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STATE REGULATION OF THE FINANCIAL SERVICES MARKET IN UKRAINE

Abstracts. The essence of such concepts is “financial service”, “financial services market”, and “participants of the financial services market”; determined the purpose of state regulation of the financial services market; forms of state regulation of the financial services market; financial services that are present in the financial services market; the structure of state regulation bodies of the financial services market in Ukraine is given; The role of state bodies in the regulation of the financial services market was studied; to characterize the regulatory legal regulation of the financial services market in Ukraine; the main problems of functioning of the domestic market of financial services are revealed; ways to solve existing problems. It is grounded that the state regulation of financial services markets consists in the state’s implementation of a set of measures aimed at regulating and overseeing financial services markets to protect the interests of financial services consumers and preventing crisis phenomena. It is concluded that the financial services market is an important element of the development of the economy as a whole, in particular, it concerns not only the state but also society. We must understand that when this market is settled, that is, all bodies that carry out state regulation are competent in their powers, only then will we make informed, effective decisions about the normal and effective functioning of the RFP. It is important that the data of the subjects of control do not overlap, their activities should be fixed at the legislative level. It is also worth bearing in mind that appropriate conditions must be created to create compensatory mechanisms in the financial services markets by developing a system for guaranteeing deposits and providing for payments under long-term life insurance contracts, non-state pension provisions, deposits with deposit accounts to credit unions, etc.

Keywords: financial services, financial services market, financial services market participants, financial leasing, funds transfer, factoring.

ДЕРЖАВНЕ РЕГУЛЮВАННЯ РИНКУ ФІНАНСОВИХ ПОСЛУГ В УКРАЇНІ

Анотація. Розкрито сутність таких понять, як “фінансова послуга”, “ринок фінансових послуг” та “учасники ринку фінансових послуг”; визначено мету державного регулювання ринку фінансових послуг; розглянуто форми державного регулювання ринку фінансових послуг; визначено фінансові послуги, які присутні на ринку фінансових послуг; наведено структуру органів державного регулювання ринку фінансових послуг в Україні; досліджено роль державних органів у регулюванні ринку фінансових послуг; схарактеризовано нормативно-правове регулювання ринку фінансових послуг в Україні; виявлено основні проблеми функціонування вітчизняного ринку фінансових послуг; запропоновано шляхи вирішення наявних проблем. Обґрунтовано, що державне регулювання ринків фінансових послуг полягає

у здійсненні державою комплексу заходів, спрямованих на регулювання та нагляд за ринками фінансових послуг для захисту інтересів споживачів фінансових послуг та запобігання кризовим явищам. Зроблено висновки про те, що ринок фінансових послуг є важливим елементом розвитку економіки країни в цілому, зокрема це стосується не тільки держави, але й суспільства. Ми маємо розуміти, що коли цей ринок урегульований, тобто всі органи, які здійснюють державне регулювання, компетентні у своїх повноваженнях, то лише тоді приймаються виважені ефективні рішення щодо нормального та ефективного функціонування РФП. Важливо, щоб повноваження даних суб'єктів контролю не перетиналися, їхня діяльність має бути закріпленою на законодавчому рівні. Варто також пам'ятати про те, що мають бути сформовані належні умови для утворення компенсаційних механізмів на ринках фінансових послуг шляхом розбудови системи гарантування вкладів і забезпечення виплат за договорами довгострокового страхування життя, договорами недержавного пенсійного забезпечення, внесками на депозитні рахунки до кредитних спілок тощо.

Ключові слова: фінансова послуга, ринок фінансових послуг, учасники ринку фінансових послуг, фінансовий лізинг, переказ коштів, факторинг.

