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## **Economic and legal regulations on the markets of financial services of Ukraine**

**Abstract.** State regulation of financial service market operations of Ukraine is characterized by a number of shortcomings, among which the most significant one is unclear division of responsibilities of state regulators and inconsistency of their competence, lack of a uniform system of means of influence. Study of the issues state regulation execution in a form of control on the financial service markets of Ukraine and elucidation of the European experience of activity of the regulators in order to improve the Law of Ukraine. Oversight and control on the financial service markets should be maximally harmonized based on the integrity of the capital market and the necessity of unification of execution of operation with financial institutes. The objects of the control are: credibility of information provided by the participants of the financial services' markets, observance the terms of conducting of the activity to provide financial services, solvency of financial institutions. Control is a form of government regulation of the financial services' market. The components of the control are: supervision, accountability, monitoring, financial monitoring, inspections, auditing, examination, lawful correction (sanctions). Means and forms of the control of the National Commission, which conducts government regulation in the area of financial services' markets, in comparison with the National Bank of Ukraine and National Commission for securities and stock market are rather weak.

**Key words:** control, oversight, National Commission, which executes government regulation in the area of financial service markets, national bank of Ukraine, national Commission for securities and stock market.

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## **Хозяйственно-правовое регулирование рынка финансовых услуг Украины**

**Аннотация.** Государственное регулирование функционирования рынка финансовых услуг Украины характеризуется рядом недостатков. Наиболее значимыми являются нечеткое распределение полномочий государственных регуляторов и несогласованность их компетенции, а также отсутствие единой системы средств воздействия. С целью усовершенствования украинского законодательства исследуются проблемы осуществления государственного регулирования на рынках финансовых услуг Украины и рассматривается европейского опыт деятельности регуляторов.

Надзор и контроль на рынке финансовых услуг должны быть максимально гармонизированы, исходя из единства рынка капиталов и необходимости унификации осуществления операций с финансовыми институтами. Объектами такого контроля являются: достоверность предоставляемой участниками рынка финансовых услуг, соблюдение условий осуществления деятельности по предоставлению финансовых услуг, платежеспособность финансовых учреждений. Контроль является формой государственного регулирования рынка финансовых услуг. Составными элементами контроля являются: надзор, отчетность, мониторинг, финансовый мониторинг, проверки, аудит, ревизия, меры воздействия (санкции). Средства и формы контроля Национальной комиссии, осуществляющей государственное регулирование в сфере рынков финансовых услуг, по сравнению с Национальным банком Украины и Национальной комиссией по ценным бумагам и фондовому рынку представляются малоэффективными.

**Ключевые слова:** контроль, надзор, Национальная комиссия государственного регулирования рынков финансовых услуг, Национальный банк Украины, Национальная комиссия по ценным бумагам и фондовому рынку.

**Introduction.** The financial service market of a coordinator of the whole financial system, sphere of relations, with the help of which the movement of financial resource is carried out, which is a mechanism of increasing competitiveness of the economy of the

country. In the basis of the efficient performance of the financial service markets there are clearly designed principles of legal regulation of relations by state regulators.

In Ukraine the mechanism of state regulation of performance of the financial service market is characterized by a number of shortcomings, i.e. unclear division of responsibilities of state regulators and inconsistency of their competence, lack of a uniform system of enforcement means. These issues demand further research and resolution on the legislative level.

The authors, who studied issues of state regulation, execution of control on financial services' markets, are the following I. A. Blank, R. J. Bacho, R. Blicharz (Blicharz, 2009), P. Wajda (Wajda, 2009), M. Wierzbowski, A. Wiktorowska (Wierzbowski, Wiktorowska, 2009), N. Vnukova, O. V. Klymenko, N. S. Kuznetsova, V. P. Levchenko, K. V. Masliaieva, V. I. Mishenko, S. V. Naumenkova, V. V. Poiedynok, V. I. Poliukhovych, V. P. Prykhodko, L. A. Savchenko, V. P. Khodakivska, though at the present moment the study of the question of unification of the system of control and oversight on the financial services' markets is becoming a pressing issue. Most of all inconsistency is noticed in control and oversight, which are important elements to develop uniform principles of legal regulation on the financial services' markets.

