THE CONCEPT OF REGULATION IN ADMINISTRATIVE AND ECONOMIC LAW AND THE EMERGENCE OF THE LAW OF MARKET REGULATION

Metamorphosis of an academic discipline: from state interventionism, through Law of Market to Law of Market Regulation

The Law of Market is the Law of Economy. Primary, historical, forms of primitive markets did not call for special regulation of the market mechanism, due to the fact that potential conflict of interest existed only between a seller and a buyer, whose economic power and the level of information was similar. During the Middle Ages, the intervention of the State had been selective, not anticipating the entire market mechanism. It was mostly limited to *ex post* situations, when some among contracting parties failed to perform its obligations.\(^1\) In periods of codification of the Law of Contracts and the enactment of the first company laws and codifications of the civil law, entry of the State into the sphere of an absolute dominance of the autonomy of will of private parties should not be interpreted as a limitation of their freedoms, but quite the reverse, as an explicit guarantee of those freedoms to *bona fide* parties. Throughout that period, functions of the State amalgamated with interests of the business associations, like guilds, as it was necessary to limit personal application of commercial law to those who were entrepreneurs. Otherwise, there was a risk that others might have misused the granted privileges. The State therefore aided collective interests of the traders by enacting mandatory provisions representing the public order. However, imperative

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nature of those provisions and codes did not limit the contractual freedoms, but enhanced them to create a stable trading framework.

However, a cradle of a modern Economic Law is 'State interventionism',² an attempt of a state to eliminate market failures that appeared as a result of the economic crisis of 1930s and after the Second World War. However, identification of the failures was often provisory, usually exceeding the boundaries guaranteeing the interest of private parties and the autonomy of their wills. In the implementation of interventionist measures, including those which directly affected the business of certain enterprises, the State had deformed the market to such an extent that, under that form of interventionism known as 'Etatism' the market was practically suspended. The rationale of the intervention was, surely, the general interest: economic stability and development. But, similarly to the other projects based on good intentions, aiming to benefit interest of a broad public, such an overwhelming intervention failed properly to address the complex problem of governance, as a mechanism of solving the problem of coordination between a state and private actors.³

Therefore, the modern Law of Market Regulation had to be developed from the ashes of excessive intervention of the State. If the main priority of the Interventionist era was public interest in the market environment, then dismantling of such a mechanism called for affirmation of private interest and restraint of interventionism. This process of limiting the intervention of the State was marked in Western Europe by deregulation and privatisation. The central role of the state in regulating the economy was suppressed and displaced.⁴ However, in the process of Post-Socialist transition, this apotheosis of a private interest has often led to the reconstruction of a 'Wild Capitalism', with all attributed social conflicts. However, the role of the Law of Market Regulation is intended to create the framework for a socially acceptable market economy, by harmonising and interlinking the public and private interest.⁵ In Post-Socialist economies, Economic Law as the Law of Market Regulation should therefore reflect a compromise between the two interests, paving a way for the

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establishment of stable market institutions, thus minimising market failures of the anarcho-capitalist era.

In the period of excessive state interventionism the State proliferated the administrative regulations in the economic sphere. Administrative actions directly affected the sphere of a Civil and Commercial Law. Hence, many situations where the state has constituted mandatory limitations to private freedoms, known as ‘exceptions to market freedoms,’ were interpreted as exceptions to the principle of basic economic freedoms, such as the right to property and conduct of business. Reference to an ‘exception’ emphasize that respective right has previously existed, and was subsequently limited. As the extreme liberal capitalism was founded on the basis of an illusion of extreme individualism, so is the excessive State interventionism, which glorified the vague public interest, based on an overwhelming definition of the general interest. This implies a distinction between two types of relatively delineated legal norms. The first group comprises authentic administrative provisions of a mandatory nature apparently limiting market freedoms, while the second group represents rules enhancing the interest of the private parties. Actions of the modern regulatory State, which nowadays regulates the market, enables business operations and guarantees the welfare of the society, rather than imposes interventionist measures, are based on those rules which aim to ensure a balance between private interests of individual market parties and their associations (subjects on the side of supply and demand) and those in charge of safeguarding the general interest. Opposed to control, the primary role of the modern state is to oversee the market – using Osborne and Gaebler’s famous metaphor “steering, but not rowing”, Majone described the modern state as a “regulatory state”. The multitude of interests and regulators is calling for rules which would facilitate harmonization of the private and public interest. Compromise is to be found in limiting the private interest by interest of a group, and the group interest by general interest, and vice versa.

