

PRIORITY AREAS AND MEANS OF PUBLIC ADMINISTRATION COUNTERING RAIDING

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Summary

Each business entity should make sufficient efforts to respond appropriately to the existing challenges (including the threat of a raider attack); however, not always and not all of them are able to cope with this on their own, and therefore require external assistance, which is expressed in the use of appropriate means of public administration to counteract raiding. The objective of the article is to improve the list of means and priority areas of public administration addressing raiding. The generalization of the developments of leading scholars and practitioners, as well as the results of the author's own research in this area, allow improving the list of means of public administration of countering raiding in the following priority areas: organisational and methodological support of public administration of countering raiding; prevention of raiding; localisation of raider attacks; minimisation of the negative consequences of the spread of raiding. The key to success in this area is the proper use of advanced methodological support, balanced application of administrative, economic, organisational, legal and socio-psychological methods of public administration, as well as consideration of market mechanisms and social norms which, to a certain extent, affect the functioning of business entities. The author proves the inadmissibility of the following: involvement of public administration officials in unfair competition; use of public authority to appropriate or gain influence over a company that has been subjected to a raider attack; use of anti-raider measures as a way of dealing with «inconvenient» public administration officials; preservation of the practice when the principle of «presumption of innocence» is applied instead of the principle of «presumption of impunity».

Key words: public administration, to counteract raiding, directions, means, priorities.

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1. Introduction

Ukraine is a social and legal state that has to protect national interests by all means, including by ensuring the welfare of the population. In this case, it is not only about the extent to which their existing needs are met, but also about creating favourable conditions for this: the formation of a diverse supply (primarily, improving the investment climate as a key to business development) and solvent demand (sufficient consumer income). Both conditions (despite their belonging to different «sides» of the market) are largely related to the proper protection of business entities: consumers – from the loss of income (primarily labour one), business representatives – from internal and external challenges, one of which is raiding – «organised activities of persons using a set of measures (bribery of corrupt officials; payment for the services of private security agencies; purchase of shares from minority shareholders; «acquisition» of unjust court

decisions) aimed at the illegal alienation of other people's assets in order to obtain excessive profits through their further use and/or resale» (*Kuzmenko, 2021: 91*). Of course, each business entity should make sufficient efforts to respond appropriately to the existing challenges (including the threat of a raider attack); however, not always and not all are able to cope with this on their own, and therefore need external assistance, which is specified in the use of appropriate means of public administration to counteract raiding. All of the above determines the relevance of this study.

Analysis of recent research and publications. The issue of public administration of activities countering raiding has become the subject of research by a number of scholars, namely: which revealed the excessive influence of corporations on the state economic policy of developed countries (including anti-raiding policy) (*Aizenberg, Hanegraaff, 2019; Nyberg, 2021*); specified the features of combating raiding in different countries of the world (*Angumuthoo, Lotter, Wood, 2020; Cheng, Christensen, Ma, Yu, 2021; Kaplan, Lohmeyer, 2020*); revealed the impact of legislation on the protection of business interests (*Vaheesan, 2020; Waked, 2020; Frattaroli, 2020; Gradstein, 2019; Kaganovich, 2019*); provided a criminal-legal assessment of the abuses of state registrars in the context of combating raiding (*Dudorov, Kamenskyi, Tytarenko, 2021*); developed a hierarchy of the impact of external factors on the likelihood of enterprises being captured by raiders (*Pisarevskiy, Aleksandrova, Yevtushenko, Poroka, Shoiko, Karpeko, 2021*); determined the most popular schemes of raiding in Ukraine (*Vasylchyshyn, Bilous, 2020*); provided a general description of the actions of raiders during encroachments on the crops of agricultural producers (*Derevyanko, Turkot, 2021*); substantiated the methodology of formation and implementation of state policy in the field of prevention and countermeasures against raiding as a component of national security (*Grytsyshen, 2021*).

The objective of the article is to improve the list of means and priority areas of public administration means addressing raiding.

Materials and methods. The given paper is based on an integrated approach, which consists in the study of public administration means aimed to counteract raiding as a single whole with the coordinated functioning of all its constituents. Besides this, the methods, which were used at the empirical and theoretical levels, such as, an abstract logical method for theoretical generalization, a method of analyzes and synthesis for the determination of the factors, which influence the character and orientation of public management, and a method of comparison for the study of methodological approaches, conceptions, developments and offers of the leading domestic and foreign scientists, devoted to the peculiarities of public administration of counter-raiding were applied in the given research.

