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## **MEASURES OF INFLUENCE FOR VIOLATION OF FINANCIAL MONITORING BY BANKS IN UKRAINE**

*The research examines the organizational principles of building a system of influence measures for violations of financial monitoring by banks in Ukraine, analysis of fines imposed on banks in the field of financial monitoring, and judicial practice of challenging the applied influence measures for the period from 2018 to 2023. This subject of research was chosen due to the impossibility of effective functioning of the national system of financial monitoring without an effective regulation mechanism. An integral part of market regulation is the implementation of influence measures adequate to the committed violation. The application of influence measures and control over the implementation of corrective actions contribute to the strengthening of the national financial monitoring system. The relevance of the study is determined by the heterogeneity of the functioning of financial monitoring systems in different jurisdictions, the involvement of a wide range of reporting entities in this process, the constant development in the field of financial monitoring due to the digital transformation of the provision of financial services. A wide list of influence measures, which the financial regulator has the right to apply to banks according to Ukrainian legislation, was revealed, including a ban on carrying out certain types of operations, removing management from their positions, classifying the bank as problematic or liquidating the bank. However, in practice, the use of influence measures in the form of written warnings and fines prevailed. The National Bank of Ukraine, as a rule, applied fines in the case of problems of banks with the implementation of measures for customer due diligence and poor banking analysis of financial transactions of clients. The ultimate goal of most schemes, which, according to the National Bank of Ukraine, violated the legislation in the field of financial monitoring, was the conversion of non-cash funds into cash. Banks appealed the decision of the financial regulator only in case of significant fines. At the same time, the courts made different decisions in similar situations, which indicates the absence of a unified position of the judicial system regarding the legality of the application of fines to banks for violations in the field of financial monitoring.*

**Keywords:** financial monitoring, financial monitoring system, regulator of the financial market, measures of influence, fines.

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## **ЗАХОДИ ВПЛИВУ ЗА ПОРУШЕННЯ ЗДІЙСНЕННЯ ФІНАНСОВОГО МОНІТОРИНГУ БАНКАМИ В УКРАЇНІ**

*У статті досліджено організаційні засади побудови системи заходів впливу за порушення здійснення фінансового моніторингу банками в Україні, аналіз штрафів, які були накладені на банки в сфері фінансового моніторингу, та судової практики оскарження застосованих заходів впливу за період з 2018 по 2023 роки. Даний предмет дослідження було обрано у зв'язку з неможливістю ефективного функціонування національної системи фінансового моніторингу без дієвого механізму здійснення регулювання. Невід'ємною частиною регуляції ринку виступає здійснення заходів впливу, адекватних вчиненому порушенню. Застосування заходів впливу та контроль за виконанням коригуючих дій сприяють зміцненню національної системи фінансового моніторингу. Актуальність дослідження зумовлена неоднорідністю функціонування систем фінансового моніторингу в різних юрисдикціях, залученням до даного процесу широкого спектру звітних компаній, постійним розвитком в сфері фінансового моніторингу внаслідок цифрової трансформації надання фінансових послуг. Виявлено широкий перелік заходів впливу, які фінансовий регулятор має право застосовувати до банків згідно українського законодавства, включно з заборонаю на здійснення певних видів операцій, відстороненням керівництва від займаних посад, віднесенням банку до категорії проблемних або ліквідацією банку. Однак на практиці*

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превалювало застосування заходів впливу у вигляді письмових застережень та штрафних санкцій. Національний банк України, як-правило, застосовував штрафи у випадку проблем банків зі здійсненням заходів належної перевірки клієнтів та з аналізом банками фінансових операцій клієнтів. Кінцевою метою більшості схем, які на думку Національного банку України порушували законодавство в сфері фінансового моніторингу, була конвертація безготівкових коштів в готівку. Банки оскаржували рішення фінансового регулятора лише при значних сумах штрафів. При цьому суди приймали різні рішення у схожих ситуаціях, що свідчить про відсутність єдиної позиції судової системи стосовно правомірності застосування штрафів до банків за порушення в сфері фінансового моніторингу.

**Ключові слова:** фінансовий моніторинг, система фінансового моніторингу, регулятор фінансового ринку, заходи впливу, штрафи.

