

DOI: <https://doi.org/10.34069/AI/2023.70.10.3>

How to Cite:

Kurepina, O. (2023). Legal regime stimulating economic activities: Convergence of Ukrainian legislation with EU law based on SDGs. *Amazonia Investiga*, 12(70), 32-42. <https://doi.org/10.34069/AI/2023.70.10.3>

## Legal regime stimulating economic activities: Convergence of Ukrainian legislation with EU law based on SDGs

### Стимулюючий правовий режим господарювання: зближення законодавства України та права ЄС на засадах ЦСР

Received: August 10, 2023

Accepted: October 5, 2023

Written by:

Olena Kurepina<sup>1</sup> <https://orcid.org/0009-0001-2096-7943>

#### Abstract

The purpose of the research is to substantiate ways to improve Ukrainian legislation, defining the features of the functioning of individual elements of SLREA, which will facilitate the achievement of SDGs. The study is based on a review of scientific literature dedicated to specific elements of SLREA (public procurement and state aid), Ukrainian legislation, and specific EU legal acts regarding the application of certain stimulating measures to achieve SDGs. It is argued that, compared to the institution of public procurement, the institution of state aid exhibits a significantly lower degree of actualization and integration into the legal framework supporting SDGs. It is substantiated that the modernization of Ukrainian legislation in the field of state aid should occur based on the model of legal regulation of the state aid system in the EU on the principles of SDGs. The development of SLREA in the context of adapting Ukrainian legislation to EU law should involve the integration of SDGs into the legal toolkit of such a regime.

**Keywords:** Stimulating legal regime of economic activities, Sustainable Development Goals, Ukrainian Legislation, European Union Law.

#### Introduction


This article discusses the need to improve Ukrainian legislation to stimulate economic activities. It is argued that current legislation is

#### Анотація

Метою дослідження виступає обґрунтування шляхів вдосконалення законодавства України, що визначає особливості функціонування окремих елементів СПРГ, що сприятиме досягненню ЦСР. Дослідження базується на огляді наукової літератури, присвяченій окремим елементам СПРГ (публічним закупівлям та державній допомозі), законодавства України та окремих актів права ЄС щодо застосування окремих стимулюючих заходів з метою досягнення ЦСР. Обґрунтовано, що, порівняно із інститутом публічних закупівель, значно меншим ступенем актуалізації та інтегрованості у систему правових засобів сприяння досягненню ЦСР відзначається інститут державної допомоги. Обґрунтовано, що, саме спираючись на модель правового регулювання системи державної допомоги у ЄС на засадах ЦСР, має відбуватися модернізація законодавства України у сфері державної допомоги. Розвиток СПРГ у контексті адаптації законодавства України до права ЄС має передбачати інтеграцію ЦСР у правовий інструментарій такого режиму.

**Ключові слова:** стимулюючий правовий режим господарювання, Цілі сталого розвитку, законодавство України, право ЄС.

not sufficient to achieve the Sustainable Development Goals (SDGs).

<sup>1</sup> PhD (Law), doctoral researcher, State Organization «V. Mamutov Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine», Ukraine.  WoS Researcher ID: JGC-8895-2023

It is probably difficult today to imagine the strategic priorities for the development of any country in the world beyond the worldview paradigm that is based on the concept of sustainable development, which aims to meet the needs of the present generation without compromising the ability of future generations to meet their own needs. This understanding of the essence of sustainable development was reached in the report of the Brundtland Commission (or the World Commission on Environment and Development). The definition proposed by this Commission remains the starting point for countries around the world in determining the direction of further social development.

It is worth noting that in September 2015, during the 70th session of the United Nations (UN) General Assembly in New York, the UN Sustainable Development Summit and the adoption of the Post-2015 Development Agenda took place. During this summit, new development milestones were approved. The final document of the summit, titled "Transforming Our World: The 2030 Agenda for Sustainable Development", included 17 Sustainable Development Goals (SDG) and 169 targets (United Nations in Ukraine, 2023). Ukraine, as a member of the UN, also joined efforts to implement the principles of sustainable development, which were reflected in the adoption of several fundamental documents. At the same time, as indicated in the Voluntary National Review on SDGs in Ukraine not all tasks related to the 17 goals have been accomplished. Progress has been successfully achieved for 15 out of the 17 goals, albeit unevenly. Some goals have already been reached by 80% or more (goals 1, 3, 4, 5), while progress for four goals is within the range of 60-80% (goals 2, 6, 8, and 16). For some goals, progress is within the range of 20-60% (goals 7, 11, 12, 17), and achieving benchmarks for the remaining goals (goals 9, 10, 13, 14, and 15) is currently considered unlikely (less than 20%) compared to the set targets for 2020. Goal 8, "Decent Work and Economic Growth," is recognized in the Voluntary National Review on SDGs in Ukraine as an accelerator for achieving all goals. Therefore, the potential of the stimulating legal regime of economic activity should be utilized to the fullest extent in a series of government reforms (United Nations Ukraine, 2021).