2. Results

A synthesis of the work of leading scholars and practitioners, as well as the results of our own research in this area, allows us to improve the list of means (within the framework of administrative, economic, organisational, legal and socio-psychological methods) of public administration addressing raiding (taking into account market mechanisms and social norms) in the following priority areas:

1. *Organizational and methodological support of public administration in the area of raiding prevention:*

– allocating budget funds and attracting grants for research on this issue (in particular, on the preconditions, forms and methods of raider attacks; methods and means of countering raiding);

- clear definition of the concepts: «raiding», «raider attack», «actions with signs of raiding», «stakeholders of a raider attack», «public response to raiding», «inaction in the event of a raider attack»;
- regulations (first of all, elimination of their duplication) of general, sectoral and special competences of authorised public administration bodies and streamlining of their interaction to counteract raiding;
- scientific substantiation (for further adjustment of legal and social norms) of the degree of responsibility (criminal, administrative...) of all stakeholders of a raider attack (not only direct participants of the «forceful stage» of a raider attack («titushky») and those who documented and organised this process («professionals», «coordinators», «corrupt officials»), but also, and most importantly, its «orderers»);
- a thorough analysis of positive and negative experience of raiding prevention as a prerequisite for improving the methodology of public administration in this area;
- holding interagency events to exchange national experience and identify best foreign practices raiding prevention (taking into account the causes, forms of manifestation and consequences of raider attacks) for further adaptation to the conditions of Ukraine;
- improvement of existing, as well as development and implementation of new methods and means of public administration of raiding prevention;
- scientific support for the adaptation of modern anti-raiding practices to the conditions of specific companies.

2. *Prevention of raiding:*

- identifying and eliminating shortcomings in the current legislation on the business environment of economic entities (in particular, with regard to countering raiding);
- increasing the income of the population (primarily, reducing poverty) and improving the crime situation as a prerequisite for reducing the number of people who can be involved in raider attacks;
- monitoring and analysis of legal, economic and social aspects (parameters) of business entities' activities. Companies with the following features deserve special attention: questionable legality of ownership of the company's assets; legal conflicts in the provisions of the charter and other corporate documents regarding the election of executive bodies and their decision-making; conflicts involving owners, management, partners; rapid positive development dynamics (market price, revenue/profit, scale of operations, sales markets, spheres of influence and circle of interests); rapid (but allegedly unjustified) deterioration of economic indicators; encumbrance of assets by pledging them as collateral (including to its own branches or structures); significant scale of shadowing of own activities; significant amounts of receivables and payables, a significant «portfolio» of problem loans and a negative «credit history»; financial, technical, technological, environmental and other challenges directly or indirectly related to the company's activities (blocking tax invoices, no access to production facilities, impeded traffic); seizure of bank accounts, production resources or finished products; ineffective management; existence of court decisions on the company's assets and orders of the State Enforcement Service of Ukraine; lack of a strong corporate security system (in particular, insufficiency of its power, material, technical, information, and communication components); unrealised potential of the company and its significant opportunities (for example, in the context of the General Plan of Development of a settlement, National/sectoral strategies/programmes of development/building/reconstruction...); appearance of information in the media that compromises the company; problems with contractors and partners, problems with counterparties and partners who unexpectedly refuse to work without prepayment and/or make various, often not entirely

substantiated, claims; unscheduled inspections by representatives of various law enforcement and regulatory authorities;

