

3. Административное, финансовое, налоговое право

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THE LEGAL REGIME OF THE FUNDS OF THE NATIONAL BANK OF UKRAINE

The National bank of Ukraine (NBU) used the financial resources for implementation of main and other functions. The article 4 of Law of Ukraine “On the National bank of Ukraine” determines that NBU carries out charges due to own profits within the limits of the ratified estimate. The National bank of Ukraine carries out charges due to the State budget of Ukraine in cases definite by the law. The property of the National bank is the public domain. A National bank is not responsible on the liabilities of public authorities, and public authorities are not responsible on the liabilities of the National bank. It is quite possible that they can voluntarily assume these obligations.

To date, in the legal literature insufficient attention is paid to the issues to the funds of the National bank. Therefore the purpose of this article is to determine the legal order of funds of NBU. It will give a possibility to formulate recommendations for the effective management of these funds. The authors seek to determine the place of the financial resources of the National bank in the financial system of the state, determine the sources of their formation, determine the directions of the expense and determine the organization of the financial control.

The legal status of the National bank of Ukraine is dual. The National Bank of Ukraine (hereinafter referred to as the NBU) is the central bank of Ukraine, a special central body of the state administration, whose legal status, objectives, functions, powers and organization principles shall be determined by the Constitution of Ukraine,

this Law and other laws of Ukraine. According to the article 5-1 of the highlighted Law, the NBU activities shall not be profit-oriented. But NBU gets profits, because it is a banking organization. Estimate of NBU includes the list of the revenues and the expenses of the National bank. There are two possible situations: revenues exceed expenses or expenses exceed revenues. If the revenues exceed the expenses, after the part of distributable profit has been used for the purposes defined in this Law, the rest of distributable profit shall be transferred to the State Budget in full (part 3 article 5-1 of Law “On the National bank of Ukraine”). In case of insufficiency of funds in the general reserves the excess of the NBU expenses over its income shall be compensated from the State Budget of Ukraine for the year following the reporting one (part 7 article 5 of Law “On the National bank of Ukraine”). The NBU shall not transfer to the State Budget of Ukraine the portion of distributable profit that exceeds the one declared in the audited financial statements approved by the NBU Council (part 8 article 5 of Law “On the National bank of Ukraine”).

It should be mentioned that apart from some country-specific rules for settlements between the central bank and the budget, the methodology used in the course of the excessive deficit procedure of the European Union suggests the general rule that central banks may only reduce the budget deficit against their own income by making transfers to public finances from their operating income in the form of dividends or taxes.

The National bank of Ukraine gets profits from such operations: grant loans to the banks for support of liquidity, purchase and sale of securities, purchase and sell currency valuables in order to exercise monetary regulation, investment metals, conducting transactions with reserves and investment metals, accounts of international organizations and realization of other operations necessary for providing of implementation of the functions.

The Funds of the National bank occupy the separate place in the financial system of the state. These funds are the centralized monetary fund. The state owns this fund. The financial resources of NBU differ from the financial resources of state participating banks. Also these financial resources differ from the resources of budgetary establishments. This fund is alike with the state budget and off-budget funds. This fund has a public financial character.

A. Nechayy defined the features that allow differentiating private and public finances. These features can be applied to NBU's fund. At first, the state owns the financial resources of NBU. Secondly, the NBU does not work to ensure private interests; it works to ensure public interest. NBU provides stability of the national monetary unit. Also NBU organizes and regulates money circulation. For the regulation of these relations the imperative method is used. [2, p. 30-33]

A National Bank uses the funds to implement the functions, which are determine in the Law "On the National bank of Ukraine" (article 6 and 7): 1) for realization of monetary policy; 2) for the management by the banking system; 3) for providing of existence of NBU (payment, development of material and technical base and others like that). The financial control for activity of the National Bank consists of State control, department control, and also audit. The state financial control for activity of the National bank of Ukraine will be realized thus. The NBU shall be accountable to the President of Ukraine and the Verkhovna Rada of Ukraine within their constitutional authority. (article 51 of Law of Ukraine "On the National bank of Ukraine"). On the annual basis, the NBU shall submit to the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine the following: by 15 March, monetary indicators estimated for the next year; by 1 April, information on the calculation of the part of projected distributable profit to be transferred to the state budget in the current year; by 1 September, information on the calculation of the projected distributable profit to be transferred to the state budget in the following year.

