“The notion and content of financial system in the context of financial law of Ukraine”

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THE NOTION AND CONTENT OF FINANCIAL SYSTEM IN THE CONTEXT OF FINANCIAL LAW OF UKRAINE

Abstract

The financial system of the advanced countries develops according to two basic models – a bank-based system and a market-based system, depending on the level of protection of the rights of owners, investors and lenders. A paradigm shift in functioning of global financial system and financial systems of all countries is based on financial law, which formalizes all financial relations. Reviewing the financial system of Ukraine, the researchers pay a special attention to public finance due to its substantial share in redistribution of Ukraine's GDP. A comparative analysis of the concept "financial system" makes it possible to draw a certain analogy with the approaches of experts in financial law. From the economic point of view, a country's financial system includes three key areas – state finance, household finance and corporate finance, which are closely interrelated. Matching these three spheres with the legal approach, state finance is defined as public finance, while household finance and corporate finance are referred as private finance.

The financial market functions as a part of the financial system. In economic terms, the financial system is a dynamic and open environment, while it implies an intense movement of financial resources, a rapid emergence of new financial instruments and integration into the global financial market. From the legal point of view, the financial system is a static financial and legal phenomenon, which includes centralized and decentralized public funds, as well as funds of business entities and individuals.

Keywords financial system, law, bank-based system, market-based system, public finances, financial intermediaries

JEL Classification G10, G20, G28, K20, K30

INTRODUCTION

The financial system is a reflection of economic relationships that form and grow within the economic system. The current financial system of a country is a reflection of channels of money flows between economic agents – the state, enterprises, households and financial intermediaries. The structure of the financial system and the volume of its spheres determine the type of financial system and its key participants. In the last years, the global financial system is in a state of turbulence. Therefore, today the main task is the search for new ways to reduce the risks provoked by financial systems of individual countries. The last global financial crisis made a certain contribution into these changes as shown in the works of Kuo-Cheng Tseng (2015). At the core of the changing paradigm in the functioning of the global financial system and financial systems of individual countries is financial law, which formalizes all financial relationships. La Porta et al. (1998) analyzed 49 countries regarding interdependence of financial law and the model of financial system and determined that financial systems are formed depending on the level of protection of the rights of owners, investors and lenders.

1. LITERATURE REVIEW

The analysis of approaches to understanding the essence of the concept "financial system" as an economic category and legal term shows the availability of common approaches and a certain difference in the existing interpretations.

The study of publications of foreign authors (Philipp Hartmann, Angela Maddaloni and Simone Manganelli (2003) Garryj. Schinasi (2005), Franklin Allen, Michael K. F. Chui, Angela Maddaloni (2004), Demirguc-Kunt Asli, Levine Ross, V. Maksimovich (1998, 1999) Chuk C. Y. Kwok, Solomon Tadesse (2006), Aggarwal Raj, John W. Goodell (2016) and the materials of the International Monetary Fund lead to the conclusion that the understanding of the financial system from economic and legal points of view significantly differs from the approach common in Ukraine and based on the distribution and redistribution of the gross domestic product. In the foreign literature, a financial system is generally considered from the point of view of its participants.

A financial system is defined by the set of institutions (markets and intermediaries) through which households, corporations and governments obtain funding for their activities and invest their savings. In a given financial system, the mixture of financial markets and intermediaries operating in the economy defines the financial structure of that system. Different financial structures might have different economic and welfare implications for a given financial system (Hartmann, Maddaloni & Manganelli, 2003).

In this context of understanding of financial system, the focus is made on ensuring the financial stability of its functioning through the efforts of all financial regulators, including the European ones – the European Banking Authority, the European Insurance and Occupational Pensions Authority, the European Securities and Markets Authority, the Joint Committee of the European Supervisory Authorities (Cibak, Demirguc-Kunt, Feyen & Levine, 2012). "A financial system can be considered stable if it (1) facilitates the efficient allocation of economic resources geographically and over time, as well as other financial and economic processes (such as saving and investment, lending and borrowing, liquidity creation and distribution, asset pricing, and, ultimately, wealth accumulation and output growth); (2) assesses, prices, allocates, and manages financial risks; and (3) maintains its ability to perform these key functions even when faced with external shocks or a build-up of imbalances. By implication, because the financial system encompasses a number of different but interrelated components – infrastructure (legal, payments, settlement, and accountancy systems), institutions (banks, securities firms, institutional investors), and markets (stock, bond, money, and derivatives) – a disturbance in one of the components that could undermine the stability of the entire system" (Schinasi, 2009).