From a comparative perspective, in socialist economies or countries which legal systems are based on a Roman law tradition, the Law of Market Regulation was often an exclusive branch of a public law, known as the Public Economic Law or the Administrative

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Economic Law (the Administrative Business Law). Its expansion was justified by a need to raise the entire efficiency of the market, but excessive legislative intervention and command-and-control measures created compliance burdens to market participants, distracting them from optimising their business strategies. In such a way, Public Economic Law represented the antipode of Commercial Law (Business Law). However, it is important to stress out that, in parallel with Administrative Economic Law, in these countries the Law of the Economy, as an integral discipline of a mixed public-private nature, existed and faced transformation to reflect the changes of a role of the state.

For Public Law of the Economy, limitations of basic freedoms were the rule, but an exception for private law. Abandonment of an illusion of completely liberal market, especially in the context of the existing financial crisis, opens a wide sphere of balancing of individual and joint interests and changes in the role of the executive function. The executive function, including independent regulatory agencies, represent a basis of the mechanism of social regulation. The executive branch of the Government and public administration is an intermediary between the goal of the legal norm and its implementation, while the judiciary function is essentially a post-regulation. In regulating the markets, the main difference

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between a judge and a regulator is that the judge intervenes *ex post*, while regulator, as a rule, *ex ante*.\(^\text{11}\)

Executive function is charged with a mission to fulfil the goals of regulation. For the same purpose, regulators may enact implementing legislation and have acknowledged adjudicative power. In enforcing a legislative framework of the market, administration is charged with a mission to protect the public economic order and the rule of law and is expected to fulfil its tasks with a due respect of the principle of legality. As far as executive function acts in line with its statutory powers, taking an action in line with the applicable rule formally discharges a regulator from responsibility, but it does not always mean that the regulator has effectively supported a model of the market which is efficient and capable of safeguarding the envisaged economic and non-economic effects. In drafting rules regulating the market, a legislator (including the executive branch in interpreting the statutory provisions) has to bear in mind that legislation must comprise the element of elasticity, which would enable the market to function properly in the period of dynamic changes affecting market participants. Economic sphere is, without doubt, the most dynamic subsystem of a global society. Therefore, laws and regulations applicable to markets, and regulatory regimes must be reflexive, and the process of regulation must be based on the evaluation of both positive and negative effects and incentives it creates for subjects obliged to conform.\(^\text{12}\)

Unlike commercial codes which emerged in the 19\(^\text{th}\) century, the Law of Market Regulation can not be codified due to the requirement of a high elasticity and hybrid nature of norms, and as such represents structurally and thematically unarranged set of rules and broader norms.\(^\text{13}\)

Where the Law of Market Regulation has not been established on the basis of regulation of the market implemented through joint efforts of all market players, and where the executive function is not obliged to observe the principle of efficiency, this branch of law is reduced to a set of mandatory provisions which affect functioning of the market through limitations and mandatory regimes. Regardless of the fact that this was, logically, the way the modern Regulatory Law has evolved, classical administrative apparatus did not prove to be capable of fully respecting the principle of efficiency in the process of enforcement and therefore was accused of hindering the development of the economy. Law of Market


Regulation calls for the application of methods of interpretation, harmonisation and coordination.\textsuperscript{14} Hence, it is necessary to enhance the power of the executive branch, especially the independent regulatory agencies,\textsuperscript{15} which as experts may develop these methods of interpretation and coordination through institutional networks, not only at a level of national economy, but the international level.\textsuperscript{16} Modern regulators must therefore have acknowledged operational independence. In order for the regulator to be considered as an 'independent regulatory agency', in addition to its independent status it is necessary to have the three following conditions cumulatively satisfied: regulatory powers in terms of legislative and adjudicatory authority, supervisory authority and a power to take enforcement actions in supervising regulated entities.\textsuperscript{17} Such a regulator should not only adhere to the letter of law, but attempt to balance the legality, efficiency and development, and “fine-tune the relationship between economic goals and political necessities, with the imperative demands of the rule of law, justice and legal certainty, what has always been the challenge at the macro and micro-social level”.\textsuperscript{18}

Obviously, the legal discipline which was previously restrictively defined as a set of mandatory rules limiting the private autonomy and freedoms of market participants,\textsuperscript{19} is facing the problem of proving to be opportune. Mission of law is not to limit market freedoms, but to guarantee them. Mission of law is not to alter the market structure, but to preserve market institutions from those tendencies which would distort them and prevent the market from performing its main economic functions. Mission of law is not to subjugate the economy to the power of politics, but to protect the economy by preventing the unwanted effects of laws of the market. Therefore, the Law of Market Regulation cannot be conceived in light of theoretical approaches interpreting the law as an instrument of state’s monopoly of power. The interest of market participants to have stable and functioning markets is not only their private interest, it is the interest of the market itself, and the interest of the State. However, due to the fact that the development of the Public law of Economy throughout the

\begin{footnotes}
\item[16] In that sense see: E. Cohen: L’ordre économique mondial. Essai sur les autorités de régulation, Fayard, 2001.
\end{footnotes}
history of market regulation appeared to be ‘limiting’ rather than ‘enabling’, it is only since the wave of privatisations and denationalisations of the 80s that the corpus of Law of Market Regulation becomes recognized as an economic good.

