

CONTROL IN THE FIELD OF BANKING ACTIVITY: PROBLEMS, PROSPECTS OF DEVELOPMENT AND LEGAL REGULATION

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Annotation. The aim of the work is to study the problems of control in the field of banking. During the writing of the work, the concept, essence and content of the concept of control in the field of banking activity are studied. By working through a large number of works of scientists on this issue and using the method of comparison and analysis, ways to overcome more significant shortcomings have been identified. The most effective ways to solve the problem, which consist in the integration and differentiation of banking legislation, have been found. The process of integration of banking legislation, in our opinion, consists in carrying out high-quality work on the creation of the Banking Code of Ukraine. The mechanism for creating a banking code should include the process of systematization of banking legislation, which includes incorporation and codification. The legal regulation of banking activity in foreign countries, which is characterized by the diversity of the legal nature of the sources of banking law, a highly developed system of normative acts on banks and banking activities, the thoroughness of their legal regulation and the penetration of a foreign element into the national banking legislation, has been studied. Therefore, in connection with Ukraine's aspiration to join the European Union, considerable attention should be paid to the legal regulation of the principles of control in the field of banking activities in the EU.

Key words: Control in the field of banking, Lima Declaration, Codification of banking legislation, Banking Code of Ukraine

1. Introduction.

Today, Ukraine is integrated into the world economic and legal community and it is obvious that the established control system must comply with the provisions of the Lima Declaration on Guiding Principles of Control, adopted in 1977 by the IX Congress of the International Organization of Supreme Audit Institutions (INTOSAI).

In addition, the Declaration of the XX INTOSAI Congress also calls on all members of the International Organization of Supreme Audit Institutions to use INTOSAI standards as reference material when developing their own standards.

In view of this, the system of state control bodies should be structurally and methodologically unified, functionally defined, with clearly defined rights that cover the entire set of budgetary resources that ensure the functioning of the economy. This will allow, on the one hand, to eliminate unnecessary duplication, optimize public spending on ensuring the functioning of control bodies and, on the other hand, significantly increase their efficiency.

At this stage of development of the national economy and the banking system of Ukraine, the issue of maintaining the liquidity and solvency of banks is particularly acute. The banking system of Ukraine is currently in

a state of protracted recession, which is directly influenced by the indicative regulation of banking activities represented by the regulator – the National Bank of Ukraine.

2. 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 O. Kostyuchenko [24], O. Orliuk [25], D. Kyryliuk [23], E. Karmanov [22] and others.

3. The aim of the work.

The purpose of the study of this work is to find possible ways to overcome the problems that arise during the exercise of control in the field of banking activity on the basis of research and systematic analysis of available scientific sources.

4. Review and discussion.

The central place among all the problems related to the exercise of control is occupied by the problem of efficiency, since it should be considered in the context of the efficiency of the use of budget funds and state property, as well as the effectiveness of state financial control.

Increasing the efficiency of the state's budgetary policy and the use of budgetary funds and state property is called upon by the need to create a new system of state financial control – the most important lever for building a competitive national economy.

Ensuring the efficient and economical use of public funds requires mechanisms of sanctions and incentives, respectively, for inefficient and effective use of budget resources, the introduction of a system of their measurement and evaluation, which should be reflected in the Budget Code of Ukraine, the Law of Ukraine "On the Accounting Chamber of Ukraine" and other normative legal acts.

A detailed analysis of the legislative regulation of the banking system shows that it is at the stage of formation and its development has a progressive vector, but does not yet fully meet the needs of the market economy.

In particular, such scholars as O. Kostyuchenko [1], O. Orliuk [2], D. Kyryliuk [3], E. Karmanov [4] and others identify a number of negative features of the current banking legislation, which can be grouped as follows:

- multi-level nature of legal regulation, the presence of a large number of by-laws;
- making frequent changes and additions to normative legal acts;
- contradictions with other branches of law;
- lack of a single codified act on banking;
- insufficient number of special laws in the banking sector;
- limited access to operational information on law-making activities of authorized bodies [1, p. 137; 7, p. 23–29; 3, p. 80–83; 2, p. 44–46].

We consider it possible to overcome these shortcomings through the integration and differentiation of banking legislation. The process of integration of banking legislation, in our opinion, consists in carrying out high-quality work on the creation of the Banking Code. The mechanism for creating a banking code should include the process of systematization of banking legislation, which includes incorporation and codification.

