HOW THE EU ASSOCIATION AGREEMENT SHAPES UKRAINE'S FINANCIAL SERVICES MARKET REGULATION

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Summary. This article delves into the impact of the European Union (EU) Association Agreement on Ukraine's financial services market regulation. The study examines how the harmonization of Ukrainian legislation with EU norms has shaped the financial services sector’s development and integration into the European economic area. Research Objectives: The main objectives of this research are to analyze the extent to which Ukrainian legislation aligns with the acquis EU in the financial services domain and to identify the challenges and opportunities arising from this process. Additionally, the study aims to assess the implications of the EU Association Agreement on Ukraine's financial market stability, transparency, and regulatory oversight. Methodology: To achieve the research objectives, a comprehensive review of relevant literature, EU directives, and regulatory acts concerning financial services was conducted. The study also analyzed official documents related to Ukraine's adaptation to EU norms and the implementation of the Association Agreement. Furthermore, expert opinions and insights from prominent scholars in the field were considered to gain a deeper understanding of the subject. Findings: The analysis reveals that the EU Association Agreement has played a pivotal role in shaping Ukraine's financial services market regulation. The step-by-step adaptation of Ukrainian legislation to the acquis EU has fostered a more unified legal environment for market participants in both Ukraine and EU countries. Notably, the transfer of regulatory functions for the non-banking financial services market to the National Bank of Ukraine has enhanced overall financial stability and brought Ukraine's financial practices in line with international standards. However, certain limitations and restrictions in the cross-border provision of services persist, presenting challenges to fair competition and market access. Despite these hurdles, the successful implementation of the Comprehensive Program for the Development of the Financial Sector until 2020 has contributed to resolving economic issues and restoring macroeconomic stability in Ukraine. As Ukraine continues on its path towards deeper integration with the EU, ongoing efforts and reforms in the financial services market are essential to align with EU norms, foster cooperation, and attract more investments.

Keywords: 1. EU Association Agreement; 2. Financial services market regulation; 3. Harmonization of legislation; 4. Financial market stability; 5. Cross-border provision of services; 6. Integration with the EU.

Introduction: The expedited progress of Ukraine towards membership in the European Union necessitates the updating and revision of the information regarding the adaptation of Ukrainian legislation to the acquis EU. Among the economic sectors that need to be integrated into the European economic area, one of the most critical is the financial services market. Its multidimensionality, complexity of legal
relations it encompasses, specificity of the subject composition, and public national interest – all of these factors influence the degree of harmonization of Ukraine’s legislation with the corresponding EU norms. Moreover, the regulatory framework of the EU in this field is characterized by a significant volume of normative acts of various legal forces and degrees of codification. Furthermore, the implementation process becomes more complicated due to the absence of professionally translated directives and regulations of the EU. This affects the situationally made limited circle of specialists in this field, which creates insufficient public discussion of an important element of doing business - providing and receiving financial services.

Several authors have extensively worked on the topic of harmonization of commercial legislation in this narrow sphere, including Marchenko B.V., Pozniak Ya.S., Zamryha A., Svystun L.A., Shovkoplyas G.M., Drachov O.V.

As Marchenko B.V. notes, "Regarding the sphere of economical legislation, it will undoubtedly be legitimate to define the general purpose of harmonization as creating a sufficiently unified legal environment in Ukraine for all subjects of market relations of Ukraine and EU countries"[1, p.303].

One must agree with Pozniak Ya.S. when he states that "The biggest problem in the process of implementing the Association Agreement with the EU is the lack of communication and dialogue with business representatives to explain the proposed legislative novelties and advantages after their introduction for market participants"[2, p.177].

Drachov O.V. rightly points out that "For Ukraine, it remains essential to carry out reforms in a wide range of issues, including the sphere of the market of financial services, which is one of the main components of Ukraine’s financial and economic system. Integration of Ukraine into the EU is impossible without fully accepting the principles and standards that apply within the community. Therefore, the inclusion of Ukrainian financial services markets in the European system is only possible if they comply with the criteria and standards of the European Union"[3, p.145].

