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CORPORATE GOVERNANCE OF STATE-OWNED BANKS IN THE CONTEXT OF STATE OWNERSHIP TRANSFORMATION: COMPETENCE-BASED AUTONOMY OF GOVERNING BODIES AND OECD STANDARDS

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Abstract

The article examines the legal framework of corporate governance of state-owned banks in Ukraine in the context of reducing state ownership in the banking sector. It identifies the limits of the State’s exercise of shareholder rights and the allocation of powers among the highest governing body, the supervisory board and the management board.

The article develops the concept of competence-based autonomy of the governing bodies of a state-owned bank as a legal framework for the exercise of corporate powers based on compliance with statutory limits of authority, independent professional judgement, accountability and responsibility for decisions. Criteria are proposed for assessing the lawfulness of the State’s influence as shareholder on the activities of the bank’s governing bodies.

The article examines the constitutional foundations for distinguishing the State’s public authority from its corporate powers, safeguards for supervisory board independence, accountability mechanisms and corporate governance arrangements during preparation for the sale of state-owned shareholdings. Particular attention is

paid to the legal consequences of the loss of state-owned bank status and the statutory safeguards ensuring continuity of governance.

The study analyses the OECD Guidelines on Corporate Governance of State-Owned Enterprises 2024, the OECD Review of the Corporate Governance of State-Owned Enterprises in Ukraine 2026, and the recommendations of the Basel Committee on Banking Supervision.

Proposals are made for improving the legal framework governing strategic interaction between the State as shareholder and the bank's governing bodies, supervisory board performance evaluation and corporate procedures during pre-sale preparation.

Keywords: state-owned bank, corporate governance, competence-based autonomy, supervisory board, management board, State as shareholder, state ownership, independence, OECD.

Introduction

Corporate governance of state-owned banks combines the exercise of the State's corporate rights with the operation of the bank as an independent legal entity and a specially regulated financial institution. This arrangement requires a clear division of powers between the State as shareholder, the highest governing body, the supervisory board and the management board.

This issue is particularly relevant in the context of preparations for changes in the ownership structure of the banking sector. The Principal (Strategic) Areas of Activity of State-Sector Banks, approved by the Cabinet of Ministers of Ukraine in 2026, combine the objectives of maintaining financial stability, ensuring operational efficiency and gradually reducing the State's share of the banking sector [5, pp. 2–3]. In relation to corporate governance, they are based on the principles of professionalism, independence and integrity of supervisory boards, separation of the functions of the owner, supervisory bodies and management, transparency in decision-making and accountability for results [5, pp. 4–5].

These strategic areas are consistent with the general objectives of the Strategy for the Development of Ukraine's Financial Sector, updated in August 2025, which seeks to ensure macroeconomic and financial stability, facilitate Ukraine's economic recovery and integrate its financial sector into the European Union [10]. Improving corporate governance in state-owned banks is both an element of the management of state corporate rights and an institutional prerequisite for the resilience of the banking sector.

The Law of Ukraine "On Banks and Banking" establishes a special legal regime for state-owned banks. The highest governing body may not decide matters concerning

the activities of a state-owned bank that fall outside its exclusive powers, and does not participate in day-to-day management. The supervisory board governs the bank within the scope of its powers and oversees and regulates the activities of the management board, while the management board is responsible for day-to-day management [1, Articles 7 and 37].

Accordingly, preparations for changes in a bank's ownership structure must preserve the statutory allocation of corporate powers. The State's strategic objectives, including those relating to preparation of a shareholding for sale, must be pursued through the corporate mechanisms provided for by law.

This article aims to establish the legal meaning of competence-based autonomy of the governing bodies of a state-owned bank, substantiate criteria for assessing the lawfulness of the State's influence as shareholder on their activities, and identify directions for the development of corporate governance in light of OECD standards and the recommendations of the Basel Committee on Banking Supervision.

In an earlier study, the author substantiated the concept of a regulated transformation of state corporate participation in the banking sector [14]. One distinct aspect of this concept concerns the legal limits of the State's influence as shareholder on the activities of the bank's governing bodies, particularly during preparation for the sale of a state-owned shareholding. This aspect constitutes the subject of the present study.

