

АДМІНІСТРАТИВНЕ, ФІНАНСОВЕ ТА ІНФОРМАЦІЙНЕ ПРАВО

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FINANCIAL SERVICES IN UKRAINE: CONCEPT, ESSENCE AND CLASSIFICATION

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Annotation: the article addresses various aspects of the concept, essence and classification of financial services in Ukraine. Author suggests the measures to improve the functioning of financial services markets in compliance with the Basel principles and the integration of the domestic stock market into the European and world markets.

Key words: finance, financial activities of the state, financial services, financial services markets, government regulation of financial services activities.

Анотація: стаття присвячена вивченню поняття, сутності та класифікації фінансових послуг в Україні, процесу удосконалення функціонування ринку фінансових послуг, що відповідає Базельським принципам та інтеграції внутрішнього фондового ринку до європейського, світового ринку.

Ключові слова: фінанси, фінансова діяльність держави, фінансова послуга, ринки фінансових послуг, державне регулювання діяльності з надання фінансових послуг.

Аннотация: статья посвящена изучению направлений понятия, сущности и классификации финансовых услуг в Украине, процедуре усовершенствования функционирования рынков финансовых услуг, которой будет соответствовать Базельским принципам и интеграции внутреннего фондового рынка в европейский, мировой рынок.

Ключевые слова: финансы, финансовая деятельность государства, финансовая услуга, рынки финансовых услуг, государственное регулирование деятельности по оказанию финансовых услуг.

The financial services market is a voluminous and multidimensional phenomenon where financial resources turn into capital investments. Various points of view are being expressed in the scientific literature to determine the financial services market. Some stating that it is a certain economic space for the sale and purchase of financial services. Others that it includes the activities of state and financial institutions to meet financial needs.

It should also be emphasized that the legislator divides all participants in the financial services markets into four groups: 1) persons who, in accordance with the law, have the right to provide financial services in Ukraine; 2) persons engaged in the provision of intermediary services in the financial services markets; 3) an association of financial institutions included in the register of self-regulatory organizations; 4) consumers of financial services. At the same time, the legislator also points to other participants in the financial services markets, which may be determined by regulatory acts on the regulation of individual financial services markets.

Experts in the field of administrative and financial law have repeatedly drawn attention to the problems of the functioning of the financial services market. An important problem being the instability of the financial market and financial system that causes the participants to decrease their activity and do not carry out investment activities in the amounts that could contribute to the accelerated development of both financial relations and financial mediation [1, p. . The reason for this situation in Ukraine is the imperfection of the current legislation and the modern mechanism of state regulation of the provision of financial services. The gaps in the current legislation allow some individuals the opportunities for exploitation of the financial institutions for their own enrichment at the expense of consumers.

Current research is focused on the various aspects of economic, civil, financial, legal and administrative-legal regulation of public relations in the provision of financial services. The legal status of participants in the financial services market, financial institutions was investigated in the works of L. Ilchenko-Xuiva [2, p. A. Jaszhetakak [3, p. S. Rumyantsev [4, p. L. Balanyuk [5, p. O. Kartamysheva [6, p. I. Shamray [7, p. Various authors such as V. Yarotsky [8, p. K. Maslyayev [9, p. I. Plakhin [10, p. V. Gostyuk [11, p. 16], Polovko [12, p. addressed issues of the legal nature of financial instruments that are used in the financial services markets. The problems of organizing and implementing financial control in Ukraine were examined in the thesis presented by L. A. Savchenko [13, p. 89-93]. Characterization of certain types of financial services was carried out by J. Chapichadze (factoring) [14, p. I. Yakubivsky (financial leasing) [15, p. the results of a fundamental theoretical study of the problems of banking transactions were presented by I. Bezklubby [16, p. 32]. The problems of the legal regulation of risk insurance in the financial services markets were addressed by I. Chaykin [17, p. 22]. The legal foundations of state supervision and financial control for the provision of financial services were analyzed by G. Ostapovich [18, p. M. Saenko [19, p. 20].

