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Article

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Reference: Shyshkov, Stanislav (2020). Resumption of confidence in the Ukrainian stock market : is it enough, for this purpose, to tighten sanctions for market abuse?. In: Economy and forecasting (1), S. 57 - 78.
http://econ-forecast.org.ua/?page_id=189&lang=uk&year=2020&issueno=1&begin_page=57&mode=get_art&flang=en.
doi:10.15407/econforecast2020.01.057.

https://doi.org/10.15407/ econforecast.2020.01.057
УДК 336.761
JEL G12, G14, G18, K22

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RESUMPTION OF CONFIDENCE IN THE UKRAINIAN STOCK MARKET: IS IT ENOUGH, FOR THIS PURPOSE, TO TIGHTEN SANCTIONS FOR MARKET ABUSE?

The article assesses the effectiveness of counteracting abuse on the Ukrainian stock market. It has been revealed that the problem of improper legislative registration of counteraction to abuses in the stock market entails unsystematic and biased enforcement by the regulator (NSSMC). The author highlights that the proposed implementation of the requirements of MAR and MAD to the national legislation is inadequate both in the context of the market's functional role in the economy and in the context of the unjustified extension of the regulator's powers. It has been stated that ignoring these issues at the level of prospective legislation will not increase confidence in the stock market and will block incentives for its development, due to the following reasons:

- maintaining uncertainty of abuse criteria and their differences from accepted market practice will complicate regulation of economic relations, and establishment of "rules of the game";

- unreasonable, selective and subjective enforcement will reduce the effectiveness of the regulatory function, because market participants will not understand the causes and unobvious consequences of lawful and unlawful behavior;

- an imbalance in the rights and responsibilities between market participants and the regulator may raise doubts about the adequacy of the regulatory and compensatory functions to ensure effective regulation of legal relations in the market and to compensate for the consequences of unlawful actions of regulator employees.

It has been substantiated that the introduction of strict prohibitive norms into national legislation to counteract abuses in the stock market based on the implementation of the European approach should be as detailed as possible, unambiguous, and consistent with the immature state of the market. At the same time, prohibitive norms should be an integral part of systemic steps aimed at improving the quality of the market, and in its absence - a vector to stimulate development. It is necessary that in the conditions of market immaturity and the actual absence of individual segments, the strict prohibitions

for abuse of market participants should be applied carefully and accompanied by the regulator's symmetrical responsibility in case of insufficient substantiation and subjectivity of law enforcement.

Key words: *stock market, stock exchange, securities, public company, public offering, listing, information asymmetry, market manipulation, market abuse, insider dealing*

The effectiveness of the stock market as a mechanism for attracting investment is inseparable from fair pricing. Among the known means of counteracting information asymmetry and uncertainty, the imperative role of stock trading and fair prices in its aftermath is probably the only and most effective one. Informational asymmetry and market abuse can offset the positive role of stock prices, which is why the legislation of countries with developed stock markets stipulate strict regulatory and criminal sanctions for such abuse.

The inability of illiquid and underdeveloped markets (including the Ukrainian one) to ensure objective and regular pricing of financial instruments significantly complicates the task of developing appropriate regulatory and prohibitive practices, even despite the attempts to implement the legal framework and experience of mature markets. After all, such implementation (especially in terms of strict prohibitions on market abuse) should take into account the existing distortions and dysfunctions inherent for immature markets, in particular the difficulty of separating manipulative actions from acceptable but not very perfect market practices.

Problematic issues of the functioning of stock markets, in particular, in the context of combating market abuse, are reflected in the research of many domestic scientists and financiers, in particular, R. Volynets, O. Dudorov, D. Kamensky, O. Kashkarov, V. Tertyshnyk, O. Zarutska, O. Mozgovyi, V. Oskolsky, O. Sokhatska, N. Sheludko, I. Shkolnyk, etc. It should be noted that in the works of well-known foreign researchers on combating information asymmetry and market abuse, in particular, such as J. Akerlof, R. Aggarwal, F. Allen, A. Blahno-Pazhikh, D. Gale, D. Porter, M. Spence, J. Stiglitz, K. Felixon, A. Chakraborty, R. Hansen, R. Yarrow, etc., the main focus is on the most developed capital markets. Instead, the conditions for the implementation of legal and regulatory experience of developed markets to combat abuse of law and regulatory practices in immature and illiquid stock markets still remain insufficiently covered.

The relevance of the study of the above mentioned issues is especially important given that the fight against abuse in the interpretation of the stock market regulator of Ukraine (NSSMC) is positioned as the greatest achievement in the last five years and almost the main task in reforming the market.[1]

1. This was again emphasized during the public discussion on *the Strategy for the Development of the Financial Sector of Ukraine until 2025* - a program development document for the next five years. The strategy characterizes the current state of the financial sector as of December 2019 as follows:

- the stock market is clean and transparent, but the volume of transactions with shares and bonds of enterprises is very low;

- in the context of stock market cleansing and systematic fight against price manipulation during 2015–2019, the circulation of securities of 49 issuers was stopped due to signs of fictitiousness, trading of securities of 273 issuers was stopped, and 136 licenses for professional activity in the stock market were revoked. Stopping the circulation of "junk" securities made it possible to obtain a more objective assessment of the state and size of the stock market;

- due to the reduction of non-market transactions in the organized market, the volume of trades in corporate shares and bonds on it decreased in 2018 by 80% compared to 2014;

In view of the above, *the purpose of the article* is to identify the reasons for the unsatisfactory counteraction to abuses in Ukraine's stock market and to clarify the conditions for the implementation of EU experience on strict prohibitive standards for such abuses in conditions of insufficient legal certainty.

1. Combating abuse in Ukrainian stock market: interim results

Beginning in 2015, when the NSSMC was headed by the current management, active enforcement was initiated in the stock market, which looked very much like a "regulatory campaign". In particular, in a few months of 2015, 111 lawsuits of price manipulation were initiated. Later, this wave of cases slightly decreased (largely due to the lengthy consideration of cases and subsequent active appeal of the imposed sanctions in the courts), but in 2016-2018 cases were initiated and considered by dozens.

Due to increased licensing requirements and regulatory burden on securities traders who now feel the regulator's growing pressure, it becomes easier for securities traders to renounce the license and leave the market, where investment opportunities and margins are constantly declining (unlike the NSSMC budget, Table 1).

Table 1

Dynamics of market participants and law enforcement indicators (NSSMC) in 2014–2018.

Indicator	2014	2015	2016	2017	2018	2018/ 2014, %
Number of securities traders, *units*	462	369	302	270	242	-48
Number of professional market participants, *units*	1 124	955	843	785	745	-34
Share of licenses of professional participants whose validity is revoked or suspended *%*	3	4	4	6	3	0
Number of fines for infringement of financial monitoring, *units*	74	30	57	125	91	+23

- combating capital market abuses remains a priority. In order to prevent offenses and the inevitability of punishment, it is necessary to amend the legislation, which will create preconditions for combating abuse in the stock market, and improve the system of supervision and control over the activities of its participants in accordance with international standards. [1].

