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PROBLEMS AND PERSPECTIVES OF BANKING REGULATION IN UKRAINE DURING ECONOMIC CRISIS IN 2014-2016

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Abstract

This paper focuses on highlighting of essential moments and a behavior of banking system of Ukraine during the financial crisis of 2014-2016. We analyze the development of key banking indicators and bankruptcies of banks and run the segmentation of the banking system on various groups. We show that insolvency and bankruptcy of many banks with Ukrainian capital could be often attributed to illegal behavior of owners (shareholders) and top management of these banks regarding capital withdrawal and forced bankruptcy. Moreover, we run a critical analysis of the National Bank of Ukraine (Central Bank) and banking regulation during financial crisis. We show that the so-called "curators" or supervisors appointed by the National Bank of Ukraine contributed to the capital withdrawal and money embezzlement, and finally to the partial collapse of banking regulation.
In addition, we analyze the operations of Deposit Guarantee Fund (DGF) on deposits reimbursements to depositors along with provisional administration and liquidation of insolvent banks. It turns out that DGF has not found investors for insolvent banks in most cases and the sale of assets of bankrupted banks has been non-transparent and inefficient.

Keywords: banking system, central bank, banking regulation, financial crisis, bankruptcy

JEL classification: *G21, G22, E50, H56*

Introduction

Commencing the end of 2013, financial and economic crisis has been looming into Ukraine due to political uncertainty. These events negatively influenced the banking system of Ukraine. During 2014-2016 the banking system itself has undergone the most difficult period in its history: bankruptcies of many small and large banks, depositors lost of their savings, small businesses along with large firms and corporations lost their money on banking accounts as well. The trust to Ukrainian banks and confidence to the banking system as a whole has been lost (De Haas et al., 2016; Manasse et el., 2016). The National Bank of Ukraine as a regulator of banking system has lost its credibility as well.
These events have threatened the existence of the banking system itself as well as existence of Ukraine as a sovereign entity and contributed to severe economic collapse. The bankruptcy of 40% of commercial banks not only undermines the credibility of the banking system, but also threatens the stabilization of banking environment and stimulates panic among ordinary depositors (Ghosh, 2016). The depositors have strong fears that they will not be able to return their savings. The economic stabilization is not possible since a large amount of businesses (small businesses, firms, enterprises and companies) is losing its currents assets and money

(current accounts are blocked during the introduction of provisional administration; it is not allowed even to pay taxes or pay out salaries). The business is losing its stance by reducing production and laying out workers (Čihák and Schaeck, 2010; Goncharuk, 2016).
This paper is organized as follows: First, the overview of the Ukrainian banking system will be presented. Second, the main reasons of the problems of Ukrainian banks during the crises will be described. Third, the activity of the National bank of Ukraine as a central bank in the sphere of regulation of commercial banks will be run and the results presented and commented on. Forth, policy implications will be outlined and discussed in detail. Finally, in the conclusions the main outcomes and proposals of our research will be clearly stated.