**The goal of the paper** is to study problematic questions of execution of economic and legal regulation in a form of control on the financial service markets of Ukraine and elucidation of European experience of activity of the regulators in order to improve Ukrainian legislation.

**Main results of the research.** One of the main tasks of the economic and legal regulation of the financial markets is distribution of functions of the authorized bodies on the market of financial services.

The functions of the state regulation on the financial service markets are executed by corresponding regulating subjects. According to the opinion of V. I. Poliukhovych, the following can be referred to the functions of the bodies of the government on the securities market:

- 1) legislation and rule-making: a) adoption of legal acts concerning the activity of the participants of the securities market; b) regulation of issue and circulation of securities, rights and obligations of the participants of the securities market; c) introduction of rules and standards of execution of operations on the securities market;
- 2) licensing activity and setting bans: a) issue of licenses to perform professional activity on the securities' market; b) banning and stopping professional activity on the securities market in case of absence of a license to conduct such activity and making accountable for conducting such activity according to the legislation in force;
- 3) accounting and registering activity of the government (information and registration function);
- 4) development of a system protecting rights of investors;
- 5) supervisory activity of the bodies [1, P. 65-66].

V. I. Poliukhovych developed a classification of functions of the National Commission for Securities and Stock Market (further - NCSSM), which is, in our opinion, is a general one, and it can be applied also to the National Commission, which executes state regulation in the area of financial service market (further –

Natncomfinservices) and to the National Bank of Ukraine (further – NBU) with consideration of the characteristics of the sectors of the financial service markets.

We believe that, if in the result of carrying out of legislative activity, conducting of certain operations there can be differences in authority of state bodies, then oversight and control on the financial services market should be maximally harmonized, on the basis of unity capitals' market and the necessity of unification of execution of operations with financial institutes.

Consider the existing legal regulation of the financial service markets within the framework of state regulation. Modern state regulation of the financial service market is carried out by three authorized institutions: National Committee of Financial Services, National Committee on Securities and Stock Market, National Bank of Ukraine. Besides, the regulatory authorities include Antimonopoly Committee, State Financial Monitoring and the Fund of Guaranteeing Private Persons' Investments are not entitled to manage the area of financial service markets, but they can carry out and do carry out their regulatory authority, the character of which is stipulated by the function performed by the authority. Namely, the Antimonopoly Committee of Ukraine has regulatory powers connected with protecting free economic competition and prevention of unfair competition in all the spheres of the economy, including the non-banking financial services. Though, in O.V. Klymenko's opinion, the functioning of these markets show that Antimonopoly Committee does not occupy an active position in this issue [2, P. 61]. The National Bank of Ukraine takes decisions to open banking licenses and bank liquidation on the proposition of the Fund of Guaranteeing Private Persons' Investments.

As it was mentioned before, the state regulation of financial service markets is provided through implementing the National Committee of Financial Services' functions under the Law on Financial Services and State Regulation of Financial Service Markets Nr. 2664-III (hereinafter – Law Nr. 2664) of 12 July 2001, the Regulation on the National Committee carrying out State Regulation in the area of Financial Service Markets approved by the Decree of the President of Ukraine Nr. 1070 of 23 November 2011 (hereinafter Regulation Nr. 1070), National Committee on Securities and Stock Market's functions under the Law on Securities and Stock Market Nr. 3480-IV of 23 February 2006, Law on State Regulation of Securities Market in Ukraine Nr. 448 of 30 October 1996 (hereinafter Law Nr. 448), Regulation on the National Committee on Securities and Stock Market approved by the Decree of the President of Ukraine Nr. 1063 of 23 November 2011 (hereinafter Law Nr. 679), Law on Banks and Banking Activities Nr. 2121 of 7 December 2000, including:

- 1) developing and approving regulatory acts (p. 1 Article 28 Law Nr. 2664 and p.7.3 Regulation Nr. 1070; p.3.6. Regulation Nr. 1063; Article 56 Law Nr.2121);
- 2) state registration of financial institutions (p. 2 Article 28 Law Nr.2664 and pp.4.8, 4.9 Regulation Nr. 1070; p.4.38 Regulation Nr. 1063; Article 17 Law Nr. 2121);
- 3) issuing permits and licensing the financial service activities (p. 3 Article 28 Law Nr. 2664 and p.4.12 Regulation Nr. 1070; p.4.35 Regulation Nr. 1063; p.2 Part 2 Article 44 Law Nr. 679);
- 4) setting obligatory criteria and norms for financial institutions to carry out their activities (p. 4 Article 28 Law Nr. 2664 and p.4.18 Regulation Nr. 1070; p.6.5-6.6 Regulation Nr. 1063; Article 66 Law Nr. 2121);
- 5) control and oversight of financial institutions (p. 9 Article 28 Law Nr. 2664 and p. 4.36 Regulation Nr. 1070; Article 29, 30 Law Nr. 2664; p. 6.51 Regulation Nr. 1063 p. 37-5 Article 7 Law Nr 448; Part 11 Article 67 Law Nr. 2121 Article 66, 71 Law Nr. 2121);

6) enforcement measures (p. 10 Article 28 Law Nr. 2664 and p. 4.39, 4.40 Regulation Nr. 1070; p. 6.61 and 6.64 Regulation Nr. 1063; Article 73, Law Nr. 2121).

Thus, we can see that the functions of the state regulators are similar but in fact there are certain differences in controlling activities. This is actually the peculiarity of one of the major functions of the state regulators which is to control the activity. The objects of such controlling activity and control include:

- integrity of information provided to the participants of the financial service market;
- following the conditions of carrying out activities on providing financial services;
- capacity of the financial institutions to meet their liabilities.

The above mentioned stipulates that the controlling function fully covers the whole mechanism of economic and legal regulation as an integral system of state regulation of financial service market.

But the control in a wider understanding is a form of state regulation of the financial market services. It is worth mentioning that properly functioning system of control on the market ensures better investment environment, protection of the financial services consumers' interests, abolishing system risks. Each Ukrainian financial market is formed as a separate element and has its own peculiarity of economic and legal regulation. The elements of control include: observation, accountancy, monitoring, financial monitoring, checks, audit, revision, enforcement measures (sanctions).

In a narrower understanding, the control can be considered as an activity of the governmental authorities on the financial service markets, as one of the means, namely supervising the quantitative indices of the financial institutions, the subject of which include the following prudential regulations which are common for all Ukrainian financial institutions, namely: capital criteria, liquidity criteria, credit development criteria, investment criteria.

Having analyzed the above mentioned list of functions performed by the state regulators on the financial service market with the account of the conclusions that the most essential issue for stabilizing the financial service market is control of prudential regulations, we will focus on forming the list of regulations and means of control as a separate function of the economic and state regulation of the financial service markets.

The structural and logical scheme of the means and forms of control performed by the state bodies on the financial service markets of Ukraine is presented below:

	National Committee of Financial Services	National Committee on Securities and Stock Market	National Bank of Ukraine
1. Developing regulatory and legal acts	+	+	+
2. State registration of financial institutions	+	+	+
3. Issuing permits and licenses to financial institutions	+	+	+
4. Setting binding criteria and regulations for providing financial services	+	+	+

5. Carrying out checks	+	+	+
6. Implementing the means of enforcement and administrative sanctions	+	+	+
7. Prudential oversight and intructions	+	+	+
8. Availability of territorial departments (local controlling authorities)	-	+	+
9. Liquidating financial institutions	-	Only liquidation of UITs (p. 23 Article 8 Law Nr. 448)  -	Together with the Fund of guaranteeing the private persons' investments  +

*\*Based on the Ukrainian legislation regulations*

Thus, we can see that the means and forms of control performed by the National Committee of Financial Services compared to other authorities do not cover all the areas of control. In our opinion, this can be explained by the following. Firstly, the National Committee of Financial Services does not have territorial departments which, within the framework of their duties, would control the non-financial institutions in terms of their keeping to the licensing conditions in their activities, carry out prudential oversight over such institutions, implement sanctions in case of violations, as well as would consider applications and claims filed against financial institutions breaking economic activity rules, namely, by means of planned and extraordinary inspections, including remote audit, etc. In case of the lack of such institutions at the regional level, the consumers of the non-banking financial services have to turn directly to the office of the National Committee on the Financial Services in Kyiv to protect their broken rights. Secondly, it is necessary to implement the set of instruments, so that the National Committee on the Financial Services could have an influence on the problematic and fake participants of the non-banking financial services through administrative and economic sanction of liquidating such institutions as it is postponed for the National Bank of Ukraine and the Fund of Guaranteeing the Individual Persons' Investments.

