Financijske institucije i tržišta Europske unije - regulacija i supervizija

Financial institutions and markets in the European Union - regulation and supervision

MARTA BOŽINA BEROŠ
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"And once the storm is over, you won't remember how you made it through, how you managed to survive. You won't even be sure, whether the storm is really over. But one thing is certain. When you come out of the storm, you won't be the same person who walked in. That's what this storm's all about."

Haruki Murakami

The economic and financial crisis that reached its peak in 2008 left no part of the financial system untouched. At the European level, it highlighted the need for dauntless initiatives to improve the insufficient regulatory rules, since the European system of regulation was in great need of *"*repairs*"* (de Larosière, 2009). One consequence of the crisis, and not in Europe alone, was that more regulation was widely advocated and indeed implemented. To rephrase part of Marukami's quote "When we come out of the crisis, regulation won't be the same as when we walked in. That's what the crisis is all about."

The financial system is by its nature dynamic and unstable, speculation and risk being inherent in its origins and development (Galbraith, 1993). On the other hand, regulation and rules come after facts (*ex facto oritur jus*), meaning that financial rules are not capable of being designed so as to anticipate financial facts, i.e. financial creativity and innovation. Accordingly, financial regulation finds it difficult to manage and control all the risks involved within the financial system. The textbook entitled *Financial institutions and markets in the EU – regulation and supervision* written by Marta Božina Beroš examines the regulation of financial institutions and markets at the European level, contributing to a critical understanding of the dynamics of financial regulation in the EU through combined studies of law and economics.

The textbook is organized in six chapters, the first serving as an introduction. The author briefly explains the genesis of financial integration, emphasizing its developmental stages in the EU context and pinpointing the challenges it poses to in European regulatory policies.

With the second chapter, the author begins to critically elaborate on the topic and introduces all the main theoretical foundations needed to puzzle out the rest of the book. Since the regulation of financial institutions and markets combines the study of regulatory theories from law and from economics, the author first of all relates these two fields by explaining the three main economic reasons for the need to regulate economic relationships juridically. Firstly, if there were no regulatory policies, trading with financial instruments, financial assets and financial transactions would be exposed to the perils of *asymmetric information* since the trading price is based on contractual terms and market developments. The author points out that one of the goals of financial regulation is to balance the rights and obligations between the contracting parties and thus allowing an informed and easier financial decision making process. *Systemic risk externalities* represent the second underlying reason for financial regulation. The aim is to avoid or alleviate the contagion effect initialized by the collapse of one financial institution that spills over to other institutions included in the system. On one hand, financial institutions often embark on excessively risky financial transactions for the sake of profit or the status of market leader. On the other hand, such negligent behaviour can endanger the fulfilment of the financial contract. Financial regulation has the goal of curtailing these two risks, i.e. the *adverse selection and moral hazard risks*, both listed as the third reason by the author.

Besides explaining the interplay of law and economics in the field of financial regulation, this (second) chapter examines the thin dividing line between regulation and supervision. Although in practice regulation and supervision frequently overlap, the author clearly distinguishes supervision from regulation and explains the models of supervision used to monitor the outcomes of implemented regulatory measures.

In the following three chapters the author carefully delineates the three areas that are subject to financial policing: (1) financial assets and transactions, (2) financial institutions, and (3) financial markets. Although each chapter outlines the main theoretical definitions and assumptions, the author focuses on the specificities within the EU's regulatory framework. So, she fleshes out assets and transactions typical for most member states (securities, bank deposits, bank loans and financial derivatives), analyses financial institutions through the lenses of European (banking) regulation as well as Basel Accords and also surveys financial markets under the MiFID (Markets in Financial Instruments Directive) framework. Moreover, in all of the three mentioned chapters, the author relates the topic to the latest global financial crisis and gives a critical discussion. For instance, special emphasis within the third chapter (Financial assets and transactions) is given to securities lending and securitization, because these have often been mentioned by public experts as the main causes of the financial collapse.

The last chapter constitutes a concluding critical review of the topic of regulatory governance in the EU, clearly distinguishing the pre- from the post-crisis period. In fact, the crisis has left no part of the financial system untouched and the European Commission has undertaken a long list of reforms narrowing down the discretionary powers of EU members. The author pinpoints centralisation and institutional consolidation as the main characteristics of post-crisis EU financial regulation. However, it is clear within the discussion that the author does not completely agree with such principles and gives arguments why the proposition of "maximum harmonization" might not be the best solution for the EU. Having in mind that the EU tightened the discretionary powers of its members not only in the field of financial regulation but also in economic governance as a whole, in the very last paragraph (p. 223) of the book she concludes the following:

> *"Unfortunately, excessive centralization and regulatory uniformity will simply ignore the interests of small(er) member states in favour of the*

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> *greater good, i.e. the stability of the Euro Area and European finance. However, the role of members can not be so easily reduced. EU policy makers and the public can continue with their plans assuming that the EU is on track to become a perfectly integrated super-state. However, it is time to become aware of the limitations of integration – political and economic. Member states are still the EU reality, even when they are part of a* sui generis *political and economic integration such as the EU, and their diversity must be respected, as must their right to protect their own economic interests."*

Financial regulation is not an easy task. Neither is writing a textbook about it. Marta Božina Beroš's manual reinforces the understanding of financial systems and regulatory governance, a topic often neglected in the Croatian literature. Although the author is familiar with regulatory theories from law and economics, the textbook discusses financial regulation from an economic perspective in the European context. The writing is not particularly challenging to read, but requires a knowledge of the basics of economics and finance. It is appropriate for use in advanced undergraduate and graduate finance courses and can serve as an excellent reference for educators and practitioners. Giving that each of the chapters begins with an overview of the chapter, a reader will easily spot and locate specific concepts of interest.

Recognizing that textbooks are not static publications, the author might pursue the matter further in a subsequent edition, detailing the particularities of the complex European multi-jurisdictional system (legislation, institutions and decision-making) and showing the legal perspective of financial regulation as well. Moreover, more emphasis might be devoted to financial supervision and its country-case examples. This would enhance the book's usefulness, develop its contribution to the topic of financial regulation and supervision, and at the same time make it accessible to a wider audience.