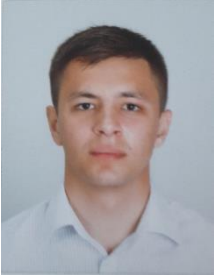


УДК 347.73

**MUST BE REFORMED, CANNOT LEAVE*****Prokopenko P. S.,****PhD student of the Department of Administrative, Economic Law and Financial and Economic Security,  
Sumy State University*

This article explores possible ways of reforming of the regulatory system of the financial services market, it is given definition and established the needs for assignment institutional functional and financial independence to regulators (regulator) in according to international practice which will lead to improvements of the market, that is, the regulation of financial services market become more efficient, the state economy will stabilize and indexes of the banking, insurance, stock and other sectors of the financial services market will improve. The ways of improvement of regulatory bodies and their powers to regulate and supervise the financial services market were offered on a table. The prospects of introduction of the single regulator of the financial services market were analyzed, that is, advantages (improved accountability, developing a body of professional staff, regulatory efficiency, regulatory flexibility, competitive neutrality, supervision of financial conglomerates) and disadvantages (lack of macro-prudential supervision, the risk of transitional period, moral hazard, limited synergies, diseconomies of scale, unclear objectives) of this system were identified, our vision of overcoming the problems associated with the introduction of the single regulator were given. On our deep conviction which approach to choose for reforming the system of supervision and regulation of financial services market of Ukraine should decide by referendum. The regulator (regulators) should given a broad autonomy, a clear mechanism for allocation of powers and prosecution of the leaders of the body (bodies) must be defined.

**Keywords:** single supervisor of the financial services market, supervision of the financial services market, regulation of the financial services market, improve the system of executive power, ways to reform the financial services market, financial independence, functional independence, institutional independence, personal independence.

У статті досліджено можливі шляхи реформування регуляторної системи на ринку фінансових послуг, надано визначення та відзначено, що надання регулюючим (регулюючому) органам інституційної, функціональної та фінансової незалежності, у відповідності до міжнародної практики, призведе до покращення ситуації на ринку: здійснення регулювання ринком фінансових послуг стане більш ефективним, відбудеться стабілізація економіки держави та підвищення показників у банківському, страховому, фондовому та інших секторах ринку фінансових послуг. У вигляді таблиці запропоновано шляхи вдосконалення системи регуляторних органів та їх повноважень щодо регулювання та нагляду за ринком фінансових послуг. Проаналізовано перспективи введення єдиного регулятора ринку фінансових послуг: виявлені переваги (підвищення відповідальності, розвиток професійних кадрів, коефіцієнт корисної дії регулювання, нормативна гнучкість, конкурентна нейтральність, нагляд за фінансовими конгломератами) і недоліки (відсутність макро-пруденційного нагляду, ризик перехідного періоду, моральний збиток, обмежена синергія, втрати від масштабу, неясні цілі) системи, надано наше бачення подолання проблем, пов'язаних з введенням єдиного регулятора. На наше глибоке переконання в Україні, шляхом референдуму, слід визначитись, який з підходів обрати для реформування системи органів нагляду та регулювання за ринком фінансових послуг. Слід надати контролюючому органу (органам) широку автономію, визначити чіткий механізм розподілу повноважень та притягнення до відповідальності керівників даного органу (органів).

**Ключові слова:** єдиний інспектор фінансового ринку послуг, спостереження за фінансовим ринком послуг, регулювання фінансового ринку послуг, покращення системи виконавчої

влади, шляхи перетворення фінансового ринку послуг, фінансова незалежність, функціональна незалежність, встановлена незалежність, особиста незалежність.

The policy of European integration requires from Ukraine an effective reform of the financial market.

We think that the main obstacle to reform this system is an unwillingness to stabilize the financial sector, because destabilization is one of the ways of getting excess profits by different oligarchic-political groups.

The European Union Association Agreement between Ukraine and European Union forces by small steps to implement reforms that are so significant for Ukraine.

We think that in a short period we will see wide-ranging reform that will affect financial services regulators. Soon we will see how it will be and what goals will be pursued by the ruling political party.

This question was researched by Mishchenko V., Soloshkina I., Agatha K. Somchenkov A., Kuzmenko A., Andruschenko I., Sennikova I., Popova A., Belyaev V., Bilyk M. etc.

Our research establishes the main problems of regulation of financial services market and research of implementation prospects of single supervisor of financial services market.

Today, a quite difficult situation has developed on the financial services market. During 2014-2016 years, 82 banks were withdrawn from the market. 17 banks were withdrawn from the market in 2016 [3].

