University of Zagreb
FACULTY OF ECONOMICS AND BUSINESS
Zagreb - Croatia

Trg J. F. Kennedya 6
10000 Zagreb, Croatia
Tel +385(0)1 238 3333
http://www.efzg.hr/wps
wps@efzg.hr

WORKING PAPER SERIES

Paper No. 07-09

Deša Mlikotin Tomić
Marta Božina

Control of Global Business – Legal Questions and Tendencies

SVEUČILIŠTE U
ZAGREBU

Control of Global Business – Legal Questions and Tendencies

Deša Mlikotin Tomić
dmlikotin@efzg.hr

Marta Božina
mbozina@efzg.hr

Faculty of Economics and Business
University of Zagreb
Trg J. F. Kennedya 6
10 000 Zagreb, Croatia

Abstract

This paper examines the impact of regulation on market competition and market performances. It analyses the importance of strict financial regulation for a well performing economy. Heavy regulation decreases market flexibility, vital in the financial sector and decreases the possibility of competition. In a rigid legal environment economic actors will be drawn to the possibility of avoiding legal rules, and operate in a informal manner. At the same time regulation is necessary to enable financial stability, market integrity and confidence. This aspects are very important in transition countries which are on the way to implement and accept the modern market mechanism which are replacing state economy.

The paper discusses the legal tendencies in regulating the financial sector in EU, the benchmark for Croatian legislation. In order to understand the scope and to be able to advocate this legislation and institutions a sight on its roots and development in US is also laid down. In spite of the outmost goal of transparency the European legislation is rather complicated and reveals more the interests of biggest stakeholders and professional rent seeking groups than genuine public and small investor's expectation. In assessing concrete legal solutions, European directives are so far the only international model of financial supervision in a predominantly national regulatory environment.

The question about its positive effects inducing economic growth at the top although intricate on such level of abstraction is not yet too confirmed. It is not about bundle of legislation but its nature and pace of implementation that will gradually induce confidence and investment. In order to achieve that open and right questions are to be publicly advocated rather than premature and anticipating statements.

The question posed is if regulation is a core factor in good financial and overall economic performance in countries around the world, or is it only a trend in EU and transition countries.

Keywords

regulation, informality, competition, securities, insider trading market, financial sector regulation, comitology

JEL classification

K2

1. INTRODUCTION

The rapid pace of globalization and the internationalization of business has been a controversial issue for the past decade and thus intensively discussed within the academic and expert community. With the intensification of business transactions and growth of international business the emphasis is on the qualitative dimensions of these phenomena. The great challenge of the contemporary globalization is in ensuring economic liberalization and increase transnational investment together with the structuring of practices and institutions that will secure “social, environmental and human rights dimensions of business performance”(Utting, 2005). The social implications of the free-market policies on industrial countries have been analyzed and studied in numerous research papers (Beck, T.. Demirgüc-Kunt, A., Levine, R., 2002), stressing the diverse effects that this trend has on economic growth and changes in the legal framework. Meanwhile little has been said about the reality of business internationalization in developing and transitional countries such as Croatia. Transition economies are undergoing significant structural changes in the economy, supported by matching legal reforms in order to achieve maximal convergence. The aim is to develop an efficient infrastructure of rules, practices and adequate institutions that will facilitate market activity and promote business competition as well as secure social control over markets. This paper analyses the contemporary aspects of global business and its conduct in developing countries, the potential of institutional reform process to shape a modern business environment, taking account of the features marking a transition economy. It emphasizes the priority of business regulation development and reform along with the structuring of contemporary growth policies. This paper argues that the regulatory approaches implemented in different countries originate from their legal background and specific economic evolution thus making it difficult for transition countries to implement "foreign regulations" but rather stressing the importance of "made-to-measure" regulatory approaches in accordance with the trends of economic liberalization and corporate-led globalization.

2. CONTROL OF BUSINESS

To give a clear definition of what is meant by control of business is a demanding task. The concept of control is very elusive – it has different meanings within different social communities, which varies with time and the community’s level of cohesion, its organizational stage and cultural origin. If we manage to define control, we are still left with another deceptive concept – that of business. Nowadays everybody seems to know what business is, but when the question of business control and regulation arises it is challenging to structure a control scheme that will comprise and be adequate to all its various types and forms. And as if the task was not demanding enough, the control of business is closely related with the legal origins of a social community, so that there is no uniform resolution to the definition of business control. In this paper we discuss the various concepts of control in different social and economic circumstances, giving insight to the legal origin of control and the areas in which control is exercised. We analyze the effects that different levels and types of control have on the business environment.

