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LEGAL ASPECTS OF GLOBALIZATION AND INTEGRATION OF THE FINANCIAL MARKETS – CASE STUDY OF SERBIA[121]

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Abstract
In recent years, in the market-oriented economies in the world, carried out powerful transformational processes in the financial markets. The initiators of these processes are given as follows: globalization, liberalization, integration of financial markets, deregulation of financial markets, institutional changes, trade in financial derivatives, increasing competitiveness on the market, concentration and centralization of capital, with the continuous development of information technology and the Internet. Deregulation resulted in the absence of legal regulation and adequate control of financial markets. On the other hand, the globalization of financial markets has contributed to the creation of a new, international financial regulation, and the deletion of clear boundaries between national legal systems. Harmonization promoted by international financial organizations and the EU directive did not give the expected results in terms of financial markets in the region. The experiences of young capital markets in the region, including the Serbian capital market, are aimed at preserving financial stability rather than the competitiveness of the market. Therefore, the paper points out how the implementation of international standards contributes to the enhancement of the stability and security of financial markets in Serbia, through the efficient control of the operation of market participants, increasing the transparency of their business, in the context of the response to the conduct of supervision and mandatory disclosure of business results.

Keywords: *financial markets, capital markets, globalization, integration of financial markets, deregulation*

INTRODUCTION

By the early 20th century, modern regulation of financial markets began in the United States. As a consequence of the Great Depression, the "New Deal" governing promoted a set of laws of the issuance and trading.[122] The "New Deal" represented a break with the approach to the laissez-faire doctrine (interference of the state in the market), and the transition to active state regulation (Sovilj, Stojković-Zlatanović 2017, 144-147). In that manner, US President Franklin Delano

[121] This paper is the result of work on projects No. 179023 financed by the Ministry of Education and Science of the Republic of Serbia.
[122] In the period from 1933 to 1940, six laws were adopted: the Securities Act from 1933, the Securities Exchange Act from 1934, the Public Utility Holding Company Act from 1935, the Portfolio Management Act from 1939, the Investment Company Act of 1940 and the Investment Advisers Act of 1940.

Roosevelt showed the importance of an intense struggle with the crisis, in a systematic and organized way, setting a sound foundation for the regulation and development of capital markets. The laws of capital markets were more fundamental and more durable following the pressure of the economic crisis (Janković 2011, 582).

During the 1980s, the penetration of the liberal conception to the economy has taken place as the starting phase of deregulation of financial markets. It is justified by the need for market institutions, instruments and procedures, which are the product of modern information development, to be free from regulatory restrictions as well as to improve the allocative function of the financial market (Vasiljević, Delić 2009, 471). The result of deregulation as reflected in almost any kind of regulation and control of financial market participants, which is one of the initiators of the current financial crisis. Modern trends of deregulation, internationalization, financial liberalization in the operations of financial entities, the waves of disturbances that have hit Far Eastern countries in the late 1990s, and the current financial crisis are clear signs of high social and economic costs that arise from financial system disorders (Todorović 2013, 214). The growing integration of the global economy over the past twenty years has mostly coincided with the rise of the Anglo-Saxon type of capitalism, led by the idea of the liberal market and the United States as the leader in the deregulation of economic and financial structures (Ognjanović 2009, 503).

DETERMINATION OF FINANCIAL MARKETS – THE ROLE, SIGNIFICANCE AND THEORETICAL CONCEPTS

Financial markets are the most important but also the most vulnerable segment of the economic system of each country. They represent one of the fundamental postulates of the market economy since that financial market enables the linking of supply and demand for various forms of financial activity. Moreover, financial markets allow the allocation of financial resources, from participants who at a given moment have surplus funds, to those participants who at that moment require the funds. Financial markets enable optimal use of social resources of the domestic economy, economic development, financial resources mobility and capital between branches, control of participants' efficiency (Borković 2012, 1333).

