

Iryna LYCHENKO
Lviv Polytechnic National University,
Educational and Research Institute of Law,
Psychology and Innovative Education,
Head of the Civil Law and Procedure Department,
Dr. Habil. (Law), Full Professor
iryna.o.lychenko@lpnu.ua
ORCID: 0000-0002-4838-3579

THE NATIONAL BANK OF UKRAINE AS AN SUBJECT OF THE ADMINISTRATION OF TRADE IN CURRENCY VALUES

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Abstract. The article is devoted to the definition of the features of the functioning of the currency market in modern conditions, the analysis of existing challenges and threats caused by military actions, the economic situation of the state, the activities of entities that play an important role in the public administration of banking and financial legal relations. A thorough analysis of the peculiarities of the implementation of functions by the National Bank of Ukraine in the field of public administration of currency trading is presented.

Particular attention is paid to determining the competence of the National Bank of Ukraine as a subject of currency control. It was established that in Ukraine it is the National Bank of Ukraine that plays an important role as the subject of foreign exchange control, in particular, regarding compliance with the rules of regulation of foreign exchange transactions in relation to banks, persons who have received a license to carry out foreign exchange transactions, implements scheduled and unscheduled inspections. The effective organization of public administration of the defined sphere of financial relations is achieved through the adoption of normative legal acts of the Board of the National Bank of Ukraine.

The peculiarities of the organization and implementation of financial monitoring and currency supervision by the National Bank of Ukraine are analyzed. It was determined that an important area of activity of the National Bank of Ukraine is the protection of the rights of consumers of financial services, supervision of compliance by banks and other providers of financial services with the current laws on the protection of consumer rights.

The transformational changes in the banking system that have been taking place in recent years under the leadership of the National Bank of Ukraine, including the digitization of the state's banking sector, have been analyzed. It was found out that the military actions led to the radical actions of the National Bank of Ukraine in the sphere of administration of trade in currency values, which helped to calm the panic of the population in the conditions of the beginning of the war in the country.

Keywords: currency; foreign exchange market; foreign exchange values; public administration; trading of foreign exchange values; public administration of trading of foreign exchange values.

Formulation of the problem. The economic development of the state is impossible without the development of the foreign exchange market, revision of instruments for the implementation of foreign

exchange policy, formation of perfect mechanisms for the administration of trade in foreign exchange values, and provision of public administration bodies with sufficient competence for this. All this has a direct impact on strengthening the economy and increasing the welfare of the population in general.

Special attention of public administration bodies should be focused on the public administration of processes related to the foreign exchange market, in particular the organization of its functioning.

In view of this, the study of the functions of the National Bank of Ukraine as a subject of the administration of currency trading deserves special attention. An in-depth study of these issues will improve the control over such operations, strengthen the protection of the rights of participants in the currency trading market, and the stability of the domestic monetary unit in general.

Analysis of the study of the problem. Certain aspects of the functioning of the National Bank of Ukraine, the renewal of its activity strategy, its implementation of administrative potential in relation to the participants of the foreign exchange trading market, innovations in the development of the banking system in general were reflected in the works of such authors as B. Danylyshyn [1], V. Volokhata [2], L. Szeged [3], S. Yakovenko [4]. However, the issue of public administration of currency trading by the National Bank of Ukraine was considered only in a fragmentary manner. Therefore, it is extremely important in today's conditions to understand the peculiarities of the NBU's implementation of its powers in the specified area, to determine the prospects for improving its implementation of its functions as a guarantor of the protection of the rights of participants in such legal relations, a subject of control and supervision in the field of currency trading.

The aim is a theoretical definition of the peculiarities of the implementation of functions by the National Bank of Ukraine in the field of public administration of trade in currency values.

Presenting main material. There are many entities operating on the foreign exchange market, which perform the functions of sellers of currency, its buyers and intermediaries. Important participants in these relations are commercial banks, bank clients, credit and financial institutions, currency exchanges and other subjects. All of them are involved in transactions related to the purchase and sale of non-cash, cash foreign currency, bank metals, payment documents in foreign currency, etc.

The functioning of the currency market is under the constant influence of political and economic processes in the state, inflationary processes; depends on the stability of the national monetary unit, the balance of payments of the budget, the level of unemployment, the competitiveness of domestic products, and the stability of the national financial system in general. People's confidence in the national currency plays a special role.

The foreign exchange market and its regulation occupy a leading place in the economic policy of the state. The organization of the currency market of Ukraine and currency policy, according to the current legislation, is entrusted to the National Bank of Ukraine.