However, due to the high level of declarativeness in the provisions of the Sustainable Development Ukraine 2020, the implementation of reforms in some areas of legal regulation of socio-economic relations varied in terms of effectiveness. In

certain cases, strategic approaches to reforming specific elements of Ukraine's sectoral legislation, which formed the basis of the stimulating legal regime for economic activities, were not initiated at all. In particular, the development vector included the implementation of reforms in economic competition protection (Decree of the President of Ukraine № 5/2015, 2015), an integral element of which is state aid to economic entities. The author considers this as a component of the stimulating legal regime of economic activity. However, as demonstrated in this study, the reform of the system of state aid to economic entities is taking place incrementally in the absence of a unified "roadmap" for improving legislation in this area. At the same time, deeper and more systematic steps by the state are evident in the reform of the public procurement institution, the stimulating effect of which is significant for activating processes of integrating SDGs into various spheres of public life.

Therefore, this research aims to justify ways for further improvement of Ukraine's legislation, which defines the features of the functioning of specific elements of the incentivizing legal regime for economic activities. This will contribute to the achievement of SDGs in various areas of societal relations.

## Literature Review

Sustainable development is a development process that meets the needs of the present without compromising the ability of future generations to meet their own needs. The legal regime stimulating economic activities is a set of legal regulations that aim to promote economic development through incentives.

The search for effective legal methods and means to stimulate the transition of countries to sustainable principles of economic, ecological, and societal development holds a significant place in the research conducted by both foreign and domestic scholars.

Particular attention is drawn to the scientific developments of foreign experts who emphasize the advantages and new opportunities created by certain legal instruments for the implementation of state policies on sustainable development. In several scholarly studies, structural changes in the socio-economic and ecological spheres achieved through the regulatory potential of the institution of public procurement have been highlighted. This has been detailed in the scientific works of Aldson F. (2011), Andrecka M. (2017), Caranta R. (2010), Fisher E. (2013),

Hermans F. & Knippenberg L. (2006), Manta O. et al. (2022), Steiner M. (2013), Telles P., Ølykke G.S. (2017), Witjes S. & Lozano R. (2016), and others.

Aldson's (2011) study found that public procurement can be an effective instrument to promote sustainable development by encouraging the purchase of sustainable goods and services. This finding is relevant to the current article because it suggests that Ukraine's legal regime could be modified to promote sustainable public procurement. Public procurement, as emphasized by Andrecka M. (2017), Caranta R. (2010), Fisher E. (2013), Manta O. et al. (2022), Steiner M. (2013), Telles P., Ølykke G.S. (2017), Witjes S. & Lozano R. (2016), should be considered a driver of transformations in the economic sphere that simultaneously contributes to the consideration of social values, environmental standards, and the development of socially responsible business. These mentioned scholarly approaches are crucial to be taken into account in the process of shaping the conceptual principles of developing the stimulating legal regime of economic activity, as creating favorable conditions for sustainable economic activity is essential.

The possibilities of state aid in the context of creating incentives for accelerating the transition to a sustainable development model in various areas of societal relations have been emphasized in the scholarly works of Bartniczak B. (2014), Gupta A. (2023), Rivera-Lirio J.M. & Muñoz-Torres. (2010), Williams M. (1998), and others. In particular, Bartniczak B. (2014) rightly emphasizes that various types of state aid have varying impacts (ranging from positive to negative) on economic relations, and consequently, this can affect the success of implementing SDGs. Such a conclusion is highly valuable, especially in the context of the ongoing reform of the state aid system in Ukraine. The research findings of Gupta A. (2023) are crucial to the concept of this article, highlighting the correlation between different forms of state aid and their impact on achieving ambitious goals outlined in the European Green Deal. In earlier studies, notably in Williams M.'s (1998) article, attention was drawn to both positive and negative consequences of the impact of state aid provided for economic development projects on the natural environment. Environmental issues, as evidenced by the EU experience and recent changes in Ukraine's environmental policy, have become extremely important in the context of SDGs implementation. The prioritization of achieving socially significant results through the

implementation of state aid policy is emphasized in the work of Rivera-Lirio J.M. & Muñoz-Torres (2010). It is worth agreeing with this thesis, as the social impact of economic activity is crucial within the SDGs system.

Particularly noteworthy is the systematic and in-depth study by Hermans F. & Knippenberg L. (2006), which stands out among other attempts by authors in its reliance on the principles of resilience and justice to identify criteria for assessing sustainable development. The scholarly approaches of these authors have influenced the rationale for the author's own proposals.