Incorporation of banking legislation should be understood as bringing to a certain system of normative legal acts that regulate banking relations, according to certain criteria.

Taking into account the specifics of banking legislation, O.M. Seleznyova proposes to incorporate banking legislation not according to one criterion, but according to several, moreover, with the allocation of the main and auxiliary. As the main one, it is advisable to choose a subjective criterion (grouping of normative legal acts into several subsystems depending on which state body adopted these acts), and to determine the chronological criterion as an auxiliary criterion [5, p. 82-83].

As for the codification of banking legislation, it should be carried out on the basis of incorporated normative legal acts in order to combine these acts and make some changes and additions to them by forming a codified act.

The logical conclusion of the codification of banking legislation should be the Banking Code of Ukraine. The structure of the Banking Code should not differ from the generally accepted standard, i.e. it should consist of a general and a special (special) part. This thesis is supported by the domestic scientist E. Karmanov, who believes that the general part of the Banking Code should contain the norms applied in the regulation of all banking legal relations, apply to the entire subject of banking legislation, and the special part should determine the general provisions for the provision of banking services, highlight active and passive operations of banks, as well as financial management services [4, p. 45]. There is no unanimity among scholars on the expediency of including in the Banking Code legal relations arising with the participation of the National Bank of Ukraine. Thus, according to Y. Karmanov, the general part of the Banking Code should cover the functions of the banking system as a whole, the National Bank of Ukraine, banks and banking associations [4, p. 46]. In contrast, D. Kyryliuk believes that the regulation of vertical relations arising between the National Bank and commercial banks should be carried out by separate regulations, and the content of the Banking Code should be limited to the norms governing the relations of banks with other banks or financial institutions, as well as with their customers.

T.G. Klich believes that the Banking Code should include provisions regulating legal relations between the National Bank and other participants of the banking market, in particular, those provisions that give the National Bank the right to exert direct influence on the banking system should be subject to detailed coverage [3, p. 82]. Therefore, we consider it appropriate to dwell in detail on the structure of the Banking Code. The general provisions should be disclosed in Part I, which would contain three sections. In the first section, it is expedient to highlight the essence of legal relations subject to regulation by banking legislation, to consider the objects, subjects and participants of banking legal relations. There is a need to highlight the structure of the banking system, the functions of the Central Bank, banks and banking associations. Particular attention needs to be paid to the disclosure of the basic principles of banking activity in Ukraine and the relationship between subjects and participants of banking legal relations. The second section of the general provisions should be devoted to the legal status of the National Bank in the banking system, highlight its organizational and legal structure and features of functioning, in particular, related to the formation of the authorized and reserve funds of the bank, the results of activities, the distribution of profits, the preparation of financial statements, and the conduct of audits. According to T.G. Klich, the functions and operations of the National Bank should be covered in a special part of the Code. The third section of the general provisions should disclose the legal status of the bank, types and possible organizational and legal forms of bank establishment. The process of inclusion in this part of the procedure for registration and licensing, reorganization and liquidation of banking institutions is important. It is expedient to turn a number of provisions from the following current regulations into legislative norms: Regulation on the procedure for registration and licensing of banks, opening of separate subdivisions (approved by the Resolution of the Board of the National Bank of Ukraine dated 08.09.2011, № 306), Regulation on the application by the National Bank of Ukraine of measures of influence for violation of banking legislation (approved by the Resolution of the Board of the National Bank of Ukraine dated 17.08.2012, № 346).

The special part of the Banking Code of Ukraine should contain two sections. The first section should reveal two main areas of the NBU's activities, namely: mechanisms for implementing instruments of direct and indirect influence on the state's money market and mechanisms for the Central Bank's

influence exclusively on the banking system. T.G. Klich believes that the mechanism of the NBU's influence on the money market can be covered in the Banking Code by setting out the procedure for the Central Bank's application of the required reserve ratios, discount rate, and open market operations; use of the right to issue money and regulation of money circulation, the procedure for carrying out foreign exchange interventions and currency regulation. In order to present the mechanism of the NBU's influence on the banking system in a special part, it is expedient to cover in more detail the procedure for refinancing banking institutions, the mechanism for banking regulation and supervision, and the application of measures of influence to violators of banking legislation. At the same time, this section of the special part would make it possible to combine a number of provisions contained in two specialized laws and some specialized ones, in addition, it would be expedient to transfer certain provisions from subordinate legal acts to legislative postulates. This, in particular, concerns the Regulation on the Regulation of the Liquidity of Ukrainian Banks by the National Bank (approved by the Resolution of the Board of the National Bank of Ukraine dated 30.04.2009, № 259), the Regulation on the application by the National Bank of Ukraine of measures of influence for violation of banking legislation (approved by the Resolution of the Board of the National Bank of Ukraine dated 17.08.2012, № 346).