The banking system of Ukraine during crisis: segmentation and analysis

The National Bank of Ukraine in addition to its main constitutional task to provide the stabilization of national currency hryvnya has another important task – to provide the stabilization and sustainable development of national banking system. The Central Bank in the area of banking regulation and banking supervision must make such decisions to avoid certain systemic banks and banking system as whole from a collapse, reduce the amount of possible bankruptcies among commercial banks along with suspension of banking business and withdrawal of some banks from the market (Johnson et al., 2000). The wrong and ineffective banking regulation could be attributed to the fact that an insolvency or bankruptcy of large and systemic commercial banks stimulates so called "domino effect" with such negative side effects as banking crisis, panic on the market, credit crunch, loss of confidence and, finally, to the loss of deposits within the banking system (Mertens and Urga, 2001).
The National Bank of Ukraine's policy and decision making role as banking regulator during financial crisis must be increased since a weak banking regulator and a lack of appropriate banking instruments stipulates speculative transactions on the market, the lost of banking regulative capital, and embezzlement of funds abroad. These events provoke panic among depositors and businesses, capital outflow from the country (Sochan, 1998). The banking system experiences bleeding cash: depositors are trying to withdraw their savings by all means available; business via offshore accounts transfers from Ukraine cash in billions of dollars. Moreover, the panic on the market among depositors on some stage is not possible to stop by implementing neither market nor administrative instruments due to the lack of confidence towards Ukrainian banks and banking regulator. The National Bank of Ukraine has failed to implement effective measures to stabilize banking sector during the peak of the crisis. As a result of such decisions, the banking system almost collapsed, therefore, a lost of confidence among all players on the market. Such turmoil has negative impacts on all sectors of economy and is very bad for small business (Strielkowski, 2012) and might lead to the increase of the outward labour migration from Ukraine (see e.g. Strielkowski and Weyskrabova, 2014).
Having analyzed banking assets and liabilities under the circumstances of macroeconomic challenges and threats along with National Bank of Ukraine's measures and decisions made as a banking regulator, we have outlined some problems and contradictions. The current situation in the banking system has been indentified.
The Ukrainian banking system during 2004-2016 (Table 1) has undergone negative dynamic. This could be attributed to quantitative figures and qualitative analysis. For a example, the number of banks in Ukraine has decreased as many as almost twice from 180 banks as of January 1, 2014 to 100 acting banks as of September 1, 2016. The profitability, a return on capital, a structure of assets and liabilities has drastically deteriorated.
In accordance with a methodology of the National Bank of Ukraine, let us do a segmentation of the banking system. Having analyzed the dynamic of banking system in 20014-2016 in

order to figure out the roots of banks' insolvencies and bankruptcies, we discovered that the NBU commencing the 2016 divides banks in Ukraine on the following groups:

- state banks (banks with state's capital; the government owns more than 75%);
- foreign banks (banks of foreign banking groups; stakeholders in these banks are foreign banking groups or entities);
- group 1 (banks with assets of more than 0,5% of total banking assets);
- group 2 (banks with assets of less than 0,5% of total banking assets).

Table 1: Key indicators of Ukrainian banks (mln. hryvnya)

	Indicator	**01.01.2014**	**01.01.2015**	**01.01.2016**	**01.~~10~~09.2016**
1	Number of acting banks	180	163	117	100
1.1	Including: with foreign capital	49	51	41	39
1.1.1.	Including: with 100% foreign capital	19	19	17	16
1.2	Banking brunches and other banking entities in Ukraine	19290	15082	11871	10718
2	Foreign shareholders capital in regulatory capital, %	34	42,5	43,3	56
3	Banking assets	1 278 095	1 316 852	1 254 385	1282535
3.1	Including: loans	911 402	1 006 358	965 093	943062
4	Non Performing Loans as a percentage of total loans, %	7,7	13,5	22,1	25,3
5	Banks Capital	192599	148023	103713	151049
5.1	Including shareholders capital	185239	180150	206387	264343
6	Banking Liabilities, total	1 085 496	1 168 829	1 150 672	1124894
6.1	Business Deposits	234 948	261 372	317 626	348882
6.1.1	Including: long-term deposits	104 722	102 527	96176	90794
6.2	Population Deposits	433 726	416371	389060	410595
6.2.1	Including: in foreign currency	188 832	224 579	207 793	-
6.2.2	Including: long-term population deposits	350779	319121	281462	298223
7	Regulatory Capital	204976	188949	130974	140974
8	Profit / Losses	1436	-52 966	-66600	-11627
9	Profitability of Assets, %	0,12	-4,07	-5,46	-1,23
10	Profitability of Capital, %	0,81	-30,46	-51,91	-11,54

Source: Own calculations based on the National Bank of Ukraine (2016).

In our viewpoint, the National Bank of Ukraine has done the right job, when the regulator indentified the group of "foreign banks" namely the banks with foreign capital. Banks, which are owned by foreign banks or banking holdings are attributed to this group. Moreover, banking business must be only sole business of these foreign entities. There are 25 banks in this group with percentage in the structure of banking assets approximately 34,5% as of July 1, 2016. It is necessary to indentify banks with foreign Russian capital in this group, since the percentage of Russian banks within this group is quite high (circa 35%). The business and behavior of Russian banks (especially of banks with state Russian capital) could potentially be attributed to risky category in comparison with other banks in this group due to unannounced war and sharp deterioration of relations between two countries.

