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CONTROL IN THE FIELD OF BANKING: CONCEPT, PROPERTIES AND ESSENCE

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Annotation. The article is devoted to the study of the concept of control, its properties and essence. In the course of the study, it was found that there is no consensus on the concept of control, and especially control in the field of banking. There are so many authors, so many opinions. This ramification leads to significant gaps and collisions, for example, in law. Thus, having a vague definition of the concept leads to a variety of interpretations of the meaning and in some cases avoidance of responsibility for certain violations of the Law. The purpose of this article is to accumulate a set of concepts into a more unified one and one that in the future will help in solving certain difficult situations that arise regarding control in the field of banking.

Key words: Control in the field of banking, Lima Declaration, Codification of banking legislation, control, Supervision

Introduction. During the analysis of a large number of sources, it can be noted that, unfortunately, there is no single approach to the definition of the concept of control, which leads to a large number of discussions and collisions.

Analysis of scientific publications. The issue of control in the field of banking and the problems that arise on the formation and development of control is currently understudied. A large number of discussions arise around this issue. Among the scientists who have devoted their works to the study and research of the problems that arise in the implementation of control in the field of banking activities, the following can be distinguished B. Usach, V. Rudnicki, S.O. Levicka etc.

The aim of the work. The purpose of the study of this work is to find possible ways to overcome the problems regarding the lack of a unified approach to the definition of the concept of control in the banking sector.

Review and discussion.

The Great Explanatory Dictionary of the Modern Ukrainian Language defines control “as checking, accounting for the activities of someone, something, supervision over someone, something.” The explanatory dictionary of the living Great Russian language by V. Dahl defines control as accounting, reconciliation of accounts, accounting; “A place of presence

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engaged in the verification of reports.” In turn, the Explanatory Dictionary of S. Ozhegov and N. Shvedova defines control as verification, as well as constant observation for the purpose of verification or supervision.

Also, the definition of the term, which is given by V. Shevchuk, deserves attention. The author clarified the origin of the term “control” from an etymological point of view and found that the term “is of Latin origin, formed by combining the words: *rola*, which means a roll of paper with notes, document, and *contra*, that is, the opposition that is put forward against the statements contained in this document. Therefore, the term ‘*controla*’ should be interpreted as a comparison (juxtaposition or opposition) of several statements” [13, p. 11].

Along with this, B. Usach finds the origin of this term from the French “*controle*”, which means “a list kept in duplicate”, and explains its meaning as “a revisit to a previously considered issue, ... verification of the implementation of certain economic decisions in order to establish their legality and economic feasibility” [10, p. 5].

According to G. Kireitsev, “control should be considered as a multifaceted phenomenon, as a function of management and accounting, including the function of coordinating the activities of business entities”.

In the “Accounting Dictionary” (edited by Professor F. Butynets) the concept of “control” appears in two planes: the first – as “systematic observation and verification of the process of functioning of the relevant object in order to establish its deviations from the specified parameters”, and the second – as “the decisive influence of the enterprise in order to obtain benefits from its activities”.

Such scientists as A. Honcharuk and V. Rudnytskyi believe that “control as a management function is a system of monitoring and checking the compliance of the process of functioning of the management object with the adopted management decisions, establishing the results of managerial influence on the managed object, identifying deviations in the process of implementing these decisions” [9, p. 14].

S.O. Levytska gives a broader definition of the term “control”, noting that “control is: an organic system of monitoring certain issues by regulatory authorities; not only a source of information, but also an element of management of economic objects and processes; indicative factor in the implementation of management decisions; the system of dynamic development, primarily in matters that ensure the rational use of state resources by business entities”.

According to C. T. Horngren, control should be considered “as an action that contributes to the implementation of the decision and reflects a realistic assessment that provides feedback on the results” [11, p. 966].

L. Shatkovska calls economic control an important link in the production management system. With the help of such control, “they reveal the actual state of affairs at enterprises, find out the reasons for deviations from normal working conditions, unused reserves” [12, p. 36].

When analyzing the concept of “control”, we also consider it appropriate to refer to the interpretations provided by legal dictionaries and encyclopedias.

In these literature, control is explained as a systematic verification of the implementation of laws, directives, resolutions and decrees or as state or public measures for supervision, verification, accounting of activities, behavior of individuals and legal entities, that is, control is an inspection in order to ensure the reliability and legality of certain actions and the process of tracking the actual implementation of plans.