Experts of the International Monetary Fund Martin Cibak, Asli Demirguc-Kunt, Erik Feyen and Ross Levine (2012) offer the 4x2 Matrix of Financial System Characteristics, which are grouped into two blocks – Financial Institutions and Financial Markets according to four groups of indicators – depth, access, efficiency, stability.

In the global financial architecture, two basic models of financial systems are traditionally identified – bank-based and market-based. "The American system is more market-based or intend to be in that the financing of both household and corporate activities is accomplished more through markets than in Europe, where there is much greater reliance on bank funding and less reliance on tradable securities (although this is changing).

While one might argue that the American system of finance hassled to greater economic productivity and deficiency, this great inefficiency is accompanied by greater asset market volatility and turbulence and a greater observed propensity to financial stress" (Demirguc-Kunt, Levine, 1999). A bank-based model of financial system envisages that banking institutions keep the bulk of the savings generated in the economy in the form of deposits of legal and physical persons. In this model, legal and physical persons do not carry out direct investments, but entrust banking institutions with making investment decisions. Banks not only conduct credit operations, but also are the main buyers of stocks and bonds. They own shares, control stock trading and dominate on capital markets. The structure of financial products on such mar-

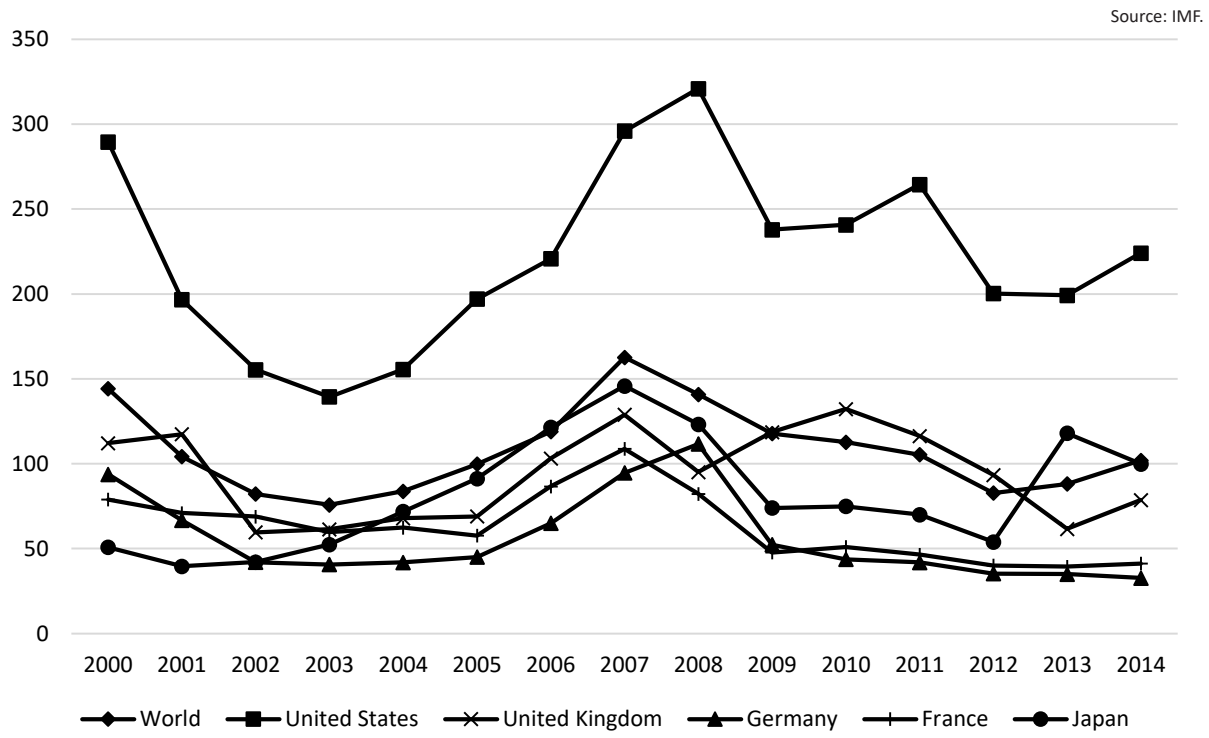

Figure 1. Dynamic of stock traded, total value, % of GDP

kets is more conservative. A bank-centered financial system is characterized by situations when the role of financial in-term diaries is performed mainly by banks leading to the transformation of the temporarily free funds of economic agents through their transformation into credit resources for the country's economy. At the present stage of development in Ukraine, we have a model of financial system, which is more close to bank-centered one, because the primary source for extended reproduction in the real sector of the economy, apart from companies' own resources, are bank loans. Although, in terms of development of the capital markets, the activity of banks is fragmented. "In traditionally bank-based Germany, the market for corporate bonds has grown significantly over the past decade. More generally, the growth of global finance has shifted the balance in the direction of market-based architecture in most of the developed world. Nevertheless, the paradigm of bank- versus market-based systems offers a tool for comparing financial systems in different countries" (Bijlsma & Zwart, 2013).

