

ANALYSIS OF THE REGULATORY FRAMEWORK OF FOREIGN COUNTRIES IN TERMS OF THE FUNCTIONING OF SECURITIES MARKETS AS AN INTEGRAL PART OF ENSURING ITS SECURITY

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Introduction. When studying the issue of ensuring the financial security of the securities market, it is necessary to take into account the fact that the domestic stock market has a continuous history of development for just over 30 years, while securities transactions have been carried out in the world for more than 5 centuries. Despite this, it is now possible to assess the entire mechanism of the securities market, all its pros and cons, problems, and trends. At the same time, the state should refrain from copying existing structures of the stock market infrastructure that are successfully operating in other countries. However, it is necessary to use the best-proven experience of foreign countries to develop concepts for building the securities market. At the same time, over the past 30 years, we have not been able to observe any decisive, positive changes in the regulation of the securities market in Ukraine by the state. This trend may change after the end of the war, as Western partners will be willing to provide financial assistance in exchange for reforms, as is the case with the European Union's €18 billion macro-financial assistance for 2023. In exchange for paying interest on the loan, Ukraine has committed to implementing reforms in the areas of rule of law, energy, structural reforms and good governance, and macro-financial stability. In this regard, scholars need to prepare the theoretical basis of these changes for further effective reforms.

Analysis of recent research and publications. A significant contribution to the study of the world experience of the development and functioning of stock markets was made by leading foreign and domestic scientists Leos O., Sivchenko G., Moskvina S.O., Pospolitak V.V., Harutyunyan R.R., Pshyk B.I., Sobkevych O.V., Kuznetsova N.S., Bilochenko A.M., Krasnov I.V., Tretyakov O.V., Harabar V.M., Greshko R.I., Matseliukh N.P., and others.

Objectives of the article. The main task of the article is to analyze the regulatory frameworks of foreign countries concerning the functioning of securities markets and how they contribute to ensuring the security of these markets. The article aims to examine the various regulatory mechanisms, policies, and practices implemented in foreign countries and understand their effectiveness in maintaining the security of securities markets.

The article analyzes the regulatory systems in different countries and explores the laws, regulations, and institutional structures in place to govern securities markets.

The article identifies the essential elements of regulatory frameworks, such as legal frameworks, supervisory bodies, disclosure requirements, investor protection measures, and market surveillance mechanisms.

The article evaluates the effectiveness of the regulatory measures adopted by foreign countries in ensuring the security of securities markets.

Based on the analysis of foreign regulatory frameworks, the article identifies best practices and lessons that could be applied to enhance the regulatory framework of Ukraine.

Overall, the article aims to provide a comprehensive analysis of foreign regulatory frameworks for securities markets and extract insights that can inform improvements in the regulatory framework of Ukraine.

The main material of the study. The process of improving domestic legislation in line with international best practices should have started long ago. Since the signing of the Association Agreement between Ukraine

and the European Union, the state has committed itself to adhere to the goals and principles, which means adapting our legislation to the declared principles of securities circulation of the International Organization of Securities Commissions (IOSCO).

The biggest problem of the domestic securities market is that Ukraine lacks proper control over the implementation of the orders of the National Securities and Stock Market Commission, which lacks sufficient institutional independence. In addition, it should be noted that there are a number of smaller but also significant problems, including:

- The Multilateral Memorandum of Understanding on Advice and Cooperation and Information Exchange (IOSCO MMoU) has not been signed. This document will allow for the exchange of experience between regulators in preventing unfair behavior of securities market participants;

- Abuses in the securities market that are not detected or properly investigated. The most common are violations in the registration of securities issues; conducting certain types of professional activities in the stock market without a valid license; incomplete or inaccurate information about the activities and financial condition of issuers; untimely execution or non-execution of decisions, resolutions, orders of the NSSMC to eliminate violations; disclosure of confidential, "insider" information; non-compliance with the terms of the securities prospectus; placement and distribution of securities advertising without its prior submission to the NSSMC;

- Inaction of the body that was supposed to monitor monopolies allowed majority owners to control minority shareholders. Free float for most large securities market participants does not exceed 10%, and in reality, it is as low as 0%. The squeeze-out procedure against minority shareholders is extremely common.