The strategy provides for the construction of a system for combating and preventing crime on capital markets in accordance with the requirements of EU laws (including Regulation 596/2014 of 16.04.2014 on market abuse, MAR [1], and Directive 2014/57 / EU of 16.04.2014 on criminal sanctions for market abuse, and MAD II [1]), which effectively prevent and stop fraud in capital markets, in particular, the use of "Ponzi schemes", insider information and manipulation.

To achieve such state of the market in accordance with the Strategy it is necessary:

- to ensure compliance of national legislation on combating abuse in capital markets with the requirements of MAR and MAD (until 2025),

- to strengthen the powers of regulators to effectively prevent and ensure punishment for abuse in the financial sector, in particular empowering them to investigate fraud with financial instruments (until 2023)

- introduce proper standards to counteraction abuse in the capital markets, in particular, for manipulation on capital markets and organized commodity markets, use of insider information, in particular in accordance with MAR and MAD (until 2023).

A powerful PR campaign, which has been going on for five years is an additional proof that the NSSMC has chosen the "fight against abuse" as the main means to building a modern stock market in Ukraine.

Table 1 (end)

Indicator	2014	2015	2016	2017	2018	2018/ 2014, *%*
Total fines for manipulation, *million UAH*	340	3 270	5 440	2 890	816	+140
Cases initiated for price manipulation, *units*	5	111	43	6	13	+160
NSSMC budget, *million* UAH	43	43	53	87	126	+193

Source: compiled by the author according to the NSSMC [1].

Did the regulator really not notice the manipulation or intentionally abstain from initiating lawsuits on such abuses until 2015, and in 2015 the new management of the NSSMC "saw straight" at last and revealed manipulation in the market on an unprecedented scale? (And without any changes in the legislation!)

Before the "market cleansing" campaign, securities traders did not at all believe that their usual securities trading and liquidity operations against the background of systemic price volatility and non-obviousness of abuse criteria could really be classified as manipulation. And after 2015, market participants simply stopped transactions with securities, which suddenly, much later than the transactions, were recognized by the regulator as fictitious, "technical", dubious (as if not the same regulator registered the securities issues and received reports from issuers of such securities – by the way, the situation with the criteria of "fictitiousness" was also not so simple, and some issuers successfully challenged this status).

The above situation is a clear demonstration of the imperfect laws and, as a consequence, the unpredictability of law enforcement, when market participants are required to do impossible things, in particular, to predict in advance, which transactions and financial instruments the NSSMC will start to interpret as questionable and abusive in a few years.

Market participants consider the current situation with the effectiveness of reforms in the financial sector and market "cleansing" from another angle: for example, the joint statement of stock and commodity market participants, who in August 2019 appealed to the President to prevent stock market destruction due to the action of its regulator (NSSMC), stated:

– non-fulfillment of quantitative and qualitative targets of stock market development stipulated by the Financial Sector Development Strategy until 2020 [2];

– reduction not only of trade, but also of issue activities (6.5 times on shares, twice on corporate bonds), which, moreover, is made mostly by state companies and banks;

– non-adoption of the necessary market laws and poor quality of implementation of the European legal framework and lack of understanding of the consequences of the initiated legislative changes, including profanation of squeeze-out procedures;

– exclusively punitive nature of regulation, ignoring the interests of national issuers and investors, absolute lack of dialogue with market participants together with their public discrediting, etc. [2, 3].

[2] In particular, instead of receiving the Advanced Emerging status for its financial market (planned for before 2020), Ukraine is not represented even in the Watch List for the worst level of FTSE classification - Frontier Market. According to the estimates of financial market development and regulation of stock exchanges (using the method of calculating the Global Competitiveness Index), Ukraine consistently ranks one of the last in the world. Ukraine's ratio of the value of assets of public collective investment institutions to GDP (being the target equal to 10%) actually decreased from 0.1% to 0.01% during 2015–2018 [3]. Plans for the assets of the second tier of the pension system to reach 2% of GDP are far from being realized either.

The regulator in the Strategy for the Development of the Financial Sector of Ukraine until 2025 not only draws attention to the impressive values of the quantitative indicators of the five-year "cleansing" of the market, reports on the already achieved cleansing and transparency of the market, but also justifies the need for further efforts, empowerment and financing. It is suggested to ignore the "victims", as this applies only to "non-market" transactions and "junk" securities, and the reduction of exchange trading is only reported for corporate shares and bonds, while the market is reportedly not narrowing, but simply receives "a more objective assessment and size".

However, the reduction in exchange trading during the implementation of previous Strategy for the development of the financial sector was observed not only in terms of shares and corporate bonds, but also in government bonds (in 2018 by 55% compared to 2014, Table 2).

Table 2

Indicators of exchange turnover of selected types of securities in Ukraine in 2014–2018

Indicators	2014	2015	2016	2017	2018	2018/2014, %
Volume of exchange trades, UAH billion:	619,7	286,2	235,4	205,8	260,9	-57,9
government bonds	545,8	250,1	210,1	189,5	245,7	-55,0
shares	24,5	5,2	2,1	5,0	1,2	-95,2
corporate bonds	32,8	13,5	9,2	6,1	10,3	-68,7
Volume of exchange trades to GDP,%	39,6	14,5	9,9	6,9	7,3	-32,3
Share of turnover on stock exchanges,%:						
government bonds	79,3	88,3	61,9	74,0	60,5	-18,8
shares	6,3	1,1	0,4	4,0	1,5	-4,8
corporate bonds	47,0	25,2	16,5	20,5	30,5	-16,5

Source: compiled by the author according to the NSSMC [1].

In almost all financial instruments, there is a migration of circulation towards the over-the-counter market. The explanation for the decline in trading activity in the segments of non-government instruments is not very correct, since this trend was characteristic not only for "junk" securities, but also for stocks (including so-called index ones) and bonds of well-known issuers - industry leaders.

And, of course, the regulator and market participants quite differently assess the quality of measures against market abuse and the corresponding law enforcement.

The problem of proper anti-abuse legislation is very painful. This is evidenced not only by the regulator's initiation of 173 cases of manipulation in 2015 - 2018 and numerous sanctions against market participants (up to revocation of licenses), but also by lengthy lawsuits, contradictory law enforcement, difficulties in forensic support of proceedings, lack of adequate methodology for the detection of abuses and generalizations regarding judicial practice. Due to legal uncertainty, market participants simply do not understand the growing variety of the regulator's approaches to qualify their actions as manipulation, so in order to minimize legal risks they try to move the conclusion of agreements outside the regulated (exchange) market.