In essence, the basic role of financial markets is to connect surplus and deficit sector. The trading of financial instruments achieves the connectivity. The purchase can be organized or disorganized, mass or individual, depending on the aspirations of buyers and sellers (Vasiljević, Vasiljević, Malinić 2008, 6). The financial markets can be seen in a wider and a narrower context. The broader concept of financial markets encompasses all the subjects of social life, which in different ways participate in the financial markets. Participants in the financial market are given as follows: the public sector, the corporate sector, the sector of the population as well as the sector of foreign subjects. Each of these participants can be found both on the supply side and the demand side in the financial markets, depending on whether they have a deficit or surplus of cash (Malešević, 84). In the broadest sense, financial markets exist wherever a financial transaction takes place. In the strict sense, financial markets are a precisely defined place where, in an organized manner, according to clearly defined rules, the supply and demand are facing, for different forms of financial assets and financial instruments (Borković 2012, 1334). Globally, one of the main goals of state regulation in the financial markets and, consequently, the capital market is to maintain financial stability, given that, in the absence of legal regulations, the financial system suffers from temporary instability (Todorović 2002, 314). An additional goal of legal regulation is to provide adequate protection to investors from fraud and false information.

To support this fact, it is important to mention the key ideas presented by the President of the Financial Services Authority H. Davis, concerning the regulation of financial markets: 1) maintaining confidence in the financial system and financial markets; 2) protection the users of services by providing expertise and financial reliability of the companies, on the grounds that users must bear a certain level of responsibility for their financial decisions; 3) continuous increase in public understanding of the nature of financial products offered to them (the relationship between yield and risk); 4) defined role in monitoring, detection and prevention of financial crimes (Milovanović 2010, 250).

As the main objectives of regulation of financial markets, Whitaker states: 1) protecting investors from fraud; 2) enhancing market integration in terms of the reliability of the price formation process and the lack of market manipulation; 3) protection against systemic risk (Milovanović 2010, 251).

Current trends in the financial markets

As one of the characteristics of the world economy and finance, the globalization has a strong influence on the philosophy and the configuration of the global financial market. The internationalization and globalization of financial markets are the main characteristics of modern financial markets. Namely, globalization is a process of integration of the financial markets of national economies into a large international financial market. It enabled business entities to turn to the global financial market in search of new sources of funding allowing business entities to collect free financial resources not only within the domestic economy but around the world, using different rules, tax relief and other factors affecting the cost reduction (Erić 2003, 105).

Modern financial markets are changing at a drastic pace, from rapid development and reaching boom, to the collapse of the same and the emergence of major international crises caused by cyclical and structural factors. The former concept of internationalization of the market now is replaced by the concept of globalization. According to the scope of globalization, today's financial markets overcome all branches of the real economy. The causes of the emergence of financial crises are the multiple processes taking place in the global financial market: deregulation and liberalization of the financial sector, institutional changes, diversification, securitization, concentration and centralization of capital, financial derivatives, the development of information technology[123], systemic risk, risk management (Janković 2010, 267-273).

[123] Information technologies had a significant impact on the financial markets. The introduction of new technologies once had unexpected effects on the structure of financial markets. An example is the introduction of a telegraph on

The experience of young capital markets in the region, i.e. the markets of the countries in transition, shows that they preferred stability and less competitiveness of the market. The harmonization promoted by the IOSCO and EU directives regulating the capital market, has not yield the expected results. The global economic crisis has contributed to the adoption of protectionist measures. In addition to the economic crisis, the development of financial markets in Serbia, as well as in the countries of the region, has been additionally affected by the political risk (Minović, Erić 2016, 156-159). In such situations, the countries in transition turn to their resources and create a capital market according to their interests, and interests of their main foreign trade partners (Ognjanović 2009, 502-510).

The issue is how the financial markets will look in the future in developed countries. The initial assumption is that the financial markets shortly will differ from country to country, even within a single market like the European Union. In the increasingly fierce competition in the financial sector, there is a high concentration and the formation of a small number of large investment companies, banking holdings, multi-service financial institutions that will dominate the international as well as the domestic financial scene. The main initiators of the reform of financial regulation and the financial system are three world power centers: the United States, the United Kingdom and European Union (Vračarić 2009, 614).