In domestic research, the issues of legal support for the implementation of SDGs, including through the prism of specific components of the incentivizing legal regime for economic activities, and the creation of prerequisites for societal development based on sustainable development principles, taking into account the progressive experience of foreign countries, are presented in the scholarly works of Gudima T. (2020), Malolitneva V. & Dzhabrailov R. (2019, 2020), Ustymenko V. & Zeldina O. (2019), Shapovalova O.V. (2016), and others. Specifically, the studies of the mentioned authors reflect the issue of improving the legal framework for economic relations in Ukraine at both macro and micro levels, with an emphasis on the implementation of sustainable development principles. In the research by Gudima T. (2020), the features of improving the legal regulation of monetary and credit policies and macroprudential policy based on sustainable development principles are elucidated. The results obtained by the author constitute a comprehensive scientific foundation for assessing the potential of the stimulating legal regime of economic activity in achieving SDGs. The development and evolution of legislation on sustainable public procurement are highlighted in the works of Malolitneva V. & Dzhabrailov R. (2019, 2020). The scientific conclusions drawn by these authors were taken into account during the assessment of the current state and prospects for the development of the public procurement institution as a component of the stimulating legal regime of economic activity. The research of Shapovalova O.V. (2016), Ustymenko V. & Zeldina O. (2019) also hold scientific-practical value, where the peculiarities of adapting Ukraine's economic legislation to EU requirements based on sustainable development principles are disclosed. Additionally, these studies delve into the implementation in Ukrainian legislation of approaches that have

found expression in the EU's investment policy, contributing to the achievement of SDGs.

At the same time, the aforementioned scholarly studies do not provide answers to the questions posed within this article, particularly regarding the determination of the possibilities of the incentivizing legal regime for economic activities in achieving SDGs, taking into account contemporary changes occurring in European Union (EU) law. Indeed, as evidenced by the EU experience, stimulating economic activity is precisely aimed at achieving SDGs, which is reflected in the prioritization of sustainable development policies. This involves supporting the fundamental idea of transitioning to a circular economy, attracting "green" investments, and other initiatives. Accordingly, among the possible means of realizing the potential of the stimulating legal regime of economic activity, public procurement and state aid to economic entities can be recognized. The potential of these instruments is capable of ensuring the implementation of SDGs and is the subject of in-depth investigation in this article.

Additionally, a unique aspect of the article is driven by Ukraine's acquisition of candidate status for membership in the EU, as confirmed by the European Council's decision on June 23, 2022. It is precisely with this consideration in mind that the scholarly material is presented within the scope of this research work.

### Methodology

The theoretical foundation of the study is based on the main scientific results presented in the works of the authors, whose analysis is outlined in the literature review. If we briefly summarize their findings, the following key scientific approaches and conclusions can be highlighted:

1) the principles of resilience and justice are crucial for assessing the degree of implementation of sustainable development principles in various areas of societal development. This extrapolates to relationships that are the subject of the stimulating legal regime of economic activity; 2) economic development stimulation should not occur at the expense of diminishing the role and significance of social and environmental goals. Achieving these goals is a guarantee of the harmonious development of society based on sustainable development; 3) the outcome of implementing various stimulating measures should be the formation of a new model of behavior for economic agents, including the widespread

adoption of socially responsible business practices that align with SDGs; 4) sustainable public procurement and effective state aid can act as accelerators for the government's transition to a sustainable development model; 5) the adaptation to EU law, currently a highly relevant task for Ukraine, should occur on systematic principles, involving the modernization of all sectors of legislation to contribute to the achievement of SDGs at macro and micro levels of legal regulation in various spheres of social relations.

These scientific conclusions have been considered in shaping the author's own perspective and preparing scientific proposals. To achieve the research aim, a combination of general scientific and specialized methods of scientific inquiry was employed in the article. These methods include dialectical, comparative legal, analytical-synthetic, formal-logical, and system-structural analysis, as well as predictive methods, among others.

The dialectical method was used to assess qualitative and quantitative indicators of transformations in Ukraine's legislation regarding the integration of SDGs into key directions of state policy. It allowed for an evaluation of the degree of legislative reform in the areas of public procurement and state aid to economic entities, as well as the acquisition of norms within these legal institutions as tools to support the achievement of SDGs.

The comparative legal method was utilized to identify the peculiarities of integrating SDGs into EU legislation, understand the role of state aid institutions in promoting the achievement of sustainable development objectives and formulate proposals for the corresponding improvement of Ukrainian legislation in this area.

The analysis of the statistical, scientific, and empirical information presented in the article, which vividly illustrates shortcomings in the formation of national principles for providing state aid to economic entities as a key element of the incentivizing legal regime for economic activities, was conducted using the analytical-synthetic method.

The formal-logical and system-structural methods were employed to emphasize the weak positioning of the state aid institution to economic entities as an institutional basis for supporting the achievement of sustainable development goals compared to the institution of

public procurement. This was analyzed within the context of the gradual implementation of sustainable development principles.

The predictive method was used to identify opportunities for further improvement of Ukraine's legislation, which defines the functioning of specific elements of the incentivizing legal regime for economic activities in the context of promoting the achievement of SDGs.

The empirical basis of the research consists of national legislative acts, specific legal acts of the EU, statistical and analytical information, and the practices of state authorities and others.

## Results and Discussion

In particular, the pace of reforming certain legal institutions, the norms of which are deeply integrated into the structure and content of the incentivizing legal regime for economic activities as an integral component of economic law and legislation, is noteworthy.

Significant progress has been achieved, first and foremost, in the process of improving the institution of public procurement, especially in terms of adapting Ukrainian legislation to EU standards. This consistent legislative work was carried out with a focus on the target indicators established by the Strategy for Reforming the Public Procurement System ("Roadmap"), approved by the Cabinet of Ministers of Ukraine's (CMU) Order No. 175-p., February 24, 2016.

