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**IMPLEMENTATION  
AND HARMONIZATION  
OF EUROPIAN UNION  
LAW RULES IN THE  
PROCESS OF  
PROVIDING  
FUNCTIONING OF THE  
UKRAINIAN INSTITUTE  
OF BANKING  
INFORMATION**

In spite of the fact that as a result of hostilities in the East, the annexation by the Russian Federation of the AR of Crimea, Ukraine finds itself in very difficult conditions continuing to take the course of the process of joining the European integration space, which is confirmed by the adoption of the Law of Ukraine “On Ratification of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand” [1]. In an effort to be recognized as a European partner, fulfilling the terms of this Agreement, adapting to the requirements of the European Union, the Ukrainian state has initiated a series of political, socio-economic, legal and institutional reforms. Today the current situation in the Ukrainian economy is characterized by a number of significant problems and risks, but thanks to reforms, activation of European integration processes, the modern domestic business is gradually becoming part of the world economic system, the share of exports of goods and services to the EU countries is increasing. There is no doubt that the growth of exports depends to a large extent on the competitiveness of Ukrainian enterprises' products in international markets. Unfortunately, for most businesses, conditions are difficult to anticipate. In its turn in the process of economic activity is necessary to make decisions that affect the economic indicators of the enterprise, improve its activity, cooperation with other subjects of market relations, without violating the legal framework of entrepreneurship. It is indisputable that information space, information resources, information infrastructure and information technologies have a significant impact on the level and pace of socio-economic, scientific, technical and cultural

development of the modern state. At the same time, it should be noted that the unstable political and socio-economic situation in the country increases the degree of risk of decision-making and functioning of enterprises in general. Accordingly, a significant role in the effective functioning of business entities of modern Ukraine depends on the level of information ownership in various fields, especially in banking. As the banking sector has an important function to ensure the development of an efficient economy of the state. At the same time, it is important to improve the legal regulation of information relations in the field of banking, which is associated with the rapid development of public relations and, above all, market ones. All this necessitates legal protection of information in the sphere of money circulation, in particular when conducting banking operations. Due to the specific nature of banking activities, the relationship between the bank and the client is credible. The client not only trusts the bank with its cash, but also potentially admits it to information about its financial status. Disclosure of information relating to the client's financial condition, and in particular information that is bank secrecy, may adversely affect the security and reputation of the customer of the bank, which reinforces the need for clear state regulation of the banking information sphere in general and the institution of banking information in particular. At the same time, there has recently been a growing interest in access to banking information by both individuals and public authorities, which jeopardizes the efficiency of banking information protection and creates confidence in the banking system as a whole. Thus, the World Economic Forum published the ranking of countries in the Global Competitiveness Index 2017-2018, according to which Ukraine ranks 123rd out of 137 countries in terms of reliability and confidence in banks [2]. Accordingly, to our position, the theoretical understanding of the legal framework existing in Ukraine to regulate the institution of banking information in the context of correlation with the European Union regulatory framework in this field is important.

The implementation of international law rules in national law is understood as a process consisting of a set of procedures and tools that contribute to the effective implementation of these rules. As a result of implementation, on the one hand, borrowing of provisions of international law (procedures, institutions, language fragments, normative acts, principles, values, legal ideas), and on the other – transformation of national legislation in order to update and improve the rules of the national legal system. Thus, the “implementation of

international law” against the background of other terminology, which is also used in the context of taking into account “foreign” legislation, is in fact a practice of adapting to the legal “field” of relevant international, state and, in particular, European Union countries, Ukrainian legislation. At present, it is a system of financial and legal frameworks, which harmonize key principles and legal norms for the general rules of operation and development of economic entities in Ukraine [3, p. 185-186]. In the given context Ukraine’s top priority is to undertake a legal reform that would include, in particular, the approximation of national legislation to the norms and requirements of international law.

Approximation of legal systems leads to the development of a theory on the implementation of the Strategy of integration of Ukraine into the world community requires rethinking the provisions of international law by synthesizing ideas of relevant legal areas. The development of the world economy, international economic relations, leads to the emergence of foreign entities in the national banking system in the form of penetration of foreign capital into the banking sector, the development of international and regional cooperation on the formation of standards of banking regulation, the formation of cross-border banking services market. Therefore the integration processes, which are given, in Europe and the particular importance of banking in the course of the creation of a single economic and monetary union, the problem of harmonization of banking legislation is urgent for both the Member States of the European Union and the countries pursuing their policies of joining the organization. [4, p. 326].