Origins of Control

If we discuss the concept of control we have to understand what “control” means – in that regard we can define control as a form of coercion backed by an organized structure that can enforce control by power(Clark, 1939). Nowadays this “organized structure of power” is represented by the state and newly established regulatory bodies... In that sense we can argue that control became more expert than power and social orientated. This “social control” is exercised in behalf of the society and its groups; therefore it should include all of the different interests that we encounter within this socio-economic cohesion. However the level of social cohesion is variable – it changes together with the evolution of the demographic and economic factors, and it alters social interests hindering the efficiency of social control. In an era of business internationalization and booming trans-national business transactions, the interests that should be protected and controlled are growingly divergent. What is important to asses at this point, is where did control come from – what are its origins? And how did it evolve to this current concept of social control that is always imperfectly comprehensive or imperfectly social, giving the complex socio-economic cohesion of the modern business. More importantly –

what were the major reasons behind its evolution, and redefining? The origins of control are different if we analyze the American business environment or the European one. Every research in the origins of control should include a specific period of American economic history – the Great Depression and the New Deal arrangement. That period transformed the character of business, the concept of economic life and economic relations of every market actor, redefining the powers and responsibilities of the community toward business (Clark, 1939). This revolution of business perception did not affect only the American business environment – its arrangements and consequences spread throughout the European continent transforming the European industry of the time. After a period of economic prosperity mostly due to the rapidly growing oil and electric power industry which revolutionized the way in which business was led, the United States were left with an inflated bubble. Like every other economic anomalism, this bubble burst in October 1929 (the infamous Black Tuesday), crashing the Wall Street stock market and, together with other structural factors and followed by a widespread run on banks, initialized the period of Great Depression that will give incentive to a worldwide trend of economic instability. The American political and economic establishment reacted promptly, adjusting nation's values, inserting social control within the structure of industry. A restructuring of the economy and democratization of business was stimulated by the New Deal arrangement (1933-1937) – including programs that sought reform of the financial system, institution re-structuring, and just competition in all industries. The financial system was re-regulated with new legislation – the most important being the *Securities Act 1933*[1], followed by the Securities Exchange Act the next year[2]. Together with the *Glass-Steagal Act* the Federal Insurance of bank deposits these regulations provided a clear framework within financial action could take place whilst maintaining a stable macroeconomic position of the nation. Institutions were depicted as parts of social machinery, evolving according to their inherent laws. However their importance in socio-economic management is immense, their results have to justify their existence and because of that they need to be directed towards socially shared interests. The growth of democracy called for a change in the character of business and its conduct in all sectors. It promoted the stance that not everything is fair in business and that business has to be subjected to rules with orderly intents. Control was denoted as an integral part of business, inherent to the "business game". The New Deal arrangements clearly stated that the essential meaning of business is private gain subject to a variety of restrictions.

The discussed aspects of the New Deal affected the system of control in other countries – Britain for example, which wasn't able to adopt such a major program of reform which led to some important political changes. However, it promoted the importance of control of business environment and its evolution together with the understanding of the intelligent legislative system which starts with a fair understanding of the character and tendencies of business.

Types and areas of control

To understand how the intricate network of control models the economic life it is necessary to understand various types of enforced control and areas of the economic system in which control is being exercised. It makes great difference if control is being exercised in a business area that's a monopoly or not, whether it is completely consolidated or made up by a number of independent companies, or if the regulation is permanent or temporary – which makes impossible the choosing of a certain type of control on a general principle. We can differentiate types of public regulation and public control[3]:

[1] The core basis of the new approach to the regulation of economic activity was: The Securities Act of 1933, The Securities Exchange Act 1934, The Glass-Steagal Act of 1933, and The Banking Act of 1933.

[2] The key provision of these Acts is still in force as of 2007, proving the legislative quality of these financial regulations.