State of Research, Methodology and Scientific Novelty

International approaches to the corporate governance of state-owned enterprises are set out in OECD documents establishing principles for the exercise of the State's ownership function, the operation of supervisory boards, accountability and internal control [11–13]. The specific features of bank corporate governance arise from special requirements concerning the professional suitability of bank managers, the collective suitability of governing bodies, risk management and internal control [6–9; 17].

The 2026 OECD Review notes the alignment of the legal framework governing corporate governance of Ukraine's state-owned enterprises with international standards and emphasises the need for their consistent practical implementation [12, pp. 8–11].

The limits of corporate autonomy, the allocation of powers among the bodies of a legal entity and responsibility for decisions were examined by the author in an earlier study on the use of artificial intelligence in corporate governance [20]. That study substantiated the significance of the statutory powers of a legal entity's governing bodies as a legal limit on the delegation of management functions and proposed a

criterion for distinguishing public oversight from corporate discretion. These propositions are developed further in the present study of corporate governance in state-owned banks, where particular importance attaches to the limits of the State's exercise of shareholder rights, the independence of professional judgement of governing bodies and responsibility for the exercise of their respective powers.

The methodological framework comprises formal legal, systemic, functional and comparative legal methods. OECD provisions are used as an international standard of sound corporate governance and are not equated with rules of national law.

The scientific contribution consists in substantiating the concept of competence-based autonomy of the governing bodies of a state-owned bank and identifying criteria for assessing the lawfulness of the State's influence as shareholder. Competence-based autonomy denotes a legal framework for the exercise of corporate powers based on compliance with statutory limits of authority, independent professional judgement, accountability and responsibility for decisions.

1. Special Legal Model of Corporate Governance in a State-Owned Bank

The general principles governing the management of state corporate rights are established by the Law of Ukraine "On Management of State-Owned Assets", under which the management of such assets consists in exercising powers to give effect to the State's rights as owner [3, Articles 1 and 3].

A special regime applies to banks. The Law of Ukraine "On Joint-Stock Companies" expressly provides for the application of special legislation to financial institutions and establishes the precedence of its provisions in the event of a conflict with general corporate-law provisions [2, Article 1].

The Law of Ukraine "On Banks and Banking" establishes a distinct system of governing bodies for state-owned banks. The highest governing body of a state-owned bank is the Cabinet of Ministers of Ukraine, which performs the functions of managing the State's corporate rights in the bank [1, Article 7]. The Law expressly limits the scope of its intervention: it may not decide matters falling outside its exclusive powers and does not participate in the bank's day-to-day management [1, Article 7].

The supervisory board is a collegial governing body of a state-owned bank which, within the scope of its own powers, governs the bank and oversees and regulates the activities of its executive body. The management board is the executive body responsible for day-to-day management [1, Article 7].

The statutory model of corporate governance in a state-owned bank is based on the functional allocation of powers among its governing bodies.

The constitutional foundations for the exercise of the State's corporate rights are the equality of all holders of property rights before the law and the principle of legality governing the activities of public authorities [15, Articles 13 and 19]. State ownership of bank shares does not extend the statutory powers of public authorities in relation to the bank's activities.

Under Article 7 of the Law of Ukraine "On Banks and Banking", a state-owned bank is a bank in which 100 per cent of the authorised capital is owned by the State. Where the State disposes of all or part of its shares, the bank loses its status as a state-owned bank on the day following that disposal. From that day, Article 7 of the Law ceases to apply to the bank, and its charter and internal regulations remain in force insofar as they do not conflict with legislation or regulations of the National Bank of Ukraine (NBU).

For the purposes of this study, the term "state-owned bank" is used within the meaning of Article 7 of the Law of Ukraine "On Banks and Banking", whereas "state-sector bank" also encompasses banks with partial state ownership, according to the scope of the documents under examination.

Within one month of the loss of state-owned bank status, the supervisory board must convene a general meeting of shareholders to bring the bank's charter and activities into conformity with legislation. The powers of the supervisory board and management board continue until terminated in accordance with the procedure prescribed by law [1, Article 7].