It is accustomed that, when defining the nature of a certain phenomenon, one initially attempts to define it within its genus proximum, thereafter pointing to its specific traits. As the Law of Economy, the Law of Market Regulation may represent a part of the Business and Law of Commerce, taken in its widest meaning. But it would be false to try to find its place within traditional public and traditional private law. The Law of Market Regulation transcends that strict division between the public and private law. It encompasses a vacuum in between that border, and infiltrates into the sphere of the private law. The whole complex of Business Law is based on the autonomy of market transactors. In certain segments of that complex a problem of coordination between the public and the private interest appears as a problem of proportion, not of the essence. Even in the field of classical Law of Commercial Contracts, an area where mandatory provisions are exceptions to optional rules, the legislator had stipulated some obligatory norms with the aim to protect the validity of the contract as such. Obligatory norms are even more represented in the area of Company Law, where statuses of companies are determined in a much higher level of ius cogens, although the legal order supports the right of founders to choose a type of a company. In the field of Market Regulation the number of obligatory norms prohibiting certain actions or mandating specific business processes is even higher, but all these norms should be interpreted as specific regimes equally applicable to market participants who find themselves in a specific market environment. By creating a general framework through specific regimes, the Law of Market Regulation appears as a set of rules aimed to protect the public economic order and freedom of competition. But it does not attempt to do so as a derivative of interest of an endangered competitor, but in general interest of the national economy. In this sense, the nature of the norms forming those special regimes is even more mandatory in comparison with the other areas of the Business Law.

The return of private regulation of the market, followed by new supervisory role of the administrative apparatus are two parallel processes. This transition clearly emphasizes that the Law of Market Regulation can no longer be treated as a discipline which exclusively belongs to the corpus of a public/administrative law. It has been enriched with techniques and forms

\[20\] In the preface to his famous book, Ogus clearly emphasized „This book has its origin in a conviction that conventional approaches to public law and administrative law have failed to address some key issues pertaining
of private regulation and that is why it is hard to locate this area of positive law (with strong policy elements) which deals with specific legal regimes and such a modified role of the State, within disciplinary boundaries known in the legal doctrine and practice. As already mentioned, this subject used to form a part of a classical Administrative Law, as the Administrative Economic Law, and in Continental Europe is still predominantly considered as Public Law. On the other side, its complementary part, based on the harmonisation of private interests, where the State did not have such an active role but was charged with the mission to protect the freedom of competition, developed as the Law of Competition.

Despite of many changes that occurred during the last decades, branches of public law in Continental Europe could not completely comprise a new dimension of the action of State (public administration) as a partner in market regulation, which has a different logic than that of monopoly in regulation. With the enduring global financial crisis, one may be concerned about advocating institutional solutions other than a traditional central regulatory authority. However, the current economic crisis, attributed by many to a lack of central regulatory vigour, does not diminish the need for the new governance. Completely different, the crisis calls for proactive regulation. More than ever, the Law of Market Regulation is facing a challenge of how to alter the incentives of private actors so that they better ensure the public goal of stable and efficient markets.

By placing Law of Market Regulation within the corpus of Business Law, the scope of Business Law is broadened with elements of public law. Its subject is the market, but not individual contractual trade relations, but those expressing the interest of the society to regulate functioning of the market mechanism. But, it would not be appropriate to limit dilemmas on the nature of the Law of Market Regulation as an independent branch of law and course of study, only to the problem of locating it within the system of legal branches and disciplines, as it differs from those in some other features. More than any other legal discipline, the Law of Market Regulation is characterised by many non-legal (meta-juridical) determinations. Hence, its existence can not only be tested by comparing it with traditional


legal disciplines, as it can not perfectly fit the traditional model of legal branches and disciplines.\textsuperscript{23} Transcending the border between the public and the private, Law of Market Regulation as an autonomous discipline may fill a gap and overcome deficiencies which arise due to mechanical division between classical private and classical public law, protecting private or public interests.\textsuperscript{24} The main argument supporting this thesis is the fact that precise separation among two interest spheres, generally accepted after the famous definition by Ulpianus,\textsuperscript{25} is overridden in practice. Public law and the role of the State in today’s world are more concerned with individual utility.