One of the impetus for improving the legislation came in 2018 with the support of the EBRD. With the participation of the NSSMC, a number of legislative acts regulating the securities market were revised, including the Laws of Ukraine "On the Depository System of Ukraine", "On State Regulation of Capital Markets and Organized Commodity Markets", "On Collective Investment Institutions", and "On Capital Markets and Organized Commodity Markets". The main changes were related to the powers of the NSSMC in terms of licensing of market participants, operation of depository and clearing institutions, risk management principles, access of central counterparties to trading platforms, requirements for reporting on transactions, setting prices for services, etc.

Separately, the concept of legislative changes presented in 2018 proposed to bring the activities of electronic trading systems in line with the requirements of the Regulation on the Functioning of Stock Exchanges. According to this provision, electronic trading systems must ensure the acceptance, processing and transmission of orders from exchange trading participants; access of exchange trading participants during the trading session; preparation of information necessary for the execution of exchange contracts; protection of information formation and maintenance of databases on the course and results of exchange trading; constant access of the Commission to the exchange trading process on-line; maintaining orderly conditions for algorithmic trading and avoiding abuse; the possibility of canceling erroneous orders; calculation of price volatility indicators.

In addition, the NSSMC, together with the NBU, is trying to develop new requirements for licensing stock intermediaries and service organizations, as there are financial institutions on the market that have signs of fictitiousness.

First of all, it would be logical to pay attention to the US legislation regulating the securities market, as the US stock market is one of the most developed and is a benchmark for other securities markets. U.S. legislation in terms of regulating securities markets, and in general, has two levels – federal and state. The laws do not exist on their own but are supplemented by rules and regulations that explain the practical aspects of their application. The main regulator of stock exchanges in the United States is the U.S. Securities and Exchange Commission (SEC), the activities of this organization are regulated by laws, some of which were adopted during the Great Depression.

Interestingly, the regulation of the US stock market is mostly self-organized. The U.S. Securities and Exchange Commission has limited functions, and its activities are complemented by self-regulatory organizations such as the New York Stock Exchange, NASDAQ, and the Chicago Board Options Exchange. These organizations set their own rules for market participants and ways to punish violators. The main principle of the securities market is the disclosure of reliable information to shareholders. The US government and self-regulatory organizations prioritize the establishment of fair, orderly, and efficient markets; investor protection; and transparency of information; and, compared to European regulators, investor categorization is less mandatory. In the latter regard, the main difference from continental regulators is the investor protection rules, namely, the system protects all investors, but with certain differences for institutional investors.

The United States of America has eight major pieces of legislation that regulate the securities market. These include:

– Securities Act of 1933. This document regulates the procedure for providing financial information about securities and specifies that it should serve investors, not the government, and prohibits fraud in the registration and trading of securities. In addition, this act establishes the right of investors to claim damages if the information provided to them was unreliable. However, as always, there were certain drawbacks, as this document required the SEC to provide truthful information but did not guarantee its accuracy, did not regulate the secondary market for securities, and set restrictions under which the issuer could not advertise its securities and could not sell them to more than 35 non-accredited investors.

– Securities Exchange Act of 1934. This document defines the powers of the US Securities and Exchange Commission, which include registration and regulation of brokerage firms, agents, clearing companies, and self-regulatory organizations (New York Stock Exchange, NASDAQ, Chicago Board Options Exchange, and the Financial Industry Regulatory Authority (FINRA)). This document also establishes prohibited types of behavior for securities market participants and grants the US Securities and Exchange Commission disciplinary powers over market participants. For companies with assets exceeding USD 10 million and securities held by more than 500 owners, the document establishes the frequency of filing reports, which are available for review through the SEC's EDGAR. However, hedge funds were left out of the picture, as they could have avoided most of the provisions of the law.

– Trust Indenture Act of 1939. This document was fully dedicated to regulating the circulation of debt securities. The Act stipulated that bonds could not be sold if the agreement between the issuer and the holder did not meet the standards, and also made it mandatory to have a written agreement for the sale of bonds worth more than USD 5 million. The document granted investors the right to take independent legal action against issuers.

