

чи нечесним, справедливим чи несправедливим, прийнятним чи неприйнятним[11]. Такі норми і уявлення «народжуються» і «живуть» у народі у вигляді традицій, ціннісних установок, загальноприйнятих правил, етичних імперативів. У них відтворюються Божественні начала норм індивідуального-суспільного життя. Тому мораль виявляється постійним джерелом «підживлення» права; із моралі право «черпає» потенціал міри добра і справедливості.

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FINANCIAL SECURITY: LEGAL NATURE, STRUCTURE AND TYPES

Kostyuchenko O., *Doctor of Law, professor of Department of civil law and process University of the State Fiscal Service of Ukraine*

Костюченко О.Є. ФІНАНСОВА БЕЗПЕКА: ПРАВОВА ПРИРОДА, СТРУКТУРА ТА ВИДИ

Abstract: *On the basis of the fact that the financial safety is the new phenomenon for Ukrainian state, the determination of its legal nature is an actual task of legal science. This paper is devoted to the research of financial safety and its legal component. There are considered the modern scientific views of determination of the category financial safety to determine its characteristics and to identify the key features that should be a basis of legal regulation of financial safety in Ukraine. The problem of legal financial interest is separately considered as a core of the financial safety of all kinds. It is offered an author's view of the types of financial safety and their role in securing the economic independence and the independence of the state. The analysis of constitutional regulations gave reasons to affirm that the leading role in securing the financial safety in Ukraine belongs to the state through its authorities. State authorities that implement the state and regulatory powers create the legal conditions of support of the financial safety in the state and protection of legal financial interests of economic entities. There is offered the determination of financial safety in its legal aspect and characteristics of its legal nature in the article.*

Keywords: *financial safety, financial interest, legal financial interest, legal nature, economic entities.*

Аномація: *Стаття присвячена дослідженню фінансової безпеки та її правової складової. Розглянуто наукові погляди щодо визначення категорії фінансова безпека з метою визначення її характеристики та виділення ключових ознак, які мають бути покладені в основу правового регулювання фінансової безпеки в Україні. Окремо розглядається проблема законного фінансового інтересу як стрижня фінансової безпеки усіх видів. Пропонується авторський погляд на види фінансової безпеки та їх роль у забезпечення економічної самостійності та незалежності держави. Державні органи, які реалізуючи державно-владні повноваження створюють правові умови підтримки стану фінансової безпеки в державі та захист законних фінансових інтересів економічних суб'єктів. В роботі обґрунтовано, що у правовому аспекті фінансова безпека – це стан, в якому економічний суб'єкт, реалізуючи економічну свободу здатний відповідально забезпечувати своє функціонування (існування) та захист власних законних фінансових*

інтересів від внутрішніх та зовнішніх загроз у поточному та майбутніх періодах з метою стійкого розвитку. Правова природа фінансової безпеки виражається в: а) законному фінансовому інтересі економічного суб'єкта, який є стрижнем усіх видів фінансової безпеки за суб'єктами; б) економічній свободі яка визначається через ступінь свободи, функціональні можливості суб'єкта, тобто правомочності щодо фінансових ресурсів. Рівень фінансової безпеки має ключове значення при обранні методів, правових засобів та заходів впливу при забезпеченні фінансової безпеки економічних суб'єктів. У демократичній правовій державі протидія внутрішнім та зовнішнім загрозам із метою стійкого розвитку економічного суб'єкта за межами правового поля неможлива, а отже, однією зі складових фінансової безпеки, як явища, є правова складова, призначена впорядковувати відносини між економічними суб'єктами, надавати їм правову форму та прогнозованого характеру через правовідносини. Правова складова фінансової безпеки має закласти в основу законного фінансового інтересу ціннісні орієнтири національній економіці, економічній та господарській діяльності суб'єктів господарювання.

Ключові слова: фінансова безпека, фінансовий інтерес, законний фінансовий інтерес, правова природа, суб'єкти господарювання.

