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Energy market manipulation: Criminal law analysis and signs

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■ **Abstract.** Article 42 of the Constitution of Ukraine establishes the principles of preventing abuse of a monopoly position in the market and unfair competition in economic activity. Manipulation of the Energy Market – an act that violates the procedure for state regulation of the electric energy market and the natural gas market approved by the current legislation – poses an increased public danger. The purpose of the study is to investigate objective signs of manipulation in the energy market as part of a criminal offence under Article 222-2 of the Criminal Code of Ukraine. Within the framework of the study, a complex of scientific methods was applied: dialectical, hermeneutical, systemic, formal logical, generalisation, system and structural, method of ascent from the abstract to the concrete, analysis, and synthesis. It is proved that the object of manipulation in the energy market is covered by public relations that control the procedure for state regulation of the electric energy market and the natural gas market approved by the current legislation – the implementation by the state of comprehensive measures to manage the demand, prices, and volumes of the wholesale energy market, prevent abuse and violations in this area. The criminal legal content of the concept of “manipulation” is determined by the deliberate activity of a person(s) who violate the conditions of functioning of the wholesale energy market, is carried out by performing a set of illegal actions, the purpose of which is to obtain financial benefits for themselves and third parties, by changing the price of a financial asset. The essence of manipulation of the wholesale energy market is highlighted through its inherent features, which indicate a violation of the conditions necessary for making transactions on the wholesale energy market and a deviation of the asset price from the real market price in the right direction for manipulators (the presence of a process of overstating (underestimating) the total price of the contract, which leads to the loss of its market status). The practical significance of the study lies in the fact that the analysis carried out is of auxiliary importance for law enforcement practice in solving issues related to the legal qualification of manipulation in the energy market

■ **Keywords:** object of criminal offence; public relations; electricity market; natural gas market; wholesale energy market; abuse

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■ Introduction

In response to the challenges of global competition exacerbated by the global financial and energy crisis, the energy-saving policy of many countries in recent years is aimed at the development and implementation of such energy strategies, which are primarily aimed at protecting national interests, developing effective energy consumption management systems and limiting the scale of financial, economic and energy-economic impacts. Ukraine is no exception, where the electricity generation market as of 2023 can be described as highly concentrated, competitively limited, and manipulative. Competition is most pronounced in such areas as the supply of electricity within and outside the relevant energy association, as well as in economic and trade operations with electricity with independent suppliers and individual energy companies. Among the main phenomena that negatively affect the state of Ukraine's energy sector and energy security are corruption, arbitrariness, the control of monopolistic oligarchs, and market closure. The consequences of these negative phenomena can be observed through real manifestations of inconsistency, an imbalance between supply and demand for energy resources: their producers receive losses, and electricity suppliers – super-profits.

Only at the beginning of the war, namely in February 2022, the volume of electricity consumption in Ukraine decreased by almost 30% (Why suppliers..., 2022). These indicators were influenced, first of all, by the mass relocation of a significant part of Ukrainians who were forced to leave due to incessant rocket attacks and airstrikes on the energy infrastructure, and the termination of the activities of industrial enterprises that consume a considerable amount of electricity. This is especially true in regions where active military operations are being conducted (De Klerk *et al.*, 2023).

In addition, the crisis processes in the energy sector of Ukraine during the Russian-Ukrainian war caused not only military operations related to damage and destruction of energy facilities, but also the artificial creation of challenges and problems in the market by individual state services. Therefore, the intensification of efforts of various state institutions to ensure the development of an effective mechanism for countering crime in the energy sector in Ukraine seems to be an extremely urgent issue. Establishing such a process is the key to solving socially significant problems – de-monopolisation and decriminalisation of the fuel and energy complex industries, and will also eliminate outstanding accounts receivable and payable of generating companies, the operator of the wholesale electricity market and energy supply enterprises, which tends to accumulate (Vozniuk & Kamenskyi, 2022). Consequently, issues related to ensuring energy security as an integral component of economic and national security are gaining

a significant role in Ukraine. The state capacity in the sphere of ensuring the protection of national economic interests and the removal of economic threats is in the same plane as the socio-economic development of Ukraine, influencing both its constancy and inflexibility, and determining its effectiveness in international cooperation. In addition, economic crime (in almost all its manifestations) and the scale of its spread are a threat to the national security of any country (Mozol *et al.*, 2020).