ГОСУДАРСТВЕННОЕ РЕГУЛИРОВАНИЕ РЫНКА ФИНАНСОВЫХ УСЛУГ В УКРАИНЕ

Аннотация. Раскрыта сущность таких понятий, как “финансовая услуга”, “рынок финансовых услуг” и “участники рынка финансовых услуг”; определена цель государственного регулирования рынка финансовых услуг; рассмотрены формы государственного регулирования рынка финансовых услуг; определены финансовые услуги, которые присутствуют на рынке финансовых услуг; приведена структура органов государственного регулирования рынка финансовых услуг в Украине; исследована роль государственных органов в регулировании рынка финансовых услуг; охарактеризовано нормативно-правовое регулирование рынка финансовых услуг в Украине; выявлены основные проблемы функционирования отечественного рынка финансовых услуг; предложены пути решения имеющихся проблем. Обосновано, что государственное регулирование рынков финансовых услуг заключается в осуществлении государством комплекса мер, направленных на регулирование и надзор за рынками финансовых услуг для защиты интересов потребителей финансовых услуг и предотвращения кризисных явлений. Сделаны выводы о том, что рынок финансовых услуг является важным элементом развития экономики страны в целом, в частности это касается не только государства, но и общества. Мы должны понимать, что когда данный рынок урегулирован, то есть все органы, осуществляющие государственное регулирование, компетентные в своих полномочиях, то только тогда принимаются взвешенные эффективные решения относительно нормального и эффективного функционирования РФП. Важно, чтобы полномочия данных субъектов контроля не пересекались, их деятельность должна быть закре-

плена на законодательном уровне. Стоит также помнить о том, что должны быть сформированы надлежащие условия для образования компенсационных механизмов на рынках финансовых услуг путем развития системы гарантирования вкладов и обеспечения выплат по договорам долгосрочного страхования жизни, договорам негосударственного пенсионного обеспечения, взносами на депозитные счета кредитных союзов и т. д.

Ключевые слова: финансовая услуга, рынок финансовых услуг, участники рынка финансовых услуг, финансовый лизинг, перевод средств, факторинг.

Problem statement. Under current conditions of globalization, the financial services market (hereinafter – FSM) is in the making. New types of financial services are introduced, while traditional services are improving and continue to evolve. At the present stage, the competitive struggle among the professional market participants for the client base and free financial resources is intensifying, as well as the mechanisms for implementing financial transactions and the forms of cooperation between providers and consumers of financial services are being improved. The importance of FSM lies in the fact that it is one of the mechanisms for ensuring the competitiveness of the country's economy, in particular, it helps to direct investment flows into the most attractive segments of the economy and thus leads the country to economic growth. That is why the strengthening of the financial services market in Ukraine requires the study of the current state of its development, the identification of problems and the timeliness of determining the main directions of its development, and in the aggregate affects the efficiency of the functioning of the economy as a whole.

Analysis of the recent research and publications. The state regula-

tion of the financial services market in Ukraine is one of the most important topics that is reflected in the works of Ukrainian scholars: L. Akimova, Yu. Garmashov, L. Dokienko, N. Drozd, V. Klymenko, Zh. Lysenko, I. Liutyi, O. Maliutina, T. Tomniuk.

The purpose of the article is to reveal the essence of such concepts as “financial service”, “financial services market”, and “participants of the financial services market”; to determine the purpose of state regulation of the financial services market; to consider the forms of state regulation of the financial services market; to determine the financial services that are present in the financial services market; to depict the structure of the state regulation authorities of the financial services market in Ukraine; to investigate the role of state authorities in regulating the financial services market; characterize regulatory legal regulation of the financial services market in Ukraine; to identify the main problems of the functioning of the domestic financial services market; to suggest ways to solve existing problems.

Study findings. State regulation of financial services markets implies the implementation of a set of measures by the state aimed at regulating and over-

seeing the markets for financial services to protect the interests of consumers of financial services and prevent crisis phenomena. For a better understanding of this issue, it is advisable to define the term “financial service”, “financial services market”, and “participants in the financial services market”.

