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**Blikhar M.**

*Candidate in Economic Sciences, Doctor of Juridical Sciences, Associate Professor, Professor at the Department of Administrative and Informational Law of Institute of Jurisprudence, Psychology and Innovative Education, Lviv Polytechnic National University, Ukraine;*  
*e-mail: blikharm@ukr.net; ORCID ID: 0000-0003-2974-0419*

**Vovk V.**

*Doctor of Juridical Sciences, Professor, Professor at the Department of Theory and History of State and Law of Khmelnytsky University of Management and Law Named after Leonid Yuzkov, Ukraine;*  
*e-mail: korvinstar@ukr.net; ORCID ID: 0000-0002-0588-2095*

**Shevchenko N.**

*Candidate in Economic Sciences, Associate Professor, Associate Professor of of the Department of Finance and Accounting of Institute of Management, Psychology and Security of Lviv State University of Internal Affairs, Ukraine;*  
*e-mail: shevchenkon09@gmail.com; ORCID ID: 0000-0012-1815-7554*

**Kokhaniuk T.**

*Candidate in Juridical Sciences, Head of the Department of Organization of Educational and Scientific Training (doctoral and postgraduate studies) of Lviv State University of Internal Affairs, Ukraine;*  
*e-mail: kokhanuk@ukr.net; ORCID ID: 0000-0002-1303-4272*

**Dobosh Z.**

*Candidate in Juridical Sciences, Associate Professor of the Department of Civil Law and Procedure, of Institute of Jurisprudence, Psychology and Innovative Education of Lviv Polytechnic National University, Ukraine;*  
*e-mail: zdobosh7@gmail.com; ORCID ID: 0000-0002-3680-7207*

## **DIRECTIONS OF OFFENSE PREVENTION IN THE STOCK MARKET OF UKRAINE**

**Abstract.** The article considers the legislative and regulatory documents which outline the features of detecting offenses in the stock market of Ukraine. The main offenses in the domestic stock market have been formed, and the subjects, objects and types of sanctions for offenses have been considered. It is determined that the main body in the field of detection and prevention of stock market violations is the National Securities and Stock Market Commission (NSSMC), which considers cases of offenses, regulates the activities of issuers and financial intermediaries, prepares reports on stock market operations, carries out licensing of professional participants and provides cooperation with state institutions, state and local authorities in the field of crime prevention. An analysis of offenses in the stock market of Ukraine during 2017—2019 has been carried out. The main directions of stock market offenses prevention are outlined, namely: imposition of financial sanctions, revocation or suspension of licenses of professional participants, issuance of orders and resolutions, increase of fines in the stock market, prevention of price manipulation. Proposals were made to improve the activities of the Stock market infrastructure development agency, in particular to form a single complete and detailed base of issuers, professional participants, offenses, foreign investors and large securities holders. It is proposed to reduce violations in the stock market through active cooperation with the International Organization of Securities Commissions (IOSCO). In general, we can conclude that there is no critical situation in the field of offenses in the stock market of Ukraine, as evidenced by analytical studies.

**Keywords:** offenses, stock market, license, issuer, professional market participants, National Securities and Stock Market Commission.

**JEL Classification** G18, K22, K40, K49

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**Бліхар М.**

*кандидат економічних наук, доктор юридичних наук, доцент,  
професор кафедри адміністративного та інформаційного права  
Інституту права, психології та інноваційної освіти  
Національного університету «Львівська політехніка», Україна;  
e-mail: blikharm@ukr.net; ORCID ID: 0000-0003-2974-0419*

**Вовк В.**

*доктор юридичних наук, професор,  
професор кафедри теорії та історії держави і права  
Хмельницького університету управління і права імені Леоніда Юзькова, Україна;  
e-mail: korvinstar@ukr.net; ORCID ID: 0000-0002-0588-2095*

**Шевченко Н.**

*кандидат економічних наук, доцент,  
доцент кафедри фінансів та обліку  
Інституту управління, психології та безпеки  
Львівського державного університету внутрішніх справ, Україна;  
e-mail: shevchenkon09@gmail.com; ORCID ID: 0000-0012-1815-7554*

