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ВДОСКОНАЛЕННЯ ДЕРЖАВНОГО КОНТРОЛЮ БЕЗПЕЧНОСТІ ХАРЧОВИХ ПРОДУКТІВ З УРАХУВАННЯМ ВИМОГ ЗАКОНОДАВСТВА ЄВРОПЕЙСЬКОГО СОЮЗУ

Анотація. *Стаття присвячена проблемам вдосконалення правових засад державного контролю безпеки харчових продуктів в контексті гармонізації національного законодавства України з відповідним законодавством Європейського Союзу. Актуальність дослідження обумовлена необхідністю підвищення ефективності державного контролю безпеки харчових продуктів для гарантування європейських стандартів захисту здоров'я людини. Мета дослідження полягає у з'ясуванні структурних особливостей законодавства, що стосуються державного контролю безпеки харчових продуктів, виявленні практичних проблем правового регулювання державного контролю безпеки харчових продуктів та напрацюванні шляхів їх вирішення. Методологічну основу дослідження становлять порівняльно-правовий метод, історико-правовий та діалектичний методи, методи аналізу та синтезу, системно-структурний та формально-юридичний методи. З'ясовано, що харчове законодавство та законодавство про корми мають загальну мету правового регулювання – захист здоров'я людини, хоча з формальної точки зору це різні галузі законодавства. Недостатня правова визначеність такої підстави позапланових інспектувань як обґрунтована підозра щодо невідповідності вимогам законодавства обумовлена різними підходами до формулювання повноважень контролюючих органів в Україні та Європейському Союзі. Для уникнення корупційних чинників під час державного контролю безпеки харчових продуктів краще впроваджувати інформаційно-комунікаційні технології, а не вдаватися до неповної гармонізації законодавства України із законодавством Європейського Союзу. Впровадження в Україні європейської концепції харчового шахрайства вимагає її узгодження з кримінальним та адміністративним законодавством, а також створення необхідних організаційно-правових умов для виявлення відповідних правопорушень під час державного контролю безпеки харчових продуктів*

Ключові слова: *інспектування, харчове законодавство, гармонізація із законодавством ЄС, санітарні та фітосанітарні заходи, євроінтеграція*

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IMPROVEMENT OF STATE CONTROL OF FOOD SAFETY TAKING INTO ACCOUNT THE REQUIREMENTS OF THE LEGISLATION OF THE EUROPEAN UNION

Abstract. *The article is devoted to the issues of improving the legal basis of state control of food safety in the context of harmonisation of national legislation of Ukraine with the relevant legislation of the European Union. The relevance of the study is due to the need to improve the effectiveness of state control of food safety to guarantee European standards for the protection of human health. The purpose of the study is to clarify the structural features of legislation related to state control of food safety, identify practical issues of legal regulation of state control of food safety and develop ways to solve them. The methodological basis of the research consists of the comparative legal method, historical-legal and dialectical methods, methods of analysis and synthesis, system-structural and formal-legal methods. It was found that food legislation and feed legislation have a common goal of legal regulation – the protection of human health, although from a formal point of view they are different areas of law. Insufficient legal certainty of such grounds for unscheduled inspections as reasonable suspicion of non-compliance with legal requirements is due to different approaches to the formulation of powers of regulatory authorities in Ukraine and the European Union. In order to avoid corruption factors during state control of food safety, it is better to introduce information and communication technologies, and not resort to incomplete harmonisation of the legislation of Ukraine with the legislation of the European Union. The introduction of the European concept of food fraud in Ukraine requires its coordination with criminal and administrative legislation, as well as the creation of the necessary organisational and legal conditions for identifying relevant offenses during state control of food safety*

Keywords: *inspection, food legislation, harmonisation with EU legislation, sanitary and phytosanitary measures, European integration*

INTRODUCTION

Ukraine's European integration efforts are historically driven by various factors. However, the main role among them is played by the desire to get closer to the high standards of living characteristic of most countries of the European Union. These standards are primarily based on respect for human rights, among which the protection of human life and health occupies a prominent place. In this regard, food safety issues play a very important role in the policy of the European Union, which is reflected in the *acquis communautaire*, because food products directly affect human life and health. As Markus Lipp, a representative of the Food and Agriculture Organisation of the United Nations (FAO), rightly points out, food safety is everyone's business: farmers, food industry workers, retailers, and consumers [1].