2. The State as Shareholder and Strategic Management

State ownership of bank shares gives rise to a legitimate interest on the part of the State in determining the purposes for which its asset is used. In state-sector banks, these purposes may extend beyond commercial objectives.

The Principal (Strategic) Areas approved in 2026 expressly state that, under martial law, profit maximisation is an important but not the sole criterion for the activities of state-owned banks. Strategic decisions must take into account support for the economy, macrofinancial stability, financing of priority sectors and other objectives identified by the State [5, pp. 2–4].

The document establishes the principle of separating the functions of the owner, supervisory bodies and management. It states that the State as shareholder seeks to enable banks to operate competitively, independently and profitably, while the Ministry of Finance monitors the achievement of objectives without interfering in banks' operations [5, p. 4].

Article 7 of the Law of Ukraine "On Banks and Banking" provides for the allocation of powers in formulating a state-owned bank's strategy. The highest governing body

determines the principal (strategic) areas of the bank's activities; the supervisory board ensures that the bank's development strategy is drawn up, adopts it and subsequently submits it to the highest governing body for approval.

The Law specifies the grounds for refusing to approve the strategy and authorises the highest governing body to terminate the terms of office of all supervisory board members if approval is refused again, subject to mandatory publication of the relevant grounds [1, Article 7].

These powers are statutory mechanisms of strategic oversight by the shareholder. Their exercise must comply with the grounds and procedures prescribed by law and preserve the powers of the supervisory board.

It is proposed that the lawfulness of the State's influence as shareholder be assessed against five criteria: a statutory basis for exercising the power; whether the matter falls within the powers of the relevant body; compliance with corporate procedure; preservation of independent professional judgement; and consistency with the purpose of the power and the requirements of banking legislation, taking into account the interests of the bank and the rights of depositors and creditors.

Application of these criteria makes it possible to distinguish the shareholder's setting of performance targets for the bank from instructions issued outside established procedures concerning lending to a particular borrower, selection of a counterparty or execution of a specific business transaction.

Article 7 of the Law of Ukraine "On Banks and Banking" also prohibits a state-owned bank from granting unjustified preferential treatment to individual customers [1, Article 7].

3. The Supervisory Board: Independence, Powers and Responsibility

The supervisory board acts in the interests of the state-owned bank and ensures protection of the rights of depositors, creditors and the State as shareholder [1, Article 7].

The supervisory board of a state-owned bank comprises nine members, six of whom are independent and three of whom represent the State [1, Article 7]. Legislation also establishes requirements concerning professional suitability, business reputation and the collective suitability of the board [1, Articles 7, 37 and 42; 6].

This model combines representation of the State as owner with a majority of independent members.

The functional significance of independence is reinforced through the committee system. The Law prescribes specific requirements for the composition of audit, risk, nomination and remuneration committees [1, Article 7].

The NBU Regulation on Bank Licensing specifies requirements concerning the business reputation and professional suitability of bank managers and the collective suitability of banks' governing bodies [6]. The risk management and internal control systems also provide for a specific allocation of functions among the supervisory board, the management board and control units [7; 8].

Independence does not preclude accountability. Cabinet of Ministers of Ukraine Resolution No. 863 of 1 July 2026 establishes the procedure and criteria for the annual performance evaluation of supervisory boards of state-owned banks, including their involvement in pre-sale preparation [16]. When assessing the implementation of the adviser's recommendations, consideration should be given to the justification for supervisory board decisions, their compliance with banking legislation and their impact on the bank's financial stability. Proper documentation of such decisions reconciles competence-based autonomy with accountability.

A distinction should be drawn, according to the party conducting the assessment and its purpose, between the shareholder's evaluation of supervisory board performance, the board's self-assessment and the National Bank of Ukraine's assessment of corporate governance in the exercise of banking supervision [1, Articles 7 and 37; 11, Section VI.I; 16].

In an earlier study, the author proposed distinguishing the assessment of the propriety of the decision-making procedure from the assessment of the substance of a business decision [20]. Applying this approach to state-owned banks entails examining compliance with the limits of authority, the adequacy of information, the soundness of risk assessment and the justification for decisions, taking into account the statutory powers of the party exercising oversight.