Among the experts who considered issue of criminalisation of abuse in energy markets and innovations of the Criminal Code of Ukraine, it is necessary to mention I.I. Bartosh (2022A), who conducted a comprehensive study on the protection of economic relations in the sphere of functioning of the energy market and the analysis of the grounds and reasons for criminalisation of behaviour described in Article 222-2 of the Criminal Code of Ukraine. The provisions substantiated by the researcher form a conceptual basis for further scientific analysis of this topic, which is the latest and at the same time debatable. Critical analysis of the decision of the Verkhovna Rada of Ukraine to supplement Article 222-2 of the Criminal Code of Ukraine, which resulted in a scientific conclusion on the expediency of its exclusion from the system of Section VII of the Special Part, was carried out by R.O. Movchan & I.I. Parfenyuk (2021). It is also worth mentioning the prominent scholars A.A. Vozniuk & D.V. Kamensky (2022), who carried out a general analysis of criminal liability for manipulation in the energy market with relevant recommendations for improving criminal law prohibition. Researchers partially considered the content and description of objective signs of the specified composition of a criminal offence. However, despite the researchers' attempts to solve criminal and legal problems of qualifying manipulative abuses in the energy markets, qualitative changes in ensuring effective protection of the latter have not yet taken place. Therefore, the task of forming an effective mechanism for criminal legal protection of the energy market from manipulative abuse remains one that needs to be solved, first of all, at the scientific level.

The purpose of the study is a criminal legal assessment by a detailed review of objective signs of a criminal offence that establishes responsibility for actions related to energy market manipulation. The purpose of the study is to clarify problematic issues of their legal regulation, in particular, the concept of "manipulation", and formulate specific proposals and recommendations for improving criminal legislation based on the above.

■ Materials and Methods

The research methodology is based on modern approaches to criminal law and is based on universal

values and various methods of scientific cognition. An important factor in this methodology is the use of various scientific methods for a deep understanding and analysis of the subject matter. One of the key methods used in this paper is the dialectical method. This approach allowed considering the connections between the manipulation of the energy market and social processes through the interaction of opposites and the development of the phenomenon over time. The dialectical method helped analyse the dynamics and changes in this area, and identify the main trends.

The hermeneutical method was used to interpret concepts in the context of criminal law. This revealed their meaning and significance, especially in relation to manipulation in the energy market. The system method was used to analyse the object of research – a criminal offence. It allowed considering this phenomenon as a complex systemic formation that combines various aspects and components. Etymological analysis helped understand the origin and change in the meaning of the term “manipulation” over time, and the formal logical method allowed systematising actions with signs of manipulation in the energy market and developing specific proposals for improving legislation.

The generalisation was used to formulate new proposals based on existing trends and positions in the scientific literature. This enriched the understanding of the concept of “energy market manipulation”. The system and structural method was used to determine the features of the generic and direct objects of the criminal offence under study. The dogmatic method identified the possibilities of adjusting the content of the norm, which establishes criminal liability for energy market manipulation. The comparative legal method allowed comparing this paper with Ukrainian and foreign studies on this issue, which contributed to a more in-depth analysis. Moreover, the method of convergence from the abstract to the concrete was used to analyse the object of manipulation in the energy market, and the synthesis method was used to formulate general conclusions. In general, the combination of these methods facilitated a deep and comprehensive investigation of the problem of manipulation in the energy market in the context of criminal law, revealing its essence and possible solutions.

The normative basis of the study was the Constitution of Ukraine, the Criminal Code of Ukraine, and legislation of Ukraine regulating the principles of activity in the electric power industry”. A significant component of the theoretical basis of the research turned out to be the works of prominent Ukrainian and foreign researchers, which allowed revealing the complexity and features of the process of energy market manipulation, and the impact of manipulation processes on the social environment.

■ Results and Discussion

After entry into force on June 16, 2020, the Law of Ukraine No. 738-IX “On Making Changes to Some Legislative Acts of Ukraine Regarding the Simplification of Investment Attraction and the Introduction of New Financial Instruments”, Section VII of the Criminal Code of Ukraine has been supplemented with prohibitions on illegal behaviour in wholesale energy markets (hereinafter – WEM): Article 222-2 “Manipulation in the Energy Market” and Article 232-3 “Illegal use of insider information regarding wholesale energy products”. The current version of Article 222-2 of the Criminal Code of Ukraine provides for two parts and four notes, where the estimated concepts of “significant size”, “significant harm”, “grave consequences”, and “subject of crime” are clarified. Its qualifying features in the legal regulation are defined as: a) repetition; b) actions committed by a group of persons by prior agreement; c) grave consequences.

Object of a criminal offence

When qualifying the corpus delicti of a criminal offence, the establishment of its object is of primary importance. The importance of clarifying this component is beyond doubt – it is well known that it is the object of a criminal offence that reveals the social essence of an act, contributing to its accurate qualification and differentiation from related criminal acts and offences. First of all, the object of the crime under study needs scientific analysis. In accordance with the provisions of Article 13 of the Constitution of Ukraine, the protection of the rights of all subjects of property and economic rights and the social orientation of the economy is guaranteed by the state. According to the law, all subjects of property rights (parties to legal relations) are equal. Article 17 of the Basic Law of the state stipulates that ensuring the economic and information security of Ukraine is a key state function, “the concern of the entire Ukrainian people”. Economic criminal offences are often identified with economic criminal torts. However, this position is not entirely correct. Based on the generalisation of various specific characteristics of economic criminal offences, it can be argued that criminal offences in the field of economics are characterised by encroachment on the economic system as a whole and violation of its functioning, as well as property and self-serving orientation (causing harm to various material values and/or obtaining benefits (gain) both for themselves and other persons). This type of criminal offence can also include criminal offences against property, in the sphere of drug trafficking, and some offences in the field of official activity.

