

NEW PRINCIPLES FOR FINANCIAL MARKET OPERATIONS LEGAL FRAMEWORK

The article analyzes the impact of new emerging relationships in financial markets across the world through analysis of new financial operations principles that emerged from such relationship. These principles include the further encouraging of the automation of financial transaction, supporting democratization of finance, self-governance of cryptocurrency exchanges and financial market participants. Such new features of financial market had irrevocably led to appearing of new issues, problems and challenges for law and financial market policymakers. Through analyzing deeply these features by comparing different legal ways to approach it, the possible solutions could be found. However, in no way such solution will be peculiar to only one country. As article demonstrates, all these principles are cross jurisdictional and govern the problems not for one country within its border, but for the essence of it itself that is without border and often without any physical realization. Herein the idea that takes place in these principles such as absence on intermediary, less bureaucracy and capital market not only for professionals should be regulated properly. Thus, the way to it is yet to be found, however understanding the essence of these new principles for financial market operations will help to found effective approach. Moreover, such effective approach may be based on FinTech, RegTech or SupTech that are also analyzed in this article.

Keywords: financial market principles, democratization of finance, automation of financial operations, self-governance, crypto exchanges, SupTech.

Introduction. Financial market as a system which tends to rapid and irreversible changes is based on specific principles that govern financial market relationship and operations therein. Thus, with the developing of new financial markets operations and new structures at whole inside already established system it is possible to say that new principles of financial market operations are appearing in such emerging relationships. Obviously, what distinguish these principles are the facts that they are international and it is not by the choice but by the necessity to cover the relationship within all participants that are borderless and cross jurisdictional in order to prevent the global problems that may appear in absence of effective principles compliance approach. Herein the problems of the future of financial market operations arises. Will it be effective and efficient or will it be overregulated; will it consider approach for democratization of finance or will it remain close to common people. There is a possibility that even with the attempt to provide an answer to these challenges legal framework may fail. The reason of this is concluded from the types of relationships and its desire to not be regulated at all. With this there is a rise in FinTech and RegTech that lead to appearing of the SupTech that described herein. These instruments are sufficient to look at regarding new financial market operations legal framework because they are the grounds and constructs for future development and changing the view on financial market operations.

Key research results. Principles for financial market regulation set up common standards for international policymakers in the field of financial markets. Such principle-based approach may be disputed and is not the only one claimed to govern the basic and ground relationship on financial markets. Thus, two of the most popular possible ways to approach financial regulation were commented by Anand A.I. (2009) in the article "Rules v. Principles as Approaches to Financial Market Regulation". The author, triggered by the 2008-2009 global financial crisis, discussed the following possible approaches: principled-based (where market participants are free to adhere to the principles that are imperative in the outcome by its own mechanism, mostly it includes self-regulation) and in contrast rule-based (institution-based) financial regulation (where market participants should follow specific and details rules set out by the financial market government authority) [1; p. 111-112]. However it can also be disputed that approaches contradict each

other, rather than supplement. Though such disputes may be possible in the 2008-2009 years, it is questionable if such issues may arise now. It is clear that in financial market regulation both principle and rules are united and equally govern relationships herein. Thus, principles are and should be the foundation for further regulation and rulemaking that are not subject to specific jurisdiction. This is what makes principle-based approach efficient for the financial market operations legal regulation.

There is no doubt that the financial market operations should be regulated by a harmonized legislative framework that is based on common international principles that are grounds for sovereign regulation. It is nearly impossible for a state that wishes to be involved in a free and open capital market to establish a separate completely different legal regulation for financial markets because market participants need to have similar legal protection, possibilities and transparency. Gosse P. and Pihon D. in the work "The Future of Financial Markets and Regulation: What Strategy for Europe?" emphase a question for all times for financial regulation and drawers a "incompatibility triangle of financial objectives" such as financial stability and financial integration and sovereign financial regulation, where middle point is almost unachievable and state should compromise one of them [2; p. 9]. Thus, it is impossible for now to claim the full financial market system legal harmonization because it goes in contradiction with the desire of each state and the interests of market participants, however the so-called similar "zones" with similar legal framework can be divided (for example, EU zone). However, what principles will be leading in future financial markets in the light of the new financial sector's appearance such as crypto market. Thus mainly 2 relatively new principles demonstrated further: automation of financial transactions and self-governance of exchanges. It can also be stated that both principles are leading to a democratization and decentralization of finance. And thus, to further independence and decentralization of financial market regulation.