In the context of the Tax Code of Ukraine, trading in currency values is associated with transactions related to the transfer of ownership of bank metals, national and foreign currency, payment documents, securities denominated in these currencies or bank metals [5].

The functioning of the foreign exchange market is significantly influenced by the trends of dollarization of the economy, when the processes of displacement of the domestic currency by foreign ones take place against the background of the depreciation of the domestic currency due to its instability and, as a result, weak public confidence in the national currency.

Military actions and the economic crisis of recent years had a significant impact on the dominance of such trends, inflationary processes in the state intensified, prices for imported goods rose, the state began to lose control over monetary policy, and the banking system became vulnerable.

In such conditions, the functioning of the foreign exchange market requires the rational influence of state institutions in order to guarantee its stability.

The National Bank of Ukraine should be noted among the most important subjects of the public administration of trade in currency values, which implements a wide range of control powers in order to avoid a currency crisis, identify deviations from the norms of the functioning of this market, establish the level of their danger, etc.

Such central banks play an important role in the public administration of banking and financial relations in many countries. They are important elements of the banking system. However, their creation in many developed countries took place quite recently and dates back to the beginning of the 20th century. In particular, the central bank of Sweden (Riksbank) was formed in 1668. During this period, the Federal Reserve System of the United States and the Bundesbank of Germany emerged. It is such institutions, in addition to performing the functions of the emission center of the state, the subject of ensuring the circulation of money [3, c. 79], perform an important function of public administration of financial and economic legal relations in the state.

In Ukraine, the NBU itself plays an important role as the subject of foreign exchange control, in particular, regarding compliance with the rules of regulation of foreign exchange transactions in relation to banks, persons who have received a license from the NBU to conduct foreign exchange transactions, and implements scheduled and unscheduled inspections. It regulates the procedure for conducting foreign exchange operations, issues and revokes licenses, determines the limits of open currency position for foreign exchange market participants, applies punitive measures for violation of the rules of currency regulation and control.

The NBU's powers are exercised in accordance with the provisions of the Constitution of Ukraine, the Tax Code of Ukraine, the laws of Ukraine "On the National Bank of Ukraine", "On currency and currency operations", "On banks and banking" and many other legal acts.

In particular, in Art. 2 of the Law of Ukraine "On the National Bank of Ukraine" dated May 20, 1999 No. 679-XIV [6] noted that the National Bank of Ukraine performs the function of not only the central bank of Ukraine, but also a special central body of state administration in our country.

The function of public administration in this field involves active work in the field of law-making, organizational, economic and other activities. At the same time, the main task of the NBU is to ensure the stability of the domestic currency [4, c. 264–265].

Scientists note the specificity of the legal status of the National Bank of Ukraine, emphasizing that this status is special. This is due to the fact that this institution does not belong to any branch of government and is independent from other state authorities, with an independent and unmediated goal of activity – ensuring the stability of the domestic monetary unit. It should be emphasized that despite the presence of common characteristics with the authorities, it is nevertheless endowed with a significant difference, since it does not belong to the system of public administration bodies of the country subordinate to the Cabinet of Ministers of Ukraine [7, c. 344].

The main mechanism of public administration of the banking system, the use of which allows the National Bank of Ukraine to ensure its stability, is banking supervision. The aforementioned law outlines it as a system of control measures and active, orderly actions of this institution to ensure compliance by banking and other institutions and individuals with regulatory requirements, guarantee the stability of the banking system, etc.

This law connects the function of public administration of financial relations by the National Bank of Ukraine with state regulation and supervision in accordance with the current legislation of legal entities under public law that provide financial and related services, the definition of the legal basis for the functioning of the banking system of our country and other institutions that provide certain financial services, currency supervision, especially in the conditions of martial law, ensuring cyber protection and information security in the banking and financial sphere, including in the activities of banks, operators of payment systems, technological operators of payment services, other persons implementing their activities in financial markets services.

In general, in domestic science, it is customary to divide the functions of the NBU into public and non-public. The first can manifest themselves in the role of the main and relate to banking regulation, while the second relate to control law-making, methodological, organizational, and international activities. S. Yakovenko notes the special role of this institution as a subject of ensuring the law enforcement function of the state [4, c. 264-265].

An important area of activity of the National Bank of Ukraine is the protection of the rights of consumers of financial services, supervision of compliance by banks and other providers of financial services with current laws on the protection of consumer rights.

At the same time, the extremely broad powers of the National Bank of Ukraine concern the public administration of trade in currency values. In particular, from the content of Art. 45 of the aforementioned law, it follows that it is the NBU that ensures the organization of the foreign exchange market in our country, determines its structure, the procedure for trading currency values on it [6].