In this regard, it seems appropriate to propose amendments to the Criminal Code, namely, at the beginning of Section VII in a separate Article, to regulate the concept of criminal offences in the field of

economic activity. The disposition of the proposed article can be set out in the following wording: "Article ... The concept of a criminal offence in the field of economic activity. 1. A criminal offence in the field of economic activity is recognised as an intentional or negligent socially dangerous act (action or omission) provided for in this section, committed in the field of economic activity (production or sale of products (goods), performance of works or provision of services of a cost nature) and caused significant damage to the subject or other participant in relations in the field of economic activity".

Thus, the concept of a generic object of economic criminal offences is defined as a system of management that includes economic relations in the production, distribution, exchange, consumption, and sale of goods and services. This is the economic content of these relations (Boboshko & Nesterenko, 2019). Specialists in criminal law, E.M. Kisiliuk & O.V. Protsyuk (2015) define the generic object of criminal offences in the field of economic activity as social relations that have developed in the process of production of a public product by all sectors of the economy, its distribution and exchange, performance of works and provision of services of a valuable nature, and in the process of creation and execution of budgets from the results of economic activity.

The commented Article 222-2 of the Criminal Code of Ukraine has direct and additional objects. The act provided for in Article 222-2 of the Criminal Code of Ukraine is a violation of a clearly defined pricing procedure for WEM, disorganises its constancy, causes an imbalance and the creation of artificial prices, causes the appearance of economic disparity and the receipt of unjustified profits by certain WEM participants, leads to a reduction in investment specifically in WEM, etc. The main purpose of these markets is the purchase and sale of wholesale energy products, and therefore, the main purpose of the corresponding abuses of market participants is an illegal influence on the value of a particular wholesale energy product (Bartosh, 2022b).

Manipulation-related activities are described in sufficient detail in Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider activity and market manipulation, which describes these activities as transactions or orders related to trade: which give or may give false (deceptive) ideas about the supply, acquisition, or tariffs of a financial instrument, or which are coordinated by one or more persons, resulting in the establishment of artificial or phenomenally high or low tariffs on one or more financial instruments. The only exception is cases when the person who started operations or issued a trade order proves the legality of the grounds for committing such actions, or the compliance of such actions with the established practice

in the relevant organised market. This includes transactions or orders for trading using unfair methods or other types of fraud. Therefore, market manipulation is a deliberate act aimed at significantly changing the price, demand, supply or volume of goods by distorting true information using appropriate methods and techniques.

From the content of the above-mentioned signs of manipulative activity, it can be concluded that manipulation in the markets is one of the forms of financial fraud, the forms of which, according to O.V. Kravchenko *et al.* (2021), are subject to both legal and socio-psychological regulation. This is a method of management and/or control aimed at the behaviour of individual participants in order to shape the energy market situation using hidden psychological influence and/or dishonest methods. Various techniques and methods, market factors (supply, demand, quantity, price, time, competition) are used, transactions are carried out in interrelated segments of the energy market, and orders are placed in trading systems. First of all, manipulative abuses are aimed at supply or demand to change (towards decreasing or increasing) the rate price in order to encourage individual market participants to purchase or sell at the rates that are profitable for the initiator of such operations.

Objective side of a criminal offence

According to the construction of the objective side, an illegal act under Article 222-2 of the Criminal Code of Ukraine is a criminal offence with a material composition – mandatory signs are an act in the form of an action, socially dangerous consequences and direct causal relationship. The objective side of a criminal offence is established by the following components:

- 1) Acts in the form of deliberate actions of persons in the energy market (in particular, in the electricity market and the natural gas market) who show signs of manipulation in the WEM, which are defined by the legislation in the energy sector.
- 2) Consequences are significant damage to the rights, freedoms, and interests of individuals protected by law, state, or public interests, or the interests of legal entities.
- 3) Making a profit – a person or third parties make a significant profit.
- 4) Avoiding losses – individuals avoid significant losses.
- 5) Causal relationship.