Another model of financial system's functioning is based on the use of benefits of the capital market with "broad participation" (broad based, capital market). This model is characterized by a situation in which equity market is distanced from banks. Access to funding is not determined through credit relationships, but by market prices of financial assets. In this case, the owners of savings, both as legal and physical persons, are engaged in investments through financial intermediaries. This market model creates competition for those wishing to receive long-term capital and maximize the use of savings as investments. Capital allocation in competitive environment makes it possible to obtain capital both by new and established companies. A broad based capital market requires short-term and long-term involvement of many investors with both high and middle income levels. However, the accumulated savings of small investors can provide the funds needed to finance large-scale enterprises. This market needs a high level of legal protection of the interests of small investors and a significant number of highly skilled experts in the field of transactions with securities. This model is becoming increasingly popular in the world and, therefore, the movement of financial resources is also carried out through the stock market, where the United States is the undisputed leader, which is confirmed by Figure 1.

Figure 2. The share of public finance in the financial system of Ukraine, % (compiled by the author based on the data of the National Bank of Ukraine, the National Securities and Stock Market Commission, the National Commission for Regulation of Financial Services)

Traditionally, in Japan and continental Europe, the role of banks has been much greater than in the US, where markets play a larger role in transactions between providers and users of capital. Differences between financial systems around the world are more often a question of degree. In the United States, banks do play an important role, for instance, in financing smaller firms (Bijlsma & Zwart, 2013).

"The US has a very large capital market but smaller banking sector, whereas the EU has a very large banking sector but smaller capital market (even if we have seen that some subtleties tend to mitigate those affirmations). However, it is clear that companies, in general, both in the EU and the US, 'rely heavily' on banks to finance them and are both vulnerable to the tightening of bank lending. The size of the capital markets or of the banking sector is irrelevant in this regard and might be more significative of the way the largest companies of both regions get their financing" (Detzer, Dodig, Evans, Hein, 2013).

The financial system in the world economy has the following peculiar feature: in the center of its functioning there are all flows that move through the financial market, which makes it possible to profitably place temporarily available funds or to obtain the necessary resources. The state, companies and households are equal participants of the market who can act as investors and borrowers, but not independently, but using the services of financial institutions. When considering the financial system in this sense, the role of public finances narrows compared with domestic scientific approaches. It should also be emphasized that public finances are usually certain issues that are not addressed in the context of investigation of the financial system. This is due to the fact that it is virtually impossible to unify all approaches in the area of budget and tax legislation.