Unfortunately, the legal reference literature and the current legislation of Ukraine do not contain a unified approach to the definition of the legal content of the term “control”. The Encyclopedia of Law, for example, defines “control” (French *controle* – check, from Old French). *contre-rolé* – a list that has a duplicate for verification) – as a check on the implementation of laws, decisions, etc. It is one of the most important functions of public administration. The Legal Encyclopedic Dictionary edited by A. Sukharev contains the term “control” and defines it as one of the forms of exercising power that ensures compliance with established regulations. According to the Legal Scientific and Practical Dictionary-Reference Book, state control is the activity of authorized entities (state bodies and officials) to verify the actual data on the compliance (non-compliance) of controlled objects with formally defined norms (standards), which ends with a decision on response measures adequate to the results obtained. The new legal dictionary defines state control as a way to ensure legality in public administration. The essence of control, as noted in the dictionary, is to observe the functioning of the relevant controlled object; obtaining objective and reliable information about the state of legality and discipline; taking measures to prevent and eliminate violations of legality and discipline, identifying the causes and conditions that contribute to the offense; taking measures to bring the perpetrators to justice. In the Scientific and Practical Dictionary-Reference “Terms and Concepts in the Legislation of Ukraine” (edited by O. Skakun), “control” is defined with reference to the relevant provisions of current regulations, in particular the Law of Ukraine of January 11, 2001 “On Protection of Economic Competition” and the Law of Ukraine of December 7, 2000 “On Banks and Banking” [6, p. 169]. Thus, according to Art. According to Article 2 of the Law of Ukraine “On Banks and Banking”, control is understood as “direct or indirect ownership of a share in a legal entity, individually or together with other persons, representing the equivalent of 50 or more percent of the authorized capital or votes of a legal entity, or the ability to exert a decisive influence on the management or activities of a legal entity on the basis of an agreement or in any other way” [1]. It should be noted that in this Law control is not considered from the point of view of the management function and at the same time is not a category of administrative law in general. In this case, we are talking about control as a characteristic of the scope of ownership or possession of a legal entity, i.e. control, in the text of this Law, is a legal category within the framework of economic and corporate law.

In turn, in accordance with Art. 1 of the Law of Ukraine “On Protection of Economic Competition”, control is the decisive influence of one or more related legal entities and/or individuals on the economic activity of a business

entity or part thereof, which is exercised directly or through other persons, in particular due to: the right to own or use all or a significant part of assets; the right that provides a decisive influence on the formation of the composition, voting results and decisions of the management bodies of the business entity; conclusion of agreements and contracts that make it possible to determine the conditions of economic activity, give binding instructions or perform the functions of the management body of a business entity; filling the position of the head, deputy head of the supervisory board, board, other supervisory or executive body of a business entity by a person who already holds one or more of these positions in other business entities; holding more than half of the positions of members of the supervisory board, management board, other supervisory or executive bodies of the business entity by persons who already hold one or more of these positions in another business entity. Such a definition of the legislator is not very successful, since it significantly expands the content of control, identifying it with the central function of power – management.

Particular attention should be paid to the fallacy of the legislator's approach to the definition of the legal definition of "control" with its deliberate identification with the definition of "supervision". For example, the control actions of such bodies as sanitary and epidemiological services, fire inspections are called "supervision". Despite the fact that they have all the features of a controlling body, the above attitude is enshrined even in the name of these bodies – fire supervision bodies, sanitary and epidemiological surveillance bodies, etc. Thus, the Order of the State Nuclear Regulatory Committee dated October 25, 2004 "On Approval of the Recommendations on Establishing Criteria for the Acceptance of Conditioned Radioactive Waste for Disposal in Near-Surface Storage Facilities" states that administrative control is – «This is the supervision of a radioactive waste storage facility after its closure by a body authorized by the state or a designated institution in order to comply with radiation and hygienic regulations, prevent the removal of radionuclides and unauthorized interference. Control can be active (monitoring, control of the integrity of barriers, carrying out restoration work if necessary) or passive (restrictions on economic activity within the site, preservation of information about the existence of the storage facility).» Moreover, in this definition, disclosing the types of control, the legislator actually refers control to measures of administrative coercion (restrictions on business activities within the site, preservation of information about the existence of the repository), which is, of course, incorrect. Indeed, the exercise of control may be associated with the use of various measures of state coercion. But, as M. Studenikina rightly noted, to reduce control to coercion means to distort the real state of affairs. Administrative coercion is applied in cases of committing illegal acts by individuals or legal entities (in the field of public relations) or in emergency circumstances within a separate administrative proceeding for the prevention, suppression of illegal acts, bringing perpetrators to justice, prevention and localization of the consequences of emergencies. Control, on the other hand, is an everyday, positive activity of a creative nature, which is

constantly expanding, becoming all-encompassing, since management itself is impossible without control. In the Law of Ukraine of December 1, 1994 "On Administrative Supervision of Persons Released from Prisons", Contrary to the title of this act, the legislator defines administrative supervision as a system of temporary coercive measures of observation and control (rather than supervision) over the behavior of individuals released from prisons.