1. The theoretical principles of definition of concept of financial safety

The financial safety – is a new concept for Ukrainian science, although it is already widespread in the practical activity for considerable time. A concept “financial safety” was separated from a general concept “economic safety”. The financial safety is a separate subsystem of the system of economic safety. In the economic area of the Former Soviet Union the problems of financial safety were not substantially considered, and thus, Ukraine does not have a historical experience to secure the financial safety both in country in the whole and economic entities and citizens.

Let us find out what should be understood under the concept “financial safety”? Concerning the fact that scientists share their opinion that the financial safety is a component of economic safety, it can be determined whether the unity of views of the concept “financial safety” exists. For this purpose, let's analyze the expressed in literature views of definitions of such concepts as “financial safety”, “enterprises financial safety”, “bank financial safety” and etc. This way, there is a conception of financial safety in the Concept of “Financial Safety of Ukraine” as a component of economic safety that characterizes the state of protection of essential (key) interests of the state, regions, enterprise structures and citizens in the financial area from the influence of wide circle of negative factors(threats) [13]. Iu. Kim writes that the financial safety of enterprise is an activity of risk management and protection of enterprise from external and internal threats for securing a stable enterprise development and own capital increase in the current and strategic perspective [11, p. 65]. O. Baranovskyi affirms: “Commercial bank financial safety – is a set of conditions under of which potentially dangerous for the financial state of commercial bank actions or circumstances are prevented or reduced to such level at which they are not able to harm to the established order of bank functioning, preservation and reproduction of its property and infrastructure, and to prevent the bank achievements of statute goals; a state of safety of financial interest of commercial bank, its financial stability, and also an environment in which it operates” [2, p. 12-13]. I. Blank under the financial safety of enterprise understands the qualitatively and quantitatively certain level of its financial state that secures a stable safety of its priority balanced financial interests from the identified real and potential threats of external and internal nature, the parameters of which are determined on the basis of its financial philosophy, and create the necessary conditions for financial support of its sustainable growth in the current and future periods [3, p. 24]. Perekhrest L. writes: “the bank financial safety is a dynamic characteristic of elements, cooperation of which allows to secure its sustainable development and to guarantee the protection of financial interests from internal and external threats both at present moment and in the long term” [20, p. 6]. V. Shlemko and I. Binko note that under the financial safety it should be understood such state of financial, monetary, exchange, bank, budgetary, tax systems, that is characterized by balance, by stability to the internal and external negative influences, by ability to secure an effective functioning of national economic system and economic growth [8]. A. Epifanov, O. Plastun, V. Dembovskyi consider that financial safety of business entities is an important component of financial safety and is an ability of business entity to engage in economic, including the financial activity, effectively and

stable during indefinite time. It is implemented by use of set of interrelated diagnostic, instrumental and control events of financial character that should optimize the use of financial resources, secure the proper level of their realization and negate the risk influence of internal and external environments [25, p. 25]. E. Dmytrenko asserts that the financial safety is a state of security and providing essential financial interests of person, society, state or separate political units with legal, economic, political, informative, scientific, operational and other events both in the middle of the state and abroad that guarantees the financial independence of Ukraine and protection of its financial system from internal and external threats [6, p. 17].

The presented views of financial safety indicate that authors mainly determine this concept through interests, financial state, independence, ability to resist the threats. However, they are painted by economic sense of financial safety and do not reflect its legal nature. We believe that to secure the financial safety is not enough the economic mechanisms, and in the aspect of legal research one should note the following key feature of financial safety as securing of financial interest. To better understand the importance of financial interest, it should be taken that the financial interests of the state, economic entities and separate citizens do not always coincide and sometimes are contradictory. However, all of them reflect the financial needs of subjects. The financial interests are motivated by the necessity of existence (functioning) that goal for humans is a need in existence, self-expression and personal development. For economic entities the goal is in economic development that provides, first of all, the financial interests of owners. The social and economic development is the goal for state existence. Speaking about an interest as a legal phenomenon, it should be noted that the interest has been analyzed in the researches of ancient Roman lawyers by the study of problem of dissociation of private law from public law [7, p. 1]. In the literature it can be found such approach to the interest: a law is the form of realization of social interests [15, p. 89]; a law is a result of fair interests' estimation [27, p. 28]. Thus, the interest and the law are interdependent phenomena.

