

ADMINISTRATIVE AND LEGAL PRINCIPLES OF FUNCTIONING OF THE FINANCIAL SYSTEM IN UKRAINE AND EUROPE: A COMPARATIVE ANALYSIS

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Abstract. *The purpose of the article* is a comparative legal analysis of the administrative and legal principles of the functioning of the financial system in Ukraine and European countries. *The subject of the study* is the peculiarities of the state regulation of financial systems in Great Britain, Germany, Poland, Spain, Sweden, and Ukraine. *Methodology.* The research is based on comparing the legal regulation of the financial system in Ukraine and in the EU countries. An analysis of European experience in the administrative regulation of financial systems and financial activity has shown that most European states support the policy of regulating the financial system as a holistic, indivisible phenomenon, gradually moving away from its understanding as a set of separate segments. A significant influence on this issue was made by the European Union, within which there was introduced a combination of the most important functions in the regulation of the EU financial system and entrusting them to a separate group of special bodies. *Results* of the comparative legal study showed that, unlike most European countries, in Ukraine, the administrative and legal framework for the provision of certain components of the financial sector, in particular, banking, investment, tax and budget, financial services market, etc., are not combined into a single model of state regulation of financial system, but they are scattered. In turn, the lack of a unified legal basis for state regulation of the national financial system in practice creates a situation where such regulation is carried out by a large number of state bodies of varying degrees, whose powers are repeated in some cases, which causes contradictions. *Practical implications.* It is found that the key difference between the regulation of financial systems in the countries of Europe lies in the very principle of perceiving the role of the state in this process and understanding the content of the financial system as a whole. Financial consolidation and the formation of large financial conglomerates necessitates the replacement of the traditional regulatory paradigm, based on the consideration of the financial system as a set of segregated segments (insurance, banking, stock, etc.), taking into account the interconnectivity of various financial intermediaries. *Value/originality.* A comparative legal study of the basic principles of the functioning of the financial system in Ukraine and European countries provides a better understanding of the most promising directions of development of the domestic economic system in the context of strengthening the integration and globalization processes in the international financial and commodity markets.

Key words: administrative-legal principles, financial system, state regulation.

JEL Classification: K23, P34, H7

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1. Relevance

The vital activity of any state depends on the functioning of a large number of different elements, in particular: society, legal system, security and inviolability of its territories, etc. One of the most important components is the economy of the country. In Ukraine, the financial sector is currently in transition state due to a number of factors: firstly, our country is relatively young compared to other European countries; and secondly, a sharp reorientation of the national economy from the planned form to the market; thirdly, the restructuring of the regulatory framework and the change in the state policy in the economic sphere under the “pressure” of European standards. At the same time, incompleteness and partial imperfection of the financial system of Ukraine leave a place for its further reformation and development. In this context, the issue of state influence on the financial sphere, that is, its power regulation is important. Relations that occur in this case are regulated by rules of many branches of law. Hence it turns out that in the modern legal system of the state, there are corresponding administrative and legal principles of functioning of the financial system of Ukraine. In this case, it should be noted that this aspect is not a novel in the territory of foreign countries. In particular, in each European country, there are the relevant power and legal principles of support and influence on the financial sector that are relevant for borrowing.

It should be emphasized that in the scientific sphere, the issue of comparing the administrative and legal principles of the functioning of the financial system of Ukraine and European countries was not properly addressed. At the same time, the lack of a theoretical and practical justification of this aspect confirms the high level of its relevance. A comparative analysis of the administrative and legal framework for the functioning of the financial system in European countries and Ukraine will allow seeing the positive and negative factors of our country's activity in this area, as well as understanding what experience should be taken.

2. The degree of development

The financial system is a multidimensional phenomenon, therefore, its research was carried out by a large number of foreign and domestic scholars of various scientific fields, in particular: Voronova L.K., Oparin V.M., Borynets S.Ya., Afanasiev M.P., Vasylyk O.D., Lunina I.O., Sadovskyi V.M., Mykhailov A.M., and others. The problems of the administrative-legal mechanism of regulation of the financial system were considered in their writings by such theorists-lawyers as: Bandurka O.M., Averianov V.B., Zasunko S.S., Kolpakov V.K., Stolbovyi V.P., Sushchenko V.D. and others. The foreign experience of state regulation of financial systems was

highlighted in the writings of McDonald W., Rose T., Trachtman J., and others. Instead, a comparative analysis of the Ukrainian and foreign administrative principles in the field of ensuring the functioning of the financial system was not properly carried out.