**Introduction.** At the current stage of development of the global economy, each international jurisdiction uses its unique tools to protect the economy from the harmful effects of "dirty" money. This toolkit is usually called the national system of financial monitoring. This system includes state bodies and reporting institutions, connections between them, interaction with external entities. Such systems cannot be effective without supervision of the primary subjects of financial monitoring – companies or individuals who are required to take Anti-Money Laundering / Countering the Financing of Terrorism (hereinafter – AML/CFT) measures and provide information to state regulators. In the process of supervision, state regulators identify problems that reporting entities must solve. In order to stimulate the solution of such problems, regulatory bodies are given the right to apply influence measures to supervised persons. The main purpose of applying such measures is to maintain the effective functioning of the national financial monitoring system.

**Materials and methods.** Research of the regulatory function in financial monitoring systems was conducted by many modern scientists. Some of these scientists carried out their analysis of the regulatory actions of state bodies and their impact on business. Dirk A. Zetzsche, Douglas W. Arner, Ross P. Buckley, Rolf H. Weber [9] studied the process of the revolution in the field of information compliance of RegTech services, which was caused by the strengthening of financial regulation in the EU (in particular in the field of AML/CFT). Alan Gelb focused his attention on the need for a transparent use of a risk-oriented approach during the analysis of clients and the conduct of their operations, since reducing risks to zero, according to his conclusions, led to de-risking processes. This was especially true of small transactions performed by low-income clients [1]. O. Vasylchyshyn, V Tytor, A Tsar studied the foreign experience of investigating financial crimes [8]. O. Ruda and O. Martseniuk focused attention on current innovations in financial monitoring by Ukrainian banks under martial law conditions [7]. At the same time, the topic of analysis of influence measures for violations of financial monitoring rules by Ukrainian banks remained undisclosed. Accordingly, the purpose of the study is to identify the organizational foundations of building a system of influence measures for violations of

financial monitoring by banks in Ukraine, analysis of fines imposed on banks in the field of AML/CFT, and judicial practice of challenging the applied influence measures.

**Results.** The list of possible influence measures in the field of AML/CFT for Ukrainian banks is contained in the "Regulations on the application of influence measures by the National Bank of Ukraine", which was approved by the resolution of the NBU Board dated August 17, 2012 No. 346 (with amendments) [6].

The first form of influence measure is a written warning. In a written warning, the National Bank of Ukraine (hereinafter – NBU) expresses to the bank its concern about the state of its affairs, points out violations of the law, deficiencies in work and, if necessary, establishes measures that the bank must take within a specified period in order to eliminate deficiencies. The bank is obliged to submit a response to the NBU indicating the period during which the bank undertakes to eliminate the identified violations. In the event that the bank does not comply with the requirements regarding the elimination of the violations specified in the written clause within the specified time, the NBU has the right to apply other measures of influence to the bank. If it takes more than two months to eliminate the bank's violation, a measure of influence other than a written warning is applied.

The next form of influence measure is the conclusion of a written agreement with the bank. An integral part of the written agreement is a plan of measures that the bank undertakes to take to eliminate violations or prevent them in its further activities. The deadlines for fulfilling obligations are set individually, taking into account the nature of the problems and committed violations, as well as taking into account the assessments and conclusions of the National Bank of Ukraine. In case of non-fulfillment by the bank of the obligations assumed in the written agreement, the NBU may make a decision to apply other measures of influence to the bank.

A significant measure of influence on the bank is a decision to limit, stop or terminate certain types of operations carried out by the bank. The list of restrictions on carrying out certain types of operations is determined by the NBU. Such a decision can be taken, in particular, in case of non-compliance with

the requirements of the National Bank of Ukraine within the established period regarding the elimination of violations in the bank's activities, or in case of violation of the requirements of the legislation on financial monitoring.

A financial measure of influence on banks is the imposition of fines. Penalties for violations of the requirements of the legislation on financial monitoring are imposed on banks in Ukraine in different amounts and depend on the type of violation.

A fine of no more than 1,000,000 UAH is applied for the following types of violations: refusal to establish or maintain business relations; violation of the order of creation and storage of documents; violations in information exchange (including with financial intelligence unit of Ukraine); violation of requirements regarding financial transactions; failure to provide protection to employees who reported violations of AML/CFT legislation; violation regarding internal documents.

A fine of no more than 2,000,000 UAH is applied for the following types of violations: violation of the procedure for freezing or unfreezing assets; failure to meet the requirements of the National Bank; repeated within three years of any type of violation provided for in subparagraph 1 of clause 7.21 of chapter 7 of section II of the Regulation on the use of influence measures by the National Bank of Ukraine.