The formulated disposition of the said article in such a textual presentation cannot be called completely correct and accurate. In this area, it is worth supporting O. Koshovyi *et al.* (2019), who argue that the prohibition of a certain type of illegal behaviour in the form of manipulation on the stock exchange consists only of describing its specific features. The

content of the very concept of “manipulation” is not disclosed, however, attention is simultaneously directed to another – the law in its larger understanding as general term “legislation”. The researchers emphasise that the appeal to other legislation is necessary from the standpoint of appropriate qualification of actions that are covered by manipulation in the stock market. The question arises about the range of actions with signs of manipulation provided for by the legislation in the energy sector. This issue is quite complex, since the regulatory legislation does not contain a clear list of such actions, and accordingly, this wording complicates the construction of the composition of a criminal offence.

The concept of manipulation was first voiced on April 21, 2011 in the Law of Ukraine “On State Regulation of the Securities Market in Ukraine” of October 30, 1996 No. 48/96-BP: (article 10-1). This article was called “Manipulation of the Stock Market”. It was then that the president of Ukraine V.F. Yanukovich signed the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Prevention of Legalisation (Laundering) of Criminal Proceeds”, which provided for criminal liability for manipulating the stock market with a penalty in the form of a fine in the amount of 750 to 2 thousand tax-free minimum incomes of citizens or imprisonment for up to three years (in case of recidivism or group commission of a crime – a fine of 2 to 3 thousand tax-free minimum incomes of citizens or imprisonment for up to five years).

Regulation of the European Parliament and of the Council EU No. 1227/2011 “On Integrity and Transparency in the Wholesale and Energy Markets” of 25 October 2011 covers the manipulation of the WEM by actions committed by persons by artificially setting prices not conditioned by market forces of supply and demand, including the actual availability of production, storage or transportation capacity, and demand. Forms of market manipulation are defined as: 1) placement and withdrawal of false (fictitious) applications; 2) dissemination of false or deceptive information or news through the mass media (the Internet or by any other means (methods)); 3) deliberate provision of false information to business entities whose field of activity is to ensure the provision of reports or quotes on the state of the market, which results in misleading market participants who act based on such reports or quotes on the state of the market; deliberate formulation of the idea that the availability of electric generation power or availability or the transmission capacity is different from what is actually technically available if such information affects or may affect the price of wholesale energy products. Thus, in the general sense, energy market manipulation is a complex of economically or technologically unjustified actions that manifest themselves in an illegal (artificial) reduction/increase

in the value of energy goods, the purpose of which is to persuade other market participants (consumers) to purchase or sell at the proposed and profitable rate for the initiator of these actions.

Manipulation of the energy market

The consequences of manipulation in the energy market, according to A.A. Vozniuk & D.V. Kamensky (2022), are: hidden monopolisation of the energy market (subjects, committing abuses, impose private interests on other business entities and society, ignoring their needs; illegal enrichment of some participants in the energy market and unprofitability of others; increase in tariffs for energy products to the population. However, it would be a bit of a mistake to assume that the issue of manipulating the energy market boils down only to changing the value of an energy commodity and improving its own profits. This is a trading activity that is associated with a violation of the relevant objective procedure for compliance with the conditions and factors for performing an action to make transactions on the WEM. In other words, such activities are characterised by a wide range of relevant illegal actions with wholesale energy products.

Moreover, according to legislation, manipulation in the energy market refers to the unfair practice of business management in the market, the purpose of which may also be to conduct financial transactions aimed also at legalising (laundering) proceeds from crime. The implementation of this business (trading activity) by manipulation involves misleading other persons, who, under the influence of which, have a desire (interest) to become its participant.

The electricity market model, which was introduced in the summer of 2019, was aimed at abolishing the monopoly of a single wholesale buyer of this product and creating competitive conditions for all its participants, ensuring free pricing and providing better services. However, as a result of these changes, the facts of trade in non-existent goods by some suppliers and buyers of electricity were recorded, which gave them the opportunity to enrich themselves with millions of USD in profits, at the expense of other market participants. The largest losses, as noted by the journalists of “Schemes”, were received by large companies “Energoatom” and “Guaranteed Buyer” (Chornoalov, 2020; Kulish *et al.*, 2021; Blinov & Parus, 2023).

According to the energy market model introduced in 2019, four sectors of the wholesale electricity market are conditionally defined:

1) Conclusion of bilateral contracts (agreement between the producer (trader) and the consumer on the sale of electricity for a certain time at a contractual price;

2) “Market one day ahead” (sale of electricity to be consumed the next day). On the one hand, manufacturers and traders appear on the market with

ready-to-sell prices, on the other – consumers announce tariffs at which they are ready to make a purchase. If the price and volume match, the purchase and sale transaction is automatically recorded;

3) “Intraday market” (a consumer can buy additional electricity “today for today”, but its price will be higher than when buying on the “day-ahead market”).

