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## **THE UKRAINIAN FINANCIAL INSTRUMENTS MARKETS IN CONDITIONS OF GLOBALIZATION**

In the article are considered discrepancy of the standard legislation of Ukraine to the international regulation of the markets of financial instruments. It is established that the main differences concern: mutual recognition between regulatory bodies of the Ukrainian security market and their colleagues from EU member states.

**Keywords:** standard legislation; international regulation; markets of valuable papers; financial instruments; European integration; globalization.

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## **РИНОК ФІНАНСОВИХ ІНСТРУМЕНТІВ УКРАЇНИ В УМОВАХ ГЛОБАЛІЗАЦІЇ**

У статті розглянуто невідповідність нормативного законодавства України до міжнародного регулювання ринків фінансових інструментів. Встановлено, що основні відмінності стосуються: взаємного визнання між регуляторними органами українського ринку цінних паперів та їхніми колегами із держав – членів ЄС.

**Ключові слова:** нормативне законодавство; міжнародне регулювання; ринки цінних паперів; фінансові інструменти; європейська інтеграція; глобалізація

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## **РЫНОК ФИНАНСОВЫХ ИНСТРУМЕНТОВ УКРАИНЫ В УСЛОВИЯХ ГЛОБАЛИЗАЦИИ**

В статье рассмотрены несоответствие нормативного законодательства Украины к международному регулированию рынков финансовых инструментов. Установлено, что основные отличия касаются: взаимного

признания между регуляторными органами украинского рынка ценных бумаг и их коллегами из государств - членов ЕС.

**Ключевые слова:** нормативное законодательство; международное регулирование; рынки ценных бумаг; финансовые инструменты; европейская интеграция; глобализация.

**Urgency of the research.** The main characteristic of the modern capital market as it was already noted, it is internationalization, thanks to which the investor has an opportunity to make available funds, not only in national, but also in foreign financial instruments.

The European markets integration experience of financial instruments demonstrates, that this process is an effective way to increase in capitalization of the market and attraction of considerable investors number due to borders expansion of the market, that allows the market of financial instruments to perform effectively function for providing with investment funds of the corporate sector.

It should be noted that despite the high level of development of all sectors of economy of the Western European countries, their markets of valuable papers because of limitation of national borders considerably conceded American and Japanese [1]. Integration has improved a condition of each separate national market, it has reduced the attraction cost of the capital and it has increased efficiency of its distribution [2].

Rapprochement of the legislation of the European zones countries was carried out according to the Art. 3 of The Contract about Creation of the European Union. Therefore today, similar to other spheres of economic and social-legal activity of the European Union, the functioning of markets of valuable papers is guided by the uniform principles and standards entered within the territory of the common market.

**Target setting.** Practical accomplishment of directives of the EU will demand essential shifts on the basis of supervising powers and practice of regulators of the financial sector and in the field of management, business practice,

risk management, observance of the established requirements and disclosure of information by participants of the market. And it turns requires development of regulations that will allow to enter the new legislation during the reasonable transition period.

**Actual scientific researches and issues analysis.** The significant contribution to development for regulation of the markets of financial instruments in the conditions of the European integration and history of development was brought by the famous scientists: A. Baranovsky, M. Bilyk, V. Korneev, D. Leonov, T. Lemishevska, B. Lutsiv, A. Moroz, V. Mishchenko, A. Peresada, Yu. Petrunya, L. Primostka, O. Sokhatska, O. Tkach, Fedorenko, V. Sheludko.

**Uninvestigated parts of general matters defining.** At the same time not enough scientific works cover features of implementation of the international regulation of the markets of financial instruments to the standard legislation of Ukraine. The new requirements determined by the European legislation and also its differences demand a research from the standard legislation of Ukraine.

**The research objective.** Research of features Compliance of the standard legislation of Ukraine to the international regulation of the markets of financial instruments.

**The statement of basic materials.** It is clear, that integration processes without harmonization of legislations and establishment of uniform standards, also were followed by standardization of financial instruments, it was the most important for our research. Thus the European mutual, pension and other investment funds have received a wide choice of instruments for capital investing that contributed to the growth of investments profits, as result – to increase inflow of private capital.