Analysis: Article 133 of the Association Agreement [4] emphasizes the recognition by the Parties of the importance of bringing the current legislation of Ukraine closer to the legislation of the European Union. Ukraine ensures a step-by-step adaptation of its normative base to the acquis EU.

To achieve a coordinated, simultaneous, and rapid process of adaptation of Ukrainian legislation, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On the National Program for Adaptation of Ukrainian Legislation to the Legislation of the European Union. List of Ukrainian Legislation and the EU Acquis in Priority Adaptation Sectors (Sections 2-7)" on March 18, 2004, No 1629-IV[5].

In the introduction to Section 7 Financial Services of the mentioned list of regulatory acts, emphasis is placed on the necessity of proper regulation of financial services in accordance with EU law. This takes into account the primary goal of the European Union - the establishment of the Single Market within the EU. The powers of EU institutions in this area have been formulated since the inception of the European Economic Community.

Indeed, various markets of financial services are governed by a series of regulatory acts, which encompass their specific nature. Among these acts, we can highlight the provisions regulating the freedom of movement of capital and
payments (Articles 56-60 of the EC Treaty), the freedom to provide services (Articles 49-55 of the EC Treaty), and the freedom of establishment (Articles 45-48 of the EC Treaty). Additionally, the financial services market is significantly influenced by the currency policy of the EU and the activities of the European Central Bank (ECB). The objectives of the currency policy and the organizational principles of the ECB are delineated within Chapter VII of Part Three of the EC Treaty.

Special regulation of specific financial services markets, such as banking, insurance, and securities market, is governed by secondary legislation of the European Union.

At this stage, it is important to acknowledge the need for a two-tier analysis of EU norms to determine the scope of Ukrainian legislation and the depth of its adaptation.

Moving forward, an analysis of the regulation of the financial services market in the EU should commence with a review of general definitions. Assistance can be sought from decisions of the Court of the European Union that interpret fundamental terms such as “freedom of establishment” and “freedom to provide services.”

According to Chapter 7 of the Association Agreement, titled “Current Payments and Capital Movement,” Article 144 states: “The Parties undertake to impose no restrictions and shall allow, in freely convertible currency, in accordance with the provisions of Article VIII of the Articles of the Agreement of the IMF, any payments and transfers on the current account of balance of payments between the Parties.”

The mentioned fundamental principles of conducting economic activities are reflected in the provisions of the current economic legislation of Ukraine and serve as the guiding principles for economic operations, while also shaping the legal economic order.

Article 5 Economic code of Ukraine named “Constitutional fundamentals of legal order in the economic sector” contain the following definition: Legal economic order in Ukraine shall be secured based on the best possible combination of market self-regulation of economic relations between economic entities and state regulation of macroeconomic processes, pursuant to the constitutional requirement of responsibility of the state before an individual for its activity, and declaration of Ukraine as a sovereign, independent, democratic, social and constitutional state.

Indeed, Article 76 of the Ukrainian Law “On Payment Services”[12], titled "Purpose of State Regulation," includes among its objectives of State regulation of the payment market, the facilitation of integration into European and global payment markets. According to the preliminary analysis conducted by the Cabinet of Ministers of Ukraine, the highest level of success in adapting legislation to EU law has been observed precisely in the payment services market.

Section 5 "Economic and Sectoral Cooperation," Chapter 12, Articles 383-385 of the Association Agreement, encompasses the principles and directions of state regulation in the financial services market and establishes the basis and scope for cooperation among competent state authorities aimed at harmonizing regulation. This chapter reinforces the encouragement of cooperation between relevant regulatory and supervisory bodies, including the exchange of information and experiences regarding financial markets and other related measures. It envisages
the development of administrative capacity for these bodies, particularly through personnel exchange and joint training. Each Party to the Agreement makes the necessary efforts to ensure the implementation of international regulatory and supervisory standards in the field of financial services. These international standards include, among others, the "Core Principles for Effective Banking Supervision" by the Basel Committee, the "Core Principles for Insurance Supervision" by the International Association of Insurance Supervisors, the "Objectives and Principles of Securities Regulation" by the International Organization of Securities Commissions, and others.