Prospects for the development of the domestic banking system in the conditions of building an information society are conditioned not only by the level of Ukrainian legislation and the quality of the legal system, but to a large extent by the full compliance with the requirements and norms of international legal institutions, and first of all by the European Union. “Adaptation of legislation” against the background of other terminology, also used in the context of taking into account “foreign” legislation, is in fact a practice of adapting to the legal “field” of the relevant international state, in particular European Union countries, the legislation of Ukraine. At present, it is a system of financial and information and legal bases, which harmonize key principles and legal norms for the general rules of functioning and development of banking and information sphere in Ukraine.

In the conditions of the information society development, the banking sphere is being re-reflected. As noted above, not only the level

of automation of banking is changing, but also banking itself – its product becomes more capacious, which means an increase in the share of innovation, design and marketing in its value. Effective bank management is based on the collection, analysis, evaluation, transfer and use of information in order to maintain and develop management processes and solve socially important tasks. At the same time, precision, logic and promptness of information processes should be important conditions for optimal information support of the bank's management system. These processes are very active in the developed countries of the world, in particular in the countries of the European Union.

European integration processes require the creation of a modern banking legislation adapted to the requirements of the European Union, which requires the optimal correlation between the requirements of the latter and the experience of the Ukrainian law school. In order to address the issue of harmonization of national banking legislation more quickly, it is necessary to develop legislative programs that would cover the whole process of harmonization, determine all stages of their implementation, with specified deadlines and control over their implementation. Such programs, according to experts, should include analysis of compliance of the banking legislation of Ukraine with international legal documents, determination of measures to eliminate the identified gaps and disagreements with a clear timetable for implementation of measures, determination of state structures – executors of these measures, as well as assignment to the National Bank of Ukraine of functions oversee programs and timelines [4, p. 327].

In order to further analyze the issue of implementation and harmonization of the norms of international and European Union law in the process of ensuring the functioning of the Banking Institute of Ukraine, it is considered appropriate to characterize the conceptual and categorical apparatus, namely to determine the content of such concepts as “classification of banking information” and “banking information”. There are currently a number of approaches to classifying information in the banking industry. In particular the focus may be downward (from the authorized subject to the obliged) and upward (from the obliged to the authorized). According to the source of information, it is divided into external and intra-bank information. Legal and reference banking information is allocated by legal force, and regulatory and non-regulatory within legal information. According to the access regime, banking information is divided into open bank information and restricted banking information, which in turn is divided into confidential

banking information and banking secrecy, and within the latter can be distinguished business and professional banking secrecy. Depending on the stage of banking, the information is divided into preliminary (founding), current (proper banking) and final (final) banking information. Preliminary (founding) banking information is information provided by the banking legislation, which has a constituent character, is formalized and submitted at the stages of creation and registration of a bank, as well as licensing of banking operations. Current (proper banking) information is information defined by banking legislation that provides for banking transactions, banking services, etc., is issued and provided to authorized entities and banking authorities, in particular clients, the National Bank of Ukraine, government bodies in accordance with the law, contract or on other grounds. Final (final) banking information is information defined by banking law for a certain reporting period, which is provided to authorize entities by virtue of prescriptions of legal acts or upon their request for completed banking activities [5].

With regard to the concept of banking information, it can be viewed both broadly and narrowly. In broad terms, this definition of banking information is proposed. Banking information is any information, directly or indirectly, related to the bank, banking activities and banking system that is required when making the appropriate decision by the bank or client. In a narrow sense, banking information can be considered as information about the bank and its activities [5].

The current legal framework in Ukraine for regulating the Institute of Banking Information is quite extensive. As to Art. 32 of the Constitution of Ukraine [6] is prohibited the collection, storage and dissemination of confidential information about a person without his or her consent, except in cases provided by law.

In addition to the Basic Law of the State, an important role in resolving this issue is played by international legal acts, the consent of which has been given by the Verkhovna Rada of Ukraine, among which is the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime [7]. November 8, 1990, which obliges the parties to take the legislative and other measures necessary to empower their courts or other competent authorities to issue banking documents or to seize bank documents and not to evade them about bank secrecy.