To understand the context of the problem, we should refer to the year 2011, when Ukraine's current legislation first established rules to define manipulation and sanctions for such offenses. For a long time, this norm was "dormant", all the more so as the subjectivity of the criteria for manipulation and insufficient definition of the issue in the legislation was noticed already during the public discussion on the issue, and since then the situation with

legal certainty has not changed for the better. Therefore, in 2012-2014, the initiation of lawsuits with signs of manipulation was sporadic (4-7 cases per year). Subsequently, for many market participants, the anti-manipulation legislation adopted in 2011 suddenly turned into a significant but selectively applied "stick".

Even refusal from transactions with troubled issuers does not guarantee against sanctions, as there are cases when *sanctions were imposed for transactions that took place before the issuer was declared fictitious or the circulation of its securities was terminated*, so in fact it is necessary for market participants to anticipate specific restrictive measures of the NSSMC against issuers [4]. However, the "telepathic superpower" that the regulator requires from brokers would actually involve the use of insider information, which should really be considered an abuse.

In addition to the securities traders, who are constantly accused and who are regularly required to explain the economic nature of their operations, it is the stock exchanges who suffer, as they are the ones responsible for the initial control of transactions for signs of manipulation. Due to the lack of legal certainty in classifying particular actions of market participants as manipulation, the point of view of the stock exchange might not coincide with the vision of the regulator. Therefore, sanctions are imposed on the stock exchange too - for failure to identify transactions, which, according to NSSMC experts, have signs of manipulation.

At the same time, the problem of unpredictability of law enforcement affects the entire market, not just exchanges and direct participants in exchange trading. Already, institutional and ordinary investors have to provide explanations about the economic meaning of their operations on stock exchanges, and they become subjects of offence cases. The vast majority of investors are completely unprepared for this, which is at odds with the government's constantly declared plans to attract the householders' funds to stock market instruments (including the instruments of the government's public debt). High-profile information campaigns talk a lot about profitability, but not about the unforeseen legal risks for investors, as they may suddenly become participants of allegedly manipulated transactions rather than victims of abuse. And after the implementation of European legislation, strict prohibitions will apply not only to members of exchanges, but also to all participants in transactions with securities, derivatives and commodities, including those investors who are brokers' clients. With exchange trading in anonymous mode and with a more or less significant number of buyers and sellers of financial instruments, the risk of becoming one of the participants in transactions part of which have signs of manipulation significantly increases, (especially if these signs are determined as subjectively as today). And it is still unclear how, with large volumes of transactions in financial instruments, the regulator will identify (and whether will identify at all) bona fide investors, separating them from the actual abusers?

All the more so as the regulator is able to impose sanctions even on market makers and primary dealers, despite the direct rules of national law and the European legal framework, which stipulate that transactions of persons who maintain liquidity under the relevant agreements with the exchange or issuer should be a priori considered as non-manipulative.

According to the current legislation on state regulation of the securities market, the number of existing rights, tasks and other powers of the NSSMC as of 01.01.2020 reaches 118. Although the effectiveness of their implementation is questionable, the scope of powers is expected to significantly expand by law and provide additional resources for financing the regulator from contributions of market participants. It is expected that this should raise the confidence of domestic and foreign investors in the market and help attract investment.

However, it should be reminded that the public debt market, which is now the only attractive to domestic and foreign investors segment of Ukraine's stock market, is developing rapidly without strict prohibitions and without special participation of the NSSMC, but thanks to other government agencies (Ministry of Finance as issuer, NBU as a placement agent, depositary and regulator of major market participants).

Due to the market's high transparency, publicity of the issuer, interest in the efficient operation and fulfillment of obligations, including providing convenient access to non-residents through the NBU's link with Clearstream, in 2017–2019 they managed to raise the volume of investments in government bonds of Ukraine from non-residents from UAH 6 to 118 billion, and from the households - from 0.1 to 10 billion UAH. *And this is what can be really considered an indicator of trust*. It is due to the growth of market volumes and the decrease in the value of borrowings that the prices and yields of government bonds have become more predictable and less volatile [5, 6], and it is due to this that opportunities for abuse have decreased.

Based on the international experience in anti-abuse legislation, two basic approaches can be identified:

1) in the United States, the law does not specify the criteria for manipulation in too much detail, does not try to provide an unambiguous definition, and uses rather general formulations, but the courts, when determining verdict, comprehensively and in great detail consider *the economic nature* of specific transactions;

2) in the EU, this issue is regulated at the level of a separate MAD II (Market Abuse Directive) and MAR (Market Abuse Regulation) law, which *provide detailed* criteria for abuse and their differences from normal market practice.

Unfortunately, in domestic practice there is currently neither attention to adequate assessment of the economic essence of transactions, nor detailed definitions of illegal actions.

The regulator's attempts to investigate the economic content of transactions, which are available in documents published on the NSSMC's website on initiated lawsuits[3] and in court decisions, usually seem rather primitive and do not consider obvious approaches to economic analysis and accounting. In particular, the book value of securities is not taken into account, the financial result is determined not between purchase and resale transactions, but between sale and subsequent purchase transactions, etc. In addition, the size of financial sanctions is often incomparable to the damage to market participants and the market as a whole[4].

And in general, not only market participants to whom sanctions are applied, but even courts to which market participants apply for protection of their interests, have not seen formalized substantiations and analysis that should precede the initiation of manipulation cases by the NSSMC and should be referred to in the regulations on offenses.

Of course, the study of economic sense is not conducted on all transactions that take place in regulated markets, but only on those that arouse reasonable suspicion, because they meet certain characteristics (criteria). Revealing abuses is really a rather difficult task and lacks

[3] Law enforcement / NSSMC. https://www.nssmc.gov.ua/enforcement/#win2

[4] Thus, in 2016, a state bank was sanctioned in the amount of 170,000 UAH, which is almost 9,000 times (!) higher than its trade "loss" (and "profit" of its counterparties) artificially calculated by the regulator in the amount of 19 UAH per transaction with three issues of government securities for three conditionally separated trading days (for a period of six months!) Fluctuations in stock exchange prices during the day were 0.02-0.03%, so it is unclear how this could negatively affect the market. The bank was the primary dealer in government bonds and acted under an agreement with the Ministry of Finance as the issuer, so its transactions are clearly defined by law as non-manipulative. Moreover, the bank proved in court that it did not incur a loss of UAH 19, but a significant trading profit, and the total income from securities ownership reached 135 million UAH.

sophisticated development, even in foreign studies, which to a greater extent deal with abuses on the examples of developed markets. However, in mature markets, this task is quite effectively solved by regulators, in cooperation with exchanges and self-regulatory organizations. SEC, BAFIN and other regulators use comprehensive software solutions and procedures that allow, automatically, with the use of numerous research methods, to identify suspicious transactions among a large number of transactions, conduct their close analysis and only then make informed decisions to initiate abuse investigation [7, 8].

A proper functioning of such abuse-detecting systems (in particular for the construction of algorithms, mathematical models, and statistical and other methods of information processing) requires clear and unambiguous qualitative and quantitative criteria. Accordingly, it requires unambiguous and detailed normative definition of such criteria, application of clear and carefully formulated terminology, and methodological support.