[3] Coskun, C. A.: *Regulation and Control vs. Deregulation and Decontrol*; www.canaktan.org/canaktan_personal/canaktan-arastirmalari/ozellestirme/aktan-regulation-control-vs.pdf ; accessed 11 March 2007

PUBLIC REGULATION	**PUBLIC CONTROL**		
Administrative regulation	**Economic regulation**	**Administrative Control**	**Economic control**
▪ taxation ▪ conscription ▪ standardization in products ▪ environmental regulation	▪ legal barriers to market entry (public monopoly, franchise,) ▪ legal barriers to international trade (tariffs, quotas) ▪ subsidies of public economic enterprises	▪ auditing ▪ environmental control ▪ health control	▪ price control ▪ wage control ▪ rent control ▪ interest rate control ▪ exchange rate control

The type of control and its form adapts to the complexity of the socio-economic conditions of a country and the character of business transactions that are being controlled, and therefore the overall economic performance of a country indirectly depends on the type of control that is implemented in a certain business are.

Effects and expectations

Subsequent to the discussion above it is obvious that state intervention to the market can promote the stability of business transactions and sustain competitiveness. After the prevailing "laissez-faire" attitude of the state towards business in the 19th and the beginning of the 20th century, great economic challenges forced the state to structure regulations that would control the markets and thus facilitate growth.

The liberalization of markets and internationalization of business in the 20th and 21st century removes artificial bureaucratic rigidities between countries, which sometimes greatly impair the efficiency of international trade. Awareness that regulation does have its limitations, and that it is not possible to form such a regulatory framework that will respond to different crisis situations with equal efficiency has supported the need for targeted regulation based on fair principles – basically it promoted deregulation. Empirical studies show that deregulation can promote competition and greater efficiency and effectiveness in different business areas. Furthermore, it is a method of achieving free market competition in countries that are facing economic and political transition.

The growing trend in business control and market regulation is the broader view of regulation – the writing up of rules that are sufficient and coherent, and that respond to specific market crises and concerns. Accordingly it is appropriate to argue that there is a tendency to re-regulation of the market and business, the waving of excessive regulation and the generating of clear, targeted rules that will play an important role in supporting development in different business areas.

3. TRANSITION AND REGULATION

The structure of a legal system and its relevance to the conditions of the real economy are intensively discussed and researched by the academic society. There is empirical evidence showing that the rule of law does contribute to a nation's wealth and its pace of economic growth (Scully, 1998). A modernizing state economy requires an adequate and harmonized legal infrastructure centered on the protection of property and contract rights, and formulated as a system of relatively precise legal rules. Almost every transition economy is characterized by a weak legal system which undercut efforts to promote a modern, market-oriented economy. Economic reform and transition implies legal reform - since most economic policies are implemented through law and regulations, and therefore one of the greatest challenges of the transition process is to prepare a set of written laws that will delineate individuals' rights and responsibilities and act as a promoter of market activity.

In this chapter we argue that after years of detachment of the legal system from the individual market actors, transition is the period in which law has to connect with the economic signals, and that legal reform should be pursued simultaneously with economic reform (Gray, 1997).

Role of the state in a market economy

The transition process has both a political and economic aspect, thus requiring a full-circled state reform by building of new institutions that empower governments to do what they should do in a market economy while impeding them from doing what they should not do. Since the state has played a much controversial role in the centrally-planned economy system that was inherent to most of developing countries, which hindered the efficient allocation of resources positioning the state towards goals that were centrally highlighted as social. However in a mature market economy the state plays an active role in remedying market irrationalities and organizing efficient markets. In accepting the neoclassical assumption of the spontaneity of markets the developing countries found new challenges inherent to the market organization that cannot be settled through voluntary transactions.

Much debate has been made between the role of the state in transition and development, mainly based on two contrasting perceptions: the first calling for a large scale state intervention to solve market failures, and the second promoting the "naturalness" of markets whose dynamic forces inherently lead to growth. We argue that regardless of the "negative" legacy of the state intervention in the economy, we cannot deny that many aspects of the market theory and failures of welfare economics are a rationale for government activity[4]. Considering these facts, it can be stated that the role of the state in a well functioning market economy from an economic point of view is mainly to:

1. bear the responsibility of maintaining macroeconomic stability;
2. internalize the externalities between private and social costs and benefits;
3. lessen the unemployment as a direct result of market imperfection;
4. offset externalities in the area of information by forming regulations to protect market actor's interests.

A weak state during transition can be very intrusive due to the lack of effective legal and regulatory institutions. Market economy is embedded in state institutions which promote the moral and ideological basis of a market economy. But state has been as a policy matter reduced in its operation at the beginning of transition because that was the political impetus of dismantling socialist state and its overwhelming property.

