

The concept and features of banking as an object of administrative and legal influence

Ivan Naumenko,

Applicant of the Scientific Institute of Public Law

<https://orcid.org/0009-0002-0760-7764>

Abstract. Attention is focused on the fact that banks should be understood as financial institutions that carry out various operations with money and securities, providing a wide range of services to individuals and legal entities.

In the article, based on the analysis of scientific views of scientists, the author's definition of the concept of "banking activity" is proposed. It was found that banking is a specialized type of economic activity, which is carried out by banks on the basis of an appropriate license and involves a wide range of transactions with cash, securities and other financial assets. Such activity is carried out for the purpose of attracting funds, managing financial resources, lending, carrying out settlement and payment operations, as well as ensuring financial stability and liquidity.

Attention is focused on the fact that the main features of banking activity, which emphasize its importance and characterize it as an object of administrative influence, are expressed in three key aspects: economic, political and public-legal.

It was concluded that banking activity, as an object of administrative and legal influence, is characterized by the following features: a) it is carried out by specially authorized entities, which are implemented on the basis of obtaining a license; b) conditions the emergence of legal relations of a power-management nature between various subjects; c) provision of the relevant banking activity is carried out by specially authorized entities that have a special administrative and legal status; d) has important social, economic and political significance, due to which it is subject to strict regulation, mainly by the norms of the administrative branch of law.

Key words: banks, banking activity, object, administrative and legal regulation.

Problem statement. Banking is one of the oldest spheres of social activity, which has been known in Ukraine and around the world for many millennia. The very etymology of the word "bank" goes back to the French word "banque", which means "chest", and the Italian word "banca", which means "table". "Chest" indicates the function of preservation, as it is a place where something valuable is kept. The roots of the term also go back to the Italian "banca", which meant a table, counter, or workplace. Such tables were set up in the squares where lively trade took place. Trade was conducted using a variety of coins minted by states, cities, and even individuals. There was no uniform coinage system. Under these conditions, specialists were needed who would know a lot of coins, could evaluate them and give advice on exchange [1, p.14]. Today, banks should be understood as financial institutions that carry out various operations with money and securities, providing a wide range of services to individuals and legal entities. It is worth noting that the activities of banks have a direct impact on the functioning of the entire financial sector of the state. In view of the above, regulation, in particular, administrative and legal regulation of the activities under study, is of great importance.

State of the research. Some problematic issues related to banking in Ukraine were considered in their scientific works: I.A. Bezklubiyi, D.O. Hetmantsev, V.V. Kovalenko, M.M. Pintokha, O.H. Popov, V.I. Teremetskyi, N.V. Trusova and many others. For example, V. Teremetskyi et al. have considered some aspects of control over the activities of banks by the

Deposits Guarantee Fund and have defined the tools of its control activities [2, p. 80]. However, despite the significant theoretical achievements, the issue of studying banking activity as an object of administrative and legal regulation is not sufficiently developed in the scientific literature.

Purpose and objectives of the research. The purpose of the article is to define the concept and to reveal the specific features of banking activity as an object of administrative and legal influence. To analyze the scientific views of scholars on the interpretation of the concept of "banking activity"; to reveal the provisions of current legislation, and on this basis to identify the factors which characterize banking activity as an object of administrative and legal influence.

Scientific novelty of the research. The scientific novelty of the article is that it further elaborates on the theoretical approach to defining the concept and generalizing the list of characteristic features of banking activity as an object of administrative and legal influence.

Presentation of the main material. The Law of Ukraine "On Banks and Banking Activity" states that: "banking activity is the attraction of deposits from individuals and legal entities and the placement of these funds on its own behalf, on its own terms and at its own risk, opening and maintaining bank accounts of individuals and legal entities" [3]. In essence, the regulatory definition equates banking activity with banking services. However, despite the legislative consolidation, there are a number of other approaches to understanding this category in the scientific literature.