Change in the role of administrative apparatus, change in the regulatory processes and new techniques of regulation have clearly erased the stereotype of a classical division between administrative and civil law,\textsuperscript{26} as well as on the international level.\textsuperscript{27} Most obvious example is found in the EU, where new modes of regulation, ranging from co-regulation to self-regulation emphasised the role of private law in the European multilevel regulatory architecture.\textsuperscript{28} Classical distinction between the public and private law, pursuant to interest criterion, is thus superseded. The same is with division based on character or the effect of a legal norm, differentiating between mandatory and optional. 'Identifying public with


\textsuperscript{25} Publicum ius est quod ad statem Romanae spectat, privatum quod ad singulorum utilisatem.


\textsuperscript{27} E. Benvenisti: “The interplay between actors as determinants of the evolution of administrative law in international institutions”, 68 Law and Contemporary Problems (2003), 319.

mandatory, and private with optional norms has been excessive since legal doctrine has at its
deposition the terms *jus cogens* and *jus dispositivum*».

Therefore, insistence upon reintegration of fragments of the inter-disciplinary divided segments of the normative
framework into the general framework which would enable a systematic overview of
regulation of the market, seems to be appropriate. The Law of the Economy transcends the
public-private dualism, which is commonly associated with liberal political theory.

**Law of the Market within a framework of 'regulatory capitalism'**

Central task of the modern Economic Law as the Law of Market Regulation is to
prevent the anomalies of the market mechanism and ensure stable functioning of the market. Market relationships in a modern economy are more complex than at the beginnings of
capitalism, so are the rules regulating them. Not only that production process has become
more complex, but in addition to subjects of the market on a supply and demand side, many
other subjects emerged. Those subjects and new institutions differ from typical business
enterprises in terms of economic organisation as well as their social function, such as trade
unions, professional associations etc. Even large enterprises and multinational companies
substantially differ from companies which characterized a phase of liberal capitalism by its
organisation, capital, corporate culture and the overall social influence they project. And even
more, regulatory systems became interdependent and a legal framework relating to market
systems may no longer be of a national character.

An extremely liberal concept of the market, essentially based on a hypothesis of
perfect and competitive market, obviously does not always function in the best and the most
effective way. Therefore it is necessary to identify and correct deficiencies, with other words,

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29 V. Vodinelić: «*Razlikovanje javnog i privatnog prava*», 5 Annals of the Faculty of Law of the University of Belgrade (1982), 657, p. 670.
31 D. Truchet, „*La distinction du droit public et du droit privé dans le Droit Économique*“ in: J.-B. Auby, M.
32 P. Cane, „*Public Law and Private Law: A Study of the Analysis and Use of a Legal Concept*” in: J. Eekelaar,
to solve a problem of negative effect of market failures, what is often interpreted as an interference of the State in certain activities of private parties.\textsuperscript{34} This approach supports the intervention only when it is necessary to solve the problem of typical market failures such as negative externalities, moral hazard, imperfect competition, natural monopolies etc.\textsuperscript{35} “Where, then, market failure is accompanied by private law failure... there is a prima facie case for regulatory intervention in the public interests”.\textsuperscript{36} Traditional justification for intervention is often based on market failures which are apt to disable perfect competition. As often emphasised in economic theory: competition whenever possible, regulation only when it is really necessary.\textsuperscript{37} However, market liberalisation, its deregulation and substitution of regulation with ‘competition’, although caused weakening of the interventionist role of the State, did not imply that state decided not to regulate the economy. ‘Deregulation’ is an elusive concept, but its essence is the process of reducing state control over an industry or activity to make it structurally more responsive to market forces.\textsuperscript{38} Essentially, deregulation of the market strengthened regulatory role of the state,\textsuperscript{39} and created a paradox that the role of State is limited – but this actually augmented the statutory regulation.\textsuperscript{40} Regulation of a modern Market does not represent a self-denial of the role of the State, but State's attempt to discover the most appropriate means of influencing markets and its participants to achieve socially acceptable goals.\textsuperscript{41} Hence, the concept of 'Regulation' of the Market must be doctrinally neutral, somewhere in a broad vacuum between extremes of Marxist Scylla and Adam Smith’s Charybdis.\textsuperscript{42}