2. PRACTICAL INSIGHTS

In contrast to the common world approach to the models of financial system, in defining the financial system, domestic researchers pay special attention to the companies of the real sector of the economy, because they create the country's GDP and, therefore, are the starting point for further distribution and redistribution of financial resources. This approach is relevant in the conditions of a poorly developed financial market, which fulfills the functions of a mediator. Such understanding of financial system arises from the dominant role of public finance, which con-

tinues to play a key role in the Ukrainian economy. Scientific literature pays attention to the conceptual meaning and the essence of finance. Finance is an economic concept for securing resources. Theories assert that the allocation and distribution of resources to ensure the delivery of public sector goods and services is a central function of government (Rafuse, 1991).

Public finance is the economic concept that facilitates the fulfillment of this function in government by focusing on policies to guide resource utilization and financing strategies such as borrowing and taxation (Finkler, 2004).

To a certain extent, the role of public finance in some countries is highlighted by Nyamita and others (2015). In Ukraine, the role of public finance has significantly increased in recent years, since, in the period 2010–2016, there was a significant change in the structure of Ukraine's financial system and creation of the current financial system with the domination of public finances in all its sectors (Figure 2). In particular, in the banking sector, which is dominant among the financial intermediaries in Ukraine, the biggest share of assets and liabilities belongs to state banks, especially after the nationalization in December 2016 of PJSC "CB PrivatBank" – the leader of Ukraine's banking system according to its assets and liabilities. The stock market's operations with domestic government bonds have almost completely replaced equities and corporate bonds. Regarding the private pension sector, almost 50% of its assets belong to the corporate pension fund of the National Bank of Ukraine.

Considering this situation, in terms of maintaining a systematical approach to the study of Ukraine's financial system, an approach based on the understanding of financial system as asset of economic relations over the distribution and redistribution of GDP with the dominant role of public finance from the point of view of economics and its coordination with the Ukrainian legislation cannot be ignored.

The financial system is one of the basic and fundamental categories of the financial law of Ukraine. The current financial legislation contains no definition of financial system, although some financial sector laws give definition of its subsystems. At the same time, the current legislation uses such terms as monetary system, exchange system, credit system, etc., but they have no legal definitions, which leads to different interpretations of these concepts and, therefore, different understanding of their structure and content.

In science, financial law was formed as several reasonable comprehensive conceptions for the understanding of financial system:

- as a complex multilevel system of open type, which is a structured set of organized and somehow interrelated elements united by common functioning and one goal. On the basis of this concept, it is proposed to define the term financial system as an internally caused totality of interrelated and integrated areas, spheres and institutions, which represent a specific group of financial relations that mediate the formation, distribution and use of resources of the state, local self-governments, enterprises of different forms of ownership, financial institutions (Nestorenko, 2014);

- as a defining element and reflection of the level of economic development, which is organically and inherently based on the norms of financial law. On the basis of this concept, it is proposed to define the term financial system as a set of individual elements of financial relations and financial institutions regulated through financial and legal norms, which help form, distribute and use financial resources of the state and society (Kovalchuk, 2007);

- as a functional totality of separately existing financial institutions. Based on this concept, it is offered to understand financial system as a set of financial institutions, each of which contributes to the formation and use of the relevant funds to finance the activities of the state and local self-governments, that is, the activity regarding the formation, distribution, redistribution and use of public resources to fulfill the tasks and functions of the state and local self-governments (Orlyuk, 2007);

- as a set of stable types of economic relations, which cover all forms of public and private finances known to highly developed industrial societies. Based on this concept, it is offered to understand financial system as an effect achieved through the financial activity of the state aimed at initial or general regulation of economic activity, which needs further development by using the whole gamut of legal regulation (Zapolskiy, 2008).