The signing of the association agreement between Ukraine and the European Union, the European Atomic Energy Community and their member states has become a powerful impetus for the development of many areas of Ukrainian legislation [2]. One of these areas is food legislation. Thus, in 2014 a revised Law of Ukraine "On Basic Principles and Requirements for Food Safety and Quality" [3] was adopted, which implements the requirements of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002, that lays down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [4]. It was this law that

defined the fundamental requirements for ensuring food safety at all stages of their production and circulation, which formed the basis of the latest food legislation of Ukraine, based on modern European standards.

Although the main goal of harmonising the legislation of Ukraine on food products with the legislation of the European Union is to protect human health, this is not its only task. An equally important expected result of this process is the expansion of opportunities for exporting domestic food products to European and global markets. The logic here is simple – if a Ukrainian manufacturer adheres to the same requirements for food safety during their production as in the European Union, and if the system of state control of food safety in Ukraine works according to European principles, such products inspire confidence, and therefore it is easier to promote them on foreign markets.

The procedural requirements for state control over compliance with food legislation remained insufficiently developed. In order to harmonise the relevant procedural norms of the national legislation of Ukraine with the legislation of the European Union, another important law was adopted in May 2017, namely Law of Ukraine “On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare” [5]. This law reflects the relevant norms of Regulation (EC) 882/2004 of the European Parliament and the Council of 29 April 2009 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules [6].

The adoption of the Law of Ukraine “On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare” [5] was logical, although certainly not the last step towards the practical implementation of the European concept of food safety, based on the principle of “from farm to fork”. As noted by H. Schebesta and J.J.L. Candel, the EU's “from farm to fork” strategy aims to ensure the fair provision of healthy and environmentally friendly products [7]. According to this concept, state control should cover all stages of food production and turnover, starting from the moment of production of raw materials and ending with the control of food safety on store shelves and in the network of public catering establishments [8]. State control of food safety should begin at the stage of growing plants and animals, products from which subsequently enter the agro-food chain. It is this approach that has received the widest possible expression in the new Regulation (EC) No. 2017/625 of the European Parliament and of the Council of 15 March 2017 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products [9].

Considering the complex nature of the concept of “from farm to fork”, the control of food safety intended for human consumption should include, among other things, control over the production and turnover of feed intended for productive animals, because through the food products of animal origin produced from them or with their help, there is an indirect impact of feed on human health. In this regard, it is worth noting that for the consistent implementation of this concept, another important European integration law was adopted in December 2017, namely the Law of Ukraine “On Feed Safety and Hygiene” [10]. This law establishes legal norms based on the requirements of Regulation (EC) No. 1831/2003 of the European Parliament and of the Council of 22 September 2003 on additives for use in animal nutrition [12] and Regulation (EC) No. 767/2009 of the European Parliament and of the Council of 13 July 2009 on the placing on the market and use of feed [13]. Consequently, Ukraine, at least at the level of primary legislation, has established a certain legal and regulatory framework for further implementation of European food safety standards.

At the same time, the development of modern national legislation on state control of food safety raises a number of issues of both theoretical and practical nature that require scientific understanding. Thus, the first obvious question that arises in this context against the background of approximation of the legislation of Ukraine in the field of sanitary and phytosanitary measures to the relevant legislation of the European Union is the ratio of food legislation and feed legislation. The relevance of this issue is since the state control of food safety covers not only the safety of food products themselves, but also includes the control of feed, which, although indirectly through food products of animal origin, still affect human health. The answer to this question is important primarily because it allows a better understanding of the structural features and internal relationships of the legislation of Ukraine and the European Union.