LEGAL REGULATION OF FINANCIAL MARKETS AS A RESPONSE TO MARKET DISTORTIONS

After the first wave of the financial crisis that hit the world in 2007, many countries have initiated legislative reforms to abandon the deregulation as a prevailing principle. The position that the market should rest on its legalities was abandoned by implementing legal reforms. Currently, it is evident that the degree of legal regulation has significantly increased. One of the main objectives of the reform was the establishment of new regulatory bodies and the transfer of supervisory activities to existing market regulators. The market regulators have to be independent in their work. Furthermore, they require to ensure a fair, efficient and transparent functioning of financial markets. An adequate level of market regulator independence can be achieved by preventing any external pressures, including the interests of the political centers of power and lobbying (Ćirović, Janković 2013, 633).

In response to the current financial crisis, many theories that offer potential solutions to emerging from the crisis are cited in the scientific and professional literature. It will be mentioned only some of the theoretical approaches. The first approach is to fill legal gaps in international regulations. Representatives of this approach point out that financial markets are prone to breakdowns, which can be caused by various factors, from inadequate regulation to the failure of supervisory authorities. The next approach points out that reform of international financial

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the New York Stock Exchange and the Philadelphia Stock Exchange. Another historical example is the big boom realized by the London Stock Exchange, when floor trading was replaced by electronic boards, which increased the transparency and market liquidity (Jednak, 60).

control is necessary, and that it is not enough to tighten the existing regulations, but it is necessary to reform the regulations truly(Bunčić 2010, 293). Representatives of the following approach to resolving the financial crisis have been seen in cross-border capital controls. They point out that the current crisis is caused by excessive capital mobility, especially in the United States. By contrast, a particular group of authors provides resistance to new regulations of the financial markets. It is highlighted that the regulatory authorities would never have adequate information to be in readiness for the next crisis. Finally, some authors advocate for the decentralization of international financial market regulation, to accept the diversity of all market participants (Bunčić 2010, 294).

One of the basic principles of modern financial legislation implies that the regulatory structure and the regulatory strategy must be flexible and efficient. Legal regulation must be ready to respond to all challenges brought by continuous technological advances, financial innovations (e.g. securitization (Knežević, Mitrović 2007, 91-98), financial derivatives, etc.). The legislator and the public administration need to feel the real needs of the market, and its participants, thereby contribute to the harmonization of the financial system. Otherwise, it can cause imbalance. The purpose is that the right is reflexive. It means that the legislator in the process of adopting legal norms also takes into account their application and incentives, to enable the financial market participants to harmonize their interests with the public interest (Jovanić 2009, 21).

Robust transformation processes in the financial market are implemented in developed market economies. The trigger factor of these processes is the deregulation of the financial system, increasing competitiveness in the market, globalization and integration of financial markets with the constant development of information technology and the Internet (Janković 2006, 872). For the further development of the financial market, the economic laws of supply and demand are not enough. A complex system of regulatory infrastructure is needed, existing laws and rules, alongside stable institutions and respect for the ethical codex in the conduct of business on the market.

The aim of legal regulation is not the elimination of the market mechanism. The goal is to overcome market failures. The free market competition and regulation should not be interpreted to exclude one another, but to complement these factors. The significance and peculiarities of the financial market, as well as the consequences of possible disturbances in its functioning within the national economy and beyond, justify the existence of prudential requirements and control mechanisms. The interdependence of national financial systems has resulted in the harmonization of regulation, supervision and standards of financial participants at the international level (Jovanić 2009, 21-23).

To follow the definition of International financial law, it is necessary to include rules of both private and public law. The globalization of the financial markets creates a new trend, which is approaching by simultaneously changing the existing division of regulations (Bunčić 2010, 293). Work on the formation of international financial law means creating new points of contact and deletion of clear boundaries among national legal circles. The example of financial globalization (deregulation, liberalization, innovation) is the development of shadow banking (Kulms 2011, 533-552) including investment banks, hedge funds and other financial intermediaries. It has been recognized as a weak regulation, which contributed to the current financial crisis.

A key point in the process of redefinition of the legal regulation of financial markets is knowledge of the fragility of the financial system, as a result of excessive exposure to risks. The financial market crisis, the processes of globalization, deregulation and the internationalization of the market showed that the traditional instruments of market control are insufficient in terms of preserving the stability of the financial system as a whole. The sensitivity of supervisory regulatory authorities to the risk profile of financial institutions has drastically increased, especially in the presence of non-traditional risks (Cesarini 1994, 107). This required the adoption of new supervisory instruments to strengthen control over the capital market participants.[124]

In response to the financial crisis that hit the world in 2007, a number of international regulations were adopted aiming at improving the ability of the financial sector to absorb losses arising from the economic and financial situation. It reduces the risk of spill-over of the crisis from the financial sector into the real economy (Sovilj, Stojković-Zlatanović 2018, 1).