For example, according to the Banking Encyclopedia, banking activity is a set of legal actions performed by certain entities in the form required by law or contract [4]. A comprehensive justification of the category under study is offered by Yu.M. Bysaha and M.V. Sidak, focusing on the intersection of the content of banking functions and operations. They believe that banking activity is the right of banks and credit institutions to exercise their statutory functions and powers, to carry out banking operations in the interests of legal entities and individuals, to provide them with banking services on the basis of licenses, and to carry out other permitted activities on their own behalf and at their own expense within the limits of the competence granted. In turn, scientists interpret banking functions as features that characterize an institution in terms of its legal status as a legal entity that owns property for independent full economic management, making a profit as a result of economic (commercial) activities, as well as ensuring control in cash and currency transactions. According to scientists, banking operations, as a component of banking activities, are separate practical and legal operations aimed at achieving specific goals and satisfying users of banking services [5, p. 140]. O.P. Orliuk points out that banking activity is a system of operating special entities and operations carried out by them as participants of a single banking system with regard to money, securities and currency values as means of payment, savings and goods. In legal terms, banking activity is a system of ongoing transactions and operations aimed at making a profit. According to the scientist, such activity is entrepreneurial, exclusive and professional, characterized by specific legal regulation regimes and accompanied by external and internal banking risks, which creates additional grounds for increased supervision by the state represented by authorized bodies [6, pp. 8-9]. In her scientific works, I.I. Diakonova concludes that banking activity is a complex of working functions of banking institutions, which include: 1) transfer of monetary capital for use by industrial and commercial entrepreneurs in the form of loans. This function can also be defined as credit intermediation; 2) storage of funds and cash and non-cash payments. We have intermediation in payments; 3) mobilization of savings and incomes of different segments of society and their provision on the terms of payment and return within a certain period of time at the disposal of industrial and commercial entrepreneurs, as a result of which these incomes and savings are transformed into capital; 4) creation of some types of credit instruments, in particular, issuance of banknotes by issuing banks [7, p. 2].

A.V. Buriak gave the definition of banking activity, according to which it is the work of a bank as a dynamic open system, which is determined by its functions in the economy and is characterized by the corresponding result at the macro and micro levels; the process of accumulation of financial resources and their placement; the process of maximizing shareholders' income in order to manage the efficiency of the banking business [8]. Analyzing the content of banking activity, S.H. Arbuzov writes: "A modern bank is a specific financial institution created by the state or individuals or legal entities,

operating on the basis of laws and regulations of the state, and performing a number of special functions related to monetary, foreign exchange and other financial transactions and services, as well as ensuring the interests of owners, the state and its customers through the formation and use of assets, obtaining financial results (profit) and fulfillment of its obligations to the state and customers" [9; 10, p.15].

V.I. Rudevskaya, having analyzed the doctrinal approaches to the definition of banking activity, made the following conclusions: "The definition of banking activity cannot be limited to the list of banking operations, as it includes legal, public and entrepreneurial activities. Activity of banks is acquiring new features in classical operations and expanding the scope of services in the context of technological progress. The economic basis of banking activity related to the accumulation and placement of temporarily available funds is the movement of cash resources, which is an objective process of influencing the formation and use of borrowed value. Over time, classical banking activity is supplemented by new types of banking operations and banking services. Consideration of the interpretations of the concept of "banking activity" and approaches to defining its content made it possible to propose a definition of banking activity as a financial and economic activity that includes a set of operations for maintaining accounts, transferring funds and raising funds to provide money loans for the purpose of making a profit, meeting the needs of society in obtaining banking services and ensuring the stability of the banking system" [11, p.198].

Thus, to date, a large number of approaches to the interpretation of banking activity have been developed, which define it as: a system of functions performed by banks; work of banking institutions, a special type of economic activity; a set of intermediary financially significant transactions; directly as a structured hierarchy of banking institutions headed by a state organization, and so on. Such a variety of definitions is due to the complex and rather broad content of banking activity.

Therefore, the conducted analysis makes it possible to conclude that banking is a specialized type of economic activity, which is carried out by banks on the basis of an appropriate license and involves a wide range of operations with cash, securities and other financial assets. Such activity is carried out with the aim of raising funds, managing financial resources, lending, conducting settlement and payment transactions, as well as ensuring financial stability and liquidity.