- monitoring and analysis of mergers, acquisitions and sales of companies (their shares, including by minority shareholders);
- monitoring and analysis of the behaviour of persons collecting insider information about business entities («weaknesses», competitors, «enemies», business partners, risky and/or illegal transactions...), which can be used to initiate and organise a raider attack;
- monitoring and analysing decisions of courts and/or other public administration bodies regarding specific business entities, as well as decisions of general meetings of co-owners, which may become the basis for a raider attack on the company concerned;
- detection and suppression of the following: forgery/falsification of company documents; incitement of minority shareholders to sell their shares and/or organise general meetings of owners where they initiate a change of management; inducing management to conduct illegal activities, violate existing agreements and contracts, conclude disadvantageous agreements (including credit agreements); preparing conditions for a forceful seizure (in particular, engaging private security agencies and/or individuals («titushky»));
- improvement of interaction (in particular, automatic exchange of information) between authorised institutions (including international ones), paying special attention to the activities of the Office for Countering Raiding, as well as simplification and acceleration of procedures with strict compliance with the current legal norms);
- creation of databases of organisations and individuals specialising in raiding, with further restrictions on their activities;
- prohibition of issuing a power of attorney to third parties to participate in the general meeting of LLC members or JSC shareholders;
- further reform of the executive and judicial branches of government;
- improving cooperation with the media, law enforcement agencies and other public authorities;
- use of «trusted» professional registrars and custodians;
- replacement of inefficient company management;
- creating an impeccable corporate history;
- maximum consolidation of company assets;
- avoidance of corporate disputes and causes for lawsuits.

3. Localisation of raider attacks:

- direct intervention of authorised public administration bodies in the activities of a company suffering from a raider attack (in particular, the admittance of representatives of the National Police of Ukraine into its territory; temporary suspension of business activities, seizure of assets, «freezing» of bank accounts; voluntary blocking of operations on the liquid account of a company suffering from a raider attack; urgent (probably temporary) withdrawal of assets not seized by the raider ...);
- conducting operational search measures, investigative and other actions aimed at identifying and bringing to justice not only the direct participants of the raider attack, but also those whose participation is allegedly unclear (intermediaries, orderers);
- engaging the media in unbiased coverage of the circumstances of the actions of raiders and public authorities and companies that countered the raiders;
- increasing the company's ability to organise the protection of its own rights (including with the involvement of a loyal workforce and concerned members of the public).

4. *Minimisation of the negative consequences of the spread of raiding:*

- criminal or other liability (primarily, imprisonment, confiscation of property, etc.) by court decision in accordance with applicable law;
- lifelong disqualification of persons convicted of raiding from holding positions in public administration and local self-government bodies, practising notary public, as well as being a manager and/or co-owner of business structures;
- thorough verification of the compliance of official income and available assets not only of persons involved in raider attacks and actions with signs of raiding, but also of their immediate environment (it should be noted that such persons are, in part, the main (at least legally) beneficiaries of the illegal benefits obtained from involvement in raiding);
- nationalisation of enterprises and/or their assets that have been «captured» by raiders, with their subsequent sale at public auction;
- strict (but impartial) public control over the activities of business entities that have been subjected to a raider attack and/or alienation of assets only in the presence of signs of raiding;
- preventing the sale (especially a quick sale) of a company which ownership has signs of raiding;
- ignoring partnerships and purchases of goods/services from companies that have been involved in actions with signs of raiding.

In the end, it should be emphasised that the following is unacceptable:

- involvement of public administration officials in unfair competition;
- conducting anti-raider activities as a way of dealing with «inconvenient» public administration officials;
- the use of public authorities to gain influence (providing a «roof») over a company that has been subjected to a raider attack, and under certain conditions – to acquire ownership rights (usually to «front persons») to such a company;
- preservation of the practice of applying the principle of «presumption of impunity» instead of the principle of «presumption of innocence».

3. Conclusions

The generalisation of the findings of leading scholars and practitioners, as well as the results of the author's own research in this area, allow us to improve the list of public administration means for countering raiding in the following priority areas: organisational and methodological support for public administration means for countering raiding; prevention of raiding; localisation of raider attacks; minimisation of the negative consequences of the spread of raiding. The key to improving the effectiveness of public administration for countering raiding is the proper use of advanced methodological support, balanced application of administrative, economic, organisational, legal and socio-psychological methods of public administration, as well as due application of market mechanisms and social norms that to some extent affect the functioning of business entities. The following is unacceptable: involvement of public administration officials in unfair competition; use of public power to appropriate or gain influence over a company that has been subjected to a raider attack; use of anti-raider measures as a way of dealing with «inconvenient» public administration officials; preservation of the practice of applying the principle of «presumption of impunity» instead of the principle of «presumption of innocence». Further research should be devoted to the development of theoretical provisions and practical recommendations aimed at improving public administration means for countering raiding.