**Коханюк Т.**

*кандидат юридичних наук,  
завідувач відділення організації  
освітньо-наукової підготовки [докторантури та аспірантури (ад'юнктури)]  
Львівського державного університету внутрішніх справ, Україна;  
e-mail: kokhanuk@ukr.net; ORCID ID: 0000-0002-1303-4272*

**Добош З.**

*кандидат юридичних наук,  
доцент кафедри цивільного права та процесу  
Інституту права, психології та інноваційної освіти  
Національного університету «Львівська політехніка», Україна;  
e-mail: zdobosh7@gmail.com; ORCID ID: 0000-0002-3680-7207*

## НАПРЯМИ ЗАПОБІГАННЯ ПРАВОПОРУШЕННЯМ НА ФОНДОВОМУ РИНКУ УКРАЇНИ

**Анотація.** Розглянуто законодавчо-нормативні документи, у яких окреслено особливості виявлення правопорушень на фондовому ринку України. Сформовано основні правопорушення на вітчизняному фондовому ринку, розглянуто суб'єкти, об'єкти і види санкцій за правопорушення. Визначено, що головним органом у сфері виявлення та запобігання правопорушенням на фондовому ринку є Національна комісія з цінних паперів та фондового ринку (НКЦПФР), яка розглядає справи про правопорушення, регулює діяльність емітентів та фінансових посередників, складає звіти щодо операцій на фондовому ринку, здійснює ліцензування професійних учасників, забезпечує співпрацю з державними установами, органами державної і місцевої влади у сфері запобігання правопорушенням. Здійснено аналіз правопорушень на фондовому ринку України протягом 2017—2019 років. Окреслено основні напрями запобігання правопорушенням на фондовому ринку, а саме: накладання фінансових санкцій, анулювання або призупинення ліцензії професійних учасників, винесення розпоряджень і постанов, збільшення розмірів штрафів на фондовому ринку, запобігання маніпуляціям із цінами. Надано пропозиції щодо вдосконалення діяльності Агентства з розвитку інфраструктури фондового ринку, зокрема щодо

формування єдиної повної і детальної бази емітентів, професійних учасників, правопорушень, іноземних інвесторів та великих власників цінних паперів. Запропоновано здійснювати зменшення правопорушень на фондовому ринку шляхом активної співпраці з Міжнародною організацією комісій із цінних паперів (IOSCO). Загалом, можна зробити висновок про відсутність критичної ситуації у сфері правопорушень на фондовому ринку України, про що свідчать проведені аналітичні дослідження.

**Ключові слова:** правопорушення, фондовий ринок, ліцензія, емітент, професійні учасники ринку, Національна комісія з цінних паперів та фондового ринку.

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**Formulation of the problem.** The modern stock market, as a complex structure of effective economic development, is characterized by negative indicators of declining securities listing, the number of licensees (professional participants), the level of liquidity of stock exchanges, the volume of additional issues of shares of joint stock companies. At the same time, the number of offenses in the stock market related to the provision of inaccurate and/or incomplete information, money laundering, concealment of income, activities without a license and permits is reduced.

However, despite the reduction in the number of offenses, the problem of effective law enforcement in the stock market remains extremely acute, and requires improved areas of profits legalization, prevention of capital manipulation, fictitious activities with prices for financial assets.

A significant number of violations in the stock market negatively affects not only the capitalization of joint stock companies, investment attractiveness of issuers, the state of confidence in financial intermediaries, but also undermines the image of the state as a financial partner in the international market. A significant number of problems are related to the imperfection of the current legislation, the lack of effective tools to influence offenders — sanctions, fines, lawsuits, etc. In this regard, the topic of research areas (methods, means, programs) of prevention of offenses in the domestic stock market is extremely relevant.