3. The purpose of the article is to conduct a comparative analysis of administrative and legal principles of the functioning of the financial system in Ukraine and European countries.

First of all, it is necessary to outline features and define the content of categories “administrative legal principles” and “financial system” as separate phenomena in order to reveal this problem. It should be noted that the concept of “administrative legal principles” in the scientific literature is quite common. In addition, it consists of two independent terms that have broad content. Thus, according to the provisions of the vocabulary literature, “administration” is disclosed as a bureaucratic guide through orders and instructions (Busel, 2005). In turn, the word “foundation” is used in the meanings:

- the basis of something;
- the main thing, on what something is based;
- initial, main position, principle; the basis of the outlook, the rule of conduct;
- way, method of doing something (Bilodid, Buriachok, 1972; Zabroda, 2013).

Thus, administrative principles can be defined as the bases, priority directions of public administration. At the same time, the term “legal” denotes their unity with a particular branch of law – administrative. The latter is considered by scientists as a set of legal norms regulating the public relations of a managerial nature in order to fulfil tasks and functions of the state, which are drawn up in the sphere of executive power, internal organization of other state bodies, as well as in the process of carrying out by public organizations, their bodies of external legal-power authorities (Alforov, Vashchenko, Dolhopolova, Kupin, 2011; Bytiak, Bohutskyi, Harashchuk, 2000). In this context, it is advisable to give a thought of Melnyk R.S. and Bevzenko V.M., according to which administrative law regulates such groups of social relations as:

- social relations that arise in connection with the provision of subjects of public authority, primarily public administration, with human and civil rights and freedoms;
- social relations that take place in the field of public administration of state and communal property objects;
- social relations that take place in the internal organization of public authorities;
- public relations in the sphere of the interaction of public authorities with civil society institutions (Melnyk, Bevzenko, 2014).

Thus, the administrative and legal principles can be defined as normatively-fixed bases of government activity of state bodies in relation to public administration in certain spheres of social relations. Based on this interpretation, the administrative and legal principles are not separate principles of the work of certain state bodies, but a set of rules of law, which contain provisions of initial, key ideas of the management of a particular field of social relations. In our case, such a sphere is a financial system, the content of which also needs to be further elaborated.

It should be emphasized that the main feature of the financial system is its systemic nature, that is, the presence of the structure of interconnected elements. The notion of a special form of unity of categories in the system dates back to the time of ancient Greece (Agoshkova, Akhlibininskii, 1998; Bilinskyi, 2011). Its characteristic feature is that each element is a completely independent category, which can have its own purpose of existence, tasks, etc. However, in aggregate, such elements acquire common features, and their target orientation may change. In connection with this, there is a logical question of what the financial system represents and what elements are included in it? There are several scientific views on defining the content of this category. For example, Oparin V.M. argues that the problem of defining the content of the financial system should be considered in two sections: on the content and the institutional structure. In the first case, under the filling of the financial system is meant a set of separated but interrelated links (finances of business entities, state (public finance), international finance, financial and insurance markets), which reflect the particular forms of financial relations. By institutional structure, the financial system appears as a set of financial institutions that ensure its effective functioning, organization and implementation of financial activities of its subjects (Bubryka, Solonar, Utkina, 2016; Oparin, 2006). Kyrylenko O.P. considers the financial system as a set of separate areas of financial relations that are interconnected, they have centralized or decentralized funds, and there are an appropriate management apparatus and legal support (Kyrylenko, 2002). According to Popov I.V., the financial system is a set of historical economic relations between the formation, distribution, and use of funds of state, economic entities, and households, the distribution and redistribution of GDP, which are realized with the help of a financial instrument based on the country's financial legislation (Popov, 2012; Hanzhytska, 2016). Well-grounded is the position of Orliuk O.P., which marks the multidimensional character of financial system category, defines the content of the latter in three "dimensions", namely:

- as a set of financial institutions that contribute to the creation and use of funds specifically for the performance of financial activity of the state;

- as a set of bodies of state power and bodies of local government, which carry out the management of financial activity of the state as a whole, as well as enterprises, institutions, organizations, which participate in it;

- as a set of public finances, finances of business entities, international finance, and financial market (Orliuk, 2010; Myrhorod-Karpova, 2017).