The official definition of financial services is regulated by the Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets". According to the paragraph 5 of Part 1 of Art. 1 of the said Law, financial

services are operations with financial assets that are carried out in the interests of the third parties at their own expense or at the expense of these persons, and in cases provided for by the legislation, at the expense of financial assets attracted from other persons for the purpose of making a profit or maintaining the real value of financial assets. The legislator avoids a clear definition of the concept of “financial assets”, and limits it by the list in clause 4, part 1, article 1 of the same Law. The list includes the following objects: funds, securities, debt obligations and the right to claim debt that are not related to securities [20].

Referring to the regulatory framework that contains the definition of objects included in the list of “financial assets”, we could concentrate on the following issues listed below. The first concept of “funds” is presented in the Law of Ukraine “On Banks and Banking Activities” as money in national or foreign currency or its equivalent [21]. The term “funds” in this case is related to any funds that are in legal circulation in Ukraine. However, instead of the definition of “funds” in the concept of “financial assets”, it would be necessary to indicate directly in the text of p. 4 part 1 of art. of the Law of Ukraine “On Financial Services and State Regulation of Financial Services Markets” - “cash in national or foreign currency”. This amendment will make the Law to define clearly the essence of this concept.

The second concept of “securities” is addressed in three regulatory acts: in part 1 of art. of the Civil Code of Ukraine [22], Part 1 of Art. of the Economic Code of Ukraine [23] and in Part 1 of Art. special normative act - the Law and of Ukraine “On securities and stock market” [24]. According to these laws, a security is a document of the established form with relevant details certifying a monetary or other property right that defines the relationship between the person who placed it (issued) and the owner and provides for the fulfillment of obligations under the terms of its placement, as well as the possibility of transfer rights arising from this document to other persons.

The third concept of “debt obligation” is defined in the Budget Code of Ukraine. It is interpreted as the obligations of the borrower to the creditor on the loan, resulting from the issuance and placement of debt securities and / or concluding credit agreements [25].

Current legislation does not contain the fourth notion of “the right to claim debt”. However, the legislator broadly uses the indicated term when regulating a factoring contract. Under the factoring contract (financing under the assignment of a monetary claim), one party (factor) transfers or undertakes to transfer the funds to the second party for a fee. In return, the client transfers the right or agrees to transfer the right to claim debt from the third party (debtor) to the factor as indicated in part 1, article 1077 of the Civil Code of Ukraine [22].

Therefore it is important to note that the derivation of the term “financial assets” by using the technique of defining one term through another is unsuccessful since not all the categories in the list of “securities, debt obligations and the right to claim debts that are not related to securities.” have legal definitions.

In the study of the concept of “financial assets” it would be impossible to circumvent the notion of “financial instruments” associated with it. The legislator in the definition of this category in the conceptual apparatus p. 20 Part 1 of Art. of the Law of Ukraine “On Securities and the Stock Market” went the same way as in determining financial assets. Financial instruments are securities, futures contracts (futures), interest futures contracts (forwards), futures contracts for exchange (as of a certain future date) in the case of price dependence on interest rate, exchange rate or stock index, options giving the right to the purchase or sale of any of these financial instruments, including those involving a monetary form of payment (exchange rate and interest options) [24]. Based on this concept, we can conclude that financial instruments are certain documents - securities and special agreements. Other documents that partially support this definition are subordinate regulations that implement international standards in the national legislation on accounting.

The essence of a financial service is manifested through the common understanding of it as the service that results in obtaining benefits. In the current legislation, the term “service” is used by the legislator in many regulations, starting with the Civil Code, as well as in the Law of Ukraine “On Financial Services and State Regulation of Financial Services Markets”. However, a single clear definition of the concept of “services” has not yet being made.