Article 7 of the Law of Ukraine "On Banks and Banking" establishes equal rights and duties for independent supervisory board members and State representatives, as well as their freedom to exercise independent judgement when voting. Members of the supervisory board and management board are responsible for the bank's activities within the scope of their respective powers [1, Articles 7 and 37]. These provisions constitute the statutory basis for the concept of competence-based autonomy and are consistent with the OECD Guidelines [11, Chapter VI].

4. The Management Board and Day-to-Day Management of the Bank

The management board is the executive body of a state-owned bank, responsible for the day-to-day management of its activities. The chair and members of the management board are appointed and dismissed by the supervisory board in accordance with the statutory procedure [1, Article 7].

The supervisory board oversees the activities of the management board. Under Article 37 of the Law of Ukraine "On Banks and Banking", the bank's supervisory board does not participate in the bank's day-to-day management [1, Article 37].

The competence-based autonomy of the management board is exercised within the parameters of the bank's approved strategy, established risk appetite, internal policies and the supervisory board's oversight powers. Independence in managerial decision-making is coupled with the duty to comply with banking legislation on risk management, internal control and compliance [1, Articles 37–40; 7–9].

5. Corporate Governance During the Transformation of State Ownership

Under Article 9 of Law of Ukraine No. 3983-IX, the decision to prepare a bank shareholding for sale is taken by the Cabinet of Ministers of Ukraine, taking into account the opinion of the Financial Stability Council. During preparation, the bank is required to undertake measures to increase the value of the shareholding, including measures informed by the recommendations of the sale adviser. The Law also provides for the implementation of measures specified in instructions issued by the Cabinet of Ministers of Ukraine [4, Article 9].

Article 9(2) of Law No. 3983-IX establishes a specific corporate requirement for the implementation of pre-sale preparation measures in banks in which the State owns 50 per cent or less of the ordinary shares: the consent of the general meeting of the bank's shareholders must be obtained [4, Article 9(2)].

The absence of an equivalent special requirement for banks with a larger proportion of state ownership does not extend the powers of the State as shareholder. Decisions relating to pre-sale preparation are taken in accordance with the statutory allocation of corporate powers.

The practical significance of these provisions increased in October 2026 following the conclusion of tripartite agreements between the Ministry of Finance of Ukraine, the respective banks and the financial adviser N. M. Rothschild & Sons Limited concerning preparation for the sale of state-owned shareholdings in JSC Sense Bank and JSB Ukrgasbank. In its official announcement of 23 October 2026, the Ministry of Finance of Ukraine emphasised that the engagement of the adviser did not signify a change in the banks' ownership or interrupt their normal business activities [18].

Compliance with instructions issued by the Cabinet of Ministers of Ukraine and implementation of the adviser's recommendations require adherence to the statutory limits of the powers of the bank's governing bodies. In particular, a recommendation to dispose of non-core assets requires a decision by the authorised body of the bank and an assessment of its financial and regulatory consequences.

Increasing the value of a state-owned shareholding must take into account the long-term interests of the bank, its financial stability and the rights of depositors and creditors.

Decisions concerning changes to strategy, asset restructuring, cost optimisation or the organisational structure of a bank require an assessment of their impact on capital adequacy, liquidity, risk levels and business continuity.

6. International Standards of Corporate Governance in State-Owned Banks

The 2024 OECD Guidelines provide for the professional, informed and accountable exercise of the State's ownership function, clearly defined expectations regarding enterprise performance, operational autonomy for enterprises and respect for the independence of supervisory boards [11, Sections II.B and II.C].

For interaction between the entity responsible for managing state corporate rights and the enterprise's governing bodies, the OECD recommends establishing appropriate communication channels, including through the chair of the relevant governing body [11, Sections II.C and VI.F].

The principal functions of a supervisory board include strategic guidance, oversight of the executive body and oversight of risk management [11, Sections VI.A, VI.B and VI.J].

In this respect, the basic structure of Ukrainian banking legislation is consistent with the relevant principles: the special Law separates the powers of governing bodies, establishes a majority of independent supervisory board members and assigns to the supervisory board responsibility for appointing and overseeing the management board [1, Article 7].