By structuring regulatory institutions and modern market institutions the transition state has been overloaded by tasks and costs of which its administration and public had poor knowledge and no understanding. New transition state had limited influences all the market participants to accept and obey market values and rules. A targeted state intervention in the process of the gradual establishment of a market economy is indispensable for facilitating market transition. The market is not a neutral and apolitical entity – it is not a means to itself. These are the general statements which can apply to all countries that have made choices for market economy. Then, it has to change its policy instruments through the re-definition of the economic policy and the structuring of an adequate regulatory policy. Empirical evidence show that economic growth is better achieved when the state and the market play as a "tandem" and when the development is promoted by a mutually supportive structure of market and non-market institutions.

The new considerations on the course and effects of transition go beyond such generalities. Taking into consideration the recent decade experience in Germany it is considered that there is a general skepticism toward free market economy which partly generates from unsuccessful privatization projects and deceptive transition promises (Siebert, 2005). The German authors remind us on the roots of German liberalism and high

[4] „There is evidence that under conditions of administrative weakness it is harder to create and regulate functional national markets in goods, labor, and finance than it is for government to manage the bulk of production itself." Chaudhry, K. A.: *The Myths of the Market and the Common History of Late Developers*; Politics and Society, Vol. 21, No. 2, 1993

principles of the state intervention which is limited to guaranty of safety and equality of opportunities. Responsibility for welfare was delegated to society (Baum, 2005).

4. LAW AND CONTROL IN GLOBAL BUSINESS

In the globalization era the market legislation and control are questioned and revised again. . Its different forms and varieties existing in countries around the globe including economies that did not for economic or political reasons decided to implement concept of market. Every country has to determine which level of market liberty will be adequate to promote sustainable growth. If a country is acceding to membership of WTO or EU the choice is not fully within its power. Membership in respective common market associations imposes implementation of market law and institutions although in different degrees. What is common to all the "market systems" is that they are inevitably connected with law and regulatory institutions. As every economic system are governed by certain rules of game, the market economy is governed by the "rule of law" which exercises two functions in an economy – first, it regulates discretionary interventions of the state in the market activities, and second, it regulates the economic behavior of individuals and enterprises, providing a stable and predictable financial and market environment with fair competition. In order to structure a market-friendly legal system in transition countries we argue that there has to be a set of adequate laws, effective institutions that enforce them and corresponding advocacy to promote the market values and discipline. It has to bear in mind the realistic approach to the issue. The market discipline hurts some of social agents and sometimes very strong stakeholders. The compliance with market regulations induces cost sometimes so high that it makes entrepreneurs give up planed friendly takeovers and block the hostile one (Baum, 2005).

New control for new business

The global business law has been mainly modeled by free trade, free circulation o goods, capital. And other within GATT, WTO and EU. On the financial and take over market the controlling norms and institutions were not caching up the pace of dynamic practice. Namely the harmonization of financial markets has not been traditional agenda of trade harmonization. As a result we have now apart from US stock market domestic regulation as a most developed one only European law "international" i.e. global business market regulation and regulators supposed to serve financial stability and market credibility. Japanese, Singapore, Hong Kong and other important financial market stay within their national borders.

Prudential and market regulation

Three main pillars of financial regulations in Europe are: banking, insurance (including pension funds) and security regulations. Regulation is considered mainly rule making different from supervision which regards the implementation of rules in specific cases (Wymeersch, 2005). Regulation is rule making which regulates also supervision. In Europe this activities are separated while in USA they are comprised under one notion. Regulators issue rules, they are also "rule makers" and supervisors under same roof.

Regarding sector specific criteria under the "prudential" regulation is understood regulation of banks, investment firms, insurance companies and pension funds.

The market regulation extends to directives regulating securities market, public offering of securities, takeovers, investment funds and sometimes also relations between banks and insurance companies. Apart from stock exchange and other trading facilities to the market regulation belong also some post trading activities such as are clearing and settlement.[5]

The European legal sources on financial market regulation regulate markets in financial instruments (Directive 2004/39/EC), public offering of securities related prospectus (Directive 2003/71/EC), takeover bids (Directive

[5] Council Directive 85/611/EEC.

2004/25/EC), collective investment in securities (Directive 85/6111/EEC) , on insider dealing and market abuse (Directive 2003/(6/EC) , notification of managers , suspicious transactions, inside information in relation to derivatives (Directive 2004/72/EC).