2. Nature of an interest as a component of financial safety

An interest is a purposeful attitude of human to any object of its necessity. The interest depends on the conditions of human beings, reflects a necessity for their life of subjects of the world [22, p. 107]. Thus, the interest should be considered through a necessity and need. In 1943 a psychologist Abraham Maslow expressed his opinion that human behavior is determined by a wide spectrum of necessities. He offered five categories of such necessities and defined their hierarchy in basis of which he put the needs (food, water, accommodation). And on the top of necessities he defined high individual needs (confession, self-expression) [16]. It is methodologically important to realize that a key subject in legal relationships with securing of financial safety is human being who plays the role of citizen, public servant of economic entity or government body. The existence of state and economic entities is not possible without human being (people). Thus, any financial interests, first of all, are conditioned by objective biological bases of the person as a result of which it is obliged to eat, to drink, to get dressed, to have an accommodation etc. So, in an order to satisfy these necessities, the person should have financial resources getting from its own labour, property, its results and income. "Human activity is characterized by motives, goals, and also means by which it is realized. The motives are something for the sake of what is an activity, those necessities and interests it satisfies. A person attitude to an activity, and therefore, how it is executed, is mostly determined by motives. The purpose is such result for achievement of which the activity is directed. The methods of its realization have an important role in activity near the goal and motives. These include not only instruments used by human but also skills and abilities for the efficient use of these instruments" [10, p. 160-162]. Thus, one of necessary conditions of human activity is a motive because the process of activity is anyway subordinated to conscious purpose. The external subjective and objective factors influence on human psyche and thus mature its behavior. The interest, in its turn, is mediated by necessities, motives, goal, realization means, abilities and skills.

Concerning the financial interests we fully agree to the statement of E. Dmytrenko, who writes, that financial interests are essential financial necessities of person, society and state,

which protection and providing with the help of the system of legal, economic, political, personnel, informative, scientific, investigation and search operative and other events both in the state and abroad guarantees the financial independence of Ukraine and protection of its financial system from internal and external threats [6, p. 16]. Thus, the satisfaction of any financial interests mediates by means of protection and providing that, in its turn, closes us to such important question as a role of the state in the process of satisfaction of financial interests of all its economic entities (under the economic entity understand both individual and collective entities that realize an economic, economical activity, as for example a person, household, businessman – physical person, enterprise, establishment, organization, state). Relying on stated, if we talk about financial interests, they should be examined from the position of public interest. There is consistently suggested an idea in the literature, that under the public interest is understood the concentrated expression of common social necessities and aspirations [18, p. 86]. Iu. Tihomirov writes that from the legal point of view the public interest is characterized by certain normative signs, fixing of its priority, establishing of order and guarantees of providing, fixing of guard methods and responsibility events [23, p. 6]. K. Totiev reasonable notices that the public interest specifies on the state responsibility to realize the corresponding to its interest activity [24, p. 25]. Thus, if the financial interests that have public character specify on their legal nature, it should find out the state's role in satisfaction of such interests.

3. State's role in providing of financial interest of economic entities

A state is as sovereign, political and territorial citizens association which is created with the purpose of providing of social and group interests of society's members. After its social nature it should provide the maximal compromise of interests in the socially heterogeneous society. As a tool of this compromise in the democratic state is a law. Appointing a right of private property (p. 41), right on entrepreneurial activity (p. 42) and right to work (p. 43) to the Constitution of Ukraine [12], the state took the obligation to define the legal forms of realization and protection of these rights through the additional laws. Thus, with the purpose of implementation of its assignment in society, one of interests of the state in the financial area is a requirement in creation of legal conditions for achievement of interests' compromise of economic entities. But somebody can mark that the persons' needs are endless, and the financial interests almost cannot be satisfied in full. It is twofold, because the state in law form determines the necessary type and measure of rights and obligations of economic entities during realization of their economic activity.