Regarding the control over the activity, in the norms of the highlighted law are defined two forms of audit - external and internal (articles 69 and 70 of Law of Ukraine "On the National bank of Ukraine"). Internal auditing means that the NBU shall establish an internal audit department tasked with assessing the effectiveness of risk management, internal controls and governance in NBU structural units, guided by international standards for the professional practice of internal auditing. External audit for the purposes of the highlighted law is used in the following meaning. Audits of NBU annual financial statements, which have been produced according to international financial reporting standards, must be carried out at least once a year by an audit firm that has experience in delivering central bank audits. Audits of NBU annual financial

statements must be delivered in compliance with international auditing standards. Prior to delivering an audit of NBU annual financial statements, the audit firm must be approved by the NBU Council in accordance with a procurement process, as set forth in the Law of Ukraine on Public Procurement. An audit firm cannot audit NBU's annual financial statements for more than five consecutive years. In monitoring how money is received and spent by Ukraine's state budget, the Accounting Chamber checks how the targets of NBU administrative expenses are met. An Accounting Chamber of Ukraine and Main Control and Revision Office of Ukraine carry out the state control for NBU. They have a right to check up implementation of estimate. State Fiscal Service of Ukraine has a right to check up the observance of tax legislation. But these organs do not estimate directions and expedience of realization of charges of NBU.

We consider it necessary to analyze approaches to the regulation of activities and property relations of the central banks of other countries. According to the norms of The Bundesbank Act, the Deutsche Bundesbank is a federal institution with legal personality under public law. Its capital, amounting to 2.5 billion euro, is owned by the Federal Republic of Germany. In exercising the powers conferred on it by this Act, the Deutsche Bundesbank shall be independent of and not subject to instructions from the Federal Government. As far as is possible without prejudice to its tasks as part of the European System of Central Banks, it shall support the general economic policy of the Federal Government. The Deutsche Bundesbank shall advise the Federal Government on monetary policy issues of major importance and shall furnish it with information on request. The Federal Government should invite the President of the Deutsche Bundesbank to attend its deliberations on important monetary policy issues. As we can see, the Deutsche Bundesbank has the same level of the independence as the NBU has.

The net profit shall be distributed in the following order: 1 20% of the profit, but at least 250 million euro, shall be transferred to the statutory reserves until they equal 2.5 billion euro; the statutory reserves may only be used to offset falls in value and to cover other losses; 2 the balance shall be paid over to the Federal Republic of Germany.

The financial year of the Deutsche Bundesbank shall be the calendar year. The accounting system of the Deutsche Bundesbank shall comply with generally accepted accounting principles. The annual accounts shall be drawn up with due regard to the

tasks of the Deutsche Bundesbank, in particular those deriving from its being an integral part of the European System of Central Banks, and shall be published with appropriate notes thereon; the liability structure need not be disclosed. The Executive Board shall draw up the annual accounts as soon as possible. The accounts shall be audited by one or more independent external auditors appointed by the Executive Board in agreement with the Federal Court of Auditors (Bundesrechnungshof) and subsequently published. The external auditors' report serves as the basis for the audit carried out by the Federal Court of Auditors. To assist it in its management and administrative tasks, the Deutsche Bundesbank shall prepare a cost account. Before the start of a financial year, the Deutsche Bundesbank shall draw up a standard cost account and an investment plan. At the end of the financial year, it shall make a comparative analysis of the budgeted figures and the actual costs and investment. This analysis shall be reviewed separately by the external auditors. The annual accounts, the standard cost account, the investment plan, the analysis of the budgeted figures compared with actual costs and investment, and the external auditors' reports shall be forwarded to the Federal Ministry of Finance (Bundesministerium der Finanzen) and the Federal Court of Auditors. The annual accounts, the analysis of the budgeted figures compared with actual costs and investment and the external auditors' reports shall be presented to the Bundestag (the lower house of Parliament).

Summing up, it should be noted that the analysis of the norms of legislation of Ukraine and Germany on the activities of central banks, allows us to assert compliance with their norms to the norms of The Audit charter for the Eurosystem/ESCB and the single supervisory mechanism.

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