**Analysis of recent research and publications.** The issue of areas of offenses prevention in the stock market of Ukraine, the peculiarities of state regulation of the securities market is the subject of research of not only domestic scholars, scientists, but also practitioners. In particular, the main issues in the field of legislation development, improvement of mechanisms and substantiation of the goals of regulation of activities in the stock market of Ukraine are outlined in the works of Klymenko K. [1], Khort Yu. [3], Khromayeva T. [4], Bilozir M. [9], Plotnikova M. [11], Sheludko V., Maslova O., Boda Z., Rogach O., and others.

**The purpose of the article** is to determine the nature of offenses in the stock market of Ukraine, study the types and state of offenses in the domestic stock market, as well as form the directions of offenses prevention taking into account the level of legal framework in this area and government regulation, and the interest of financial agents to reduce financial misconduct.

**Presenting main material.** The definition of «offense in the stock market» is contained in the main legislative acts that govern the activities of entities in the securities market and ensure the functioning of structural elements (stock market, capital market, insurance market, etc.), such as: Law of Ukraine «On state regulation of securities market in Ukraine» [5], the Law of Ukraine «On amendments to certain legislative acts of Ukraine on improving the functions of state regulation of financial services markets» [6], the Law of Ukraine «On securities and stock market» [7], Decision of NSSMC «On approval of the rules for consideration of cases of law violation on capital markets and the application of sanctions or other measures of influence» [8], the Law of Ukraine «On joint stock companies» [10]. In view of legislative and regulatory documents, stock market offenses can be defined as illegal actions of one person or group of persons related to the issue, sale, purchase of securities, investment transactions, powers of attorney in the field of monetary relations in the securities market (and stock market as a structural element).

The main offenses in the stock market of Ukraine include:

– placement of securities in the market without registration of their issue in the manner prescribed by law;

- manipulation of the stock market by issuers and licensees, exchanges;
- carrying out professional activities in the stock market without a license to carry out all or some types of such activities;
- failure to provide the investor with reliable information about the issuer (financial reports, activities or officials);
- lack of placement, incomplete placement of information on the activities, the financial condition, services provided, transactions carried out by domestic stock market entities;
- untimely execution or non-execution of decisions, resolutions, orders of the NSSMC on elimination of violations related to market activity;
- intentional actions that show signs of stock market manipulation;
- disclosure of secret, insider information (this item is especially important for the Central Depository and joint stock companies);
- non-compliance with the terms of the prospectus issue of securities;
- placement and distribution of securities advertising without its prior submission to the NSSMC [5; 8; 10].

The main state body that regulates and supervises the activities in the stock market of Ukraine, develops legislative and regulatory acts, prepares financial statements on the activities and development of the market is the National Securities and Stock Market Commission (NSSMC) [12]. One of the key areas of work of the NSSMC is the prevention of offenses, manipulation and abuse in the stock market of Ukraine, and in case of their occurrence — taking measures to solve (eliminate) them and prevent them in the future.

In order to prevent and minimize violations in the domestic stock market, the NSSMC reviews cases of identified violations, revokes or suspends licenses, issues orders and decisions on violations of the law, imposes fines and sanctions, considers complaints and makes decisions on them, cooperates with state and local authorities, and state bodies, develops regulations in the field of crime prevention.

Also, an important area in the field of crime prevention is cooperation with the National Anti-Corruption Bureau, the National Agency for Prevention of Corruption, the State Fiscal Service, the Commission for Regulation of Gambling and Lotteries, the State Property Fund, the State Statistics Service of Ukraine. The main goals of cooperation are:

- transfer of information on the revealed facts (information) of criminal offenses in the securities market to the National Anti-Corruption Bureau of Ukraine, referred to its competence;
- at the request of the relevant state bodies conducting inspections, audits, controls among stock market participants;
- obtaining and providing the necessary information at the request of the National Agency for Prevention of Corruption regarding transactions, market participants, services provided, concluded agreements, etc.;
- obtaining (if necessary) by the NSSMC the direct access to information of public authorities and local governments;
- signing agreements on the provision and receipt of statistics on stock market performance indicators and statistics in general by areas (social, economic, demographic);
- assistance in identifying violations in the field of money laundering, treason, international fraud.