At the same time, an increase in the number of legal norms brought to the legislative level will contribute to the stabilization of banking legislation. In the second section of the special part, it is advisable to disclose the procedure for the provision of banking services and the implementation of banking operations. This should include provisions devoted to the description of the general principles of the provision of banking services. It is expedient to specify the procedure for carrying out deposit, credit and cash transactions. Most of the provisions of by-laws, in particular the Instructions on the Procedure for Opening, Using and Closing Accounts in National and Foreign Currencies, could become legislative norms (approved by the Resolution of the Board of the National Bank of Ukraine dated 12.11.2003, No. 492), Instructions on non-cash payments in Ukraine in the national currency (approved by the Resolution of the Board of the National Bank of Ukraine dated 21.01.2004, No. 22), Instructions on interbank transfer of funds in Ukraine in the national currency (approved by the Resolution of the Board of the National Bank of Ukraine dated 16.08.2006, No. 320), instructions on cash transactions by banks in Ukraine (approved by the Resolution of the Board of the National Bank of Ukraine dated 01.06.2011, № 174), Instructions on the organization of collection of funds and transportation of currency valuables in banking institutions of Ukraine (approved by the Resolution of the Board of the National Bank of Ukraine dated 14.02.2007, № 45), Regulation on the procedure for carrying out deposit transactions by banks of Ukraine with legal entities and individuals (approved by the Resolution of the Board of the National Bank of Ukraine dated 03.12.2003, № 516), etc.

Therefore, we believe that the adoption of the Banking Code of Ukraine would significantly reduce the number of by-laws by bringing important provisions to the legislative level and reduce the excessive regulation of banking procedures, which can be quite realistically fixed at the level of internal bank documentation. An integrated approach to the analysis of all the accumulated material would allow to achieve harmonization of a significant number of regulations on the activities of banking institutions, eliminating their internal contradictions and filling in the gaps in the legal regulation of relations in the banking system.

S.M. Lobozińska [6] believes that the development and adoption of the proposed Banking Code would indicate that there is no need for the existence of the current Laws of Ukraine "On the National Bank of Ukraine" and "Pro banki i bankivsku diyalnist"[7]. However, it should be emphasized that the process of codification of banking legislation should not abolish the institution of special legislation, on the contrary, the process of codification should necessarily take place in parallel with the process of developing new special banking laws that would regulate specific legal relations arising in the process of development of banking. Also, it is necessary to support the position on the adoption of such special laws as: "On State-Owned Banks and Nationalization of Banking Institutions", "On State Regulation of the Banking System in a Special Period", "On Virtual Banks and Internet Banking", "On the Activities of Banking Associations", "On Consumer Lending", "On Bankruptcy of Banks", "On State Regulation of Foreign Banking Capital in Ukraine", "On Protection of Competition in the Banking System" [6, p. 189-190].

Thus, the analysis of the legal support of banking activity shows that it needs to be improved. Intensification of the process of codification of banking legislation along with the development and adoption of special laws, the effect of which would be aimed at regulating specific legal relations between subjects and participants of the banking market, would contribute to the improvement of banking legislation by clearing it of norms that have long lost their relevance, and supplementing it with new provisions regulating modern aspects of banking relations. It should also be noted that the banking system of Ukraine over the years of independence, unfortunately, has not become powerful, in particular, the lion's share of the negative impact on the legal support of banks in Ukraine belongs to the global financial crises, the deplorable general state of the country's economy and the inadequate system of banking supervision, which is entrusted to the National Bank of Ukraine by the current legislation and bears the signs of a vestige of the past, borrowed from the practice of Soviet times.

