragraph 10 of the Memorandum on Economic and Financial Policy, dated November 8, 2021.

The main task of the ESBU is to ensure the economic security of the state by counteracting offences that encroach on the state economy functioning. The main goals are the protection of public finance of the state, the unshadowing of the national economy, the creation of competitive conditions for business, and integration into the European economic area. Successful fulfilment of the mission will strengthen the economic stability and invulnerability of the national economy to external and domestic threats.

The ESBU is a new executive authority that exercises its powers through the main office and territorial offices, which must be provided with appropriate resources.

In contrast to other law enforcement agencies, the ESBU operates an analytical component, the purpose of which is to assess risks and threats in the economy and prepare forecasts and recommendations aimed at eliminating and/or minimizing them.

In general, ensuring the effective functioning of the ESBU is one of the tasks of the Economic Security Strategy of Ukraine until 2025. This requires a comprehensive and phased formation of promising directions for the development of ESBU, which must be reflected in the Strategy for the Institutional Development of the Economic Security Bureau of Ukraine until 2027, currently under development. In particular, the ESBU has already approved strategic blocks and directions of development intending to form the Strategy for the Institutional Development of ESBU for 2022 – 2027. As a result of the strategic sessions, directions of development and strategic initiatives were developed and were presented at the meeting of the Sectoral Group to support the development of the economic security sector of Ukraine. During the ESBU Board meeting, held on February 23, 2023, the Strategic Initiatives for the Institutional Development of the ESBU until 2027 were supported.

Given the global developments and the military aggression of the russian federation, Ukraine national security faces new challenges, including ensuring its economic component. In such circumstances, counteracting threats in the economic sphere, entrusted to state authorities and primarily to law enforcement, become particularly relevant. The ESBU performances are based on the analytical component, namely, the rejection of the "punitive model" and the emphasis on prevention, the research of the prerequisites for committing criminal offences contribute to the introduction of democratic principles professed by the advanced countries of the world into the national human rights system.

The ESBU refuses the "traditional" model of work, focused on phenomena and events that have already occurred. The adoption of a risk-oriented approach in ESBU activities allows for event forecasting and anticipation based on a comprehensive analysis of significant data sets. This analysis includes information obtained from automated information and reference systems, registers, and databases of state authorities and local self-government bodies, to which the ESBU has access granted by law. This expanded access enhances capacity of the ESBU to respond promptly to existing challenges and negative trends in the economic sphere, enabling more effective countermeasures against criminal offences that threaten the economic security of the state.

The analysis of the data obtained at the strategic level allows us to determine the trends in the development of global threats to the state economy, properly prepare for possible scenarios, as well as promptly take measures to prevent and/or counteract them.

Therefore, the main task of the ESBU is to effectively identify risks to the economic security of the state, assess their severity, determine the potential impact on the economy, evaluate the capacity to respond effectively, and develop measures to minimize or eliminate these risks. Thus, guided by analytics, activity of the ESBU proves most effective in combating phenomena and processes that generate risks in the economic sphere and ensures the protection of business entities from unwarranted interference in their activities.

According to Article 7 of the Law of Ukraine "On the Economic Security Bureau of Ukraine," interdepartmental agreements (contracts), joint orders, and protocols have been signed to facilitate electronic information exchange, including access to automated information and reference systems, registers, and databases held by state authorities or local self-government authorities. A comprehensive register has been compiled, covering 38 state authorities that utilize 54 automated information and reference systems, registers, and databases (without taking account into subsystems).

Active cooperation was being carried out between October 2022 and January 2023 with the American research company Moody's Analytics, concerning advisory support, and providing access to employees of the ESBU to the Orbis information database.

As a result of the agreement, employees of the ESBU were granted seven trial licenses to access the Orbis analytical database from November 24 to December 23, 2022, and from December 23, 2022, to January 23, 2023. Additionally, a memorandum on strategic partnership and cooperation was signed between ESBU and Clearview AI, Inc., for enabling the analysis of additional sources of information.