An important area of offenses prevention in the stock market is the imposition of financial sanctions on violators identified during inspections. Thus, during 2019, the National Securities and Stock Market Commission considered 2,694 cases of offenses committed in the stock market (*Fig. 1*), which is a positive tendency compared to 2016 by 2,384 cases and 1,491 cases compared to 2018.

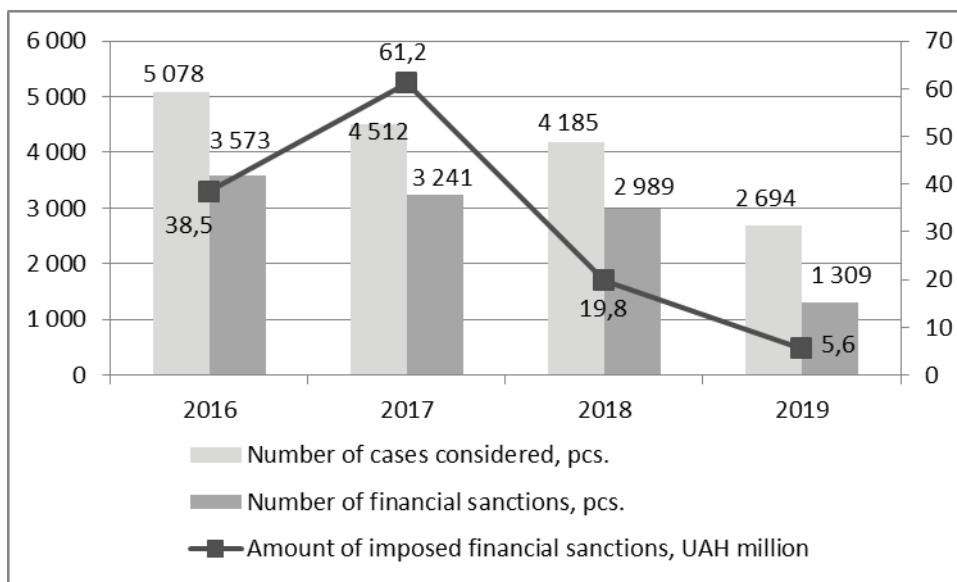


Fig. 1. Indicators of offenses in the stock market of Ukraine during 2016—2019, UAH million, pcs.

Note. [13].

As a result, 1,309 financial sanctions were imposed, which accounted for 50% of the total number of decisions taken. The total amount of financial sanctions in 2016 amounted to UAH 38.5 million, in 2017 — UAH 61.2 million, in 2018 — UAH 19.8 million, and in 2019 only UAH 5.6 million. However, according to economists, the size of financial fines for offenses in the stock market is insignificant compared to the profits of offenders. The majority of violations are related to non-disclosure of regular annual information about issuers and manipulation of securities prices and transactions with them.

The next direction of crime prevention is the revocation or suspension of the license to perform professional activities, carried out on the basis of the NSSMC Decision «On approval of the procedure for suspension and revocation of licenses for certain professional activities in the stock market (securities market)» [14]. Thus, during 2017—2019, as a result of consideration of cases (Fig. 2), 84 licenses were revoked and 8 were suspended. At the same time, in the structure of professional activity licenses for carrying out broker and dealer activity, underwriting, activity on management of securities and mortgage coverings, depository activity, storage of assets of joint investment, storage of assets of pension funds, clearing activities are subject to revocation or suspension (the term fluctuates from 1—3 years).