Given the diversity of views of the scholars, we concluded that the financial system of the state – a set of social relations that arise in the area of distribution and use of the whole mass of cash resources, implemented in the activities of individual subjects and provided by the state, which determines features, forms, and the procedure for conducting financial activities. Accepting the scientific position of Nesterenko A.S., we note that these relations are consolidated into integral institutions, which, in turn, are a part of the structure of the financial system. Hence it turns out that the latter includes: public finances, finances of business entities, international finance, and financial markets (Nesterenko, 2013). At the same time, the latter includes: banking, tax and budget, investment spheres, financial services market, etc.

So, after outlining the essence and peculiarities of all the necessary concepts, we are able to determine what constitutes the administrative and legal basis for the functioning of the financial system of the state. In our opinion, this is a set of legal norms that establish the key principles governing the activities of public authorities in the field of organization and provision of the financial system as a set of relations regarding the distribution and use of monetary resources. Simply put, these principles regulate the peculiarities of the existing model of state-legal regulation of the financial system as a whole.

The administrative and legal principles of the functioning of the financial system can be found in the provisions of many legislative and subordinate laws and regulations of Ukraine. For example, in the Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets", Article 20 states that state regulation of financial services provision activities is carried out by:

- 1) maintenance of state registers of financial institutions and registers of persons who are not financial institutions but have the right to provide separate financial services, and licensing of financial services;
- 2) legal regulation of activities of financial institutions;
- 3) supervision over the activities of participants in financial services markets (except for financial services customers);
- 4) application by the authorized state authorities of the measures of influence;
- 5) other measures on the state regulation of financial services markets (Pro finansovi posluhy ta derzhavne rehuliuвання rynkiv finansovykh posluh).

Similar provisions are also contained in the Law of Ukraine "On Investment Activity". Chapter III of the

Law defines purposes, forms, and limits of state-legal regulation of investment activity. In particular, its goal is determined as the implementation of economic, scientific and technical, and social policies, based on the goals and indicators of economic and social development of Ukraine, state and regional programs of economic development, state and local budgets, in particular, the amount of financing of investment activity provided in them. At the same time, privileged conditions are created for investors investing in the most important areas for satisfying social needs, first of all, in the social sphere, technical and technological improvement of production, creation of new workplaces for citizens who need social protection, introduction of discoveries and inventions in the agro-industrial complex, in the implementation of programs for the elimination of consequences of the Chernobyl accident, in the production of building materials, in the field of education, culture, protection of cultural heritage, environmental protection and health (Pro investytsiinu diialnist : zakon vid 18.09.1991 #1560-XII). Under these conditions, the main forms of state regulation of investment activity are the management of public investment, regulation of investment activities, control over the implementation of investment activities by its participants and investors (Pro investytsiinu diialnist : zakon vid 18.09.1991 #1560-XII).

In the field of banking, state regulation is limited. According to Articles 4 and 5 of the Law of Ukraine "On Banks and Banking Activities", banks formed in accordance with the laws of our state independently determine the directions of their activity and specialization by types of services. Public authorities and local governments are prohibited from influencing the management or employees of banks in any way during the performance of their official duties or interfering in the activities of the bank (Pro banky i bankivsku diialnist : zakon vid 07.12.2000 #2121-III). Instead, in accordance with the legislation, the regulation of banking activities, as well as supervision of the banking system in order to promote financial stability, within the powers granted by law, is exercised by the National Bank of Ukraine – a special central government body (Pro banky i bankivsku diialnist : zakon vid 07.12.2000 #2121-III; Pro Natsionalnyi bank Ukrainy : zakon vid 20.05.1999 #679-KhIV). The legislator also clearly defined forms of administrative and legal influence on the banking system, which include:

- 1) registration of banks and licensing of their activities;
- 2) establishment of requirements and restrictions on the activities of banks;
- 3) application of sanctions of an administrative or financial nature;
- 4) supervising the activities of banks;
- 5) advising on the activities of banks (Pro banky i bankivsku diialnist : zakon vid 07.12.2000 #2121-III).