Civil Code in Art. enshrines the concept of a contract for the provision of services, which itself is a fairly new legal institution [22]. At the same time, studies of the essence of the service more than once became the subject of scientific research. Scientists have discovered the main feature of the service - the performance of actions that do not have a tangible result. That is, when a service is provided, it is not the result itself that is sold, but the actions that led to this result [26].

B. Denisenko, defining the place of a financial service in the conceptual and logical sequence “service” - “paid service” - “financial service”, focuses on the characteristics of the financial service but with certain reservations. First of all, the scientist noted that the legislative definition of the concept of “financial service” is contained in the laws adopted to regulate the public law aspects of social relations in this area. Secondly, the scientist doubted the possibility and, most importantly, the need to combine in one legal concept the private - legal and public-law characteristics of relevant phenomena and objects, which actually takes place in the case of the definition of financial services [27, p. 56].

At the same time, a comprehensive study of the financial services theoretical aspects would be incomplete without highlighting the issue of the types of financial services and their classification. Indeed, as was rightly pointed out, one of the methods of researching a certain phenomenon or object, which allows for a thorough knowledge of its essential features, is the scientific classification [28, p. 34]. At the same time, in the legal encyclopedic literature it is noted that the classification (from the Latin. Classic - discharge and ... ficatio, from the facio - I do) is a system of subordinate concepts (classes, objects) of a particular area of knowledge or human activity that is used as means to establish connections between these concepts or classes of objects. Scientific classification expresses the system of laws inherent to the relevant industry [29, p115]. Classification is a scientific method of knowledge, which is based on the logical operation of dividing the scope of a concept. As a rule, the basis for the classification is to select the characteristic signs of the phenomenon. However, any classification makes sense if as a result there is an increase in knowledge about the object under study or accumulated knowledge creates a specific system that allows it to reflect clearly its features [30, p. 258]. In this context, one should pay attention to the fact that in the etymological sense, classification means the system of distribution of objects, phenomena or concepts into classes,

groups, etc. with common features or properties [31, p. 544]. Thus, any classification based on a certain feature of an object is common for a certain group of elements of this object and allows to study its properties in more details as well as to determine this object and establish the nature of its relationships with other objects [32, p. 34].

Scientific classification of financial services allows to explore their essence [33, p. 73-74], to identify their relationships and, as a result, will allow to improve their legal regulation more purposefully and correctly [28, p. 34]. In this context, we note that the above-mentioned tasks are of particular relevance due to the fact that the service sector, as practice shows, is one of the most promising sectors of the economy and is developing dynamically.

The list of financial services is regulated in Art. of the Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets" dated July 12, 2001 [20]. The analysis of the above mentioned standards results in the possibility to allocate a classification criterion of the financial services according to the form of transaction provisions [20].

According to this criterion, the following types of financial services can be distinguished: 1) issuance of payment documents, payment cards, travelers checks and / or their maintenance. The general principles of functioning of payment systems and settlement systems in Ukraine are determined by the Law of Ukraine "On Payment Systems and Transfer of Funds in Ukraine" dated April 5, 2001. Thus, in accordance with Art. of this legal act, the settlement document is defined as a document for transfer of funds to be used to initiate the transfer from the payer to the payee's account. In turn, a payment card is an electronic means of payment in the form of a plastic or other type of card issued in accordance with the current legislation that is used to initiate a transfer of funds from the payer's account or from the corresponding bank account to pay for the cost of goods and services, transfer funds from their accounts to the accounts of other persons, to receive funds in cash at the bank's cash desks, through automatic teller machines, as well as to carry out other operations stipulated by the relevant agreement. Settlement check is a paper settlement document containing the unconditional order of the payer to the bank that services it to transfer the amount of funds to the beneficiary specified in it [34] 2) clearing is a mechanism that includes collecting, sorting and offsetting reciprocal claims of participants in the payment systems, and also calculation on each of them the total balance for a certain period of time between total amounts of transactions [34]; 3) other forms of payment support including: - Quiring - technological information services for settlements on transactions made using electronic means of payment in the payment system; - Issuing electronic means of payment - conducting operations to issue electronic payment means of a certain payment system; - Processing - an activity that includes the execution of operations with payment instruments for the authorization, monitoring, collection, processing and storage of information, as well as the provision of the processed information to the participants of the settlement and the settlement bank for carrying out mutual settlements in the payment system; - Settlement and cash services - services provided by a bank on the basis of a relevant agreement related to transfer of funds from the account (to the account) of the relevant person, disbursement of funds in cash, as well as other operations stipulated by the agreements [34].