Despite the fact that the results of 2015 the number of companies located in the State Register of financial institutions in comparison with 2014 has increased by 7% or 152 institutions and was equal to 2239 [5], proofs are unsatisfactory.

The number of insurance companies decreased by 5% (21 institutions), while the number of credit institutions increased by 17, or 2% [5]. It shows the low solvency of population and ineffective policy in the financial sector. The fall of the hryvnia has led to impossibility of further activities of insurers and low solvency of population that is forced to turn to credit institutions.

According to Art.6 of the National Bank of Ukraine (hereinafter NBU) Act the NBU is responsible for this situation. It is determined that

the main function of this body is to ensure the stability of national currency of Ukraine.

According to Art. 1 of the NBU Act the NBU is the central bank of Ukraine, the special central body, legal status, tasks, functions, powers and principles of the organization are determined by the Constitution of Ukraine, this Law and other laws of Ukraine.

Among other functions, according to Art. 21 the Financial Services and State Regulation of Financial Services Act, NBU can identify the function of regulating the market of banking services and money transfer, in other words regulation of banks activities on the financial services market.

Other major players that regulate the financial services market are the State Commission for State Regulation of Financial Services Markets (hereinafter – SCSRFSM) and the Securities and Stock Market State Commission (hereinafter – SSMSC).

The NBU is independent from the government, while the other two are coordinated by the Cabinet of Ministers of Ukraine and are on budget financing. This affects negatively the efficiency of state regulation of the financial sector. Indeed, international practice has shown that the state regulator should be operational institutional and financial independence to avoid the government political influence [9].

The urgent question that needs a solution, in our opinion, is to provide regulators institutional functional and financial independence.

The institutional independence on the financial services market is a control over the activities of regulator carried out by the highest body of regulator (council), which is formed with taking into account the interests of controlled entities and is not controlled by the Cabinet of Ministers of Ukraine or President.

Financial independence on the financial services market is an ability of the regulator, within the law, to form and fill the budget of the organization, to establish the cost of services provided by itself, and the budget of supervisor must be isolated from the state budget.

Functional independence on the financial services market is the ability of regulator independently, at their own discretion, within the

law, to regulate and supervise the activities of controlled entities.

In our opinion, as a type of independence, which ensures the effective functioning of the regulatory system should be highlighted personal independence on the financial services market,

which is to identify exceptional grounds for dismissal officials of regulator.

We see several options to improve the efficiency of regulation of financial services market, set out in the Table. 1

| Variant | 1. Development of existing regulators  | 2. Creation the single supervisor   | 3. Creation the single supervisor based on NBU   | 4. Introduction of two separate bodies: regulatory and supervisory  |
|---------|--|---|--|---|
| Essence | <ul style="list-style-type: none"> <li>● Introduction the NBU Act</li> <li>- Determine expanded list of responsibility of the NBU officials</li> <li>- Give the right to controlled entities to appoint 1/3 members of the NBU Council</li> <li>- The council of NBU should elect its own head</li> <li>● The adoption of the SSMSC Act and the SCSRFSM Act</li> <li>- Provide SSMSC and SCSRFSM full institutional, functional personal independence</li> <li>● Create a clear system of coordination between regulators</li> </ul> | <ul style="list-style-type: none"> <li>● Introduction the Constitution and adoption of the Single Supervisor Act</li> <li>- Consolidation of the special status of the single supervisor with all kinds independence above</li> <li>- Transfer all functions of the NBU, SSMSC and SCSRFSM to the competence of the single supervisor</li> <li>- Give the right to controlled entities to appoint 1/3 members of the single supervisor council</li> </ul> | <ul style="list-style-type: none"> <li>● Introduction the Constitution and the NBU Act</li> <li>- All in column 1 for the NBU</li> <li>- Transfer functions of the SSMSC and SCSRFSM to the competence of the NBU</li> </ul> | <ul style="list-style-type: none"> <li>● Introduction the Constitution and the NBU Act</li> <li>- Leave functions of the NBU directly connected with the support of national currency stability</li> <li>- Clearly allocate jurisdiction between financial services market regulator and the NBU</li> <li>- Provide financial services market regulator institutional personal financial and functional independence</li> <li>- Establish the special status of the supervisor in the Constitution</li> </ul> |

Today the question of creation a single supervisory body for the financial services market is hung in the air.

This idea was born in Singapore, and later was spread among the Nordic countries [8].

However, among many countries only about 50 have single supervisor of the financial services market and only in 7 of them a central bank performs the functions of supervisor. However, in most countries the other authority instead of the central bank performs functions of supervisor [10].