According to the Law of Ukraine “On Financial Services and State Regulation of Financial Services Markets”, financial services are transactions with financial assets carried out in the interests of third parties at their own expense or at the expense of these people, and in the cases stipulated by the law – at the expense of financial assets borrowed from other people for the purpose of obtaining profit or maintaining the real value of financial assets [1]. The law also provides definitions of “financial services market” and “financial services market participants”. According to the Law, financial services markets are the sphere of financial market participants’ activities aimed at providing and consuming certain financial services. Financial services markets include professional services in the markets for banking services, insurance services, investment services, securities transactions and other types of markets that provide for the circulation of financial assets [1].

In addition, the market includes people who, according to the law, have the right to provide financial services on the territory of Ukraine; people carrying out activities on rendering intermediary services in the markets of financial services; the associations of financial institutions included in the register of self-regulatory organizations, carried out by the authorities in charge

of the state regulation of financial services markets; consumers of financial services who are the participants in the financial services market.

According to article 19 of the Law of Ukraine “On Financial Services and State Regulation of Financial Services Markets”, the purpose of the state regulation of financial services markets in Ukraine is the following: implementation of the unified effective state policy in the sphere of financial services; protection of interests of financial services consumers; creation of favorable conditions for the development and functioning of financial services markets; creation of conditions for effective mobilization and placement of financial resources by participants in financial services markets taking into account the interests of the company; provision of the equal opportunities for the access to financial services markets and protection of their participants’ rights; compliance with the requirements of legislation by participants in financial services markets; prevention of monopolization and creation of conditions for the development of fair competition in the markets of financial services; control over the transparency and openness of financial services markets; promotion of integration into the European and world financial services markets [1].

The forms of state regulation of financial services markets in Ukraine are presented in fig. 1.

In order for the state regulation to be effective, it is necessary to determine what exactly relates to the financial services that are present in the market. In accordance with article 4 of the Law of Ukraine “On Financial Services and State Regulation of Financial Services

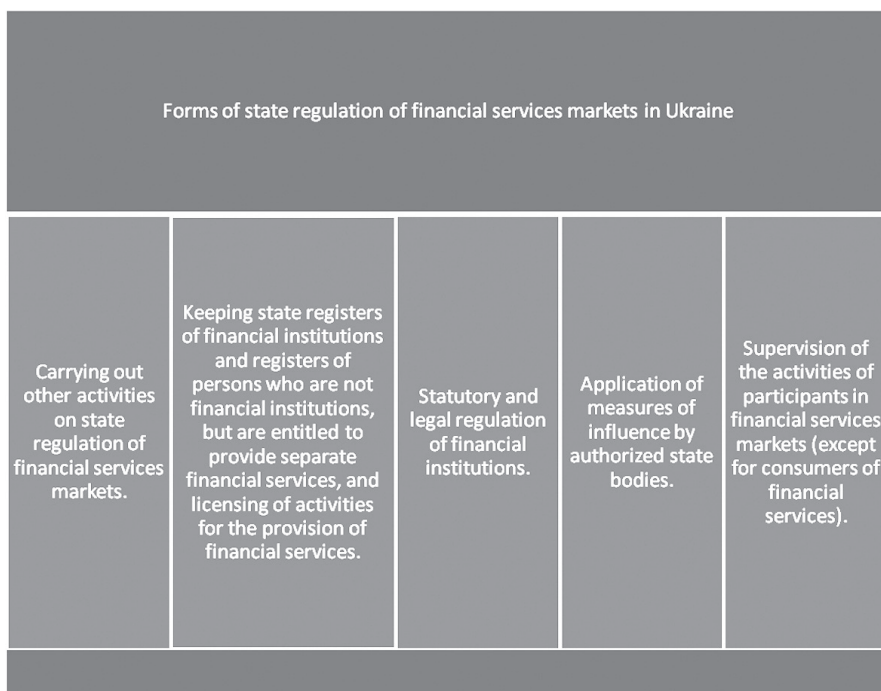


Fig. 1. Forms of state regulation of financial services markets in Ukraine¹

Markets” the following services are considered as financial [1]:

- issue of payment documents, payment cards, traveler’s checks and/or their servicing, clearing, other forms of settlement;
- trust management of financial assets;
- exchange activities;
- attraction of financial assets with their obligatory subsequent recovery;
- financial leasing is a type of civil law relations arising from a financial leasing agreement [2];
- provision of loans, including those on the terms of financial credit;
- provision of guarantees and sureties;
- transfer of funds is the movement of a certain amount of money for the purpose of crediting it to the beneficiary’s account or giving it in cash. The initiator and the recipient may be the same person [3];
- services in the sphere of insurance and in the system of the defined contribution pension provision;
- professional activities in the securities market, subject to licensing;
- factoring is a set of services for producers and suppliers engaged in trading activities on deferred payment terms [4];
- administration of financial assets for the purchase of goods in groups;

¹ Source: compiled by the author on the basis of the source [1].

- property management for financing of construction and/or real estate transactions in accordance with the Law of Ukraine “On Financial and Credit Mechanisms and Property Management in the Construction of Housing and Real Estate Operations” [5];
- transactions with mortgage assets for the purpose of issuing mortgage-backed securities;
- banking and other financial services provided in accordance with the Law of Ukraine “On Banks and Banking Activities” [6].

The FSM, like any other market, needs regulation from the state. The main authorities implementing state regulation of the financial services market are presented in fig. 2.

Legislative level. The President of Ukraine is entitled to control the observance of legality in all structures and spheres of functioning of the executive and administrative system of the state. With a view to implementing laws and within his competence, the President of Ukraine issues decrees and orders that are of subordinate nature and mandatory on the entire territory of Ukraine [7 p. 78].

Coordination of the development of the system of normative legal acts that have the legal force of the Law and provide the regulation and supervision of the financial market of Ukraine, adopted by the Verkhovna Rada of Ukraine. According to Article 92 of the Constitution of Ukraine, only the laws of Ukraine establish the foundations

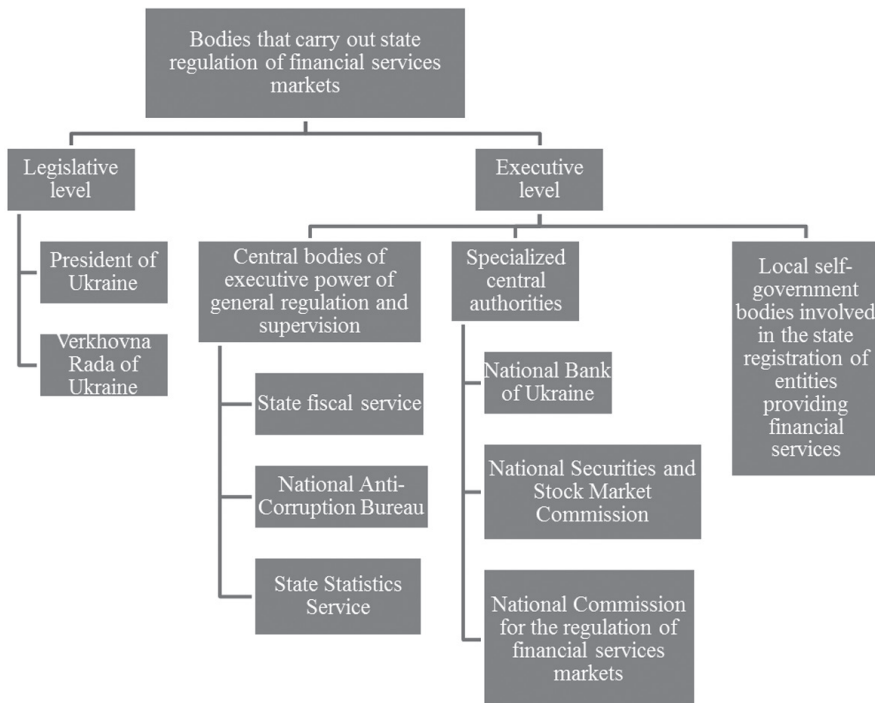


Fig. 2. Authorities that carry out state regulation of the financial services market²

² Source: compiled by the author on the basis of the source [1; 3; 7].

for the creation and functioning of the financial, monetary, credit and investment markets; the status of the national currency, as well as the status of foreign currencies on the territory of Ukraine; the procedure for the formation and repayment of state internal and external debt; the procedure for the issuance and circulation of government securities, their types [8].