It is important to note that changes in the legal regulation of public procurement also took place in compliance with Ukraine's commitments to achieving the goals and objectives of sustainable development. These goals, as established by established scientific approaches, are aimed at ensuring the balance of sustainable development across three components - environmental, economic, and social (Ustyenko, (Ed.), 2021).

In this context, it is not coincidental that in the national report "Sustainable Development Goals: Ukraine," which presents adapted global sustainable development goals and indicators of their implementation tailored to Ukraine's needs, emphasis is placed on considering the relevant national program documents' tasks, specifically Goal 12.7, which aims to "Promote sustainable practices in public procurement according to national strategies and priorities" within Goal 12,

"Ensuring sustainable consumption and production" (United Nations Ukraine, 2017).

Importantly, as a result of consistent reforms, approaches to the functional purpose of public procurement have changed significantly, leading to the systemic integration of SDGs into public procurement procedures and the inclusion of environmental and social components in the assessment criteria for "tender proposals." According to Article 29 of the Law of Ukraine № 922-VIII "On Public Procurement" dated December 25, 2015 (as amended by the Law of Ukraine dated September 19, 2019, with subsequent amendments), the evaluation criteria include: 1) price; or 2) life cycle cost; or 3) price together with other evaluation criteria, including payment terms, delivery time, warranty service, technology transfer, and training of managerial, scientific, and production personnel, as well as measures related to environmental protection and/or social protection related to the subject of procurement (part 3).

The importance of deepening the integration of so-called "horizontal" goals into the public procurement system is highlighted in the scholarly work of V. K. Malolitneva. The scholar suggests applying a value-oriented approach to public procurement in Ukraine, which would involve the implementation of "horizontal" goals within the framework of relevant directions of the country's state policy, particularly in environmental protection, which encompasses the development of "green" public procurement, and in social protection, which includes the realization of employment and training opportunities, the promotion of respect for human rights, and protection (Malolitneva, 2021).

Indeed, the adaptation of legislation in the field of public procurement to the provisions of Directives 2014/24/EU and 89/665/EEC, by Appendices XXI-F, XXI-G, and XXI-H to the Association Agreement between Ukraine and the EU, within the framework of the third stage (January 1-December 31, 2019) of implementing the Action Plan for the Implementation of the Strategy for Reforming the Public Procurement System ("Roadmap") (approved by the CMU's Order No. 175-p, 2016), provided for the reflection in the national legal framework of the conditions for the integration of social and environmental standards and requirements for contractors or products purchased for state needs as characteristics and elements of proposal evaluation in procurement procedures in the

national legal field (Articles 74 and 77 of Directive 2014/24/EU) (Order No. 175-p, 2016). However, the institute of state aid to business entities, the legal norms of which constitute a significant proportion of the stimulating legal regime of economic activity, is much less updated and integrated into the system of legal tools to promote the achievement of sustainable development goals.

Despite the priority declared in the Sustainable Development Ukraine 2020 for the reform of economic competition protection (Decree of the President of Ukraine № 5/2015, 2015), of which state aid to business entities is recognized as a key means of implementation, the state has not taken sufficient measures to direct the potential of state aid to business entities towards achieving sustainable development goals.

It must be noted that, a Strategy ("roadmap") for reforming the system of state aid to economic entities, has not been developed and presented to date, as, for example, it was done in the case of public procurement. In turn, the existing Concept of reforming the system of state aid to economic entities, approved by the CMU's Order No. 81-p, on January 13, 2010 does not take into account the recent changes in Ukraine's legal policy, internal and external strategies, which have occurred due to the Association Agreement between Ukraine and the EU and Ukraine's acquisition of candidate status for EU membership in 2023.

By the way, in EU legislation, the concept of "state aid" is consistently evolving, and it is worth noting that in EU law, unlike domestic legislation, the use of the phrase "state aid" is traditional. This concept is considered one of the key legal instruments capable of ensuring not only the effective use of state or local resources but also directing these resources toward achieving SDGs. The beginning of such fundamental changes in the nature and purpose of state aid was laid down by the European Commission in the Communication EU State Aid Modernisation (Communication SAM) dated May 8, 2012. In particular, the text of Communication SAM repeatedly refers to the Europe 2020: A strategy for smart, sustainable and inclusive growth, also known as the Sustainable Development Strategy (European Union, 2010). (European Union, 2012).

As indicated in this Communication from the European Commission, state aid policy can also actively and positively contribute to the strategy objectives by prompting and supporting

initiatives for more innovative, efficient and greener technologies, while facilitating access to public support for investment, risk capital and funding for research and development (point 3.1) (European Union, 2010).

Since the adoption of the Europe 2020: A strategy for smart, sustainable and inclusive growth, also known as the Sustainable Development Strategy and the implementation of measures to modernize the state aid system, the latter has become an integral means of implementing sustainable development policies in the EU. This is specifically emphasized in the reflection paper "Towards a Sustainable Europe by 2030" prepared by the European Commission, which states: «The EU State Aid policy, especially since its modernization in recent years, has been geared towards sustainability. 94% of total State Aid in the EU was targeted at horizontal objectives of common interest, such as environmental protection, research, development, innovation and regional development. Of total spending, 54% was in support of environmental and energy savings» (European Commission, 2019, January 30).