In the European Union the market of the financial instruments includes:

- the valuable papers, that are in free circulation;
- instruments of the monetary market;
- derivatives valuable papers (including options, futures, forwards).

Let's consider in more detail the types of derivative financial instruments that are issued in circulation in the EU stock markets. Speaking of options, then their interpretation and the nature in the European Union do not differ from ones in Ukraine. So, according to the Law of Ukraine «On Corporate Profit Tax», option is a standard document certifying the right to acquire (sell), valuable papers (goods, means) on certain conditions in the future, with the fix price for the time of making an option or for the time of such acquisition by the parties to the contract. Somewhat different value in the stock exchange practice of Ukraine, it has futures and forward agreements.

The futures contract in accordance with a civil practice western states – a special agreement on the purchase (sale) of valuable papers (goods, currency values) at a fixed price at the time of conclusion of the transaction and execution of the transaction through a certain period (mostly 2-3 years). Before the expiration of the agreement the small sum which to some extent guarantees its performance is granted. In these agreements the third participant is the exchange, clearing house as the intermediary between the seller and the buyer.

In Ukraine, in accordance with the Draft Law [3], a futures contract (futures) – standardized fixed-term contract, under which the seller undertakes in the future within the established term (the date of fulfillment of obligations under the futures contract) to transfer a basic asset to the possession of the buyer on the conditions determined by the specification, and the buyer undertakes to accept a basic asset and to pay its price, to the contract for the date of conclusion, or the price defined in the future, specified in the contract.

According to the Law of Ukraine «About the taxation of profit of the enterprises» the future contract – the standard document which certifies the obligation to get (to sell) valuable papers, goods or means in certain time and under certain conditions in the future, with fixing of the prices of the moment of implementation of obligations by the contract parties. At the same time any party of the future contract has the right to refuse his performance only in the presence of the consent of other party of the contract or in the cases determined by the civil

legislation. The buyer of the future contract has the right to sell such contract during the term of his action to other persons without coordination of conditions of such sale with the seller of the contract.

According to definition, accepted in the western countries, the forward – a form of urgent fast calculations, that are carried out not later, than in 2-3 days after the conclusion of the transaction, banks, industrial firms for the purpose of avoidance of possible losses from fluctuations of the change in price, exchange rate. According to the forward transaction the seller and the buyer agree to purchase (sale) of valuable papers (goods, currency values) for a certain date. The strike price is defined at the time of the conclusion of the transaction.

In Ukraine the forward contract (forward) – the contract of delivery according to which the seller (supplier) promises in the future at the scheduled time (date of performance of obligations on the forward contract) to transfer a basic asset to the possession of the buyer on the conditions determined by the contract, and the buyer undertakes to accept at the scheduled time a basic asset and to pay for him the price determined by such contract [3].

The forward contract – the standard document which certifies the obligation of the person to get (to sell) valuable papers, goods or means in certain time and under certain conditions in the future, with fixing of the prices of such sale at the conclusion of such forward contract [4].

At the same time any party of the forward contract has the right to refuse his performance only in the presence of the consent of other party of the contract or in the cases determined by the civil legislation.

Actually it is possible to note what processes of integration of the stock markets in the European Union moves ahead quite satisfactory rates that is confirmed by statistical data.

The stock market appears the most problem in this sense. So, in the European zone C of 2010 their profitability was significantly reduced, and during 2014-2016 average index of profitability has decreased up to 3-1,5%.

Today investors of the EU still show commitment to national actions though

gradually this tendency weakens. So, the specific weight of joint-stock investment into other EU countries – from 52% in 2011 has a little increased up to 55% in 2005 that demonstrates that easing of tendency to national actions is followed by strengthening of a regional tendency.

The market of the state bonds is slightly better integrated. So, by 2016 in EU countries – the 15th level of yield on the state bonds was approximately identical while in a zone of the EU-25 it differed in a much bigger variety. However, on a wave of financial crisis of 2007 in the EU-15 the level of yield on the state bonds became more various owing to tendencies to liquidity again.

The market of corporate bonds shows noticeable signs of the growing integration as variations of cumulative yield spreads depend on the country almost equal to zero.