At the same time, quite practical issues deserve attention regarding the grounds for carrying out unscheduled measures of state control of food market operators, the introduction of information and communication technologies into the system of state control of food safety to prevent corruption, organise counteraction to food fraud, etc. For example, organisational issues related to combating food fraud are given a lot of attention at the international level, as evidenced by relevant publications in scientific sources of such authors as J. Spink, D. Moyer [14], E. Casadei, E. Valli, P. Panni, J. Donarski [15], H. Kendall et al. [16], S. Meulen et al. [17].

Given the above, *the purpose of the study* is to highlight the structural features of legislation related to state control of food safety, as well as to identify ways to improve the relevant legislation for more effective organisation of food safety inspections, prevention of corruption and counteraction to food fraud.

1. MATERIALS AND METHODS

The study of legal issues of improving state control of food safety in the context of harmonisation of the relevant legislation of Ukraine with the legislation of the European Union requires a comparative analysis of a number of acts of national legislation of Ukraine and the legislation of the European Union. In this regard, among the acts of national legislation of Ukraine, it is worth taking into account the Law of Ukraine “On Basic Principles and Requirements for Food Safety and Quality” [3], the Law of Ukraine “On State Control Over Compliance with Legislation on Food, Feed, Animal By-Products, Animal Health and Welfare” [5] and the Law of Ukraine “On Feed Safety and Hygiene” [10]. At the same time, among the acts of European Union legislation, attention should be paid primarily to Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 [4], that lays down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety, Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, regulation (EU) No. 2017/625 of the European Parliament and of the council of 15 March 2017 [9] on measures of official control and other official activities carried out in order to ensure the application of food and feed legislation, regulations on animal health and welfare, plant health and plant protection products, regulation (EU) No. 183/2005 of the European Parliament and of the council of 12 January 2005 [11] laying down requirements for feed hygiene, Regulation (EU) No. 1831/2003 of the European of the parliament and of the council of 22 September 2003 [12] on additives for use in animal nutrition, as well as Regulation (EC) No. 767/2009 of the European Parliament and of the Council of 13 July 2009 [13] on the placing on the market and use of feed. To carry out a comparative analysis of these and other legislative acts, this study uses the comparative legal method of cognition.

Since the regulatory framework of state control of food safety is developing quite quickly and dynamically both in Ukraine and in the European Union, historical, legal and dialectical methods of scientific knowledge were used in its research. This allows better understanding of the general logic of building and developing relevant legislation, its impact on public relations in the field of state control of food safety. In addition, the use of these methods of cognition makes it possible to predict the prospects for further development of the relevant legislation. This study raises questions about the correlation of various structural components of legislation, the purpose of which is to ensure food safety, and therefore protect human health, since the relevant legislation, in turn, is an integral part of legislation in the field of sanitary and phytosanitary measures. In this regard, such general scientific methods of cognition as analysis and synthesis, as well as the system-structural method, are used to cover these issues. Their application gives the opportunity to look at the legislation on food products and feed legislation as an integral system, each of the elements of which performs its own function to achieve a single ultimate goal – the protection of human health. The method of analysis is also used to study the grounds for conducting unscheduled inspections during the state control of food safety, the powers of the chief state inspectors (chief state veterinary inspectors) to temporarily stop the production and/or turnover of food products and feed, as well as the modern European concept of food fraud. Based on the relevant analysis, a number of proposals for improving state control of food safety were synthesised. To clarify the content of legal norms regulating public relations in the field of state control of food safety, a formal legal method was used.

2. RESULTS AND DISCUSSION

2.1. *Correlation between food legislation and feed legislation*

Having committed itself to bringing its national legislation in the field of sanitary and phytosanitary measures as close as possible to the relevant legislation of the European Union [2], Ukraine has made a lot of efforts and made significant progress in this direction. At the same time, such an approximation of the legislation cannot be considered absolutely complete. Therefore, it is necessary to first look at the issue raised from the point of view of European Union law. In accordance with the provisions of Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law [4], this legislation includes laws, regulations (rules) and administrative provisions regulating public relations with respect to food products in general, in particular in terms of their safety, both at the level of the European Union and at the national level of member states, and applies to the production, processing and turnover of food products, as well as feed produced or fed to

productive animals. So, judging by this definition, EU food legislation includes, among other things, regulations related to feed. From the point of view of food safety for humans, this approach has its own obvious logic, because it is impossible to ensure the safety of food products of animal origin without ensuring the safety of feed for productive animals, given the structure of the agro-food chain (feed – productive animals – animal products – human) [9].