The National Bank of Ukraine has not announced even a single bank from this group as an insolvent bank; therefore, provisional administration has not been implemented. The number of banks in this group has not decreased for the last years. This only proves that foreign owners have been responsible owners during financial crisis. These owners are ready to increase regulatory capital of their banks to avoid problems and provide stability of banking business. The risk of reputation for foreign banks is important and foreign owners support their entities during hard times) (Brousseau and Sgard, 2016).

Banking assets with state ownership increased in 2014-2016 and as of July 1, 2016, the percentage of state-owned banks in the structure of total banking assets of Ukraine totaled 31%. This status quo on the banking market has not only positive, but also negative consequences. As a result of high probability in the increase of insolvent banks with private Ukrainian capital, many small businesses, firms and large companies prefer to open accounts in foreign and state owned banks. Consequently, the banking market has changed its structure due to redistribution of capital.

The state-owned banks have been suffering severe losses during financial crisis in 2014-2016. For example, in 2014, JSC “Ukreximpbank” sustained losses at UAH 9,8 billion; JSC “Oschadbank” - losses at UAH 8,5 billion; "Ukrgasbank" – losses at UAH 2,8 billion. In 2015 financial results improved only in "Ukrgasbank" – the profit totaled UAH 260 million. But the two largest state owned banks sustained more severe losses then in 2014: JS “Ukreximpbank” lost UAH 14,1 billion; JS “Oschadbank” lost UAH 12,3 billion in 2015 consequently. In 2014 and also in 2015 state owned banks suffered the largest losses among all banks in Ukraine. Despite the fact that capital outflow from state owned banks was the smallest in comparison with the banks with private capital, nonetheless, these state-owned banks lost the most money. We think that state is not an effective owner and the quality of management and quality of credit portfolio of these banks along with administrative costs are to be considered in more detail to figure out what went wrong.

Unfortunately, the recapitalization of state owned banks ultimately is to be done at the expenses of ordinary taxpayers. The losses of these banks in 2014 and 20015 have been covered by public (state) budget as an increase in shareholder capital.

The National Bank of Ukraine attributes to the Group 1 only 8 banks with private capital. Although some of these banks have a percentage of foreign ownership, but this percentage does not exceed 50%, or foreign investors are private companies that are not involved in banking business. The assets of this Group total 29%, but we consider that it is reasonable to mention Privatbank. The latter with percentage of assets approximately of 21% of the whole banking system and 73% of total banking assets of Group 1 is to be treated with special attention.

We have to outline that unfortunately, the number of banks in this Group significantly decreased. The Deposit Guarantee Fund provided provisional administration into banks with assets increasing UAH 6 bn. The largest banks of this Group that have been liquidated are Deltabank, Nadra, VAB Bank, Finansova Initsiatyva, Forum, Brokbusinessbank, Bank Mykhailivskyi, Finance i Credyt, Khreschatyk, Imeksbank and other large banks to name only a few. Unfortunately, the DGF has not been able to find even a single investor to these banks. Therefore, all these banks have been recognized as bankrupted and the procedure of liquidation of such banks is being implemented. Some of these banks have already been liquidated.

We consider that the banking system of Ukraine has undergone the largest financial and economic crisis in its history. The government, the NBU, Finance Ministry, DGF must have been supported the largest commercial banks. The liquidation of the large systemic banks not only negatively influences the small businesses and companies, but also has tremendous impact on macroeconomic environment. The bankruptcy of a large systemic bank means the financial losses to companies and businesses. As result of such wrong policy making decisions, bankruptcies among these companies and businesses are possible with subsequent increase in an unemployment rate and decrease in industrial output. That is exactly what happened in Ukraine. We think that the nationalization of the largest systemic banks simultaneously with strengthening the responsibility of the owners of insolvent banks is a better alternative. The government sustained severe losses due to inappropriate strategy and policy on the banking market. Besides quantitative indicators and financial losses, the confidence and trust in the banking system has been lost forever. This is a main asset in banking. To recover this confidence is a formidable task and it will take a lot of time.

Group 2 is the largest by the number of banks. As of July 1, 2016, 63 banks belonged to this Group. In most cases, this Group consists of banks with private national capital or banks with partly foreign capital belonging directly or indirectly to Ukrainian citizens or offshore companies affiliated with Ukrainian citizens. Despite the numerous quantitative representation of these banks (63% out of total banks in Ukraine), the percentage of their assets in the structure of banking system is insignificant – only mere 5,5%.

