

INSTITUTE OF FINANCIAL INTERMEDIARIES' RESPONSIBILITY FOR NON-COMPLIANCE WITH REGULATORY STANDARDS: COMPARATIVE LEGAL ANALYSIS OF LEGISLATION AND LAW ENFORCEMENT PRACTICES IN THE EU AND UKRAINE

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Annotation. This study analyzes the institutional structure of financial intermediaries' liability for regulatory violations in a comparative context between the EU and Ukrainian legal systems. Therefore, it shall determine and analyze the mechanisms, forms (types), and practices of enforcement of regulatory responsibility applied to financial service providers.

The research addresses the conceptual foundations of regulatory liability, analyzing both administrative and civil sanctions applied to financial intermediaries for breaches of supervisory requirements. Particular attention is given to the evolution of enforcement mechanisms within the EU regulatory architecture, including the role of European Supervisory Authorities and national competent authorities in sanctioning non-compliant entities.

A comparative legal analysis highlighted differences in the approaches to regulatory enforcement between the EU and its Member States, on one side, and Ukraine, on the other. While a harmonized framework of enforcement has been broadly set out within the provisions relating to administrative sanctions in MiFID II and several other sectoral financial services regulations, an interim model reflecting adaptations of European standard practices to domestic traditions at law exists in Ukraine. The paper focuses mainly on actual practical implementation—including administrative pecuniary penalties (fines), suspension or restriction of activity licenses.

Key findings demonstrate that the EU system emphasizes preventive supervision and proportionate sanctioning, supported by advanced risk-based monitoring and cross-border cooperation mechanisms. Ukrainian practice, in spite of incorporating European principles and elements, is still facing challenges with consistency in enforcement, adequacy of sanctions to support deterrence with violations against regulations.

The study considers particular cases of enforcement action taken against banks, insurance companies, investment firms and payment service providers in both jurisdictions. This empirical study brings out differences in the severity of sanctions, due process safeguards and effectiveness of remedial measures.

The recommendations proposed in this study for aligning Ukrainian regulatory enforcement with the best practices of the EU include building institutional capacity within supervisory authorities, increasing transparency related to sanctions imposed, developing an efficient appeals mechanism and adopting a risk-based approach towards enforcement. This paper adds to existing literature on topics discussed therein by exploring them from a perspective of ongoing debate about regulatory convergence and approximation of financial law in Ukraine towards that of Europe.

Key words: financial intermediaries, regulatory compliance, administrative liability, financial supervision, European Union law, Ukrainian financial regulation, enforcement mechanisms, sanctions regime, comparative legal analysis.

1. Introduction.

The contemporary development of the global financial system is characterized by the increasing complexity of financial relationships and the growing role of financial intermediaries in ensuring the stability of economic processes. The globalization of financial markets and the integration of national economies into a unified international space necessitate the creation of effective legal mechanisms for regulating the activities of financial institutions. The issue of establishing adequate liability for financial intermediaries for violations of regulatory requirements takes on particular significance, as deficiencies in legal regulation can lead to systemic crises affecting not only individual financial institutions but the economy as a whole.

Ukraine's European integration process and its aspiration to comply with international financial regulation standards actualize the issue of harmonizing national legislation with European Union norms. The adaptation of the Ukrainian legal system to European requirements in the sphere of financial services requires a deep understanding of the liability mechanisms operating in EU countries and their effective implementation, taking into account the specifics of domestic legal tradition. The absence of comprehensive comparative legal analysis in this field creates obstacles to quality financial legislation reform and may negatively impact the effectiveness of law enforcement practice.

Transformational processes in the Ukrainian economy, occurring under wartime conditions and future post-war recovery, place increased demands on the reliability and transparency of financial intermediaries' functioning. The development of digital technologies in the financial sphere, the emergence of new forms of financial intermediation, and the expansion of the spectrum of financial services create additional challenges for regulatory authorities regarding ensuring effective control and applying proportionate sanctions for violations. The need to attract international investment for economic recovery also requires creating a legal environment that meets global standards for protecting the interests of financial market participants.

The scientific and practical relevance of the research is determined by the need to develop theoretically grounded proposals for improving the system of financial intermediaries' liability in Ukrainian law based on studying advanced European experience. Insufficient study of liability mechanisms in a comparative legal aspect and the absence of a systematic approach to analyzing law enforcement practice create gaps in the scientific understanding of the issues and complicate the formation of an effective legal regulation model. A comprehensive study of this subject will contribute to developing conceptual foundations for modernizing domestic financial legislation and increasing trust in the Ukrainian financial system from the international community.