Future and further automation of financial transactions is unavoidable in the financial markets that are inclined to use FinTech and distributed ledger technology. Fintech is currently in charge of full change of the financial system and further shift of existing paradigmas. In the article Omarova S. T. (2020) specifies in what way Fintech is shifting financial markets. The groups of features are

following: the volume of financial transactions becomes bigger; finance is becoming faster (trading and so on); computer programming in financial decision-making is becoming the center; the overall financial system loses its transparency; market boundaries are becoming weaker [3; p. 87]. With such, legal regulation should take its leading place to guide and regulate currently existing and possible future existing relationships and operations in the financial market. Automation is expectable in the banking sector and capital market also. The other aspect of this process is RegTech, which is also becoming popular nowadays. In the future RegTech and legal regulation may accompany each other as well as contradict. However, RegTech may be used as a help tool for solving issues that legal regulation specifies. So, is 'embedded regulation' possible and if yes, what challenges it setups for international financial market regulation. In the article "Decentralized Finance" by Zetsche D.A., Arner D.V., Buckley R.P. (2020) authors stated that the core point of RegTech and FinTech is the goal of decentralized finance that can be "summarized in ABCD acronym: AI, Big Data, Cloud, and DLT (including blockchain and smart contracts)" [4; p. 179]. The authors also raise a top 3 future possible legal problems such as jurisdiction, enforcement and data protection [4; p. 184]. And the ideal solution is far from being found, however RegTech may be a suitable option for decentralized finance. Thus, the embedded regulation into a decentralized finance system may seem as a possible solution, however an external guarantor for supervisory cooperation is needed [4; p. 202].

Together with FinTech and RegTech that are oriented mostly on institutions or companies, it should be mentioned the new trend designated especially for financial market participants. It is SupTech. SupTech is a possibility for financial agencies to embed the technologies and automation to regulatory processes by itself contrary or additionally to automation of administrative or operational procedures that are applicable characteristics for RegTech. SupTech for financial supervisory bodies may help solve issues that are difficult to solve currently without automation or use of technologies. Moreover, SupTech's input in data procession in this context is expected to be valuable and will be a ground for future financial market authority to shift to a more technology friendly attitude [5; p. 10-11].

The principle of automation financial transaction is a lot tied with the principle of democratization of financial markets and democratization of finance overall. This term means the ability to any individual to become a market participant in capital market [6; p. 6]. It can be considered a consequence and reply to rapid changes in the financial market. Thus, more and more individuals are inclined to invest money in order to accommodate wealth. Here are 3 key factors to consider: access (to financial instruments, with or without professional help), education and trust in the financial market [6; p. 11]. In the already mentioned article "Decentralized Finance" by Zetsche D.A., Arner D.V., Buckley R.P. (2020) authors stated that decentralization of finance and provision of financial services by market participants in cross-border jurisdiction with the use or facilitation of technology is decentralization process that currently happening nowadays and is not a goal but rather a natural phenomena and challenge to current financial market regulation that may completely undermine it [4; p. 174]. Thus, the idea that pursued by decentralized

finance is to "develop systems which use technology to eliminate borders, jurisdiction, and the necessity of centralized control including governments" (Zetsche D.A., Arner D.V., Buckley R.P. (2020), [4; p. 184]. The essence of this principle is in great correlation with the principle and idea of financial inclusion. Herein FinTech is used like a tool to open financial markets to individuals and encourage the access to financial operations and services. Financial inclusion was always on the agenda of the World Bank Group. Currently, the World Bank Group is promoting the importance of digital financial services, capital market and biodiversity topic, potentiality and risks for consumers of FinTech and so on [7].