However, the thesis that food legislation includes, in particular, feed legislation is not always consistent with the provisions of other acts of European Union legislation, in which the terms “food legislation” and “feed legislation” are used in parallel with each other, and therefore are considered different branches, which can be seen even in the title of the already mentioned Regulation (EC) No. 882/2004 [6] and Regulation (EC) No. 2017/625 [9]. It is worth noting that in Ukraine, during the adoption of new legislative acts in the field of sanitary and phytosanitary measures, it was possible to avoid this terminological inconsistency existing in the European Union. Thus, in Law of Ukraine “On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare” [5] the terms “food legislation” and “feed legislation” have separate definitions and are used simultaneously in the text, and therefore can be considered separate branches of national legislation. Although from an essential point of view, this approach cannot be considered perfect, because the ultimate goal of regulatory and legal regulation of public relations both in relation to food products and feed is human health, and therefore it should be a single area of law, from a practical point of view in the Ukrainian reality, the distinction between food legislation and feed legislation is appropriate. The fact is that in Ukraine, a literal interpretation of the law prevails, and therefore, when it comes, for example, to bringing to justice for violating a particular legislation, it would be difficult to prove that the legislation on food products actually also applies to feed.

2.2. Basic principles of state control of food safety

Along with the concept of “from farm to fork” [7], one of the cornerstone principles of the European and now Ukrainian food safety control system is a risk-based approach to organising state control measures at all stages of food production and turnover. The fact is that it is almost impossible to ensure continuous state control of all food products for purely economic reasons, because such control will require too many human, technical and financial resources, and therefore is impractical. Therefore, state control based on a risk-based approach is more rational. The essence of the risk-based approach is that the frequency of state control measures and their nature should depend on the degree of risk associated with the production or turnover of a particular food product. Thus, in particular, food products of animal origin (meat, milk, eggs, etc.) pose an increased risk to human life and health, since a number of infections (diseases) can be transmitted from animal to human through such products, for example, salmonellosis. Therefore, state control measures in enterprises producing or marketing such products should be carried out more frequently than in enterprises producing or marketing non-animal foodstuffs (bread, biscuits, etc.). Therefore, correct risk assessment is critical for the successful organisation of state control measures [18].

Another important component of the food safety control system is traceability. At the moment, the requirements for ensuring traceability are enshrined in the Law of Ukraine “On Basic Principles and Requirements for Food Safety and Quality” [3], according to which traceability is the ability to identify the market operator, time, place, subject and other conditions of supply (sale or transfer) sufficient to establish the origin of food products, animals intended for the manufacture of food products, materials in contact with food products, or substances intended for inclusion, or expected to be included in food products, at all stages of production, processing and circulation. According to Article 22 of this law [3], market operators must be able to identify other market operators who supply them with food products on the “step back” principle and are able to identify other market operators to whom they supply food products on the “step forward” principle. Traceability information shall be available to the competent authority which is authorised to carry out national food safety control. Traceability is important because it allows identifying unsuitable food products and withdraw them from the market in the event of an outbreak of diseases or identify risk factors as a result of analysis, thus preventing further exposure to these factors [18].

With the adoption of the Law of Ukraine “On State Control Over Compliance with the Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare” [5]. Another important tool of the new system of state control is inspection without prior notice of the business entity. Without such unexpected inspections, it is impossible to ensure the effectiveness of state control of food safety, as evidenced not only by European, but also by our own Ukrainian experience [19].