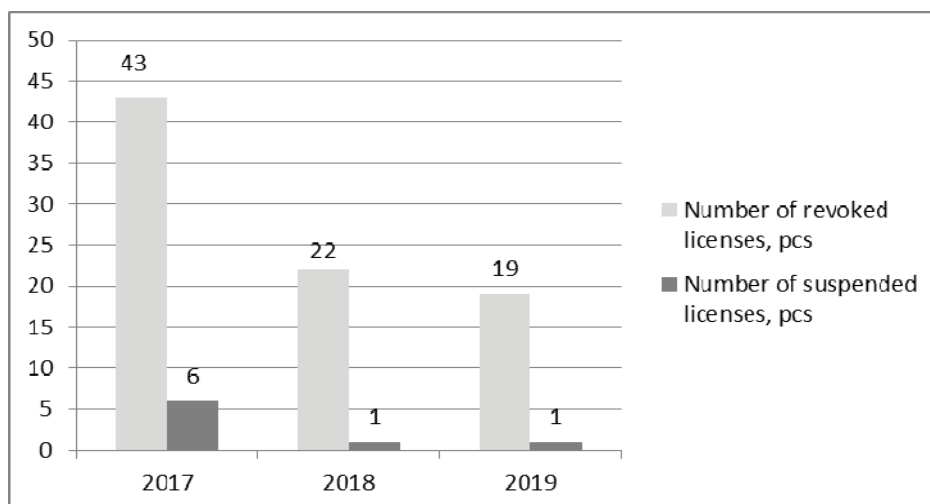


Fig. 2. Number of revoked and suspended licenses in 2017—2019, pcs.

Note. [13].



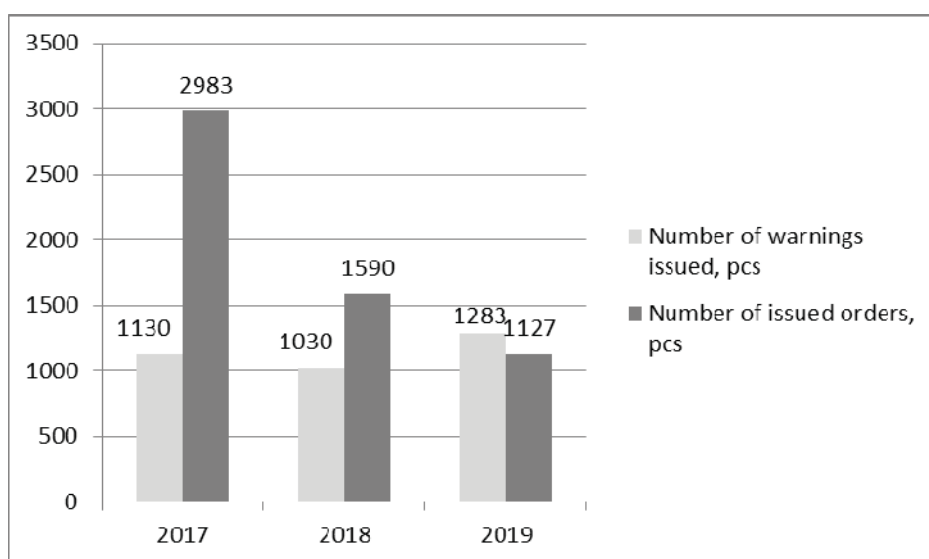
According to the NSSMC in 2019:

- 19 licenses for professional activities of participants were revoked and 1 license was suspended, for example, in 2017 49 licenses were revoked;
- 51 cases on offenses related to the activities of professional stock market participants were considered and closed.

Taking into account the fact that at the end of 2019 the number of professional participants was 709 institutions, the number of revoked licenses and detected violations indicates the problems of professional participants in compliance with the law, strengthening business reputation and profitability.

A significant share in the structure of offenses in the stock market belongs to issuers of securities, namely public joint stock companies. The main problem is incomplete submission, submission of inaccurate information, untimely submission, or non-submission of information on activities, financial statements, new shareholders, additional issues, listing.

In this case, warnings are issued (*Fig. 3*), or orders are executed in the stock market by the NSSMC.



**Fig. 3. The number of warnings and orders issued by the NSSMC in the stock market of Ukraine during 2017—2019, pcs.**

*Note.* [13].

In 2019, 1,283 warnings and 1,227 orders were issued to immediately eliminate violations of the law while operating in the stock market. At the same time, considerable attention is paid to the field of securities price manipulation, in particular, the analysis of more than 40,000 securities transactions was carried out, which revealed 31 violators, offenses for investment certificate issuance (3 pcs.), option certificate transactions (2 pcs.), government bonds issues (37 pcs.).