Scientists call the main arguments for the creation of the single regulatory body:

#### 1. Supervision of financial conglomerates

The rise of financial conglomerates, which operate diverse groups of financial institutions domestically or internationally, has increased the need for the sectoral supervisors to cooperate and coordinate their actions in an aim to ensure comprehensive supervision [7, p. 190].

We are agree with this statement absolutely. Fragmented supervision may raise concerns about the ability to ensure the free and seamless

supervision and overall risk estimation. There are also risk groups that may not be addressed by sectoral supervisors which watch only a part of the conglomerate. Creation of the single coordinating and regulatory body is able to overcome the disorganization of the system.

#### 2. Competitive neutrality

A related argument is based on the fact that the lines of demarcation between products and institutions have blurred as financial systems have evolved and matured. Thus, the situation may arise where financial institutions offering similar products or services are supervised by different authorities. Differences in their regulations and associated cost of achieving compliance may give certain institutions a competitive advantage in offering a particular product or service [6].

Someone argues otherwise: «Attempts of the NBU to address this issue will inevitably lead to a conflict of interests: on the one hand, all financial institutions are equal before the law and after the adoption of the proposed changes will relate to one regulator. So, if deposits in banks

are covered by deposit guarantee system, then cash deposits to other non-bank financial institutions also must enter this system. The same position should be with respect to liquidity support – if banks have the right to use the loan of the NBU for supporting their liquidity while all other members of the financial services market which fall within the scope of Regulation central bank should also have the right to appeal to the National Bank as a last resort lender [10]».

We disagree with this statement. Coming from this logic one can argue that if a combination of features and creation of the single supervisor of all financial institutions will also be a single example – with no division into banks, insurance companies and others. In this case if a person wants to deal exclusively with insurance services it will need to carry out the registration process the same as the bank that is not responding adequate to the situation.

Full regulatory neutrality should not be the main purpose of supervision. It is appropriate to control the same operations in different ways depending on the nature (system value) of institution in which they are carried out.

### 3. Regulatory flexibility

The unified approach to supervision may allow for development of regulatory arrangements that are more flexible, especially when a new type of financial product or institution emerges which was not covered by the original legislation. A status for the unified supervisory agency has to be drafted with adequate flexibility to permit it to respond rapidly to the market innovations [6].

The body that will supervise the entire financial services market must have full functional independence.

### 4. Regulatory efficiency

The unification permits cost savings for infrastructure and administration.

Unification may also permit the acquisition and taking advantage of information technologies, which become cost-effective only beyond a certain scale of operations [6].

Unification may help to minimize wasteful overlap and duplication of oversight, research and data collection, thus lay the basis, for a more efficient reporting system [7, p. 190].

### 5. Developing a body of professional staff

«... a regulatory agency should be able to attract, retain, and develop a body of skilled

professional staff. Unification can assist in this process, especially in those countries where regulatory capacity is still being developed... It would be able to offer its staff a more varied and challenging career than they would enjoy in a specialist regulator, and might be sufficiently large to develop its own tailored, in-house training programs [6]». It will also makes easier to share knowledge.

### 6. Improved accountability

The existence of multiple agencies, perhaps with overlapping responsibilities and areas of jurisdiction, makes possible a blame disbursement strategy among the regulators, thus making it difficult to hold any of them accountable [7, p. 190].

We are convinced that single supervisor with clear structure could solve this problem and everybody will know who must be responsible for failures.

Arguments against unification:

#### 1. Unclear objectives

For single regulator it «... will be difficult to strike an appropriate balance between the different objectives of regulation... its statutory responsibilities may be vague and ill-defined, which in turn can give rise to problems of holding the regulatory agency to account for its activities [6]».

We think that the establishment of clear defined accountability should be a priority branch in the reform of the sector, because clear objectives assist in identifying of clear tasks and regulation these markets as an integral system.

#### 2. Diseconomies of scale

One source of inefficiency could arise because a unified agency is effectively a regulatory monopoly [6]. Monopoly as a single regulator on financial services market could be an inflexible and more bureaucratic than separate agencies.

Another source of diseconomies of scale is the tendency to assign centralized supervision new responsibilities that go beyond its broad scope.

#### 3. Limited synergies

Most of these agencies have been established with similar departments for banking, securities and insurance markets.

«...economies of scope are likely to be much less significant than economies of scale [6]». The behavior of the different type of agencies varies appreciably. Some of them use softer ways for ruling their own sector like a doctor. Some of

them regulate their own sector by stricter methods like a police officer.

To overcome this problem we propose to form a budget of single supervisor through controlled entities as well as penalties for non-compliance in this area.

A similar model of filling the regulator budget is used in Germany.