Self regulation can be a tool to harmonize relationships in financial markets and establish professional ground regulation. At the same time, self regulation may be a tool to ensure independence of the financial sector and its transparent effectiveness. However, self regulation on financial markets has always been a difficult and unresolved topic for international law makers, especially in the context of the USA and Europe. Because of the 2008-2009 global financial crisis the trust in self regulated organizations and its powers were lost. However more than 12 years after can there be talk and future for self regulated operations and governance on the financial market. In Japan self-regulation is rather not an option and possibility but it is a duty that leads from capital market participants' obligations under the law. The Law herein is Financial Instruments and Exchange Act. In Accordance with Article 84 (1) "A financial instruments exchange must perform self-regulatory services in an appropriate manner, in accordance with this Act and with its articles of incorporation and other rules, in order to ensure the fair purchase and sale of securities and market derivatives transactions on the financial instruments exchange market, as well as to protect investors." In Accordance with Article 84 (2) The term "self-regulatory services" in respect of a financial instruments exchange means: (i)services related to the listing and delisting of financial instruments; (ii)the investigation of members', etc. compliance with laws and regulations; (iii)other services specified by Cabinet Office Order as necessary for ensuring fairness in transactions on a financial instruments exchange market". According to Article 85(1) "With the authorization of the Prime Minister, a financial instruments exchange may entrust the whole or part of the self-regulatory services of the financial instruments exchange to a self-regulatory organization" [8]. Further Japan Exchange Group established a self-regulated Japan Exchange Regulations (JPX-R) that is an organization with the goal to provide Japan Exchange Group with an effective legal framework[9].

In contrast, for example in the Asia region the Monetary Authority of Singapore (MSA) is an integrated regulator in financial markets and control body that provides a legislative framework. Singapore has one of the most effective regulated regimes for FinTech that improves and broader under MSA. MSA stated the goal to create a smart financial center with the help of innovation and fintech [10]. Not only this, Singapore projects for the future its regulation model for crypto assets and stablecoins, e-money and overall digital currencies system. Singapore Exchange Securities Trading Limited (SGX-ST) also established its own separate independent body for self regulation such as Singapore Exchange Regulation (SGX RegCo). According

to the SGX RegCo Charter (2017) "does not pursue any for-profit objective that is linked to the business activities of SGX and its group of companies" (A. 3.) [11]. The criticism may arise when self regulated institutions are at the same time market participants. Will it be a transparent and clear system or encourage future gaps in regulation. Further, for example, Japan Securities Dealers Association that also operates under Financial Instruments and Exchange Act and has a wide range of its self-regulatory possibilities. To ensure it the organization has a very clear and transparent system for making such regulation possible in the form of self-regulatory HandBooks where the detailed process of self regulation is described. Japan Securities Dealers Association may conduct following self-regulatory services: 1) creating, implementing and enforcement self-regulatory rules and guidelines; 2) audits and monitoring; 3) enforcement of actions for law violation; 4) mediation, claim investigation [12].