References

1. Aizenberg E., Hanegraaff M. (2019). *Is politics under increasing corporate sway? A longitudinal study on the drivers of corporate access*. *West European Politics*. 43(1). 181–202. DOI: 10.1080/01402382.2019.1603849
2. Angumuthoo M., Lotter D., Wood S. (2020). *Public Interest in Mergers: South Africa*. *The Antitrust Bulletin*. 65(2). 312–332. <https://doi.org/10.1177/0003603X20912882>
3. Cheng B., Christensen T., Ma L., Yu J. (2021). *Does public money drive out private? Evidence from government regulations of industrial overcapacity governance in urban China*. *International Review of Economics*. 76. 767–780. DOI: 10.1016/j.iref.2021.07.012
4. Derevyanko B., Turkot O. (2021). *Pro protydiu zbyranni chuzhoho vrozhaiu «reideramy» [On countering illegal harvesting by «raiders»]*. *Ukrains'ka politseistyka: teoriia, zakonodavstvo, praktyka [Ukrainian policing: theory, legislation, practice]*. 1. 132–141. <https://doi.org/10.32366/2709-9261-2021-1-1-132-141> [in Ukrainian]
5. Dudorov O.O., Kamenskiy D.V., Titarenko S.S. (2021). *Kryminal'no-pravova otsinka zlozhyvan' derzhavnykh reiestratoriv u konteksti protydii reiderstvu [To the question of correct criminal law definition of seizure of subjects of economic activity (raiding)]*. *Naukovyi visnyk Natsional'noi akademii vnutrishnikh sprav [Scientific Bulletin of the National Academy of Internal Affairs]*. 1. 118–130. <https://doi.org/10.33270/01211181.118> [in Ukrainian]
6. Frattaroli M. (2020). *Does protectionist anti-takeover legislation lead to managerial entrenchment?* *Journal of Financial Economics*. 136(1). 106–136. DOI: 10.1016/j.jfineco.2019.03.014
7. Gradstein M., Kaganovich M. (2019). *Legislative restraints in corporate bailout design*. *Journal of Economic Behavior*. 158. 337–350. DOI: 10.1016/j.jebo.2018.12.003
8. Grytsyshen D.O. (2021). *Derzhavna polityka v sferi zapobihannia ta protydii ekonomichnoi zlochynnosti [State policy in the field of prevention and counteraction to economic crime]: Extendet abstract of candidate's thesis*. Kharkiv, 437. [in Ukrainian]
9. Kaplan R., Lohmeyer N. (2020). *A comparative capitalism perspective on the privatization of governance: Business power, nonbusiness resistance and state enforcement in Germany, 2000–2010*. *Socio-Economic Review*. 19(1). 247–272. DOI: 10.1093/ser/mwaa001
10. Kuzmenko T. (2021). *Sutnist' poniattia «reyderstvo» [Essence of the concept of «raiding»]*. *Ekonomichni chytannia [Economic readings]: materialy I mizhnarodnoi naukovo-praktychnoi konferentsii [materials I international science practice conference]*, 2021, February 19. Kharkiv, 90–91. [in Ukrainian]
11. Nyberg D. (2021). *Corporations, Politics, and Democracy: Corporate political activities as political corruption*. *Organization Theory*. 2(1). 1–13. DOI: 10.1177/2631787720982618
12. Pisarevskiy M., Aleksandrova V., Yevtushenko V., Poroka S., Shoiko V., Karpeko N. (2021). *Management of economic security of industrial enterprises for countering raiding*. *Management Theory and Studies for Rural Business and Infrastructure Development*. 43.1. 151–160. <https://doi.org/10.15544/mts.2021.13>
13. Vaheesan S. (2020). *Privileging Consolidation and Proscribing Cooperation: The Perversity of Contemporary Antitrust Law*. *Journal of Law and Political Economy*. 28. 28–45. <https://doi.org/10.5070/LP61150255>
14. Vasylychshyn O., Bilous I. (2020). *Raiding as a separate type of organized criminal activity in the financial sphere*. *Economic analysis*. 30.1.2. 216–222. <https://doi.org/10.35774/econa2020.01.02.216>
15. Waked D. (2020). *Antitrust as Public Interest Law: Redistribution, Equity and Social Justice*. *The Antitrust Bulletin*. 65(1). 87–101. DOI: 10.1177/0003603X19898624