Also, an important area in the fight against manipulation of securities prices is the consideration of notifications (in 2019 their number was 112) on manipulation, price instability, information on price increases and decreases. In response, the NSSMC provides relevant requests to professional participants, who work them out within their powers and activities.

An important task in the direction of offenses prevention is to detect illegal legalization (laundering) of incomes, especially those that pass through the securities market. To do this, the control over the volume of securities issue, nominal and market capitalization of securities and the time of placement, financial transactions of financial intermediaries, evaluation of investors activity (domestic and foreign), as well as processing of notifications and complaints (*Fig. 4*) are carried out, and unscheduled inspections by the NSSMC, the State Fiscal Service, and relevant government agencies are conducted.

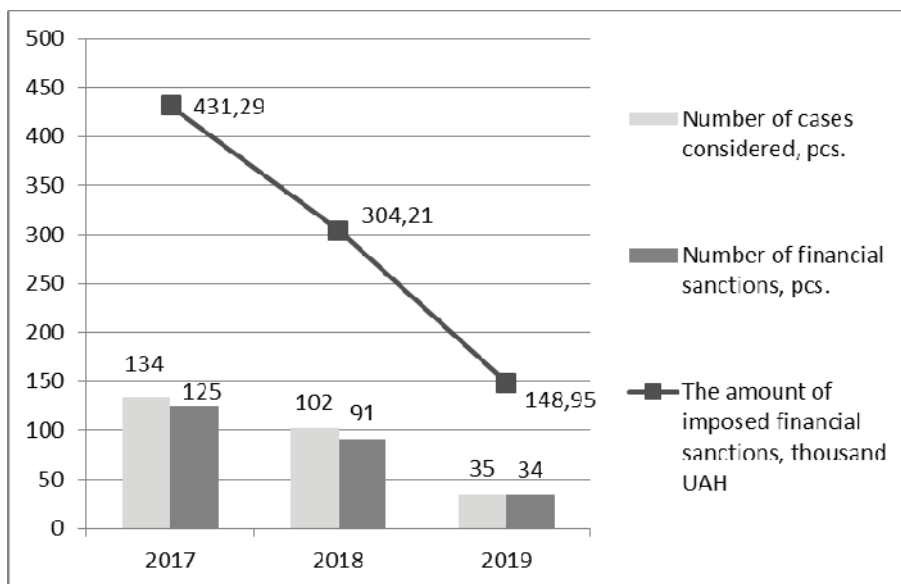


Fig. 4. Dynamics of cases of legalization (laundering) of income obtained illegally during 2017–2019, pcs., UAH, thousand

Note. [13].

As can be seen from the figure, there is a positive tendency of reduction of the number of cases to be considered by 99, the number of financial sanctions by 91 in 2019 compared to 2017. Accordingly, during the analyzed period, the amount of imposed financial sanctions decreased by UAH 282.34 thousand, which indicates the effectiveness of measures in the field of legalization (laundering) of income. In our opinion, the positive changes are related to:

- quick response to notifications, complaints and reports on possible violations by market participants;
- supplementation and/or updating of normative-legal acts in the field of prevention of offenses in the stock market, money laundering, terrorist financing;
- cooperation with the European Union, international organizations in the field of offenses prevention (use of international experience), implementation of agreements on compliance with legal norms;
- conducting detailed monitoring and audits of securities transactions, financial activities of professional market participants and issuers of securities.

The area of public information remains problematic, which includes financial statements of entities, statistics, information on securities transactions, data on issuers and professional market participants. In Ukraine, the role of the database on financial reporting and activities of stock market participants is assigned to Stock Market Infrastructure Development Agency of Ukraine (SMIDA) [15]. The Agency is the authorized person of the NSSMC to disclose information about issuers of securities, acts as an information and consulting center for stock market participants. As of the end of 2019, the number of issuers registered in the database of the Agency was 9,241, at the beginning of 2021 their share decreased to 4,947. Of this number, less than 30% submitted timely financial statements for the previous year, new shareholders and stock market operations, which affects the further development of the stock market, attracting new investors and entering the international market, in a negative way. Even the NSSMC provides an annual report on the state of the stock market with a delay of 4–5 months, which makes it impossible to obtain statistics for market participants in time.