The comparative analysis of the concept "financial system" from the point of view of economic science makes it possible to draw a certain analogy with the approaches of financial law experts. In particular, one can distinguish an approach that is consistent with the theory of A. Nestorenko and which defines financial system as "a set of separate but interrelated spheres (a component generalized according to a certain sign) and links (a separate component) of financial relationships that are peculiar for the mobilization and use of financial resources, as well as the relevant apparatus of management and regulatory provision. According to the form of ownership one can distinguish: state finance (belonging to the state, state-owned municipal entities), private finance (belonging to private and collective enterprises, economic associations and companies of the mixed forms of ownership, households). Spheres: finances of households, state entities, financial market, international finances. Links: finances of commercial enterprises of all forms of ownership, social institutions, public organizations and charity foundations (finances of economic entities), consolidated budget of Ukraine, state credit, state trust funds (state finance), stock market, credit market, exchange market, financial services market, the market of gold and other precious metals (the sphere of financial market), finances of international organizations and financial institutions, multinational corporations and other subjects of foreign economic activity, international financial market (the sphere of international finances) (Yuriy, Fedosov, Alekseyenko, 2008).

At the same time, the reference and encyclopedic literature defines financial system as a set of regulated financial and legal norms of individual elements of financial relations and financial institutions, which help the state create, distribute and use centralized and decentralized monetary funds. However, in defining the elements of the financial system, it is stated that the financial system consists of centralized state funds (state budget), finances of business structures, centralized trust funds, state credit, reserves and insurance funds, financial market (Zagorodniy, Voznyuk, Smovzhenko, 2002). Comparing this definition or content description with the definition of the structure of financial system (its elements), we can see a certain discrepancy. The financial system is defined as a dynamic financial and legal phenomenon (financial relationship) in which the elements of its structure are a system of their legal relationships.

These views on the structure, the content of the financial system and its definition are, to some extent, a combination of the simple, namely the subjective, objective (funds) and institutional concepts of financial system. It should also be noted that the legal and economic literature contains different views of financial system, which, to some extent, reproduce, combine or provide a certain detailed elaboration of the given ones. The comparison of the views of researchers on the content, structure and definition of financial system gives grounds to assert that researchers often assume a combination of legal and economic approaches resulting into the static and dynamic understanding of financial system. The study of financial system as a complex financial and legal phenomenon, on the one hand, and economic phenomenon, on the other hand, the achievement of consensus in the understanding of the structure and content as a result of unification of the logic of cognition of this phenomenon will make it possible to obtain a clear understanding of the legal and economic nature of financial system, which will have a significant impact on the development of financial science and the science of financial law, financial legislation and the practice of their use.

As seen above, the Ukrainian scientists have different views on this complex financial and legal phenomenon, characterizing it based on those features, which, in their opinion, are the most significant. This existence of different interpretations of the concept of financial system is caused by the methodological foundation of definitions used

in any field of knowledge. At the same time, the state of ambiguity in understanding of the system is predetermined by the lack of legal definition of this concept and the definition of structure of the financial system. The understanding of the nature of financial system envisages its consideration through the transition from the whole (financial system) to identification of its parts (elements) in their diversity. To understand the nature of financial system, it is necessary to distinguish its elements by means of classification, to learn the essence of each selected element, to identify the general and specific features of these elements, and, on this basis, to combine these elements of financial system into a single whole concept of financial system. Therefore, we have a chain of knowledge: analysis and clarification of the existing definitions of financial system – classification (selection of elements) – identification of the whole in the selected elements – construction and coordination of the whole – provision of modern definition of financial system.

In order to clarify the content and identify the structure of financial system, it is necessary to determine the methodological principles of understanding of its essence. The first step should be the understanding of this system as a static or dynamic financial and legal phenomenon. The dynamic feature requires a constant variability, changeability, movement and development. If we accept the financial system as a dynamic financial and legal phenomenon, then, it can be seen as a set of financial relationships or legal relationships. In economic terms, the financial system is a dynamic, complex and open system, because it reflects the constant movement of funds between its subjects. In this respect, it is treated as a combination of financial relations regarding the distribution and redistribution of the gross domestic product or through the lens of conversion of savings into investments.