Concluding the mentioned above, we can see that the National Bank of Ukraine is so far the only state regulator which practically fully performs the functions of economic and legal regulation of the corresponding financial institutions – banks and some financial institutions. But making the National Bank of Ukraine a single mega-regulator on the financial service markets is not a panacea for solving the problems of state regulation on the financial service market. In our opinion, it would be worth separating the competence of carrying out prudential oversight within the regulator which is mostly technically prepared and adjusted for fulfilling this function in terms of economic and legal regulation of the financial service markets. It should be aimed at supporting financial stability in individual financial institutions, as well as prevention or smoothing the system risks. It would be worth if this body could

postpone different approaches to supervise the reliable and insolvent participants of the markets, as well as, in particular in terms of controlling the financial institutions which both attract and loan funds.

The corresponding unity of regulation, control and oversight on the financial service markets can be observed in the EU, despite the existence of the authorized bodies with the division in the European countries according to separate financial service markets which is proven both in the scientific sources and regulatory and legal acts.

As an example, the theoretical understanding of the oversight in the scientific and practical sources of Poland is the following. P. Wajda (Wajda, 2009) draws attention to the fact that the oversight includes the controlling activities (including setting the competence for the entity which is being controlled in terms of comparing the actual state with the desirable state, i.e. regulatory fitness), which apply to the performance of rights for the power of authority over the supervised entity [3, P. 95]. In the opinion of M. Wierzbowski, A. Wiktorowska (Wierzbowski, Wiktorowska 2009), the state body having the supervising functions should have means of influence and instruments given to it by the state and law, so that it can have a possibility to control the behavior of the supervised entities [4, P. 93]. The following definition of oversight was proposed: legal provision of the powers to perform certain actions which restrict or stop the activities of the supervised entity [5, P. 1369]. As it is claimed by R. Blicharz (Blicharz, 2009), the notion of oversight is given different meanings, it can be multifunctional in the legal acts and sets the order and type of instruments of the authority which carries out the oversight, and first and foremost the nature of each instrument which can be applied in this or that situation [6, C. 47].

Thus, the opinions of these authors confirm that the overwhelming majority of means and forms of control necessary for the efficient implementation of the economic and legal regulation of the financial services should be assigned to oversight.

In the EU the European System of Financial Supervisor (heinafter – ESFS) was formed, which consists of: 1) the European Systemic Risk Board (heinafter – ESRB); 2) the European Securities and Markets Authority (heinafter – ESMA); 3) the European Banking Authority (heinafter – EBA); 4) the European Insurance and Occupational Pensions Authority (heinafter – EIOPA).

The documents based on which the new ESFS has been created include the Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24/11/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board [7], Council Regulation (EU) No 1096/2010 of 17/11/2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board [8]. Currently, the EU uses the structure of regulation based on the sector principle.

ESRB is responsible for macro-prudential oversight of the financial system within the Union, Chapter 10 of the European Parliament and Council Regulation ‘On Creating the European Committee of the System Risks’.

EBA provides for efficient and consecutive prudential regulation and oversight within the whole European banking sector, Chapter 11 of the European Parliament and Council Regulation ‘On Creating the European Banking Authority’.

ESMA is an independent EU authority that contribute to maintaining stability of the EU financial system in terms of its integrity, transparency, efficiency and order in the securities market functioning, as well as strengthening the investor protection.

EIOPA has been created to improve functioning of the internal market, including, namely, proper and efficient regulation and oversight; provision of stable, transparent, efficient and proper functioning of the financial markets; strengthening

international coordination in the area of oversight over the insurance and pension funds activities; protection of financial service consumers' rights in this area.

The framework of the financial oversight authorities in the EU has a global power, which is one of the factors for building a system with a number of regulators with the lack of mega-regulator. But in order to draw a conclusion about the purposefulness of the mega-regulator's or several mega-regulators' existence under current conditions at the level of an individual country, it is necessary to analyze the current state of the system of control and oversight over the financial service markets in the individual leading EU member states.