In the insurance sector, cross-border integration was mainly due to the cross-border merger and the acquisition of controlling stakes and the formation of the pan-European unions. In 2016, the 20 largest insurance associations in the Europe collected 523 billion Euros, representing more than 50% of the total volume of the European premium income.

Though markets of valuable papers become European more and more, post-trade infrastructure remains significantly sprayed over the countries. Barriers on the ways of integration of post-trade structures and complexity of the market structures which have arisen for overcoming these barriers lead to increase in cost of operations and risks for cross-border investors. A research of post-trade expenses in the Europe demonstrate that at implementation of cross-border operation with stocks investors pay on average 2,5-4 times more, than in case of carrying out such operation at the same time.

Approach of the current legislation of Ukraine to the international standards is an important condition for increasing the attractiveness of the domestic market of valuable papers for potential investors. Studying of the concrete European and international standards and its adaptation in Ukraine can provide a necessary basis

for integration of the Ukrainian market of valuable papers into the international markets, in particular in the European.

One of burning issues of the stock market of Ukraine is the lack of experiment on formation of a system of accounting of the rights on named and documentless valuable papers today.

Therefore, the experience of developed markets of valuable papers, which have long time and successfully solved these problems, is very valuable for the formation of an efficient system of accounting for rights and the system of payment under valuable papers in our country.

Today procedures of account, the clearing and calculations using depositaries and keepers define effectiveness and efficiency of markets of valuable papers, help to provide its integrity, to reduce risk level and to save significant money [5].

But there is a reasonable question: by what documents it is necessary to be guided Ukraine at improvement of its legislative base and what actually is understood as the concept «international standards of regulation of market of valuable papers»?

There is several main groups of the documents regulating activity of the stock markets at world level to which the Ukrainian legislators should pay attention when developing domestic standard and legal base on its matter. It is, in particular:

1. The report of Group 30 (G30) in the editorial office of the international association ISSA (International Securities Services Association);
2. Recommendations of Bank of International Settlements (Bank of International Settlements – BIS), in particular:
  - documents of the Basel committee of bank supervision;
  - documents of Committee on payment and systems of calculations;
3. Documents of the European association of the central depositaries (ECSD – European Central Securities Depositories Association);
4. Acts of the European Union.

It is worth noticing that often objective reasons don't allow to realize completely requirements of the international standards demanding accounting of domestic realities, the specifics of securities market in Ukraine are caused by privatization processes, but not evolutionary development. The low efficiency of economic activity of issuers of valuable papers and fiscal policy don't promote creation of attractive investment climate, and activity of depository system is directed mainly to service of postprivatization processes and need of strategic investors.

But despite all specified features the international regulations that regulate activity on market of valuable papers have very universal character, and therefore have to be considered in the conditions of integration of the Ukrainian market into world economic space. Therefore we will consider each of the listed above groups of laws in more detail.

An important document that carefully describes the experience of using on developed stock markets of accounting and servicing of valuable papers, became the report of Group 30 (G30), which appeared in 1989. The main attention in the report is concentrated on the systems of clearing and calculations in the world markets of valuable papers, they are connected with the processes which are the cornerstone of functioning of the stock markets so, define efficiency of their activity.

In parallel to ISSA's activities, the Bank for International Settlements (BIS) has developed a number of recommendations about implementation of clearing and payment under transactions with valuable papers.

Among them particular attention should be paid to the documents of the Basel Committee on Banking Supervision at the BIS, such as:

- risks in computer and telecommunication systems, 1989;
- operational risk management, 1998;
- risk management for electronic bank activity, 1998;
- the description of control of risk management of calculations in foreign exchange transaction, 2000 [5].

In the legislation of Ukraine it is necessary to consider also some documents of Committee on payment and the systems of calculations:

- Report on Netting Schemes (Angell Report), 1989;
- Report of the Committee on Interbank Off-Grid Netting Schemes of the Central Banks of the Group of Ten (Lamfalussy Report), 1990;
- Supply against payment in securities settlement systems, 1992;
- International securities settlements 1995;
- Risk of settlements in international stock exchanges, 1996;
- Clearing Procedures for Exchange Derivatives, 1997;
- Gross settlement systems in real time, 1997;
- Structure of Disclosure for Securities Settlement Systems, 1997;
- Report on OTC derivatives trading: the procedures for calculating and managing the risks of participants, 1998;
- Recommendations for Securities Settlement Systems, 2001 [5].