However, this totality is nothing more than a system of financial legal relationships, the sphere of origin of which is the financial activity of the state. The financial activity of the state as a sphere of emergence and development of financial relationships and the type of legal activity is a kind of public or private activities mediated by the law and carried out by special legal actions, operations and procedures aimed at realization of specific tasks and functions to satisfy the public and private needs and interests.

Therefore, the understanding of financial system as a dynamic financial and legal phenomenon leads to the identification or confusion of its concept with the concepts of the system of financial legal relationships or financial activity.

In general terms, from the legal perspective, it seems reasonable to understand financial system as a static, stable, but rather conditional set of certain elements. These elements, including the existing concepts of financial system, can be subjects or objects. However, in relation to subjects, there are some reservations, because the totality of subjects, depending on the financial and legal structure, can be:

- a system of financial bodies (in the broadest sense, a system of subjects of financing activity) if we take into account the organizational and legal aspects and consider them the subjects of financial activity;
- a subject composition of financial legal relations when viewed in terms of establishing legal relations between them regarding the object resulting into realization of their subjective financial and legal responsibilities.

The understanding of financial system in terms of application of the post-subject concept leads to the confusion of the concepts of financial system with the system of financial bodies (subjects of financial activity) or subject composition of financial legal relations.

In our opinion, in order to characterize the financial system and give it a universal definition that will distinguish it from other related concepts, it is necessary to proceed from its understanding as a system of objects determining the scope of their financial and legal phenomena. The above is supported by the fact that understanding the object theoretically, the cognition (thinking) moves from the phenomenon to its essence consistently revealing its different aspects and relationships, reflecting them in the respective dialectical cate-