This approach to cooperation in the field of financial services among the Parties to the Agreement contributes to market stability and transparency, safeguards investor interests, and promotes favorable conditions for investment activities. Such measures are crucial for fostering economic growth and cooperation between the Parties to the Association, particularly in the context of post-war Ukraine.

The adaptation of state regulation in the financial services market, starting from July 1, 2020, led to the transfer of regulatory functions for the non-banking financial services market, including insurance, leasing, factoring companies, credit unions, pawnshops, and other financial entities, to the National Bank.

"The financial sector reform over the past five years has contributed to macro-financial stabilization and improved financial stability, reliability, and transparency of banks. The 'split' provides the National Bank with the opportunity to continue ensuring financial stability in a more comprehensive and effective manner, encompassing not only the banking sector but also the non-banking sector. Additionally, it should facilitate further integration of Ukraine into the EU as part of the implementation of EU directives and other documents, and aligning the national regulatory framework with international standards," emphasized the Head of the National Bank of Ukraine [7].

This reform has been instrumental in enhancing the overall stability of the financial system, promoting better regulatory oversight, and aligning Ukraine's financial practices with international standards. By extending its regulatory scope to encompass both banking and non-banking sectors, the National Bank aims to foster a more resilient and integrated financial environment in the country. Furthermore, this reform is seen as a significant step towards bringing Ukraine's financial regulations in line with the EU directives, thus enhancing the nation's prospects for deeper integration with the European Union.

In this context, it is appropriate to concur with the opinion of Shovkoplyas H., who comes to the conclusion that "indeed, as Ukraine is on the path of integration into the global economic space, including accession to the EU, significant steps are being taken by the state authorities in the field of financial services markets in Ukraine to improve the legislation in this area and adapt it to the EU legislation" [8].

As a result of the commitments made by Ukraine, the Comprehensive Program for the Development of the Financial Sector until 2020 was adopted [9]. "The National Bank implemented the Comprehensive Program for the Development of Ukraine's financial sector until 2020 to achieve sustainable development of the financial market in 2015-2019. We reformed the country's financial system to
liberalize financial markets, stimulate fair competition, overcome the consequences of the economic crisis, and regulate markets," stated the National Bank of Ukraine [10].

The level of implementation of the Program was deemed acceptable, considering the complexity and comprehensiveness of the tasks faced by the regulators. The completion of the remaining tasks was transferred to the Strategy for the Development of Ukraine's financial sector until 2025 [11]. "The successful implementation of most of the tasks outlined in the Program contributed to the resolution of numerous economic issues accumulated in Ukraine in previous years and the restoration of macroeconomic stability in Ukraine after the crisis of 2014-2015," noted the regulator [10].


Returning to the above-mentioned, the National Bank of Ukraine, the National Securities and Stock Market Commission, the Ministry of Finance of Ukraine, and the Individual Deposit Guarantee Fund are implementing the Strategy for the Development of the Financial Sector of Ukraine until 2025. Despite the impact of the full-scale military aggression of Russia and the global COVID-19 pandemic during 2020-2022, financial regulators have been able to make progress in implementing the Strategy for the Development of the Financial Sector of Ukraine until 2025. As of the end of 2021, 85% of the roadmap measures for document implementation have been completed or are being executed according to the approved schedule.

In 2022, due to the full-scale war of Russia against Ukraine, financial regulators are also reviewing the Strategy and planning to present its update in 2023, taking into account the priority measures outlined in the Plan for the Recovery of Ukraine, developed within the framework of the National Council for Ukraine's Recovery.

According to Chapter 6 on the Establishment, trade in services and electronic commerce in Section IV of the Association Agreement, the Parties, reaffirming their respective rights and obligations under the WTO Agreement, hereby lay down the necessary arrangements for the progressive reciprocal liberalisation of establishment and trade in services and for cooperation on electronic commerce.

Indeed, according to Article 86, paragraph 13 of the Association Agreement, "services" are understood as "any service in any sector except services supplied in the exercise of governmental authority" which includes financial services as well.

The Law of Ukraine "On Financial Services and State Regulation of the Financial Services Market" refers to financial services operations with financial assets carried out for the benefit of third parties at their own expense or at the expense of these persons, and in cases provided for by law, and at the expense of financial assets attracted from other persons, for the purpose of making a profit or preserving the real value of financial assets.