In the framework of international cooperation, the said Convention prohibits the parties from invoking banking secrecy as a ground for refusing any cooperation under Art. 18 of the said international document, and also provides for the possibility, in case of disclosure of

bank secrecy, to authorize a request for cooperation by a judge or other judicial body.

The next level in the hierarchy of legal regulation of the Institute of Banking Information is constituted by the legal acts, which, in accordance with the Order of the Ministry of Justice of Ukraine “On improving the procedure for state registration of legal acts in the Ministry of Justice of Ukraine and canceling the decision on state registration of legal acts” 2005 are defined as official documents, adopted by the authorized by this subject of law-making in the form determined by law and order, which set norms of law for unknown persons who make range of people and are designed for repeated use [8].

Thus, the Law of Ukraine “On Information” [9] of October 2, 1992 discloses the legal bases for creating, collecting, receiving, storing, using, disseminating, protecting, protecting information, where, among other types of information, bank information can be directly allocated. Law of Ukraine “On the National Bank of Ukraine” [10] of May 20, 1999, according to which one of the functions of the said bank is to provide methodological support for the storage, protection, use and disclosure of bank secrecy information. In addition, the aforementioned act of legislation in section XII outlines the powers of the central bank of Ukraine to provide banking information in the part of the organization of monetary and financial statistics. Also the rules of Art. 66 prohibited disclosure of bank secrecy by employees of such bank. The Law of Ukraine “On Banks and Banking” [11] of December 7, 2000, defines the structure of the banking system, as well as the principles for the creation, operation, reorganization and liquidation of banks. The legal regulation of bank secrecy is devoted to Chapter 10 of the mentioned legal act, which outlines the meaning of the concept of bank secrecy, the list of information that constitutes such secrecy, the obligation to preserve bank secrecy and the procedure for its disclosure, as well as the provision of its disclosure are specified information on the accounts of debtors. The functioning of this framework law contributes to the creation of a mechanism which is the key to the proper storage of information that is banking secrecy. The Criminal Code of Ukraine [12] of April 5, 2001 establishes responsibility for the illegal collection for the purpose of using or using information that constitutes a commercial or banking secret (Article 231), disclosure of a commercial or banking secret (Article 232), etc.

In today’s world of financial services, with its high mobility of funds and rapid development of payment technology, means of money

laundering, anonymous protection, and tax fraud in some countries or territories make financial transnational crime. One of the areas contributing to combating such negative trends is the timely and complete receipt of information, which is accepted to be classified as bank secrecy. As a result, there has been a recent worldwide trend toward legislative restriction on banking information security. Banking secrecy is becoming more transparent in many developed countries, both America and Europe. In order to prevent and combat the legalization (laundering) of funds and the financing of terrorism, States are stepping up international cooperation in this area, including cooperation at the operational level. Ukraine, in cooperation with the countries of the European Union, ensures the implementation of relevant international standards, including those of the FATF Group, into national law. For example, the Law of Ukraine “On Prevention and Counteraction to Legalization (Laundering) of Proceeds of Crime, Financing Terrorism and Financing the Proliferation of Weapons of Mass Destruction” [13] of 14 October 2014 stipulates the interaction of law enforcement agencies and banks in obtaining, from the latest documents or information that is banking secrecy. This position is reflected in specialized laws related to the activities of particular law enforcement agencies – the Security Service of Ukraine, the National Anti-Corruption Bureau of Ukraine, etc. Accordingly, the Law of Ukraine on Currency and Currency Transactions [14] of the 21 June 2018 regulates certain aspects of the Institute of Banking Information. In particular, the mentioned legal act allows partial disclosure of banking secrecy, thus slightly changing the rules of its disclosure.

A special place in the system of current legislation governing the Institute of Banking Information is given to by-laws, the norms of which specify the provisions of laws or fill in the gaps of legal regulation. We propose to classify these acts into two groups: by-laws governing the issues of restricted banking information; by-laws containing open access information relating to the provision of banking information regarding individual bank operations and services.

