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PECULIARITIES OF CONTROL AND SUPERVISION OF NONBANK FINANCIAL INSTITUTIONS

Introduction The report describes the peculiarities of control and supervision of nonbank financial institutions in Ukraine. The author identifies the main reasons and conditions that impede effective security in the non-banking financial services market in Ukraine and proposes a number of measures to improve the activities of individual financial institutions.

Results and Discussion

Often, NFIs operate in the financial services market that do not meet the licensing requirements. In particular, during the period 2015-2021, 658 NFIs were excluded from the State Register of Financial Institutions, of which 221 (+ 9%) were excluded in 2021 alone, 42 at the request of the NBU and 133 for systematic violations of the requirements of the legislation in the field of financial services. In turn, the NBU, in order to prevent violations of legislation in the financial services market and protect consumer rights, applied 287 enforcement measures based on the results of control, including 188 orders to eliminate violations in the provision of financial services and 99 decisions to revoke licenses; imposed fines of UAH 1829 thousand in the credit market [1].

In the legislation governing the activities of state bodies that regulate financial services markets, the categories of «supervision» and «control» are used. In our opinion, the Law of Ukraine «On Financial Services and State Regulation of Financial Services Markets» does not distinguish between the content of these categories. Thus, Article 27 of the said law lists among the main tasks of the NBU the implementation of state regulation and supervision over the provision of financial services and compliance with the legislation in this area.

Control and supervision are one of the most important parts of the management system in general and the NFS in particular. After all, well-established control and supervision activities make it possible to timely improve the management system, adjust plans, reduce and prevent violations in this area. In this aspect, it should be emphasized that it is necessary to identify the causes in order to prevent negative consequences.

The general purpose of control and supervision is to identify the actual state of affairs in any process, to compare the compliance of this state with the intended goals and, if necessary, to take corrective measures to bring the controlled object to the proper state. Naturally, the most effective organization of control and supervisory activities is the one that helps to identify in advance the causes of certain violations. Undoubtedly, one of the main goals of control and supervision activities is to timely identify various violations and their perpetrators, but the ultimate goal of both control and supervision is to correct and eliminate violations. A well-organized system of control and supervision is a constructive tool for management.

Therefore, starting to consider this issue, we note that the role of the state in the activities of NFIs is not limited to regulating the procedure for registration, licensing and admission to activities. An essential component of the entire administrative and legal, including procedural, regulation of the procedure for the activities of such institutions is the organization of state control, since their functioning is one of the many diverse areas of social relations covered by state control. Such control by the State is aimed at carrying out legal, stable and responsible activities of non-bank financial institutions [2, p. 105-106].

The public purpose of control is that it serves as a means of obtaining information about the processes taking place in society and its various entities, determining the compliance of actions on the way to achieving the goal, identifying the reasons for deviations from them, and developing measures to counteract the identified deviations.

Control as a function of management is the observation and verification of compliance of the object of management with the management decisions (laws, plans, regulations, orders, instructions, orders, etc.). The most important task of control is to prevent possible omissions and mistakes, to encourage officials to perform their duties

in good faith, and to promote personal responsibility of each individual for the assigned area of work [3].

Society carries out control activities primarily through the State, which, as an official representative of society, assumes responsibility for regulating the processes taking place in it and controls their expediency in accordance with the tasks set, their implementation within the framework of current norms and rules. The State, regulating «general affairs», controls their implementation by various bodies and organizations, protects the interests of the individual and society, and takes measures to protect their interests [2, p. 106-107].

One of the dangers that control poses at the current stage of development of our state is an attempt to use it again as a punitive tool in the interests of a separate group of people, to turn it into «control for control.» During the years of the totalitarian state, control was used as a means of punitive influence on one of the participants in the control relationship. Control was mainly aimed at exposing violations and punishing the official involved. This approach to the use of control is inherently wrong. Control is not a punitive measure and should not be an end in itself and be determined by «the stricter the better». In a democratic state, the foundations of which were laid down in the Declaration of State Sovereignty of Ukraine and then enshrined in the Constitution of Ukraine, it is important to direct its activities, and thus the activities of state bodies and officials, to ensure and protect human rights and freedoms, to serve their interests and the interests of society as a whole. This implies that the state exercises control in accordance with its main purpose and directs its activities to fulfill its tasks.