The number of banks from the Group 2 has been decreasing for the last years as well. Many banks have been recognized as insolvent and, subsequently, liquidated. The so called process of “banking cleaning” by the NBU could be attributed to this Group of banks. The NBU announced “banking cleansing” towards banks with “dirty” operations and transactions. The bankruptcy of one or a small number of these banks does not have an impact on the banking system and the confidence on the market. In most cases these small banks are insolvent due to servicing of business interests of their owners. The deposit portfolio of such banks was small or such banks did not have any deposits at all. Some banks from this Group suspended their business “in civilized manner” by the methods of self liquidation. The liquidation of small banks should be considered as a good signal to the market since these ‘pocket banks” most often violated banking and currency legislation.

Banking regulation and its efficiency: analysis of the National Bank of Ukraine’s measures

Special attention has to be paid to the “institution of curators” provided by the National Bank of Ukraine and evaluation of their efficiency. Commencing 2014, the National Bank of Ukraine provided curators to all commercial banks with central bank’s refinancing and stabilization loans. These curators or supervisors work at all state banks (it does not matter whether these banks have refinancing loans or do not have refinancing) as well as at all banks with Russian capital (commencing June 2014).

In accordance with Article 67 of the Law of Ukraine “On Banks and Banking”, the National Bank of Ukraine has a right to introduce a special control regime and supervision over the banking and to provide a curator to any bank. Such control regime is an additional instrument of banking supervision. The purpose of this instrument is to strengthen the control over the cash flows at any particular bank and to avoid some risky transactions by bank’s employees without authorization by curators.

In accordance with Article 5.1 of “Provision on Implementation by the National Bank of Ukraine Measures of Influence for Violation of Banking Legislation”, there are many reasons to provide a curator to the bank. The NBU can provide curator to the bank as a result of the following reasons:

- Management of the bank failed to execute the NBU’s demands on elimination of available violations;
- Dismissal of Chief Executive Officer;
- Off-site supervision and inspection detected risky operations (transactions) which threaten the interests of depositors and creditors, the violation of banking legislation, profits gained with a help of the violation of banking legislation: even if these violations have not worsened a financial statement of the bank;
- The existence of real threat of non-execution by the bank its obligations and commitments before clients and creditors;
- The requirement in strong control over the bank and its operations to avoid the possibility of non-execution by the bank its obligations and commitments before clients and creditors;
- The requirement in control over the bank during 6 month period since the bank has lost its status as transitional;
- The availability of a conflict of interests at the bank;
- The National Bank of Ukraine provided a loan to support liquidity;
- The availability at the bank of a loan to support liquidity, provided by the NBU.

Having analyzed the list of reasons why the curator has to be introduced, it is worth concluding that the NBU may provide the curator to any bank even if this bank is profitable and does not use the NBU’s refinancing loans.
In this case the curator has wide authorities and power. The curator is authorized to control banking operations; to initiate the order of payments by the bank and its branches taking into account the available funds on the correspondent account and the content of payments itself; to select methods of the management of the initial payments’ order, etc.
In fact, the curator appointed by the NBU from the list of central bank’ personnel, has a right not only to ban the commercial bank to use the direct correspondent accounts with other banks, but also to demand that all additional banking payments to be done exclusively via consolidated correspondent account at the NBU. Therefore, the curator is able to ban any doubtful banking operation, and, simultaneously, such supervisor does not allow the money transfer on controversial purposes.
To analyze the efficiency of the “institution of curators” appointed by the NBU to commercial banks is rather difficult. This is due to the fact, that the NBU does not announce information about curators, their names and particular banks these supervisors have been appointed to. There is a lack of information about curator’s responsibility for inappropriate execution of their duties. As a result of these circumstances, a huge amount of funds have been wiped out of banks (including the refinancing loans provided by the NBU).
There are numerous questions to curators appointed to the banks, which got the NBU’s refinancing. These commercial banks had to pay out money to depositors, but in fact, these refinancing loans have been wiped out of the banks. Later, the Deposit Guarantee Fund introduced a provisional administration into those already “empty” banks. The largest commercial banks with the NBU’s curators and refinancing tags are Delta Bank, Nadra Bank, VAB Bank, Imeksbank and others. The curators had been appointed to these banks far before the NBU recognized these banks as insolvent. Unfortunately, we do not have answers to the questions, why curators have not stopped the leakage of funds out of these banks. The curators had a power and authorities to do so. We also do not have any information whether the NBU somehow disciplined such curators for inappropriate execution of their duties.
In our viewpoint, such situation is not appropriate and adequate. The lack of transparency in the “institution of curators”, the lack of criminal responsibility for curators for facilitating the violation of the banking legislation, namely, the embezzlement of funds and forced

bankruptcy of insolvent banks may only further complicate the efficiency of banking regulation and the “institution of curators”.