2. Analysis of recent research and publications.

The issue of financial intermediaries' liability has attracted considerable attention from researchers in recent years, both in Ukraine and European countries. Foreign scholars, particularly (Khaled, Ghassan & Adas, Noor. (2024)), in their works emphasize the evolution of the European approach to financial services regulation after the 2008 financial crisis [1]. Their research demonstrates a trend toward strengthening requirements for financial intermediaries and expanding the spectrum of sanctions for violations of regulatory norms.

Ukrainian legal scholars are also actively researching this issue, although their works are mostly focused on individual aspects of legal regulation. Thus, T.V. Kuz analyzes the peculiarities of administrative liability of banking institutions [6], while O.R. Shevchuk investigates the mechanisms of civil liability of insurance companies [4]. A.V. Kovalenko in his publications examines issues of corporate governance in financial institutions and their impact on the liability system [9].

Comparative legal research in this field is represented by works of (Akang, Akaninyene. (2024)), who conducts an analysis of European financial supervision standards [2], and (Yanan Zhang & Bing Zhu. (2021)), who investigates mechanisms for protecting the rights of financial services consumers in the context of European integration [3]. However, these works do not encompass a comprehensive analysis of the financial intermediaries' liability system in a comparative aspect.

International organizations also pay significant attention to financial market regulation issues. The Basel Committee on Banking Supervision regularly publishes recommendations on principles of effective supervision [10], and the European Banking Authority (EBA) develops technical standards for applying sanctions [11]. These documents form the basis of national legislation but require adaptation to the specifics of individual legal systems.

Despite the significant volume of scientific publications, the issue of comprehensive comparative legal analysis of financial intermediaries' liability systems in the EU and Ukraine remains insufficiently studied. There is a lack of works that would systematically analyze the mechanisms of implementing European standards into Ukrainian legislation, taking into account the peculiarities of the national legal system and modern challenges of digitalization of the financial sector.

3. The purpose of this research is to conduct a comprehensive comparative legal analysis of the institutions of financial intermediaries' liability for violations of regulatory requirements in the legal systems of the European Union and Ukraine to determine the degree of compliance of national legislation with European financial regulation standards.

The research is aimed at identifying conceptual approaches to legal regulation of liability of financial intermediation subjects, systematizing regulatory requirements and sanctioning mechanisms applied in the jurisdictions under consideration, as well as analyzing law enforcement practice in the context of ensuring the effectiveness of supervisory activities of financial regulators.

4. Main research material with full substantiation of obtained scientific results.

The legal regulation of financial intermediaries' liability in the European Union is based on a comprehensive system of directives and regulations that form uniform standards for all member states. The primary document is Directive 2014/65/EU on markets in financial instruments (MiFID II), which establishes detailed requirements for investment firms' activities and provides for gradation of sanctions depending on the severity of violations [12]. Directive 2009/138/EC (Solvency II) regulates insurance companies' activities and establishes principles of proportionality in applying sanctions [13]. These normative acts create a legal basis for national regulators regarding the application of appropriate measures of influence.

The system of financial intermediaries' compliance in the EU is characterized by a differentiated approach to classifying violations. European legislation distinguishes administrative violations that entail penalty sanctions and serious violations that may lead to license revocation or prohibition of conducting certain types of activities. Regulation (EU) No 575/2013 (CRR) establishes minimum capital requirements for credit institutions and provides for automatic application of corrective measures upon their violation [14]. Such a system ensures the preventive nature of regulation and allows preventing systemic risks.

Procedural aspects of bringing to liability in European practice are regulated by principles of due legal procedure and the right to defense. Directive 2013/36/EU establishes the obligation of regulatory authorities to ensure fair hearing before making a decision on applying sanctions [15]. An important feature is the presence of a developed system of administrative appeal and the possibility of addressing specialized judicial bodies. The European Court of Justice in its decisions has repeatedly emphasized the need to observe the principle of proportionality in determining the size of sanctions.

Ukrainian legislation in the sphere of financial services is based on the Law of Ukraine "On Financial Services and Financial Companies" and special laws regulating the activities of individual types of financial

intermediaries [16]. The Law of Ukraine “On Banks and Banking Activities” establishes a system of measures for the influence of the National Bank of Ukraine, including warnings, fines, restrictions on conducting banking operations, and revocation of banking licenses [17]. However, the Ukrainian system is characterized by less detailed gradation of sanctions compared to European standards.