4) “Balancing market” (purchase and sale of electricity volumes that are beyond the current projected production or consumption). For example: a consumer has purchased a partial amount of electricity needed in previous markets. Accordingly, a consumer has the right to automatically purchase additional electricity on the “balancing market”. Or,

if a producer generates more energy than it sold in previous markets, this excess is put on the “balancing market”. The goal is to prevent market imbalances and prevent negative consequences that may affect the energy security sector (Chornovalov, 2020). Most electricity markets operate on a two-way application basis, where electricity producers, suppliers, and consumers submit applications for the desired volume and purchase and sale price. The selection of applications and further calculation take place at the intersection of the demand curves of suppliers (consumers) and supply of electricity producers (Blinov, 2015). Schematically, the main components of the electric energy market are shown in Figure 1.

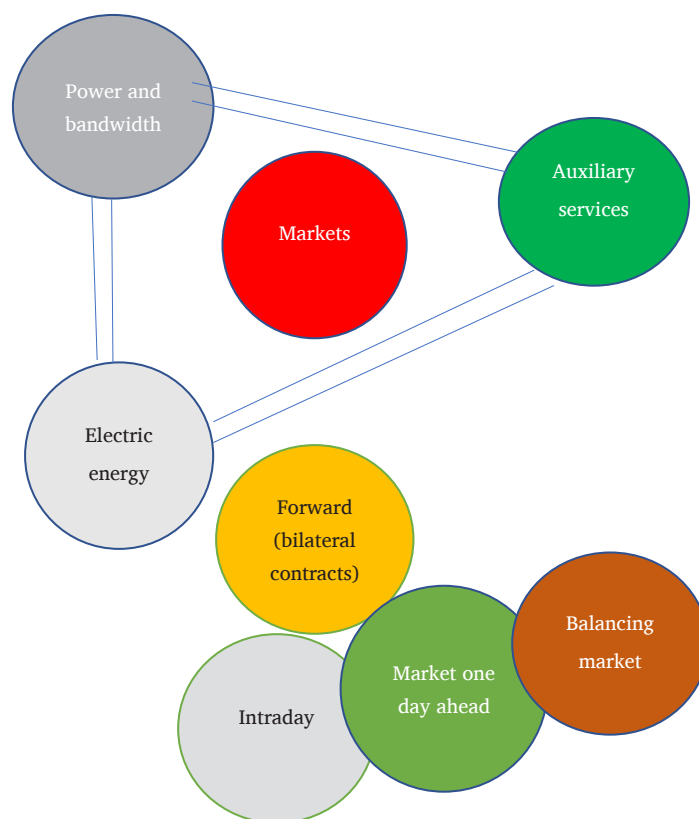


Figure 1. Main components of the electricity market

Source: Participants and structure of the electricity market (2019)

Materials published by lawyer A. Kryveshko (2020), witnessed statements about significant manipulative abuses in the market, which were filed by the National Energy and Utilities Regulatory Commission, SE “Market Operator” and SE “Guaranteed Buyer” in early 2020. The following forms of abuse have been recorded: a) some market participants (mostly traders and electricity suppliers) have set dumping tariffs in their applications for electricity sales, taking into account previous billing periods; b) the actual volume of electricity for sale has been exceeded. The consequence of these actions was the inability of most electricity producers to supply electricity at the market

price “for a day ahead”, as a result of which there was a forced transition to the next stages of transactions (sales) – on the intraday market and, in a situation of non-purchase – on the balancing market (sale of excess electricity at a dumping price).

Consequently, manipulative abuses can be expressed in distortions as trading operations in the energy market by selling generation that is not supported by actual volumes. As a result, there is an unmotivated waste of funds by the relevant enterprises, organisations, the state, and practices of inflated pricing, which creates restrictions in competition in the electricity market. In fact, there are two blocks of

situations that reveal the features of manipulation: economic withdrawal of electricity capacity (submission of an economically unmotivated application for the sale of electric energy); active (physical) withdrawal of electricity capacity (the real volume of electric energy is not reflected in the contract). Criminal manipulative schemes can be different, but in most cases they are manifested in corrective actions in order to change the price mechanism of electric energy.

Manipulative actions are an act of economic influence with a self-serving orientation, which, due to the violation of the integrity of the market pricing mechanism, have an increased public danger. Thus, they cause market destabilisation and lead to corresponding economic imbalances in the consumer market. Currently, there is no clear legislative interpretation of the concept of “manipulation” in the legislation of Ukraine. It is worth considering how the concept of “manipulation” is interpreted in the scientific literature, and what content lawyers put into its understanding.

“Manipulation” is a term of Latin origin (from the Latin word “*manipulare*” in the etymological sense of “to control”, “to manage with knowledge”, etc.). Its content is endowed with the characteristics of a nondescript (unconscious) influence that is supposed to be exerted on the person over whom they intend to control. Its primary understanding, emphasised by researchers V. Tertyshnyk & O. Koshovyi (2018), is combined with a complex of actions of both positive and negative nature. This also includes various “frauds”. Laws and regulations do not provide for signs by which it would be possible to distinguish “positive” manipulation from socially dangerous “fraud”. Consequently, there may be a situation of bringing to justice a person who has committed socially useful (necessary) actions or who has shown the interests of the state on formal grounds.

