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REGULATORY AND LEGAL SUPPORT OF STATE REGULATION OF THE ACTIVITIES OF BANKING INSTITUTIONS IN UKRAINE

The article describes the features of the regulatory and legal support of state regulation of banking institutions in Ukraine. The main problems and contradictions of the regulatory and legal support of state regulation of banking institutions in Ukraine are identified. The directions of improving the regulatory and legal support of state regulation of banking institutions in Ukraine in modern conditions are identified.

Keywords: *public management and administration, state management, state regulation, banking sector, banking institutions, regulatory and legal support of state regulation, information society, European integration.*

Problem setting. Modern risks, challenges and threats to the socio-economic development of Ukraine are largely determined by Russian military aggression and are the factor under the influence of which the state must contribute to ensuring the stability of the economy and the social sphere, including through the implementation of effective and efficient state regulation of the activities of banking institutions, which largely depends on its proper regulatory and legal support.

Recent research and publications analysis. Such scientists as Getmanets K., Guzenko O., Kadala V., Lebedev O., Khaylova T., Tseluyko V. and others have devoted their publications to the study of the features of the regulatory and legal support of state regulation of banking institutions in Ukraine [3; 4; 10].

However, many theoretical, methodological and practical issues regarding the determination of directions for improving the regulatory and legal support of state regulation of banking institutions in Ukraine in modern conditions remain insufficiently researched [4; 10].

Paper objective. The purpose of the article is to identify areas for improving the regulatory and legal support for state regulation of banking institutions in Ukraine in modern conditions.

Paper main body. For a comprehensive analysis of the regulatory and legal support for the activities of banking institutions in the context of the formation of an information society, it is advisable to highlight the main legislative and regulatory acts that form the legal basis for the digital transformation of the financial sector in Ukraine. These legislative acts determine the principles of the functioning of banking institutions, regulate the issues of personal data protection, ensuring cybersecurity, the use of information and communication technologies, electronic payment instruments, and also establish requirements for digital reporting and transparency of banking transactions .

Let us consider the essence and main provisions of the fundamental legislative acts in the field of state regulation of the activities of banking institutions in Ukraine.

The Law of Ukraine “On Banks and Banking Activities” defines the structure of the banking system, the economic, organizational and legal principles of the establishment, operation, reorganization and liquidation of banks, and its purpose is to legally ensure the protection of the legitimate interests of depositors and other clients of banks, the sustainable development and stability of the banking system, as well as the creation of favorable conditions for the development of the economy of Ukraine and an appropriate competitive environment in the financial market [5].

The Law of Ukraine “On Banks and Banking Activities” provides for appropriate restrictions on ensuring competition in the banking system.

Thus, banks are prohibited from concluding agreements with the aim of restricting competition and monopolizing the terms of providing loans, other banking services, setting interest rates and commission fees. A bank is also prohibited from taking any actions to introduce unfair competition into its practice (Article 53).

Banks are prohibited from distributing advertising in any form that contains false information about their activities in the field of banking services (Article 54), and the National Bank of Ukraine has the right to apply measures of influence to banks and other persons who violate the requirements of this article regarding the reliability of advertising [5].

This Law also stipulates that banks and the National Bank of Ukraine are obliged to ensure the preservation of banking secrecy by:

- 1) limiting the circle of persons who have access to information constituting banking secrecy;
- 2) organizing special records management with documents containing banking secrecy;
- 3) using technical means to prevent unauthorized access to electronic and other information carriers;
- 4) applying provisions on the preservation of banking secrecy and liability for its disclosure in contracts and agreements between the bank and the client (Article 61) [5].

In accordance with the provisions of the Constitution of Ukraine, the Laws of Ukraine “On Banks and Banking”, “On the National Bank of Ukraine”, other legislative acts of Ukraine and regulatory legal acts of the National Bank of Ukraine, state regulation and banking supervision are carried out by the National Bank of Ukraine, which determines the features of regulation and supervision of systemically important banks, taking into account the specifics of their activities [2; 5; 6; 7; 9].

The National Bank of Ukraine, when supervising the activities of banks, conducts an inspection of banks on their compliance with the requirements of the legislation regulating relations in the field of prevention and counteraction to the legalization (laundering) of proceeds from crime, financing of terrorism and financing of proliferation of weapons of mass destruction, and the adequacy of measures to prevent and counter the legalization (laundering) of proceeds from crime and financing of terrorism (Article 63) [5].

The purpose of banking supervision is the stability of the banking system and the protection of the interests of depositors and creditors of the bank regarding the security of storage of clients' funds in bank accounts (Article 67) [5].

When exercising banking supervision, the National Bank of Ukraine has the right to require banks and their managers, responsible persons of banking groups, and members of

banking groups to eliminate violations of banking legislation, to comply with the regulatory legal acts of the National Bank of Ukraine in order to avoid or overcome undesirable consequences that may jeopardize the safety of funds entrusted to such banks or harm the proper conduct of banking activities.