Financial regulation institutions

Law underpins stable financial markets and is an important source of their vitality[6]. The new economic and political dynamics that shape the modern business environment underline the importance of international cooperative efforts and the role of international and regional financial institutions and regulatory bodies[7]. Their highly valuable goal is to promote proper financial and commercial laws, which can effectively be implemented by national legal institutions, provided by adequate resources and be granted the necessary authority to enforce the law. In pursuing that goal European directives are transferred to national legislation with comprehensive implementing transposition regulations. Due to that sometimes differences still exist in national legislations more due to transposition than national legislation.

It has to be also pointed out that financial market regulations in Europe are relatively new. Even in Germany the most prosperous market economy regulator till 2000 the takeovers and securities have been regulated by stock exchange codes and not law.

The main task is to structure such a system of financial intermediaries and markets that's adequate to the nature and requirements of the nation's real economy and are well promoted and accepted in business community. Additionally, financial and commercial systems should be highly integrated and transparent. The most significant component of financial law nowadays involves an interdisciplinary and international concept of regulatory and market forces interconnection. The legal foundations of sound finance require a set of clear financial laws supported by a legal system i.e. institutions that ensures their effectiveness.

Comitology

The European supervision of financial market is based on two concepts: committee organizational structure and coordination of national supervision bodies.[8]

The project of supervising committees has been elaborated and promoted in the Lamfalussy report (Final Report of the Committee of wise men on the regulation of European securities market, 2001). The elaborate proposal consists of schemes of a four level phasing out of establishment of committees which have been set up by Commission decisions as:
1. European Banking Committee (Decision 2004/10/EC);
2. European Insurance and Occupational Pensions Committee (Decision 2004/9/EC);
3. European Securities Committee (Decision2004/8/EC).

Level 3 are supervisory committees which are the:
1. Committee of European Banking Supervisors (Decision 2004/5/EC),
2. Committee of European Insurance and Occupational Supervisors (Decision 2004/6/EC),
3. Committee of European Securities Regulators (Decision 20'04/3/32).

The committee approach conflicts the functional expectations of European institutions.

[6] Sanders, G.: *The legal anchoring of sound financial markets - Law in Transition*; EBDR 1999; www.ebrd.com/country/sector/law/corpgov/about/anchor.pdf, accessed 11 March 2007

[7] Norton, J. J., Sir Lubbock, J.: *International financial law and international economic law: implications for emerging and transition economies*, Law in Transition; EBDR 1999, www.ebrd.com/country/sector/law/corpgov/about/anchor.pdf, accessed 11 March 2007

[8] Decision 1999/468/EC, see: europa.eu.int/comm./intetrnal_market/finances/cross-sector/index_en.htm#committee

Since financial supervision has basically remained on the national level of 27 members states the need for coordination and cooperation on this level works as a substitute for a central European supervisory body, Securities and Exchange Commission (Engle, 2006).

Before that is accomplished there are different modalities of cooperation described as *de facto* cooperation, memoranda of understanding, the European scheme based on recognition of supervisory competence of the home supervisor, delegation, appointment of coordinator designation of lead supervisor (Chiu H-Y, 2006).

5. SOME FEATURES OF THE EUROPEAN SECURITIES DIRECTIVES

Efforts to regulate the securities sector on a supranational level origin from the first Company law Directive of 1968[9], real support for market participants was obtained by the promulgation of the 1999 Financial Services Action Plan. European securities regulation has emerged as a new and quickly developing field within the legal basis of the European financial markets. The goals of the EU Securities law are found in the Directives and other regulations and decisions.[10] At the same time the implementation and enforcement of securities law is found in the national laws of the Member states. The policy goals of EC Securities Law are to protect investors, assure proper functioning of securities market, and attain uniform standards within the community. The scope of the regulations is to support investor confidence in the stability of the market.

The Listing Admission Directive is one of the effective instruments in achieving these goals[11]. It determines conditions for listing securities issued by one Member state, on the stock exchanges of other Member states. It protects investors by assuring adequate capitalization of companies and building a single capital market by integrating securities law. The Listing Admission Directive requires companies to report material information which may affect the price of these financial instruments, such as balance statements that need to be disclosed and published, thus allowing dissemination. The conditions under which the securities issued by a company based in one Member state will be admitted to the stock market and stock markets of other Member states are governed by the New Prospectus Directives. The first objective of the Directive is to create a system of mutual recognition to reduce transaction costs associated with listing shares on other stock markets in the EU in order to obtain an integrated capital market. The second objective of the Direction is protection of investors via disclosure rules that promote capital formation and allocation. The abovementioned regulations support the integration of the capital market and sustain global competition of European securities.