– Investment Company Act of 1940. This document established the requirements for applications, fees, financial disclosure, and responsibilities of investment companies. The Act also regulated the operations of affiliates and underwriters, accounting and auditing, distribution, redemption, and repurchase of securities, and actions in case of fraud. The purpose of this document was to reduce conflicts of interest in securities trading.

– Investment Advisers Act of 1940. This act provided for registration with the U.S. Securities and Exchange Commission and requirements for companies and individuals that are financial advisors. However, such requirements were established only for advisors to investment companies or with assets exceeding USD 100 million.

– Sarbanes-Oxley Act of 2002. This document introduced stricter corporate compliance and criminal penalties for violations of accounting rules or submission of inaccurate financial statements and defined rules for the storage and destruction of accounting and other financial documents. It also established strict requirements for information technology, accounting, and audit departments of securities market participants.

– Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. After the 2008 crisis, the United States needed to change its approach to monitoring the financial stability of financial services companies. The main focus was on preventing abuses in mortgage lending. The act defined the obligation of lenders to disclose information in a form convenient for consumers, introduced centralized exchanges for swap trading, and created new approaches to credit rating assessment.

– Jumpstart Our Business Startups Act of 2012. With this document, the legislator tried to give more freedom to small and young companies by the standards of the US economy and relaxed the reporting and disclosure requirements of the US Securities and Exchange Commission for companies with revenues of less than USD 1 billion, and allowed them to advertise their securities. This defined crowdfunding in the legal plane. However, such actions have increased access to riskier venture capital investments.

Securities market regulation in the European Union is somewhat different in principle from that in the United States. However, Ukraine will need to consider the provisions of the former, as the Association Agreement with the European Union provides for the adaptation of national legislation to the provisions of the Markets in Financial Instruments Directive, version II, Markets in Financial Instruments and amending Regulation, European Market Infrastructure Regulation, Settlement Finality Directive, and Financial Collateral Directive.

Analyzing the EU regulations and directives on stock markets, it can be noted that the main goal is to protect investors and maintain market stability. The peculiarity of securities market regulation in the EU is that different regulators set different priorities, some of them define fairness and transparency as the main goal, while others – efficiency and liquidity.

In the European Union, the main regulatory framework for the regulation of stock markets is also larger and includes 26 regulations:

– Markets in Financial Instruments Directive II of 2018. This directive applies its rules to all types of financial investments, trading, and the work of professional securities market players. In addition, it severely restricts the possibilities of over-the-counter trading, requires transparency of costs, and improved transaction accounting and reporting requirements. The document restricts anonymous trading and creates conditions for the development of electronic trading.

– European market infrastructure regulation of 2011. The regulation increased transparency requirements for OTC derivatives markets, mitigated credit risks and created a mechanism for recognizing central counterparties outside the European Union.

– Central Securities Depositories Regulation. This document unifies the requirements for central securities depositories in the European Union. The regulation increases the security of securities settlements and creates conditions for the establishment of an integrated settlement market by blurring the distinction between national and cross-border securities transactions.

– Securitization Regulation. The regulation generally outlines the issues of simple, transparent, and standardized securitization.

– Short selling Regulation. The regulation introduces a requirement that short positions in equity and debt securities must be covered and reported to the relevant regulators, which will result in increased transparency of short positions.

– Benchmarks Regulation. The regulation introduces the supervision of benchmark administrators through registration with the European Securities and Markets Authority (ESMA).

– Capital Requirements Directive. The Directive introduces prudential indicators for assessing credit institutions and investment firms, prohibiting central banks from relying on Moody's and S&P ratings.

– Undertakings Collective Investment in Transferable Securities. The Directive harmonized the management and sale of funds, which means that a fund must be registered in the EU and can be sold to investors from anywhere in the world based on uniform regulatory and investor protection requirements.

– Alternative Investment Fund Managers Directive. The Directive introduced marketing standards aimed at attracting private capital, remuneration policy, risk monitoring and reporting, as well as general accountability.

– The European Venture Capital Fund Regulation. The Regulation introduces a single (voluntary) certificate for managers of alternative investment funds among all member states of the European Union.