Instead, the definition of abuses (primarily manipulation) at the level of the existing legislation of Ukraine, NSSMC regulations and the terminology used for this purpose are biased, vague, and contradictory. The method by which the regulator allegedly detects manipulation does not add certainty, and after inquiries from market participants, it has become even non-public[5] - perhaps because it is actually devoid of research methods? When asked by market participants about the terminology and methodology for detecting abuses, the regulator responds in general terms and shares plans to address the issue through the adoption of new laws.

However, the existing subjective criteria of manipulation are actively applied in the initiated cases, and later in the courts. Moreover, new "criteria" regularly appear, which are in no way regulated by law (for example, transactions are concluded "within minutes", "securities that are the subject of transactions are in the assets of CII", etc.). In 2019, the regulator in its inquiries began to demand clarifications on the reasons for fluctuations in the prices for financial instruments no longer within one or more trading days, but within a whole year. Due to the lack of specific and quantifiable criteria for abuse, the NSSMC sanctions can be applied both in the case of significant (in the regulator's opinion) fluctuations in stock prices, and in the case of minor fluctuations. Transactions on the same financial instruments with similar prices, which take place on different exchanges, can have opposite consequences - from the revocation of licenses of securities traders to the closure of offence cases. Thus, the shortcomings of legal regulation in the field of manipulation, which were mentioned when the relevant legislation was adopted in 2011, still create opportunities for conflicting law enforcement and make it difficult for affected market participants to protect their rights [8].

Therefore, given the need to implement the European legal framework and the lack of trust in regulators and the judiciary, for Ukraine, an essential point should be a detailed legal definition of abuse criteria.

Numerous legal shortcomings of the existing legislation and law enforcement practices on abuse in Ukrainian capital market are analyzed in detail in a comprehensive study [8]. And the ways to create a promising legislation should be analyzed exactly in this context.

2. Planned legislation on criminal sanctions for market abuse

Then what is planned to bring Ukrainian legislation in accordance with EU anti-manipulation standards?

[5] By the order of the NSSMC of 14.12.2018 No230 this document was rated as proprietary information of the NSSMC

According to the Strategy for the Development of the Financial Sector of Ukraine until 2025, as a result of the implementation of the European legal framework, criminal responsibility for abuse in Ukrainian stock market should be replaced - from the current not very significant fines and deprivation of the right to hold certain positions to up to eight years of imprisonment. Of course, this is a rather severe punishment, which is much harsher than the punishment for other types of fraudulent offenses and comparable to the punishment for very serious crimes.

Two draft legislative acts are currently being discussed.

In Draft Law No 2284 of 17.10.2019 (On Amendments to Some Legislative Acts of Ukraine to Facilitate Investment and the Introduction of New Financial Instruments) [9], which is the fourth attempt to implement the European approaches (in particular, *Markets in Financial Instruments Directive*, MIFID II) to regulated markets and derivatives, the text on manipulation remains unchanged, but the scope of the NSSMC (and, accordingly, the possibility of punishment) extends to the participants of commodity exchanges and commodity market.

The Draft Law "On Amendments to Certain Legislative Acts of Ukraine Concerning the Protection of Investors from Abuse in Capital Markets" (update of previous draft law No 6303 of April 6, 2017) a MAR implementation is expected, but experience does not suggest that it will be sufficiently correct. In particular, because the NSSMC seems to principally avoid initiating official translations of European directives and regulations on the functioning of the capital market into Ukrainian.

There are no official translations of MAD II and MAR on the official website of the Government Office for Coordination of European and Euro-Atlantic Integration, whose tasks, according to Resolution of the Cabinet of Ministers of Ukraine № 759 of 04.10.2017, include providing translation of the EU acquis into Ukrainian. The Ministry of Justice of Ukraine once translated only the text of Directive № 2008/26 / EC of 11.03.2008 [10], which amended the original Directive 2003/6 / EU of 28.01.2003 on insider trading and market manipulation (market abuse, MAD I). On the Government portal, MAR only appears in the Indicative Plan for the Translation of Acts of the EU Acquis for 2019–2020 [11].

Apparently, the only success of the translators can be considered the literal transfer of the provisions of MAD II and MAR on penalties to this draft law.

It is worth noting that the task of implementing the requirements of MAR and MAD to the national legislation was set in the previous Development Strategy until 2020, but this task (like many others) was left unfulfilled. They did not even find time to initiate official translation during five years (2015-2019). However, the problems are not so much related to non-compliance with the deadlines for implementation of European standards, as to the expected quality of the implementation and shortcomings of the existing and promising legislation, which, despite its "reform", nevertheless does not prevent the NSSMC from poor law enforcement.

Analysis of the discussed draft legislation on abuse shows that in some cases criminal sanctions are even stricter than the EU requirements: in particular, MAD II requirements provide for one year imprisonment, while the draft law- for at least two years, and maximum terms of imprisonment in some cases increase from four (MAD II requirements) to eight years (the draft law). At the same time, the quantitative criteria of significance and serious consequences for abuse are increased. Instead of fines with deprivation of the right to hold certain positions or engage in certain activities, a penalty in the form of long-term imprisonment is introduced (Table 3).

Table 3

Comparison of current and future criminal sanctions for market abuse

Offense	Current legislation (CCU, Art. 222, 232)	Draft law on abuse combating (CCU, Art. 222[1], 232[1])	MAD II (Art. 7)
Market manipulation	Significant size (≥500 NTM): a penalty of 3-5 thousand NTM; deprivation of the right to hold certain positions / engage in certain activities for up to three years	Significant size (≥600 thousand NTM): imprisonment for a term of 2-4 years	Imprisonment for up to four years
	Repeated / by prior conspiracy by a group of persons / serious consequences (damage ≥1000 NTM): penalty of 5–10 thousand NTM, deprivation of the right to hold certain positions / engage in certain activities for up to three years	Repeated / by prior agreement by a group of persons / severe consequences (damage ≥1200 thousand NTM): imprisonment for a term of 4-8 years with confiscation of property	
Unlawful disclosure of insider information	A penalty of 750–2000 NTM, possible deprivation of the right to hold certain positions / engage in certain activities for up to three years	Imprisonment for up to two years	Imprisonment for up to two years
Insider dealing	Significant amount (≥500 NTM): a penalty of 3–5 thousand NTM, possible deprivation of the right to hold certain positions / engage in certain activities for up to three years	Significant amount (≥600 thousand NTM): imprisonment for a term of 2–4 years	Imprisonment for up to four years
Unlawful disclosure or insider dealing	Repeated / by prior conspiracy by a group of persons / severe consequences (damage ≥1000 NTM): a penalty of 5–8 thousand NTM, possible deprivation of the right to hold certain positions / engage in certain activities for up to three years. Actions committed by an organized group: a penalty of 8-10 thousand NTM, possible deprivation of the right to hold certain positions or engage in certain activities for up to three years	Repeated / by prior conspiracy by a group of persons / serious consequences (damage ≥1200 thousand NTM): imprisonment for a term of 4-8 years with confiscation of property	

Source: compiled by the author according to the Criminal Code of Ukraine (CCU) and MAD II; NTM - non-taxable minimum income of citizens (17 UAH)

Financial sanctions are increased by 450-10000 times or new financial sanctions are introduced for violations for which there were no previous requirements or similar sanctions were only applied in the form of warning or revocation of the license (Table 4).