According to the first group should include: first, the resolution of the Board of the National Bank of Ukraine “On approval of the rules of storage, protection, use and disclosure of bank secrecy” of the 14 July 2006 [15], which in addition to the general provisions, contains rules detailing the procedure storage, protection, use of information containing bank secrecy, as well as determine the procedure and limits of disclosure of such information, seizure (deprivation) of things and

documents containing the specified type of information. A special place is given to the peculiarities of the disclosure of banking secrecy to the central bank of Ukraine and the authorized body in this sphere. It is the by-law that regulates in the most detail the issue of information related to banking secrecy as a type of banking information. Secondly, the Resolution of the Board of the National Bank of Ukraine “On approval of the Regulation on the organization of information security measures in the banking system of Ukraine” of September 28, 2017 [16] whose main purpose is to improve the requirements for protection of information in banks’ information systems, in particular and banking information, by introducing an information security management system, setting up cryptographic protection of banking information, conducting basic and additional information security measures mats.

Without going into a detailed analysis of the second group of by-laws, let us briefly list them: Resolutions of the Board of the National Bank of Ukraine “On approval of tariffs for services (operations) provided (performed) by the National Bank of Ukraine” (2003), “On approval of the Regulation on the conduct by the National Bank of Ukraine of transactions on the purchase and sale of foreign currency on the terms of “swaps” (2016), “On approval of the Regulation on conducting cash transactions in the national currency in Ukraine” (2017), “On approval of the Bank’s Settlement Rules and Ukraine total cost of consumer credit and real annual interest rate on the consumer credit agreement ”(2017),“ On approval of the Instruction on the procedure for currency monitoring of banks by residents in compliance with the deadlines for payments on export and import of goods ”(2019), “On Approval of the Regulations on Security Measures and Determining the Procedure for Performing Certain Foreign Currency Transactions” (2019) and others. That is, bank information with open access can refer to credit, settlement, currency, cash transactions and various financial services [17, p.92].

Having chosen a European development way, Ukraine has undertaken to fulfill one of the fundamental principles of the European Union financial market and, accordingly, of its modern banking system, namely, the free movement of goods, persons, services and capital. Including free movement of capital related to the granting of loans. In spite of the fact that during the period since the signing of the Association Agreement with the EU, Ukraine has made a number of changes in the banking legislation of the country regarding banking regulation and supervision, liberalization of the capital market,



functioning of payment systems, Ukraine's current credit policy is complex and contradictory. It is characterized by the existence of fraudulent commercial activities related to disclosure of information by the lender. When offering credit products, Ukrainian banks generally do not provide their clients with the full range of information that consumers of such services should possess. Accordingly, the consumer cannot assess all the risks associated with repayment of the loan amount and payment of interest on it, which makes it impossible for the consumer to fulfill his obligations. As a consequence, the bank bears losses, its financial condition deteriorates, and ultimately, clients who keep their funds in the accounts in such financial institution suffer. Important in this context is the application of the principles of sound credit management in Ukrainian banking legislation, which is addressed in Directive 2008/48 / EC [18]. The Directive provides for the provision of sufficient information that the consumer of the credit product has been able to consult before concluding the credit agreement. Such information should include specific advertising provisions regarding credit agreements, as well as some elements of standard information that should be provided to consumers in order to be able to compare different offers and assess risks. Such information must be provided in a clear, concise and understandable manner to the consumer.

Summarizing the above considerations, it should be noted that, despite the size of the regulatory framework through which the legal regulation of the Institute of Banking Information is carried out and its constant updating, such regulation remains imperfect. In particular, it is about the obsolescence of certain provisions of legislation and their inconsistency with the requirements of international legal acts or the contradiction of the provisions of one act with the provisions of another. These problems are further compounded by the lack of a legislative definition of banking information, which leads to inaccuracy and ambiguity in the understanding of the content of certain legal acts and misclassification of certain information in banking. Positive in this context is the consolidation at the legislative level of the definition of banking information in order to differentiate it from other types of information and facilitate legal understanding; approximation of acts of national legislation to international ones. In its turn the implementation and harmonization of European Union law in the process of ensuring the functioning of the Banking Institute of Ukraine will enhance confidence in the national banking system and the mechanism of protection of banking secrecy as a type of banking information.