It is worth noting that the administrative and legal principles of the functioning of the financial system in a part of the state regulation of fiscal-tax relations show the change in the vector of public administration in this field, which is determined by its reformation. Confirmation of this fact can be found in the provisions of the Strategy of Sustainable Development "Ukraine-2020" approved by the Decree of the President of Ukraine on 12 January 2015. The seventh paragraph of the document states that the purpose of the tax reform is to build a tax system that is simple, economically fair, with minimal time spent on the calculation and payment of taxes, creates the necessary conditions for the sustainable development of the national economy, provides sufficient coverage of the State Budget of Ukraine and local budgets. The main areas of reform are the transition from supervisory and punitive functions of the fiscal authorities to the servicing, which helps in the calculation and execution of tax payments, rather than aims to fill the budget through financial sanctions and overpayments; reduction of the number of taxes, their size, and simplification of the procedure of calculation and payment; introduction of electronic services for taxpayers; reduction of the tax burden on wages in order to unshadow it; improvement of the legislation of Ukraine aimed at increasing the fight against tax evasion schemes for both legal and natural persons, in particular, improving the administration of value added tax, creating a system of tax control depending on the degree of risk in the activity of taxpayers, ensuring openness of access to information on payment of taxes, improvement of the legislation on transfer pricing issues, implementation of control over expenditures of individuals (Pro Stratehiu staloho rozvytku «Ukraina-2020»: ukaz vid 12.01.2015 #5/2015).

Thus, the analysis of current legislation has shown that at present there are a large number of administrative and legal principles for the functioning of the financial system, which are enshrined in legal norms, which regulate key aspects of state influence on certain spheres of components of the financial system. At the same time, the conducted research revealed that Ukraine did not develop a general model of state regulation of the financial system. There are only administrative and legal foundations for securing certain components of the financial sector, in particular, banking, investment, tax and budget spheres, financial services markets, etc. In these areas of state regulation, independent political courses are formed, which allows noting the general inconsistency of administrative and legal regulation of the financial system. It is precisely because of this that there is a large number of state authorities in Ukraine that have different powers in the financial sphere. At present, the coordination of the financial system is carried out by the Cabinet of Ministers of Ukraine, the Verkhovna Rada of Ukraine, the Accounting Chamber, the President of Ukraine, the Ministry of Finance of Ukraine, the State

Treasury, the National Bank, fiscal authorities, etc. Such a control and regulation mechanism is extremely cumbersome and ineffective, which ultimately leads to negative economic consequences for our country.

The European experience of administrative regulation of financial systems and financial activities is significantly different from the national one. It is worth pointing out that signs of the current stage of development of the world economy are the liberalization of foreign economic relations, the strengthening of integration and globalization processes in international financial and commodity markets, which takes place due to the openness of national economies and cooperation of countries in various spheres of economic activity. Thus, the openness of the national economy contributes to the development and deepening of economic, productive, financial, social, cultural, and other interrelationships between countries (Denysiuk, 2015). A striking example of this fact is the European Union (hereinafter – the EU). The essence is that a large number of states are now a part of the EU. This international organization, in the person of special bodies, coordinates the functioning of financial systems of the member states in order to ensure economic stability in the territory of the Union. At the same time, this approach does not preclude the existence of appropriate national mechanisms to maintain the functionality of financial systems directly in the territory of the EU Member States.