After that it is necessary to find out, how to define the maximal measure of mutual requirements of economic entities which strive to get the high level of own financial security? In our opinion, such measure can be a "legal financial interest", it is the main sign that gives a legal maintenance to the relations of economic entities for providing of financial safety. The legal interest as a legal category is not new for science. Thus, under the legal interest is usually understood permission of certain behavior and connect it with the legal right [21, p. 15]. In its turn, the legal and public interests are united by that they both are legally meaningful interests, satisfaction of which is based on the law. However, their maintenance, realization and protection methods are different [17, p. 120-123]. Without paying attention to availability in law of scientific researches works from researches of legal and public interests, the current legislation of Ukraine does not contain the determination "legal financial interest". We already marked in our researches that the research of legal nature of financial safety gives an opportunity to provide financial safety with the help of administrative and legal of facilities [14, p. 69]. Therefore, the methodology of description requires stating a concept "legal financial interest".

Thus, if the financial interest is a subjective attitude of economic entity to its necessities (necessary and desirable), then the law is a normative act that has the highest legal force, adopted in special order with the aim of getting the legal principles in regulation of socially meaningful relations in the state, and the relations between economic entities are regulated by a law on conditions of beginning of certain legal relationships between them. We conclude that the "legal financial interest" has following characteristics:

- it begins in legal relationships;
- it is based on fixed rights and obligations in law;
- provides the necessary and desired financial necessities appointed by the state;
- it is characterized by plenty of financial resources, balance of income and expenditure;
- it is limited by legal possibilities appointed in law.

Thus, the legal financial interest is the aspiration of participants of legal relationships to satisfy their financial necessities based on appointed in law rights and obligations. Following it, if a legal nature of financial safety is developed due to the legal financial interest, then is a question how is this legal nature represented in financial safety?

4. Legal component of financial safety

L. Perekhrest by investigation of providing bank financial safety under the unstable economic environment defined that the bank financial safety has following components: 1. Organizational financial safety that contains a resource, credit, investment, and exchange and payment safety. 2. Safety of financial and economic information that consists of bank secrecy, client database, unauthorized access to electronic network [20, p. 7]. Assume that from the position of economic foundation of problem of providing of financial bank safety or other economic entities such components will be enough, however, regarding to the necessity of economic entities to satisfy own financial interests and financial safety in a legal way, these components are not enough. A legal component of financial safety of economic entity is an integral part as actually financial resources directed to its economic development.

Realizing the organization and management of financial safety of economic entities it should consider the fact that a legal component for their adequate legal regulation of relations for ensuring financial safety should meet economic base. A law as a public phenomenon has its sources in which the rules of behavior for legal relationship participants are, in particular to provide financial safety. During description of law sources with the aim of construction of legal component of financial safety it should be noted that the phrase “source of law” has two meanings in science. The first is the source of law in the material meaning, the second has a formal meaning. V. Nersesiants writes that under the material source of law is understood the reasons of law forming, that is all that in accordance with certain approach generates (forms) a positive law – those or other material or spiritual factors, public relations, human nature, nature of things, will of God or legislator. Under the formal source is understood a form of external expression of regulations (content) of existing law. It means that rules of existing law (their normative content) are in the certain (officially recognized) sources of law, which are officially recognized (institutional) forms of fixing and existence of law [19, p. 399-400]. S. Aleksieiev writes, that a law it is the norms, general rules. Legal norms should be distinguished from laws. They (laws) are only “sources of law”, documents [1, p. 417-418].

In some form the researchers describing the financial safety of economic entities concentrate on security and protection of own financial interests and resources from threats. In our opinion, it points directly to the right for owners of financial resources to realize independently the protection of own legal interests within the limits of legislation of Ukraine. However, as appointed in the title 1 article 41 of Constitution of Ukraine, everyone shall have the right to own, use, or dispose of his property and the results of his intellectual or creative activities. However, in the article 319 of Civil code of Ukraine [26] is determined the general order of realization of property law, namely: an owner owns, uses and disposes of own property at the own discretion and concerning own property performs any actions which does not contradict a law. The property obligates an owner use the right without harming the rights, freedoms and dignities of citizens, public interests. The state does not interfere in realization of property rights of owner. Such legislative regulations provide a basis to conclude that the state creates the legal field for owners of financial resources for free use of their property; gives them independence in accepting of managerial decisions about their property and does not respond for the results of economic entities’ activity. But detail of “freedom” of economic entities deserves attention from position of providing their financial safety.