The concept of preventing manipulation of the securities market, unfair trading practices, and violation of the ethics of professional activity in the stock market, approved by the decision of the National Securities and Stock Market Commission of 14.01.2003 No. 21, defines the concept of “manipulation” as follows: deliberate or voluntary actions aimed at misleading or abusing trust (fraud) in relation to participants in the securities market, by establishing price control or artificially influencing the value of securities¹.

Manipulation that is being investigated by V. Tertyshnyk & O. Koshovyi (2018) and D.V. Kamensky (2020), is defined as an action taken by market participants or a group of participants

aimed at controlling prices through artificial interventions. This process takes place through the purchase and sale of securities, in particular wholesale energy products. The main goal is to create a false or deceptive illusion of active trading in the market. This practice is aimed at trying to change prices (tariffs) by giving a false impression that significant trading operations are actually taking place in the market. Such manipulation can lead to an illegal change in the exchange rate price of the stock instrument, which can affect the normal price indicator. Researchers note that this type of manipulation encourages other market participants to perform certain actions regarding the purchase and sale of securities based on the created artificial environment. The final result is a purposeful change in the exchange rate price of a stock instrument relative to its normal level.

O.V. Kravchenko *et al.* (2021) characterised manipulative trades as profitable malicious trades made on the following principles: trading is designed to move prices in a certain direction; the trader is not sure that prices are able to move without making a trade; the profit received arises solely from the trader's ability to move prices, and not from their possession of valuable information. Thus, financial manipulations have a clearly defined goal – to obtain personal benefits or for third parties, by changing the price of a financial asset in the right direction. The result of foreign researchers' understanding of manipulative transactions is the active trading activity of the latter, associated with the establishment of deceptive artificial control over the market price in order to obtain financial benefits.

E.M. Kisiliuk & O.V. Protsyuk (2015) identified four common components for any type of manipulation: 1) intentional action or omission; 2) intent; 3) causal relationship; 4) artificial price. The omission should have a conscious character and direct intent to commit the corresponding act, which has signs of manipulation, as a result of which a situation is formed that does not correspond to the real state. However, given the feature of concealment (carried out unnoticed, which distinguishes manipulation from other abuses, it seems that this act may also have a passive form – committed by inaction (failure to provide, failure to enter information, etc.). The Draft Law of Ukraine No. 4503 of 16.12.2020, which proposed amendments to the Law of Ukraine “On the Electricity Market”, manipulation of the electric energy market is disclosed as actions for making transactions, providing orders and/or instructions for making transactions with wholesale energy products,

¹Decision of the State Securities and Stock Market Commission No. 21 “On Approval of the Concept of Preventing Manipulation of the Securities Market, Unfair Trade Practices and Violation of the Ethics of Professional activity on the Stock Market”. (2003, January). Retrieved from <https://zakon.rada.gov.ua/rada/show/vr021312-03#Text>.

which: 1) create energy products; 2) provide (try to provide) a person (group of persons) with the opportunity to form prices for one or more wholesale energy products at an artificial level; 3) spread false or deceptive information through the media or in any other way both for demand and supply, or relative to the prices of wholesale energy products¹.

O.K. Vasylyak (2016) defined the generic object of economic crimes as a system and procedure for legally protected public relations that arise during the activities of business entities in the field of social construction. These relations are associated with the production, sale of products and provision of value-based services that serve as the basis for entrepreneurial and other economic activities. Coverage of these relations focuses on the economic competence of business entities in various types of economic activity. However, it is subject to clarification that the scope of their occurrence is somewhat broader than emphasised by the author, that is, it is not covered only by social construction, but concerns economic systems of various levels and types (industry, agriculture, communications, trade, services, etc., as well as their sub-sectors).

The generic object of criminal offences in the field of economic activity is outlined by specialists in criminal law, E.M. Kisiliuk & O.V. Protsyuk (2015), as social relations that have developed in the process of production of a social product by all sectors of the economy, its distribution and exchange, performance of works and provision of services of a cost nature, and in the process of forming and executing budgets from the results of management. This definition of the concept of a generic object, according to researchers, has a somewhat generalised character. Therefore, for a clearer characterisation with an emphasis on the branch of production or type of activity, in these illegal acts, E.M. Kisiliuk & O.V. Protsyuk (2015) also identified specific objects. Consumer and market conditions for the functioning of the electric power industry are a criterion for classifying manipulation in the wholesale energy market (hereinafter – WEM) as criminal offences in the consumer market. The specific object of a criminal offence, in this case, is necessary to specify and narrow the field of public relations that arise in the process of managing, and which are violated (or there is a threat of their violation) by committing an illegal act. It is the specific object that is the link between the generic and direct object, including manipulation on the WEM.