In Germany the controlling functions at the financial service market is given to the Bundesanstalt für Finanzdienstleistungsaufsicht (hereinafter – BaFin). Under Article 1 of the Gesetz über die Bundesanstalt für Finanzdienstleistungsaufsicht [9] certain state bodies merged in May 2001, the new authority receiving the name of the Federal Department of the Financial Supervision. BaFin carries out its controlling activities in three areas: banking industry, insurance, as well as securities operations. Under p. 6 of the Law 'Gesetz über das Kreditwesen' [10], BaFin is an administrative body responsible for the oversight over the institutions. The control over the financial service market is based on the Law 'Gesetz über den Wertpapierhandel' [11] and the Law 'Gesetz über die Beaufsichtigung der Versicherungsunternehmen' [12]. Among a wide range of duties and responsibilities of the BaFin, the major include: (a) providing stable, integral and reliable work of the German financial system; (b) licensing financial activities; (c) control over banks and other financial institutions, which allows for the oversight over reliability; (d) preserving investors' trust in the financial markets which is provided through the function of the market oversight – control over the implementation of the professional conduct standards; (e) control over keeping to organizational requirements; (f) supervision over companies' financial accountancy. BaFin carries out state regulation of the banks, insurance companies, pension funds, securities markets, asset management companies, investment funds and local management companies.

Drawing conclusions, we can see that despite the fact that Germany is a member of the EU which generally follows the sector oversight system, Germany follows the model of single authority oversight. BaFin is a single prudential authority and a body which carries out legalization of all the financial institutions.

As for Great Britain, the system of financial service market regulation in this country stipulates for the creation of three new authorities: the Financial Policy Committee (hereinafter – FPC), which is responsible for prudential regulation at the macro-level and sustainability of the system on the whole (the provisions for this authority are set in part 1 sect. 4, 9 B Financial Services Act 2012 [13]); the Prudential Regulation Authority (hereinafter – PRA) is the Bank of England subdivision independent in its activities in the area of prudential regulation at the micro-level which oversees banks, construction companies, credit unions, insurance and investment companies (general obligations of the PRA are set in part 2 sect. 2 THE PRUDENTIAL REGULATION AUTHORITY Financial Services Act 2012 and in Article 2 Regulated activities which are PRA-regulated activities The Financial Services and Markets Act 2000 (PRA-regulated Activities) Order 2013 [14]); the Financial Conduct Authority (hereinafter – FCA) registers the financial institution which are subordinate both to PRA and FCA (a list of financial services which require a permit from FCA are set in parts 2, 3 The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 [15] and part 2 Chapter 1 1H The Financial Conduct Authority Financial Services Act 2012).

Based on the above, we can see that the British financial service market is characteristic of the existence of two regulating authorities – the PRA and FCA. Both

these bodies carry out prudential oversight over different financial institutions, while FCA in a turn also controls the way in which these financial institutions carry out their business, that is “dual-regulated firms”) – the so called Twin Picks model. Thus, we can see that it is typical neither of England nor Germany to copy the EU system of the financial oversight system

**Conclusions.** In the EU member states the system of financial service markets traditionally consists of: the banking service market, stock market, insurance market, investment market. Thus, we can see that it is similar to the financial service market in our country. As a result, we consider it worthwhile to follow the EU legislation principles in terms of reforming the national financial service market, because the regulation system in the EU, Germany, the Great Britain most closely corresponds to the legislative purpose of building the system of financial services and their corresponding markets in Ukraine which requires the improvement of the corresponding regulators.

Though the applicable Ukrainian legislation in the area of financial services corresponds to the major standards of the EU legislation, but alongside a range of positive changes which were introduced to adapt Ukrainian legislation to the EU standards, there are some unsolved issues. Namely, there still remains the pressing issue of inconformity in governmental authorities' actions on the financial service markets in terms of control and oversight over the markets, lack of individual regulation instruments in corresponding bodies (lack of territorial departments in the National Committee on Financial Services). The solution of these issues, as a result, is the introduction of such institutions at the regional level, as well as separating the function within a certain regulator which would be responsible for the prudential oversight of the financial service markets, as is the case in the EU member states.

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