What should banking supervision be like in a modern developed, and above all, rule-of-law state? It should be an independent, non-corrupt and politically biased central body of state power. The National Bank of Ukraine is essentially the same commercial structure as any commercial bank. The National Bank has the same estimate, the same expenses and profits, and its own enterprises that conduct economic activities. Never, under any circumstances, should one commercial entity control and audit another. Objectivity here is a big question by definition. The National Bank, as a commercial structure, although state-owned, also needs constant banking supervision and regulation by the state. Internal and external audits are not designed to produce the same results as banking supervision. This important state body cannot be uncontrolled. Otherwise, again and again we will have rumors about abuses committed or not committed by his leadership, as has happened more than once. In democratic, law-based countries of the world with developed economies, the state body tasked with banking supervision is not only separate from the Central Bank, but also controls the Central Bank on an equal basis with other banks. Such a system has been working for a long time, for example, in Germany. Therefore, there is a need to improve the current legislation of Ukraine aimed at establishing a transparent, maximally objective system of state banking supervision and regulation of banking activities.

Thus, modern trends in improving legislation are associated with the creation of new complex branches of legislation (in particular, banking, privatization, tax, etc.), which is a significant factor influencing the real solution of economic and social issues.

In connection with the improvement of legislation, which entails reducing the gap between the current law and the changed social relations, the system of legislation should approach its own ideal – the system of law. Summarizing the above, it can be concluded that it is necessary to systematize and codify all the norms of banking legislation into one normative legal act – the Banking Code. Its goal is to create stable legal instruments necessary for the activities of all participants in the banking system of Ukraine on the basis of the most valuable provisions of the current banking legislation and new approaches to the activities of banks in Ukraine. With the adoption of the Banking Code, the legal status of the National Bank of Ukraine and individual institutions of the banking system, as well as the regime of banking activities, will be determined, will be a fact that testifies to the consolidation of new approaches to the management of the monetary system of the state in market relations, will contribute to the consolidation of the demonopolization of the banking system as a whole, as well as ensuring its stability and legal protection of the interests of clients – legal entities and individuals. The gradual harmonization of the national banking legislation with the legislation of the European Community, the development and improvement of banking rules and standards enshrined in the Banking Code, all this will contribute to attracting funds of the population and enterprises to the credit system, strengthening the loan capital market, and, accordingly, the financial stability of the state as a whole.

The above gives us grounds to express an opinion on the need for further improvement of banking legislation and its systematization. Prospects for further research in this direction should contribute to the development of an integral scientifically grounded concept for the development of the banking system of Ukraine.

Also, in addition to the systematization and codification of banking legislation, in order to increase the efficiency of financial control, it is necessary to improve the quality of the work of controllers,

who should identify the maximum possible number of violations in the banking sector, as well as reduce the cost of control work.

5. Conclusions.

So, the legal regulation of banking activity in foreign countries is characterized by a variety of sources of banking law in terms of legal nature, a highly developed system of regulations on banks and banking activities, the thoroughness of their legal regulation and the penetration of a foreign element into the national banking legislation.

In connection with Ukraine's aspiration to join the European Union, considerable attention should be paid to the legal regulation of the principles of control in the field of banking activities in the EU.

One of the most important features of the legal nature of the European Union is that the legal system of interstate association, which was formed on the basis of national and international law and under the conditions of their interaction, has signs of a supranational character. The essential features of EU law are: 1) the complex nature of law, which combines international and national features; 2) dynamic changes in law, the consequence of which is a change in the nature, structure, scope and mechanism of action; 3) incompleteness of formation, and therefore it is possible to note its effect on the border of international and national law.

To achieve the optimal efficiency of state financial control, it is necessary to move simultaneously and fairly evenly in several directions at once, in particular, such as the formation of a legal framework of control that corresponds to the political system and economic development of the country; creation of a single field of financial control throughout the country in the presence of a pronounced control vertical; formation of stable qualified personnel potential of financial control bodies.

The results of the analysis of the problems and prospects for the development of state control in the sphere of banking and its legal regulation in Ukraine allow to identify the existing obstacles that stand in the way of its sustainable development and restructuring, emphasize the need to reform the existing organizational and legal mechanism of state control in this area. The above gives us grounds to express our opinion on the need for further improvement of banking legislation and its systematization. Prospects for further research in this direction should contribute to the development of an integral scientifically grounded concept for the development of the banking system of Ukraine.

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