Executive level. The main tasks of the State Fiscal Service of Ukraine (hereinafter – SFSU) are:

1) to ensure the formation of a single state tax, state customs policy with respect to the administration of taxes and fees, customs payments and the implementation of a single state tax, state customs policy, as well as combating offenses in the application of tax and customs legislation, the authorized controlling over the admission in budgets and state trust funds of taxes and fees and other payments;

2) to ensure the formation and implementation of the state policy for administering a single contribution, as well as combating offenses in the application of legislation on payment of a single contribution;

3) to ensure the formation and implementation of the state policy in the sphere of control over the timeliness of making payments in foreign currency within the period established by law, observance of the procedure for conducting cash payments for goods (services), and also for the availability of licenses for carrying out economic activities subject to licensing in accordance with law, trade patents [9].

The State Statistical Service of Ukraine is a specially authorized central body of executive power in the field

of statistics. Its activities are guided by the Constitution and laws of Ukraine, as well as the decrees of the President of Ukraine and resolutions of the Verkhovna Rada of Ukraine. The Service, within the limits of its powers, organizes the implementation of legislative acts and monitors their implementation, summarizes the practice of applying legislation on the matters within its competence, develops proposals for improving legislation and, in accordance with the established procedure, submits them for consideration by the Cabinet of Ministers of Ukraine [7, p. 80].

According to articles 19–20 of the Law of Ukraine “On the National Anti-Corruption Bureau of Ukraine” the National Bureau (hereinafter – NABU) cooperates with the National Bank of Ukraine (hereinafter – NBU), the State Property Fund of Ukraine, the Antimonopoly Committee of Ukraine, the National Agency for the Prevention of Corruption, the State Border Service, the authorities of the state tax and customs service, the central body of executive power implementing the state policy in the field of prevention and counteraction to legalization (laundering) of proceeds from crime, terrorism, financing the proliferation of weapons of mass destruction (hereinafter – the specially authorized executive agency for financial monitoring) and other government agencies [10].

The National Bureau can conclude agreements (memoranda) with individual state authorities on cooperation and information exchange. The National Bank of Ukraine, the Antimonopoly Committee of Ukraine, the State Property Fund of Ukraine, the State Finan-

cial Control Authority in Ukraine, the National Agency for the Prevention of Corruption, as well as other state authorities exercising state control over the observance of the legislation of Ukraine by Ukrainian physical and legal persons with the aim of preventing and countering criminal offenses attributed to the National Bureau's investigative authorities are required:

- to transmit to the National Bureau the information obtained in the exercising of control functions and analyzing the information that may be indicative of criminal offenses or used to prevent, detect, intercept and investigate criminal offenses attributed by the law to the National Bureau's jurisdiction;

- to carry out, within its competence, audits, inspections and other actions to monitor compliance with Ukrainian legislation by individuals and legal entities on the request of the National Bureau.

NBU in accordance with the Law of Ukraine "On the National Bank of Ukraine" is the central bank of Ukraine, a special central government body, its issuing center, conducts a unified state policy in the sphere of monetary circulation, credit, strengthening of monetary unit, organizes interbank settlements, coordinates the activity of the banking system in general, determines the exchange rate of the monetary unit relative to the currencies of other countries. The National Bank determines the type of banknotes, their denomination, distinctive features and protection system. NBU maintains reserve funds of currency, precious metals and gold and foreign exchange reserves, accumulates gold and currency reserves and carries out transac-

tions with them and bank metals. In addition, it establishes the procedure for determining the discount rate and other interest rates for its operations, authorizes the creation of commercial banks through their registration and issues licenses for the performance of banking operations, establishes standards for mandatory reserving of banks to other financial and credit institutions [7, p. 81].