It would be advisable to ensure that this issue is resolved in two ways. The first is to require stock market participants to provide details of information posted on relevant sites, agencies, including offenses, sanctions, the main types of transactions and securities transactions, information on officials, types of cooperation, expanded financial statements. The second is to increase the amount of penalties for submitting financial (statistical, informational) reports late, delayed, false or not submitted at all.

According to the Law of Ukraine «On Amendments to Certain Legislative Acts of Ukraine on Liability for Offenses in the Securities Market» [16] the amount of penalties varies on average from one hundred to five hundred non-taxable minimum incomes, the largest financial sanction is three thousand non-taxable minimum incomes of citizens, that is at the beginning of 2021 it is UAH 6,810,000 (maximum) and UAH 45,400 (minimum). The minimum size applies to the untimely disclosure of information in the stock market. Therefore, in our opinion, it is advisable to increase the size of penalties for violations in the stock market, which will force businesses to avoid significant financial losses and work honestly and openly.

The NSSMC should send information on regulatory violations (measures) to prevent violations not only to the issuer or professional participant (financial intermediary) who committed the offense, but also to partner organizations that have joint financial transactions, are partners, customers or suppliers. The risk of losing reliable partners and financial income will force them to act within the law.

Regulations and decisions oblige issuers and professional participants to annually undergo independent audits and rating checks, which are related not only to stock market operations, but also to the activities and financial condition of entities. Information on the results of the checks should be freely available on the website of the Stock Market Infrastructure Development Agency of Ukraine. As the experience of developed countries (USA, Japan, Germany) shows, the level of transparency of the issuer affects the increase of investor confidence, thereby increasing the amount of investment in activities, development, innovation, modernization or expansion. On the other hand, it is an opportunity: to develop the sphere of financial intermediaries — audit companies, rating agencies, consulting firms; to improve the infrastructure of the stock market of Ukraine, and ensure its entry into the international market; to provide additional control over stock market entities; to improve business reputation at the level of the stock market and the state; to expand the sphere of services, namely to develop directions of attraction of financial resources of households in investment in securities in the stock market of Ukraine (to withdraw money «from under pillows» in economy).

The cooperation of the National Securities and Stock Market Commission with the International Organization of Securities Commissions (IOSCO), which is the leading international organization for regulating the securities markets of 100 countries, has a positive effect on reducing the level of offenses in the domestic stock market. It provides valuable advice in the areas of improving legislation, reducing offenses, strengthening financial and partnership positions at the international level, advising on the strategic development of the stock market in the future. The key goal of the cooperation is to sign a «Multilateral Memorandum of Understanding on Cooperation Arrangements and Exchange of Information» (IOSCO MMoU), which will increase the transparency of the stock market and its participants, reduce offenses and increase reliability among the international investment community.

However, today there is a problem of compliance with the requirements for greater independence of the NSSMC from external regulatory influences (institutional independence), increasing the level of personal funding from alternative sources to increase their independence and capacity building, increase the level of IT equipment (mainly software).

**Conclusions.** As a result of the study of offenses prevention in the domestic stock market, we can conclude that during 2017—2019 there was a positive tendency decreasing the number of considered cases of offenses, imposed financial sanctions, revoked licenses issued by the NSSMC warnings of violations of laws or legislation, sanctions related to money laundering. The main areas of offenses prevention are organized by the NSSMC inspections, explanatory work, warnings, financial sanctions, suspended or revoked licenses of professional stock market participants, fines for money laundering (legalization) of income through stock market transactions. It is also proposed to increase and detail public information about issuers and professional participants, increase the size of penalties for violations of the legislation in the domestic stock market, oblige market participants to undergo annual audits and rating checks, as well as NSSMC to ensure the signing of



a «Multilateral Memorandum of Understanding on Cooperation Arrangements and Exchange of Information» (IOSCO MMoU).

Further research in the field of offenses prevention should focus on the analysis of the experience of developed countries, such as the United States, Great Britain, Japan, Germany and the tools they use to detect violations of legislation.

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