The organization of public administration of the defined sphere of financial relations is achieved through the adoption of normative legal acts of the Board of the National Bank of Ukraine. A clear example is the resolution of the Board of the National Bank of Ukraine “On the peculiarities of regulation and supervision of the activity of trading currency values in cash during the period of martial law and amendments to the Resolution of the National Bank of Ukraine dated March 6, 2022 No. 39” dated July 29, 2022 No. 165 [8].

In accordance with this regulatory act, the National Bank of Ukraine initiated the introduction of certain restrictions on institutions authorized to trade currency values. Such restrictions related to informing about the established rates of buying and selling foreign currencies, about the implementation of currency exchange operations in any form, the use of stands with exchange rates, electronic boards with the display of digital values and symbols. A requirement has been established for the equipment of the relevant premises with a technological video control system for customer service.

This normative legal act also regulates in detail the procedure for the implementation of on-site supervision, conducting unscheduled on-site inspections of the mentioned institutions that work on the foreign exchange market [8].

Another important legal act that defines the procedure for the implementation of the supervisory functions of the National Bank of Ukraine as an integral part of the public administration of the defined sphere is the Regulation on the Procedure for the Organization and Implementation of Supervision in the Field of Financial Monitoring, Currency Supervision, Supervision in the Field of Implementation of Special Economic and Other of restrictive measures (sanctions), approved by the resolution of the Board of the National Bank of Ukraine dated June 30, 2020 No. 90.

The provisions of this regulatory act apply to both banking institutions and other providers of financial services, including postal operators who provide services related to currency operations, operators of payment systems, etc. At the same time, the National Bank of Ukraine uses the mechanisms of both on-site supervision and on-site inspections in order to timely detect violations of the requirements of the law regarding financial monitoring, currency supervision, and sanctioning legislation.

In the first case, the NBU conducts an analysis of the work of the financial services provider taking into account a risk-oriented approach without mandatory presence in the premises belonging to the institution being inspected. In the second, a planned or unplanned inspection of such an institution takes place directly at its location, in particular, documents, bank automation systems, information exchange, and the activity itself. The NBU pays special attention to timely detection and avoidance of conflicts of interest during such inspections [8].

The military actions were caused by the radical actions of the National Bank of Ukraine in the field of administration of trade in currency values, which helped to calm the panic of the population in the conditions of the beginning of the war in the country. In particular, the official rate of the hryvnia was recorded at the level of UAH 29.25. per US dollar. Positive trends in the foreign exchange market, a decrease in the inflation rate, stabilization of the banking system, and the formation of gold and foreign

exchange reserves caused the NBU to abandon the fixed exchange rate in October 2023. However, this experience proved the effectiveness of the tools of administration of this sphere of financial and legal relations by the National Bank of Ukraine.

Undoubtedly, the floating exchange rate system is an achievement of countries with a market economy, an important tool for self-regulation of the balance of payments. However, some scientists note that the introduction of these instruments in Ukraine is premature, since the trends in exchange rate liberalization have a negative impact on the country's economy. The foreign exchange market, monetary policy in the conditions of war is too much under the influence of external financial shocks, is completely dependent on foreign borrowing, and the occurrence of a currency crisis predisposes to a banking crisis. They insist on the expediency of using the mechanisms of the currency corridor, following the example of the Republic of Poland. The introduction of the regime of unregulated exchange rate floating was preceded by a long transitional period (two years). A corridor of exchange rate fluctuations (zloty to euro) of up to 15% was introduced. L. Szeged believes that such measures are unacceptable in the conditions of a systemic crisis in the country. [3, c. 79].

The development strategy of the National Bank of Ukraine until 2025 is formed in view of new challenges and threats to the state's financial system in war conditions, and the vision and mission of its implementation is based on the orientation of strengthening resistance to military aggression and forming the financial basis for the restoration of the state's infrastructure. In such conditions, the National Bank became the guarantor of the financial stability of the state and the guarantee of financial inclusion of citizens. These processes should be based on a well-thought-out policy of the NBU regarding price and exchange rate stability, ensuring balanced regulation and supervision aimed at the development of the financial market [9].

Under the leadership of the National Bank of Ukraine, large-scale changes are taking place in the country's banking and financial system. In particular, together with the Ministry of Digital Transformation, work is being carried out to strengthen the digitalization of the banking sector of the state. Digital document sharing (transfer) services have been introduced. With the help of the "Action" application, it became possible to identify a person and simplify the transfer of identification digital documents, the procedures for opening bank accounts were simplified [2, p. 206]. Simplification of banking operations took place thanks to the implementation by the NBU of tools for verification of customer identification data using the BankID System, the use of a qualified electronic signature; means of video verification of clients, which provides the possibility of their communication with bank employees using video broadcasting means [2, c. 208].