A fine of no more than 10,000,000 UAH is applied for: repeated failure to comply with the requirements of the NBU; creating obstacles for the NBU in the process of its supervision in the field of financial monitoring; violation of data requirements that must be included in every payment transaction; violation of the requirements regarding the identification of counterparties in the PEP category.

A fine in the amount of no more than 50,000,000 UAH is applied for: violation of requirements regarding the implementation of due diligence measures; improper performance of the duty to manage risks.

The largest fine of up to UAH 135,150,000 can be imposed on a bank for the proper organization of the intrabank system in the field of AML/CFT, for an improper risk management system, or for repeated failure to comply with the National Bank's requirements to eliminate identified violations [4].

For violations in the submission of statistical reports in the field of AML/CFT, Ukrainian legislation establishes a fine of 51,000 UAH for each type of violation.

A fine of 400,000 UAH is imposed for violation of other requirements defined by the legislation on financial monitoring and not specified above.

In addition, the right of the NBU to remove a bank official from office is a measure of influence. An official may be reinstated on the basis of a decision of the National Bank of Ukraine after the identified

violations have been eliminated. Reinstatement may also take place based on a court decision that has entered into force.

The detection by the NBU of the submission of unreliable information by the bank regarding the fulfillment of the requirements of Ukrainian legislation in the field of financial monitoring by a person who intends to acquire or increase a significant participation in the bank, may lead to the application of an influence measure to the bank in the form of assigning the bank to the problematic category. Such a decision must contain a period during which the bank must bring its activities into compliance with the requirements of the law, but not more than 120 days. Also, if necessary, this decision may contain restrictions on the bank's activities.

The last, and most significant, measure of influence is the liquidation of the bank. According to Article 77 of the Law on AML/CFT [4], the National Bank of Ukraine has the right to revoke the banking license in the event of a systematic violation by the bank of the legislation in the field of financial monitoring. This definition includes the bank's violation of the legislation on financial monitoring after the NBU has applied at least two influence measures to the bank within two years.

The analysis of the actual application of influence measures in the field of financial monitoring in this research was carried out on the basis of information published on the official website of the NBU. On this official resource, the Ukrainian financial regulator publishes the grounds for taking influence measures, referring to Article 60 of Directive (EU) 2015/849 of May 20, 2015 [2]. States that have acceded to the Directive have an obligation to publish information regarding decisions taken by their competent authorities regarding the application of administrative penalties or measures of influence for violations of legal requirements in the field of AML/CFT. The obligation also extends to informing the public about the appeal of the decisions made and any further information about the outcome of such an appeal. Ukraine has joined this Directive, therefore it publishes such information. On May 30, 2018, Directive (EU) 2018/843 of the European Parliament and of the Council amending Directive (EU) 2015/849 was approved, but Article 60 regarding the obligation to publish the above information was not amended [3]. Statistics of AML/CFT impact measures applied to banks for 2018-2023 are contained in Table 1.

As can be seen from the above data, the most popular measures of influence on banks were issuing a written warning and imposing fines.

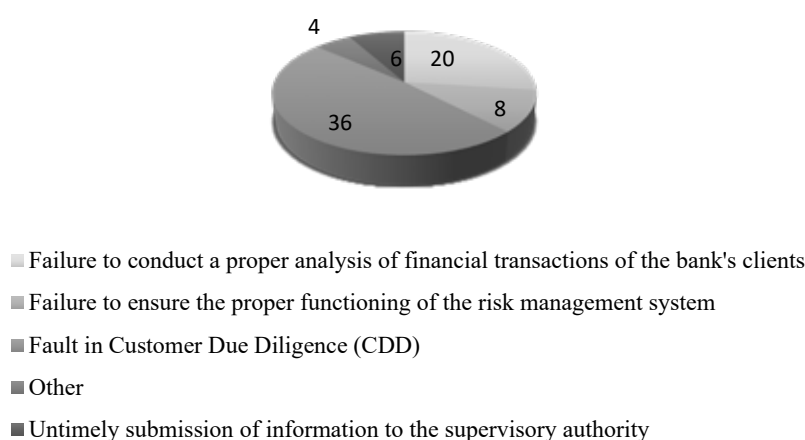
Since the written warning applies to not essential cases of non-compliance in the field of financial monitoring, the consequences of which the bank is able to eliminate within a short period of time, in this research the emphasis was focused on the analysis

