IMPACT OF THE EU FINANCIAL REGULATORY AND SUPERVISION REFORM TO THE DEVELOPMENT OF THE FUNDAMENTAL PRINCIPLES OF LITHUANIAN FINANCIAL MARKETS REGULATION

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SUMMARY

Lithuania’s financial sector is the most important part of the country’s economy and from it’s successful operation depends the rest market success. The main mission of the financial sector is to serve the real economy by funding companies and their projects. The last global financial crises highlighted the fundamental problem of financial markets – financial market participant rather than carry out its main function, they focus on short term goal and short term profits. The consequences of an crisis were felt around the whole world and highlighted the need to take immediate action, thereby enhancing, the European financial regulation and supervision. The core principles of ongoing reform is transparency, accountability, supervision and crisis prevention and management. Taking the fact, that EU law is directly applicable to the Member States, into account, there are no questions that this reform will affect the Member States’ financial sector, but there are also natural questions, how they will impact the development of the fundamental principles of the Lithuanian financial market regulations.

Objective regulation of each legal system, especially in finance, is associated with clearancy, transparency and efficiency, what leads to the result that in order to achieve the objectives, everyone has to be accountable to the responsible authorities. In the process of the reform, there had been established two responsible supervision authorities, whose main target was to ensure the macro and micro prudential regulation and supervision at the EU level. Their recommendations and warnings will have binding power to the Lithuanian responsible supervision authorities. This fact will have direct impact to the later development of the conception of the fundamental principles of Lithuanian financial regulation.

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INTRODUCTION

We will need to ensure „that our economy works for costumers, that it works for investors, that it works for financial institutions – that it works for all of us“\(^2\). It is clear that for the smooth operation of the system, its regulation and supervision must be based on certain fundamental principles. This equally applies to financial systems. In the context of globalization, the finance is not only a key factor for the State economy, but it also plays an important role in the regional or even global level. Recent economical and financial crisis, where authorities, following the doctrine of “too big to fail”, made huge government spendings to stabilize the financial system, highlighted the need to take immediate action and enhance the European financial regulation and supervision. European Union financial regulatory and supervision reform is based on the core principles of the financial law. Taking into account the fact that the European Union law has a direct impact on legal systems of Member States, it is evident that this reform will affect financial sectors of each of the Member States. However, there is a natural question of how such reform will impact the development of the fundamental principles of financial regulation and supervision of the Member States.

To this date the impact of the EU regulatory and supervision reform on the development of the fundamental principles of Lithuanian financial markets supervision and regulation hasn’t been analyzed from the legal science perspective. There are several reasons to explain this phenomenon. Firstly, it is the very recent nature of the reform, which prevented deeper scientific work on the subject and secondly, given the fact that the Lithuanian financial regulation and supervision is basically implemented by the three independent institutions, it is natural that theoretical studies have been focusing on separate sectors of the financial markets and not on the financial system as a whole.

The first part of this article determines the concept of legal principle and general notion of the principles of financial law. In the second section of this part the typology of the principles of financial regulation and supervision and how these different principles are understood by the law makers are presented.

The second part is dedicated for the understanding of the EU financial regulatory and supervision reform. Also in this part the key legal factors which influenced the last financial crisis are presented. At the end of this part, following the implementation of the reform of the EU financial regulation and supervision and comparing it with the former EU financial market regulation and supervision, general overview of the new framework of financial regulation and supervision is provided.

\(^2\) Author`s note: Words of the President of the United States Mr. Barack Obama which was said during the ceremony at the Ronald Regan Building, (2010 07 21); <http://www.politico.com/news/stories/0710/40027.html> [visite 2011 05 20].
In the third part of this article the author examines one of the most important tasks of the financial markets – prevention and management of the systemic risk, which leads to the understanding of the framework of Lithuanian financial markets regulation and supervision. This analysis shows the fact that Lithuanian financial regulation in generally is based on the core recommendations and requirements of the European Union legislation, but there is no doubt that European Union financial regulatory and supervision reform will have a major impact on the fundamental principles of Lithuanian financial market regulation.

1. PRINCIPLES OF FINANCIAL REGULATION AND SUPERVISION

1.1. GENERAL NOTION OF THE PRINCIPLES OF FINANCIAL LAW

Taking into account the fact that this article is generally based on analysis of principles of financial regulation and supervision and its impact to fundamental principles of Lithuanian financial regulation and supervision at the beginning there is the need clearly understand the weight of these principles to legislative process.

*Principle of law is the basic provision of law and legal system*. Etymological meaning of the word “principle” (in Latin – “principium”) is like “confidence, leading to the human relationship to the reality of his behavior and performance standards”, like “head of the theory, concept idea, the original claim”, like “a fundamental rule of any structures of organizations or business”, like “head of any equipment, machine architecture or operating characteristic”. As was mentioned above, if principles in general are understood like the concept idea or the head of theory, the principles of law must be understood as a basic provision of law and legal system, through which all legislation and legal system are based.

One of the few scholars who give us a clear definition of legal principles is R. Dworkin, who stated that:

“I call a “principle” a standard that is to be observed, not because it will advance or serve an economic, political or social situation deemed desirable, but because it is a requirement of justice or fairness or some other dimension of reality”. (Is Law a System of Rules? In The Philosophy of Law, 1977, p. 43.)

He continued that:

“the principles have the quality of weight or importance, in the sense of being considerations ‘which officials must take into account... as... inclining in one direction or another... When principles intersect... one who must resolve the

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In addition, it should be noted that it is not enough to state the fact that the principles of law are requirements of justice or fairness, or that the principles of law have the quality of weight or importance, however, it is crucial to distinguish them from the norms of law. Some scholars, for example Dworkin, Alexy, are drawing strict and clear line between principles and rules, but another part of them, for example Esser, Larenz, Canaris, cannot show it.

According to Dworkin, legal principles, “differ from such all-or-nothing rules because when they are applicable they do not ‘necessitate’ a decision but point towards or count in favour of a decision, or state a reason which may be overridden but which the courts take into account as inclining in one direction or another.” The well known legal theorist Robert Alexy, partly dissoned with Dworkin continued that, “in case principles collide, the solution is not to determine immediately that one principle prevails over the other, but it is found by weighing the colliding principles and then one of them, in some actual circumstances, will prevail. This kind of tension and the way it is resolved is what distinguishes principles from rules: while in the conflict of rules one needs to find out whether the rule is within or without some legal order, in the conflict of principles this very order has such conflict within itself. This legal theorist argued, that for him legal principle consists only of one species of legal norms through which optimization commands are set which are applicable in several degrees, according to norm and fact possibilities. But both of them underline that principles refer to the logical structure that is derived from provisions, and not only in the sense of different gradation, but also definite differentiation.

Another famous scholar H. L. A. Hart, while his concept of law was criticized by Dworkin, agreed with last-mentioned in one place that there are at least two features which can distinguish legal principles from legal rules. “The first is a matter of degree: principles are relatively to rules, broad, general, or unspecific, in the sense that often what would be regarded as a number of distinct rules can be exhibited as the exemplifications or instantiations of a single principle. The second feature is that principles, because they refer more or less explicitly to some purpose, goal, entitlement, or value, are regarded from some point of view as desirable to maintain, or to adhere to, and so not only as providing an explanation or rationale of the rules which exemplify them, but as at least contributing to their justifications.

Notwithstanding various contrapositions of scholars who analyzed principles of law, for example, Esser defined principles as norms that set forth bases for a given commandment to be found, whereas in his opinion rules determine the decision itself.” Larenz defined principles as norms of great relevance for the legal order inasmuch as they set forth normative foundations for the interpretation and application of the Law, therefrom

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6Ibid, p. 127.
9Ibid, p. 41.
evolving, whether directly or indirectly, behavior norms\textsuperscript{11}, we can reach one important finding that legislatures must be responsible for the formulation of general principles of conduct which are of general, publicly promulgated and prospective applicability to a given community for an indeterminate number of situations; administrators must apply such general principles to more specific situations and often to specific groups within the community – even though administrative orders and regulations often have certain legislative aspects; and the courts must apply the prescriptions of legislators, or the generalized principles deduced from a series of precedents to individual disputes\textsuperscript{12}.

In the view of what was mentioned above and the fact that, firstly, principles of law are instruments that “work” for the benefit of implementation as well as formation of legal policy and secondary, that “principles are immediately finalistic, primarily future regarding norms should be stated, that principles of law trace the boundaries of behaviour, whose we must not overstep\textsuperscript{13}. In accordance with the understanding of the principles of law given above, it is reasonable to assume that principles of financial regulation and supervision must be understood as the guiding ideology of the financial base or origin of the comprehensive nature of the stability of the important legal principles and criteria through a country’s financial legal system. 

\textbf{Financial architecture}\textsuperscript{14} is based on fundamental principles of financial law. In general, financial law is a system of risk transfer\textsuperscript{15}. Financial law consists of regulation and supervision of (i) insurance, (ii) banking and (iii) capital markets and investment management sectors. In order that these markets works in proper way it is necessary to set up appropriate regulatory and supervision legislative system, i.e. creators of financial market regulatory and supervision system engaged in the financial architecture, which is based on fundamental principles of financial market supervisory and regulatory. During creation of financial market regulatory and supervision system, the developers must follow the fundamental principles of these markets. The fundamental principles are considered as a framework of minimum standards that justly supervise practice and are universally applicable. Also, it is necessary to enable the legislature to determine the financial markets regulatory and supervision shortcomings and setting priorities for addressing them.