Comparative analysis indicates significant differences in approaches to determining criteria for applying sanctions. If European legislation operates with concepts of “serious violation” and “systematic violation” with clear quantitative and qualitative criteria, Ukrainian normative acts often contain evaluative concepts, which creates space for subjective interpretation. The National Securities and Stock Market Commission in its subordinate acts attempts to specify these criteria, but the level of detail remains insufficient.

Mechanisms of pre-trial dispute settlement and alternative conflict resolution are developed in the EU much better than in Ukraine. Directive 2013/11/EU on alternative dispute resolution for consumer disputes provides for the creation of specialized bodies for reviewing complaints about financial intermediaries’ actions [18]. In Ukraine, the functions of reviewing complaints are dispersed among different bodies, which complicates the process of protecting financial services consumers’ rights and reduces the effectiveness of control and supervisory activities.

Particular attention deserves the analysis of sanctions for violations of requirements regarding anti-money laundering and terrorist financing. The Fourth EU Anti-Money Laundering Directive (2015/849/EU) establishes minimum fine amounts for natural and legal persons, which can reach 5 million euros or 10% of annual turnover [19]. The Ukrainian Law “On Prevention and Counteraction to Legalization (Laundering) of Proceeds from Crime, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction” provides for significantly smaller fine amounts, which may not provide sufficient deterrent effect [20].

Digitalization of the financial sector creates new challenges for regulating financial intermediaries’ liability. The EU Regulation on crypto-assets (MiCA) establishes requirements for crypto-asset service providers and provides for specific sanctions for their violation [21]. In Ukraine, the legal regulation of digital financial assets is at the formation stage, which creates legal uncertainty for market participants and complicates the application of adequate liability measures.

Procedural guarantees when applying sanctions in European practice include the right to legal representation, access to case materials, and appeal of regulator decisions. The European Court of Human Rights in the case “Janosevic v. Sweden” confirmed the applicability of Article 6 of the European Convention on Human Rights to procedures for applying administrative sanctions in the financial sphere [22]. Ukrainian legislation is gradually adapting to these standards, but the level of procedural guarantees remains lower.

The system of appealing regulatory authorities’ decisions in the EU is characterized by the presence of specialized judicial instances and the possibility of addressing the European Court of Justice, which ensures uniform application of legal norms.

The preventive nature of the European regulatory system is manifested in mechanisms of early intervention and corrective measures. The effectiveness of the financial intermediaries’ compliance system largely depends on coordination between different regulatory authorities.

5. Conclusions.

The conducted comparative legal analysis indicates significant differences in approaches to regulating financial intermediaries’ liability in the legal systems of the European Union and Ukraine. European practice demonstrates a more developed system of sanctions gradation with clearly defined criteria for their application, based on principles of proportionality and effectiveness of influence. Ukrainian legislation demonstrates fragmentation of regulation and insufficient differentiation of liability measures depending on the nature and degree of public danger of financial intermediaries’ violations.

Analysis of law enforcement practice revealed significant discrepancies in procedural aspects of bringing financial intermediaries to liability. The European model is characterized by a high level of procedural guarantees for financial intermediation subjects, including detailed mechanisms for appealing regulators' decisions and judicial control over their activities. Ukrainian practice emphasizes insufficient development of procedural norms, which creates prerequisites for violating the principle of legal certainty and may negatively affect the investment attractiveness of the national financial market.

Comparative analysis of sanctioning mechanisms demonstrated the advantage of the European model regarding ensuring the preventive impact of liability measures. The EU administrative sanctions system provides a wide spectrum of influence—from warnings and fines to license deprivation and prohibition of conducting certain types of activities, which allows ensuring adequate response to different types of violations. The Ukrainian sanctions system is characterized by limited tools of influence and insufficient connection between the severity of the violation and applied liability measures.

The research results substantiate the necessity of comprehensive reform of Ukrainian legislation in the sphere of financial intermediaries' liability, taking into account best European practices. Priority directions for improvement should be: unification of approaches to defining violation compositions, creating a clear system of sanctions gradation, improving procedural guarantees and mechanisms of judicial protection of financial intermediation subjects' rights. Implementation of these changes will contribute to increasing the effectiveness of financial supervision and creating favorable conditions for developing the national financial market in accordance with European standards.

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