Each bank is subject to inspection by persons authorized by the National Bank of Ukraine (Article 71). Inspections are carried out to determine the level of security and stability of the bank's operations, the reliability of the bank's reporting, and the bank's compliance with the legislation of Ukraine on banks and banking activities, legislation regulating activities in the payment market, and regulatory legal acts of the National Bank of Ukraine [5].

According to Article 25 of the Law of Ukraine "On the National Bank of Ukraine", the NBU conducts monetary policy (regarding the banking sector) by applying the following instruments:

- determination and regulation of the norms of required reserves for banks;
- interest rate policy;
- refinancing of banks (the NBU also has the right to provide loans for refinancing a bank, if this does not entail risks for the banking system) [6].

In order to protect the rights of depositors and other creditors, the National Bank of Ukraine has the right to establish additional requirements, including requirements for increasing the level of regulatory capital of a bank or other prudential standards, for a certain type of activity and provision of financial services that the bank has the right to carry out. The NBU also regulates the activities of specialized banks through prudential standards and regulatory and legal support for the operations carried out by these banks.

In addition, the National Bank of Ukraine has the right to apply to banking institutions measures of appropriate influence for identified violations of the law.

According to Article 73 of the said law, in case of violation by banks or other persons of banking, currency legislation, legislation regulating activities in the payment market, legislation in the field of prevention and counteraction to the legalization (laundering) of proceeds from crime or financing of terrorism and financing of proliferation of weapons of mass destruction, legislation on protection of critical infrastructure, cyber defense and information security, legislation on virtual assets, regulatory legal acts, requirements and/or

decisions of the National Bank of Ukraine, carrying out risky activities that pose a threat to the interests of depositors or other creditors of the bank, application of sanctions to banks or owners of significant participation in banks by foreign states (except for states that have committed or are committing armed aggression against Ukraine) or intergovernmental associations or international organizations and/or application of sanctions that pose a threat to the interests of depositors or other creditors of the bank, failure to implement and/or improper implementation of decisions on the application of influence measures to ensure stability banking system, the National Bank of Ukraine has the right to apply measures of influence adequate to the committed violation or the level of such threat, which include:

- written warning;
- convening a general meeting of participants, the bank's council, the bank's management board;
- concluding a written agreement with the bank, under which the bank or a person specified in the agreement undertakes to pay a certain monetary obligation and/or take measures to eliminate and/or prevent violations in further activities, improve the bank's financial condition, increase the efficiency of the risk management system, etc.;
- suspension of the payment of dividends or capital distribution in any other form;
- restriction, suspension or termination of certain types of operations carried out by the bank, including operations with persons related to the bank;
- prohibition of granting blank loans;
- imposition of fines;
- temporary, until the violation is eliminated, prohibition of the owner of a significant stake in the bank from exercising voting rights (temporary prohibition of voting rights);
- a requirement for the owner of a significant stake in the bank to alienate the bank's shares (units);
- removal of a bank official from his position;
- classification of the bank as problematic or insolvent;
- revocation of the banking license and liquidation of the bank.

According to the legislation, the National Bank of Ukraine performs the following functions in the field of regulation of banking institutions:

- acts as a lender of last resort for banks and organizes a refinancing system;
- establishes rules for banks for conducting banking operations, accounting and reporting, protection of information, funds and property;
- determines the directions of development of modern electronic banking and payment technologies, creates and ensures continuous, reliable and effective functioning, development of payment, accounting systems created by it, the national system of electronic remote identification of the National Bank (BankID system of the National Bank), establishes the conditions for interaction of entities in such systems, controls the creation of payment instruments, systems for automating banking activities and activities in the payment market, means of protecting information about banking activities and activities in the payment market;
- carries out banking regulation and supervision on an individual and consolidated basis;
- approves the charters of banks and amendments to them, licenses banking activities and operations in cases provided for by law, maintains the State Register of Banks, creates and maintains the Credit Register of the National Bank of Ukraine;
- represents the interests of Ukraine in the central banks of other states, international banks and other credit institutions, where cooperation is carried out at the level of central banks;
- participates in the training of personnel for the banking system of Ukraine;
- determines the features of the functioning of the banking system of Ukraine;
- establishes requirements, provides methodological support for the processing, storage, protection, use, transmission, disclosure and destruction of information constituting the secret of financial services, banking secrecy;
- carries out state regulation in the areas of electronic identification and electronic trust services in the banking system of Ukraine;
- determines the procedure for using an electronic signature in the banking system of Ukraine;

- carries out state regulation and supervision in the field of prevention and counteraction to the legalization (laundering) of proceeds from crime, financing of terrorism and financing of the proliferation of weapons of mass destruction by banks and branches of foreign banks;
- determines the procedure, requirements and measures for ensuring cyber protection and information security by banks;
- ensures the formation and maintenance of a list of critical infrastructure facilities, as well as a register of critical information infrastructure facilities in the banking system of Ukraine;
- ensures the formation and implementation of state policy in the field of critical infrastructure protection for banks;
- protects the rights of consumers of financial services provided by banks;
- establishes requirements for banks that will issue bank certificates of deposit;
- determines the procedure for the application of cloud computing technology and the provision of cloud services by banks;
- establishes requirements for ensuring the availability of services provided in the banking system of Ukraine [6].