A key difference in the regulation of financial systems in Europe is in the very principle of perceiving the role of the state in this process and awareness of the content of the financial system as a whole. Financial consolidation and formation of large financial conglomerates necessitates the replacement of the traditional regulatory paradigm based on the consideration of the financial system as a set of segregated segments (insurance, banking, stock, etc.) by that one, which takes into account the interconnectivity of different financial intermediaries and establishes for them the same rules and supervision principles. For example, on this basis in the European Union, a new European system of financial supervision has been built, the key institutions of which at the European level have become the European Systemic Risk Board, and three sectoral bodies created on the proposal of the European Commission:

- 1) European Securities and Markets Authority;
- 2) European Banking Authority;
- 3) European Insurance and Occupational Pension Authority (Giorgio Di G., 2005; The Level 3 Committees welcome the new institutional arrangements on European financial supervision: Press release; Baldych, 2013).

At the national level, in economically advanced countries, the regulation of the financial system is also based on the consolidation of a large amount of authority within one or more core bodies that implement a common economic policy that affects all spheres and components of the financial system.

The most striking manifestation of this aspect is Great Britain. Administrative regulation of the financial system in the territory of this state is carried out by a single, key institution – the treasury (Harust, Tolkachov, 2017). It should be noted that HM Treasury of Great Britain is one of the oldest state agencies, but in terms of the number, it is one of the smallest. HM Treasury is a political and creative department with several functions that combine it with the public and industry. Its connection with financial markets is mainly through the Bank of England. Historically, its main function was to control the spending of public funds, but now one of the most important tasks is to manage the economy of Great Britain in such a way as to achieve the economic goals set by the ministries and agreed with the Parliament (Yurii, Stoian, Mats, 2002; Bulhakova, Kolodii, 2002; Havrylishyn, Kozyrieva, 2007). The Treasury of Great Britain has a wide range of functions in support of the functioning of the financial system. In particular, this body regulates issues related to:

- 1) public expenditures, which include expenditures of state agencies for labour and pensions in the public sector, as well as an investment;
- 2) coordination of the financial services market;
- 3) strategic oversight of the UK tax system;
- 4) supervision of economic stability (United Kingdom Government : HM Treasury).

In addition, among the main functions of the Treasury in accordance with UK law are development, drafting, and execution of the state budget; development and implementation of fiscal policy of the state; tax system management; management of the activity of structural subdivisions of the Treasury; development of tax legislation, simplification and computerization of tax legislation; financial and economic forecasting; planning and control over public expenditures, maintaining budget balance, timely and efficient budget coordination, drafting a financial and budget report, and submitting it to parliament; the implementation of the policy of relations with the European Community, the maintenance of the balance of profits and costs associated with EU membership, and so on (Havrylishyn, Kozyrieva, 2007).

The German model of administrative regulation of the financial system is similar to the British one, it is also based on the unification of powers within the framework of several main bodies of financial coordination. On the territory of Germany, the Federal Financial Supervisory Authority carries out oversight functions in the financial sector. This body has a wide range of authorities, and also has the right to issue government rules and regulations within the scope of its competence. In addition, the Authority also carries out banking supervision, in conjunction with the German Federal Bank. The latter, in the process of ongoing control, evaluates documents, reports, annual financial statements and audit conclusions, and so on. It

should be noted that the Federal Financial Supervisory Authority issues licenses for banking, insurance, and financial services, as well as oversees the activities of credit institutions, financial conglomerates, insurers, investment and pension funds, and activities in the securities market (Khoruzhyi, 2016).

Similar administrative and legal principles of the functioning of the financial system exist in other European countries as well. In particular, in Poland, state financial regulation is carried out by the Financial Sector Supervision Commission. The latter is a body of financial supervision with autonomous competence and a separate budget that oversees banks, insurance companies, insurance intermediaries, investment companies, asset management companies, investment and pension funds, payment service providers and e-money providers, credit bureaus and markets of securities (Khoruzhyi, 2016). On the territory of Sweden, the state regulation of the financial system is implemented in the activities of the Financial Supervisory Authority. It is a public institution responsible for financial supervision of banks, supervision of electronic money and activities of payment institutions, activities in the securities market (including exchanges, clearing institutions), activities of investment and pension funds, consumer lending and savings activities, loan associations, as well as insurance and insurance intermediation activities. Funded at the expense of annual regulatory fees and at the expense of license fees. The Authority is subject to the Ministry of Finance of Sweden (Khoruzhyi, 2016).