In developed market economies, the financial system is thoroughly and comprehensively regulated. The regulation of this scale arises from the need to build and to constantly maintain the financial participants' confidence in the security and equal treatment of the financial market. In this view, the European Union revises the earlier regulations. Therefore, the European Parliament adopted the Directive on markets in financial instruments in 2014 since the financial crisis has revealed weaknesses in the functioning and transparency of financial markets. The Directive regulates financial markets, including situations where trading in such markets takes place outside the organized market, in order to increase transparency. Moreover, the Directive provides better legal protection for investors, in the context of gaining trust, considering the unregulated areas, providing supervisory authorities with greater powers in the execution of tasks.[125]

Stability and security are the main points of an efficient financial system. Therefore, an efficient financial system is the basis of dynamic and sustainable economic development. The confidence on the financial markets and financial institutions is achieved through the regulation of the financial market accessing control of important information, prudential control of financial institutions as well as control of monetary policy (Vasiljević, Vasiljević, Malinić 2008, 22).

Prudential control of financial institutions has a preventative function in activities that could contribute to the lack of functioning of the financial system. Prudential control can be achieved by several forms: issuing a work permit to financial

[124] The role of supervisory bodies is equally important as well as adoption of new rules, which are best demonstrated by Australia and Canada. Despite the idea that strict surveillance constrains competitiveness, the global economic crisis has shown that financial systems of states with rigorous and consistent supervision are better passed (Caruana 2010, 110).

[125] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, *Official Journal of the European Union L* 173/349, 12.6.2014.

institutions, which prevents entry to those who do not meet professional standards and business ethics; disclosure of business information to national regulatory agencies and investment public; restrictions on the operation of financial institutions (Vasiljević, Vasiljević, Malinić 2008, 23). The citizens should have high confidence in financial institutions, that is predictable and with adequate regulatory control, upon the law, rules and morality (Ljutić 2002, 288).
It is important to take into account the mentioned tendencies in the developed countries and in the international financial system in the process of liberalization and development of the financial market in Serbia, so that the legislative bodies can take measures to ensure the efficiency and stability of the domestic financial market, and further development (Vračarić 2009, 614-615).

CHARACTERISTICS OF THE SERBIAN CAPITAL MARKET

As a candidate country for EU membership, the EU's financial market and stability are of the utmost importance in Serbia. Proper functioning of the financial markets provides an opportunity for the national economy to make full use of development resources because this ensures that the investment projects are financed with minimal costs. The following functions of the financial system aimed at overcoming obstacles to the smooth movement of resources: the formation of information on potential investment opportunities and the allocation of capital; conducting investment control; creating conditions for investors and depositors to get their funds on the basis of contracts concluded; enabling trade, diversification and risk management; collecting and grouping of savings and facilitating the exchange of goods and services (Vračarić 2009, 612-613).
As in other transition countries, the securities market in Serbia is relatively new. The re-establishment of the Belgrade Stock Exchange[126] in 1990 provided securities trading. The securities market during 1990s was centralized, all stock trading took place on the stock exchange until the adoption of a series of laws over 2000s (Jeknić 2000, 507).
By regulating the capital market, the domestic legislator has set the basic objectives of protecting investors, reducing systemic risk, providing a fair, efficient and transparent capital market.[127] The idea was to keep pace with the global trend of reforming regulation of the financial markets. Today, there is a characteristic existence of an optimal number of securities markets. The reasons for the dispersion of trade in multiple markets are numerous: the establishment of the competitive stock exchange (regulated markets), multilateral trading platforms, OTC market, systematic internalisers, the development of new technologies, the culture of informal trading, cross-border competition (Milovanović 2007, 943). One of the main reasons is to encourage market competition between professional participants, i.e. investment companies, as well as between stock exchanges. Thereby, it is striving to eliminate the monopoly, which is one of the basic principles of the MiFID Directive (Hudson 2008, 50).

