



## ADMINISTRATĪVO TIESĪBU APAKŠNOZARE

# THE LEGAL PROTECTION OF FINANCIAL INTERESTS IN A DEMOCRATIC SOCIETY

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### Introduction

The last decade has seen one of the biggest economic shifts in the past century<sup>1</sup>. That includes not just the European Union (EU), but also much of the rest of the world. The circumstances of the financial sector in Latvia, like in other EU member states, have given rise to considerable economic, political and social shifts. Yet the legal aspects of the contemporary financial sector remain a niche within the studies of law, especially in Latvia. The author does not consider any recent changes unuseful, but considers most of the current results merely reactionary which can have further unwanted legal consequences and therefore require sufficient research.

The understanding of financial interests can be somewhat misleading, because fundamentally they have an economic motivation<sup>2</sup>. The author considers the fundamental human rights of today a fairly recent concept which needs further development, especially in terms of financial interest protection outside of the prohibition of discrimination<sup>3</sup>. In times where legal persons can share the realization of different human rights just as natural persons, the author considers the financial interests of both to be at least partly attributable to the rights to property. The reason is that life and the gratification of human senses is beyond the scope of economics. Yet economic interest realization does represent a major component of modern life within a democratic society and therefore there is a need for a clear legal understanding of the protection limits for the human rights to property in relation to financial interests.

The research area is EU public law, the subject of the paper is human rights (rights to

property). The aim of the research is to establish the theoretical and fundamental understanding of financial interests and the needed amount of legal protection in the EU. The research resources consists of legal, theoretical and political documentation, as well as industry research material. The used methods are: descriptive – for the textual description of the conditions, logical – for the structural representation of the research content, inductive – for general conclusions from individual premises, comparative – for the comparison of similar conditions, and legal-technical – for the reasoning of legal merits.

The author concludes that the legal protection of financial interests can be in part compared to the protection of the environment. On one hand you have the special commercial interests that want to exploit the available resources in order to gain a financial benefit and on the other you have the interests of the society for long term sustainable growth and safety of the environment<sup>4</sup>. Therefore the author concludes that the environment, neither physical, nor financial, can be singled out of the systemic governance of human rights in a democratic society and has to reflect equally comprehensive conditions in a contemporary democratic society, including the EU. Additionally, alongside this paper the author prepared a downloadable audio article<sup>5</sup>.

### 1. The legal importance of financial interest protection

The paper is about the interests of persons within the EU in relation to financial services. Financial services are a multitude of activities, the most common historically being banking,

investment and insurance<sup>6</sup>. It is possible to assume that financial interests are rather speculative in nature, because there is a need for certainty within uncertain conditions<sup>7</sup>. The financial sector by its very definition does not create any value of use, but rather a medium of value sustenance and exchange<sup>8</sup>. Accordingly the author considers value as a broad term meaning not just economically viable resources like natural resources, workforce or skills, but also any particular interests for people that are willing to deplete other resources for advancement of those interests. Even though it is not fully understood how human beings consider and evaluate time as a resource, the limited nature for a single human being is justification enough to consider it as a value of economical merit.

The reason the author determines the nature of financial interests to be speculative is because they are monetized, i.e., dependent on a particular currency as a legal payment tool in a particular jurisdiction<sup>9</sup>. That by itself distinguishes the science of law from the rest of the social sciences, because in the financial sector economic values are represented according to legal prerequisites. The paper is intended to be one of several to come about those legal prerequisites with respect to the scope of financial interests and their methodical legal protection within the European Union.

The author differentiates between the economic and financial interests only in the introduction to demonstrate the possible content of each term. Otherwise the paper is about the financial interests which can be considered at least part of economic interests. As the globalization process continues the financial sector becomes ever more important as a means to facilitate the transactions of goods and services from all over the world<sup>10</sup>. The commercial business interests therefore do have an important role in creating demand for financial services. Yet the meaning of these services is ease the transactions, not to determine their outcome.

The financial interests and therefore the need for financial services can be summarized into three general categories of the financial sector: 1. transaction management, 2. asset protection, 3. asset increase. As all business and free enterprise systems, the financial sector with its services gives persons the opportunity to scale the rights to property by taking on certain risks which can

result in possible gain or loss. The private sector of the economy falls under the private law part within the science of law. Yet the author points out the indicative nature of the economic policy of several countries with respect to funding private financial service institutions that have a supposed systemic meaning to the whole economic stability<sup>11</sup>. The author considers such matters within public law.