To create favorable conditions to accelerate the EU's green and digital transitions, the Commission Regulation (EU) 2023/1315 (Official Journal of the European Union, 2023). This regulation introduced amendments, including to Commission Regulation (EU) № 651/2014, declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (referred to as the General Block Exemption Regulation - GBER) (European Commission, 2014, June 17).

In particular, as mentioned in the European Commission's press release, these innovations provide Member States with more flexibility to develop and implement support measures in sectors crucial for the transition to climate neutrality. This is intended to accelerate investments and funding for the production of clean technologies in Europe in line with the Green Deal Industrial Plan for the Net-Zero Age (European Commission, 2023).

It should be additionally emphasized that the adoption of Commission Regulation (EU) 2023/1315 was a logical outcome of recent changes in various sets of guiding principles for state aid. In the context of Ukraine's integration into the EU and the subsequent adaptation of national legislation to EU law, this holds

significant importance for enhancing domestic legal regulation of state aid to economic entities. In this regard, it is worth noting that the lag in the implementation of legal norms regulating specific categories of state aid from the list classified as stimulating measures in the GBER Commission Regulation (EU) № 651/2014 is significant. This can create substantial challenges in achieving nationally defined indicators for sustainable development goals.

In particular, Article 1(1) of Commission Regulation (EU) № 651/2014 as amended by Commission Regulation (EU) 2023/1315 outlines the list of aid categories covered by its scope and enumerates 16 types (European Commission, (2014, June 17). Meanwhile, Article 6(2) of the Law of Ukraine № 1555-VII, 2014 "On State Aid for Economic Entities" dated July 1, 2014, establishes the provision that the Cabinet of Ministers of Ukraine defines the criteria for assessing the admissibility of individual categories of state aid and designates only 9 types.

As can be seen, the differences in the lists of "compatible with the internal market" and "permissible" state aid categories in terms of the number of types are evident. Additionally, an analysis of the current legislation in Ukraine reveals inconsistencies in the substantive nature, characterized by incomplete or contradictory reproduction of the procedures, conditions, and other aspects related to the provision of relevant categories of aid, which are recognized as "compatible with the internal market" under EU law and "permissible" under national legislation. Sometimes, this can be explained by the lack of proper monitoring by national legislative bodies regarding the current versions of relevant EU legal acts and the failure to take measures for the corresponding update of national legislation.

Indeed, the problems related to adapting national legislation to EU law are most pronounced in the area of environmental protection aid.

According to section 2.2 of the Communication from the European Commission – 2022 Guidelines on State aid for climate, environmental protection and energy, the following categories of aid are considered compatible with the internal market, provided certain requirements are met:

- a) aid for the reduction and removal of greenhouse gas emissions, including through support for renewable energy and energy efficiency;

- b) aid for the improvement of the energy and environmental performance of buildings;
- c) aid for the acquisition and leasing of clean vehicles (used for air, road, rail, inland waterway and maritime transport) and clean mobile service equipment and for the retrofitting of vehicles and mobile service equipment;
- d) aid for the deployment of recharging or refuelling infrastructure for clean vehicles;
- e) aid for resource efficiency and for supporting the transition towards a circular economy;
- f) aid for the prevention or the reduction of pollution other than from greenhouse gases;
- g) aid for the remediation of environmental damage, the rehabilitation of natural habitats and ecosystems, the protection or restoration of biodiversity and the implementation of nature-based solutions for climate change adaptation and mitigation;
- h) aid in the form of reductions in taxes or parafiscal levies;
- i) aid for the security of electricity supply;
- j) aid for energy infrastructure;
- k) aid for district heating and cooling;
- l) aid in the form of reductions from electricity levies for energy-intensive users;
- m) aid for the closure of power plants using coal, peat or oil shale and of mining operations relating to coal, peat or oil shale extraction;
- n) aid for studies or consultancy services on matters relating to climate, environmental protection and energy (Official Journal of the European Union, 2022).

At the same time, the list of aid categories covered by the Criteria for Assessing the Eligibility of State Aid to Economic Entities for Environmental Protection, approved by the CMU's Resolution No. 1060 dated October 11, 2021, has not been updated and brought into compliance with both the 2022 Guidelines on State aid for climate, environmental protection and energy and the updated version of Commission Regulation (EU) № 651/2014.

There is also a difference in the methodological principles for assessing the compatibility of state aid in the fields of climate, environmental protection, and energy with the internal market. This is essential for developing national approaches to determining the eligibility of state aid measures to business entities for environmental protection.

As stated in point 21 of 2022 Guidelines on State aid for climate, environmental protection and

energy, based on Article 107(3), point (c), of the Treaty, the Commission may consider compatible with the internal market State aid to facilitate the development of certain economic activities within the Union (positive condition), where such aid does not adversely affect trading conditions to an extent contrary to the common interest (negative condition) (Official Journal of the European Union, 2022).