Thus, O. Glushchenko on the basis of classification of historical forms of economic freedom and historical stages of its development grounded scientifically that the economic freedom has internal and external forms of display. The internal forms she classified follows: awareness of economic values (value conscious function), choice of economic aims (aim created function) and determination of economic behavior (behavior function), the external are: under the criterion of freedom degree – economic sovereignty, economic independence, liberalization; under the functional displays – possession, power, management; under the patterns of ownership – ownership, labour, income [4, p. 3]. We absolutely agree with the author's statement that the public display of economic freedom is determined in interaction of entities which comes in formal and informal relations. The realization of economic freedom of economic agents in external space requires organization of its displays with restrictions that make the interaction of entities institutionalize. The value awareness of public economic freedom is based on perception of freedom of each its member [4, p. 8]. Thus, what does give us the awareness of economic freedom essence for understanding the financial safety of economic entities?

We believe that, firstly, it is understanding that a right of economic freedom is inseparable from obligations to follow the appointed limits in this freedom. Second, the “economic freedom” should not be identified with tyranny, and should be understood as a right of choice of realization form of financial interests, choice of partners and contractors, economic sovereignty and economic independence (own or collective decisions). Third, the economic freedom of entities is limited in the order established by law, and can be limited in prospect by public interests. The last is very fundamental question concerns the relationships in the future, where in case of occurring of unfavorable economic terms the state can restrict economic rights and freedoms. Considering the question about possibility of limitation of entities' economic freedom, we pay attention to article 22 of Constitutions of Ukraine, where is assigned that the content and scope of the existing rights and freedoms shall not be diminished by an adoption of new laws or by introducing amendments to the effective laws [12]. Therefore, we think, when it comes about human and citizen rights and freedoms, the question about diminishing of content and scope of the existing rights and freedoms it should be distinguished from economic freedom and order of realization of entrepreneurial activity. However, the experience of overcoming and counteraction to the economic crisis shows that anti-crisis legislation is appointed to regulate such relations that arise in the crisis period and operate a limited time. Target foundations of anti-crisis legislation correspond to general public interest of all society members and to international legal principle of “advantage of public interests above personal”. Characterizing the constitutional fixing of principles of legal state O. Zaichuk, N. Onishchenko write that aiming to reach, where it's necessary, interest parity of society and state, it provides out of these limits indisputable advantage to the personal interests, rights and freedoms of person. Other word, the Constitution of Ukraine conducts consistently the idea of public interest, trying to follow the principle of proportion [9]. In the aspect of financial safety and possible restrictions of economic freedom it should distinguish economic entities, where the individual entities are separate citizens, collective entities. They are, as a rule, legal entities, thus, the consequences of economic freedom restriction are excellent.

Separation of financial safety under levels on the base of differences of economic and economical activity of economic entities gives an opportunity to define the individualized approach to the legal regulation of financial safety of these entities. Based on the level of economic safety as fundamental principles of financial safety, let's determine its levels.

In the literature the economic security is given in three levels: 1) international safety (global, regional); 2) national safety (state, industry, region, society); 3) private (enterprise, economy or persons) [5, p.8].

The authors of monograph “Financial safety of enterprises and bank institutions” argue that economic security of business entities is a primary element in the system of economic security, because they provide the vital necessities of population and resources for its

development [25, p. 18]. We partially agree with such statement, because we think that economic entities are key functional rather than resource entities that provide development of society, state.

Based on the presented abstracts and regulations of article 3 of the Constitution of Ukraine which appointed that an individual, his life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value [12], we think that the levels of financial security are follows:

- 1) supranational – international financial safety;
- 2) national – financial safety of the state;
- 3) local – financial safety of the financial system, where the turnover of all financial state flows and financial safety of regions are;
- 4) individual – financial safety of economic entities, households, citizens.