In addition to imposing tougher financial sanctions, the NSSMC obtains many new rights and powers:

– to conduct inspections for signs of manipulation, use of insider information, other violations of the legislation on the stock market, joint stock companies and the protection of the rights of consumers of financial services;

– to apply to the court with a claim (application) for termination of the legal entity for

violation of the prohibition of insider dealing and/or unlawful disclosure of insider information, as well as for manipulation;

Table 4

Comparison of current and planned financial sanctions for market abuse

Offence	Current legislation	Draft law on abuse	MAR
To individuals (current legislation - Code of Administrative Offenses, Articles 1638–1639, draft law - Law of Ukraine "On State Regulation of the Securities Market in Ukraine", Article 43, MAR - Article 30)			
Market manipulation	100–500 NTM; repeatedly or by a group of persons – 500–750 NTM	up to 5 million euros (increase by 10 thousand times)	up to 5 million Euros
Unlawful disclosure or insider dealing	500–750 NTM	up to 5 million euros (increase by 10 thousand times)	up to 5 million euros
Non-detection, non-notification of manipulation and insider dealing	-	up to 1 million euros	up to 1 million euros
Violations regarding the list of insiders and informing insiders, the list of managers and informing about their transactions, committing transactions during the closed period	-	up to 0.5 million euros	up to 0.5 million euros
To legal entities (current legislation - Law of Ukraine "On State Regulation of the Securities Market in Ukraine, Article 11, draft law - Article 45, MAR - Article 30)			
Market manipulation	10–50 thousand NTM or up to 150% of profit (receipts)	15 million euros or 15% of total annual turnover (increase by 450 times)	15 million euros or 15% of total annual turnover
Unlawful disclosure or insider dealing	10–50 thousand NTM or up to 150% of profit (receipts). Repeatedly during the year: 50–100 thousand NTM or 150–300% of profit (receipts)	15 million euros or 15% of total annual turnover (increase by 450 times)	15 million euros or 15% of total annual turnover
Non-detection, non-notification of manipulation and insider dealing; violation of the procedure for disclosure of insider information		2.5 million euros	2.5 million euros
Violations regarding the list of insiders and informing insiders, the list of managers and informing about their transactions, performing transactions during the closed period		1 million euros	1 million euros
Market manipulation	10–50 thousand NTM or up to 150% of profit (receipts)	15 million euros or 15% of total annual turnover (increase by 450 times)	15 million euros or 15% of total annual turnover

Source: compiled by the author according to MAR, [13, 14].

– avoid applying to the Ministry of Justice for state registration of own legal acts;

– significantly (by times) increase the cost of administrative services;

– receive regulatory contributions from market participants, etc.

Moreover, in the case of investigation of crimes under Art. 222_1 and 232_1 of the Criminal Code (manipulation, unlawful disclosure or insider dealing), the investigator or prosecutor must involve as a specialist a representative from the NSSMC. However, if the NSSMC, on the one hand, has the power to establish the facts of abuse and, on the other hand, acts as an expert in court, then what unbiased proceedings will it be?

On the other hand, the draft law completely omits the implementation of Art. 11 of MAD II, which *provides for the proper training of judges, prosecutors, police, judicial and those competent authorities' staff* involved in offence cases and the investigation of market abuse. Indeed, why train them, if after that they will be able to express qualified doubts about the position of the NSSMC representatives?

Thus, instead of the accuracy of the law, market participants are offered a regulator with declarative tasks, but unique hyper-powers - not only in the regulatory sphere, but also in the field of criminal justice.

Formally, the implementation of MAR requirements in terms of identifying abuses and, conversely, actions that are not manipulation or insider dealing, as well as issues of fighting abuse look quite diverse.

Currently, the relevant legal regulation exists at the level of two articles: Art. 10.1 of the Law of Ukraine "On State Regulation of the Securities Market in Ukraine" and Art. 44-45 of the Law of Ukraine "On Securities and Stock Market". The proposed changes are already included in 13 articles of the Law of Ukraine "On State Regulation of the Securities Market in Ukraine": Art. 41.2 "Disclosure of Insider Information", Art. 44 "Insider Information", Art. 44.1 "Insiders", Art. 44.2 "List of Insiders", Art. 44.3 "Insider Dealing and Unlawful Disclosure of Insider Information", Art. 44.4 "Prohibition of Insider Dealing and Unlawful Disclosure of Insider Information", Art. 44.5 "Stock Market soundings", Art. 45 "Stock Market Manipulation", Art. 45.1 "Prohibition of Stock Market Manipulation", Art. 45.2 "Buy-back Program", Art. 45.3 "Stabilization of Financial Instruments", Art. 45.4 "Prevention and Detection of Abuse on the Stock Market", and Art. 45.5 "Rights of Managers".

At the same time, detailed analysis shows the schematicity and superficiality of the implementation. A significant discrepancy is evidenced by the comparison of the spheres of MAR and the draft legislation. According to Art. 2 of MAR, its scope is limited *exclusively to financial instruments* (those admitted to trading on regulated market, MTF, OTF or those dependent on them/influencing them in price/volume). Instead, the draft law distinguishes between the scope for the use of insider information and manipulation. If the insider information is limited to information related to financial instruments, then, as to manipulation, Art. 45 of the draft law *extends the scope of use even to those products* that are basic assets of the financial instruments admitted to trading.

In MAR, the criteria of lawful and unlawful conduct of a person possessing insider information are clearly defined, separated and regulated in Art. 9 and 10. Instead, in the above mentioned draft law (Article 44.3), the definition of lawful conduct (its limits) is attributed exclusively to the competence of the NSSMC. And experience shows that the position of the NSSMC is only infrequently characterized by legal certainty.

While MAR addresses the issues of accepted market practices, which are not manipulation, in the separate and well detailed Article 13, which contains a specific list of criteria to be considered when approving accepted market practices, then the draft law suffices with

only one paragraph in Art. 45, which does not contain any specification and again makes this issue a matter of exclusive competence of the NSSMC.

So instead of constructive steps to stimulate similar development for segments of non-government financial instruments (stocks, corporate bonds, derivatives), the market will once again receive a partial and ambiguous implementation of the European legal framework, lacking a proper balance in legal relations with the regulator (which eventually becomes a monopoly), and too harsh compared to the EU criminal sanctions and financial sanctions, which are absolutely inconsistent with the realities of Ukraine's economy. This in no way solves the problem of the lack of fair prices and the lack of other incentives for the capital market to perform its natural functions - neither in terms of draft legislation, nor in terms of strategies for the development of this country's financial sector.