According to Article 99 of the Constitution of Ukraine, the main function of the NBU is to ensure the stability of the monetary unit – the hryvnia. Fulfilling its main function, the National Bank promotes stability of the banking system, as well as price stability (within its authority) [8].

So, the state considers the securities market as a priority branch of economic development that should be guided and controlled by a separate agency – the National Commission on Securities and the Stock Market (hereinafter – NCSSM). It should be noted that the NCSSM was established by the Decree of the President of Ukraine on 23.11.2011 with the aim of comprehensive legal regulation of relations arising in the securities market, ensuring the protection of the interests of Ukraine's citizens and the state, preventing abuses and violations in this area. The main tasks of the Commission, defined by the Law of Ukraine "On State Regulation of the Securities Market in Ukraine" adopted in 1996, are the following:

- 1) formation and provision of the unified state policy implementation regarding the development and functioning of the securities and their derivatives market in Ukraine, facilitating the

adaptation of the national securities market to international standards;

2) coordination of the state authorities' activities on the functioning of the securities and their derivatives market in Ukraine;

3) implementation of state regulation and control over the issuance and circulation of securities and their derivatives on the territory of Ukraine, compliance with legislation in this area;

4) protection of investors' rights through the application of measures to prevent and suppress violations of legislation in the securities market, the application of sanctions for violation of legislation within their authority;

5) assistance in the development of the securities market;

6) generalization of the practice of applying the legislation of Ukraine relating to the securities issue and circulation in Ukraine, development of proposals for its improvement [7, p. 82].

It should be noted that SFSU and NCSSM interact with each other and exchange information. In addition, a Memorandum of Understanding, Cooperation and Information Exchange between the National Anti-Corruption Bureau of Ukraine and the National Commission on Securities and Stock Market dated 30.05.2016 № 32/14 was concluded between the National Securities Commission and the National Anti-Corruption Bureau [11].

In addition, between the National Securities Commission of Ukraine and the State Statistics Committee of Ukraine (SSCU), the Agreement № 21/14/3 of 01.03.2013 on the interchange of information resources [12] was concluded. According to clause 4

of the Statute on the State Statistics Service of Ukraine, approved by the Decree of the President of Ukraine № 396/2011 of 6 April 2011, the SSCU, in accordance with its tasks, utilizes administrative data and other necessary information for statistical purposes, concludes agreements on the exchange of information resources with government agencies, local authorities and other legal entities that carry out the activities related to the collection and use of statistical information and administrative data [13].

Between the National Securities and Stock Market Commission and the NBU, Agreement № 114/1 "On Information Cooperation between the National Commission on Securities and the Stock Market and the National Bank of Ukraine" dated December 12, 2013 was concluded [14].

According to article 18 of the Law of Ukraine "On Prevention and Counteraction to Legalization (Laundering) of the Proceeds from Crime or Terrorism Financing, as well as Financing Proliferation of Weapons of Mass Destruction", the tasks of a specially authorized body include, inter alia, the establishment of cooperation, interaction and information exchange with the state authorities, the National Bank of Ukraine, competent authorities of foreign states and international organizations in the field of prevention and counteraction to legalization (laundering) of proceeds from crime or terrorism financing, as well as financing proliferation of weapons of mass destruction [15].

The National Commission implementing state regulation in the sphere of financial services markets was estab-

lished in accordance with the Decree of the President of Ukraine of November 23, 2011. The Commission is a specially authorized body of executive power in the sphere of regulation of financial services markets. In accordance with the Law of Ukraine “On Financial Services and State Regulation of Financial Services Markets” and “Directives on the National Commission Implementing State Regulation in the Sphere of Financial Services Markets”, the main tasks of this commission are:

1) formation and provision of the implementation of the policy of state regulation in the sphere of financial services markets (except for the market of banking services and securities markets as well as derivative securities);

2) development and implementation of the strategy for the development of financial services markets and the solution of systemic issues of their functioning;

3) ensuring the development and coordination of the unified state policy regarding the operation of the defined contribution pension insurance system;

4) exercising of state regulation within the limits of its powers and supervision over the provision of financial services and compliance with legislation in the relevant field;

5) protection of the rights of financial services consumers through the application of measures of influence within its powers with a view to preventing and suppressing violations of legislation in the financial services market;

6) summarizing the practice of applying the Ukraine’s legislation on financial services and markets and developing proposals for their improvement;

7) development and approval of normative legal acts applicable to the implementation of issues within its competence;

8) coordination of activities with other state authorities;

9) the introduction of internationally recognized rules for the development of financial services markets [7, p. 82].

