

The Law of the
EU Single Financial Market

PROF. UG DR HAB. ANNA JURKOWSKA-ZEIDLER
Financial Law Department
Faculty of Law and Administration
University of Gdansk

EU Single Financial Market



- Is a part of the internal market of the EU
- Is based on 'four freedoms' - the free movement of people, goods, services and capital.
- These freedoms are enshrined in the Treaty on the Functioning of the European Union

Single Financial Market;
General principles

- Freedom of establishment and Freedom to provide services are two of the "fundamental freedoms" which are central to the effective functioning of the EU Internal Market.
- The freedom of establishment is set out in Article 49 of the Treaty on the Functioning of the European Union and the freedom to provide cross border services is set out in Article 56.

RIGHT OF ESTABLISHMENT Article 49 TFEU

- Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Single Financial Market; The principle of freedom of establishment

- The principle of freedom of establishment enables a financial institution to carry on a financial (banking) activity in a stable and continuous way in one or more Member States.

SERVICES Article 56 TFEU

- Within the framework of the provisions set out below, restrictions on freedom to provide services within the Union shall be prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

Single Financial Market; The principle of freedom to provide services

- The principle of the freedom to provide services enables a financial (banking) institution providing services in one Member State to offer services on a temporary basis in another Member State, without having to be established.

Financial services market

The financial services market includes four major areas for which similar European policies apply:

- Banking,
- Insurance
- Securities (capital market)
- Payment services

Financial services market

- Financial market is subject to separate and relatively specific regime
- This is because money at the financial market acts as a product and not only as a legal tender
- The organisation of the financial market has to provide security for the market participants (financial institutions)

The law of the EU Single Financial Market

- The law of completing the single financial market of the EU is based predominantly on the secondary legislation, particularly on directives specifying how Member States should arrange the financial market legal regime in their national law
- Regulations

Financial services

- Recognition of the entities performing financial services could be a starting point for determination of activity on the financial market

Financial services. Directive 2013/36/EU. Annex

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Taking deposits and other repayable funds.
2. Lending including, inter alia: consumer credit, credit agreements relating to immovable property, factoring, with or without recourse, financing of commercial transactions (including forfeiting).
3. Financial leasing.
4. Payment services as defined in Article 4(3) of Directive 2007/64/EC.
5. Issuing and administering other means of payment (e.g. travellers' cheques and bankers' drafts) insofar as such activity is not covered by point 4.
6. Guarantees and commitments.
7. Trading for own account or for account of customers in any of the following:
 - (a) money market instruments (cheques, bills, certificates of deposit, etc.);
 - (b) foreign exchange;
 - (c) financial futures and options;
 - (d) exchange and interest-rate instruments;
 - (e) transferable securities.
8. Participation in securities issues and the provision of services relating to such issues.
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings.
10. Money broking.
11. Portfolio management and advice.
12. Safekeeping and administration of securities.
13. Credit reference services.
14. Safe custody services.
15. Issuing electronic money.

Financial services. Legal definition

- "financial service" means any service of a banking, credit, insurance, personal pension, investment or payment nature

(Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services)

The legal regime of financial institutions

- The EU law forms two groups of entities active at the financial market and each of them received a separate legal regime
- So the market is not internal (single) when two groups of institutions are considered
- However, it is uniform for credit institutions and to broadly defined group of financial institutions

Financial institutions

CREDIT INSTITUTIONS

- Banks
- other credit institutions (for example credit unions)

OTHER FINANCIAL INSTITUTIONS

- Insurance institutions
- Investments firms
- Pension funds
- Stock exchanges and brokers
- Payment Institutions
- Financial conglomerates

Banking services

- Achieving an integrated market for banks and another credit institutions is a core component of the European policy in the area of financial services.

Regulation of banking activity in the EU

The EU policy in the field of regulation of banks are based on

- „the principle of mutual recognition“ and
 - „the principle of single license (single passport)“
- a system which allows financial services operators legally established in one Member State to establish or provide their services in the other Member States without further authorisation requirements.

The principle of mutual recognition

- *Mutual recognition* is the principle that a financial services (products) lawfully marketed in one Member State and not subject to Union harmonisation should be allowed to be marketed in any other Member State, even when the service does not fully comply with the technical rules of the Member State of destination.

The principle of mutual recognition

- There is one exception to this principle: the Member State of destination may refuse the marketing of a financial service (product) in its current form only where it can show that this is strictly necessary for the protection of „general interest“, for example, public safety, consumer protection or financial stability. In that case, the Member State of destination must also demonstrate that its measure is the non-discriminatory measure.

The principle of single license

- The single licence authorises a bank established in a Member State to open branches or provide services without any other license in the partner countries within the EU.