An example of the inefficiency of state control in this area, which existed before the adoption of this law, was given by the chairman of the state service of Ukraine for food safety and consumer protection V.I. Lapa. According to him, in order for representatives of the specified competent authority to be able to go

out for inspection, the consumer must buy a doughnut or any other type of food product, make sure that it does not meet the requirements of the law and write a complaint to the relevant territorial body. The complaint is submitted for approval to the central office and then to the policy-making body. In case of food safety hazards, this is the Ministry of Agrarian Policy and Food of Ukraine. On average, the time between the complaint and the actual exit for verification is at least a month and a half, and it is clear that during this time there is already another doughnut or other type of product on the shelves [19].

Therefore, the rule on inspections without prior notice was extremely necessary. It cannot be said that such a legal norm is completely new for Ukrainian food legislation. The previous version of the Law of Ukraine “On Basic Principles and Requirements for Food Safety and Quality” [3] also contained a norm on inspections without prior notice. However, as correctly notes E.M. Horovets these provisions were dead and did not really work, because they contradicted the Law of Ukraine “On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity” [20], which provides for the obligation of the supervisory authority to warn the enterprise about the inspection 10 days before it starts. The corresponding conflict between the norms of the two laws is eliminated by the Law of Ukraine “On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare” [5], so businesses must be prepared for previously unannounced visits of state inspectors [21].

At the same time, taking into account European practice and the requirements of the relevant legislation of the European Union, the latest Ukrainian legislation on state control of food safety establishes a norm on mandatory prior notification in the case of such a specific form of control as an audit of permanent procedures based on the principles of HACCP (Hazard Analysis and Critical Control Points). In the case of an audit, such a notice, which should be carried out three working days before its start, is objectively necessary for the preparation of the necessary documentation concerning HACCP, without which it is impossible to effectively conduct an appropriate state control measure [21].

2.3. Reasonable suspicion as a new basis for inspections

Another important innovation of the Law of Ukraine “On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare” [5] is an expansion of the list of grounds for unscheduled inspections that can be carried out in relation to food industry enterprises. It concerns the norm of part four of Article 18 of this law [5], according to which state control measures can be carried out unscheduled in case of detection of non-compliance or the appearance of a reasonable suspicion of non-compliance. So, for example, if during a scheduled inspection of a supermarket, a state (veterinary) inspector recorded a violation of labelling requirements or other legal requirements that a food product must meet, this violation or even suspicion of commission may become the basis for further unscheduled inspection of another manufacturer of this product.

While the rule is generally justified as facilitating a rapid response to food law violations and enhancing the protection of public health, it also carries with it certain risks and the potential for arbitrary and manipulative interpretation. This is especially true of the term “reasonable suspicion of non-conformity”. Thus, if everything is more or less clear about non-compliance as a basis for further holding an unscheduled state control event (first, a violation of the law is recorded, which later entails holding an unscheduled state control event), then such a basis as “reasonable suspicion of non-conformity” can be interpreted in different ways. In particular, it can be an application to the territorial body of the state service of Ukraine for food safety and consumer protection of one business entity for violation of food legislation by another business entity. It is one thing when such a claim is genuinely substantiated and has a factual basis. It is quite another matter when such an appeal for an offence is used by one business entity as a tool in the competitive struggle against another business entity.

In European practice, “reasonable suspicion of non-conformity” as the basis for unscheduled inspections is perceived normally, since in the EU regulatory authorities are traditionally given broad discretionary powers. For Ukraine, where the powers of state bodies are trying to write out as clearly as possible in order to avoid corruption factors, such a norm on reasonable suspicion is new, and only law enforcement practice can answer the question of how justified and effective it is. It is obvious that in the future, this norm will be clarified taking into account law enforcement practice, in particular during the development of an updated version of the Law of Ukraine “On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare” [5] based on Regulation (EC) No. 2017/625 of the European Parliament and of the Council of 15 March 2017 [9] on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products.