To the international norms we can attributed Recommendations of ECSDA (European Central Securities Depositories Association), which was founded in 1997 and unites Central Depositories of Western Europe. ECSDA's work focuses on developing a methodology of safe and efficient settlement and clearing. The results of its work were a series of documents, such as:

- Carrying out clearing and calculations in the markets of valuable papers. Implementation of requirements of recommendations of Group of Thirty, 1993;
- Financial management by risks in the markets, 1997;
- Activities for securities on the Internet, 1998;
- International repo of the transaction, 1999;
- ECSDA international settlements, 2000;
- Model contract between the European CSD, 2000;
- Recommendations for settlement systems about security transactions (CPSS-IOSCO), 2001.

The procedure of harmonization of the Ukrainian legislation with the legislation of the EU assumes accounting of regulations of the following legal acts of the European Union:

- Council Directive 77/91 / EU of 13 December 1976 on coordination with a view to developing equivalent remedies for the protection of their interests and interests of others;
- Directive 94/19 / EU of the European Parliament and of the Council of 1994 about deposit guarantee schemes;
- Council Directive 93/22 / EU of 1993 on investment services in the valuable papers field;
- EU: Recommendation of the Commission of 1977 on the European Code for the Transaction of Transferable Securities;
- Directive 2000/12 / EU of the European Parliament and of the Council of 2000 on the establishment, implementation and deliberate oversight of the activities of electronic money institutions.

The principles established in them create conditions for a liberalized capital movement, providing a basis for real integration of economies of the European countries. On the basis of general regulations the financial industry creates specific actions and procedures which promote the international investment flows and reduce risks of investing activities.

At the same time, practical accomplishment of directives of the EU requires essential shifts in the territory of supervising powers and practice of regulators of the financial sector and in the field of management, business practice, risk management, observance of the established requirements and disclosure of information by participants of the market. And it in turn requires development of regulations which will allow entering the new legislation during the reasonable transition period, in particular as for transition to supervision of activities of investment funds and insurance companies.

**Conclusions.** Reduction in compliance of the Ukrainian standard legislation to international standards of regulation of the markets of financial instruments.

And it turns requires development of regulations that will allow to enter the new legislation during the reasonable transition period.

Considering the aforesaid, the Ukrainian power could consider the possibility of introduction three stages to approach process, namely:

Stage 1 – the analysis of legislative discrepancies and contradictions.

The analysis of legislative distinctions and contradictions assumes the overview of current Ukrainian laws and regulation acts and determination of provisions, that are necessary to make changes and additions, in order that they met the requirements of directives of the EU and the implementing measures and also questions, which aren't covered by Ukrainian laws and regulations, and necessary preparation for determination and regulations of new laws.

Stage 2 – approximation to the EU directives.

The second stage will provide approximations of the Ukrainian legislation to requirements of directives on the valuable papers market. This stage can be performed by two parallel segments. The first segment to cover approximations of the Ukrainian legislation to requirements of directives on the valuable papers market, and the second segment to cover directives concerning insurance, acquisition and capital stock in the financial sector, additional supervision of activities of financial conglomerates and money laundering.

Stage 3 – approach to implementation actions of the EU.

The third stage will consist in approach of the Ukrainian regulations in implementation actions, in particular implementation directives and regulations of the EU Commission.

It can also be realized two parallel segments by analogy to the second stage. The first segment to cover directives on the valuable papers market, and the second – insurance, acquisition and increase in capital stock in the financial sector, additional supervision of activities of financial conglomerates and money laundering, etc.

Of course, each packet of implementation actions should be provided transition periods that'll be rather longer in order that regulatory bodies and

participants of the market could meet the established requirements. As they have enduring value for the embodiment in the life of all directives, implementation measures providing assessment of real owners reputation of regulated organizations and reputation and experience of the persons managing business activity should be immediately performed.

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