– European Social Entrepreneurship Funds Regulation. The regulation is aimed at simplifying the procedure for investing in funds that focus on social projects.

– European Long-Term Investment Fund Regulation. Regulation that introduces the mandatory use of a depository when investing in long-term projects in the real sector of the economy.

– Market Abuse Regulation. The regulation strengthens liability for disclosure of "insider" information and market manipulation and obliges financial institutions to train staff in fair play.

– Directive on criminal sanctions for market abuse. The Directive stipulates that companies and individuals will be held liable for financial offences under national law.

– Credit Rating Agencies Regulation. The Regulation introduces higher standards of integrity, responsibility, good governance, and independence of credit rating agencies to protect investors.

– Investor-Compensation Schemes Directive. The Directive introduces a guarantee of compensation for investments, in addition to covering investment risk.

– Transparency Directive. The Directive establishes uniform requirements for annual and semi-annual financial reports of securities issuers.

– Securities Financing Transactions and of Reuse Regulation. The Regulation introduces new requirements to ensure transparency in the use and disbursement of repo transactions.

– Prospectus Regulation. The regulation introduces a unified registration document certifying a company that has securities listed on a stock exchange.

– Regulation of Packaged Retail and Insurance-based Investment Products. The regulation introduces retail investment and insurance products in the European Union that may be offered by banks or other financial institutions as an alternative to savings accounts.

– Settlement Finality Directive. The Directive obliges the members of the European Union to inform the European Securities and Markets Authority about payment and settlement systems. It is aimed at reducing the risk associated with participation in payment and securities settlement systems.

– Financial Collateral Arrangements Directive. The Directive allows the lender to immediately realize the collateral in the course of the borrower's bankruptcy proceedings.

– Financial Conglomerates Directive. The Directive provides additional tools and imposes more responsibilities on the relevant supervisory authorities of the Member States of the European Union for financial conglomerates and establishes methods for calculating the overall solvency of the conglomerate.

– Anti-money laundering Directive. The Directive is aimed at preventing the legalization of illegally obtained funds or terrorist financing by describing the latest opportunities to counteract these phenomena.

– Distance Marketing of Consumer Financial Services Directive. The Directive is aimed at protecting investors who sign a financial services contract remotely and sets out the requirements for information that investors must receive before entering into a contract.

– Directive on the admission of securities to official stock exchange listing and on information to be published on those securities. The Directive authorizes the Member States of the European Union to establish internal requirements for the listing of securities.

Trends in global capital markets show that local markets should adjust their approaches to building systems for recording ownership and executing securities transactions following international standards. Such international standards are developed by international organizations such as Group of 30 (G-30), Association of European Central Securities Depositories, ECSDA, International Organization of Securities Commissions (IOSCO), International Securities Services Association (ISSA), Bank for International Settlements (BIS), Committee of European Securities Regulators (CESR), European Central Bank (ECB), Asia-Pacific Central Securities Depository Group (ACG), the Giovannini Group (GG). The purpose of developing common standards and recommendations is to improve the process of interaction between participants in securities transactions and clearing, reduce risks, and improve the management of the depository system.

One of the first recommendations for building a securities market infrastructure was set out in the 1989 Group of 30 reports. The basis of these recommendations was later improved by the International Securities Services Association (ISSA). This report focused on the organizational structure and management of custody activities, which should significantly improve and simplify the servicing of local and cross-border securities transactions.

Also in 1990, the Group of 30 developed the report "International Clearing and Settlement", in which it presented 20 recommendations to improve the relationship between participants in securities settlement and clearing, reduce the risks of transactions in the securities markets, and improve the management of the settlement and clearing system in the global securities markets.

The recommendations of the Giovannini Group, which advises the European Union Commission on financial market issues, play a significant role in improving the stock market in continental Europe. The group identified 15 barriers to securities settlement and clearing in the global stock market and developed recommendations for their elimination. They mainly concern cross-border securities trading and standards governing the cross-border settlement of securities transactions. These recommendations pay considerable attention to the creation of a unified technological framework for settlements (barrier No. 1), propose to eliminate differences in the practice of issuing securities (barrier No. 8), and focus on the streamlining of settlement periods and the problems of remote access to national settlement and clearing systems (barriers No. 4-6), proposals are made to eliminate discrepancies in the legal system (barriers No. 13-15), and it is recommended to eliminate taxes on securities transactions (barrier No. 12) to ensure equal conditions for national and foreign investors.