Chapter 3 of the Association Agreement regulates the procedure for the cross border provision of services. It establishes the scope of application of this procedure, imposes restrictions on certain types of services (Article 92). With respect to market access through the cross-border supply of services, each Party shall accord services and service suppliers of the other Party treatment no less favourable than that
Appendix XVI-B contains a List of Commitments in which certain EU countries impose limitations on the provision of certain types of services by Ukrainian economic operators on their markets. Such limitations are implemented through the establishment of market access clauses or non-application of the national treatment to services and legal entities from Ukraine.

It should be noted that certain measures of state regulation of economic activity should not be considered discriminatory; instead, they are applied to legal entities of the agreement parties if they do not constitute market access restrictions or limitations on national treatment. Such means of state regulation include: the requirement to obtain licenses, obligations related to universal service, the recognition of qualifications in regulated sectors, the need to pass specific exams, including language exams, non-discriminatory requirements that certain activities cannot be carried out in nature reserves or areas of special historical and artistic interest.

Furthermore, the mentioned list does not affect the existence of state monopolies and exclusive rights.

Indeed, Sector 7 defines a list of financial services that fall under the national and most favourable treatment, taking into account limitations imposed by individual countries. Among them are insurance services and related services, banking and other financial services.

It is worth mentioning that in addition to the clause regarding the types of financial services, there are requirements concerning the entities that are entitled to provide such services in the participating countries. According to Annex XVI-A of the Agreement, horizontal limitations are applied to legal entities and their branches regarding the difference in treatment between branches and subsidiaries. Foreign branches may only be granted permission to operate within a Member State's territory under conditions specified in the relevant legislation of that Member State, and they may be required to comply with specific prudential requirements.

Annex XVI-A introduces the following sectoral reservations for all EU countries: Only firms having their registered office in the European Union can act as depositories of the assets of investment funds. The establishment of a specialised management company, having its head office and registered office in the same Member State, is required to perform the activities of management of unit trusts and investment companies.

Additionally, certain countries have implemented their own restrictions regarding the legalization of financial institutions' activities in their markets.

Conclusions: In conclusion, Ukraine’s Association Agreement with the European Union has played a significant role in shaping the regulation of its financial services market. The agreement necessitates the harmonization of Ukrainian legislation with EU norms and standards, aiming to create a unified legal environment for market participants in both Ukraine and EU countries. To achieve this, Ukraine has been gradually adapting its normative base to align with the acquis EU.

The financial services market, being one of the most critical sectors for
integration into the European economic area, has undergone significant changes and reforms. This includes the transfer of regulatory functions for the non-banking financial services market to the National Bank of Ukraine, enhancing overall stability and aligning the financial practices with international standards.

The Strategy for the Development of Ukraine's Financial Sector until 2025 outlines five strategic directions, including financial stability, macroeconomic development, financial inclusion, development of financial markets, and innovative development. The successful implementation of most tasks from the Comprehensive Program for the Development of the Financial Sector until 2020 has contributed to the resolution of economic issues and the restoration of macroeconomic stability in Ukraine.

The Association Agreement emphasizes the importance of cooperation between competent state authorities and the exchange of information and experiences regarding financial markets. The agreement encourages the alignment of regulatory and supervisory standards with international best practices.

Despite the challenges posed by russian aggression and the global pandemic, financial regulators have made progress in implementing the financial sector's development strategy. As of the end of 2021, 85% of the roadmap measures have been completed or are being executed according to the approved schedule.

However, certain limitations and restrictions still exist in the financial services market, particularly with regard to cross-border provision of services. Both Ukraine and EU countries have put forth commitments and limitations in Annex XVI-B, affecting the provision of certain types of services by economic operators from Ukraine in their markets.

Overall, the Association Agreement has contributed to enhancing Ukraine's financial regulatory environment, fostering cooperation with the EU, and promoting economic growth and stability. As Ukraine continues its journey towards deeper integration with the European Union, further efforts and reforms in the financial services market will be crucial to aligning with EU norms and standards, ensuring fair competition, and attracting more investments.

References:


