IS PRINCIPLE BASED LEGISLATION SMART CHOICE FOR CAPITAL MARKET'S REGULATION

***Borut Stražišar* ***

Abstract

Global financial crisis in 2008 posted numerous questions about the reasons and triggers. In past three years world's economic literature has been full of academic articles analysing each reason or trigger and scientific explanations of possible connections. Majority outcome was, that key factor was excessive use of derivatives and synthetic financial products, which were under regulated or not regulated at all. The outcome was that countries with developed financial markets introduced new regulations and controls in the field of derivatives and synthetic financial products. Term "systemic risk" was introduced in global financial market. But will this approach really prevent such global crisis? Submission is divided in three parts.

First part deals with the theory of principle based regulation. Principle based regulation was firstly introduced in UK and latter accepted by European Union in the field of capital markets. It was a way, together with the Lamfalussy process, to make EU regulation acceptable for all member states. Instead of detailed prescribed behaviour, legislation texts prescribe only desirable goals. Implementation is left to each state or, even worse, to each supervised subject. So the implementation should depend on the capital market's development, capital product's structure, tradition, investment companies' size etc. From a distant view, principle based legislation could be seen as a great legislation writing's technique. It could be seen as an effective solution to regulate a fast developing field without need to change the regulation. But is it true?

Second part of the submission addresses the legal questions and problems, connected to the principle based regulation starting with the validity of regulations. Broad definitions in Market in financial instruments Directive (MiFID), introduced for fast adaptation to new financial products and instruments, are now turning into dinosaurs. Contrary to US's fast action, European Union is still discussing whether spot forex trade is financial instrument or not. On the other hand, broad and unclear definitions, represents a friendly environment for new casino's financial products. Even recognised financial instruments (like derivatives and synthetic financial instruments) are recognised as gambling contracts by national courts within European Union. Problems with legal enforcement of financial contracts are mentioned also in common law's literature. There are numerous pages describing the economic and financial essence of each derivative or synthetic financial instrument. But the chapters, dealing with the legal aspects, are short and end with a similar advice: "due to small number of case law and the danger, that courts could interpret such contracts as a gambling contract, we strongly advise to settle all disputes outside the court." In case of numerous defaults unenforceability of contracts could be the poison pill for the trust in capital markets. Accepted solutions could also be a problem for administrative or criminal sanctions. Broad and unclear definitions could violate the basic principle "nullum crimen sine lege praevia." And least but not last, in modern financial world sins are made in interpretations of details and not of principles.

Third part of submission deals with the necessary assumptions for a workable principle based legislation. It starts with basic legal culture and generally accepted rule of law. It deals with the corporate culture, consumer's organizations, financial markets and capable supervisors. Only when all the actors perform their expected roles, the principle based legislation could work properly.

Keywords: Principle Based Legislation, Capital, Emerging Economies, Egyptian Revolution

JEL classification: K22, K23, K42, G28

** Senior lecturer, Fakulteta za komercialne in poslovne vede, Lava 7,Celje; ERUDIO IC, Litostrojska cesta 40, Ljubljana*
E-mail: borut.strazisar@guest.arnes.si

1. Introduction

We could compare financial crisis in world economic system with the snow at the begging of winter. It's natural phenomena, but every time surprise us and causes a lot of troubles. With time we get used to it and we adapt our lives to the new weather conditions. Only the weather experts make a debate whether the snow came to early or about its quality and quantity. For most ordinary people with financial crisis is the same. Everyone expect also the bad times but everybody is surprised when they come. And after a while most of us adapt to new economic situation. There is only one slice difference – we know the mechanism of snow formation (which is always the same); we always don't know the mechanisms of financial crisis (which are different). But is this really true?

Great depression's lesson was that under regulated financial market is a gold mine for speculators with precise mechanisms of market abuse and insider trading. The result in the States was new legislation on securities and stock exchange.[1] At that time the rampant practice of buying on margin made the effects of the stock market crash worse. In margin buying, an individual could purchase a share of a company's stock and then use the promise of that share's future earnings to buy more shares. Unfortunately, many people abused the system to invest huge sums of imaginary money that existed only on paper.

Global financial crisis in 2008 posted numerous questions about the reasons and triggers. In past three years world's economic literature has been full of academic articles analysing each reason or trigger and scientific explanation of possible connections. Majority outcome was, that key factor was excessive use of derivatives and synthetic financial products, which were under regulated or not regulated at all. The outcome was that countries with developed financial markets introduced new regulations and controls in the field of derivatives and synthetic financial products. Term "systemic risk" was introduced in global financial market. But will this approach really prevent such global crisis? So we come to the same position as it was in great depression – under regulated market with mass usage margin's buying. The only difference is that the financial hole is now a lot bigger than in 1930's due to more greed and fastest trading systems. In financial world the rule of the "wild west" was generally accepted –not by legislation, but by intentionally exclusion some of financial world from legislation.[2] It was believed that development of financial world is too fast to be followed by state legislation. So the best way is to let the market forces and self-regulation do its work. And profit's maximization leads our financial world from Enron case[3] to Madoff's Ponzi scheme. By the end of the day investor's confidence in financial instruments and markets was gone. And everybody starts talking about the crisis of trust. Result was that governments start seeking the measures to return trust in capital markets.[4]

In this submission I won't discuss about the economic or financial reasons for the crisis. It's the task for financial economists. It's mere theoretical question what is the real value of synthetic or derivative instrument.[5] It's mere a theoretical question also whether the credit rating grade is A+ or A.[6] These are instruments of fictional financial world which have unlawful effect on everyday world. The intention of this submission is to discuss the suitability of legal solutions for present financial markets.

2. Principle based regulation

Market in financial instruments Directive (hereinafter MiFID) and also Slovenian Law on market in financial instruments introduces new legislative approach. It's so called principle based legislation. It's not a totally new approach – such approach was partially introduced at the beginning of 1990's in the field of European standardisation with so called "new approach". Basic idea of such solution is that legislation doesn't contain exact actions but only the final goals that should be achieved.[7] There are also some imperative articles but the basic idea is to achieve goals – means and ways are in the hands of

1 In 1933 Truth-in-Securities Act was introduced. This act requires anyone offering stocks, bonds or other securities for sale to make a "full and fair disclosure" of financial and other information relating to the issues involved. It also mandated that companies disclose the securities holdings of their officers and directors. This was after years of dishonest dealings by investors seeking to cut their losses short as the Depression worsened. In the same year also The Glass-Steagall Act was introduced. It's also known as the Banking Act of 1933 and prohibits commercial banks from engaging in the investment business. In 1934 Securities Exchange Act was introduced. This act sought to rid the stock market of an epidemic of unfair and dishonest practices. It also created the Securities and Exchange Commission to carry out its regulations.

2 E.g. in the States with the modernisation of Commodities Act.

3 This was the classic case of auditor's conflict of interests. And the last crisis showed the credit-rating agency's conflict of interests. So the main question in last sovereign's debt problem is why creditors still believe credit-ratings agencies even though they showed that their analyses are not trustworthiness. It's also the big question why the national legislations still tolerate such agencies and their influence on investors and capital markets.

4 Latest debt's crisis in Europe has shown that no such measure was found yet.

5 Although such financial instruments surpass the basic legal rule "Nemo plus iuris in alium transferre potest quam ipse habet."

6 The case of bankrupted banks in the States (e.g. Goldman Sachs) showed that credit ratings are more or less the same as the predictions of the gypsies with the glass ball.

7 In legal text this is shown in syntax "should have appropriate…"

market participants. Imperative norms are necessary for the sanctions. Principle based articles aren't appropriate for the sanction system – the basic legal principle "nullum crimen sine lege praevia" could not be achieved with such type of norms.[8] Principle based legislation have the following features (Balck, Hopper in Band 2007, 192):

- it's written in broad manner so it's appropriate for flexible use in the fast developing industries;
- it contains qualitative terms and not quantitative terms (fair, appropriate, reasonable,…);
- it contains purposes for each article;
- it's applicable in whole spectre of activity;
- it contains behavioural standards (experience, integrity, care,…);
- standard's violation should base on guilt;
- sanctions are civil but under the administrative or criminal law.

Principle based legislation should have the following positive effects (Balck, Hopper in Band 2007, 195):

- higher management is active in the internal regulative procedures;
- core is the intention of the regulation and not the exactness;
- flexibility allows development of new business models, products, strategies and internal procedures;
- allow higher degree of regulator's response to the market developments;
- allow concentration on the core questions;
- minimise complexity and maximise harmonization;
- allow cooperation between regulator and company and introduce targeted supervision (in case of good intention and bad market information).

Financial crisis in 2007 started academic discussion about the appropriateness of principle based legislation for financial markets. Such approach should have the side effect that system is less predictable and it allows the retrospective validity of norms. Users could and are also misusing such system to set their regulations on the prescribed minimum (Black 2008, 426). It's the problem connected with self-regulative organizations. Development of self-regulation was connected with the idea of regulatory flexibility what should result with the higher quality of goods and services.[9] Final result was that minimal standards were accepted as optimal and that the goals were achieved with minimal financial and organizational inputs and changes.[10]

Black (Black 2008, 427-428) describes seven paradoxes of principle based legislation:

- explanation paradox – norms are flexible but they could become very exact with the use of interpretative rules;
- communication paradox – it arises out of the different regulation's interpretation from different regulators;
- harmonization's paradox – regulations allow creativity, but at the same time, because of uncertainty, the users take the conservative approach;
- paradox of supervising and implementation – with the retrospective explanations the supervisors are in risk that their procedures would be annulled;
- paradox of internal management – flexibility of internal supervising system could result in its inoperability (because of too much regulations);
- ethical paradox – retirement that users should decide for the degree of harmonization could result in bad decisions;
- paradox of trust – trust in system should exist before the regulation enter into force.

Principle based legislation could provoke very conservative actions from the part of users, because they want to avoid possible actions against them and possible bankruptcy procedures (Schwarcz 2009, 177). This is seen also in Slovenian market with the lack of new financial products and services. Also investment companies choose only investments that give the ensured return.

Burgemeestre and others (Burgemeestre, Hulstijn in Tan 2009, 39) define the following differences between standard norms and principle based norms:

8 This is the reason that in UK, which is the principle based legislation's country of origin, monetary sanctions are treated as civil sanctions and not sanctions within administrative or criminal system. Otherwise the prosecution of such behavior could be illegal.

9 Self-regulation is not a big invention of the 20th century. It was present in the middle age in European countries within professional organizations (e.g. guilds in Germany, Austria and Slovenia). At the begging self-regulation was intended to protect certain profession from the outside (incoming of new professionals) and inside (protecting of competition and trade secrets) dangers. Self-regulation had had in those period two main advantages. First advantage was that professional organizations could change the insufficient rules either by changing the articles of professional codes or by changing the interpretation of certain article. Such solutions allowed the use of up to date legislation which covered the main needs of craftsmen. The second advantage was the use of such professional legislation by the professional arbiters. Because of clear professional language in such codes arbiters didn't need deep legal interpretation of written norms and the procedure was short with no lawyers involved. In the 18th century the state took control over the professional orders and also included some of the self-regulation norms in the state laws. So the state gained the right to control professional self-regulation and in certain cases intervened with the state legislation when the self-regulation's solutions were in contrary with state interest. Such solution we can still find nowadays in certain European legislation (e.g. Germany, Austria), where the competent minister has the right to withhold the self-regulation which is contrary to the public interest.

10 So called dimmed mirror effect.

Table 1. Differences between standard norms and principle based norms

Dimension	Principle based norms	Standard norms
Time	Ex post	Ex ante
Conceptual	General/universal/abstract	Specific/individual/concrete
Functional	Great discretion	Less discretion
Response act	Declarative (what)	Procedural (how)
Expected knowledge	High	Low
Exceptionality	Generally allowed	Only if allowed
Dispute existence	Depends on weight	No disputes

Source: Burgemeestre and others (Burgemeestre, Hulstijn in Tan 2009, 39)

Table 2. Typology of regulatory institutions

	Regulatory institutional model			
	Prescriptive	Outcome-oriented†	Process-oriented‡	
			Management-based	Meta-regulation
Regulatory foci	Prescribed actions	Outcomes	System design	Systemic learning
Compliance determination	Adherence to prescribed actions	Achievement of acceptable results	Acceptable planning (and implementation) of systems and controls	Systems and controls are shown to yield learning and improved (proxy) outcomes
Nature of rules	Detailed specification of required actions	Output specifications	Design process specifications	Goal-oriented principles
Basis for achieving regulatory goals	Adherence to prescriptions assumed to meet goals	Outputs are closely associated with goals	Systems are designed to meet goals	The interim (proxy) outcome of regulatees' systems is evaluated and controls are readjusted to improve performance
Relevant circumstances	Organizations are homogeneous and regulators have a good understanding of the association between systems and achievement of regulatory goals	Organizations are heterogeneous or markets are unsubtle or both, yet regulators and regulatees nonetheless have reasonable understanding of what good outcomes look like	Organizations are heterogeneous or markets are unstable or both, yet regulators and regulatees nonetheless have reasonable understanding of what good control systems look like	Organizations are heterogeneous or markets are unstable or both, and both regulators and regulatees have limited understanding of what good outcomes or good control systems or both look like

†Including performance-based regulation, standards-based regulation, and principles-based regulation.
‡Including management-based regulation, enforced self-regulation, New Governance principles-based regulation, and meta-regulation.

Source: Gilad 2010, 487

Principle based regulation represents so called meta-regulation or belong to a family of "process-oriented regulation" that mandates and monitors organizations' self-evaluation, design, and management of their first-tier operations (e.g. food processing) and their second-tier governance and controls (e.g. internal quality assurance over food processing). "Meta-regulation," is a dynamic process-oriented regulatory institution. Meta-regulators expect organizations to not only identity risks and devise internal control systems, but also to continuously evaluate the efficacy of their internal systems and incrementally improve them in light of this evaluation (i.e. double-loop learning). Regulatory monitoring focuses on the quality of regulatees' self-assessment of the association between their systems and perceived outcomes and on the actions that they take in light of these assessments. Meta-regulation does not end with regulators holding organizations accountable for incremental improvement of their systems and proxy outcomes. Regulators should consciously engage in learning about the industries and the problems that they are trying to manage, assess the impact of their strategies, and continuously improve their regulatory strategies accordingly (i.e. triple-loop learning) (Gilad 2010, 488).

From legislative point of view, financial crisis in 2008 was a product of different factors:

- strong lobby organizations who succeed to introduce "wild west" financial legislation either by not regulating certain instruments or by omitting certain strict rules;[1]
- weak governments;[2]

1 E.g. prohibiton for banks to deal in investmnent services.

2 Either weak government was non-effective because it has to deal with the problem of coalition coordination and so has no time and energy to solve the real life problems. Or the government intentionally leaves the certain field underegulated to maintain peace within the governing coalition. In both cases the certain economic activity is forced to make self-regulation to protect its interests.

- greed of investors;[3]
- conflict of interest within regulators and rating agencies.[4]
- lack of legal enforceability for derivative and hybrid financial instruments.[5]

There are numerous reasons why principle based legislation became so popular within self-regulatory organizations including exchanges and broker dealer associations. First advantage of self-regulation is the low cost for the state. Low cost effect works in two directions. First the state has no expenses to monitor the certain economic activity for the legislative purposes and for drafting such legislation. Second state has no expenses for implementation and inspection of needed legislation. Both expenses are on the shoulder of self-regulatory organization or its members. A cost of inspection is lower because the set regulations are normally accepted by majority of organization's members (what implicit means that they already comply with such regulations). On the other hand inspection is paid ether by self-regulative organization (at the end paid by the members) or by the offender. The negative part is that such costs are sooner or later transferred in the cost paid by the consumer. Due to the private nature of self-regulative organizations public has no insight to the costs of adaptation and implementation of self-regulations and the effect of these costs on the final price of certain good or service.