The next criterion for the classification of financial services is the activity on the currency transactions (currency exchange) [20]. By foreign exchange transactions we mean any payments associated with the movement of currency values between the subjects of the foreign exchange market. These operations are classified according to several criteria: 1) by the term of payment for the sale and purchase of foreign currency: - Cash, or operations with immediate delivery; - Urgent; 2) by the mechanism of operations: - Spot transactions; - Forward operations; - Futures operations; - options. 3) for its intended purpose: - operations to obtain currency to make payments for international settlements - transactions to hedge against currency risks (hedges) - operations with a view to profit, or speculative operations. 4) the scale of the operation: - Wholesale (carried out between banks) and Retail (carried out between banks and other stakeholders) [35, p. 224-225].

The attraction of financial assets with the obligation of their subsequent return is the next criterion for the classification of financial services. Thus, according to the Regulation "On the establishment of restrictions on combining the activities of financial institutions to provide certain types of financial services", which was approved by the Order of the State Commission for Regulation of Financial Services Markets of Ukraine No. 1515 dated July 8, 2004 according to this criterion, the following types of financial services can be identified: Direct attraction of the financial assets defined as direct action of the financial establishment to obtain funds from various types of investors; - Indirect attraction of financial assets defined as the actions of the financial institution to obtain the financial assets from individuals and / or legal entities through intermediaries, as well as the receipt of the financial asset balances arising from the conduct of normal business activities in the interests of these persons [36].

Another criterion for the classification of financial services in accordance with the Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets" is the activity of trust management of financial assets [20]. In the literature there are the following types of financial services related to the trust management of financial assets: - Full trust management, which involves the commissioner to perform actions regarding the subject trust management independently within the limits defined by the trust agreement, with the mandatory notification of the principal about each committed action: - Trust management by agreement - performing actions regarding the subject of trust management, subject to mandatory prior approval of the action by the principal; - Trust management by order, which allows the commissioner to perform actions regarding the object of trust management only under the condition that the principal issues an order in the form and procedure provided for by the trust agreement [37, p. 346].

A separate group of financial services, in accordance with paragraph 6 of Part 1 of Art. 4 of the Law of Ukraine "On Financial Services and State Regulation of Financial Services Markets" constitute financial services for the provision of funds for a loan, including the terms of a financial loan [20]. According to the Art. 1046 of the Civil Code of Ukraine, under a loan agreement, one party (lender) transfers to the other party (borrower) money or other things determined by generic characteristics, and the borrower undertakes to return to the lender the same amount of money (loan amount) or the same amount of the borrowed items of the same kind and quality. In this case, the loan agreement may be with interest or interest-free [22]. In turn, in Art. 14 of the Tax Code of Ukraine, it is established that a financial loan is funds provided by a resident or non-resident bank that qualifies as a banking institution in accordance with the legislation of the host state as non-resident,

or residents and non-residents having the status of non-banking financial institutions in accordance with the relevant legislation, as well as a foreign state or official agencies, international financial organizations and other non-resident lenders legal or physical for a specific period of time for the targeted use and at interest [38].