The economic issues of our society that have arisen during the last decade do not exclude the democratic interests of the majority, rather reflect the systemic shortcomings for the timely evaluation of legal regulation within the financial sector *ante factum*, that is, before the events<sup>12</sup>. Considering the contemporary perception of human rights in its most basic form as the rule that the state should not intervene in operations of persons if there is no democratic need to do so, the legal importance of financial services could be viewed as one of easing the realization of the rights to property. Yet the author considers such a conclusion as theory which is being shaped by the practical issues.

## **2. The conceptual issues with the financial sector**

The financial sector encompasses all aspects of every day life within a western democratic society. The need to buy and sell goods and services globally, do transactions in legal tender and take precautions from possible monetary loss shows the real practical use of financial services. However, the need does not necessarily mean a debated demand within a democratic society<sup>13</sup>. That creates a dual perspective on practical issues.

As mentioned earlier, the science of law has a special weight when we analyze the financial sector. Law is the medium in which the political views of a society take shape. Accordingly law can be a well suited dependant when there is a need to take the democratic viewpoints into the speculative markets. The author concludes this by considering the merit that the human rights have given to society like the freedom of capital, workforce etc. Yet the author points out the fact that law is an ill suited management master, i.e., the law is not suited for hypothetical scenario resolution. Also from a legal sociology standpoint law does not create the social anchoring for

certain rules to be respected.

The legal viewpoint of economics can be criticized in at least two ways. One is that the freedom of choice determines the actions of human beings, therefore no legal norm in a free society will take hold of the freedom of choice. The second is that people ultimately seek gratification of their instincts and wishes. What the law distinguishes separately as needed does not mean that it has the legal justifications (for instance, human rights issues in the EU with respect to freedom of goods and services, movement of capital etc.).

The author differentiates substantially between the need for a legal basis for freedom of choice and the free will within a democratic society. For instance, Latvia is a republic where elected officials democratically vote on different political issues. The majority of society may or may not like the choices of the parliament, yet the prevailing political assumption is that the society has chosen their representatives and all decisions are in the direct interests of their respective electorate. The author considers the lack of evidence for the effectiveness of such an assumption to be self evident, especially during the last five years of political reforms, state debt crises etc. in order without a considerable prospect of resolution<sup>14</sup>. Even when the assumption is being considered true, the economic value seeking will remain somewhat constant and the demand in a democratic society might not be what is politically needed.

Another shortcoming of the financial interest protection in the EU is the lack of regulation with respect to lobbying. The need for a comprehensive legal framework is determined by not just the recent global economic problems, but also from the systemic approach to the main industries such as banking<sup>15</sup>. The practical issue of the financial services industry is not that it does not fulfill accelerating functions for economic value enhancement, but that it can have the upper hand in terms of legal risk management. Currency as the legal denominator determines the actions of persons in its respective jurisdiction. Yet the currency is dependent on the financial sector<sup>16</sup>. So there is an infinite cycle risk. The legal norms create the basis for a self enhancing system of monetary volume without an effective control mechanism. To be more clear the author points

out the fact that people gradually increase their productivity, which means they use their time more effectively in terms of achieving a desired goal. Yet most prices for goods and services increase as well. There is no established judicial value for inflation, meaning the increasing volume of circulating currency. Therefore the financial services like banking, investment and insurance demand bigger costs for the same amount of risk. Such a system has its roots in political economy and not necessarily in the legal interests of a democratic society, which the author considers to be superior.

### 3. The legal merit of long term regulation

Considering the requirements for the paper length, the author leaves out for future papers certain aspects of the legal understanding of the financial sector, including market capitalization, trade and trust law requirements. This is not to say that those are not important. Yet the author deals with a much broader concept for all readers to understand initially. Namely that the general meaning of the financial sector is to serve the economic long term value interests of the members of society within a scope of the rights to property. The speculative nature of financial services and trading creates a somewhat distorted approach to the long term risk management of everyday people, which may even constitute the bigger part of our contemporary society in the EU.