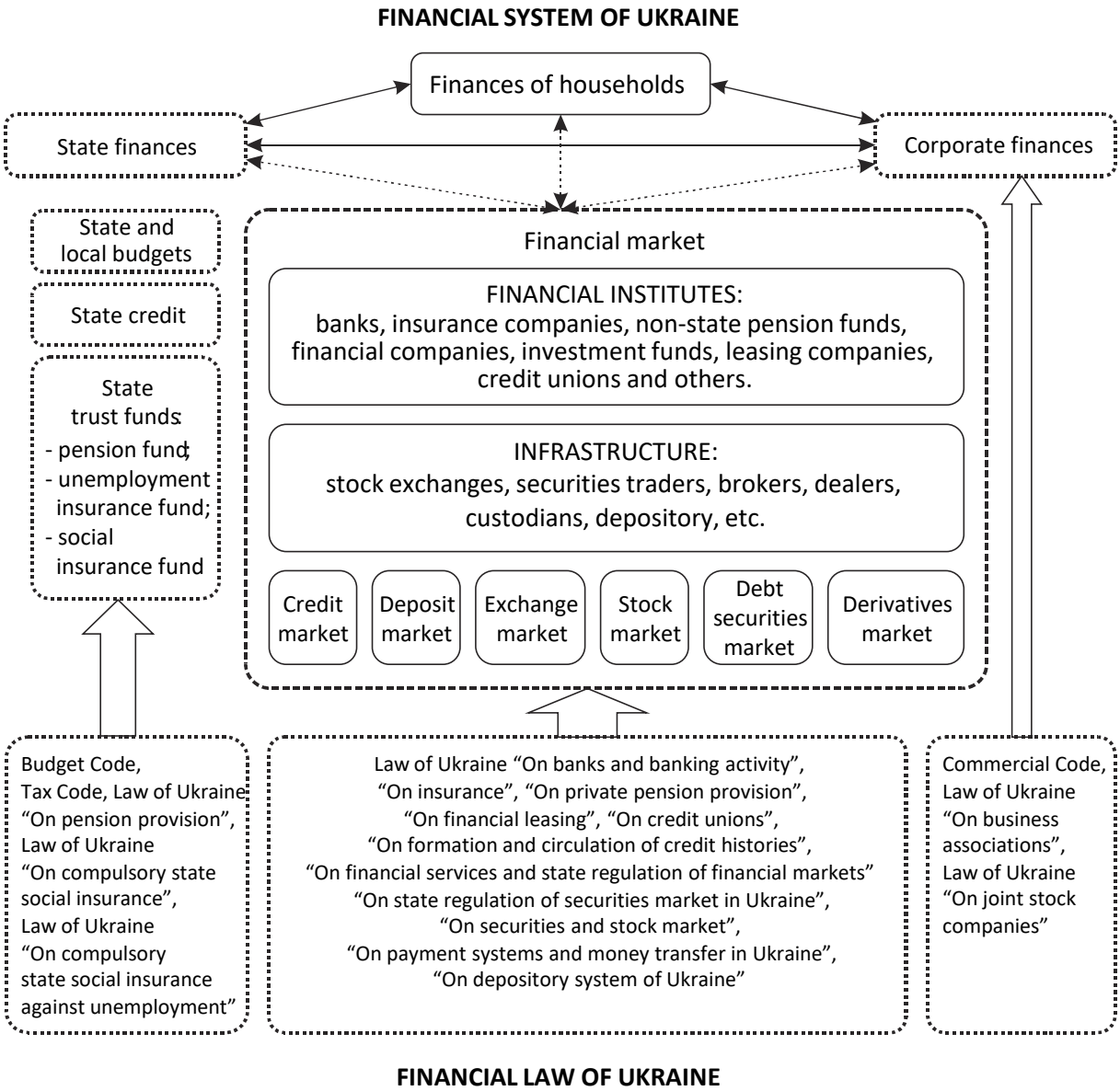

Figure 3. The financial system of Ukraine – harmonization of economic and legal views

gories, which are the forms of dialectical thinking in this process. This object leads to financial and legal relationships between the subjects of financial activity resulting in the emergence and development of financial legal relationship the sphere of which is the financial activity. This approach suggests that financial system is a system (totality) of finances, which supports the validity of the use of objective concept for its understanding.

The financial system is a complex, multifaceted financial and legal phenomenon consisting of lower-level subsystems (types, classes) the nature and content of which is a subject of scientific debates. Returning to the types or subsystems of financial system, in our opinion, they can be divided into two major groups: public and private finances (subsystem of the first level).

On the second level within the public finance, an important place is occupied by the budgetary system as a combination of the state and local budgets and, in a broader sense, as a totality of financial resources for ensuring the tasks and functions carried out by the relevant public authorities and local self-governments during the budget period (a totality of centralized funds).

According to the legislation, a tax system is a totality of the national and local taxes imposed by the order established by the Tax Code of Ukraine. Structurally, the tax system includes a hierarchical totality of all taxes and other mandatory payments and, regarding its content, it is a totality of such payments for the formation of centralized and decentralized funds (tax revenues or funds).

Studying the financial system methodologically it is important to determine why the financial system is a system, rather than a number of unrelated elements. This leads to the need to identify the characteristics that reveal its systemic nature. To form a coherent scientific picture of the financial system, it is necessary not only to identify its elements, but also to reveal their inner regularity and relationship. This regularity is expressed in the development of financial legal relationships that are the legal form of financial activity. During this development, there is a change in financial legal relationships, although, in some cases, not only in financial ones, which leads to changes in legal entities, the method of legal regulation and the legal regime of the objects of legal relations. Without changing its form (monetary resources), the object of financial legal relations changes its legal status, while the monetary resources emerge in the form of tax, budget, banking, foreign exchange, insurance and so on. However, the belonging of these funds to the financial system remains unchanged. One observes their transition from one subsystem of the financial system to another while remaining within the system.

In the development of financial legal relations, finance, as their object, without changing its form (monetary resources), changes by type, which affects the establishment of legal regime by the norms of financial law.

Therefore, from the position of harmonization of economic and legal approach to the nature of the financial system in Ukraine, considering the role of the financial market and gaining understanding of the financial system in terms of the world economic and legal practice, its structure can be presented as follows (Figure 3).