As a type of financial services, leasing can be classified as follows: 1) depending on the sector of the market where leasing operations are conducted - domestic, foreign (international) and international transit leasing; 2) in relation to the leased property (or in terms of servicing) - clean, full and partial; 3) according to the degree of recoupment of the property - leasing with full (or close to full) payback, leasing with incomplete payback; 4) with allowance for tax benefits for the property, profits, VAT, various fees, accelerated depreciation - fictitious and valid; 5) by the type of financing - urgent and renewable; 6) by the type of property - leasing of movable property and real estate; 7) depending on the form of organization of the conducting technology - direct, indirect (intermediary) and share (separate) leasing; 8) by the nature of leasing payments - cash, compensation and mixed leasing [39, p. 280-281].

The next criterion for the classification of financial services is money transfer activities. According to Art. 1 of the Law of Ukraine "On Payment Systems and Transfer of Funds in Ukraine" of April 5, 2001, transfer of funds is the movement of a certain amount of funds where due to the fault of a bank or other transfer entity, it is debited from the account of the wrong payer and / or credited to the account of the wrong recipient or the issuance of this amount in cash. In this case, it is possible to distinguish two types of financial services related to the transfer of funds - interbank and intrabank transfer [34].

Depending on the methods of ensuring the fulfillment of obligations the financial services may be distinguished as: 1) provision of guarantees. Thus, in accordance with Art. 200 of the Commercial Code of Ukraine, the guarantee is a specific means of ensuring the fulfillment of economic obligations by written confirmation (letter of guarantee) by a bank, other credit institution, insurance company (bank guarantee) on meeting the requirements of an authorized party in the amount of the full sum of money specified in the written confirmation if the third person (obliged party) will not fulfill the specified obligation or other conditions may be in force that are stipulated in the confirmation [23]; 2) surety (surety). According to Art. 553 of the Civil Code of Ukraine, under a surety agreement, the guarantor guarantees to the debtor's creditor that the debtor will fulfil his duty [22].

The next criterion for the classification of financial services is professional activity in the securities market, which is subject to licensing. In accordance with Art. 4 of the Law of Ukraine "On State Regulation of the Securities Market in Ukraine" dated October 30, 1996, the following types of professional activity in the securities market are subject to licensing: 1) brokerage activity - the conclusion of civil law contracts by a securities trader (in particular, commission agreements, instructions) regarding securities on its own behalf (on behalf of another person), on behalf of and at the expense of another person; 2) Dealer activity - entering into civil law contracts by a securities trader obtaining securities on its own behalf and at its own expense for the purpose of resale, except as required by law; 3) underwriting - entering into contracts for the alienation of securities and / or carrying out actions or rendering services related to such alienation in the process of issuing these securities on behalf of the issuer on the basis of a relevant agreement with the issuer; 4) securities management activity - an activity performed by a securities trader on his own behalf for remuneration for a certain period on the basis of an agreement on the management of securities transferred to him and cash intended for investing in securities, as well as securities obtained in the process of this management and cash owned by the installer of the management in his interests or in the interests of the third parties determined by him; 5) asset management activities - professional activities of a stock market participant (asset management company) that is carried out by it for remuneration on its own behalf or on the basis of a relevant asset management agreement owned by institutional investors; 6) mortgage coverage activities - activities that are carried out by the mortgage cover manager on its own behalf for a fee for a specified period to perform contract management and mortgage coverage, provide the representation of interests of mortgage bond holders, monitor compliance with the terms of replacement of mortgage assets or include new mortgage assets in the mortgage coverage, monitor the timeliness and completeness of the issuer making payments on ordinary mortgage bonds, ensure compliance of mortgage coverage to the legislation, perform other functions defined by law; 7) depository activity of the deposit institutions - activities of depository accounting and servicing placement of securities and the issuer's operations with securities issued by it on the securities accounts of its depositors; 8) activities for the storage of assets of collective investment institutions - activities for the storage of assets of collective investment institutions (documents, ownership of assets of general investment institutions), servicing the operations of joint investment institutions and exercising control over said activities according to the current legislation 9) activities for storing assets of pension funds - servicing the pension fund in accordance with the Law of Ukraine "On non-state pension provision" [40]; 10) activities for organizing trading in the stock market - activities of the stock exchange to create organizational, technological, informational, legal and other conditions for the collection and dissemination of information about securities and other financial instruments and the demand for them; trading in securities and other financial instruments, centralized conclusion of contracts for securities and other financial instruments in accordance with the rules established by a stock exchange registered according to the law; 11) clearing activities are activities for determining obligations to execute transactions with securities and other financial instruments, preparation of documents (information) for settlements, as well as the creation of systems guarantees for the fulfillment of obligations for transactions in securities and other financial instruments [41].