2.4. Prevention of corruption and introduction of information and communication technologies

It is worth noting that the question raised regarding the interpretation of the term “reasonable suspicion” is to a certain extent related to concerns about the growth of corruption factors, since officials of the relevant regulatory authorities can also resort to arbitrary interpretation of this term. At the same time, it would be impossible to fully implement the basic European principles of state control of food safety without such broad categories as reasonable suspicion. The fact is that in the European Union, the relevant competent authorities of the member states traditionally have very broad discretionary powers regarding state control of food safety. Thus, in accordance with Regulation (EC) No. 882/2004 [6] and later Regulation (EC) No. 2017/625 [9], the competent authorities responsible for food safety control are authorised to suspend operations or close food production and circulation facilities for any period of time necessary to eliminate detected violations.

Unlike the member states of the European Union in Ukraine, the competent authority that exercises state control over food safety does not have such unlimited powers to close down food production and processing facilities. According to Article 67 of the Law of Ukraine “On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare” [5] the chief state inspector (chief state veterinary inspector) is authorised to make decisions only on temporary termination of production and/or turnover of food products and/or feed, if such production and/or turnover poses a threat to the life and/or health of a person and/or animal for a period not exceeding 10 business days. If the elimination of the detected violation requires a longer period of time, the state inspector (state veterinary inspector) applies to the administrative court to stop the production and/or turnover of food products.

Granting powers to state inspectors (state veterinary inspectors) to suspend the operation of food production and circulation facilities only for a limited period of time does not fully comply with the European model of state control. However, this is due to Ukraine's desire to create preventive legal mechanisms to prevent corruption on the part of civil servants. Thus, this approach to determining the powers of state control can be considered a compromise, because it takes into account the provisions of EU legislation on the one hand, and the realities of Ukraine on the other.

However, in this regard, a natural question arises: can Ukraine fully adapt its national legislation to the relevant norms of the European Union and at the same time prevent the strengthening of corruption factors? This is quite possible if information and communication technologies are widely used to combat corruption. According to modern research, the use of computers, the Internet, and mobile phones to detect and report corruption offences contributes to the openness and transparency of public administration and allows curbing corruption in many countries of the world [22]. Therefore, instead of incomplete implementation of the requirements of the EU legislation on food safety control in the national legislation of Ukraine, it would be necessary to create appropriate organisational and legal conditions for the introduction of additional technical fuses of corruption based on information and communication technologies into the state food safety control system. So, for example, it would be possible to legally provide for mandatory video recording of state control measures by state inspectors and state veterinary inspectors of the State Service of Ukraine on Food Safety and Consumer Protection, because today video recording remains their right, not their duty. In addition, it would be possible to establish the obligation to publish the relevant videos on the official website of this body in case of appeal against the results of state control measures. This would ensure sufficient openness and transparency of the process of state control of food market operators and reduce the associated corruption factors.

2.5. Liability for violations of food legislation and food fraud

Although EU legislation does not contain sanctions for violating food safety requirements, it also requires EU member states to establish such sanctions in their national legislation and apply them based on the implementation of state control measures [6]. That is why the Law of Ukraine “On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare” [5] in addition to the actual procedural norms regarding state control, contains legal norms establishing liability for violation of legislation on food and feed. Thus, in particular, it provides for the liability of market operators for violation of hygienic requirements for the production and /or circulation of food or feed, for failure to comply with the obligation to implement permanent procedures based on the principles of the hazard analysis and control system at critical points (HACCP), for offering for sale or sale of unsuitable food or feed, offering for sale or sale of food or feed that is harmful to human or animal health, etc.

At the same time, the national legislation of Ukraine does not provide for such a characteristic offence for EU member states as “food fraud” [8; 14]. For Ukraine, it is traditional to understand fraud, first of all, as a crime (Article 190 of the Criminal Code of Ukraine) [23]. At the same time, it does not matter what material

values (property) this crime concerns – food, real estate, antiques or money. At the same time, in the European Union, food fraud tends to gravitate more towards our understanding of administrative offences. Although there is no harmonised definition of food fraud at the European or international level, foreign literature sources indicate that food fraud covers cases of deliberate violation of food legislation committed for the purpose of obtaining economic or financial benefits by deceiving consumers [15]. As a collective term, food fraud covers the replacement, addition, forgery or misrepresentation of food products, their ingredients, packaging, or incorrect or misleading statements about food products for the purpose of obtaining property or financial benefits [14]. This raises the question of how to integrate the European concept of food fraud into the legal field, coordinating it with other acts of national legislation, primarily with the legislation of Ukraine on criminal liability and the legislation of Ukraine on administrative offences.