Ukraine has begun to build a state governed by the rule of law, and the processes that take place in all areas of activity, organizational structures, economic relations, external and internal relations that arise and are built on a new basis should be controlled by the state. All over the world, states with different forms of government exercise control and influence the formation of relations in society, and the nature of control and the measures that accompany it indicate the nature of state power and its orientation, compliance with the proclaimed democratic principles of development.

In our opinion, in the process of establishing a democratic state based on the rule of law, it is important to realize that «the state is called upon to act as a public organization, to represent the general interest and to manage the affairs of society on its behalf and in its interests [4, p. 34]. Therefore, when creating a strong independent rule-of-law state, it is necessary to proceed from its main purpose - to protect the rights and freedoms of its citizens.

In order to achieve this goal, appropriate organizational and legal mechanisms are needed that could not only act as a means of protecting these rights, but also influence the government itself, directing its actions to fulfill the tasks set. It is well known that under certain conditions the state and its bodies may oppose society and disregard the proclaimed principles. Therefore, control should prevent and prevent such confrontation. It ensures compliance with social regulators, i.e., normative and individual regulations in the activities and behavior of controlled entities in order to eliminate possible deviations from the set directions.

State control is always carried out on the basis of legal norms and has legal consequences. The legal nature of state control is manifested in the fact that it is carried out by state authorities and their officials within the limits defined by legal norms, on the basis of legal norms and in accordance with them. Therefore, it can be said that state control is carried out within clear legal boundaries, is guided in its activities by the applicable legal norms and always causes certain legal consequences. This indicates that legal principles underlie its emergence and implementation. They are manifested and characterized by certain features. First of all, these features include the fact that control is exercised by authorized state bodies and is enshrined in the rules that define the activities and powers of the controlling entity. The state vests such bodies with the relevant powers to perform specific actions and enshrines them in the law.

The current legislation of Ukraine defines and regulates state control in certain areas and industries. In general, regulatory legal acts also provide for the legal consequences of its implementation. We say «mainly» because control in the broad sense of the term may not have legal consequences. We are talking about state control over the situation

that arises in areas where direct state influence is impossible or can be applied in extraordinary circumstances. For example, the state has a direct interest in growing certain crops. However, given that producers, as private individuals, determine what, when and how much to produce, the state cannot administratively force them to do so. However, observing the state of affairs in agriculture and possessing relevant information, the state, in the exercise of its regulatory function, uses other methods of influence. They may include a state order, providing agricultural producers with a preferential loan or other means of influence that are not related to direct administration. Thus, in controlling the situation in agriculture or any other sphere, the state uses various regulatory measures, but within the limits defined by legal norms [5].

State control is carried out on the basis of general provisions and ideas reflected in the principles of control and relating to the basic rules for organizing and conducting control. Such activities in the non-banking sector can generally be viewed as an administrative procedure. Moreover, it can be either disputed (conflict) or undisputed (conflict-free). In addition, it should be considered administrative and organizational, as well as intervening (initiated by a public entity) [6, p. 323].

Therefore, in December 2021, the new Law of Ukraine «On Financial Services and Financial Companies» was adopted, which came into force on January 1, 2024, and establishes clear requirements for the operation of financial institutions. In particular, Art. 1 of the Law states that prudential requirements are qualitative and quantitative (including prudential standards) requirements established by the Regulator to ensure compliance of a financial institution with the requirements of the law to identify potential risks in the activities of financial institutions, as well as to minimize them; prudential standards are quantitative indicators, compliance with a certain value of which is mandatory for financial institutions, which are established by the Regulator to assess the financial condition and identify potential risks in the activities of financial institutions.

The purpose of state regulation and supervision of financial and support services is to ensure protection of legitimate interests of customers, sustainable development and stability of the financial market, as well as to create favorable conditions for the development of the Ukrainian

economy and a proper competitive environment in the financial market. The Regulator, within its powers, supervises the provision of financial and support services in accordance with this Law and special laws and in accordance with the procedure established by the Regulator's regulations. The Regulator conducts oversight of certain components of the financial services market in accordance with special laws. The Regulator carries out the following types of supervision over the provision of financial and support services: 1) prudential supervision; 2) supervision of market behavior. The Regulator carries out supervision on a consolidated basis, which provides for supervision of financial groups in order to control and limit the risks to which a financial institution is exposed as a result of its participation in a financial group by assessing, monitoring and controlling the risks of the financial group in accordance with the procedure established by the Regulator's regulations.