**Table 1 – Measures to influence banks in the field of AML/CFT in 2018-2023**

Year	Type of impact measure			Total
	Fine	Written warning	Other	
2018	12	20	2	34
2019	19	14	0	33
2020	15	11	0	26
2021	2	11	2	15
2022	6	9	1	16
2023	20	13	2	35

Source: Created from [5]

### Types of violations for which a fines were applied from 2018 to 2023



**Figure 1 – Types of violations for which fines were applied to banks in the field of AML/CFT in 2018-2023**

Source: Created from [5]

of more significant violations for which the NBU applied fines.

Figure 1 shows the main types of violations for which banks were fined in the analyzed period. The largest number of fines was applied for failure to perform customer due diligence (hereinafter – CDD), improper analysis of financial transactions of bank clients, and failure to ensure proper functioning of the risk management system. However, according to Regulation on Financial Monitoring by Banks, which was approved by Resolution of the NBU No. 65 of May 19, 2020, signs of an improper risk management system include: problems with the implementation of customer due diligence measures by the bank and improper analysis of financial transactions by the bank's clients. So, in fact, the NBU, applying fines to banks in the field of financial monitoring, singled out 2 problems: customer due diligence and analysis of financial transactions of bank clients.

In the opinion of the National Bank of Ukraine, non-implementation or insufficient implementation of CDD measures against bank clients led to the use

of banks in illegal financial schemes. One of the most popular schemes was the use of financial companies. Such companies opened bank accounts, received funds from other companies and issued loans to their individual clients. At the same time, the loan amounts were such that the individual clients, based on their official incomes, were unable to repay. After receiving loans, individuals withdrew loan funds in cash. Loans to financial companies were either not returned at all, or the return was not carried out by individual borrowers, but by other legal entities – guarantors.

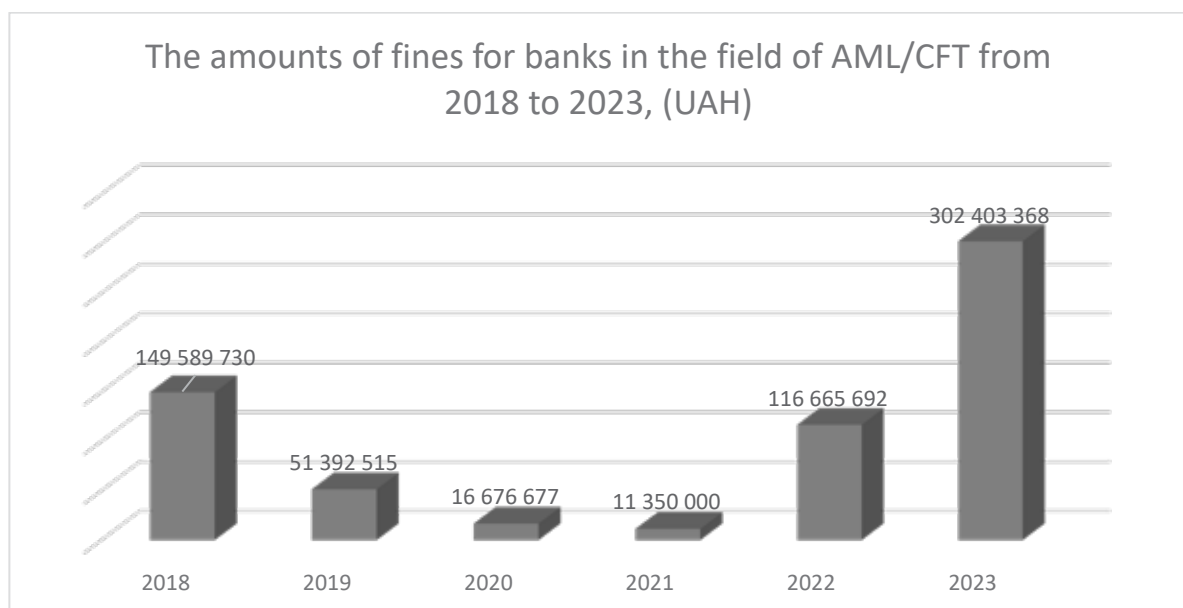
In the scheme with financial companies, the NBU drew attention to the implementation by banks of insufficient CDD measures both in relation to their clients (that is, to financial companies) and to the counterparties of such clients (legal entities that carried out the capitalization of financial companies, borrowers of financial companies, companies guarantors under loan agreements issued by financial companies). In particular, the signs of fictitiousness of the bank's customers were not properly analyzed: one person often acted as the owner and manager at the