It is this terminological inconsistency that leads to the fact that sometimes regulatory bodies that are close in tasks and forms of activity have different names for such activities. The situation is somewhat similar in the legislation of foreign countries. For example, in the Russian Federation, federal regulations mentioning sanitary supervision exist along with the Decree of the Government of Moscow of June 18, 1996 "On Additional Measures to Strengthen Sanitary Control over the Sale of Food Products in the Summer". In order to eliminate terminological inconsistencies both at the doctrinal level and in legislation, supporting the point of view of V. Garashchuk, it is necessary to enshrine the provision that: 1) regulatory bodies are all state inspections and services, other bodies that have such powers as the right to interfere in the operational activities of controlled objects. This, in turn, does not exclude the possibility for some of them to have "incomplete" control powers in certain cases stipulated by law; 2) to streamline the names of regulatory bodies, using the term "services" for those state bodies that do not have special control units, but exercise control independently (tax, customs service), and "inspections" to determine special state units that are formed as part of executive bodies.

More recent legislative practice is also not very successful in finding a correct and uniform definition of the term "control". In particular, in the Law of Ukraine "On the Basic Principles of State Supervision (Control) in the Sphere of Economic Activity", which was adopted on April 7, 2007, state control is also identified with state supervision – "state supervision (control) – activities of central executive bodies authorized by law, their territorial bodies, local self-government bodies, and other bodies within the powers provided for by law, to identify and prevent violations of the requirements of the law by business entities and ensure the interests of society, in particular, the proper quality of products, works and services, an acceptable level of danger for the population, the environment" [2]. As already noted, this approach of the legislator is rather erroneous, since it is impossible to correlate the concepts of "control" and "supervision", which, although close in meaning, are not identical, which will be discussed in more detail later in the text.

Thus, it follows from the above that the legal reference literature contains a fairly wide range of views and approaches to the definition of the term "control", which is associated with a different vision of the essence of control, different scientific interests and different understanding of certain aspects of control by certain scientists. In turn, in the current legislation of Ukraine there is also a variety of definitions of control, which is due to the specifics of a particular area. At the same time, such diversity does not in any way indicate the quality of the material array, since, despite the peculiarities of

individual spheres, the essence of control should not be lost. The existing definitions in these laws and by-laws actually blur the legal nature of control and create terminological confusion, which leads to a significant decrease in the effectiveness of legal regulation of social relations and significantly burdens the mechanism of legal regulation as a whole.

Speaking about the concept of “control”, we consider it necessary to pay attention to its essence. There are a large number of different views on the essence of state financial control, presented in the domestic scientific literature. In particular, according to O.D. Vasylyk, financial control is a management function, a specific activity that is implemented through a system of monitoring and checking the legality and efficiency of the processes of creating and using monetary income and monetary funds in order to assess the validity of management decisions and the results of their implementation to achieve proportionality and balance of economic development. At the same time, it should be noted that one of the functions of finance is the control function, which is objectively existing based on the fact that finance is an objective category. Some authors emphasize that financial control is the result of the state’s practical use of the control function of finance, that is, its internal feature – the ability to act as a means of control over the production, distribution and use of the aggregate social objectivity of the product and the national control function of income of finance.

At the same time, financial control is a subjective phenomenon, because it is called upon to be carried out by management bodies vested with such powers.

L. Ovsyannikov notes that “State financial control is the realization of the right of the state to legally protect its financial interests and the financial interests of its citizens through a system of legislative, organizational, administrative and law enforcement measures”[7].

State financial control, according to O. Gracheva, is “the activity of bodies and organizations authorized by the state to comply with the law in the process of collecting, distributing, redistributing and using monetary funds of the state and municipalities in order to implement an effective financial policy in society to ensure the rights and freedoms of citizens” [3].

According to Y. Kalyuga, the state financial control is based on the use of the control function of finance and is one of the manifestations of its importance in the expanded reproduction [5].

S. Shokhin believes that the state financial and economic control should be understood as a multifaceted intersectoral system of supervision of state and public bodies endowed with control functions over the financial and economic activities of enterprises, institutions and organizations in order to objectively assess the legality and expediency of economic and financial operations and identify reserves of state budget revenues and extra-budgetary funds [14].

According to Y. Danylevsky and M. Golovan, “State financial control is a type of financial control carried out by the relevant state financial control bodies. It consists in establishing the actual state of affairs regarding compliance with the requirements of the current legislation at the controlled

object, aimed at ensuring legality, financial discipline and rationality in the course of formation, distribution, possession, use and alienation of assets belonging to the state, as well as the use of funds remaining with the subject of financial legal relations in connection with the provided benefits for payments to budgets, state extra-budgetary funds and loans received under the guarantees of the Cabinet of Ministers of Ukraine”.