An equally important task in combating food fraud is to create appropriate organisational prerequisites for identifying and clarifying the circumstances of relevant offences, in particular during the implementation of state control measures. In this regard, it is worth paying attention to the experience of the European Union, where the EU Food Fraud Network (FFN) and the Administrative Assistance and Cooperation System (AAC) have been created [15], which facilitate interaction between European countries in the fight against food fraud, which is transnational in nature. In this regard, the possibility of Ukraine joining these European initiatives should be considered.

The settlement of the issue of legal liability for food fraud, the creation of appropriate organisational and legal mechanisms to combat this type of offence would be appropriate during the development of an updated version of the Law of Ukraine “On State Control Over Compliance with LEGISlation on Food Products, Feed, Animal By-Products, Animal Health and Welfare” [5] on the basis of Regulation (EC) No. 2017/625 [9], because the current version of this law is based on the norms of Regulation (EC) No. 882/2004 [6], which has already lost its force.

CONCLUSIONS

In recent years, Ukraine has made significant efforts to bring national legislation on food products closer to the legislation of the European Union. A number of important legislative acts have been adopted that implement the requirements of the relevant EU legislation, such as the Law of Ukraine “On Basic Principles and Requirements for Food Safety and Quality”, the Law of Ukraine “On State Control Over Compliance with Legislation on Food Products, Feed, Animal By-Products, Animal Health and Welfare” and the Law of Ukraine “On Feed Safety and Hygiene”. From the point of view of the purpose of legal regulation, these laws form the basis of legislation on food products, the purpose of which is to ensure food safety, and therefore protect human health. At the same time, from a formal and legal point of view, there are grounds to distinguish between food legislation and feed legislation.

The current legislation of Ukraine on food products is not without drawbacks related to its approximation to the relevant legislation of the European Union. Some of these, such as the lack of legal certainty of individual grounds for unannounced inspections, namely “reasonable suspicion of non-conformity”, are due to different approaches in defining the powers of competent authorities. In the European Union, there is a tendency to give regulatory authorities broad discretionary powers, while in Ukraine, they try to define the authorities as clearly as possible in order to minimise the conditions for corruption offences. Attempts to prevent corruption sometimes lead to incomplete adaptation of the legislation of Ukraine to the legislation of the European Union, as can be seen in the example of the powers of chief state inspectors (chief state veterinary inspectors) to temporarily stop the production and/or turnover of food products and/or feed. However, as the world experience shows, combating corruption in modern conditions could be more effective due to the introduction of modern information and communication technologies, and not by limiting the powers of regulatory authorities.

In addition, the European concept of food fraud needs to be deeply understood in order to introduce it into the national legislation of Ukraine. In this regard, it is important to harmonise modern European approaches to understanding the entire variety of offences covered by this concept with domestic criminal and administrative legislation, as well as to create appropriate organisational and legal prerequisites for combating the relevant offences.

RECOMMENDATIONS

It is necessary to adopt a law regulating the production, turnover and use of materials that come into contact with food, because they also affect the safety of what a person consumes. In addition, it should be taken into account that the safety of food products of animal origin is significantly affected by the health of productive

animals that are used for the production of such products. Therefore, the development of legislation on veterinary medicine also affects food safety and state control processes in this area. Since a new version of the Law of Ukraine “On Veterinary Medicine” was adopted in February 2021, today it is important to develop bylaws based on it, considering the relevant European requirements. Only then will the European model of state control of food safety be fully operational in Ukraine. Taking this into account, further scientific research should be focused on ensuring the development of the law on contact materials and bylaws in the field of veterinary medicine.

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