Responsibility for market participants should be balanced by the responsibility of the regulator's specialists. Although the NSSMC manages to prove its position in some litigations with market participants, there are also quite a few cases when the courts conclude that the initiation of lawsuits and imposition of sanctions for abuse are unfounded: according to the NSSMC's annual reports, in 2016 the courts of first instance ruled 27 decisions in favor of stock market entities, in 2017 - 19, and in 2018 - 20.

However, the regulator did not draw proper conclusions from this practice: there is no information about who took responsibility or about the corresponding changes in the NSSMC's staff after the losses in court. At the same time, initiating a lawsuit and imposing a sanction is a blow to reputation, and an appeal in court is a significant expense of money and time. Thus, unreasonable lawsuits result in reputational and financial costs for market participants, difficulties in their activities, reduction of their income and taxes, inefficient use of resources of the regulator, reduced confidence in it and in the market in general, and limited productivity of the judiciary to deal with significant offenses. In one of the most high-profile cases, a securities trader (after proving that the NSSMC's allegations of manipulation in all courts were unfounded) had to appeal to the President of Ukraine and the Verkhovna Rada, as the regulator during several months failed to comply with the court's final decision on the unlawfulness of the NSSMC's actions on the imposition of fine and suspension of the license [15].

To some extent, the above mentioned draft law raises the issue of damage caused by decisions, actions and/or inaction of the NSSMC (its staff and/or experts involved), in particular, due to their professional mistakes. However, lawsuits filed against such persons are considered lawsuits filed against the NSSMC, which provides them with legal protection. Even if the damage is proved in court, the compensation mechanism in this draft law is not very detailed, and sources of compensation (including payments from insurance companies, where the NSSMC must insure professional responsibility) depend on the funds that market participants must give to the regulator (in the form of payment for administrative services and regulatory fees). So is this format of the regulator's responsibility really symmetrical to the damage incurred by market participants?

In the absence of symmetrical responsibility and in the actual absence of the market (at least of the stock market and other non-governmental instruments, especially in terms of systemic demotivation of its basic, most economically significant, issuers and investors), introduction of vague prohibitions and opportunities for their unconditional application inevitably lead to the confusion of concepts and provokes corruption.

Failure to consider the above issues, the introduction of prohibitions on market abuse at the level of draft legislation will not only fail to increase confidence in the market or produce

incentives for its development, but will also fail to ensure the implementation of a number of important functions of law:

– preservation of uncertainty in the criteria of abuse and its differences from acceptable market practice will complicate the implementation of the economic function of regulating economic relations, and the establishment of "rules of the game" in the economic sphere;

– unreasonable, selective and biased law enforcement will reduce the effectiveness of educational and preventive functions, as market participants will have unclear factors and non-obvious consequences of both lawful and illegal behavior;

– and the imbalance of rights and responsibilities of market participants and the regulator may raise doubts about the adequate performance of regulatory and compensatory functions in ensuring effective regulation of legal relations in the market and compensation for the regulator's wrongful acts.

3. Economic aspects of combating market abuse.

Largely, the answer to the question announced in the title of the article should be considered in economic terms, because the public interest is threatened by the economic consequences of market abuse. Indeed, why do the legislation in developed markets stipulate such harsh measures for market abuse offenses? Are the implementation of punishment standards and the regulator's superpowers in their application really able to affect the economic component of legal relations between stock market participants? What should be the indicators of such impact? How does the current state of Ukrainian national stock market relate to the punitive provisions in developed countries?

The functioning of stock markets, as well as any complex economic mechanisms, creates a risk of unique (i.e. not inherent in other markets) abuses. The main ones, which are legally separated in most countries with developed stock markets and are considered the most serious, relate to price manipulation and illegal use of insider information.

Fundamental factors in counteracting market abuse and the institutional basis of relevant regulatory practices are the effectiveness of combating information asymmetry and unbiased pricing of financial instruments, which is determined by the degree of market development and liquidity.

Information asymmetry is a situation when one group of economic entities has the necessary information and the other does not. The existence of information asymmetry is associated with the properties of information as such, as well as the peculiarities of its perception and behavior of some economic entities in relation to others. In an economic system, signals come to its elements with a certain lag, so the less informed entities have to operate in conditions of permanent uncertainty. Despite the rapid development of informational technology and the rapid access to information, as well as the growth of its volume, the problem of information asymmetry does not disappear, but rather deepens. In the context of globalization, and society's diverse needs for financial services, the dynamism of these needs and technical solutions to meet them, and rapid development of financial innovations and informational technologies, information asymmetry is becoming one of the key economic problems [8].

In financial markets, information asymmetry shows up in the fact that if certain entities have more information about the real value of financial assets or investment opportunities than other market participants do, it creates preconditions for incorrect market valuation of financial assets and provides opportunities for more informed participants to get certain benefits from this [16].

Manipulation and insider trading are exclusively inherent in regulated (exchange) market, whose most important function is the determination of objective price targets. Therefore,

criminal actions will negatively affect precisely the quality of the stock market's price function. So the strict responsibility for these offenses is a legislative reflection of the prominent role of exchange pricing.

State regulation and active participation of the state plays a significant role in the system of counteracting information asymmetry, and its reduction. The measures include state control over the quality of goods and services, the proper functioning of financial markets, and the introduction of prohibitive rules that establish responsibility for opportunistic behavior of economic entities who enjoy the benefits of information asymmetry.

Competitive stock trading provides probably *the only way to achieve fair (market) pricing and minimize information asymmetry*, but this largely *depends on the state of legislation, regulation and the level of development of the stock market.* Given the important role of exchange prices for the economy, the main efforts of financial market regulators should be aimed at determining objective price reference points (actual prices and benchmarks).

In immature markets, the effectiveness of counteracting information asymmetry, and, consequently, the effectiveness of revealing and preventing abuse, seems rather questionable due to a number of factors:

1) low quality of the disclosure of financial statements of the issuers, as it is aimed at purely formal compliance with regulatory requirements, rather than at real transparency for the issuer to raise capital via stock market instruments;

2) insufficient investor's confidence in local issuers and their securities;

3) limited experience of public authorities in detecting and combating very specific stock market abuses, lack of precedents and generalizations, and usually low level of the market participants' confidence in the unbiased law enforcement and justice, in particular due to legal uncertainty;

4) insufficient development of informational, analytical and expert institutions, which face significant difficulties in estimating the fair value of companies and financial instruments - due to limited methodological support, certain conditionality of financial reporting (especially for companies within groups), insufficient or limited period of available exchange prices, and limited number of similar companies to compare their financial and price indicators with the investigated ones;

5) limited or inactive market for most financial instruments, leading to the inability of the stock exchanges to perform the function of determining fair (market) value (due to insufficient liquidity, competitiveness and regularity of transactions).