According to Article 22 of the Law of Ukraine “On Financial Services and State Regulation of Financial Services Markets”, the National Bank of Ukraine, the National Securities Commission and the National Financial Services Commission have the right to access each other's information databases that are maintained to regulate the financial services markets [1].

The NBU, the National Commission for the Securities Market and the National Financial Services Commission are obliged to conduct operational meetings at least once a month, or more often at the request of one of the leaders of these authorities, in order to cooperate and coordinate their activities. Based on the results of these meetings, appropriate protocols are drawn up and/or interdepartmental agreements are concluded. The decisions contained in these protocols and agreements are mandatory for consideration and implementation by each of the authorities that carry out state regulation of financial services markets.

All the above-mentioned authorities in their activities are guided by the regulatory legal acts of fig. 3.

In addition to general legislation in the sphere of financial services markets, there are also laws regulating the activities of the insurance market, credit institutions, non-state pension funds,

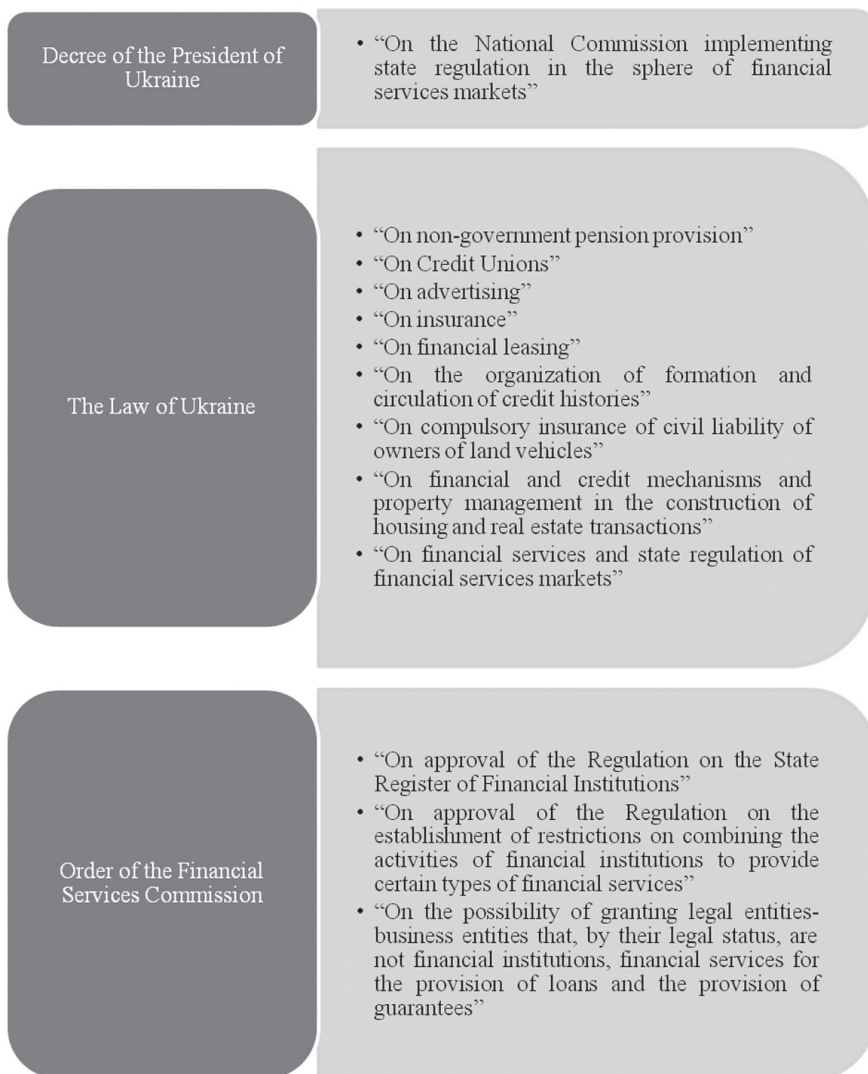


Fig. 3. Normative and legal regulation of the financial services market in Ukraine³

financial companies, pawnshops and lessors, and credit history bureaus.