same time; the companies lacked other employees, except for the manager; the location of clients was in places of mass registration of companies; financial operations of the bank's client companies and their counterparties were conducted from the same IP addresses. Also, according to the NBU, the banks that were involved in this scheme did not analyze clients taking into account the signs of their relationship: the same state registration addresses, common contact phone numbers, the presence of common managers/ultimate beneficial owners/trustees.

Another popular scheme, upon detection of which the National Bank used a measure of influence on banks in the form of fines, was the use of financial companies-clients of the bank, to carry out financial transactions involving the transfer of non-cash funds to other banks in accordance with contracts for collection services. Further, these funds were delivered to financial companies in cash by the means of collection of other banks for settlement on the basis of suretyship contracts for the obligations of legal entities – the bank's clients. Such legal entities then purchased scrap metal or agricultural products from individuals. In this scheme, the bank's clients were both financial companies and companies that bought goods for cash from individuals. Inadequate investigation of such clients-legal entities led to banks not detecting signs of their falsity: state registration of companies was often carried out almost simultaneously, companies had a single composition of founders and officials, companies did not submit tax and financial statements. Banks also had problems with the analysis of financial transactions of clients with signs of fictitiousness, since often the officially declared economic activity

of such legal entities did not coincide with the actual movement of funds. For example, the main activity of the company was the purchase of scrap metal and agricultural products, but significant sums of money were also received on the company's accounts for the supply of other types of products (for example, jars for cosmetics; agricultural fibers; animal feed; greenhouse film, etc.). After crediting the funds with this purpose of payment, the company transferred the funds to other business entities with a different purpose of payment within a short period of time, in most cases without VAT. Such actions could indicate payment for goods without actual delivery of goods.

Also, the National Bank imposed fines on banks when signs of cash withdrawals were detected through individual clients of the banks. An individual opened a bank account. The bank carried out CDD measures in relation to her and established her financial status. Often, the financial condition of such clients was "unsatisfactory" due to the absence of official income or a small amount of such income. After opening an account, individuals received non-cash funds from other counterparties. Moreover, the purpose of the payment did not correspond to the professional activity of the individual. The seller or shipper could receive funds for design services, legal services, insurance underwriting services, etc. The amount of funds received by individuals could be hundreds of times greater than the declared income of such a client and not at all correspond to the expected income that the client indicated in the bank questionnaire when opening a current account. Despite the unsatisfactory financial condition of the client, the banks concluded that the financial transactions



**Figure 2 – The amount of fines for banks in the field of AML/CFT from 2018 to 2023**

*Source: Created from [5]*

correspond to the financial condition of the client, which meant acceptance of such transactions by the bank. The final phase of this scheme was the withdrawal of cash by individuals from their accounts. In this case, as in previous types of schemes, the banks, according to the regulator, violated both the process of analyzing financial transactions and the procedure of the CDD, since a large number of bank clients and their counterparties in this scheme appeared in criminal proceedings.

The last typical scheme was the use of government securities to legalize income. Individual clients of banks purchased domestic state loan bonds from legal entities at a price that was lower than their fair value. Subsequently, such individuals sold these bonds to legal entities at a price that was close to or higher than their fair value. As a result of such actions, legal entities received a permanent loss, and individual clients of the banks received a permanent profit due to the further sale of bonds. Further, such profit was usually received by customers in cash. In the opinion of the NBU, both the process of analyzing financial transactions (the transactions were carried out without an obvious logical purpose) and the process of implementing the CDD, as among the bank's clients who received funds, there were many people with the sign of Politically Exposed Person, were violated.

The total amount of fines imposed by the NBU on banks in the area of AML/CFT by year, for the analyzed period, decreased from 2018 to 2021 (inclusive). Since 2022, the amount of fines has increased significantly, which was due both to the increase in the number of fines themselves and to the revision by the NBU of the approaches to the application of fines for key violations in the field of AML/CFT, which were reflected in the changes made to the "Regulations on the Application of the National Bank of Ukraine influence measures".