The 2026 OECD Review notes that, following the reforms of 2021–2024, the legal framework governing corporate governance of Ukraine's state-owned enterprises has moved significantly closer to OECD standards [12, pp. 8–10].

The Review also covers a broad range of state-owned enterprises, and its findings concerning certain general problems in the practical implementation of corporate governance should therefore not be automatically extended to banks. State-owned banks are subject to a separate and considerably more detailed special regime under the Law of Ukraine "On Banks and Banking" and NBU regulations.

The specific features of bank corporate governance are set out in the consolidated guidelines of the Basel Committee on Banking Supervision, in particular chapter CGO10, "Corporate governance", published on 1 January 2026. Of particular relevance to state-owned banks is the provision giving priority to the interests of depositors over those of shareholders, especially in retail banks [17, para. 10.3].

The OECD Guidelines and the recommendations of the Basel Committee are non-binding guidance and are used in this study as international benchmarks for assessing and improving the national legal framework for corporate governance.

7. Directions for Further Legislative Development

The findings of this study suggest the following directions for improving corporate governance in state-owned banks.

First, the mechanism of the framework agreement on cooperation provided for by Article 7 of the Law of Ukraine "On Banks and Banking" should be improved, particularly with regard to documenting the shareholder's strategic expectations and resolving disagreements concerning the implementation of pre-sale preparation measures [1, Article 7].

Second, corporate procedures for preparing a bank for sale should be specified in greater detail, identifying the competent body for each measure, assessing the financial, legal and regulatory consequences of the relevant decisions and monitoring their implementation [1; 4].

Third, mechanisms for evaluating supervisory board performance should be aligned with requirements concerning professional and collective suitability, integrity, prevention of conflicts of interest and independent professional judgement [5, p. 6; 6–9; 16].

Fourth, organisational and legal measures should be prepared in advance to ensure continuity of corporate governance following the loss of a bank's state-owned status.

On 11 November 2026, the Verkhovna Rada of Ukraine adopted in principle Bill No. 16125 on improving corporate governance. As at 28 November 2026, the Bill is being prepared for its second reading [19]. Further consideration of the proposed legislative amendments must take into account the specific features of special banking regulation.

Conclusions

1. Corporate governance of a state-owned bank is based on a special legal regime allocating powers among the highest governing body, the supervisory board and the management board. The State must exercise its corporate rights without displacing statutory corporate governance mechanisms through administrative influence.

2. The article proposes defining competence-based autonomy of the governing bodies of a state-owned bank as a legal framework for the exercise of corporate powers based on compliance with statutory limits of authority, independent professional judgement, accountability and responsibility for decisions.

3. It is proposed that the lawfulness of the State's influence as shareholder be assessed against five criteria: a statutory basis for exercising the power; whether the matter falls within the powers of the relevant body; compliance with corporate procedure; preservation of independent professional judgement; and consistency with the purpose of the power and the requirements of banking legislation, taking into account the interests of the bank and the rights of depositors and creditors.

4. Pre-sale preparation of a state-owned bank must preserve the statutory allocation of corporate powers. The loss of state-owned bank status entails a change in the legal regime governing corporate governance, while the powers of the supervisory board and management board continue until terminated in accordance with the procedure prescribed by law.

5. The article proposes improvements to the legal framework governing interaction between the State as shareholder and the bank's governing bodies through the framework agreement mechanism, supervisory board performance evaluation, corporate procedures during pre-sale preparation and the transition to a new corporate governance model following a change in the ownership structure.

The next study in this research series will examine the economic and legal prerequisites for reducing state participation in Ukraine's banking sector and determine the legal nature of the international and European institutional mechanisms that influence the relevant state policy.

Declaration on the Use of Artificial Intelligence

In preparing this article and its English translation, ChatGPT was used as an auxiliary tool for translation, editorial and linguistic refinement, checking logical and terminological consistency, identifying possible inaccuracies and developing editorial suggestions. The scientific conclusions, legal assessments and final version of the article were determined by the author, who bears responsibility for its content.

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