R.O. Movchan & I.I. Parfenyuk (2021) and I.I. Bartosh (2022a) defined the main direct object of

the specified criminal offence as a specifically defined pricing procedure (i.e., legitimate pricing) for WEM. Considering the anti-social focus on the procedure for violating the legitimate pricing of WEM, such abuses are actually independent manifestations of anti-competitive actions, which, at the same time, occur in a specific area – the field of WEM. I.I. Bartosh (2022b), analysing the object of this criminal act, comes to the conclusion that social relations that connect the foundations of fair competition in the plane of “*legitimus*” (legitimate) billing on WEM by preventing manipulation on the latter is its main direct object. The researcher makes arguments about the consistency of the relevant fundamental provisions concerning the content of market manipulation. In particular, the proposed definition by the researcher fully corresponds to: a) the generally accepted understanding of manipulation in the stock market in legal science – an illegal practice by creating a deliberately false belief in other persons about the active trade of increasing or decreasing the value of goods (Kamensky, 2020); b) the European interpretation of the content of the category of “manipulation” on the WEM, the features of which REMIT called – the focus on artificially setting the price within the limits not determined by market forces of supply and demand, including the actual availability of production, storage, or transportation capacities, and demand (Bartosh, 2022b).

Considering the field of public relations, which is covered by the understanding of the generic object of economic crimes, the direct object of manipulation in the energy market can be defined as public relations that ensure normal conditions for the functioning of the WEM, arise on a contractual basis and cover the production, transfer, distribution, purchase, and sale, supply of electric energy (natural gas). These relationships arise when performing operations using resources in the production, transmission (transportation, supply) and distribution of electricity to the WEM (Dudorov & Movchan, 2020). The generic feature that allows them to be attributed to the economic field is precisely the economic orientation of illegal manifestations, that is, the connection with economic relations, the commission of illegal encroachments in the process of carrying out economic activities in the energy markets.

The specifics of the institution of manipulation in the energy market indicate the existence of an additional object of this illegal act, which are property relations. Manipulation in the energy market leads to an imbalance, which results in an unjustified (abnormal) increase in energy prices and tariffs, an increase

¹Draft Law of Ukraine No. 4503 “On Amendments to Certain Legislative Acts of Ukraine on the Implementation of the Provisions of the European Union Legislation on Integrity, Transparency and Prevention of Distortion of Competition in Wholesale Markets”. (2020, December). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70681.

in the cost of electricity and natural gas. The consequences of these abuses are also covered in the mass media. According to O. Khyshchenko (2020), manipulation in the energy market, in particular in the electricity market, causes an unnatural redistribution of profits from electricity trading. This process contributes to an excessive increase in profit for individual traders, and can also lead to incorrect “leaching” of funds from real generation, making it unprofitable. When the volume of manipulations in the market increases, when they reach critical levels, there is an artificial decline in prices in the market. This, in turn, leads to the fact that all generating companies, without exception, are forced to sell electricity at prices below its cost price.

O.O. Dudorov & E.O. Pysmensky (2013) note that the violation of property relations occurs during any manifestation of manipulation, respectively, researchers note, that they must be recognised as a mandatory additional object of this criminal offence. The opinion deserves support, because, according to other researchers, artificial distortion of objective prices will characterise the economic nature of manipulation (Koshovyi *et al.* (2019). In the event of a socially dangerous act causing damage to the main and additional objects, according to E.M. Kisiliuk & O.V. Protsyuk (2015), the final value is only the harm caused to the main direct object, the public danger from causing harm to an additional object is considered already covered, respectively, such an act does not require cumulative qualification.

Consequently, the criminal offence under Article 222-2 of the Criminal Code of Ukraine encroaches on public relations that ensure normal conditions for the functioning of the WEM, which is based on competitive pricing in relation to equal and fair rules of conduct for its participants, on the principle of transparency of the electric energy (natural gas) markets; on ensuring that its participants and consumers are informed about the production, transmission, distribution, purchase, and sale, reliable and safe supply of electric energy; on ensuring the protection of investors and consumers of electric energy and natural gas from possible abuses. Public relations that ensure the property interests of citizens, organisations, or the state constitute an additional mandatory object of the specified criminal offence. The legal basis for regulating these relations, in particular, is the Law of Ukraine of April 13, 2017 “On the Electricity Market”¹.

■ Conclusions

Therefore, the direct object of manipulation in the energy market is defined as public relations that

ensure normal conditions for the functioning of the WEM, arise on a contractual basis, and cover the production, transmission, distribution, purchase and sale, and supply of electric energy (natural gas). An additional object of a criminal offence is public relations that ensure the property interests of citizens, organisations, or the state. The increased public danger of manipulation in the energy market consists in undermining energy security by violating the integrity of the energy market and the trust of investors in it.