The main features of banking activity that emphasize its importance and characterize it as an object of administrative influence are expressed in three key aspects: economic, political and public law. Thus, first of all, banking activity is a tool for supporting the national economy, ensuring its efficiency, as well as compliance with social trends, needs, relevant international standards, etc. This conclusion is based on the fact that the banking system as a whole is a component of the financial market, and its stability and efficiency are a prerequisite for the development of the national economy. The main task of

the banking sector in the current economic environment is to redistribute financial resources between the state, business entities, and households to important sectors of the economy. By concentrating financial resources and channeling credit flows to priority sectors of the economy, banking institutions play an important role in the country's development. The majority of all financial services are provided by the banking sector of Ukraine. In addition, the banking system of Ukraine acts as a factor in ensuring the efficient implementation of the reproduction processes of enterprises and is the main source of investment of financial resources in the country's economy. This system ensures the redistribution of temporarily free funds of market participants at the intra-industry, inter-industry, intra-regional and inter-regional levels, thereby improving the competitiveness of the national economy and ensuring long-term growth. Modern banks carry out a significant number of operations and provide services to their customers. In addition, banks independently determine the system of organizing operational activities depending on the volume, types of banking operations, information technology, number of employees, etc. The issues of researching the trends in the functioning of the country's banking sector are among the main problems of Ukraine's economic development. This is due to the fact that a stable and efficient banking system is a guarantee of effective monetary regulation of the economy, efficiency of credit and settlement services for economic turnover, etc. [12].

The second aspect is manifested in the fact that banking activity not only provides banking services to the population and its individual representatives, but also contributes to the implementation of the state's monetary policy. The Law of Ukraine "On the National Bank of Ukraine" defines monetary policy as a set of measures in the area of money circulation and credit aimed at ensuring price stability through the use of monetary policy instruments used by the National Bank of Ukraine. The National Bank of Ukraine conducts monetary policy by using the following instruments: "1) determining and regulating the required reserve ratios for banks; 2) interest rate policy; 3) refinancing of banks; 4) foreign exchange interventions (purchase and sale of currency values in foreign exchange markets); 5) transactions with securities (except for securities confirming corporate rights), including treasury bills, in the open market 6) regulation of capital imports and exports; 7) introduction of a requirement for mandatory sale of a part of foreign currency proceeds for a period of up to six months; 8) change of settlement terms for export and import of goods; 9) issuance of own debt obligations and transactions with them; 10) transactions with derivative financial instruments. The NBU has the right to provide loans for bank refinancing, if this does not entail risks for the banking system" [13]. Thus, in the process of banking activity, the fulfillment of the tasks and

requirements of the national monetary policy determined by the National Bank of Ukraine is ensured, which contributes to the proper functioning of the entire financial sector of our country.

Speaking about the public law aspect of banking activity, it is worth emphasizing that various legal relations arise in the course of its implementation, most of which are public law or administrative. These relations include interaction with the state represented by authorized entities and are characterized by a number of other features: 1) they arise, change or terminate only on the basis of legal norms that directly give rise to them (bring them into existence) and are realized through them; there is a cause and effect relationship between these phenomena: if there is no norm, there is no legal relationship; they represent a certain unity; 2) the subjects of these relations are interconnected by legal rights and obligations, which are commonly referred to as subjective in legal science. This connection is, in fact, a legal relationship in which the right of one party corresponds to the obligation of the other and vice versa. They can be called reciprocal. Participants of legal relations act in relation to each other as authorized and legally obliged persons, the interests of one can be realized only through the mediation of the other; 3) have a volitional character: first, because the state will is reflected in them through legal norms; second, because even in the presence of a legal norm, legal relations cannot automatically arise and then function without the will of its participants, at least one of them, a volitional act is necessary to give rise to the phenomenon; 4) they are protected by the State; 5) they are characterized by individualization of subjects, strict determination of their mutual behavior, personification of rights and obligations; it is not an impersonal abstract connection, but always a specific relationship of "someone" with "someone" [14, p. 256]. The location of banking activity in the system of coordinates of state policy and the functioning of the national economy inevitably involves close interaction of banking institutions with other state bodies, in particular, on issues of regulation of such activity. Therefore, its implementation has a public law nature, which is reflected in the features of legal regulation.

Conclusions. Thus, the conducted analysis makes it possible to conclude that banking activity, as an object of administrative and legal influence, is characterized by the following features: a) it is carried out by specially authorized entities that implement their activities on the basis of obtaining a license; b) causes the emergence of legal relations of a power-management nature between various subjects; c) provision of the corresponding banking activity is carried out by specially authorized entities that have a special administrative and legal status; d) has important social, economic and political significance, given that it is subject to strict regulation, mainly by the norms of the administrative branch of law.

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