The Deposit Guarantee Fund and stabilization of the banking system of Ukraine

The significance of the Deposit Guarantee Fund (DGF) as a governmental institution on banking regulation has substantially increased for the last years (see e.g. Adamyk, Skirka, 2015, pp. 160-162). The DGF has a right not only to pay out to the depositors of banks under the provisional administration of money guaranteed by the state (within the amount of UAH 200,000 - approximately EUR 6700), but also to introduce effective measures in search of investors for banks under the provisional administration.

It is worthwhile outlining that payouts to the depositors (population) could be considered as a mere technical function of the DGF. This task demands first of all the transparency, simplicity and timeliness to pay out cash to the depositors of insolvent banks. The DGF should organize a good PR-campaign to notify and inform the population on procedure and order of future payouts to avoid a probable panic among the depositors. The depositors must be convinced that the DGF at any circumstances is able to pay out cash on time, and in full amount, despite the availability of funds at the DGF’s accounts.

To reduce the amount of payouts, the management of DGF unilaterally tried to recognize some deposit contracts as invalid or “paltry”. These decisions made by the DGF only strengthen a panic among the depositors and provoke a run on the banks. Having investigated the violations of banking legislation in some banks under the provisional administration, the DGF’s personnel must recognize some banking operations as “paltry” via court decisions, but not unilaterally, contrary of the acting banking legislation.

The main purpose of the DGF is to guarantee the deposits of population within banks, but not to search any paralegal opportunities to cut the amount of money to be paid out to depositors.

The DGF has another important task: to search and find a potential investor for insolvent banks. Those insolvent banks must be either revived or liquidated in the less painful manner. Potential investors have a chance to submit a request to buy all assets or percentage of assets of insolvent banks; to register or to buy a “transitional bank” with all assets and liabilities available; or to simply buy an insolvent bank.

Certainly, the best solution is a sale of the whole bank, while another healthy bank buys all assets and liabilities of insolvent bank.

Having analyzed the performance of the DGF in 2014-15, it is reasonable to conclude that the DGF failed to find investors for banks with provisional administration (except JSC “Promekonombank” and JSC “Terra Bank”). The requests submitted by some investors (for example, “Delta Bank”, JSC “Forum”) have been declined by the DGF for unexplainable reasons. The information about the investor’s requests is not accessible and available for general public. The top management of the DGF makes all decisions, which investors are to be able to take part in competition.

We are convinced that the performance of the DGF in search of potential investors is rather important and priorities are to be changed. The number one priority in this area must be the understanding of the fact that the recovery and revitalizing of the insolvent bank is be a substantial positive signal to a banking sector as well as to depositors and businesses. Therefore, the government and Finance Ministry must take part as investors of insolvent banks, especially of systemic banks. We consider that the lost of systemic bank far exceeds the damage to the macroeconomic environment then a “revitalization” of such bank.

The sale of assets of banks under the provisional administration and the responsibility of owners of such banks, their management for poor financial results and ultimate insolvency and bankruptcy should be considered separately. The assets of bankrupted banks are being sold non- transparently, as a rule, far less their fair value. The owners of such banks do not bear any responsibility. There is no real criminal investigation; the DGF only announces a virtual punishment. Unfortunately, the DGF has not taken any steps to arrest the assets and estate of guilty owners. The priority of DGF should be the prevention of banking violations of the owners or shareholders of healthy banks.

If even a single bank under the provisional administration not be liquidated and find its investor then it is possible to consider that the DGF performed its job well.

The effectiveness of anti-crisis measures of the National Bank of Ukraine

Having analyzed the performance or misbehavior of the National Bank of Ukraine as a banking regulator in 2014-15, it is worth mentioning that the banking regulator was unable to prevent a looming crisis on the banking market; a banking system suffered a severe crisis as a result of poor decision making policies.