Principles of administrative regulation of the financial system of Spain, the most priority areas of which are fiscal, banking, and financial market spheres, are quite interesting. State regulation of the tax sector is characterized by a high level of efficiency, which is determined by numerous reforms in the 80s of the XX century. In order to simplify the procedure for paying taxes, improve taxpayer accounting, and strengthen the fight against tax crimes, the reorganization of the tax service was carried out through a series of organizational measures, in particular:

- introduction of identification numbers for all taxpayers – both for legal entities and for individuals;
- introduction of tax labels, which contain all the information on the taxpayer: the identification number, all types of taxes payable by the payer, payment deadlines (issued to legal entities at registration, and to individuals – by mail);
- introduction of mandatory submission of a tax return together with tax labels;
- introduction of tax vectors and notes, in which taxes and their payment periods are determined;
- establishment of close cooperation with banking institutions and structures;
- changing the organizational structure of tax administration and tax service in general (Stukalo, Lytvyn, Derkach, 2014).

In the area of supporting the stock market, there is a specially established National Stock Market Commission that oversees the proper functioning of the system, checks Spanish securities markets and activities of all participating organizations. In addition, the Commission also monitors the transparency of Spanish stock markets and the correct pricing, cares about the protection of investors. The activity of the said body is extended to companies that issue securities for public placement, to secondary stock markets, and to companies offering investment services (Stukalo, Lytvyn, Derkach, 2014).

Although the banking system of Spain is a large set of different government agencies and private banking institutions, in practice it is based on the principles of strict centralization. In particular, the Bank of Spain, the central bank of the country, is the main institution that regulates the banking system and implements monetary policy in the country. In its activities, the Bank of Spain is subordinated to the Ministry of Economy and Finance, to which the government delegates powers in the field of monetary policy. The Ministry of Economy and Finance develops provisions for the Bank of Spain, which it must follow when implementing the monetary and credit policy of the government, defines principles of the Bank's implementation of disciplinary and control functions, establishes the procedure for the Bank to carry out operations with private banks, etc. (Stukalo, Lytvyn, Derkach, 2014).

4. Conclusions

Consequently, the comparative analysis showed that the administrative and legal principles of the functioning of the financial system of Ukraine differ significantly from the European ones, which manifests itself in the peculiarities of the construction of the mechanism of state regulation of the financial sphere, in general, and its separate components, in particular. So in light of the foregoing, we have come to a number of conclusions.

1. The existing administrative and legal principles of functioning of the financial system of Ukraine are characterized by general inconsistency. Simply put, there is no connection between them, which impedes the creation of a general financial policy in our country and its further realization. In all cases, the administrative and legal principles enshrined in rules of legislative and subordinate acts relate to state regulation in certain spheres of the constituent elements of the financial system.

2. The lack of a unified legal framework for state regulation of the national financial system in practice generates a situation where such regulation is conducted by a large number of state authorities of varying degrees, whose powers, in some cases, are repeated, which causes contradictions. This negative aspect directly affects the efficiency of financial activity and the level of the national economy.

3. Analysis of foreign experience has shown that most European states support the policy of regulating the financial system as a holistic, indivisible phenomenon, gradually moving away from its understanding as a set of separate segments. A significant influence on this issue was made by the European Union, which introduced a combination of the most important functions in the regulation of the EU financial system and transferring them to a separate group of special bodies.

4. It is determined that on the basis of consolidation of coordination and supervisory functions, today systems of state regulation of financial system of many European countries are built. The national regulation of financial relations is carried out by one or several clearly defined bodies in the following European countries:

Germany, Poland, Sweden, Spain, etc. The many years of the UK experience should be noted separately. In this country, the main functions in the regulation of the financial system of the country are relied on a single body – the treasury. The similar format works today quite effectively, which is confirmed by the fact that the UK economy is one of the most developed in the world.

Thus, the administrative and legal principles of the functioning of the financial system in certain European countries reflect the greater effectiveness of the mechanism of state regulation of the financial system in comparison with Ukraine. Therefore, the given foreign experience should be included in the legal system of our state in order to increase its economic stability.

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