European organizations interested in the development of the securities market also provide interesting recommendations. One of them is the Center for European Reform, which deals with issues related to the reform of the European Union. The Center for European Reforms prepared a report "The Future of the European Securities Market" on the creation of a single market for financial services within the EU and in 2004 adopted the Markets in Financial Instruments Directive. The Directive establishes a single market and regulatory regime for financial services within the European Union, replacing the current Investment Services Directive and aiming to ensure that market participants can freely interact with counterparties in other EU countries within the same timeframe and on the same terms as in their own country.

Conclusions. In the context of studying the legislative framework of foreign countries in terms of regulating the activities of securities markets, domestic scholars should immediately draw parallels with the Ukrainian

legislative framework to facilitate the work of the legislator in terms of adopting best practices. The Ukrainian stock market has not only the problem of the regulatory framework, but also other problems mentioned and described in my articles. At the same time, the legislative framework is gradually, but not so dynamically and without focusing on priority areas, being brought in line with the standards of the European Union's securities market regulation. Based on the analyzed materials and experience of state regulation of the stock markets of the European Union and the United States of America, the following provisions may be proposed to the state:

- Establish the obligation of issuers to ensure a free float of at least 15-25% for new issues and the obligation to openly sell >15% of shares of previous issues. Relaunch the work of the Antimonopoly Committee in cooperation with the National Securities and Stock Market Commission in terms of controlling the beneficial owners of securities issuers.

- Ensure the signing of the Multilateral Memorandum of Understanding on Advice and Cooperation and Information Exchange (IOSCO MMoU).

- Criminalize liability for offences in the securities market in terms of penalties for misrepresentation or failure to submit information about issuers, disclosure and use of "insider" information, and failure to comply with decisions of the National Securities and Stock Market Commission and the Antimonopoly Committee of Ukraine.

- Complete the process of simplifying access to securities market instruments for household investors and ensure their proper protection.

- To change the practice of investing only in government debt securities and to transfer the flows to investments in the real economy by providing tax or other benefits.

- Adopt the experience of the United States of America in combining state and self-regulatory approaches to supervising securities market participants.

By adopting and implementing foreign experience and following the above-mentioned simple steps, the foundations for the operation and healthy competition of securities market participants will be created.

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JEL E22, E44, G24

Marko Holovach, Postgraduate Student, Ivan Franko National University of Lviv. **Analysis of the regulatory framework of foreign countries in terms of the functioning of securities markets as an integral part of ensuring its security.**

This article conducts an in-depth analysis of the regulatory frameworks governing securities markets in foreign countries, emphasizing their role in ensuring market security and functionality. By examining the legislative frameworks of countries such as the United States and various European Union member states, the article aims to identify best practices that can be applied to enhance the regulatory environment of domestic securities markets. The study begins by exploring key regulations in the United States, such as the Sarbanes-Oxley Act of 2002, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, and the Jumpstart Our Business Startups Act of 2012. These laws introduce stricter compliance measures, define rules for financial document storage, enhance transparency, and promote accessibility for small businesses. Shifting focus to the European Union, the article examines the extensive regulatory landscape comprising directives and regulations such as the Markets in Financial Instruments Directive II, European market infrastructure regulation, and Prospectus Regulation. These regulations address transparency, accountability, investor protection, and standardization in areas ranging from trading practices to securitization and benchmarks. The article also highlights the significance of international organizations in shaping regulatory standards for securities markets, including the Group of 30, the International Organization of Securities Commissions, and the Association of European Central Securities Depositories. Their efforts in developing common standards and recommendations play a vital role in improving interaction among market participants, reducing risks, and enhancing the management of depository systems. Drawing from these analyses, the article presents valuable insights into the Ukrainian securities market. Recommendations are proposed to align domestic legislation with international standards, focusing on areas such as free float requirements, cooperation and information exchange, criminal liability, investor protection, diversification of investments, and the incorporation of state and self-regulatory approaches. By adopting and implementing foreign experience, the article asserts that a balanced and competitive securities market can be achieved. It underscores the importance of establishing a proper legal framework, ensuring compliance by issuers, investors, and regulatory bodies, and fostering collaboration among relevant stakeholders. In conclusion, this comprehensive analysis of foreign regulatory frameworks provides a roadmap for enhancing the regulatory environment of domestic securities markets. By embracing international best practices, policymakers and market participants can strengthen market security, improve functionality, and promote investor confidence, ultimately contributing to the long-term growth and stability of the securities market.