The fundamental principles of financial law do not only have the guiding role of the formation of financial regulation and supervision, but also constitute a proper understanding rules of whole financial system on which they are based. Given the fact that

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\textsuperscript{11}See supra note 7: HUMBERTO AVILA, p. 12.
\textsuperscript{13}See supra note 2: E. KŪRIS, p. 1.
\textsuperscript{14}In financial law literature, [t]he concept of international financial architecture “is generally understood as encompassing the rules, guidelines, and other arrangements governing international financial relations as well as the various institutions, entities and bodies through which such rules, guidelines and other arrangements are developed, monitored and enforced. (P. NOBEL, Swiss Finance law and international standards (Berne: Stempfli Publisher Ltd., 2002), p. 83.).
\textsuperscript{15}The author of this article make such conclusion because till this moment, scholars which are trying to define what is a financial law, in generally agree only with one, that financial law is a system of risk transfer, that is broadly means that ... the function of financial law is to permit risks (and the rewards associated with taking them) to be transferred from protection buyers to risk takers, and to circulate amongst risk takers in the financial markets. (J. BENJAMIN, Financial law (London: Oxford, 2008), p. 3.).
\end{flushleft}
there are still debates on what is the financial law, as a result, different financial law experts give us different view of fundamental principles of financial law, but in each of their work they emphasize the three main principles, which are best reflected in this definitions:

“We define global governance if financial systems to involve three main principles: effectiveness in devising efficient regulatory standard and rules, accountability in the decision – making structure and chain of command, and legitimacy, meaning that those subject to international regulatory standards have participated in some meaningful way in their development”\(^{16}\)

Additionally it should be pointed that:

“Effective decision making in the IFI’s\(^{17}\) requires that states have strong links and confidence in one another and that means that IFI decision making should be accountable both procedurally and substantively. It also means that the standard-setting process should be legitimate in the sense that all countries and economies subject to these standards exercise a certain degree of participation in the standard-setting process”\(^{18}\)

Analysis of today’s legal fiction and scholars works, author is detecting one more important fundamental principal of financial markets regulation and supervision – transparency. Before the last world financial crisis, the transparency was the only important aspect of accountability, but nowadays, it becomes one of the main principles, which is being adopted in IFI’s. One more factor regarding importance of principle of transparency is that European union understanding the necessity of this principle, especially in financial sector, consolidated the practical use of this principle in a separate directive\(^{19}\), which establishes requirements in relation to the disclosure of periodic and ongoing information about issuers whose securities are already admitted to trading on a regulated market situated or operating within a Member State.\(^{20}\)

According to the mentioned above and taking into account the fact, that with every such wave of crises, legislators of States are encouraged to develop and change governance of financial markets, which must be based on fundamental principles of financial law, is clear that stable financial regulation and supervision solely dependent on application of the fundamental principles of financial regulation and supervision.

### 1.2. TYPHOLOGY OF THE PRINCIPLES OF FINANCIAL REGULATION AND SUPERVISION

In the context of globalization, then the finance is not only a key indicator of the separate State economy, but also plays important role in the dimension of region, i.e. European Union, USA and etc., or even in the global level, principles become the cornerstone of every financial regulation and supervision. On one hand, successful

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\(^{17}\)Author’s note: International financial institutions.

\(^{18}\)See supra note 15: K. ALEXANDER, R. DHUMALE, J. EATWELL, p. 34.

\(^{19}\)Directive 2004/109/EC.

\(^{20}\)Ibid, Article 1, para 1.
application of each principle is associated with regard to their meaning and purpose, but on other hand, we cannot understand the successful use of fundamental principles without close realation of them and sometimes overlapping each other. Without doubt we can state, that objective regulation of each legal system, especially in finance, is associated with clearancy, transparency and efficiency, so as a result, in order to achieve the objectives, everyone has to be accountable to the responsible authorities.

Accountability – clear line of authority between those who make decisions and those who are subject of them. Traditional notion of accountability is based on the ability to control and direct administrative behavior by requiring „answerability“ to some internal or external authority that legitimate expectations of power as well as a clearly articulated chain of command21. In the financial regulatory field “Technical definitions of accountability … have focused on the obligation owed by the person exercising authority to another person for whom such authority is being exercised”22. According to author of this article the best and the clearest example of this principle is reflected in situation, which author found during the analysis of this principle, i.e.:

"Mr Duisenberg’s accountability model, which suggests that as long as daddy brings home the bacon, mummy and the children ought not to ask where he got it, is not viable as a modern model for the relationship between the citizen and the state."23

Undoubtedly, nowadays, there is no satisfactory explanation of this principle and we cannot use it directly, but it shows the position of this principle at the begining of its evolution and its importance in hierarchy of principles, especially in financial regulation and supervision. Unquestionably, as was mentioned above, all principles are closely related to each other and sometimes overlap each other. Moreover, it should be noted that the principle of accountability we can identify as an essential element of principles of financial supervision and regulation. This could be explained by the fact that unexpected decisions of competitive authorities, especially in financial sector, are not desirable for their possible consequences to the whole market. Accountability for finances is pretty straightforward and reflects the expectations for how public officials will handle public dollars24. In this context, the principle of accountability in financial field is removed from the impact of political day to day decisions of the country authorities, i.e. there must be clear lines of authority that show where the regulator derives its authority and to which stakeholder interests it is accountable. Moreover, the regulator’s exercise of authority should be measured for performance against some criteria of assessment25, as a result, on impact of globalization, especially in financial sector, then many decisions are taken in secret, good

governance\textsuperscript{26} calls for central banks and financial agencies to be accountable, especially where these agencies are granted a high degree of autonomy\textsuperscript{27}. Additionally it should be noted, that working group of G20, more then in one recommendation, calls for “[t]he structure of … coordinating mechanism [which] should be transparent, with clear assignments of roles, responsibilities and accountability for each authority”.\textsuperscript{28}

In view of the above, we can state, that in the process of lawmaking, when the intention of legislature is to establish the effective uses of this principle in the State law system they must answer two questions: (i) accountable for what? and (ii) accountable to whom? If we will try to find answers in Lithuanian legislature of financial supervision and regulation, the simple answers can be successive - from the point of view of banks sector of Lithuania the answer to first question can be that the Bank of Lithuania is accountable for maintainance of price stability\textsuperscript{29} and taking into account the fact that ownership of Bank of Lithuania belongs to the State of Lithuania\textsuperscript{30}, the answer to second question in the broadest sense – accountable to the citizens of the Republic of Lithuania. Morevore, International monetary fund mentioned, that is not sufficient to answer to above mentioned questions, if we want that:

"accountability for independent RSAs\textsuperscript{31} can be thought of as fulfilling four main functions. These are to (i) provide public oversight; (ii) maintain and enhance legitimacy; (iii) enhance agency governance; and (iv) improve agency performance. The recognition that accountability fulfills four main functions helps to bridge to a large extent the different emphasis that lawyers (political dimension of accountability) and economists (performance) tend to put on...

\textsuperscript{26}Author’s note: This approach is best characterized by International monetary fund, which gives us description of global governance, that explain this like “Good governance refers to the management of government in a manner that is essentially free of abuse and corruption, and with due regard for the rule of law”. (\textit{Manual on fiscal Transparency}, International monetary fund (2007), p. 111,\textsuperscript{[http://www.imf.org/external/np/fad/trans/manual.htm\textsuperscript{[http://www.imf.org/external/np/fad/trans/manual.htm]}}} [Visited 2011 04 26]). Future noted that this conception is fixed in both parts of Lisbon treaty, i.e. „In order to promote good governance and ensure the participation of civil society, the institutions, bodies, offices and agencies of the Union shall conduct their work as openly as possible”. (Treaty on the Functioning of the European Union, Article 15 (ex Article 255 TEC), para 1) and that „the Union shall define and pursue common policies and actions, and shall work for a high degree of cooperation in all fields of international relations, in order to promote an international system based on stronger multilateral cooperation and good global governance”. (Treaty of European Union, Article 21, para 2(h)).

\textsuperscript{27}P. NOBEL, \textit{Swiss Finance Law and International Standards} (Berne: Stempfli Publisher Ltd., 2002), p. 84.

\textsuperscript{28}Final report, Enhancing Sound Regulation and Strengthening Transparency, G20 working group, (2009 03 25).

\textsuperscript{29}Republic of Lithuania law on the bank of Lithuania, \textit{Official Gazette} (1994, No. 99-1957), Article 7, para 1: The Primary Objective of the Bank of Lithuania: In accordance with the Treaty establishing the European Community, the primary objective of the Bank of Lithuania shall be to maintain price stability.

\textsuperscript{30}Ibid, Article 1, para 1: The Bank of Lithuania - The central bank of the Republic of Lithuania shall be the Bank of Lithuania, belonging by the right of ownership to the State of Lithuania.

\textsuperscript{31}Author’s note: Regulatory and Supervisory services.
accountability and that, at times, also confuses our thinking about accountability (see Lastra (2001) and (2004) on the difference between both views)".\textsuperscript{32}

In order to ensure the concept of accountability is much more complicated than a collection of rules and procedures designed to elicit certain behaviors and outcomes\textsuperscript{33}. For this reason, in order to fully understand principle of accountability two more components should be defined.

Firstly, as was mentioned above, in process of application of the principle of accountability, it is important to drawn clear line from the impact of political day to day decisions, as a result accountability mechanisms ensure control by the political authorities and effective representation of diverse interests\textsuperscript{34}, after that is achieving, that authorities shall be independent of ad hoc political pressures. For example:

"Unlike the IFIs, the accountability and independence of the ESCB\textsuperscript{35} are provided for in treaty and statute. For instance, the European Central bank is accountable to EU finance ministers and to the Parliament. At first glance, the principles of accountability and independence may seem contradictory and, when implemented into a financial regulatory regime, can result in a clash of regulatory policy objectives. Although the EU treaty and accompanying legislative framework provided for the institutional independence of the ECB\textsuperscript{36} and independent regulatory policy for the ESCB, it nonetheless incorporates the legal requirements of accountability for the ECB with respect to other EU institutions."\textsuperscript{37}

In the view of the listed above, it is clear that the part of successful implemention of principle of accountability is independence, because without it authorities, cannot be accountable. Another important factor of interaction of these principles is that „one of the implication of independence is that regulatory authorities have to be accountable in political sense, through a continuing dialogue with Parliament and with the public opinion"\textsuperscript{38}.

Another interesting fact the author want to distinguish about practical uses of principle of accountability, that in economics, studies of central banks have focused on measuring central bank independence by devising appropriate indices and statistically


\textsuperscript{35}Author’s note: European system of central banks;

\textsuperscript{36}Author’s note: European central bank;


\textsuperscript{38}Proceedings of an Expert Meeting in London, United Kingdom, OECD, Designing independent and accountable regulatory authorities for high quality regulation, (2005 01 10-11) <http://www.oecd.org/Libraries/Abstract/0,3425,en_33873108_33873870_35028837_1_1_1,00.html> [visited 2011 05 13]
testing the effect of independence on macroeconomic variables.... Recently, a similar statistical methodology has been applied to central bank accountability).

Secondly, another important factor is to distinguish principle of accountability from principle of transparency. As was mentioned before, these two principles are often being collated, but from the point of view of conceptions of these two principles they must be analyzed separately.

**Transparency is an eleventh commandment and essential element of the new financial architecture.** As we analyzed previously, principle of accountability is based on political obligation, then legislature, through the law, establishes the mechanisms of control. Although, as we shall see late in paragraph, the target of principle of transparency is more or less the same like target of principle of accountability – public’s unquestioned “Right to know”.

While at the same target of these both principles the principal and thus the key difference is that obligation of principle of transparency is resulting from economic approach, i.e.:

“...helps to prevent the corruption that inevitably occurs when a few have access to important information, allowing them to use it for personal gain. Reduced price volatility also tends to be a byproduct of a transparent market because all the market participants can base decisions of value on the same data.”

In general, the principle of the transparency describes like timely promptitude of information, as a result, this principle is closely related to functions of the States authorities. In legal literature principles of transparency describes like “...an element of visibility and clarity on the one hand and an element of empowerment and capability on the other. Transparency in regulation thus entails the process of ‘seeing through’ as well as the ‘object’ that is being looked at”. Additionally it should be noted, that the consolidation of this principle in legislature, acts as a preventive measure for market abuse, as a result are guaranteed protection against (i) market manipulation or insider dealing, and (ii) money laundering or terrorism financing.

In summary of the above mentioned we can do a conclusion, that transparency must be developed through better exchanges of information both in horizontal or vertical communication, i.e. this requires each competent authority to

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41Ibid, p. 1342.
42See supra note 26: P. NOBEL, p. 84.
43Such meaning of transparency is proposed in investors website [www.investopedia.com](http://www.investopedia.com/terms/t/transparency.asp) [visited 2011 04 23]
45Directive 2003/6/EC;
46Directive 2005/60/EC;
require a regulated market to take measures to provide investors with certain information. From this point of view it is possible to exclude three dimensions of transparency, i.e.:

1. The first dimension of transparency refers to anchoring financial regulation in the overall legal framework. This constitutional dimension therefore defines the procedures and institutions by which financial markets are being regulated.

2. The second dimension of transparency relates to values and objectives of financial regulation. It has two aspects: making the objectives and underlying values of public financial policy transparent and at the same time ensuring that information is both accessible and comprehensible. The essential element is quality, not quantity, of information.

3. The third dimension of transparency addresses accountability as another important aspect of good governance. Given the variety of actors and the multitude of standards applicable to financial markets, ensuring accountability needs to be addressed from different perspectives.

As with other principles, principle of transparency has also been affected by globalization, as a result, in highest authorities level, began actively debates on the importance of this principle. The main axis of this debate was that „investors and other market observers could obtain only minimal information about pricing, trading volume, and aggregate open interest in various products that trade“. The lack of information as well experienced in responsible authorities level too, i.e. responsible authorities with a institutional discretion quite often take decisions without disclosing information that influenced the existence of such a decision, as a result decisions of the authorities isn’t motivated and sufficiently supported by evidence. In order to avoid it, they have to establish clarity in their procedures and to increase transparency. „Laws may require that regulators’ decisions be motivated and sufficiently supported by evidence. The conditions under which decisions are made matter more than the qualifications of the regulators themselves“, i.e. in the view to maintaining a stable financial system, regulation needs to focus on preventing uncertainty by establishing transparent criteria for state actions. Through this understanding of this principle we can resume that principle of transparency comes from economical approach, whose main idea is the requirements for higher quality information ensuring transparent and efficient system performance.

**Effectiveness in decision making, especially regarding expertise and logistics.** As was mentioned above, the developers of financial markets regulatory and supervision framework seeks what this system operates without any interference. It can be achieved

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47Directive 2004/39/EC: Obligation to execute orders on terms most favourable to the client: 1. Member States shall require that investment firms take all reasonable steps to obtain, when executing orders, the best possible result for their clients taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. Nevertheless, whenever there is a specific instruction from the client the investment firm shall execute the order following the specific instruction.

48See supra note 26: G20 working group1, final report.

49See supra note 37.
only through effective work\textsuperscript{50} of the system and it can be reached if all participant of the system knows and understands the goals and instruments of the system\textsuperscript{51}. Nowadays, the financial crises show, that ineffective regulation of financial market in one country can have impact not only for this state, but can have impact in international level. Taking into account the fact that financial law is the system of risk transfer, “[t]he effectiveness of the system of risk transfer in the financial markets depends on holding the risk to taker to its losses.”\textsuperscript{52} As was mentioned above, the principle of effectiveness we need to understand through proper work of whole system, i.e. through appropriate political, legal and institutional care facilities; well-developed financial market infrastructure, efficient financial sector, supervisory system, clearly define the key objectives, the necessary powers, legal protection, financial resources, as well as independence of functions within a confidential and supervisory standards body made up of a professional team, supervisory cooperation and confidentiality of information meeting exchanges. In order to achieve that above mentioned components work smoothly there was a need for commonly accepted standards. The efficient management of systemic risk in financial markets requires effective international standards of financial regulation that encourage the efficient pricing of risk and the effective supervision ..., therefore, a more effective international regime is needed to devise international standards and to monitor their implementation and enforcement\textsuperscript{53}. One of the most widely applicable international standard, there we can found consolidated rules of uses of principle of effectiveness is manual of core principles of effective banking supervision\textsuperscript{54}. The rules can be divided into the following categories: (i) preconditions for effective banking supervision (Principle 1), (ii) licensing and structure (Principles 2 to 5), (iii) Prudential regulations and requirements (Principles 6 to 15), (iv) Methods of ongoing banking supervision (Principles 16 to 20), (v) Information requirements (Principle 21), (vi) Formal powers of supervisors (Principle 22), and Cross-border banking (Principles 23 to 25). Additionally it should be noted, that some rules (group of rules) are specific to the banking market, but some of them are well established and can be useful in regulation of whole financial regulation and supervision, for example – (i) an effective system of ... supervision will have clear responsibilities and objectives for each agency involved in the

\textsuperscript{50}Author’s note: At the level of European union effectiveness is understood through [p]olicies [which] must be effective and timely, delivering what is needed on the basis of clear objectives, an evaluation of future impact and, where available, of past experience. Effectiveness also depends on implementing EU policies in a proportionate manner and on taking decisions at the most appropriate level. (European governance, White paper, Commission of the European Communities (2001 07 25, Brussels, COM (2001) 428 final);

\textsuperscript{51}Author’s note: The idea of participant understanding of goals and instruments of the system is the main factor for effective work of every system, which importance is enshrined in raport of De Larosiere roup, in which is saying, that”[t]he Group believes that an effective means of challenging the decisions of the homeregulator is needed, and therefore makes recommendations designed both to achieve a step change in the speed and effectiveness of the present arrangements for peer review (which are at a very early stage of development), and to give force to a considered decision (if arrived at), that a home regulator has not met the necessary supervisory standards.


\textsuperscript{53}See supra note 15: K. ALEXANDER, R. DHUMALE, J. EATWELL, p. 32.

\textsuperscript{54}Core Principles of Effective Banking Supervision, Basel Committee on Banking Supervision, Basel, September 1997;
supervision of … organisations. Each such agency should possess operational independence and adequate resources, (ii) supervisors must be satisfied that banks have in place systems that accurately measure, monitor and adequately control market risks; supervisors should have powers to impose specific limits and/or a specific capital charge on market risk exposures, if warranted and (iii) a key component of consolidated supervision is establishing contact and information exchange with the various other supervisors involved, primarily host country supervisory authorities.

“The [European] Union’s recent approach attempts to combine the effectiveness of a largely expert-driven rule making process with a sufficient degree of priority setting and oversight by the politically accountable institutions. Additionally, it should be noted that Community’s approach relies on effective supervision of the institutions of financial services provision by the member state.

Taking into account above mentioned it can be concluded that efficient supervision in the European Union enhances financial stability which in turn solidifies the continuing integration. It allows the integrated market to function in proper way and prevents stability problems, as the result establishes legal certainty, which is essential for creating a stable environment for efficient financial regulation and supervision. However, in order to achieve targets mentioned above and establish these principles, the principles must be legislated.

Legitimacy as a process that contributes to state-building. Nowadays, as capital in international markets is moving freely, especially in finance, the last important fundamental principal of framework of financial regulation and supervision is legitimacy. The legitimacy of international standards and rules that regulate different state behavior, especially in the area of financial regulation, should be determined, in part, by the extent to which all states that are subject to such standards have an opportunity to participate in their development. Because states have different levels of power and influence in international relations, we do not equate the opportunity to participate with actual influence. “The basic principle of legitimacy in international policymaking should involve the recognition that the state which is a subject to international norms of economic regulation should have the

55Ibid, Preposition 1.
56Ibid, Preposition 12.
59Author’s note: For example the first generation Directive on prospect uses, simply requires Member States to identify who are the competent authorities to approve prospectuses, (Council Directive 80/390/EEC);
60Workshop of the OECD INCAF Task Team on Peacebuilding, State Building and Security, Strengthening State legitimacy in fragile situations, What role and which policies for donors? (2009 03 16) <http://www.oecd.org/document/25/0,3746,en_2649_33693550_44782932_1_1_1_1,00.html> [visited 2011 05 15];
61Author’s note: Only if the actions of an independent regulatory agency have legitimacy in the eyes of the political principals, the regulated firms, and the broader public can it be genuinely effective and use the granted independence effectively. (See supra note 37: NOBEL, M. QUINTYN, and others).
62Author’s note: The New Basel Capital Accord and other standards of committee Bank of International Settlements are undoubtedly perceived as international standards of best practice with broad adherence by most countries of the world.
opportunity to participate and influence the development and maintenance of such standards”. The empirical approach of legitimacy is concerned with people’s perceptions and beliefs, rather than with observance of normative rules: whether, how and why people accept a particular form of rule as being legitimate. A political order, institution or actor is legitimate to the extent that people regard it as satisfactory and believe that no available alternative would be vastly superior (Bonnell and Breslauer, 2001).

In generally uses of principle of legitimacy is based of four sources, i.e.:

“[I]nput or process legitimacy, which is tied to agreed rules of procedure; output or performance legitimacy, defined in relation to the effectiveness and quality of public goods and services (in fragile situations, security will play a central role); shared beliefs, including a sense of political community, and beliefs shaped by religion, traditions and “charismatic” leaders; and international legitimacy, i.e. recognition of the state’s external sovereignty and legitimacy.”

The importance of this principle can be explained by the fact that today, when states act in international market, they have different levels of powers and some of them cannot have influence to decision making in international relations, as a result, in order to prevent their participation in decision-making process, this process must be structured in the way, that these states can act in rule making process. “This type of involvement gives a greater degree of ownership over the standards and possibly fosters a certain political willingness to implement and enforce the standards in good faith.”

And finally, it can be concluded that legitimization is a never ending process with basis on which the state and the society are linked and interact and by which state authority is justified. “It is about a vision of what the authority and the community who shares it is about and is to do”.

As was mentioned above, it is concluded, that only cooperation of all mentioned principles can give the result for better governance and the framework for better financial regulation and supervision, that can be achieved

“Throughout the global governance of financial systems requires effectiveness in decision making, especially regarding expertise and logistics, accountability in ensuring that decision making is transparent and provides clear lines of authority between those who make decisions and those who are subject to them, and legitimacy concerning the degree of ownership and influence that countries have in setting international standards.”

64Conflict and Fragility, The State’s Legitimacy in Fragile Situations unpacking complexity, OECD (2010), p. 16.
65Ibid, p. 23.
67See supra note 63: OECD, p. 6.
2. REFORM OF EUROPEAN UNION FINANCIAL REGULATION AND SUPERVISION

Nowadays, especially when all restrictions on the movement of capital between Member States and between Member States and third countries are prohibited\textsuperscript{69}, financial services have become increasingly important in the European Union\textsuperscript{70}. Such services are essential not only for the everyday life of EU citizens, but also for the EU economy at large. In general, the recent economical and financial crisis, then authorities in accordance with doctrine of “too big to fail”\textsuperscript{71} spent huge government spending to stabilize the banking system, highlighted the need to take immediate action, thereby enhancing, the European financial regulation and supervision. Facts mentioned above explain the large number of offered EU specific regulatory measures, which were and are taken in the area of financial services and directly or indirectly affect financial service in whole EU. Many of new regulating and supervision measures were proposed in the De Larosière report\textsuperscript{72} in 25 February 2009. We can also detect the need to reform the EU financial system in The Turner Review\textsuperscript{73} and his discussion paper DP 09/2\textsuperscript{74} too. Future noted that this reports, i.e. De Larosière report and Turner Review, fundamentally agree on main task’s of this reform. After De Larosière report the Commission of the European communities on 27 May 2009 issued the comunication regarding Europien financial supervision\textsuperscript{75}, which in general reflected the main proposals presented in the De Larosière report. According to the De Larosière report and above mentioned communication from the commission, in which was proposed, that the new Europen financial supervisory system should be created of two

\textsuperscript{69}Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union, 2010/C 83/01, article 63 (ex Article 56 TEC);
\textsuperscript{70}hereafter – “EU”.
\textsuperscript{71}The idea of „Too big to fail“ is that a business has become so large and ingrained in the economy that a government will provide assistance to prevent its failure. “Too big to fail” describes the belief that if an enormous company fails, it will have a disastrous ripple effect throughout the economy <http://www.investopedia.com/terms/t/too-big-to-fail.asp> [Visited 2011 04 23]. The meaning of „too big to fail“ we can find in the report of The High-Level group on Financial supervision in the E.U, chaired by Jacques del Larosiere (Brussels, 2009 02 25) too. They are explaining it like meaning that they [banks] can expose the rest of society to major costs and are subject to acute moral hazard. (The high-level group on financial supervision in the EU, The de Larosière Group report(Paris, 2009 02 25), paras 234.
\textsuperscript{72}Report of The High-Level group on Financial supervision in the EU published on 25 February 2009. The Group was chaired by Mr Jacques de Larosière.Hereafter – “DeLarosière report”.
\textsuperscript{73}The Turner Review, A Regulatory Response to the Global Banking Crisis, (March 2009) <http://www.fsa.gov.uk/pages/Library/Corporate/turner/index.shtml> [visited 2011 04 23]. The Lord Aidair Turner is chairman of Financial Services Authority (FSA) which is the regulator of the financial services industry in the UK<http://www.fsa.gov.uk/Pages/About/Who/board/turner.shtml>.
\textsuperscript{75}European financial supervision, Communication from the Commission (2009 05 27, [SEC (2009) 715], [SEC(2009) 716]).
pillars which will be the new, based on two levels, system of European financial regulation and supervision. The main recommendations of the de Larosière group focus on:

- **Creation of a European Systemic Risk Board** that would be responsible for macro-prudential oversight of the financial system within the Community in order to prevent or mitigate systemic risks, to avoid episodes of widespread financial distress, contribute to a smooth functioning of the Internal Market and ensure a sustainable contribution of the financial sector to economic growth. It will be the „macro-prudential supervision“, and

- **Creation of a European System of Financial Supervision** consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities (ESA’s), created by the transformation of existing European supervisory committees in a European Banking Authority (EBA), a European Securities and Markets Authority (ESMA), and a European Insurance and Occupational Pensions Authority (EIOPA). The ESFS should be built on shared and mutually-reinforcing responsibilities, combining nationally-based supervision of firms with specific tasks at the European level. The ESFS would also foster harmonised rules and coherent supervisory practice and enforcement. Thereby creating „micro-prudential supervision“.

On 22 September 2010, European Parliament – following agreement by all Member States - voted through the new supervisory framework proposed by the Commission. This was confirmed by the ECOFIN Council on 17 November 2010. Three European supervisory authorities (ESA’s) and a European Systemic Risk Board (ESRB) were established as from January 2011 and replaced the former supervisory committees.

### 2.1. MACRO-PRUDENTIAL SUPERVISION: ESRB

The ESRB is the essential building block which ensures macro-prudential supervision. As mentioned above, by the beginning of the reform regulation it was focused mainly on the national level, e.g. supervisors were assessed by the balance sheets of individual financial institutions without due consideration for interactions between institutions and between institutions and the broader financial system. Seen from today’s perspective, when ESRB is established and started his work from 01 January 2011, emergence new macro level supervision. The main role of established board are macro-prudential oversight of the financial system within the Community in order to prevent or mitigate systemic risks within the financial system. The ESRB isn’t legal person and was

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76Proposal for a Regulation of the European parliament and of the council on Community macro prudential oversight of the financial system and establishing a European Systemic Risk Board (2009 09 23, Brussels, COM (2009) 499 final, 2009/0140 (COD)).
77Hereafter – “ESRB”.
78See supra note 75: Proposal, Chapter 1, p. 2.
79Hereafter – “ESFS”.
80See supra note 75: Proposal, Chapter 1, p. 2.
82See supra note 75: Proposal, Article 1.
83Ibid, Article 3, para 2.
established on the basis of Article 95 of the EC Treaty. It does not have legally binding powers and its main responsibility is to avoid episodes of widespread financial distress, contribute to a smooth functioning of the Internal Market and ensure a sustainable contribution of the financial sector to economic growth. The creation of ESRB was an unprecedented event in EU as result it should be the fixation of main principles of financial market supervision and regulation, i.e.:

- before reform supervision was in pursuance of states national authorities, when the stability of individual firms was supervised in isolation with little focus on degree of interdependence within national financial system. Establishing of ESRB will create warnings mechanism in the interaction between micro and macro levels, as a result, will be assured principle of efficiency of financial supervision and regulation. Future noted that the lack of the efficiency was the general weakness of EU financial system, which cause the financial crisis of hole community,

- Another important issue before crises was risk assessments, then systemic risk was observable and manageable only at the national level, as a result supranational authorities could not have clear view of whole community financial system and could not manage its macro level. ESRB without being a legal entity, but giving to them a broad leeway for independent judgements, high quality analysis and sharpness in its conclusions, willensure principle of legitimacy,

- And finally the ESRB will be the main pathfinder, whose task will be the development of the European macro-prudential perspectives to address the problem of fragmented individual risk analysis at national level;

In order to implement the principle of efficiency the main decision-making body of the ESRB will be the General Board. The General board will consists of two parts – the members of the General Board with voting rights and members without voting rights. In everyday work of the board they have been granted the rights of collecting and
exchanging⁸⁸ the information what a result after the identification of significant risk, which is defined in Article 3, para 1, of above mentioned proposal⁸⁹, the ESRB will must provide warnings and, where appropriate, issue recommendations for remedial action⁹⁰. Warnings will be transmitted through the Council, thereby achieving the weight and legitimacy of ESRB recommendations.

Additionally, it should be noted that efficiency of ESRB will also be realised through the cooperation with the relevant international financial institutions, like International Monetary Fund, Financial Services Authority and another third countries bodies with purpose to maintain the financial stability in macro-prudential level.

As can be seen from the above mentioned, on the one hand, ESRB being only an advisory body, but with a flexible and widely adjustable EU regulatory framework, consolidate two main principles of financial supervision and regulation – efficiency and legitimacy, but in other hand, the purpose of justifying the useful work of ESRB can be understood only through the effective cooperation with ESFS.

2.2. EUROPEAN SYSTEM OF FINANCIAL SUPERVISION: THREE NEW ESAs

New ESAs with legal personality, legal powers and greater authority. After completion of the reform ESFS in tandem with ESRB will create common innovative framework of European financial regulation and supervision, in which ESFS become an operational European network with shared and mutually reinforcing responsibilities. Before outgoing reform at the EU level there were three committees of supervisors, i.e. (i) Committee of European Banking Supervisors (CEBS), (ii) Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and (iii) Committee of European Securities Regulators (CESR), which in the implementation of the reform have been replaced by three new European Supervisory Authorities (ESAs), i.e.:  

– European Banking Authority⁹¹ which take over, as appropriate, all existing and ongoing tasks from the Committee of European Banking Supervisors (CEBS)⁹²,
– European Insurance and Occupational Pensions Authority⁹³ which take over, as appropriate, all existing and ongoing tasks from the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)⁹⁴, and

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⁸⁸Ibid, Article 15, para 1: The ESRB shall provide the European Supervisory Authorities with the information on systemic risks necessary for the achievement of their tasks;
⁸⁹See supra note 76, Article 3, para 1: The ESRB shall be responsible for the macro-prudential oversight of the financial system within the Community in order to prevent or mitigate systemic risks within the financial system, so as to avoid episodes of widespread financial distress, contribute to a smooth functioning of the Internal Market and ensure a sustainable contribution of the financial sector to economic growth.
⁹⁰Ibid, Article 16, para 1.
⁹²Ibid, Article 8, para 1 (l), thereafter – “EBA”;
⁹⁴Ibid, Article 8, para 1 (l), thereafter – „EIOPA”.
— European Securities and Markets Authority95 to take over, as appropriate, all existing and ongoing tasks from the Committee of European Securities Regulators (CESR)96.

After the enforcement of above mentioned regulations97 and taking into account the fact that these new authorities were created as a result of a single reform of European financial market regulation and supervision, therefore their activity is regulated in a similar legal way. It should be noted only the fact, that the slight difference is in regulation of EIPOA, as this supervisor stakeholder group. In this Authority, to help to facilitate consultation with stakeholders in areas relevant to the tasks of the EIPOA two groups were established – an Insurance and Reinsurance Stakeholder Group and an Occupational Pensions Stakeholder Group98, while in EBA and ESMA is only one stakeholder group99. Despite these differences, all above mentioned ESAs are faced with similar task. The main task of ESAs, which is relevant to the main point of this article is next: (i) to contribute to the establishment of high-quality common regulatory and supervisory standards and practices100, to contribute to the consistent application of legally binding Union acts101, to monitor and assess market developments in the area of its competence102 and to contribute to the consistent and coherent functioning of colleges of supervisors, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans, providing a high level of protection [of their supervised areas] and throughout the Union103. In order to achieve this tasks, after the author’s systematization of powers, we can divide this groups of ESAs powers: (i) development draft regulatory and implementing technical standarts in the specific cases, (ii) issue guidelines, recommendations and opinions to the European Parliament, the Council or the Commission, (iii) taking individual decisions addressed to competent authorities in their supervised areas, (iv) collecting the necessary information, (v) developing of common methodologies and (vi) providing a centrally accessible database in their supervised areas.

The above mentioned appropriatable powers, which were given to ESAs and clerey defined tasks of the ESA’s, provide incentives and as a result will be guaranteed principles of integrity, transparency, effeciency and orderly functioning of financial markets. Additionally should be noted, that these principles were embbeded in all of our analyzed regulations104. Following the implementation of the reform of the EU financial regulation

96 Ibid, Article 8, para 1 (l), thereafter – „ESMA“.
99 Accordingly Regulation (EU) No 1093/2010, Article 8, para 1(a), Regulation (EU) 1094/2010, Article 8, para 1(a) and Regulation (EU) No 1095/2010, Article 8, para 1(a);
100 Accordingly Regulation (EU) No 1093/2010, Article 8, para 1(b), Regulation (EU) 1094/2010, Article 8, para 1(b) and Regulation (EU) No 1095/2010, Article 8, para 1(b);
101 Accordingly Regulation (EU) No 1093/2010, Article 8, para 1(f), Regulation (EU) 1094/2010, Article 8, para 1(f) and Regulation (EU) No 1095/2010, Article 8, para 1(f);
102 Accordingly Regulation (EU) No 1093/2010, Article 8, para 1(i), Regulation (EU) 1094/2010, Article 8, para 1(i) and Regulation (EU) No 1095/2010, Article 8, para 1(i);
103 Accordingly Regulation (EU) No 1093/2010, Article 8, para 1(i), Regulation (EU) 1094/2010, Article 8, para 1(i) and Regulation (EU) No 1095/2010, Article 8, para 1(i);
104 See supra note 90: Regulation (EU) No 1093/2010, Article 1, para 3 (b).
and supervision and comparing it with the former EU financial market regulation and supervision we can exclude this general points of our new system.

**Ensure single set of rules.** Before the reform one of the main problems was the lack of a consistent set of rules. As noted in the report of the de Larosière group:

"There [was] at least four reasons for this:
- a single financial market - which is one of the key-features of the Union – cannot function properly if national rules and regulations are significantly different from one country to the other;
- such a diversity is bound to lead to competitive distortions among financial institutions and encourage regulatory arbitrage;
- for cross-border groups, regulatory diversity goes against efficiency and the normal group approaches to risk management and capital allocation;
- in cases of institutional failures, the management of crises in case of cross-border institutions is made all the more difficult".

In order to avoid situation, when inconsistent transportation of EU financial market regulation, what occurred through derogations, exceptions, additions founds in Directives, required to develop directly applicable rules at ESFS level. The Legislator influenced by this problem in the new ESAs regulations give the directly applicable powers to competent authority, for example, “If a competent authority does not comply with the settlement decision addressed to it, the Authority should be empowered to adopt decisions directly addressed to financial institutions in areas of Union law directly applicable to them”.

After the consolidation of these powers it became an effective instrument of establishment of harmonized regulatory technical standards and it would be ensured through a single rulebook. In addition, it should be noted also that this idea is defined not only in the report of the de Larosière group, but also in regulations of ESAs. On one hand, a process of agreeing a single rulebook and removing inconsistencies in transposition across Member States will help to consolidate the principles of effectiveness and accountability, but on the other hand, this would also limit the ability of Member States to implement legislation in a way that is appropriate for the national market, that in some cases provide possibilities infringe the main principle on which is based whole Union law – Subsidiary.

**Ensure consistent application of EU rules.** Situation, before the reform which partly influenced the crises, could be understood as a lack of communication between Members State’s authorities. Moreover, this situation was not able to ensure the correct and consistent application of European Union law but allow the emergence of the financial crises. This was another reason for allowing the arising of the financial crises. In the report of the de Larosière group it was mentioned that the clear and consistent framework for crisis management is required with full transparency and certainty that the authorities have developed concrete crisis management plans to be used in cases where absence of such

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105See supra note 71: The de Larosière Group report, p. 28.
public sector support is likely to create uncertainty and threaten financial stability. The Commission of the European community’s highlighted the lack of consistency too. They mentioned that “a clear and consistent framework for crisis management is required with full transparency and certainty that the authorities have developed concrete crisis management plans to be used in cases where absence of such public sector support is likely to create uncertainty and threaten financial stability”. Then ESAs regulations entry into force to them was given binding and proportionate decision-making powers in respect of whether supervisors are meeting their requirements under the proposed single rule book and relevant EU legislation. On the basis of these regulations colleges of supervisors will play an important role. Their main tasks will be to ensure the efficient, effective and consistent supervision of financial market participants operating across borders. Consistency will also be pursued through the investigations of authorities and after that putting the recommendations to the Members states regulators.

Supervisory powers for some specific pan-European entities. In nowadays, as a result of globalization, especially in European financial markets, these markets are increasingly integrated, and the banking and insurance sectors are dominate by pan-European groups, for example in Lithuania 77.1% of banking sector is on the Scandinavian capital, and the management of their group’s is centralized in the headquarters, including the management of risk management too, the effective and timely communication of pan-European entities is essential thing for crises prevention. Of course the power to prosecute the communication with entities is fixed in the regulations of ESAs, for example, “Concerning the issue of direct supervision of institutions or infrastructures of pan-European reach and taking account of market developments, the Commission shall draw up an annual report on the appropriateness of entrusting the Authority with further supervisory responsibilities in this area”, but pointed out that this place raise further doubts about whether it is appropriate instruments to achieve the goals of the reforms and the principles of them.

2.3. CONCLUSION

The new European financial regulation and supervision framework, which was launched on the 1st of January, 2011, is different from the one which was before the crises. The authorities which were established after the reform, consisting of macro and micro prudential level, everyday supervision of companies will perform with supervisors of the Members States. The main difference is that ESAs will have ability to influence and in some cases prohibit the actions of authorities of the Member States. Another important factor is that the creation of the single rulebook of European financial market regulation and supervision will limit ability to take national considerations into account when they will be implementing these rules domestically, that result is clear and of course it is fixed in regulation, that all ESAs will have binding powers over Member States supervisors in the

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108 See supra note 71: The de Larosiere Group report, p. 34.
109 See supra note 74: Communication from the Commission, p. 33.
111 See Annex 1 – “Framework of European Financial Regulation and Supervision”
areas of competence of them. Also it should be noted that authorities of Member states will be regulated through the macro level too. The macro-level European financial market supervision will be secure by the ESRB. It should be noted, that the creation of the ESRB, was unprecedented event and it shows, how much power and flexibilities European Union law has. After the analysis of ongoing reform, we can access the conclusion, that the new European financial regulatory and supervision mechanism will work constructively, if (i) the ESRB and ESFS cooperate in the proper way, (ii) listening to the position of the Member States authorities and (iii) adopting some important recommendations by adopting them to specific needs of the Members State. Only through this constructive cooperation European competitive Authorities ensure proper, based on fundamental principles of financial law, like transparency, efficiency, accountability and legitimacy, work of new framework of European financial regulatory and supervision.

3. IMPACT THE DEVELOPMENT OF THE FUNDAMENTAL PRINCIPLES OF LITHUANIA FINANCIAL MARKET REGULATION

Since 1 January 2011 European Union began to work in three new supranational authorities, i.e. new ESA’s, which was created by the transformation of existing European supervisory committees of the EBA, ESMA and EIOPA, and which is acting in micro level and accordingly ESRB, which is acting in macro level. The member of European Commission Mr. Michel Barnier, who is responsible for the financial services said „We reach a historical agreement“ and „[t]his new structure are the control tower and the radar screens that the financial sector needs.” The creation of new Authorities, and thus the creation of new framework of European Union financial regulation and supervision, was influenced by the fact that of repetition of the former global financial crisis, i.e. the bases for this reform is to manage systemic risk of financial sector at the European Union level. So, before we will start to analyze the impact of the reform of the European Union financial regulation and supervision to fundamental principles of Lithuanian financial regulation and supervision, we need to take a look on the essential element of Systemic risk.

3.1. SYSTEMIC RISK

General definition of a systemic risk is considered as a „risk inherent to the entire market or entire market segment.“ A more comprehensive definition of systemic risk is proposed by European Central Bank, which is defining it like:

114Such definition of systemic risk is proposed in investors website www.investopedia.com<http://www.investopedia.com/terms/s/systematicrisk.asp>, [Visited 2011 04 23];


.. the risk that the inability of one participant to meet its obligations in a system will cause other participants to be unable to meet their obligations when they become due, potentially with spillover effects (e.g. significant liquidity or credit problems) threatening the stability of or confidence in the financial system. That inability to meet obligations can be caused by operational or financial problems.\(^{115}\)

and Bank of Lithuania, which understand systemic risk quite similar like European Central bank. For them systemic risk is:

.. the risk that the inability of one participant to meet its obligations in a system will cause other participants to be unable to meet their obligations. For such a default could cause significant liquidity or credit problems that could jeopardize the financial stability of the system. This inability to fulfill its obligations may result in operational or financial problems.\(^{116}\)

As is clear from the above definitions\(^{117}\) of systemic risk the main aim of financial regulation is to avoid, contain, or minimise some of the considerable risk inherent in financial market, originally especially the systemic risk, in order to protect clients or customers against the adverse consequences of a failure of their banks or insurance companies better. “One of the key purposes of financial regulation is to ensure that an appropriate legal and regulatory framework is maintained that imposes sufficient obligations on financial institutions to make sure that they manage effectively the risk and exposures that their activities generate”.\(^{118}\) Modern financial regulation has increasingly been conducted on a risk basis. This involves the identification of the separate risks and exposure involved and the imposition of appropriate controls in respect of each.

“Supervision by risk may generally be understood to refer either to the selection of particular risk for control purpose or the evaluation of regulatory performance against the particular objective set\(^{119}\).”

Depending on different type of institutions, or even on different countries, this is achieved by different measures, but all of them should be much better defined or clarified in accordance with this main financial supervision regulation aims\(^{120}\):

(i) The protection of clients, like bank depositors, securities investors, and insurance policy holders against (i) a bankruptcy of the service provider, (ii) bad selling or advisory practice often cause by a conflict of interest between service provider and client, or (iii) risky products.

\(^{115}\) Annual report 2010, European central bank, p. 275.

\(^{116}\) Annual report 2010, Bank of Lithuania, p. 117.

\(^{117}\) Author’s note: Additionally it should be noted that in the legal literature the definition of systemic risk is quite similar to this which is proposed in this chapter, i.e. „Risk for the whole of the financial system, probably arising through contagion from problems in individuals banks, sectors of the market or countries“. (P. Howells and K. Bain, Financial Markets and Institutions, Fifth Edition, (London: Pearson Education limited), p. 387);


\(^{119}\) Ibid, p. 32.

The creation of a simplified enforcement regime. Another important (closely related) aspect of financial regulation is that it may introduce a quick and cheap complaint procedure for the smaller customers or investors either through ombudsmen or compulsory arbitration scheme.

The creation or a proper legal framework for financial products and services generally. Regulatory concern extends to the legal characterization and structure of financial products and services. This is important (and often ignored) area of modern regulatory concern which may also go into transferability or proper unwinding of investments as in the case of the more sophisticated derivatives.

The minimalisation of contagion or systemic risk whilst attempting to prevent the collapse of one financial firm affecting others.

The integrity and smooth operation of markets. This is of importance foremost in the investment services industry, more so than in commercial banking.

The concern with asymmetric markets. This is a particular academic concern with the functioning of the markets and with market transparency. The idea is that goods that cannot be properly inspected and valued should be sold at an average price, which may be so low that it induces the seller of the better goods to withdraw from the market altogether.

The creation of a level playing field, especially between commercial banks. The idea here is that the more prudent bank should not in the short term be punished for its financial prudence and affected in its competition with other banks.

The prevention of monopolies amongst intermediaries in the financial services.

Concern for the reputation and soundness of the financial services industry and financial sectors and markets in the centre(s), from which they operate. This goes beyond systemic concerns and market integrity and is more properly the issue of confidence.

Thus, it follows from the definition of systemic risk and main aims of financial regulation, the object of it is stable condition of individual financial institution, as a result is guaranteed the protection of client of financial institutions.

3.2. IMPLEMENTATION OF LITHUANIA FINANCIAL AMRKET REGULATION AND SUPERVISION

As is clear from this article, for the smooth operation of any system, the regulation and supervision must be based on fundamental principles of this system. Each system is based on its own, to their satisfaction adopted, fundamental principles. Financial regulation and supervision is based on principles, which ensure that rules of regulation and supervision are legitimate, which is achieved through the accountability of responsible authorities, which must be transparent, as a result this system become effective. While these
principles can be applied to separate systems of financial regulation and supervision, but they must be tailored to the specific needs of each system.

**Framework of Lithuanian financial regulation and supervision - three independent financial supervisory authorities.** Currently, the Lithuanian financial market supervision is executing by the three financial market supervision authorities – Bank of Lithuania, The Securities Commission of Republic of Lithuania and The Insurance Supervisory Commission of the Republic of Lithuania.

**Bank of Lithuania is responsible for prudential supervision of credit institutions,** whose activity is regulated by the Republic of Lithuania law on the bank of Lithuania. To summarize, the main goal of the Bank of Lithuania in credit institutions supervision field is to monitor the compliance of credit institutions with the standards as set by the law and legislation of the Bank of Lithuania and recommended in International Accounting Standards and by the Basle Committee on Banking Supervision. These activities include – licensing, information gathering, which is necessary for the supervision, analysis, supervision of financial institutions and the assessment of the state according to the information maintained by agencies and statutory inspection of the impact of measures for their application. The Bank of Lithuania shall exercise supervision of credit institutions governed by the above mentioned Republic of Lithuania law on the bank of Lithuania, Republic of Lithuania law on banks, Republic of Lithuania law on the central credit union, Republic of Lithuania law on credit unions. Additionally it should be noted, that the Bank of Lithuania must comply with Republic of Lithuania law on financial institutions. As was mentioned in the second part of this article, banking sector is the most important sector in Lithuanian finance system, since it’s smooth and efficient operation depends on the overall market stability. As a result, Bank of Lithuania approved the core principles for the effective banking supervision, which provides that:

> **“in effective system of supervision, all institutions which engaged in banking supervision, must clearly define the objectives and responsibilities. Such institutions must be independent, their processes must be transparent, proper management, their must have sufficient recreces to conduct its business and must be accountable for their responsibilities”**.

The Securities Commission of Republic of Lithuania has jurisdiction on the supervision of the securities market and protection of investors. The Securities Commission is responsible for prudential supervision of brokerage firms, management firms, financial

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121 The Republic of Lithuania Law on the Bank of Lithuania (200103 13, No VIII-1835);
122 Supervision of credit institutions,<http://www.lb.lt/about_the_supervisory_activities> [visited 2011 05 19];
123 Republic of Lithuania law on banks, OG (2004, No. 54-1832);
124 Republic of Lithuania law on the central credit union, OG (2008, No. 76-3003);
126 Republic of Lithuania law on financial institutions, OG (2002, No. 91-3891);
127 Of the implementation of the main principles for effective banking supervision which was approved by the Basel Committee on Banking Supervision, Decision of Board of Bank of Lithuania (1998 12 17, No 224);
128 Thereafter – „The Securities Commission“;
Nerijus Strikulys, “Impact of the EU financial regulatory and supervision reform to the development of the fundamental principles of Lithuanian financial markets regulation”

advisory firms and prudential supervision of customer services. This institution is governed by the above mentioned Republic of Lithuania Law on Financial Institutions, Republic of Lithuania Securities Law,\textsuperscript{129} Republic of Lithuania Law on Markets in Financial Instruments,\textsuperscript{130} Republic of Lithuania Law Amending Law on Pension Funds,\textsuperscript{131} Republic of Lithuania Law on the Accumulation of Pensions,\textsuperscript{132} Republic of Lithuania Law on the Accumulation of Occupational Pensions,\textsuperscript{133} Law on Collective Investment Undertakings,\textsuperscript{134} Republic of Lithuania Holding Investment Company Law,\textsuperscript{135} and legislation of Securities Commission. Summarizing the above mentioned legislation, it must be concluded that the head of the Securities Commission is responsible for\textsuperscript{136} (i) legislative development and improvement, i.e. in order to improve regulation and increase legal certainty and thereby contribute to the development of the market conditions, the Securities Commission is preparing laws and drafts of law, other drafts of law, official explanations, guidelines and planned new legislation changes. It should be noted, that through this activity the efficient functioning of financial markets is ensured. (ii) supervision of financial instruments, i.e. supervision of issuers, regulated market supervision, supervision of management companies and pension funds, supervision of financial brokerage firms and corporate governance compliance with adequacy requirements, supervision of implementation of markets in financial instruments acts, investigates complaints, participation in proceedings and finally licensing, (iii) Education of investors, i.e. The main aims of ongoing investors education program – to encourage people to take care of their finances and secure financial future, to develop a global culture of investment, encourage the public, governmental and non governmental organization be interested in the topic of financial education, (iv) institutional cooperation, i.e. The Securities Commission actively cooperate with European Securities Regulator Committee and it’s working groups, for example transparency group, takeover group and others, the International organization of Securities Commission, and other international organisations. Of course, the Securities Commission carries out inter institutional cooperation too.

\textit{The Insurance Supervisory Commission of the Respublic of Lithuania}\textsuperscript{137} perform supervision of insurance, reinsurance, insurance and reinsurance brokerage business\textsuperscript{138}. The main purpose of the Supervisory Commission is to ensure reliability, efficiency, safety, and stability of the insurance system and protection of interests and rights of the

\textsuperscript{129}Republic of Lithuania Securities Law, \textit{OG} (2007, No. 17-626);\
\textsuperscript{130}Republic of Lithuania law on markets in financial instruments, \textit{OG} (2007, No. 17-627);\
\textsuperscript{131}Republic of Lithuania law amending law on pension funds, \textit{OG} (1999, No. 55-1765);\
\textsuperscript{132}Republic of Lithuania law on the accumulation of pensions, \textit{OG} (2003, No. 75-3472);\
\textsuperscript{133}Republic of Lithuania law on the accumulation of occupational pensions, \textit{OG} (2006, No. 82-3248);\
\textsuperscript{134}Law on collective investment undertakings, \textit{OG} (2007, No. 117-4772);\
\textsuperscript{135}Republic of Lithuania Holding Investment Company law, \textit{OG} (2003, No. 74-3425);\
\textsuperscript{137}Thereafter – \textit{“The Insurance Commission”};\
\textsuperscript{138}Regulations of the Insurance Supervisory Commission of the Respublic of Lithuania (2004 01 13, Decision No 27), Para 1.
policyholders, insured, beneficiaries, and injured third parties. In general, this institution is governed by the Republic of Lithuania law on insurance and above mentioned regulation. According to the author of this article, we can distinguish the following main functions of Insurance Commission: (i) draft, approve, amend, and repeal legal acts regulating activities of insurance undertakings, insurance intermediaries, branches of non-member-country insurance undertakings and branches of companies of independent insurance intermediaries established in the Republic of Lithuania, including financial and statistical accounts of insurance undertakings and branches of non-member-country insurance undertakings, (ii) grant and revoke licences to engage in insurance and insurance mediation activity, (iii) observe, analyse, check and supervise in other ways activities of insurance undertakings, insurance broker companies, branches of non-member-country insurance undertakings and branches of independent insurance intermediaries established in the Republic of Lithuania, (iv) apply sanctions provided by the law, (v) co-operate with competent authorities, financial and capital market supervisory institutions, competition and consumer rights protection institutions of the Republic of Lithuania, other European Union Member States and non-member states as well as with other institutions of the Republic of Lithuania, and (vi) inform the public about fulfillment of the functions of the Insurance Commission, significant changes in the insurance system and publish drafts of the Insurance Commission regulations on the Internet website of the Insurance Commission. Additionally it should be noted, that for effective work of Insurance Commission they have the right to detailing the legislation of the insurance law. Taking into account the fact that one of the most important functions of financial regulation and supervision is protection of consumer interest, one of the important functions of the Insurance Commission is the disput resolution of the consumers and insurer. Technically disputes are dealt in writing to the Insurance Commission by the correspondence with the insurer and the consumer, to a mutually satisfactory solution. In one hand, the efficiency of this kind of disputes resolution is, that the dispute settlement are heard by the experts of the Insurance field and they are free of charge, what makes this approach attractive, but in other hand the decisions of the Insurance Commission are only recommendatory, which do not create rights and obligations of the parties. In the author’s opinion, for the effectiveness litigation, the law should contain a rule that decisions taken by the Insurance Commission were binding powers to the parties.

Thus, the analysis of the framework of Lithuanian financial supervision and regulation shows that different financial sectors are governed by different laws and these sectors are supervised by the different responsible supervision authorities. It is worth to note that

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139 Regulations of the Insurance Supervisory Commission of the Respublic of Lithuania (2004 01 13, Decision No 27), Para 5;
140 Republic of Lithuania law on Insurance, OG (2003, No. 94-4246);
142 Republic of Lithuania law on Insurance, OG (2003, No. 94-4246), Article 207, para 1, which is saying that the supervisory committee examines consumer’s disputes with insurer, if the insurance contract arising out of or in connection with it, if the contract is the applicable law of the Republic of Lithuania.
during the writing of this article, financial market regulation and supervision began major changes in Lithuania, i.e. by the decision of the Government of Republic of Lithuania conception of the Lithuania financial sector Supervisors interconnection had beed approved\textsuperscript{143}. The main idea of this conception is to combine the above analised financial market supervisory authorities into a single, for the purpose of carrying out common institutional supervision of financial market, i.e. it will be liquidated the Securities Commission and the Insurance Commission and their oversight functions will be transferred to the Bank of Lithuania\textsuperscript{144}. However, in the view to the fact that this Lithuanian financial supervision reform is only at the initial stage\textsuperscript{145}, as a result currently prepared drafts of law’s, were not analyzed in this work because this is not the aim of this article.

As can be seen from this article, when the new framework were launched to the financial market regulation and supervised at the European Union level, better manageable systemic risk appeared as a result of financial crisis and can be identified at an early stages for them. Taking into account the fact that Lithuania is a member of the European Union and its financial regulation in generally is based on the core recomendations and requirements of the European Union legislation, Lithuania’s financial market regulation and supervision remain unchanged. Though the legislation will remain unchanged, there is no doubt that European Union financial market regulatory and supervision reform will have a major impact on the development of the fundamental principles of Lithuanian financial market regulation.

As can be seen from the second part of this article, Lithuanian supervision authorities will continue to be responsible for day to day regulation and supervision. The main difference is that instead of taking part in the European Union supervisory committees, now they will participate in the new established ESAs. Significant impact on fundamental principles of Lithuanian financial market regulation will have the establishement of the ESRB, i.e. the main task of ESRB is the identification of systemic risk in all financial sectors, that a result with increased systemic risk, they will have powers launch recomendation and warnings at micro level. These recomendations and warnings can be dedicated for the whole European Union, for the ESAs and for member states and its responsible supervision authorities. The fact, that ESRB through the monitoring of the whole European Union and different member states will have indirect binding powers, it will have direct impact to accountability principle at Lithuanian level, i.e. the powers of the

\textsuperscript{143}Decision of the Approval of the Interconnection of the Financial Market Supervisory Authorities of The Respublic of Lithuania, Government of the Republic of the Lithuania (2010 05 19, No 580);

\textsuperscript{144}See supra note 139: , para 36;

\textsuperscript{145}Author’s note: The first discussion (conference) of the competent authorities and interested parties, with the participation of the author of this article, took place at 2011 05 21. The main speakers was: (i) Ms. Ingrida Šimonytė, Minister of Finance of the Republic of Lithuania, (ii) Dr. Audrius Misevicius, Member of the Board of the Central Bank of the Republic of Lithuania, (iii) Mr. Ramunas Kaklauskas, Head of the Department of Law and International Relations at The Securities Commission of the Republic of Lithuania, (iv) Dr. Stasys Kropas, President of the Association of Lithuanian Banks, (v) Mr. Andrius Romanovskis, Director of the Lithuanian Insurance Association, (vi) Dr. Vitas Vasiliauskas, Chairman of the Board of the Central Bank of the Republic of Lithuania. Organizator of the conference law firm „Eversheds Saladžius“, in cooperation with the Association of Lithuanian Bank. More info on the law firm „Eversheds Saladžius“ website. <http://www.eversheds.saladzius.lt/en/news/?id=479>.
ESRB encourage that the participants of Lithuanian financial service accept full responsibility for their behavior. It would require them to act in good faith, that a result would be required to be given a fair and reliable information about the functioning of financial markets and thereby ensure a higher degree of transparency.