It should be noted that in the domestic financial market there are many problems related to the inadequate efficiency of the financial sector of the country, low level of economic literacy and awareness of financial services con-

sumers about the specifics of the functioning of financial institutions and the possibility of obtaining the necessary financial services, lack of public confidence in the activities of financial intermediaries, lack of sufficient practice of market relations and the like. The main problems of the functioning of the domestic market of financial services and ways to solve them are presented in table.

³ Source: compiled by the author on the basis of the source [1; 5; 16–25].

The main problems of the functioning of the domestic financial services market and the ways to solve them

№	Problems	Solutions
1	Opaqueness of the stock segment of the FSM, because today most of the operations for the purchase and sale of securities (more than 90 %) occur outside the exchanges	Strengthening the protection of the rights of consumers of financial services through the use of the disclosure mechanism by professional market participants on the basis of generally accepted principles and international standards
2	Absence of compensatory mechanisms of protection of investments of the population in the non-banking financial intermediation sector	Formation of conditions for the formation of compensatory mechanisms in the financial services markets through the development of a system for guaranteeing deposits and ensuring payments under long-term life insurance contracts, non-state pension provision agreements, contributions to deposit accounts with credit unions, etc.
3	Low demand on the services through the charging of tariffs on them and distrust of the population connected with the stereotypes, which are imposed by the bankruptcy of financial institutions	Conducting extensive educational work on the activities of the financial sector of Ukraine among consumers of financial services
4	Lack of proper legal framework for the full development of the financial services market	To improve the legal framework for eliminating asymmetric development among representatives of financial intermediation with increased competition, among which the prerequisites will be created for further development of the FSM
5	Insufficient state regulation and supervision over the activities of bank and non-bank financial intermediaries	Improvement of legislative and statutory regulation of the activities of financial institutions and the provision of financial services, the delineation of control and supervisory functions between the NBU, the National Financial Services Commission and the National Securities and Stock Market Commission
6	Absence of the concept of long-term development of banking and non-banking institutions in the financial services market	Approving the clear concept of Ukraine's integration into the world economic space
7	Lack of capital and low level of vocational training for a large part of non-banking financial institutions	The attraction of capital through the mechanism of consumer confidence in the market, the proper training of specialists who work in non-banking financial institutions
8	Absence of a qualitative system of accounting, reporting, disclosure of information on the activities of financial institutions in Ukraine	Promoting the phased introduction of internationally recognized accounting, financial reporting, auditing, disclosure and corporate governance standards in the financial sector of Ukraine

So, from the above, it can be concluded that the financial services market is an important element in the development of the country's economy as a whole, in particular, this applies not only to the state, but also to society. We must understand that when this market is regulated, that is, all authorities that carry out state regulation are competent in their authorities, then only reasonable effective decisions are made regarding the normal and effective functioning of the FSM. It is important that the powers of these subjects of control do not overlap, their activities should be fixed at the legislative level. It is also worth remembering that proper conditions should be created for the formation of compensatory mechanisms in the financial services markets through the development of a system for guaranteeing deposits and ensuring payments under long-term life insurance contracts, non-state pension provision agreements, contributions to deposit accounts with credit unions, etc.

Thus, the financial market is one of the most regulated markets. The complexity of relations in the market, its scale, existing risks, and the security interests of participants necessitated the adoption of the detailed standards and rules for market activities, the establishment of harsh conditions for its participants and the involvement of various state authorities and self-regulating organizations in the issues of regulation.

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