We believe that special attention should be paid to the definition of financial control proposed by I. Stefanyuk. In our opinion, this definition is quite exhaustive and interesting. Thus, the scientist interprets financial control as a system of active actions carried out by state authorities, local governments and citizens of Ukraine to monitor the functioning of any management object in terms of the formation, distribution and use of financial resources in order to assess the economic efficiency of economic activity, detection and blocking of deviations in it that impede the legal and effective use of property and funds, expanded reproduction of production, satisfaction of state, collective and private interests and needs, as well as improvement of economic management [4].

According to the “Dictionary of Foreign Words”, control (French: Contrôle) is a check, as well as observation for the purpose of verification. And according to the “Lima Declaration of Guiding Principles of Control” (adopted by the IX Congress of the International Organization of Supreme Audit Institutions in 1977) Control is an integral part of the regulatory system, the purpose of which is to identify deviations from accepted standards and violations of the principles, legality, efficiency and saving of material resources at the earliest stage in order to be able to take corrective measures, in individual cases, bring the perpetrators to justice, receive compensation for the damage caused or take measures to prevent or reduce such violations in the future. [6] In our opinion, this definition of the essence of control is the most successful. It emphasizes the informational (search and collection of information about the controlled entity, comparison of the actual implementation with the set goals, decisions made) and regulatory control functions (a way to eliminate the identified discrepancies between the actual state and the planned one, a decision to normalize the functioning of the object). But control is not limited to these two functions.

Thus, from the analysis of the available scientific literature on the concept of the essence of state financial control, it is considered as:

- a) the function of public administration;
- b) activities of public authorities and administration;
- c) exercising the right of the state to protect its financial interests.

Taking into account the realities of today, the role of control is constantly increasing and acquiring new shades of its essence.

Indeed, the management of any business entity is impossible without control, since it is impossible to talk about the effectiveness of management without monitoring the implementation of the tasks and without assessing the achieved level of development of the organization. The management process consists of the following stages: management decision; control and verification of implementation; evaluation of results.

The banking sector is no exception. Thus, control in the field of banking is the main tool for improving the efficiency of bank management. Control in the banking sector is one of the most “bottlenecks” of the entire system of state control. To date, there is confusion with the use of the concepts of “banking control” and “banking supervision”, there is no unified position on the essence and tasks of banking control, its relationship with financial control.

The activities of banks are subject to control by many bodies that pursue the goals set for them during the inspection, which may differ significantly and in some cases contradict each other. Among a large number of subjects of control, only the National Bank of Ukraine and audit firms in the course of inspections of credit institutions aim to ensure the stability of the banking system, that is, to contribute to the achievement of one of the main goals of banking regulation. As a result, the concept of banking control arises as a specific function of management of the second level of the banking system – commercial banks. The purpose of banking control is an objective study of the actual state of affairs in the studied sector of the economy, identification of those factors and conditions that negatively affect the implementation of decisions made and the achievement of the goals set to ensure the reliability and efficiency of the entire banking system. The main tasks of control in commercial banks are to identify coincidences or deviations (shortcomings) in the system of regulation of the banking system, to facilitate the elimination of identified deviations and to develop effective solutions.

Thus, control in the banking sector is a system for assessing the success of achieving the goals set for the banking system, i.e. comparing real achievements with indicators set by regulatory and management bodies.

From the above list of definitions of the concept of “control” it can be seen that control in the banking sector is a complex system that has its own types or directions.

V.V. Pasichnyk notes that control over the activities of banks should be understood as a holistic and continuous monitoring of the banks’ activities in accordance with regulatory legal acts [8, p. 238].

The carried out analysis showed that the concept of “banking control” is used by some scientists as a substitute for the concept of “banking supervision”, and by others it is defined as control by a commercial bank over the activities of its clients during their banking operations. In the first case, it is quite common in the scientific literature to find definitions where “Banking supervision is control...”, or vice versa, “control involves ... supervision...”, in the second case, “banking control” has nothing to do with state regulation of banking activities and “banking supervision”.

Conclusions. State financial control is the activity of state authorities and departments, regulated by the rules of law, to control the timeliness and accuracy of financial planning, the validity and completeness of receipts and movement of state financial and material resources, the correctness and efficiency of their use.

Due to the fact that the mobilization, distribution and use of funds requires special accuracy and clarity in the implementation of the issue of control in the field of banking, control issues are of paramount importance.

Due to the financial component of banking, the material basis necessary for the functioning of state bodies, including regulatory ones, is created. Any abuses and violations in the field of financial activities of the bank cause damage to the state, so the issues of their prevention, detection, etc., occupy an important place.

The main tool for improving the efficiency of bank management is control in the field of banking, which is one of the most “bottlenecks” of the entire system of state control. To date, there is confusion with the use of the concepts of “banking control” and “banking supervision”, there is no unified position on the essence and tasks of banking control, its relationship with financial control.

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