Prudential supervision is carried out by the Regulator to ensure the stability of an individual financial service provider and the stability of the financial system as a whole, as well as to protect the interests of clients and creditors of financial service providers in accordance with this Law, special laws, and regulatory legal acts of the Regulator.

Prudential supervision is carried out by: assessing and controlling the level, nature and specifics of the risks of the person covered by the supervisory activity; assessing and controlling certain types of activities (operations) of the supervised entity, including determining the level of security and stability of its operations, identifying shortcomings and negative trends in its activities; assessing the quality of the corporate governance system, internal control system of the supervised entity, taking into account the nature of its activities; assessing and controlling the financial condition of the supervised entity, identifying facts of risky activities, the signs of which are determined in accordance with special laws and regulations of the Regulator, which threaten the interests of customers and creditors of the supervised object, and preventing such activities; monitoring and ensuring compliance with the requirements of the legislation of Ukraine by the supervised object; applying corrective measures, early intervention measures, measures of influence and/or imposing on officials of a legal entity, individual entrepreneurs who provide financial services, other persons to administrative penalties [7].

Undoubtedly, Ukraine has built a sectoral model of supervision over the activities of financial intermediaries, since, in accordance with Article 21 of the Law of Ukraine «On Financial Services and State Regulation of Financial Services Markets,» the authorized bodies that carry out state regulation in the financial services market are recognized as: The NBU - with respect to the banking services market and money transfer activities; the NSSMC - with respect to the securities and derivatives markets; the Antimonopoly Committee of Ukraine and other state authorities - within the limits of their statutory powers.

Another area of supervision is a risk-based approach, and the new law introduces such approaches. That is, the requirements and rules for supervising financial institutions will depend on their size, type of activity, significance, and risks. This will ensure proportionality, with small, non-risky financial institutions receiving minimal attention from the regulator. The law also introduces a new component - supervision over the market behavior of institutions. This will involve strengthening control over financial institutions' compliance with consumer protection requirements, disclosure of sufficient information to consumers, transparent ownership structures, good business reputation of owners and managers, etc.

It is also worth mentioning financial monitoring, the main purpose of which is to prevent the use of financial companies for money laundering/terrorist financing.

Financial companies, in accordance with the Law «On Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime, Terrorist Financing and Financing of Proliferation of Weapons of Mass Destruction» [8], are subjects of primary financial monitoring, whose activities are regulated and supervised by the NBU in the field of financial monitoring.

The main objective of the NBU in the area of financial monitoring is to prevent the use of financial institutions' services for money laundering/terrorist financing. When developing regulations in the area of financial monitoring, the NBU sets out requirements and expectations for building an adequate internal system to prevent the use of a credit company's services for money laundering/terrorist financing purposes. The regulations, in particular, contain risk criteria (high-priority areas) that a

financial company should take into account when building customer due diligence procedures, identifying suspicious transactions, etc.

Electronic identification and verification require special attention. Currently, remote verification and identification of clients when concluding a loan agreement is mainly carried out through the BankID system using electronic signatures. As of today, 14 banks are connected to the BankID system (the number of banks is constantly growing) and many NBFIs, which can also use the data obtained through the NBU's BankID to verify their clients.

In addition to the existing systems, the NBU plans to regulate the issue of remote client identification and verification for NFIs in accordance with the Law. In particular, the NBU has developed a procedure for video verification, which is currently being discussed with the banking community and will be further proposed to NFIs.

The main control and supervisory functions of the NBU are:

- protection of customers' rights;
- compliance with service delivery standards and requirements for their advertising;
- ensuring transparency and disclosure of information;
- ensuring the impeccable business reputation of owners and managers;
- counteracting anti-competitive activities;
- counteracting abuses and illegal activities;
- control over the exercise of their powers.

The NBU supervises the activities of NFIs in the form of on-site supervision and inspections. To this end, the NBU has developed a procedure for supervising NFIs, which provides for on-site supervision, as well as scheduled and unscheduled inspections based on a risk-based approach

The category of «control» is much broader than the category of «supervision», which is an integral part of control. In the course of control, the subject and the object have a relationship of subordination, and the controlling body has the right to interfere with the operational activities of the controlled object and to apply legal sanctions for violations of the law.