Key words: securities market, directives, regulations, laws, standardization.

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JEL E22, E44, G24

Головач Марко Юрійович, аспірант, Львівський національний університет імені Івана Франка. **Аналіз нормативно-правової бази зарубіжних країн щодо функціонування ринків цінних паперів як невід'ємної складової забезпечення його безпеки.**

У цій статті проводиться поглиблений аналіз нормативно-правової бази, що регулює ринки цінних паперів у зарубіжних країнах, з акцентом на її ролі у забезпеченні безпеки та функціональності ринків цінних паперів. Вивчаючи законодавчу базу Сполучених Штатів Америки та Європейського Союзу, автор має на меті визначити найкращі практики, які можуть бути застосовані для покращення регуляторного середовища вітчизняних ринків цінних паперів. Дослідження починається з аналізу ключових нормативно-правових актів США, таких як Закон Сарбейнса-Окслі 2002 року, Закон Додда-Франка про реформування Уолл-стріт і захист прав споживачів 2010 року та Закон «Про стимулювання стартапів у сфері бізнесу» 2012 року. Ці закони запроваджують суворіші заходи з дотримання законодавства, визначають правила зберігання фінансових документів, підвищують прозорість та сприяють доступності для малого бізнесу. Зміщуючи фокус на Європейський Союз, у статті розглядаються директиви та регламенти, такі як Директива про ринки фінансових інструментів II, регулювання європейської ринкової інфраструктури та регулювання проспектів емісії. Ці нормативні акти стосуються прозорості, підзвітності, захисту інвесторів та стандартизації в різних сферах – від торгових практик до сек'юритизації та бенчмарків. У статті також підкреслюється важливість міжнародних організацій у формуванні регуляторних стандартів для ринків цінних паперів, включаючи Групу 30, Міжнародну організацію комісій з цінних паперів та Асоціацію європейських центральних депозитаріїв цінних паперів. Їхні зусилля з розробки спільних стандартів та рекомендацій відіграють важливу роль у покращенні взаємодії між учасниками ринку, зниженні ризиків та вдосконаленні управління депозитарними системами. На основі цього аналізу в статті представлено цінну інформацію про український ринок цінних

паперів. Пропонуються рекомендації щодо приведення вітчизняного законодавства у відповідність до міжнародних стандартів, зосереджуючи увагу на таких сферах, як вимоги щодо вільного обігу цінних паперів, співпраця та обмін інформацією, кримінальна відповідальність, захист інвесторів, диверсифікація інвестицій, а також поєднання підходів державного та саморегульованого регулювання. У статті стверджується, що шляхом запозичення та впровадження іноземного досвіду можна досягти збалансованого та конкурентного ринку цінних паперів. Підкреслюється важливість створення належної правової бази, забезпечення її дотримання емітентами, інвесторами та регуляторними органами, а також сприяння співпраці між відповідними зацікавленими сторонами. Насамкінець, цей всебічний аналіз зарубіжних регуляторних систем надає дорожню карту для покращення регуляторного середовища вітчизняних ринків цінних паперів. Використовуючи найкращі міжнародні практики, політики та учасники ринку можуть зміцнити безпеку ринку, покращити його функціональність та підвищити довіру інвесторів, що в кінцевому підсумку сприятиме довгостроковому зростанню та стабільності ринку цінних паперів.

Ключові слова: ринок цінних паперів, директиви, регуляції, закони, стандартизація.