The author considers the economic reforms of the last decade as sufficient evidence for a need for basic and simple legal approaches to the regulation of financial services. Mostly those are private economic interests which enjoy the protection of the rights to property as human rights. Yet the author considers that the legal interests of a democratic society is to build on the previous generations achievements and leave added value to the next generation. The collective interests ought to be represented by the particular sovereigns which ought to have the best interests of their society at heart.

Within public finance accounting there is a long term fiscal sustainability concept which basically defines the ability of public bodies to fulfill the present and potential future liabilities by evaluating the current financial policies<sup>17</sup>. Yet

the mere abstinence of a legal concept for long term development of the financial sector could be considered sufficient evidence for the need to seek legal approaches to the regulation of the financial sector *ab extra*, that is, outside of the particular industry. The reasoning being that real social issues do not have an expiration date, meaning that as long as there will be people, there will be a need for an efficient and just mechanism of trade and exchange. However, the real legal obligation is not to create a unique approach to credit, savings and risk management institutions. The author considers that the fundamental legal obligation lies in the successful adaptation of already working methods *mutatis mutandis*, that is, with the needed adjustments.

Notwithstanding other options, the author proposes environmental law as a general guiding branch of law for the long term conceptual legal regulation of the financial sector. The author distinguishes at least two legal merits. One is the concept of sustainable development which includes not just mere evaluation principles, but also long term interest protection of the general public<sup>18</sup>. The author proposes to use "long term sustainability" as a slight change in wording so as to differentiate between the financial and physical environment. That is to say that the conceptual meaning would be approximated to the financial interest protection according to the comparison between special commercial interests and the interests of the general public for sustainable development in the economy.

The second is the economic and commercial interest subordination to the physical and social considerations<sup>19</sup>. The author has no intentions of representing left political views by stating that the physical, social and emotional well being of the contemporary society is the primary source of economical prosperity. Therefore

the environmental law principle of sustainable development could be used as a tool for the long term development of the financial sector, because it could lead to an advancement of legal norm evaluation *ex ante*, that is, before the adoption of legislature.

### Summary

1. The legal financial interests consist mainly of the international human rights to property as they represent interests for economic value protection and growth within the modern day economic systems.

2. The effectiveness of contemporary legal regulation of the financial sector within the European Union can be evaluated within the science of private law, yet the nature of financial interests of systemic importance creates a need for analysis within public law.

3. The very intentions of the financial sector determine the need for a timely effect to cost analysis by the controlling institutions of the European Union, because of the assumption that the democratic society does not seek tremendous profit as it does protection of the purchasing power of the earned currency as payment for time spent earning an income that is fixed by a denomination of that particular currency.

4. The legal concept of sustainable development can be embodied within the legislature for the financial sector as an *ex ante* legal evaluation basis for the legal protection of financial interests within the contemporary democratic society.

5. The author proposes long term sustainability as the industry specific term for the concept of sustainable growth which is being used in environmental law.

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## **Anotācija**

Raksta mērķis ir uzsākt Eiropas Savienības finanšu sektora fundamentālo analīzi ar uzsvāru uz finansiālo interešu tiesisko aizsardzību. Īstenojot mērķi, tiek aprakstīts finanšu pakalpojumu teorētiskais pamats un tiesiskā nozīme. Autors izšķir saistītās cilvēktiesības uz īpašumu un to nozīmi uz normatīvo regulējumu mūsdienu demokrātiskā sabiedrībā. Autors iesaka ilgtermiņa uzturēšanas konceptu finanšu sektora normatīvajam regulējumam analogi ilgtspējīgas attīstības konceptam vides tiesībās.

## **Zusammenfassung**

Das Ziel des Artikels ist eine grundlegende Analyse des Finanzsektors in der Europäischen Union mit dem Schwerpunkt auf den Rechtsschutz von Finanzinteressen vorzunehmen. Zur Umsetzung des Zieles werden die theoretischen Grundlagen für finanzielle Dienstleistungen und ihre Rechtsbedeutung beschrieben. Der Autor betrachtet Recht auf Eigentum als Menschenrecht und dessen rechtliche Bedeutung in einer modernen demokratischen Gesellschaft. Der Autor schlägt das Konzept der nachhaltigen Aufrechterhaltung der rechtlichen Regulierung im Finanzsektor analog zum Konzept von nachhaltigem Wachstum im Umweltrecht vor.