6. REGULATING INSIDER TRADING

The strongest and clearest impact of the Communities *acquis* on the Member states law is visible through the Insider Trading Directive[12]. At Member State level, the rules varied greatly and legal requirements differed

[9] **First Council Directive of 9 March 1968** on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (**68/151/EEC**)

[10] **Council Directive 93/22/EEC** of 10 May 1993 on investment services in the securities field; **Council Directive 85/611/EEC** of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS); **Directive 2004/39/EC** of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC

[11] **Directive 2001/34/EC** of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities; **Directive 2003/71/EC** of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (Text with EEA relevance); **Commission Regulation (CE) 809/2004** of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements

[12] **Directive 2003/6/EC** of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse); **Commission Directive 2004/72/EC** of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of

according to jurisdiction prior to this Directive, which resulted in distorted financial markets' competition due to an incomplete legal framework in market integrity. As the community identified two main aspects of market abuse – insider dealing and market manipulation, it put forward two separate Directives addressing each category. The first regulation that prohibited insider trading and related actions was the 1989 Insider Dealing Directive[13]. The Directive presented a standard raising awareness that the prohibition and sanction of these categories of unlawful acts should be regulated in a common, if not in a uniform manner, throughout the Community. According to the Directive each Member State has to designate a single regulatory and supervisory authority with a common minimum set of responsibilities. These authorities should combat market abuse and be able to assist each other in taking action against infringements, particularly in cross-border cases. The same form of unlawful acts shall incur the same penalty in each Member State, although the Treaty does not provide for complete harmonization of penalties. Nevertheless, it is certain that the new disciplinary framework will contribute to the convergence between national systems and ensure better compliance with the requirements of the Directive[14].

7. CONCLUDING REMARKS

The harmonization of financial and securities market law in EU has gone beyond the approximation of law, considering the very modest and late codifications in European countries in this field (Germany has enacted securities and takeover law in 2000). As a consequence the EU financial market directives are introducing new rather than harmonization existing law and practice.

The methodology applied is typically European, institutional more than functional, complicated, costly, based on long term effects. On this point they would not pass the test of transparency and convergence to real sector in 27 of member states.

In spite of that some authors have doubts that this financial integration can follow and control the important innovations which took place outside of regulated markets.[15] Examples are: Eurobonds, derivatives, hedge funds, structured finance. American authors join this concern pointing out that markets can not control themselves and that complex hedging instruments like default swaps and collateralized debt obligations are multiplying faster than anyone's liability to track them (Gaarten, 2007).

The question is if it is necessary to police and anticipate all the models and innovative practice of financial markets strictly, or that some general frame of principles for that purpose should be established. The analogy could be drawn with legal frame and methodology of commercial contracts which has so far enabled the wide expansion of autonomous (*sui generis*) contracts and legal control fulfillment of basic principles and minimal formal requirements. The sophisticated comitology structure and regulators should have open minds, and doors of their boards, to fulfill their tasks within turbulent and mighty financial markets and stakeholders in Europe and related global market.

Since financial markets regulations and harmonization is in initial stage it is obviously that the process has to continue, that complex regulations have yet to be accepted by business community and courts. In addition states have to decide on their policy and real sector effects of the enforcement process even if it can create delusions and opposition from stakeholders. Hope remains that regulation and regulators will fulfill their tasks even on a slow pace rather than being hurried into doing that by a major financial national or European wide debacle.

suspicious transactions [Official Journal L 162, 30.04.2004]; **Commission Directive 2003/124/EC** of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation [Official Journal L 339, 24.12.2003]

[13] **Council Directive 89/592/EEC** of 13 November 1989 coordinating regulations on insider dealing

[14] For further information see : http: //europa.eu/scadplus/leg/en/lvb/l24035.htm

[15] It is also considered that more space should be left for regulatory competition but also the concern of the Commission that market might be overregulated and that perhaps a "regulatory pause is needed. Wymeersch, Ibid 993.

Academics and research can and must serve as indispensable intermediate between all these stakeholders dealing with a new and yet esoteric subject for Europe.