The most important factors are those related to the basic participants of the stock market - issuers and investors. Without their real economic interest in the market, any improvement in the state of regulatory institutions, informational and forensic support, or liquidity is unlikely to radically change the situation (in the absence of the issuers' interest in the circulation of issued securities, liquidity can be provided purely technically, in particular, in order to mask abuse).

Economic relations between issuers and investors are based on the imperative of economic feasibility in attracting and placing capital on the best terms. If a national stock market does not provide its basic participants with such opportunities and they meet their needs by using services of other markets, then it is difficult to expect efficiency from reforming of other market institutions. In particular, introduction of the best standards of information disclosure and punishment without clear incentives for issuers is unlikely to contribute to market development and reduce the preconditions for abuse. The experience of Ukraine's stock market shows that decades of exclusively coercive influence on issuers and growing regulatory requirements, without any progress in terms of convenience and cheaper capital raising, can

naturally only lead to degradation of emission activity, issuer's refusal to admit its securities on the exchange or overall withdrawal from the market.

In the context of Ukraine's prospects for implementing the EU's best legal experience, it should be noted that even in Poland, whose stock market was classified as developed by the FTSE Russel news agency in 2018, there were significant difficulties for the regulator in identifying accepted market practices to separate them from abuse [8]. And Ukraine's immature market, which is fundamentally different from the developed ones in the neighboring countries (and not only because of quantitative parameters, but because of institutional distortions), despite any attempts of formal copying, makes it virtually impossible to have accepted market practices (which are associated with legitimate and commonly accepted economic behavior of market participants) corresponding to the economic functions of the stock market).

In Ukraine's immature stock market characterized by illiquidity, irregular transactions, numerous risks, significant volatility, monopolization of various economic sectors and other shortcomings, there are no proper conditions and opportunities for fair pricing for most financial instruments (except government bonds). Any exchange prices are artificial, and the so-called "real" market prices simply do not exist. We can assume that any pricing on the Ukrainian stock market is manipulation. However, such a statement involves confused concept, because the economic nature of manipulation consists in the artificial distortion of objective prices. At the same time, objective prices can be formed only in conditions of: 1) much higher (than in Ukraine) liquidity, competitiveness, and adequate regulation; 2) exclusively via the use of the financial instruments of public companies interested in the existence of such objective prices [8, 17].

Presently there are no such conditions in Ukraine.

First, not every market is able to perform the function of defining a fair price. Obviously, the organized market must perform this function much more efficiently than the over-the-counter one. However, this is not necessary. In Ukraine, there are many segments of the financial market that operate exclusively outside the exchanges, but there are far fewer questions about the objectivity of their pricing than in the exchange market. These include auctions for the initial placement of government bonds, NBU tenders for repo transactions with banks, operations for government bonds in the Bloomberg network, placement and purchase and sale of NBU certificates of deposit, etc. But, again, we are talking about the government's debt financial instruments whose pricing is quite predictable. On the other hand, auctions initiated by state bodies (State Property Fund of Ukraine, Deposit guarantee Fund, bailiffs) for securities of non-state companies (shares, investment certificates and corporate bonds), regardless of the venue (exchange or over-the-counter market), often face either lack of demand, or difficulties in determining even the initial (starting) price. In addition, any auctions and tenders are usually held irregularly and have certain features (duration of the procedure, single winner, impossibility of splitting packages, and specific requirements for accreditation of participants), so it is a permanent exchange (regulated) market that allows you to regularly determine the fair price of financial instruments. However, opportunity is not a guarantee. Especially in the immature stock market of Ukraine.

Second, there are simply no public companies in Ukraine to issue a public offer and raise capital. Even non-public (actually often technical) issues in recent years have significantly decreased (Table 5), especially if we consider them separately from the recapitalization of (primarily state-owned) banks and state-owned companies.

Moreover, the introduction of legal requirement to place securities on the stock exchange only by issuers that have made a public offering (the requirement has no analogues in Europe)

has deprived the organized market of any placement at all. Now companies that are not ready or unable to meet the NSSMC's strict requirements of public offering, in principle, can not place on Ukrainian stock exchanges. Thus, in the absence of public companies, which, in the regulator's opinion, may arise in the future, Ukrainian stock market has ceased to perform the function of raising capital - just as it has long ceased to perform the function of determining fair price.

Table 5

Indicators of issuance and circulation of non-government securities in Ukraine in 2014–2018

Indicator	2014	2015	2016	2017	2018	2018 / 2014, %
Volume of issues registered by the NSSMC, UAH billion:	204,8	148,5	221,2	353,7	60,3	-70,5
shares	144,4	122,3	199,4	324,8	22,3	-84,6
shares of non-state issuers *	13,55	20,78	8,81	27,54	2,43	-82,1
corporate bonds	29,01	11,42	5,52	8,35	15,45	-46,7
Volume of issues by non-state issuers * to GDP,%	2,7	1,6	0,6	1,2	0,5	-2,2
Number of securities issues admitted to trading on stock exchanges:						
shares	1 910	1 558	1 207	491	376	-80,3
corporate bonds	648	478	234	125	105	-83,8
Number of listed securities:						
shares	182	64	8	7	4	-97,8
corporate bonds	230	135	26	12	10	-95,7
of listed securities, %:						
shares	9,5	4,1	0,7	1,4	1,1	-8,4
corporate bonds	35,5	28,2	11,1	9,6	9,5	-26,0

* Excluding the largest issues for the recapitalization of banks and state-owned companies.

Source: compiled by the author according to the NSSMC [1].

That is why in recent years the absence of the market itself is often noticed, even by the market regulator.[6]

Is the market really threatened by so-called abuses under such conditions? Can there be market abuse at all if there is no market?

The negative consequences of the formal application of European norms on immature market can be demonstrated by a number of examples.

In Ukraine, the situation of irregular trading and, consequently, irrelevant exchange prices is quite common for a significant number of shares, because until recently for thousands of joint stock companies, which were public only by name, there was a requirement for admission of its securities to trading at least on one stock exchange. The abolition of this rule was one of the factors in overall decrease in the number of issues of shares admitted to exchange trading. However, this is not the only factor, as the reduction in the number of corporate bond issues was no less significant (Table 5) both due to the introduction of strict listing requirements and due to overall lack of effective incentives for issuers to exchange placement and trading.

[6] At least, there are reports on the absence of the share market, which is usually basic segment of the stock market, about the lack of interest in the market from its basic participants (issuers and investors), and failure of market institutions to perform effective communications between basic participants.

And now, despite a significant reduction in the number of exchange instruments, there are still many issues of securities admitted to exchange trading, but due to lack of interest from investors, exchange contracts are concluded on them very irregularly.

An additional problem is the fact that, in accordance with the NSSMC's requirements, the exchanges are monitoring price fluctuations, in particular in the context of counteraction to manipulation, by comparing the prices of orders and agreements with specific price benchmarks (exchange rate, closing price) fixed exclusively in unaddressed conditions. At the same time, the share of exchange trading in unaddressed conditions is insignificant - not least, because the prices under such agreements are most controlled by the regulator.