Manipulation in the energy market can be defined as a complex of economically or technologically illegal actions of individuals that disrupt the functioning of the wholesale energy market. This may include false statements, misrepresentation of information, fictitious transactions to involve in trading operations or investments in order to attract participation in trading operations with energy products or to invest the financial capabilities of the person carrying out the specified activity. The proposed disposition of Part 1 of Article 222-2 of the Criminal Code should be stated as follows: “Manipulation in the energy market, that is, intentional actions of an individual in the field of production, transfer, distribution, purchase and sale, supply of electric energy that violate the necessary conditions for operations in the wholesale energy market, which led to the receipt of income in significant amounts by a person or third parties, or the avoidance by such persons of losses in significant amounts, or if they caused significant damage to the rights, freedoms and interests of individual citizens protected by law, or state or public interests, or the interests of legal entities, is punishable...”.

For the purpose of uniform law enforcement, it is proposed to supplement Section VII of the Criminal Code with an article with the following content: “Article ... The concept of a criminal offence in the field of economic activity. 1. A criminal offence in the field of economic activity is recognised as an intentional or negligent socially dangerous act (action or omission) provided for in this section, committed in the field of economic activity (production or sale of products (goods), performance of works or provision of services of a cost nature) and caused significant damage to the subject or other participant in relations in the field of economic activity.”

The study of the objective signs of the criminal offence consolidated in Article 222-2 of the Criminal Code of Ukraine allowed recording the diversity of ways of manipulating the energy market, which, in addition, in the context of competition and the existing serious problems of energy supply caused by the massive missile attacks by the Russian Federation,

¹Law of Ukraine No. 2019-VIII “On the Electricity Market”. (2017, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2019-19#Text>.

demonstrates the importance of this issue and the impossibility of limiting the results to these. The restructuring of the management system in the field of energy security determines the urgent need to significantly improve the mechanisms of criminal law provision of energy security, based on the current legislation and taking into account the current conditions of functioning of the energy market. And it is the thoroughly developed legislation and well-established judicial practice of qualifying and investigating criminal abuses in the energy market that will not only help to punish the perpetrators fairly, but also prevent the emergence of new ones. Therefore, to ensure the legality of bringing a person to criminal responsibility for manipulation in the energy market,

the issue that requires its priority clarification in subsequent studies is the maximum detail and clear definition of the range of illegal acts covered by the concept of “manipulation”.

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■ Conflict of Interest

None.

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Маніпулювання на енергетичному ринку: кримінально-правовий аналіз та ознаки

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■ **Анотація.** У статті 42 Конституції України закріплено принципи недопущення зловживання монополістичним становищем на ринку й недобросовісної конкуренції в економічній діяльності. Підвищену суспільну небезпеку становить маніпулювання на енергетичному ринку – діяння, що порушує утверджений чинним законодавством порядок державного регулювання ринку електричної енергії та ринку природного газу. Мета статті – дослідити об'єктивні ознаки маніпулювання на енергетичному ринку як складу кримінального правопорушення, передбаченого ст. 222-2 Кримінального кодексу України. У межах дослідження застосовано комплекс наукових методів: діалектичний, герменевтичний, системний, формально-логічний, узагальнення, системно-структурний, метод сходження від абстрактного до конкретного, аналізу й синтезу. Обґрунтовано, що об'єкт маніпулювання на енергетичному ринку охоплено суспільними відносинами, які регулюють утверджений чинним законодавством порядок державного регулювання ринку електричної енергії та ринку природного газу – здійснення державою комплексних заходів щодо управління попитом, цінами й обсягами гуртового енергетичного ринку, запобігання зловживанням і порушенням у цій сфері. Кримінально-правовий зміст поняття “маніпулювання” визначений умисною діяльністю особи (осіб), що порушує умови функціонування гуртового енергетичного ринку, здійснюється шляхом виконання комплексу неправомірних дій, метою яких є отримання фінансової вигоди для себе і третіх осіб, шляхом зміни ціни фінансового активу. Сутність маніпулювання гуртовим енергетичним ринком висвітлено через притаманні йому ознаки, якими означено порушення умов, необхідних для здійснення правочинів на гуртовому енергоринку та відхилення ціни активів від реальної ринкової ціни в потрібний маніпуляторам бік (наявність процесу завищення (заниження) загальної ціни договору, що спричиняє втрату її ринкового статусу). Практична значущість дослідження полягає в тому, що здійснений аналіз має допоміжне значення для правозастосовної практики під час вирішення питань, які стосуються правової кваліфікації маніпулювання на енергетичному ринку

■ **Ключові слова:** об'єкт кримінального правопорушення; суспільні відносини; ринок електроенергії; ринок природного газу; гуртовий енергетичний ринок; зловживання