Second point herein concerning self regulation is the self regulation of the cryptocurrency market. As it is self-evident that the self regulation is what makes this system attractive to investors and further participants, it also raises a lot of issues. However at the same time will the self regulation be enough to maintain a fair and transparent system. Currently, shortcomings in the cryptocurrency regulation system have the following features: possibility of hacks, money laundering, illegal payments, payments for illegal products, and so on. Thus cryptocurrency market participants also needed to be subject to financial control and regulation [13]. What place can have law and to what basis self-regulation may apply. Due to the nature of cryptocurrency Ostbye P. (2022) argues that herein contract-like loyalty and fiduciary duties between participants and liability basis is important to emphasize [13; p. 10]. In that case it can be argued that self regulation is necessary for cryptocurrencies exchanges to maintain their favorable appearance, however legal ground should be supervised. The next possible problem herein is the difficulties of the international community to set up a relatively unified set of rules that will govern relationships on cryptocurrencies exchanges. Thus the situation where in different jurisdictions is a different approach or even in some jurisdictions no approach at all may create gaps in regulations and further possible problems with regard to border free cryptocurrency transactions. In the article Kyles D.N. "Centralized control over decentralized structures: AML and CTF regulation of blockchains and distributed ledgers" author claims that in spite that cryptocurrencies are seek to avoid government oversight at the same time cryptomarket also seeking the global coordination and thus, thrive for specific regulation. This regulation should be based upon the technical configuration of digital constructs [14; p. 144]. Surely, currently the financial markets authorities and infrastructures are struggling due to the same issues that are a barrier for future progress for cryptocurrency and FinTech (difficult to monitor, lack of enthusiasm from participants, and so on). Both are evolving so fast and rapidly that the regulation is struggling to catch up and here it is clear that the same regulation framework may barely work on new emerging relationships [15]. Thus, there are still unresolved issued where solutions could never satisfy all of the involved parties herein. At the same time, to postpone the finding the proper way will not lead to disappearing of such relationship and issues but rather will

lead to miking the one unified way for it. The only possible solutions for the above mentioned problems is to search for compromises between state and financial market participants, between states themselves and between all involved parties to reach the common way.

Conclusions. Principle approach to financial market operations is one of the most efficient due to its cross jurisdictional impact that helps to establish basic and unite rules for financial market without its over regulation that nearly impossible to follow due to the nature of relationships that appear on financial market. Due to emerging of new operations on financial markets the principle of encouraging of further automation of such financial market operations should be recognized. Such automation is built with the use of FinTech that are becoming more popular with each year. FinTech and RegTech could help fill gaps in financial market operations and its legal regulation. Further, SupTech as possible decision for financial market agencies and governmental authorities maybe a leading step to cover legal issues that are impossible to cover without technology use. With the time goes on, it may be predictable that SupTech will be a tool to harmonize the new financial market operations. It can be argued that the FinTech and new financial market operations are indisputably tied up with the process of further decentralization and democratization of finance. These processes are the ground ideas for the following modification of financial markets, financial markets operations and with this for the modification of relevant legal regulation. With this, it will also lead to increasing of the role of self-governance in financial markets. Self-governance of crypto exchanges, of other market participants and its infrastructure under government supervision may be a good possibility to cope with illegal issues the arise from the financial market operations and further to prevent and solve them.

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ПРАВОВЕ ПОЛЕ ДЛЯ НОВИХ ПРИНЦИПІВ ОПЕРАЦІЙ ФІНАНСОВОГО РИНКУ

Аналізується вплив нових відносин, що виникають на фінансових ринках у всьому світі, шляхом аналізу нових принципів фінансових операцій, які виникли внаслідок таких відносин. Ці принципи включають автоматизацію фінансових операцій, демократизацію фінансів, самоврядність криптовалютних бірж та учасників фінансового ринку. Такі нові риси фінансового ринку безповоротно призводять до появи нових питань, проблем і викликів для законодавців і творців правил ринку. Завдяки глибокому аналізу цих особливостей шляхом порівняння різних правових шляхів підходу до цього можна знайти можливі рішення. Однак жодним чином таке рішення не буде притаманним лише одній країні. Як демонструє стаття, усі ці принципи є міжюрисдикційними та регулюють проблеми не для однієї країни в межах її кордону, а її саму суть, яка не має кордонів і часто не має жодної фізичної реалізації. Так, мова йде про ідею, бо ідея, яка міститься в цих принципах, таких як відсутність посередництва, менше бюрократії та ринок капіталу не лише для професіоналів, має бути належним чином врегульована. Таким чином, шлях до цього ще належить знайти, однак розуміння суті цих нових принципів функціонування фінансового ринку допоможе знайти ефективний підхід до його регулювання. Більш того, такий ефективний підхід може ґрунтуватися на таких інструментах FinTech, RegTech, SupTech які також аналізуються в статті.

Ключові слова: принципи фінансового ринку, демократизація фінансів, автоматизація фінансових операцій, самоврядкування учасників ринку, криптобіржі.