[126] The Belgrade Stock Exchange was created by the transformation of the Yugoslav capital market. Stock Exchange constituted 32 largest bank from the territory of the former Yugoslavia (Dugalić, Štimac 2011, 377).
[127] Zakon o tržištu kapitala, *Službeni glasnik RS*, br. 31/2011, 112/2015 i 108/2016, art. 1.

As a subject of state regulation, the Serbian capital market is characterized by several peculiarities: low liquidity and market volatility, high risk, low demand and simplified structure of the securities, less transparency and effectiveness of the market, high level of insider information, manipulation and speculation on the market, high concentration of ownership (i.e. blocks of shares in the hands of a small number of individuals), lack of competitiveness, significant presence of foreign investors, without adequate reciprocity, inconsistency of policies and measures of different state bodies, pressures on the Securities Commission (Janković 2006, 877).

It is noticeable that the Serbian capital market has significant structural problems. It is illiquid, undeveloped, with insufficient participation of qualified investors focused on long-term investments, as well as other investors (Dedeić, Stanković 2017, 367). International reference list (*Standards and Poor's list, the Dow Jones list, the MSCI list*) ranked our market in the penultimate category (under the so-called *Emerging markets*), together with too small markets (*frontier markets*) (Blanco 2013, 2-7).

An additional problem for the normal development of the Serbian capital market is the permanent withdrawal of good companies from the market, while the new ones do not enter. Attempts for rapid development of the Serbian capital market through the process of mass privatization and the legal obligations of public issuance of securities, as the pressure to enter the market, as well as in most transition countries, was short-lived. To create conditions for the normal functioning of the capital market, it is necessary to have a stable macroeconomic policy, a firm legal and institutional framework that will provide adequate protection to investors. The crucial problem of the Serbian legal system is a gap between the solid legal provisions and the lack of application of the same (Dedeić, Stanković 2017, 369).

CONCLUSION

In modern conditions of business, financial markets are necessary. It brings many benefits which include the following issues: enabling the flow of money; facilitating the collection of surplus capital and its funding for investment projects; providing liquidity, access to capital, preserving its real value; informing participants and the public about investment; linking the national economy with world economies (Mrvić 2002, 397).

Public policymakers and investors are challenged by suggesting and adopting new solutions in the context of capital market development. Hence, there is an opportunity for the development of the Serbian capital market. Among other things, the impact of the world economic crisis was reflected in the drastic fall in interest rates on term deposits of citizens with banks. Low interest rates on term deposits are estimated as a good opportunity for the development of the capital market, in the context of the depositors withdraw funds from bank accounts and invest in the same securities. In order to achieve this, it is necessary for the regulatory bodies to regain confidence in the domestic capital market and to ensure its liquidity. The development of the Serbian capital markets should be accompanied by the improvement of several processes. Most important, it is necessary to build a good reputation of all market participants: Belgrade Stock Exchange, investment companies, banks, investors, auditors, Securities Commission.

Further development of the Serbian capital markets depends on the utilization of the potential development of small and medium-sized companies. By enabling fast-growing companies (mainly in the sector of information technologies and consulting and marketing services) to access external funding from several sources, is essential in the development of the capital market (Dedeić, Stanković 2017, 374). It is, therefore, necessary to create a good business climate and attract small and medium-sized companies to enter the capital market.

Finally, it is concluded that the revitalization of the Serbian capital market is necessary, which would undoubtedly have a significant impact on the capital markets in the region. It is necessary to encourage good companies to list their securities on the Belgrade Stock Exchange to increase the investment attractiveness of the Serbian capital market. Hence, it is necessary to draw up a plan to encourage such companies to make a public offering. Furthermore, it is necessary to increase the participation of professional investors in the primary market, with the provision of secondary market liquidity.

An important role in strengthening and redefining the securities market has the Securities Commission as a national regulatory authority in the capital market. It is, therefore, necessary for the Securities Commission to implement continuous and proper control processes, accompanied by appropriate sanctioning market participants. Professional development is one of the basic preventive measures in the capital market, where a crucial role plays the Securities Commission, investment companies, banks, stock exchanges and other participants.

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