#### 4. Moral hazard

The public may have a tendency to assume that all creditors of institutions supervised by a unified supervision will receive equal protection [7, p. 191]. This is a serious problem solution of which should be done by an explanation in the media, at work – everywhere.

#### 5. The risk of transitional period.

There is a possibility of losses, certain problems particularly related with deterioration of surveillance connected with limited length of time for creation and implementation stages of another agency for regulation and supervision. Especially this risk may be sensitive for banks, which assets make up almost 95% of the assets of the financial sector of Ukraine [4].

Despite the appropriateness of the remark, one cannot deny the fact that any reformation of the system will cause the risk of transition period.

#### 6. Lack of macro-prudential supervision.

Macro-prudential supervision is a supervision of the stability of the financial sector as a whole. It includes analysis of the risks arising from the collective actions of financial institutions, the tendency of the financial system to potential shocks and analysis of the macroeconomic

results in the case of distribution problems in the financial sector [4].

In this regard, we remark that no one bothers to create a joint committee that will carry out the function of the macro-prudential supervision. For example, in Poland the Financial Stability Committee is an authority which is responsible for it.

The Financial Stability Committee includes four main financial safeties: Narodowy Bank Polski, the Financial Supervision Authority, the Ministry of Finance and the Bank Guarantee Fund. The powers of the Committee include macro-prudential supervision and crisis management.

As we can see there are sufficient arguments for both sides: for and against the creation of a single supervisor of the financial services market.

We think that the current structure of the regulatory system of the financial services market exhausted itself completely. Lack of confidence in the National Bank and other regulators, fight for every "centimeter" of the financial sector and reluctance to cooperate is a strong argument for reforming the system and transforming it into a single effective mechanism.

During this kind of reform it should be clear that entities that make a profit have an interest in fragmentation of regulation. Therefore reform of an appropriate system of regulation of the financial market will be blocked by strong players. In our opinion the fate of reform should be determined by a referendum.

### References:

1. National Bank of Ukraine Act, 679-XIV UA (1999).
2. Financial Services and State Regulation of Financial Services Act, 2664-III UA (2001).
3. The National Bank of Ukraine. The number of banks in Ukraine (background information as of 05/05/16). Retrieved October 09, 2016, from <https://facebook.com/notes/національний-банк-україни/кількість-банків-в-україні-довідкова-інформація-станом-на-050516/1631970053683827/>
4. The National Bank of Ukraine. Consultations for improving regulation and supervision of the financial sector of Ukraine. Retrieved October 09, 2016, from <https://bank.gov.ua/doccatalog/document?id=84101>
5. The State Commission for State Regulation of Financial Services Markets. SCSRFSM announced the preliminary results of the non-bank financial market in 2015: Increasing of financial institutions for 7%, insurance premium for 13%, insurance compensation for 60%, credit portfolio for 29%. Retrieved October 09, 2016, from <http://nfp.gov.ua/news/1275.html>
6. Abrams, R. and Taylor, M. (2000). Issues in the Unification of Financial Sector Supervision International Monetary Fund. IMF Working Paper, WP/00/213. Retrieved October 09, 2016, from [http://www.fep.up.pt/disciplinas/pgaf924/PGAF/issues\\_in\\_unification\\_supervision.pdf](http://www.fep.up.pt/disciplinas/pgaf924/PGAF/issues_in_unification_supervision.pdf)

7. Kocia, A. (2012). PFSA and BaFin – Comparison of Institutional Framework in Dynamic Financial Markets. *Journal of Applied Business and Economics* 13(2), 118-205.
8. Lobozyńska, S. (2012). Question about creation the single regulator of the financial services market and improve the banking regulation. *Journal of Zaporizhzhya National University*, 3(15). Retrieved October 09, 2016, from <http://web.znu.edu.ua/herald/issues/2012/eco-3-2012/194-199.pdf>
9. Somchenkov, O., Kuzmenko, A. (n.d.). Need and ways to reform the mechanism of state regulation of financial markets. Retrieved October 09, 2016, from <http://intkonf.org/ken-somchenkov-oa-kuzmenko-av-neobhidnist-ta-shlyahi-reformuvannya-mehanizmu-derzhavnogo-regulyvannya-finansovogo-rinku/>
10. Poliakov, M. (2015, September 14). Is creating of the single regulator justified and reasonable. Retrieved October 09, 2016 from [http://censor.net.ua/blogs/965/chi\\_stvorenniya\\_megaregulyatora\\_vipravdannim\\_ta\\_obgruntovanim](http://censor.net.ua/blogs/965/chi_stvorenniya_megaregulyatora_vipravdannim_ta_obgruntovanim)