In this regard, the "positive condition" entails the European Commission determining the following circumstances:

identification of the economic activity that is being facilitated by the measure, its positive effects on the society at large and, where applicable, its relevance for specific policies of the Union;  
incentive effect of the aid;  
absence of breach of any relevant provision of Union law.

On the other hand, the essence of the "negative condition" is revealed through the following elements:

the need for State intervention;  
the appropriateness of the aid;  
the proportionality of the aid (aid limited to the minimum necessary to attain its objective) including cumulation;  
the transparency of the aid;  
avoidance of undue negative effects of the aid on competition and trade;  
weighing up the positive and negative effects of the aid.

It is important to emphasize certain aspects of the "positive" and "negative" conditions. In particular, a crucial factor in justifying the necessity of providing state aid is the presence of the incentive effect of the aid, as noted in point 26 of the 2022 Guidelines on State aid for climate, environmental protection and energy, «Aid can be considered as facilitating an economic activity only if it has an incentive effect. An incentive effect occurs when the aid induces the beneficiary to change its behaviour, to engage in additional economic activity or in more environmentally-friendly economic activity, which it would not carry out without the aid or would carry out in a restricted or different manner.» Furthermore, the aid must not support the costs of an activity that the aid beneficiary would carry out and must not compensate for the normal business risk of an economic activity (p. 27) (Official Journal of the European Union, 2022).

Evaluating the necessity of state intervention as an element of the "negative condition," point 34 of the 2022 Guidelines on State aid for climate, environmental protection and energy emphasizes that the proposed State aid measure must be targeted towards a situation where it can bring about a material development that the market alone cannot deliver, for example by remedying market failures about the projects or activities for which the aid is awarded. Whilst it is generally accepted that competitive markets tend to bring about efficient results in terms of the development of economic activities, prices, output and use of resources, in the presence of market failures, public intervention in the form of State aid may improve the efficient functioning of markets and thereby contribute to the development of an economic activity to the extent that the market on its own fails to deliver an efficient outcome. The Member State should identify the market failures preventing the achievement of a sufficient level of environmental protection or an efficient internal energy market (Official Journal of the European Union, 2022).

It is worth noting that state aid, both within the framework of 2022 guidelines on State aid for climate, environmental protection and energy and other EU legal acts, is considered a legal instrument to promote the implementation of state policies across various economic, environmental, social, and other development dimensions. Being in systemic connection with other means of implementing state policy, state aid aims to address regulatory deficiencies or so-called market "failures." In this regard, state aid is generally regarded as a legal tool of secondary or discretionary application, where the advantages of this institution are utilized to rectify "residual market failures, i.e., those left unaddressed by such other policies and measures (point 35) (Official Journal of the European Union, 2022). Consequently, it enhances the effectiveness of the legal framework in specific areas of societal relations.

The mentioned context allows us to assert a correlation between the need for state intervention through state aid and its "appropriateness," which, according to point 39 of the 2022 Guidelines on State aid for climate, environmental protection and energy, is defined as follows: "The proposed aid measure must be an appropriate policy instrument to achieve the intended objective of the aid, meaning there should not be a less distortive policy and aid instrument capable of achieving the same results" (Official Journal of the European Union, 2022).



Considering state aid as an appropriate and proper means of implementing state policy, its special role lies in facilitating the transition to a sustainable societal development model. To transform the state aid system into an effective instrument for achieving SDGs, an update of the guiding principles of state aid was envisaged within "The European Green Deal", including the guiding principles of state aid in the field of environmental protection and energy. In particular, as stated in subsection 2.2.2, "Greening national budgets and sending the right price signals", "Evaluations are underway of the relevant State aid guidelines, including the environmental and energy State aid guidelines. The guidelines will be revised by 2021 to reflect the policy objectives of the European Green Deal, supporting a cost-effective transition to climate neutrality by 2050, and will facilitate the phasing out of fossil fuels, especially those that are most polluting, ensuring a level-playing field in the internal market. These revisions are also an opportunity to address market barriers to the deployment of clean products" (European Commission, 2019).

Consequently, as a result of gradual efforts towards shaping an adequate contemporary legal framework to promote the integration of sustainable development principles into key areas of societal activity, the examples provided in this work can be considered instances of substantial updates to a range of EU legal acts that define the principles of state aid compatible with the internal market.

## Conclusions

It is argued that the reform of certain legal institutions, the norms of which are deeply integrated into the structure and content of the stimulating legal regime of economic law and legislation, and whose potential could have been utilized to achieve sustainable development goals, occurred at varying paces and with different degrees of adaptation to EU law. Specifically, compared to the institution of public procurement, the institution of state aid to undertakings demonstrates a significantly lesser degree of actualization and integration into the system of legal instruments aimed at promoting the achievement of sustainable development goals.