Supervision of NFIs is a component of public administration, an independent specific type of activity of authorized supervisory entities with a special status to monitor, analyze and verify compliance of the state and activities of NFIs with legal requirements, their compliance with established criteria and standards of activity, compliance with the rules for the provision of financial services in order to prevent, detect or eliminate violations, usually without direct interference in their activities.

The main purpose of supervising NFIs is to ensure the stability and safety of their operations, protect the interests of consumers of financial services markets, and create favorable conditions for the development and efficient functioning of financial services markets. Therefore, such supervision is a type of state control over NFIs and differs from it in that it directly involves a smaller management burden in these relations, a designated entity that checks compliance by NFIs that are not organizationally subordinated to the supervisory authority, compliance with the law, special rules and regulations, but does not directly interfere with the administrative, economic, financial or other activities of NFIs, and does not apply legal sanctions.

This is the main difference between control and supervision.

Ukraine currently has a multiple system of financial sector supervisors, structured by type of financial institution - the NBU, the NSSMC, and the Antimonopoly Committee – which differ significantly in terms of their status, level of independence, institutional capacity, and the rules and procedures applied in their operations. While the NBU is sufficiently resourced to carry out state regulation of non-banking financial activities, the institutional capacity of the others does not meet the challenges in the markets under their supervision.

Therefore, achieving the goal of supervising NFIs - ensuring stability and security of their operation, protecting the interests of consumers of financial services markets, creating favorable conditions for the development and efficient functioning of financial services markets - requires, if necessary, applying enforcement measures to NFIs (clause 4 of Article 20 of the Law of Ukraine «On Financial Services and State Regulation of Financial Services Markets») that violate the legislation on financial services, commit offenses - illegal actions that entail legal liability.

At the same time, rating agencies and credit bureaus should become necessary elements of the system of state regulation and supervision of NFIs by the NBU. These organizations should occupy a mandatory place in information stories related to the regulation of supervision and the application of other administrative and legal means of control over NFIs.

Conclusions

Control and supervision are effective tools for preventing violations. It is established that in the scientific literature there is no unified view on the concept of financial control, and therefore this concept is defined in different ways. The analysis of the existing interpretations of the concept allows the author to offer the author's definition of this category which reflects the most significant aspects of this phenomenon and its role in the implementation of the State's financial activities: financial control is the activity of State bodies and non-governmental organizations vested with the relevant powers aimed at ensuring legality, financial discipline, rationality in the course of mobilization, distribution and use of the State's financial resources. This term should be enshrined in Article 1 of the Law of Ukraine «On Financial Services and Financial Companies» (2021).

In addition to the system of state control over the activities of NFIs defined by the author (general, departmental, supervisory (interdepartmental), current (operational), and final), an additional component is the formation of rating agencies and ensuring the effective operation of credit history bureaus, while these organizations should be under the direct supervision of the NBU and receive and contain information about both credit institutions and consumers and their services.

The following types of NBU supervision of activities in the non-banking financial services market are distinguished:

– prudential supervision (supervision of compliance with prudential standards and other requirements for activities established by the legislation of Ukraine, as well as the establishment of certain quantitative and qualitative requirements (prudential standards) for the activities of NFIs. Monitoring compliance with these requirements allows the regulator to detect risky activities in a timely manner, take prompt intervention measures, and thus prevent negative consequences);

–supervision of market behavior (supervision of a financial institution's compliance with the requirements for conducting business, which include openness and transparency of such activities, impeccable business reputation of owners and management, integrity and fair treatment of customers by the financial institution, attention to their needs (provision of quality services, advertising, disclosure of information, engagement of intermediaries, etc.), fair competition with other financial institutions, prevention of fraud or other illegal activities, as well as proper internal organization of the financial institution that ensures control over compliance with the above rules);

–supervision on a consolidated basis. Financial groups, especially those that combine banking and insurance activities, are becoming increasingly important in Ukraine and such combinations involve certain risks: intra-group transactions create opportunities to avoid regulatory restrictions, and there is a risk of losses from the spread of difficulties to all business units of the financial group;

–risk-based supervision or financial monitoring (identifying, controlling and managing money laundering/terrorist financing risks, ensuring timely detection of suspicious customer transactions).

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