In today's conditions, the increased attention of the National Bank of Ukraine should be devoted to the problems of administration of trade in currency values, as a process that significantly affects the level of inflation in the state. In 2021, annual inflation will exceed the 5% mark in half of developed and two-thirds of developing countries. It can be stated that in recent years in the countries of Eastern Europe, inflation has reached 16.1% on average. In view of this, central banks have directed great efforts to stimulate the flow of money supply into the economy, restore the healthy circulation of funds in the economy, maintain the monetary transmission mechanism, and, as a result, achieve price stability [1].

Conclusions. Thus, innovations in the work of the National Bank of Ukraine, digitization of banking procedures, updating of the strategy for the development of the state's banking system, and the updated mission and vision of the development of the banking system should be aimed at simplifying and facilitating the administration of currency trading in the state, improving control over such transactions. It is the NBU that should become the main subject in the administration of processes related to the foreign exchange market, the guarantor of the protection of the rights of participants in the currency trading market, and the stability of the domestic monetary unit in general.

REFERENCES

1. Danylyshyn B. (2023) *Tsentral'ni banky v period kryz: taktyka i stratehiya diy* [Central banks in the period of crisis: tactics and strategy of actions]. *Ukrayins'ka pravda*. Retrieved from: <https://www.epravda.com.ua/columns/2023/02/20/697221/> (Accessed 10.09.2024). [In Ukrainian].
2. Volokhata V. Ye. (2021) *Suchasnyy stan i perspektivy rozvytku bankivs'kykh innovatsiy u konteksti pidvyshchennya yakosti obsluhovuvannya kliyentiv* [The current state and prospects for the development of banking innovations in the context of improving the quality of customer service]. *Biznes Inform*. No. 4. P. 204–209. [In Ukrainian].
3. Sehed L. M. (2017) *Aktual'ni problemy diyal'nosti Natsional'noho banku Ukrayiny yak osnovnoho providnyka monetarnoyi polityky* [Actual problems of the National Bank of Ukraine as the main conductor of monetary policy]. *Naukovyy visnyk Mizhnarodnoho humanitarnoho Universytetu. Seriya: Ekonomika i menedzhment*. Vypusk No. 24. 2017. P. 78–82. [In Ukrainian].
4. Yakovenko S. S (2019) *Publichni funktsiyi Natsional'noho banku Ukrayiny yak sub'yekta zabezpechennya pravookhoronnoyi funktsiyi derzhavy* [Public functions of the National Bank of Ukraine as a subject of ensuring the law enforcement function of the state]. *Pravookhoronna funktsiya derzhavy: teoretyko-metodolohichni ta istoriko-pravovi problemy*. Kharkiv, 2019. P. 264–265. [In Ukrainian].
5. *Podatkovyy kodeks Ukrayiny* [Tax Code of Ukraine]: zakon Ukrayiny vid 02 hrudnya 2010 r. No 2755-VI. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 2011. No. 13–17. P. 556. [In Ukrainian].
6. *Pro Natsional'nyy bank Ukrayiny* [About the National Bank of Ukraine]: Zakon Ukrayiny vid 20 travnya 1999 r. No 679-XIV. *Vidomosti Verkhovnoyi Rady Ukrayiny*. 1999. No. 29. P. 238. [In Ukrainian].
7. Yaroshenko A. S., Zahorovs'ka I. O.; Ponomar'ova V. R. (2020) *Pravovyy status Natsional'noho banku Ukrayiny: paradyhmal'nyy analiz* [Legal status of the National Bank of Ukraine: a paradigmatic analysis]. *Yurydychnyy naukovyy elektronnyy zhurnal*. No. 8/2020. P. 342–344. [In Ukrainian].
8. *Pro osoblyvosti rehulyuvannya ta nahlyadu za zdiysnenniam diyal'nosti z torhivli valyutnyimi tsinnostyamy v hotivkoviy formi v period diy voyennoho stanu ta vnesennya zmin do Postanovy Natsional'noho banku Ukrayiny vid 06 bereznya 2022 roku No 39* [On the peculiarities of the regulation and supervision of activities related to trading in currency values in cash during the period of martial law and amendments to the Resolution of the National Bank of Ukraine dated March 6, 2022 No. 39: Resolution of the Board of the National Bank of Ukraine dated July 29, 2022 No. 165]: postanova Pravlinnya Natsional'noho banku Ukrayiny vid 29 lypnya 2022. No 165. *Ofitsiyyny visnyk Ukrayiny*. 2022. No. 64, P. 125. [In Ukrainian].
9. *Stratehiya Natsional'noho banku* [Strategy of the National Bank] (2023). Retrieved from: <https://bank.gov.ua/ua/about/strategy> (Accessed 10.09.2024). [In Ukrainian].