Self-regulation's second benefit is the flexibility of quality and quantity of norms. Self-regulatory organization adopts its norms according to the need of its members. We could expect that certain activity will be sufficiently and clearly regulated. The negative part is than members could misuse their rights and over regulate their activity in with such regulations establishing barriers to new entries. On the other hand with the use of professional language and terms self-regulation becomes for the consumer unclear and non-understandable. Another problem represents publication of self-regulation, if is not published in official journal or published only in journal accessible only to the members of self-regulative organization.

Another benefit form self-regulation is establishing the minimal standards of goods and services provided by members of self-regulation organization. Only the providers have all the information about the optimal quality which can be achieved by present knowledge and technology. So by setting minimal quality in self-regulation, providers can show consumers what they can expect on market and what can be taken as a reference to judge a quality of provided goods or services. So self-regulative organization makes the internal selection between its members and causes the close down of bad quality providers. On the other hand this solution has negative side that minimum quality soon can become also a maximum quality landmark for all the members. This can happen in case that self-regulation organization has also authority to set the recommended price for such goods or services. In case that consumer is ready to buy the set minimum quality for the set maximal price and that market has no other mechanisms to reward providers with better quality, then such providers will soon lower their quality to the set quality. So on long run market can lose the diversity of products and services. Right of self-regulation organization to set minimal quality can lead also to unjustified elimination of small providers. This can happen in the case that big providers have enough voting rights to set in self-regulation such requirements that are for small providers too expensive or technically unattainable. Problem is even bigger, if self-regulation organization is the highest professional authority and that competent court (normally constitutional or supreme court) decides that has no competence to judge about the set standards.

One of the benefits of self-regulation is also the possibility to keep a distance between professional questions and political questions. By delegating certain legislative powers to self-regulative organizations, politics clearly express their intention not to interfere into professional questions. So the state prevents cases in which the providers could be divided between the opposite requirements form state legislation and professional ethics or standards. Danger of such solution is that the set standards in facto don't cover the real needs and expectations of consumers or public interests. If self-regulation organizations don't have strict rules to prevent lobbying, than could happen that the lobby interest can prevail over the professional interest or, even worse, over the benefit of citizens. On the other hand such delegation of powers can lead to the problem of franchise state. Such processes can lead to the solution that lobbies can form, through self-regulatory organization's regulation, the citizen's expectations and landmarks. The final result can be even the unifying of all three powers (legislative, executive and legislative) in only one organ without the possibility that citizens could control the execution of mentioned powers.

3 Seen in growth of high yield financial instruments.

4 First real discussion about the conflict of interest problem went on in Enron and Parmalat case. In both cases there was a serious discussion about the possible conflict of interests within the private supervisors of private business (auditors, public notary, supervisory boards…). The same debate went out also in some cases of self-regulative organizations with certain public authority (e.g. professional chambers, professional orders).

5 In fact, derivative and hybrid financial instruments are mostly treated by courts as gambling contracts and they are unenforceable. There are only few cases in which debtor were sentenced to pay the debt from such instruments (n.b. these were the cases of clear fraud – so the court tried hard to find out way for judgement).

Cases such were energy breakdown in California,[6] Enron[7] or Parmalat[8] bring out the question of the self-regulation's efficacy and the justification of deregulation. On the other hand such cases bring out also a question of market law's efficacy. By the end of the day we are dealing with reregulation of deregulated activity. I think that all the legislative processes in last 100 years could be shown as a constant circulation. The state is constantly moving from the state regulation towards either delegated deregulation or self-regulation and then to reregulation.

3. Prerequisites for principle based legislation

By my opinion financial crisis in 2008 posted one crucial question: "Is modern society and institutions of democratic state really ready for principle based legislation?" Which are prerequisites for functioning principle based legislation?

Firstly, regulatory organization should make and publish the main goals of financial policy in forthcoming year. The adopted regulatory policy should give the clear signals which goals are more important and which are less important. So the adopted policy base on:

- findings of supervisory procedures (where are the weaknesses of system, where the expected dynamic is slowing);
- professional analyses about each factor's importance for normal functioning of capital markets (which self-regulatory measures should be implemented);
- regulator's priority on certain goals (how to achieve coherent development of financial market).

If there are no clear goals for self-regulation in each year with such omissions regulator actively promotes unstable financial markets. We must not forget that financial institutions are economic subjects which are obliged primary to deal for self-interests and interests of shareholders. If the regulator lets defining primary goals to the financial institutions causes anarchy on capital markets. Even more partially sanctioning is against logic of principle based legislation. Function of financial institutions is not the promotion of financial market stability. Their function is to guarantee their financial stability with minimal respects for investor's protection. So the publication of regulator's policy is necessary that:

- investors are aware with the degree of their protection in each financial market and each group of their investments;
- investment companies are aware with working priorities and so are able to plan enough financial means to achieve given goals;
- shareholders are aware with possible new obligations towards their companies;
- exchanges and clearing houses are aware with possible changes in their information systems.

Secondly all essential systemic and organizational risks should be addressed and properly dealt with. It's a procedure of risk's quantification and qualification and adopting all necessary measures to minimise such risks. The tasks of regulator are:

- definition of main systemic risks for each year based on analyses and known methodology;[9]
- quantification and qualification of each risk on the risk scale;
- definition of main measures to prevent risks or the reasons not to act;
- publication of all adopted measures and policy.

Thirdly, there should be professional and well informed regulator. Such regulator publishes accepted market practices. They are "condition sine qua non" for clear functioning of capital markets. Accepted market practices allow development of new instruments and new techniques on stock exchange. The line between allowed actions and market abuse actions is sometimes not so clear.

Fourthly, regulator should give the concordance to the codes of conduct or recommendations of professional associations. In such way regulator gives more importance to the professional associations. With recognition such associations became more active in searching new solutions and state get more professional support when changing regulations.

Least but not last, regulator should publish all supervisor's measures and given licences. In such way all the market participants could see the regulator's value system. So each market participant could test its solutions against regulator's practice.

What should be the country's approach towards workable principle based regulation? Legislator should firstly decide in which questions enough to set only basic principles without further detailed regulation. In the field of financial and banking law in Republic of Slovenia there is mere copy-pasting of EU directives.[10] By my opinion state's legislator should not only adopt principles[11] and set basic goals but should also set more detailed regulations in following cases:

6 More about this problem see Taylor and VanDoren (Taylor in VanDoren 2001) and Weare (Weare 2003)

7 More about this problem see Hilary and Lennox (Hilary in Lennox 2005), Graham and Woods (Graham in Woods 2006) and Rhode and Paton (Rhode in Paton 2009)

8 More about this problem see Pagano and Immordino (Marco in Immordino 2005) and Campbell (Campbell 2006)

9 No methodology and analyses causes noises on capital markets and enable higher degree of speculations on the account of small investors.

10 Authors of such legislation give simple explanation that this is the only way the EU legislation could be implemented in national legal system. If we look to Slovenian Market in Financial Instruments Act, we could see that more or less is a mere copy paste form EU directives. So all the questions are simply forwarded to financial companies – no matter whether this is possible or is legislative question.

11 Basic principles are natural part of any of national law.

- when there is a case that financial organizations doesn't have enough knowledge and human resources to adequate regulate set principles and goals;
- when there is a case that from national economy is justified to implement only one or definite ways to achieve the set principles and goals;
- when the history shows that the freedom of regulation could lead to greater illegal practices, market manipulations and under-regulation;
- when the violation of articles lead to administrative or criminal procedure or could end in revoking the given authorizations;
- when the delegated regulation will lead to the expansion of rules what will lead to the situation in which protection of small investors won't be clear.

Next step is to establish the professional and ethical regulator. Setting up the regulator with clear competences and responsibilities is necessary for workable supervision and deregulating system. Regulator should have enough professional knowledge and authority to set and impalement policy on national financial market.[12] Setting regulator with no competencies or no responsibilities is waste of taxpayer's money. On the other hand such regulator could be in desire to abuse its powers for the promotion of its leaders without the real intention to make the financial market properly functioning. In contrary – such system could lead towards destruction of national capital market. In such cases is better to have only one regulator for all three fields (banks, investment companies and insurance companies) with competent organs and people. There should be the clear obligation for regulator to publish all necessary information so that market participants could clearly see their rights and obligations.