An effective instrument of influence of the National Bank of Ukraine on the banking services market are state banks.

A state bank is a bank, 100 percent of the authorized capital of which belongs to the state. A state bank can exist only in the form of a joint-stock company, and the sole shareholder of a state bank is the state. The functions of managing the state's corporate rights in a state bank are performed by the Cabinet of Ministers of Ukraine. The body that manages the state's corporate rights in a state bank also performs the functions of the supreme management body of the state bank (hereinafter referred to as the supreme body). Other management bodies of a state bank are the supervisory board of the state bank and the board of the state bank. Decisions of the supreme body are formalized by acts of the Cabinet of Ministers of Ukraine, the drafts of which are prepared and submitted for consideration by the Cabinet of Ministers of Ukraine by the central executive body that ensures the formation of state financial policy, and are not subject to coordination with other interested bodies [5].

The Supervisory Board of a state bank consists of nine members, of which six members are independent, and three members are representatives of the state. One representative of the state on the Supervisory Board of a state bank is appointed by a higher authority upon the proposal of the President of Ukraine, one upon the proposal of the Cabinet of Ministers of Ukraine, and one upon the proposal of a specialized Committee of the Verkhovna Rada of Ukraine, whose areas of competence include banking issues.

The central executive body that ensures the formation of state financial policy has the right to receive any information about the financial and economic activities of a state bank, including information constituting banking secrecy, necessary for monitoring the activities of a state bank and the status of implementation of the state bank's development strategy.

At the same time, it should be noted that state authorities and local self-government bodies are prohibited from in any way influencing the management or employees of banks in the course of their official duties or interfering in the activities of a bank, except in cases provided for by law. The damage caused to the bank as a result of such interference shall be subject to compensation in accordance with the procedure established by the law [6].

Ukraine's declared European integration aspirations provide for the adaptation of national legislation to EU legislation and are an international obligation stipulated by the Partnership and Cooperation Agreement between Ukraine and the European Communities of June 14, 1994, according to which our country undertook to adapt its legislation to EU legislation, including in the banking sector [1].

That is why further modernization of the system of state regulation of banking institutions in the context of the formation of an information society and in the conditions of Ukraine's European integration should be implemented by adopting at the legislative level and implementing relevant strategic regulatory legal acts into state management practice.

For example, in order to maintain financial stability in Ukraine for the period of martial law in the country, the institutions responsible for maintaining financial stability in Ukraine approved a new Strategy for the Development of the Financial Sector of Ukraine, the measures of which are conventionally divided into short-term (aimed at ensuring stability, preventing deterioration of the situation in the financial sector and the economy as a whole) and medium-term (will become the basis for future reconstruction and economic growth)

[5].

Also in 2024, the Strategy of the National Bank of Ukraine was updated, which not only focuses on resisting Russian aggression and restoring the country and defines key structural reforms, but also aims to implement measures to plan the restoration and further development of the banking sector in the context of Ukraine's European integration. Thus, one of the goals of the NBU Strategy "Financial Fortress of Ukraine" "Effective Central Bank" involves ensuring the stability, efficiency, and uninterrupted operation of the central bank with the aim of European integration of the banking sector of Ukraine, as well as fruitful international cooperation [3].

In June 2023, the Verkhovna Rada of Ukraine adopted the Law of Ukraine No. 3153-IX "On Consumer Protection" in order to approximate the national legislation on the protection of consumers of financial services to the legislation of the European Union [8].

In order to ensure balance in the implementation of European requirements and preserve the potential of the banking system to increase credit support for the national economy, the updated requirements of the Law of Ukraine "On Banks and Banking Activities" were put into effect on August 5, 2024, according to which banks switched to a three-tier capital structure and new capital adequacy standards [8].

Therefore, a study of the current regulatory and legal support for state regulation of banking institutions in Ukraine is necessary to identify gaps, form strategic guidelines for reform, and develop practical recommendations for improving current legislation in accordance with current requirements.

Conclusions of the research and perspective of further development in this direction. Thus, the current complex socio-economic situation in Ukraine requires, among other things, effective state regulation of the banking sector through further improvement of the current regulatory framework. That is, the implementation of state regulation of the activities of banking institutions in Ukraine in modern conditions should take place through further comprehensive improvement of its regulatory and legal support in accordance with the existing challenges and risks of today, which are associated with Russian military aggression and the introduction of martial law in the country, as well as taking into account European standards in this area in the context of Ukraine's European integration.

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