Analyzing the amount of fines for individual banks, it is possible to identify a monetary threshold that divided the fines into significant or insignificant. In this work, this threshold was chosen as the amount of UAH 1 million. As can be seen from Table 2, the number of fines with an amount up to and after this monetary threshold is almost identical (the ratio is 47% to 53%, respectively). However, in monetary

terms, the ratio is significantly different – for fines up to UAH 1 million accounted for only 2% of the total amount of all imposed fines.

Analyzing the amount of financial costs for paying fines, banks acted in a predictable manner. In the case of a minor fine, the banks agreed with the decisions of the National Bank of Ukraine. Of the 35 fines, the amount of each of which did not exceed UAH 1 million, not a single bank filed a lawsuit in court over the six analyzed years challenging the NBU's decision regarding the fine. At the same time, out of 39 fines, the amount of each of which exceeded UAH 1 million, banks filed 12 lawsuits to cancel the NBU's decision on fines (that is, in a third of cases).

The decisions of the courts, including the Supreme Court of Ukraine, demonstrate the lack of a unified position on the issue of the legality of the NBU's use of measures against banks for carrying out risky activities, the fact of which was established by the NBU as a result of supervision in the field of financial monitoring. In 4 cases, the courts accepted the side of the NBU, in 8 other cases – the side of the banks.

Thus, the courts upheld the regulator's decision in relation to the following banks: JSCB CONCORD (fine of UAH 1,550,000); JSC SBERBANK (fine 94,737,499 UAH); JSC ALPARI BANK (fine of UAH 2,000,000); JSC IBOX BANK (fine of UAH 10,000,000).

At the same time, the courts overturned the National Bank's decision to impose fines on the following banks: JSC UKRSOTSBANK (fine UAH 30,454,928); JSC UNIVERSAL BANK (fine UAH 14,382,472); MEGABANK JSC (fine 6,200,000 UAH); PJSC MTB BANK (fine 4,350,000 UAH); JSCB INDUSTRIALBANK (fine UAH 6,852,526); JSC BANK ALLIANCE (fine 2,600,000 UAH); CB ACCORD-BANK RuJSC (fine UAH 2,313,086); JSC RWS BANK (fine UAH 3,000,390) [5].

At the same time, in some cases, the Supreme Court considered cases without notifying the NBU about the consideration of such cases and without summoning representatives of the National Bank of Ukraine to court.

**Conclusions.** Analyzing the influence measures to Ukrainian banks in the field of AML/CFT from 2018 to 2023, the following conclusions can be drawn:

**Table 2 – Distribution of fines at the threshold of 1 million UAH and more in the field of AML/CFT for 2018-2023**

Fines	Quantity		Sum		Court cases	
	Quantity	Share	Sum	Share	Quantity	Share
Fines (total)	74	100%	648 077 983	100%	12	16%
Of them up to 1 million UAH (inclusive)	35	47%	10 987 027	2%	0	0%
More than 1 million UAH	39	53%	637 090 956	98%	12	31%

Source: Created from [5]

1) the Ukrainian legislation contains a wide list of influence measures that the National Bank of Ukraine has the right to apply in case of violation by banks of the rules of financial monitoring. However, only two of them have gained significant practical application: a written warning and fines;

2) it is possible to single out two violations in the field of AML/CFT, for which the NBU applied the most influence measures to banks in the form of fines. These include problems with customer due diligence and problems with analysis of financial transactions of banking clients;

3) typical schemes that, according to the NBU, violated the legislation on financial monitoring include the use of financial companies that were clients of banks to issue loans to individuals; the use of legal entities-clients of the bank for the purchase of

scrap metal or agricultural products from individuals for cash; use of physical persons-clients of the bank to withdraw cash from their accounts; schemes with domestic government loan bonds. The ultimate goal of all these schemes was the conversion of non-cash funds into cash, which is different from the generally accepted approach according to which "dirty" cash transforms into non-cash funds;

4) in the case of fines that did not exceed UAH 1 million, banks agreed with the NBU's decisions and did not appeal them. However, when this penalty threshold was exceeded, every third decision of the financial regulator led to the bank suing the court for annulment of the decision of the NBU to impose a fine. The judicial system of Ukraine demonstrated the lack of a unified position regarding fines for violations in the field of financial monitoring.

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