For technical protection of information, a range of activities have been taken, namely:

* the initial stage of creating servers of the active directory, file server, and update server was carried out;
* of office programs, along with a corporate mail server and communication tools have been implemented for the ESBU employees;
* a communication channel has been established to facilitate information exchange between ESBU and relevant stakeholders;
* the implementation of a pilot project for a software solution to prevent confidential information leakage has been initiated;
* endpoint software for detecting cyber threats and antivirus protection has been installed;
* an electronic document management system has been implemented.

One of the priorities of the ESBU is the implementation of a unified information policy to prevent manual intervention, preventing violations of information security (threats of gaining official information), and threats of cyber-attacks which can cause negative consequences for the ESBU. Ensuring an appropriate level of cybersecurity is a crucial task for the ESBU.

The ESBU has initiated business relations with the competent authorities of foreign states. This collaboration contributes to the implementation of international standards and allows more effectively implementing the powers of the ESBU, obtaining the necessary knowledge and information.

The ESBU concluded memorandums of cooperation with the Investigation Service of the Ministry of Finance of Georgia, the State Revenue Service of the Republic of Latvia, the Financial Crimes Investigation Service of the Ministry of Internal Affairs of the Republic of Lithuania, the State Tax Inspectorate of the Ministry of Finance of the Republic of Lithuania, and the National Agency for Combating Organized Crime of the Czech Republic. The ESBU is considering signing a Memorandum on Strategic Partnership and Interaction with the competent authorities from Romania, Sweden, Slovakia, the USA, the United Kingdom of Great Britain, Estonia, and Lithuania (Customs Department under the Ministry of Finance of the Republic of Lithuania), as well as with the Organisation for Economic Co-operation and Development (OECD) and the European Anti-Fraud Office (OLAF). In particular, the ESBU has initiated amendments to regulatory legal acts to define the ESBU as the national contact point for interaction with OLAF, which was supported by the Director General of OLAF.

The ESBU has established working-level communication with the European Police Office (Europol), within which information has already been exchanged on four criminal cases through the Secure Information Exchange Network Application (SIENA).

To develop institutional capacity, the ESBU also applied to the Hague Academy of International Law on personnel training, the Organisation for Economic Co-operation and Development (OECD), the Secretariat of the OECD/UNDP Tax Inspectors Without Borders Program, the Law Enforcement Center of South-Eastern Europe (SELEC), the European Union Agency for Law Enforcement Training (CEPOL) and received consent to cooperate.

Also, the ESBU has initiated its participation in the following international projects and programs:

* Union Anti-Fraud Programme: HERCULE and AFIS;
* UA Public Finance Management Support Programme for Ukraine (EU4PFM).

From 2022 to May 2023:

* were being undertaken 15 foreign business trips to participate in international events aimed at consolidating the efforts of European countries in combatting economic crime, gaining experience, adopting best European practices, and establishing and deepening international contacts for further cooperation.
* were being participated in 10 sessions of training on gaining experience in building internal and external communications, investigating cybercrimes, crimes related to cryptocurrencies, combating cross-border organised crime, adapting national legislation with EU regulations, and more.

According to the results of international cooperation in May 2023, the Ministry of Finance of the Republic of Latvia officially confirmed the successful registration of The ESBU grant application for "Support to strengthening the capacity of the Economic Security Bureau of Ukraine in the field of protection of the financial interests of the European Union." The implementation of this grant is aimed at promoting the establishment and implementation of a system for protecting the financial interests of the European Union and strengthening the ESBU capacity through improving the legal and regulatory framework, developing methodologies, and providing the exchange of experience in conformity with the Action Plan for the Implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community, and their member states, on the other hand.