Thus, with regard to illiquid securities with irregular, episodic pricing, the following situation is typical: a broker receives an order from a client and is faced with the fact that the last exchange agreement was concluded, for example, six months ago, and the exchange rate or closing price was fixed, say, 11 months ago.

A broker can take a risk and try to execute a client order on the exchange. However, if the price in the customer's order differs significantly from the last calculated closing price, then at least the situation of price instability is fixed, a check is made to find out the reasons for such a situation and the NSSMC is informed, and signs of manipulation are monitored. In the worst case - a lawsuit of manipulation is initiated. In fact, even if the closing price was determined three years ago, it will not change anything, because the exchange has no reason to consider such a benchmark irrelevant.

Suppose the broker's order was rejected by the stock exchange trading system due to non-compliance with the established ranges of price fluctuations and no checks or lawsuits took place. Then the broker can try to make a deal out of stock exchange. However, not everything is so simple for OTC transactions. From the point of view of the NSSMC requirements, for any transactions (exchange or over-the-counter) concluded by a broker on securities admitted to exchange trading, the price benchmarks set during the last 12 months are considered relevant. Therefore, the deviation from them of the prices of even over-the-counter transactions is a reason for qualifying such transactions as "suspicious" and the broker's reporting to the NSSMC with the relevant legal risks. And the same risks will arise for the counterparty under the agreement.

In such conditions, the probability of fulfillment of the client's order is rapidly reducing, and the cost of broker services can significantly exceed the potential trading result.

It is difficult to imagine a broker in a mature market who, in order to conclude a transaction, must focus on quotations from a year ago and also explain in detail why the transaction price differs from these quotations.

Not only ordinary investors fall into this trap of illiquidity and lack of real prices. For example, the Deposit guarantee Fund has been trying for years to sell securities from the portfolios of liquidated banks, but in most cases there are no buyers - even despite bidding in the format of "Dutch" auctions and multifold price reductions (in some cases the sale does not offset costs to conduct such auctions and pay for the services of market infrastructure entities). The reason for the lack of demand is often not so much the illiquidity of securities (or more broadly - *the general risk of illiquidity of the market* [18]) or the fictitiousness of their issuers, as the non-obviousness of the fair price.

If there is no demand for securities for a long time, if the prices of their circulation are not interesting to the issuer, then can the price determined by the stock exchange based on occasional transactions be considered fair? Should private pension funds buy securities exclusively on the stock exchange? Should the market be protected from the prices of such

sporadic transactions? Should the deviation of the prices of episodic transactions from outdated price benchmarks be considered as manipulation? Can there be a question of manipulating an illiquid market at all? And if it is not about manipulation, but about other types of offenses (for example, fraud), then should this really affect the scope of powers of the NSSMC?

It is obvious that such a terrible situation with market pricing for most financial instruments is very different from the realities of EU financial markets.

Thus, the implementation of prohibitive rules for abuse in national law should take into account these systemic features of the immature market, which are naturally absent in the EU legal framework

Conclusions

It is clear that Ukraine needs to implement European legal framework, but the *presence of penalties - like the EU – in no way means the presence of a stock market, like in the leading EU countries*. And it is unlikely that a developed stock market - like in the EU - can appear just due to the prohibitive rules alone.

Are the strict prohibitions for market abuse needed? They certainly are. And it is not just a matter of fulfilling the obligations of the Association of Ukraine with the EU. Prohibition of abuse is a condition for building a high quality, mature market. This is evidenced, in particular, by the experience of Poland, where the definition of manipulation and the original prohibition rules were implemented in the legislation in the early 1990s [8,19], i.e. long before the Polish stock market began to position itself in the world as developed and attractive. But in order to apply such experience, the law must be precise, detailed, unambiguous and hence clear. This will be the basis for predictability of law enforcement.

It is necessary not just to introduce strict prohibitions into national legislation to combat stock market abuse. Given the need to implement the European approach, these rules and criteria for the qualification of abuses (and, conversely, transactions that meet the characteristics of accepted market practices) should be most detailed, unambiguous and appropriate to the immature state of the market.

At the same time, prohibitive standards should not be a "thing-in-itself", but an integral part of a systemic effort to improve the market's quality, and in its absence - a vector to stimulate its development. It is necessary that the differences between the Ukrainian stock market and mature capital markets really reduce, and convergence with it not remain only in the form of selective implementation of legislation.

Experience shows that in the conditions of market immaturity and actual absence of its certain segments, strict prohibitions on abuse by market participants should be applied with caution and accompanied by symmetrical responsibility of the regulator in case of insufficient justification and biased law enforcement.

Unfortunately, there are no grounds to believe that these rather obvious conclusions on adequate ways to combat abuse and implement the EU legal framework be taken into account in the program documents on the development of the Ukrainian market and the relevant rule-making activities.

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Received 30.01.20.
Reviewed 28.02.20.
Signed for print 15.06.20.

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ВІДНОВЛЕННЯ ДОВІРИ ДО ФОНДОВОГО РИНКУ УКРАЇНИ: ЧИ ДОСТАТНЬО УЖОРСТОЧЕННЯ НОРМ ЗА ЗЛОВЖИВАННЯ НА РИНКУ?

Оцінено ефективність протидії зловживанням на фондовому ринку України. Виявлено, що проблема неналежного законодавчого оформлення протидії зловживанням на фондовому ринку має наслідком безсистемне і необ'єктивне правозастосування з боку регулятора (НКЦПФР). З'ясовано, що пропонований варіант імплементації до національного законодавства вимог регламенту MAR (Market Abuse Regulation) та Директиви MAD II (Market Abuse Directive) є неадекватним як у контексті функціональної ролі ринку в економіці, так і в контексті необґрунтованого розширення повноважень регулятора. Констатовано, що неврахування зазначених питань на рівні перспективного законодавства не тільки не підвищить довіру до фондового ринку, а й блокуватиме стимули для його розвитку.

Обґрунтовано, що впровадження у національне законодавство жорстких заборонних норм для протидії зловживанням на фондовому ринку на основі імплементації саме європейського підходу має бути максимально докладним, однозначним та відповідним незрілому стану ринку. При цьому заборонні норми мають стати невід'ємною складовою системних кроків, спрямованих на покращення якості ринку, а за його відсутності – вектором для стимулювання розвитку. Необхідно, аби в

умовах незрілості ринку та фактичної відсутності окремих його сегментів жорсткі норми щодо заборони зловживань учасниками ринку застосовувалися виважено та – у разі недостатньої обґрунтованості та суб'єктивності правозастосування супроводжувалися симетричною відповідальністю регулятора.

Ключові слова: *фондовий ринок, фондова біржа, цінні папери, публічна компанія, публічна пропозиція, лістинг, інформаційна асиметрія, зловживання на ринку, маніпулювання, інсайдерські правочини*