BIBLIOGRAPHY

1. Baum, H.: Change of Governance in Historic Perspective: The German Experience, u Corporate Governance in Context, Ed Hopt K., Wymeersch E., Kanda H., Baum H., Oxford , 2005, pp. 5.
2. Beck, T.. Demirgüc-Kunt, A., Levine, R.: *Law and Finance: Why does legal origin matter?*, The World Bank Policy Research Working Paper 2904, 2002
3. Braendle, U. C, Noll, J., *Enlarged EU: enlarged corporate governance? Why directives might be more appropriate for transition economie*s, Corporate Governance, vol. 6, no. 3, 2006, pp. 296-304.
4. Centeno, M. A.; Portes, A.: *The informal economy in the shadow of the state*. In: Fernandéz – Kelly , P. and Shefner, J. ed.: Out of the Shadows – Political Action and the Informal Economy in Latin America, Princeton University Press, 2006
5. Chaudhry, K. A.: The Myths of the Market and the Common History of Late Developers; Politics and Society, Vol. 21, No. 2, 1993
6. Chiu H-Y I: Delegated Regulatory Administration in mandatory Disclosure- Some Observations from EU Securities Regulation, The International Lawyer, No 4, Winter 2006, pp. 748.
7. Clark, J. M.: *Social control of business – 2nd edition*; McGraw-Hill Book Company, Inc.; New York and London, 1939; p. 5.
8. Coskun, C. A.: *Regulation and Control vs. Deregulation and Decontrol*; www.canaktan.org/canaktan_personal/canaktan-arastirmalari/ozellestirme/aktan-regulation-control-vs.pdf , accessed 11 March 2007
9. Decision 1999/468/EC, see: europa.eu.int/comm./intetrnal_market/finances/cross-sector/index_en.htm#committee ,accessed 11 March 2007
10. Djankov, S., McLiesh, C., Ramalhi, R.: *Regulation and Growth*, The World Bank Policy Research Working Paper, March 2005
11. Elliott, J. E.: *The role of institutional change in post-communist transition*, International Journal of Social Economics, Vol. 24., No. 7/8/9, 1997, pp. 859-872.
12. Engle E.: The EU means of business: A survey of legal challenges and opportunities in the Europe, De Paul Business & Commercial Law Journal, spring 2006, pp. 11.
13. European Commission (2002) *Action plan: Simplifying and improving the regulatory environment*, Bruxelles: Commission of the European Communities
14. Gaarten E.J.: Too wealthy for Worries,Newsweek, February 2007, pp. 37.
15. Gray, C. W.: *Reforming legal systems in developing and transition countries*, Finance & Development, 1997
16. Jackman, D.: *Does regulation make it worse?*, Journal of Financial Regulation and Compliance, vol. 12, No. 2, 2004, pp. 106-110
17. Knight, M.: *Developing and transition countries confront financial globalization*, Finance & Development, Vol. 36, No. 2, 1999
18. Mullineux, A.: *Financial sector convergence and corporate governance*, Journal of Financial Regulation and Compliance, vol. 15, No. 1, 2007
19. Norton, J. J., Sir Lubbock, J.: *International financial law and international economic law: implications for emerging and transition economies*, Law in Transition; EBDR 1999, www.ebrd.com/country/sector/law/corpgov/about/anchor.pdf, accessed 11 March 2007
20. Pistor, K., Raiser, M., Gelfer, S.: *Law and Finance in Transition*, CID Working Paper No. 49, Law and Development Paper No. 4, 2000
21. Posner, R. A.: *Creating a legal framework for economic development*, The World Bank Observer, Vol. 13, No. 1, 1998, pp. 1-11
22. Prasad, B. C.: *Institutional economics and economic development – the theory of property rights, economic development, good governance and the environment*, International Journal of Social Economics, Vol. 30., No. 6, 2003, pp. 741-762

23. Sanders, G.: *The legal anchoring of sound financial markets - Law in Transition*; EBDR 1999; www.ebrd.com/country/sector/law/corpgov/about/anchor.pdf, accessed 11 March 2007
24. Scully, G. W.: *The Institutional Framework and Economic Development*; Journal of Political Economy 96 (4): 652-62, 1998
25. Siebert, H.: The German Economy Beyond the Social Market, Princeton 2005
26. Utting, P.: *Rethinking Business Regulation – From Self-Regulation to Social Control*, Technology, Business and Society Programme Paper Number 15, September 2005
27. Wymeersch, E.: *The future of financial regulation and supervision in Europe*, CML Rev. 2005, pp. 988.