In order to normalize the organizational foundations of the ESBU in the field of effective counteraction to potential threats and eliminate obstacles to the sustainable economic development of the state: the following steps have been taken:

* - approved and registered in the Ministry of Justice of Ukraine the Procedure for providing information by the State Tax Service of Ukraine from the State Register of individuals - taxpayers on the income of individuals upon request of the ESBU (the ESBU order dated August 31, 2022, No. 206/265).
* the ESBU participation in the implementation of the sanctions policy has been ensured by making appropriate changes to the Regulation on the Economic Security Bureau of Ukraine (resolution of the Cabinet of Ministers of Ukraine dated December 23, 2022 No.1430);
* the inclusion of the Deputy Director of the ESBU to the Interdepartmental Coordination Council on Countering Violations that affecting on the financial interests of Ukraine and the EU, established by resolution of the Cabinet of Ministers of Ukraine dated October 25, 2017, No. 1110 (changes in the composition of the Interdepartmental Coordination Council have made by the resolution of the Cabinet of Ministers of Ukraine dated June 14, 2022 No. 686);
* the inclusion of the Director of the ESBU in the Council on Prevention and Counteraction to the legalization (laundering) of proceeds of crime, financing of terrorism, and financing of the proliferation of weapons of mass destruction, established by resolution of the Cabinet of Ministers of Ukraine dated September 8, 2016, № 613 (changes to the council's composition were made by the resolution of the Cabinet of Ministers of Ukraine dated April 29, 2022, № 498).

Based on the analysis of current regulatory legal acts, the Action Plan of the Economic Security Bureau of Ukraine for the preparation of draft regulatory legal acts in 2023 has been drafted. The plan includes measures for the development of draft laws and regulatory legal acts aimed at increasing the institutional capacity and efficiency of the ESBU.

Specifically:

* draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine on Liability for Illegal Actions with the Funds of the European Union Budgets" (establishing liability for illegal actions with the EU international financial assistance funds).
* draft Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine on Liability for Illegal Actions with the Funds of the European Union Budgets"(establishing liability for illegal actions with the EU international financial assistance funds)
* draft Law of Ukraine "On Amendments to the Criminal Procedure Code of Ukraine": (abolishing the maximum threshold of damage caused during the determination of the jurisdiction of offenses to the ESBU detectives under Article 191 of the Criminal Code of Ukraine;
* draft Law of Ukraine "On Amendments to the Law of Ukraine "On the Economic Security Bureau of Ukraine" regarding the improvement of the legal framework of the activity of the Economic Security Bureau of Ukraine"(improving the legal regulation of the ESBU).
* draft Law of Ukraine "On Amendments to the Law of Ukraine "On Electronic Communications" regarding the improvement of counteraction to offenses that encroach on the functioning of the state's economy" (including the ESBU in the list of special users of the radio frequency spectrum to enhance the implementation of operational, investigative activities and pre-trial investigation by the ESBU divisions.
* draft Agreement between the Cabinet of Ministers of Ukraine and the Government of the United Kingdom of Great Britain and Northern Ireland on cooperation in the field of countering offenses encroaching on the functioning of the state economy.
* development of the draft resolution of the Cabinet of Ministers of Ukraine "On Amendments to the action plan of measures for the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand" (defining the state authority authorized to carry out the functions of the National Contact Point for organizing interaction with the European Anti-Fraud Office (OLAF).
* draft resolution of the Cabinet of Ministers of Ukraine "On approval of the Procedure for carrying out a set of measures for assessing risks in the field of economy" (regulatory regulation of the procedure for carrying out a set of measures for assessing risks in the field of economy).
* draft resolution of the Cabinet of Ministers of Ukraine "On Amendments to the Regulations on Service by Persons Holding Special Titles of the Economic Security Bureau of Ukraine" (improvement the legal regulation of service by persons holding special titles in the ESBU.
* draft resolution of the Cabinet of Ministers of Ukraine "On Amendments to the resolution of the Cabinet of Ministers of Ukraine dated May 22, 2019, № 494" (ensuring representation of the ESBU interests in Europol in order to promptly exchange information with the competent authorities of the European Union countries;
* draft order of the Cabinet of Ministers of Ukraine "Some issues of implementation of international agreements of Ukraine on cooperation in combating crime, concluded on behalf of the Government of Ukraine» (settlement of issues of international cooperation of the Economic Security Bureau of Ukraine and other state authorities of Ukraine with the relevant competent authorities of foreign states).