Graphic correlation of all named types of financial safety under the entities could be shown, disposing them from larger to smaller. However, the primary element of financial safety in whole is financial safety of citizens, and functional basis is financial safety of economic entities. The core of financial safety of all levels is a legal financial interest (figure 1). The given correlation of concepts is proposed with the purpose of methods working of legal regulation of financial safety. Because every selected type of financial safety gives an idea about scope and facilities of legal regulation and methods and principles of legal area construction appointed for realizing the adequate effective regulation of financial safety of one or other economic entity. For example, the international experience of conducting the bank business shows that nowadays the use of outsourcing in banking is spread. The scientists ground the row of reasons where the outsourcing should be regulated. The founding motive of the outsourcing regulation is the protection of the consumer's interests (bank clients). In particular, it must not occur:

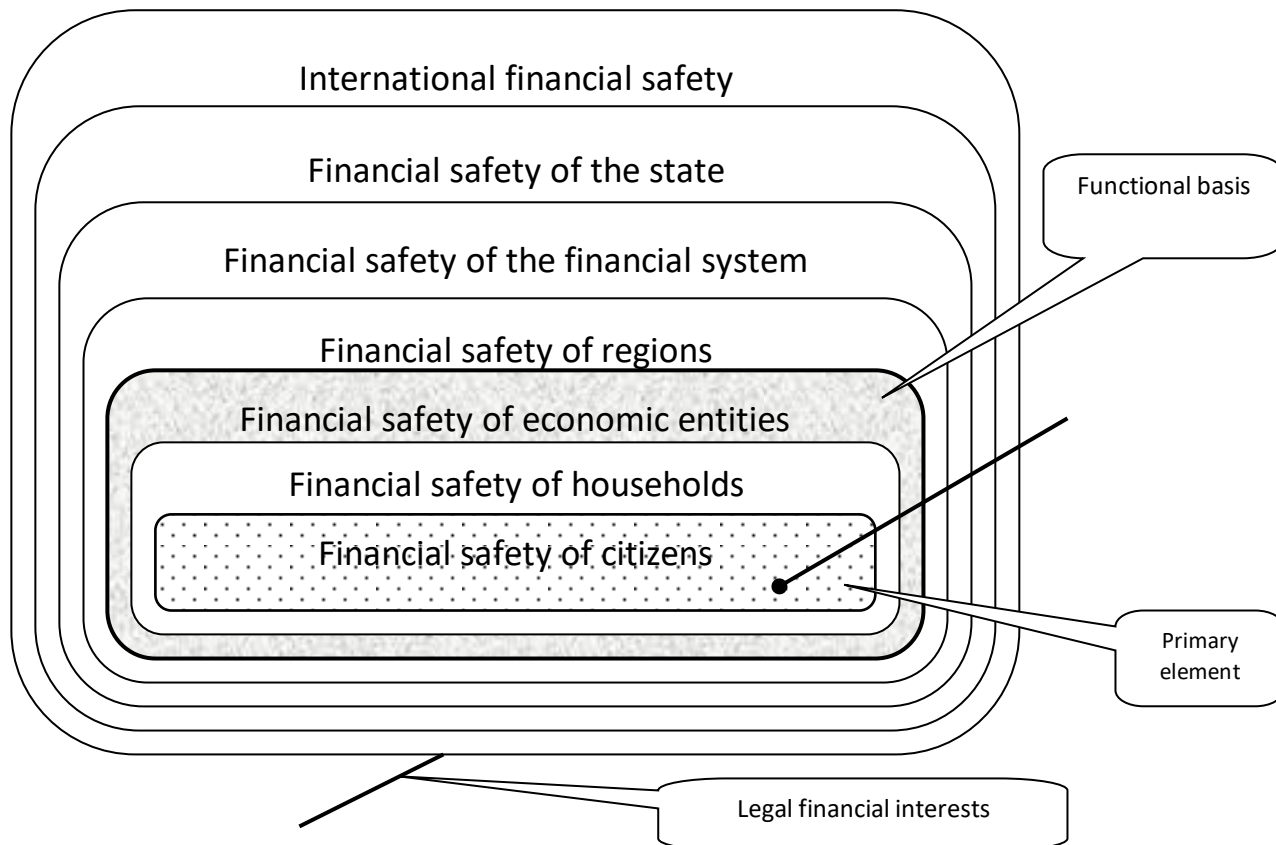
- harm to their interest;
- client's personal data security breach;
- client's information security breach.