## References:

1. Law of Ukraine “On ratification of the Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part” of 16 September 2014 N 1678-VII. [Electronic resource]. Available at <http://zakon4.rada.gov.ua/laws/show/1678-18>
2. Schwab K., (2017-2018). *The Global Competitiveness Report*. [Electronic resource]. Available at <http://www3.weforum.org/docs/GCR2017-2018/05FullReport/>
3. Chernadchuk T., Chernadchuk O., (2019). Analysis of conceptual arrangements of tax compliance in the conditions of eurointegration of Ukraine. *Journal of University Riga, Latvia, ISMA*, p.p. 185-194.
4. Bilenchuk P., (1999). *Bank law of Ukraine and Europe*. Kyiv. Ataka. 400 p.
5. Chernadchuk T., (2012). *Law regulation of information relations in banking sphere*. Zaporizhzhia. 224 p.
6. Constitution of Ukraine, (February 21, 2019). Verkhovna Rada of Ukraine. [Electronic resource]. Available at <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#n4976> (дата звернення: 11.11.2019).
7. Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime, (November 11, 2019). Verkhovna Rada of Ukraine. [Electronic resource]. Available at [https://zakon.rada.gov.ua/laws/show/995\\_029](https://zakon.rada.gov.ua/laws/show/995_029).
8. On improvement of the procedure of state registration of normative legal acts in the Ministry of Justice of Ukraine and cancellation of the decision on state registration of legal acts: Order of the Ministry of Justice of Ukraine, (April 8, 2019). #№ 34/5. Verkhovna Rada of Ukraine. [Electronic resource]. Available at <https://zakon.rada.gov.ua/laws/show/z0381-05>.
9. As for information: Law of Ukraine, (January 01, 2017). Verkhovna Rada of Ukraine. [Electronic resource]. Available at <https://zakon.rada.gov.ua/laws/show/2657-12>.
10. As for National Bank of Ukraine: Law of Ukraine, (February 7, 2019). Verkhovna Rada of Ukraine. [Electronic resource]. Available at <https://zakon.rada.gov.ua/laws/show/679-14>
11. As for banks and banking activity: Law of Ukraine, (February 9, 2019). Verkhovna Rada of Ukraine. [Electronic resource]. Available at <https://zakon.rada.gov.ua/laws/show/2121-14>.
12. Criminal Code of Ukraine: Law of Ukraine, (February 9, 2019). Verkhovna Rada of Ukraine. [Electronic resource]. Available at <https://zakon.rada.gov.ua/laws/show/2341-14>.

13. *As for the prevention and counteraction to the legalization (laundering) of proceeds of crime, the financing of terrorism and the financing of the proliferation of weapons of mass destruction: Law of Ukraine, (November 24, 2018). Verkhovna Rada of Ukraine. [Electronic resource]. Available at <https://zakon.rada.gov.ua/laws/show/1702-18>.*
14. *As for Currency and Currency Transactions: Law of Ukraine (June 21, 2018), Verkhovna Rada of Ukraine. [Electronic resource]. Available at <https://zakon.rada.gov.ua/laws/show/2473-19>.*
15. *As for approving the rules for keeping, protecting, using and disclosing bank secrecy: Resolution of the Board of the National Bank of Ukraine (February 09, 2019), Verkhovna Rada of Ukraine. [Electronic resource]. Available at <https://zakon.rada.gov.ua/laws/show/z0935-06>.*
16. *As for approval of the Regulation on the organization of information security measures in the banking system of Ukraine: Resolution of the Board of the National Bank of Ukraine, (September 28, 2017), Verkhovna Rada of Ukraine. [Electronic resource]. Available at <https://zakon.rada.gov.ua/laws/show/v0095500-17>.*
17. Chernadchuk T., (2019) *As for the question of law regulation of the institution of banking information. Journal Public Law. Issue 1 (33), pp. 88-95.*
18. *Directive 2008/48 / EC of the European Parliament and of the Council on consumer credit agreements and repealing Council Directive 87/102 / EEC, (November 11, 2019), Verkhovna Rada of Ukraine. [Electronic resource]. Available at [https://zakon.rada.gov.ua/laws/show/994\\_b19](https://zakon.rada.gov.ua/laws/show/994_b19).*

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**EU: THE ECONOMIC GROWTH STRATEGY OF THE MINERAL WATER MARKET**

The process of socio-economic development is characterized by a lack of spatial equilibrium. Due to different conditions and changing factors the endogenous and exogenous stages of development do not manifest with the same intensity at each site. However, too much spatial differentiation between levels of development can lead to obstacles to