Law enforcement pressure on business, which was usually exerted by the so-called "crime fighters" not so long ago, has contributed to the spread of corruption practices, which negatively affected the effectiveness and authority of the law enforcement system of the state as a whole. Overcoming the negative trend through the implementation of the principles of transparency and integrity into the activities of state authorities is a prerequisite for the successful and offensive development of the ESBU, and the more efficient fulfilment of its functions.

The ESBU has significantly strengthened the regulatory legal framework for anti-corruption activities. The ESBU Anti-Corruption Program was approved, trainings for employees were implemented, and a "hotline" telephone service is used. Additionally, a working group to assess corruption risks with the participation of experts from the European Union Advisory Mission in Ukraine was established. According to the results of the activity and considering the results of the study of vulnerable functions and processes, a risk register has been created. Anti-corruption control during the organization of public procurements, such as monitoring of documents and studying counterparties, has been established.

The ESBU maintains transparency and openness to society. The Council of Public Control at the ESBU has been established, whose representatives were providing proposals regarding the work of tender commissions. This initiative has helped overcome misunderstandings in the early stages of interaction. However, discussions and constructive criticism are seen as integral processes in the formation of the ESBU.

In general, the creation of the ESBU has a positive political and security effect: Ukraine has fulfilled its foreign policy obligations to the World Bank, received macro-financial assistance, and optimized the structure of pre-trial investigation bodies by eliminating the tax police, economic divisions of the police, and the SSU. The law enforcement function has been separated from the service function of the State Tax Service of Ukraine.

Thus, the concentration of powers and competencies in countering offenses in the field of functioning of the state economy has been ensured within a single body, which has effectively strengthened the economic security of the state. However, ensuring the proper provision of the ESBU functions in national security and economic security requires additional legislative changes (regulating issues related to ensuring counterintelligence protection of the economy, counterterrorism functions, etc.).

Assessing today the institutional capacity of the ESBU, it is necessary to consider objective factors - the war has created unprecedented challenges in all areas of the state`s functioning without exception. Formation and activities of the ESBU take place in unstable economic and security conditions. Despite clear legislative regulation of the funding sources for the ESBU, to which Article 32 of the Law of Ukraine "On the Economic Security Bureau of Ukraine" refers exclusively the funds of the State Budget of Ukraine and the funds provided by international technical assistance projects, proper funding for the establishment and effective functioning of the ESBU has not been implemented yet.

The main needs for the full functioning of the ESBU include the creation of its own system (networks) of the exchange of information with limited access, databases necessary to ensure the daily activities of the ESBU divisions in the field of labour, financial, and managerial relations (Article 9 of the Law of Ukraine "On the Economic Security Bureau of Ukraine)." Another task is to ensure the Territorial Offices of the ESBU with necessary material and technical resources, as well as administrative premises located in regional centres.

At the same time, the ESBU is not actually provided with modern computer, office equipment, and in the absence of appropriate expenditure items, using of licensed office software products is problematic. Lack of funding blocks the ability to fully staff the ESBU, limiting its ability to conduct investigations, analysing economic schemes, and detecting financial crimes.

Considering that the ESBU is one of the authorities that has an analytical and law enforcement function, the purpose of which is ensuring the economic security of the state, improper funding for a long time creates the risk of impossibility of full implementation of the ESBU functions and tasks for the implementation of a comprehensive reform aimed at ensuring state economic security.

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