The outsourcing regulations are based on assessing the risks connected, or the risks that could be connected, to the outsourcing usage. The most important risks are considered:

- operative risks, or risks of a third party (external service provider failure);
- reputational risks (loss of reputation due to the service provider failure);
- legal risks (adherence to legal regulations – compliance, law enforceability, observing contracts, withdrawal from contract);
- concentration (hereby is understood the excessive concentration of the whole branch - e.g. banking - on outsourcing of one similar task, important for banks - e.g. IT of providers) [28, p. 74-75].

Thus, a necessity of outsourcing regulation at the legislative level is one of state's tasks which is directly related to the providing of financial safety, both financial system and bank systems in its structure. However, the similar approach to each of proposed types of financial safety gives an opportunity to identify the key moments that need attention from the government.

Figure 1 Correlation of financial safety's types under the entities and their core



5. Conclusions

Thus, the above presented gives us a reason to believe that:

1. In a legal aspect the financial safety is a condition, in which an economic entity realizing the economic freedom is able responsibly to ensure its functioning (existence) and protection of own legal financial interests from internal and external threats in current and future periods with the purpose of sustainable development.
2. The legal nature of financial safety is expressed in:
 - a) legal financial interest of economic entity that is the core of all types of financial safety under entities;
 - b) economic freedom which is determined by freedom degree, functional possibility of entity, id est the competence for financial resources.
3. The level of financial safety has a key value by methods election, legal measures and impact measures during providing financial safety of economic entities.
4. In a democratic constitutional state it is impossible the counteraction to the internal and external threats with the purpose of sustainable development of economic entity outside the legal field. Thus, one of component of financial safety, as phenomena, is a legal component appointed to regulate the relations between economic entities, to give them a legal form and the predictable character through legal relationships. The legal component of financial safety should lay into the basis of legal financial interest the value orientations of national economy, economic and economical activity of economic entities.

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ГЕНЕЗИС ПРАВОВОГО РЕГУЛЮВАННЯ ДЕРЖАВНОЇ ІНФОРМАЦІЙНОЇ ПОЛІТИКИ У ДІЯЛЬНОСТІ ОРГАНІВ ДЕРЖАВНОЇ ФІСКАЛЬНОЇ СЛУЖБИ УКРАЇНИ

Литвин Н.А., кандидат юридичних наук, доцент, старший науковий співробітник, професор кафедри адміністративного права і процесу та митної безпеки, Університет державної фіскальної служби України

Lytvyn N.A. GENESIS OF LEGAL REGULATION OF STATE INFORMATION POLICY IN THE ACTIVITIES OF THE AGENCIES OF THE STATE FISCAL SERVICE OF UKRAINE

***Анотація.** У науковій статті досліджено генезис правового регулювання державної інформаційної політики у діяльності органів Державної фіскальної служби України. Дослідження генези формування ключових положень доктрини інформаційного права та адміністративно-правового забезпечення інформаційної діяльності органів ДФС України дало змогу виділити чотири основні етапи його становлення. Перший етап (1991–1995 рр.) характеризується відсутністю підзаконних нормативних актів, які безпосередньо стосуються інформаційної політики в діяльності податкових та митних органів. Проводиться активна робота з пошуку оптимальної структури податкових і митних органів, модернізації діяльності їх підрозділів, одним із провідних напрямів та невід’ємною складовою яких є вдосконалення інформаційно-аналітичної діяльності. Другий етап (1996–2006 рр.) упровадження інформатизації*