As evidenced by the analysis of the current legislation of Ukraine, inconsistencies in substantive nature are observed, which manifest as incomplete or contradictory reproduction of the procedures, conditions, and other specific

aspects of providing corresponding categories of state aid that are recognized as "compatible with the internal market" under EU legislation and "permissible" under national legislation. Sometimes, this can be explained by the lack of proper monitoring by national legislative bodies regarding the up-to-date versions of relevant EU legal acts and the failure to take measures for the appropriate update of national legislation. The most significant challenges in adapting national legislation to EU law are vividly demonstrated in the case of providing state aid for environmental protection.

The research provides arguments in favor of considering the experience of reforming the state aid system in the EU as a good example of directing the regulatory potential of this legal instrument for implementing state policies toward achieving more comprehensive goals. These goals involve creating conditions for sustainable societal development within secure economic, environmental, and social frameworks, as compared to the primary objectives that focus on ensuring the effective utilization of state and/or local resources without harming free competition.

It is substantiated that it is precisely through this model of legal regulation of the state aid system in the EU that the modernization of Ukraine's legislation in the field of state aid to economic entities should take place, facilitating the use of state and/or local resources to achieve SDGs. Additionally, the importance of prioritizing the compensatory function of the state aid institution in the system of implementing state economic policies in relevant directions is emphasized. This entails utilizing the stimulating potential of state aid in cases where other means of legal influence are incapable of ensuring or cannot fully achieve the objectives of economic, environmental, social, and other aspects of development.

## Bibliographic references

- Aldson, F. (2011). EU law and sustainability in focus: will the Lisbon Treaty lead to the sustainable development of Europe? *Environmental law and management*, (23), 284-299. <https://acortar.link/QjVbdV>
- Andrecka, M. (2017). Corporate Social Responsibility and Sustainability in Danish Public procurement. *Eur. Procurement & Pub. Private Partnership L. Rev.*, 12(3), 333-345. <https://doi.org/10.21552/epppl/2017/3/14>

- Bartniczak, B. (2014). Granting aid in the Context of Sustainable Development Principles. *Equilibrium. Quarterly Journal of Economics and Economic Policy*, 9(2), 41-54. <https://www.ceeol.com/search/article-detail?id=146959>
- Caranta, R. (2010). Sustainable Public Procurement in the EU. In R. Caranta and M. Trybus (Eds.), *The Law of Green and Social Procurement in Europe*. Denmark: DJØF Publishing Copenhagen, pp. 1-52. ISBN 978-87-574-2325-9
- Decree of the President of Ukraine № 5/2015. Sustainable Development Ukraine 2020. *Verkhovna Rada of Ukraine*, January 12, 2015. Retrieved from: <https://zakon.rada.gov.ua/laws/show/en/5/2015?lang=uk#Text> [In Ukrainian].
- European Commission (2019). *The European Green Deal. Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, 2019*. Retrieved from: <https://acortar.link/2tm6VR>
- European Commission (2023). *State aid: Commission amends General Block Exemption rules to further facilitate and speed up green and digital transition*. Retrieved from: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_23\\_1523](https://ec.europa.eu/commission/presscorner/detail/en/ip_23_1523)
- European Commission. (2014, June 17). *Commission Regulation (EU) № 651/2014. Declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance)*. Retrieved from: <https://acortar.link/IzwdYn>
- European Commission. (2019, January 30). *Towards a sustainable Europe by 2030: Reflection paper*. Retrieved from <https://acortar.link/rrfZUr>
- European Union (2010). *Europe 2020: A strategy for smart, sustainable and inclusive growth. Communication from the European Commission, 3 March 2010*. Retrieved from: <https://acortar.link/iwJsOL>
- European Union (2012). *State Aid Modernisation 2012. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*. Retrieved from: <https://acortar.link/w0XVBF>
- Fisher, E. (2013). The power of purchase: addressing sustainability through public procurement. *European Procurement & Public Private Partnership Law Review*, 8(1), 2-7. <https://www.jstor.org/stable/26693924>
- Gudima, T. S. (2020). Conceptual Approaches to Modernizing the Legal Framework of Monetary-Credit and Macroprudential Policies on the Principles of Sustainable Development. *Entrepreneurship, Economy and Law*, (7), 69-75. <http://pgp-journal.kiev.ua/archive/2020/7/13.pdf> [In Ukrainian].
- Gupta, A. (2023). EU State Aid Rules and the European Green Deal: Will Their Stars Align? *Air and Space Law*, 48(3), 353-362, <https://doi.org/10.54648/aila2023045>
- Hermans, F., & Knippenberg, L. (2006). A principle-based approach for the evaluation of sustainable development. *Journal of Environmental Assessment Policy and Management*, 8(3), 299-319. <https://doi.org/10.1142/S1464333206002530>
- Law of Ukraine № 1555-VII. On the State Aid to Economic Entities. *Verkhovna Rada of Ukraine*, 1 July 2014. Retrieved from: <https://zakon.rada.gov.ua/laws/show/155-18#Text> [In Ukrainian].
- Law of Ukraine № 922-VIII. On Public Procurement. *Verkhovna Rada of Ukraine*, 25 December 2015 (as amended by the Law of Ukraine dated September 19, 2019 with subsequent changes). Retrieved from: <https://zakon.rada.gov.ua/laws/show/922-19#Text> [In Ukrainian].
- Malolitneva, V. K. (2021). *Economic and legal institute of public procurement* (Doctor of Law thesis). State organization «V. Mamutov Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine», Kyiv, 33 p. [In Ukrainian]. <https://hozpravoreposit.kyiv.ua/handle/7654-32198/69>
- Malolitneva, V., & Dzhabrailov, R. (2019). Strategic Public Procurement: Facilitating Sustainable Development in Ukraine. *European Journal of Sustainable Development*, 8(2), 91-100. <https://doi.org/10.14207/ejsd.2019.v8n2p91>
- Malolitneva, V., & Dzhabrailov, R. (2020). New Steps Towards Sustainable Public Procurement in Ukraine in the Context of the EU-Ukraine Association Agreement. *Croatian Yearbook of European Law and Policy*, 16(2020), 355-374. <https://doi.org/10.3935/cyelp.16.2020.368>
- Manta, O., Panait, M., Hysa, E., Rusu, E., & Cojocaru, M., (2022). Public Procurement, a Tool for Achieving the Goals of Sustainable Development. *Amfiteatru Economic*, 24(61), pp. 861-876. <https://doi.org/10.24818/EA/2022/61/861>
- Official Journal of the European Union (2022). *2022 guidelines on State aid for climate*,