At the Lithuanian level, transparency will be affected through the development of necessary standards and requirements of wider access to information. Therefore, through the ESAs creation of required standards and the recommendations to the Lithuanian financial supervision authorities, will be ensured both the validity and legality of this actions. It should be also noted that besides the positive impact to the principles of Lithuanian financial market regulation and supervision, development of such legitimacy will have a negative impact too, i.e. the requirement of wider access to the information, held by some market participants, will reduce the profitability of financial market participants, especially it feels in derivatives market, which results could affect the entire economy of the Lithuania. Regardless of these potential negative impact, it should be noted that the shift of individual awareness of the principles of the Lithuanian financial market increase its effectiveness.

The author of this article believes that the major importance, in terms of changes of principles of Lithuanian financial markets regulation, will have changes for the principles of effectiveness. This principle will be affected by the unified approach to processes of supervision practice, the uniform application of rules in the Lithuania and another EU member states. The importance of this principle occurs in the situations when Lithuanian responsible supervision authorities have to cooperate with other EU member states responsible supervision authorities, performing monitoring of the global operating financial groups. In the point of view of Lithuania`s perspectives, importance is that ESAs can help reach agreements for common solutions and in case of dispute – to take dispute resolution process.

CONCLUSIONS

The hypothesis that EU financial regulatory and supervision reform will revolutionize the understanding of the fundamental principles of Lithuanian financial markets regulation has been proved.

1. The basis of the theoretical and practical studies can argue that financial regulation and supervision require effectiveness in decision making, accountability in ensuring that decision making is transparent, providing clear lines of authorities between those who make decisions and those who are subject to them, and legitimacy in influencing to the countries setting of international standards.

2. Constructive cooperation of the European competitive authorities with the Lithuanian responsible supervision authorities of the financial market ensure proper, based on fundamental principles of financial law, like transparency, efficiency, accountability and legitimacy, work of new framework of European financial regulatory and supervision.

3. The new framework of the European financial regulation and supervision is different from the one which was before the crises. The authorities which were established after the reform are performing the prudential macro and micro European Union financial
regulation and supervision. The main difference is that ESAs will have ability to influence and in some cases prohibit the actions of responsible supervision authorities of the Lithuanian financial market. The creation of the new monitoring mechanism will increase the level of accountability in Lithuanian financial law.

4. Analysis of the main causes of the global financial crisis can argue that the main factor of the financial crisis was instability. The proper financial regulation and supervision must be applied to the participations of the whole financial market. The stricter rules ensure proper and reliable information about the work of the financial market to the investors and general institutions. As a result it will change the understanding of the principles of the transparency.

5. Under the regulation and supervision of cross border financial groups make a possibility to agree on common decisions. Cooperation of the Lithuanian responsible supervision authorities with the others Member State supervision authorities or ESAs, will ensure maximum effectiveness of the Lithuanian financial regulation and supervision.

6. The principle of legitimacy will be enshrined only through the ESAs creation of required standards and the recomendations of the Lithuanian financial supervision authorities.

7. Only the interaction of the principles of the accountability, transparency, effectiveness and legitimacy will create a suitable mechanism for monitoring the systemic risk of the Lithuanian and the whole European Union financial regulation and supervision.

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SANTRAUKA

ES FINANSŲ REGULIAVIMO IR PRIEŽIŪROS REFORMOS ĮTAKA PAGRINDINIŲ LIETUVOS FINANSŲ RINKŲ REGULIAVIMO PRINCIPŲ VYSTYMUISI


Siektant išsiaiškinti, kaip ES finansų reguliavimo ir priežiūros reforma įtakos pagrindinių Lietuvos finansų rinkos reguliavimo principų vystymui, autorius yra iškelia hipotezę – ES finansų reguliavimo ir priežiūros reforma turės įtakos pagrindiniams Lietuvos finansų rinkos reguliavimo principams. Tuo tikslu šiame straipsnyje, siekti išanalizuoti esmines ES finansų reguliavimo ir priežiūros reformos įtakas pagrindiniams Lietuvos finansų rinkos reguliavimo principams. Tai pradėjo būti siekiant įsivaizduoti įvairias situacijas: (i) įsivaizduoti įvairias situacijas, kuriose finansų rinkos reguliavimo ir priežiūros reformos įtakos esminiams pagrindiniams Lietuvos finansų rinkos reguliavimo principams; (ii) įsivaizduoti įvairias situacijas, kuriose finansų rinkos reguliavimo ir priežiūros reformos įtakos esminiams pagrindiniams Lietuvos finansų rinkos reguliavimo principams; (iii) įsivaizduoti įvairias situacijas, kuriose finansų rinkos reguliavimo ir priežiūros reformos įtakos esminiams pagrindiniams Lietuvos finansų rinkos reguliavimo principams; (iv) įsivaizduoti įvairias situacijas, kuriose finansų rinkos reguliavimo ir priežiūros reformos įtakos esminiams pagrindiniams Lietuvos finansų rinkos reguliavimo principams.

Pagrįstai galima teigti, kad iki šiame moksliniame straipsnyje atliekamo tyrimo, apie šiame moksliniame straipsnyje nagrinėjama ES finansų reguliavimo ir priežiūros reformos įtaką pagrindinių Lietuvos finansų rinkos reguliavimo principų vystymui, iš esmės nebuvo atliekama. Tam yra keletas subjektyvių priežasčių: (i) ši reforma praktinės lygmens ir pradeda gatvęs įgyvendinti tik nuo 2011 m. sausio 1 d.; bei (ii) atsižvelgiant į tai, jog Lietuvos finansų rinkos reguliavimas yra vykdomas trijų nepriklausomų institucijų, todėl galime teigti, kad šis straipsnis nebuvo atliektas sektoriųse bankų, draudimo, vertybinių popierių ir pan. Atsižvelgiant į auksčiausias sektoriųse pateiktas priežastis galima teigti, kad šis straipsnis nebuvo atliektas, kuris detaliai analizuoj
ES finansų reguliavimo ir priežiūros įtaką Lietuvos pagrindinių finansų rinkos reguliavimo principų vystymuisi.


**Antruoje straipsnio dalyje** analizuojama vykdoma ES finansų rinkos reguliavimo ir priežiūros reforma. Prieš šią reformą finansų rinkos reguliavimas ir priežiūra iš esmės buvo sukonceptuota nacionalinaiame lygmenyje – kompetentingas finansų rinkos priežiūros institucijos vykdydavo savarankiškai tik įvairių atvejų, kuriems finansų rinkos reguliavimą ir priežiūrą naudojo neatsižvelgdamas į būtinybę kompleksiniams reguliavimui ir priežiūros veiksniams derinimui. ES finansų reguliavimo ir priežiūros reformos pasekė, kad finansų reguliavimas ir priežiūros makro lygmenyje ir Europos finansų rinkos priežiūros sistema, kuri yra atsakinga už bendrijos finansų rinkos reguliavimą ir priežiūrą mikro lygmenyje. Atlikus vykdomos reformos analizę galima daryti išvadą, kad naujasis ES finansų rinkos reguliavimo ir priežiūros mechanizmas, tik tada veiks efektyviai, jei vyks konstruktyvus makro ir mikro lygmenės finansų rinkos priežiūros institucijų bendradarbiavimas.

**Trečioje straipsnio dalyje** yra skiriama dėmesys sisteminės rizikos teisiniam reglamentavimui bei jos tinkamam suvokiui. Teorinėse ir praktinėse teisės studijose sisteminė rizika suvokiama kaip, kad dėl vieno dalyvio negalėjimo įvykdyti savo išpareigojimą sistemoje kitų dalyvių negalės laiku įvykdyti savo išpareigojimus, ko pasekėje gali kilti didelės likvidumo ar kreditų problemų, gali išlaikyti savo finansų rinkos sistemos stabilumui dėl tokio išpareigojimų neįvykdymo. Operacinės ar finansinės problemas gali lemėti tokį negalėjimą įvykdyti išpareigojimus. Taigi, kaip matoma iš sisteminės rizikos apibrėžimo, pagrindinis finansų reguliavimo tikslas yra išvengti ar minimalizuoti riziką įtakos jaučiantis finansų rinkas su tikslu apsaugoti klientus ar vartotojus nuo nepageidaujamų pasėkmių žlugus bankams ar draudimo kompanijoms.

Lietuvos finansų rinkos priežiūrą atlieka trys neįpraklausomos priežiūros institucijos: (i) Lietuvos bankas, kuris atsakinas už kredito ir mokėjimo įstaigų priežiūrą, (ii) Lietuvos Respublikos vertybinės popierių komisija, kuri turi priežiūros jurisdikciją vertybinės popierių rinkai bei atlieka investuotojų apsaugą bei (iii) Lietuvos Respublikos draudimo priežiūros komisija, kuri priežiūrai draudimo, perdraudimo, draudimo bei perdraudimo brokerių veiklas. nors, išvengiant ES finansų reguliavimo ir priežiūros reformą, Lietuvos atsakingos institucijos išskiri atsakingos už kasdieninį reguliavimą ir priežiūrą, tačiau tai
turės neabejotinos įtakos Lietuvos pagrindinių finansų rinkos reguliavimo principų vystymuisi. Taigi, galima teigti, kad įgyvendinus reformą bei esant būtinybei, Lietuvos finansų rinkos subjektai privalės atlikti šiuos veiksmus: (i) teikti teisingą ir išsamią informaciją apie finansų rinkos funkcionavimą; (ii) prisiminti atsakomybę už savo veiksmus; (iii) elgtis sąžiningai.

REIKŠMINIAI ŽODŽIAI
Finansų teisė, finansų rinkos reguliavimas, sisteminė rizika, ES finansų reguliavimo ir priežiūros reforma, finansų teisės principai