After solving the question of regulator, state should build a workable system in which there is a clear dialogue between all market participants (consumers, investment companies, stock exchange, clearing house, professional associations, academia, etc.). Principle based legislation is in fact the framework which should be filled by essence. Parts of principle based regulation are also compromises or agreements[13] between all market participants. If regulator sets system in which only one part of financial market has right to participate within policy making process, such system leads towards mistrust of small investors and by the end of the day to dead capital market.[14] Actors' active participation in policy making procedure should be part (and it is part) of any democratic society.

At the end state should build the effective dispute settlement system. Such system should be transparent and professional. Such system should have strong prevention against conflict of interests and revolving door problem.

References

1. Balck, Julia, Martyn Hopper, in Christa Band. „Making a success of Principles-based regulation." *Law and Financial Markets Review* (Hart Publishing Ltd.) 1, št. 3 (2007): 191-206.
2. Black, Julia. „Forms and paradoxes of principles-based regulation." *Capital Markets Law Journal* (Oxford University Press) 3, št. 4 (2008): 425-457.
3. Burgemeestre, Brigitte, Joris Hulstijn, in Yao-Hua Tan. „Rule-based versus Principle-based Regulatory Compliance." Montaža Guido Governatori. *Proceeding of the 2009 conference on Legal Knowledge and Information Systems: JURIX 2009: The Twenty-Second Annual Conference.* IOS Press Amsterdam, 2009. 37-46.
4. Campbell, John L. „Institutional Analysis and the Paradox of Corporate Social Responsibility." *American Behavioral Scientist* (Sage Publications) 49, št. 7 (2006): 925-938.
5. Gilad, Sharon. „It runs in the family: Meta-regulation and its siblings." *Regulation & Governance* (Wiley-Blackwell) 4, št. 4 (2010): 485-506.
6. Graham, David, in Ngaire Woods. „Making Corporate Self-Regulation Effective in Developing Countries." *World Development* (Elsevier) 34, št. 5 (2006): 868-883.
7. Hilary, Gilles, in Clive Lennox. „The credibility of self-regulation: Evidence from the accounting profession's peer review program." *Journal of Accounting AND Economics* (Elsevier) 40, št. 1-3 (2005): 211-229.
8. Marco, Pagano., in Giovanni Immordino. *Optimal Regulation of Auditing.* CEPR, Facoltà di Economia; Università di Napoli Federico II, Napoli: Facoltà di Economia, 2005, 37.
9. Rhode, Deborah l., in Paul d. Paton. „Lawyers, Ethics, and Enron." V *Enron and Other Corporate Fiascos: The Corporate Scandal Reader*, avtor Jeffrey D. Van Niel & Bala G. Dharan's Nancy B. Rapoport, 625-658. Foundation Press, 2009.
10. Schwarcz, Steven L. „The 'Principles' Paradox." *European Business Organization Law Review* (T.M.C.ASSER PRESS) 10, št. 2 (2009): 175-184.
11. Taylor, Jerry, in Peter VanDoren. „California's Electricity Crisis: What's Going On, Who's to Blame, and What to Do." *Polycy Analysis*, 3. July 2001: 1-35.
12. Weare, Christopher. *The California electricity crisis: causes and policy options.* Public Policy Institute of California, San Francisco: Public Policy Institute of California, 2003, 140.
13.

12 Slovenian reality is far from this standard – regarding the professionalism of agency's council as regarding its moral authority. Clear evidence for lack of both qualities is seen in Slovenian stock exchange and in investment management companies. Parliament's and government's relation towards Slovenian capital market is shown in academic and professional education of nominated persons in agency's council (in comparison with regulators in seriously developed countries or Slovenian Central Bank). By my opinion the simple closure of Securities market Agency in Slovenia wouldn't be noticed by anybody (except the members and employees of this agency).

13 Written or oral.

14 What could be also the case in Republic of Slovenia.