Firstly, the NBU failed to forecast the seriousness of the crisis in the banking system. Consequently, the NBU has not prevented negative events within the system and regulator has been fighting only with consequences of such events. In the spring of 2014, when the panic only was looming among the clients of banks as a result of insolvency and bankruptcy of Brokbusinessbank and Forum Bank, and an outflow of deposits was not significant, the NBU must have introduced drastic administrative measures of banking regulation to stop spreading a panic on the banking system. The ban on premature termination of deposit contracts until the stabilization on the market, along with range of administrative measures have to be introduced to prevent the capital outflow caused by the owners of the banks.

Instead, the taxation of deposits has been implemented that provoked the depositors to take their savings back out of banks. The capital outflow control has not been introduced as well. The NBU has not introduced measures on currency market to avoid speculative transactions and “faked” operations by banks on capital outflow abroad. The vacuum on the market as a result of misbehavior of the NBU has lead to sharp exchange rate fluctuations and devaluation of the national currency hryvnya. The crisis within banking system has only deepened.

In the second half of 2014, the owners of some banks (VAB Bank, MCB, Imeksbank, and others) having understood that it is better to get rid of insolvent banks then to recapitalize them, have exacerbated the upcoming crisis by wiping funds out of these weak banks. The NBU as a banking regulator has done nothing to prevent such “business” of crooked owners. On the contrary, some banks got the refinancing loans to payout deposits to the population, but instead of this, misused these loans, by lending cash to affiliated companies and entities. As above mentioned, the NBU provided curators to these banks to control the usage of refinancing loans.

Finally, it is worth considering that in 2014-15 the NBU as a banking regulator failed to be a good regulator, since an effective banking regulation stipulates to use the early warning systems to avoid insolvency. The task of the NBU is to prevent the bankruptcy of a bank, but not calculate a number of insolvent banks on the market. In 2014-16 the NBU failed to save even a single bank out of 65 recognized as insolvent. Simultaneously, the regulator had at its disposal instruments to safeguard banks out of troubles. For instance, besides providing curators to troubled banks, the NBU could have dismissed top management including CEO of these banks, by providing own managers to implement transparent refinancing and to avoid the capital outflow within the bank. Unfortunately, the NBU have done nothing in this area.

To stabilize the banking sector, it is very important to implement the criminal responsibility for crooked owners of the banks along with criminal responsibility for the NBU’s personnel for non appropriate execution of their duties (for example, NBU’s curators). The strengthening of responsibility must not only be declarative, but also effective; this means a confiscation of all assets gained by the owners illegally as well as a punishment of governmental officials. In the future, the owners of the bank should not have a choice what is better: to steal assets out of the bank and to bankrupt it, or to save the bank. “To be, or not to be, that is a question!”

Conclusions and final remarks

The banking system has undergone for the recent years the most severe financial and banking crisis in the history of modern Ukraine. The National Bank of Ukraine and government have not helped commercial banks to survive the crisis by implementing adequate measures not to exacerbate the financial collapse and stop bankrupting banks. The efficiency of policy making decisions by the National Bank of Ukraine, the Deposit Guarantee Fund and government has been almost zero to prevent a bank run and reinvent confidence on the banking market. Many depositors and small businesses lost their savings on banking accounts.

The National Bank of Ukraine, government and the Deposit Guarantee Fund have not sent positive signals to the market to stabilize the banking sector for 2014-16. On the contrary, the NBU’s top management threatened that more commercial banks to be bankrupted and, in the future, approximately 20-30 banks to be liquidated. Depositors do not know which commercial bank to be recognized next as an insolvent bank, and in panic, hastily wipe cash out of saving and current banking accounts. This only exacerbates financial statements of banks and strengthens the expectations of looming bankruptcies. The amount of money the depositors have been withdrawing for recent years far more exceeds a financial aid and loans provided by the international financial organizations. Unfortunately, the government, the NBU and the DGF have done virtually nothing to stop the capital outflow and effectively stabilize the banking system.

We believe that neither an economic growth nor exchange rate and price stabilization are not possible without strong banking system in Ukraine. The reinventing of confidence and trust on the Ukrainian banking market is as important as economic stabilization and sustainable development.

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