In scientific literature there are two main types of factoring:

1) Conventional, which is a comprehensive service system that concentrates accounting, legal, consulting and other services; 2) confidential, limited only by converting invoices [39, p.186-187].

In this paper I addressed the concept, the essence of financial services based on the scientific work of Ukrainian and foreign scientists. It is being determined that the subjects of financial services are: business entities with different legal status granted the right to carry out activities to provide financial services in Ukraine; consumers of said services; bodies regulating and controlling the provision of financial services in Ukraine. It is also being determined that the classification of financial

services is the distribution of their types to certain groups in accordance with the type and scope of activities of financial institutions.

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АДМІНІСТРАТИВНА ПРОЦЕДУРА ФОРМУВАННЯ ДЕРЖАВНОЇ АНТИКОРУПЦІЙНОЇ ПОЛІТИКИ: ПРОБЛЕМИ ЗМІСТУ ТА ПРАВОВОГО РЕГУЛЮВАННЯ

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Анотація: у статті висвітлено проблемні питання, що супроводжують процес формування державної антикорупційної політики під час розроблення її змісту. Звертається увага на те, що для того, щоб державна антикорупційна політика була ефективною та якісною, процес її формування має відповідати певним вимогам щодо її розроблення та формулювання основних положень.

Ключові слова: корупція, державна політика, адміністративна процедура, формування, антикорупційне законодавство.

Аннотация: в статье освещены проблемные вопросы, сопровождающие процесс формирования государственной антикоррупционной политики при разработке ее содержания. Обращается внимание на то, что для того, чтобы государственная антикоррупционная политика была эффективной и качественной, процесс ее формирования должен соответствовать определенным требованиям по ее разработке и формулирование основных положений.

Ключевые слова: коррупция, государственная политика, административная процедура, формирования, антикоррупционное законодательство.

Annotation: the article covers the problematic issues that accompany the process of formation of the state anti-corruption policy while developing its content. Attention is drawn to the fact that in order for state anti-corruption policy to be effective and high-quality, the process of its formation should meet certain requirements for its elaboration and formulation of the main provisions.

Key words: corruption, state policy, administrative procedure, formation, anti-corruption legislation.

Наразі в державі створені умови для викорінення корупції і не просто задекларовано наміри запобігати та протидіяти корупції, а реально проявлено політичну волю на вищих щаблях влади щодо проведення повного реформування не лише антикорупційного законодавства, а і всієї державної антикорупційної політики. Так, з метою покращення стану протидії корупції в Україні на публічну адміністрацію обов'язок щодо формування та реалізації антикорупційної політики.

Так державна антикорупційна політика згідно зі ст. 18 Закону України «Про запобігання корупції» від 14.10.2014 р. [1] розробляється Національним агентством запобігання корупції, затверджується Кабінетом Міністрів України, а приймається Верховною Радою. Антикорупційні програми публічної адміністрації та інших суб'єктів приймаються її керівниками (або іншими уповноваженими особами) та погоджуються з Національним агентством запобігання корупції.

Незалежно від типу і моделі державної політики, від того, який підхід до вирішення проблем лежить в її основі, державна політика повинна задовольняти певним вимогам: реагувати на зміни, що відбуваються в суспільстві і