СПИСОК ВИКОРИСТАНИХ ДЖЕРЕЛ

1. Данилишин Б. Центральні банки в період криз: тактика і стратегія дій. Українська правда. URL: <https://www.epravda.com.ua/columns/2023/02/20/697221/> (Дата звернення 10.09.2024).
2. Волохата В. Є. Сучасний стан і перспективи розвитку банківських інновацій у контексті підвищення якості обслуговування клієнтів. *Бізнес Інформ*. 2021. №4. С. 204–209.
3. Сегеда Л. М. Актуальні проблеми діяльності Національного банку України як основного провідника монетарної політики. *Науковий вісник Міжнародного гуманітарного Університету. Серія: Економіка і менеджмент*. Випуск № 24. 2017. С. 78–82.
4. Яковенко С. С. Публічні функції Національного банку України як суб'єкта забезпечення правоохоронної функції держави. *Правоохоронна функція держави: теоретико-методологічні та історико-правові проблеми*. Харків, 2019. 264–265.
5. Податковий кодекс України: закон України від 02 грудня 2010 р. № 2755-VI. *Відомості Верховної Ради України*. 2011. № 13–17. С. 556.
6. Про Національний банк України: Закон України від 20 травня 1999 р. № 679-XIV. *Відомості Верховної Ради України*. 1999. № 29. С. 238.
7. Ярошенко А. С., Загоровська І. О.; Пономарьова В. Р. Правовий статус Національного банку України: парадигмальний аналіз. *Юридичний науковий електронний журнал*. № 8/2020. С. 342–344.
8. Про особливості регулювання та нагляду за здійсненням діяльності з торгівлі валютними цінностями в готівковій формі в період дії воєнного стану та внесення змін до Постанови Національного

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9. Стратегія Національного банку. 2023. URL: <https://bank.gov.ua/ua/about/strategy>. (Дата звернення 10.09.2024).

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Ірина ЛИЧЕНКО

Національний університет “Львівська політехніка”
завідувач кафедри цивільного права та процесу
Навчально-наукового інституту права,
психології та інноваційної освіти,
доктор юридичних наук, професор
iryna.o.lychenko@lpnu.ua
ORCID: 0000-0002-4838-3579

НАЦІОНАЛЬНИЙ БАНК УКРАЇНИ ЯК СУБ'ЄКТ АДМІНІСТРУВАННЯ ТОРГІВЛІ ВАЛЮТНИМИ ЦІННОСТЯМИ

Анотація. Стаття присвячена визначенню особливостей функціонування валютного ринку у сучасних умовах, аналізу наявних викликів та загроз, зумовлених військовими діями, економічним становищем держави, діяльності суб'єктів, що відіграють важливу роль в публічному адмініструванні банківських та фінансових правовідносин. Представлено ґрунтовний аналіз особливостей реалізації Національним банком України функцій у сфері публічного адміністрування торгівлі валютними цінностями.

Особливу увагу приділено визначенню компетенції Національного банку України як суб'єкта здійснення валютного контролю. Констатовано, що в Україні саме Національний Банк України відіграє важливу роль суб'єкта здійснення валютного контролю, зокрема з приводу дотримання правил регулювання валютних операцій щодо банків, осіб, які отримали ліцензію на здійснення валютних операцій, реалізує планові й позапланові перевірки. Результативна організація публічного адміністрування окресленої сфери фінансових правовідносин досягається через прийняття нормативно-правових актів Правління Національного банку України.

Проаналізовано особливості організації та здійснення Національним банком України фінансового моніторингу, валютного нагляду. Визначено, що важливим напрямом діяльності Національного банку України є захист прав споживачів фінансових послуг, нагляд за додержанням банками, іншими надавачами фінансових послуг чинних законів щодо захисту прав споживачів.

Проаналізовано трансформаційні зміни у банківській системі, що відбуваються впродовж останніх років під керівництвом Національного банку України, в тому числі щодо цифровізації банківського сектора держави. З'ясовано, що військові дії зумовили радикальні дії Національного банку України у сфері адміністрування торгівлі валютними цінностями, що допомогли вгамувати панічні настрої населення в умовах початку війни в державі.

Ключові слова: валюта; валютний ринок; валютні цінності; публічне адміністрування; торгівля валютними цінностями; система публічного адміністрування торгівлі валютними цінностями.