Impact of the Development of the EU Regulation (2015–2016) on the Legal Understanding of the Repo in Frame of the Latvian Law

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Introduction. The rapid growth of legal acts aimed at improvement of the transparency and harmonization of the capital markets within Europe has made the huge impact on the legal development of the capital market's law in Latvia. Such developments are not connected only with the implementation of the EU directives and creation of new legislative acts such as the law "On financial collateral" or amendments to the existing law "On the Markets of the financial instruments", but also with the development of the legal thinking in the area of the civil law, and regulation of activities related to the financial instruments.

Aim, Materials and Methods. The aim of this article is to identify problems of legal understanding and laws of Latvia existing in interpretation of Repo, and to sketch areas where the amendments to the existing in Latvia regulation might be made.

The article is based on empirical analysis of experience, practice and knowledge of the problematic in the field offinancial instrument regulation, and namely, Repo transaction.

Result. The analysis shows that there is no historically known institute of Repo in its modern meaning, only some similarities could be found in articles 2054–2059 of the Civil law governing repurchase and resale transactions, but legal consequences arising of such transactions are greatly different. Since the establishment of the first credit institution in the independent Latvia, Repo has been developed without any specific civil regulations. The basics of its understanding was inherited from the Bank of Latvia rules "On Latvian state domestic bonds reverse repo auction" adopted by the decision No 286/5 on November 20, 1997 as well as from international practice of Repo transactions existing on interbank market, and consequently applied by the banks into their transactions with clients. Since then, except adoption of new regulation regarding financial instruments and financial collateral that implement modern EU trends, nothing has changed in respect of Repo: some banks still do not recognize that the result of Repo change is ownership rights. The legal mistake or trend leading in Latvia, however, is lack of understanding of Repo nature between lawyers, practitioners and courts, which means that legal consequences of the Repo transaction concluded under Latvian law is uncertain and unforeseeable.

Conclusions. Due to the absence of legal research in the area of financial instruments and theoretical understanding of the nature of Repo transaction in Latvia, and because of existence of tenuous case law, the enactment of Regulation No 2015/2365 (Securities Financial Transaction Regulation) is the huge step into the development of the legal understanding of Repo, especially taking into account that Repulation made quite certain legal distinctions between repurchase transaction (translated into Latvian as Repo transaction) and other three types of similar by its economical nature and idea transactions: buy/sell back, securities lending and margin lending transactions and provided ground to start legal discussions on the place of the Repo transactions among other civil transactions, the nature of Repo transactions and problematic related to the application of articles 2054–2059 of the Civil law in respect of Repo transactions.