From the economic point of view, a country's financial system includes three key areas – state finances, households' finances and corporate finances, which are closely interrelated. Matching these three spheres with legal approach, state finance is defined as public finances, while households' finances and corporate finances are referred to as private finances. State finances include state and local budgets, which are regulated by the Budget and Tax Code of Ukraine, state credit, which is also regulated by the Budget Code, as it deals with the problem of formation of external and internal state deficits. In addition, the sphere of state finances (public finances) includes state trust funds, the functioning of which is regulated by special laws of Ukraine shown in the figure.

Private finances are represented by household's finances and corporate finances with the functioning of the latter determined by the Commercial Code of Ukraine and additional laws that regulate the activity of different types of business entities.

As mentioned above, financial market is not considered as a sphere of financial system. According to the common approach in the domestic economic scientific literature, the financial market is a serving element of the financial system. At the same time, in the form shown in the figure, the financial market can be equated with an understanding of the financial system by foreign authors presented in the beginning of this article. This element of the financial system requires full harmonization with international regulatory documents, since those operations performed on the financial market are completely open to the international financial market. The list of the basic laws of Ukraine regulating, on the one hand, the functioning of individual subjects of financial activity and, on the other hand, the establishment of legal relationship between them is fairly significant. In fact, there is a separate law and a number of regulations for the functioning of each subject of financial activity. It is important not only to coordinate the action of these legal instruments, but also to bring them into line with international standards. The introduction of such changes into the legislation is possible from the legal point of view. It is also important to have economic preconditions for such transition.

This primarily concerns the Law of Ukraine "On banks and banking", which requires a revision considering the requirements of the Basel Committee and implementation of legislative regulations Basel III, as well as changes in the Law of Ukraine "On insurance" in terms of its compliance with Solvency II. The introduction of the legal norms of these international documents requires a substantial increase in the capitalization of domestic banks and insurance companies, which cannot be achieved instantly, because it takes time to accumulate significant amounts of capital by its owners. Besides, a rapid growth of capital is not always good for the financial system of the country as a whole that should also be borne in mind.

CONCLUSION AND POLICY IMPLICATION

The interpretation of the financial system in the world is substantially different from how it is done by Ukrainian experts. This is caused by the level of development of the financial market and the corresponding development models – market-oriented or bank-centered. In Ukraine, a characteristic feature of the financial system's development is a significant role of state finances and the dominance of entities of financial activity that are in the public domain. This significantly affects the understanding of financial system both economically and from the legal point of view.

In economic terms, the financial system is a dynamic and open environment, while it implies an intense movement of financial resources, a rapid emergence of new financial instruments and integration into the global financial market.

From the legal point of view, the financial system is a static financial and legal phenomenon, which includes centralized and decentralized public funds, as well as funds of physical and legal persons.

A static character of financial system consists in invariability of its structure, which provides quantitative changeability of its content, because by remaining the assets of the financial system their movement from one subsystem to another takes place: without changing qualitatively, it changes quantitatively internally.

Structurally, the financial system includes subsystems of lower levels (fiscal, tax, banking, insurance, etc.). According to its content, it is a combination of public and private finances. It is a financial and legal abstraction, whereas its content is the financial and legal reality. As a financial and legal abstraction, the financial system includes, for example, a budgetary system as a totality of budgets. The budget is a financial plan for the social and territorial entity approved by the relevant authority, while budgetary resources are the totality of funds on the accounts of the State Treasury. The tax system as financial and legal abstraction includes the totality of taxes and other obligatory payments in the amounts prescribed by law. However, as a financial and legal reality, the tax system includes the totality of tax revenues (amounts received from the payments of tax liabilities).

The financial system is a subject of financial activity and a common object of financial relations, which suggests a coincidence of the object of activity and legal relationships. Financial activity is the area of emergence and development of financial relations. In the process of development of financial legal relationships, one observes their transformation leading to qualitative changes of the object without its quantitative changes.

A considerable problem today is the need to bring the Ukrainian financial legislation closer to the requirements of international documents, particularly in the regulation of the stock market, banking and insurance activities. However, harmonization of the legal aspects is impossible without the formation of economic basis for the implementation of the adopted legislation.

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