- environmental protection and energy*. Retrieved from: <https://acortar.link/FykSnI>
- Official Journal of the European Union (2023). *Commission Regulation (EU) 2023/1315. Amending Regulation (EU) № 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance)*. Retrieved from: <https://acortar.link/1Du9II>
- Order No. 175-p. Strategy for Reforming the Public Procurement System («Roadmap»). *Cabinet of Ministers of Ukraine*, 24 February 2016. Retrieved from: <https://zakon.rada.gov.ua/laws/show/175-2016-%D1%80#Text> [In Ukrainian].
- Order No. 81-p. Concept of Reforming the System of State Aid to Economic Entities. *Cabinet of Ministers of Ukraine*, 13 January 2010. Retrieved from: <https://zakon.rada.gov.ua/laws/show/81-2010-%D1%80#Text> [In Ukrainian].
- Resolution No. 1060. Criteria for Assessing the Eligibility of State Aid to Economic Entities for Environmental Protection. *Cabinet of Ministers of Ukraine*, 11 October 2021. Retrieved from: <https://zakon.rada.gov.ua/laws/show/1060-2021-%D0%BF#Text> [In Ukrainian].
- Rivera-Lirio, J.M., & Muñoz-Torres, M.J. (2010). The Effectiveness of the Public Support Policies for the European Industry Financing as a Contribution to Sustainable Development. *Journal of business ethics* 94, 489-515. <https://doi.org/10.1007/s10551-009-0278-7>
- Shapovalova, O. V. (2016). Adaptation of Economic Legislation to EU Requirements for Sustainable Development. *Topical issues of law: theory and practice*, (32), 25-40. <https://journals.snu.edu.ua/index.php/app/article/view/139/126> [In Ukrainian].
- Steiner, M. (2013) Is There a Swiss Approach Towards Sustainable Public Procurement? *European Procurement & Public Private Partnership Law Review*, 8(1), 73–78. <https://www.jstor.org/stable/26693932>
- Telles, P., & Ølykke, G.S. (2017). Sustainable Procurement: A Compliance Perspective of EU Public Procurement Law. *European Procurement & Public Private Partnership*, 12(3), 239-252. <https://www.jstor.org/stable/26695461>
- United Nations in Ukraine (2023). *How the UN is supporting The Sustainable Development Goals in Ukraine*. <https://ukraine.un.org/uk/sdgs> [In Ukrainian].
- United Nations Ukraine (2017). National Report “Sustainable Development Goals Ukraine”. Recovered from: <https://acortar.link/31HddV> [In Ukrainian].
- United Nations Ukraine (2021). *Voluntary national review of the Sustainable Development Goals in Ukraine*. Retrieved from: <https://acortar.link/Ip9X48> [In Ukrainian].
- Ustymenko, V. A. (Ed.). (2021). *Legal Model of Sustainable Development of Ukraine: Monograph*. Kyiv: NAS of Ukraine, State Organization «V. Mamutov Institute of Economic and Legal Research of the National Academy of Sciences of Ukraine», 296 p. ISBN 978-966-02-9858-3 [In Ukrainian].
- Ustymenko, V., & Zeldina, O. (2019). EU Investment Policy as the Basis for Sustainable Development: Implementation Prospects in Ukraine. *European Journal of Sustainable Development*, 8(1), 40–52. <https://doi.org/10.14207/ejsd.2019.v8n1p40>
- Williams, M. (1998). Aid, sustainable development and the environmental crisis. *International Journal of Peace Studies*, 3(2), 19–33. <http://www.jstor.org/stable/41852857>
- Witjes, S., & Lozano, R. (2016). Towards a more Circular Economy: Proposing a framework linking sustainable public procurement and sustainable business models. *Resources, Conservation and Recycling*, 112, 37-44. <https://doi.org/10.1016/j.resconrec.2016.04.015>