\textsuperscript{36} “Where, then, market failure is accompanied by private law failure... there is a prima facie case for regulatory intervention in the public interests». A. Ogus, Regulation – Legal Form and Economic Theory, Oxford, 1994, 30.
\textsuperscript{37} J. Kay, J. Vickers, op. cit.
 Obviously, private law alone is not sufficient to regulate such heterogeneous relationships. The relative social importance of specific markets may not be equal as well. Therefore, the process of regulation of specific markets, without doubt, may not be equal, but this does not mean that private interest or interest should prevail over general interest or the reverse scenario. When the object of the Economic Law is a fragmented, economically inefficient structure, dominated by one or the other interest, leading idea should be market rehabilitation. Domination of private dimension and industry capture leads the economy to cyclical flows, while the dominance of public dimension and politically allied considerations in the regulatory process, on the basis of existing practices, inevitably lead to market inefficiency and underperformance of the economic system. That is why is highly desirable to insulate of the task of administering regulatory regimes from the vagaries of politics in order to reduce the likelihood that decisions will be made for short-term political gain and thus threaten the quality of regulatory decisions.  

In addition to institutional limitations of a modern market (as Public Law of the Economy), its initial subject matter, modern Law of Market Regulation has one other dimension as well: integration of social rules in different and heterogeneous areas of the economy and its delicate balancing. Essentially, a public economic order (fr. l'ordre public économique - OPE) has two main domains of action: 1) the public order of direction (OPE de direction) and 2) the public order of protection (OPE de protection) which represents a higher level of protection of the market and its participants than the order created by norms belonging to the corpus of private law. The first domain implying those institutional limitations is not generally accepted, but nowadays represent the essence of the modern Economic Law, its dimension known as Regulatory Law, which is emerging in Continental Europe, either as a metamorphosis of Administrative Economic Law or as meta-juridical upgrade of the Law of the Economy (Law of Market).  

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43 R. Baldwin, C. McCrudden (Eds.), op. cit., 4-6.  
44 G. Farjat, op. cit., 50-55.  
The essence of modern Economic law cannot be understood without simultaneous overview of the consistency of other disciplines of Business Law and other branches of law. The Law of Market Regulation has appropriate goal function – matching the economic efficiency criterion directly with principle of legality.\(^4^6\) That is why, in its broadest sense including the study of the regulatory process itself, the Law of Market Regulation has a meta-positive, interdisciplinary and multidisciplinary nature. In addition to its main subject matter, the overall framework of the economy, both legal, as well as non-legal affect its goal function. Every legal provision is specific in its essence, determines a specific behaviour of transactors in a given situation when there is a possibility that functions attributed to the market may be jeopardized. The spirit of such a provision, belonging to the corpus of the rules on market regulation, may be discerned only by an integral knowledge of all legislative acts tackling the relevant situation. The Law of Market Regulation is thus formally much narrower than other legal disciplines, as for example, Law of Obligations. It does not encompass all rules and limitations through which participants relate, however, on the other side, in terms of its subject it is wider than that of other legal disciplines. Law of Market Regulation is charged with a mission to coordinate harmonization of their normative subjects. But not in a way to scrutinize a consideration of an individual contractual relationship, but the social consideration which equals the optimal functioning of the market, which in return demonstrates the efficiency of laws.\(^4^7\)

Besides its strong policy component, the Law of Market Regulation is also a normative discipline, focusing on the legal framework set out to achieve the balance of the totality of economic life and to ensure its dynamic stability by its coordinatory role. Therefore, the Law of Market Regulation does not encompass all norms which are regulating the economy, but those which main goal is to ensure that market participants enter into agreements which enable them to fulfil their interests, but in the same time to preserve the interest of the other parties and the general interest. The goal-oriented nature of that rules of a systemic character is explicit, as they refer to specific market situations. Because of that attribute they represent tools aimed to achieve single ultimate goal: a prevention of market deformations. In this respect, legal norm represents a stabilising instrument of the economic policy.\(^4^8\)

As central sphere of action of the Law of Market Regulation are market relationships, immediate social effect of norms which implementation is in its focus, is a modification of the laws of market. To modify market forces but not to replace them, because it is necessary to neutralise or reduce the intensity of those tendencies which lead to permanent changes in market institutions and hamper development of market functions. Such an action may immediately alter functioning of the market mechanism, but not sporadically, on a case-by-case basis, but through permanent and democratically accepted solutions. The State and a legal system may slow down development of the economy in accordance with its inherent market forces, as may accelerate it, but can not paralyse it or determine the other way, contrary to market forces, without harming the market. Economic factor is primary and decisive. The spirit of Economic Law is guided by an idea that it is a “servant of the economy, and not its master”.

The Law of Market should ensure consistency, unity and absence of discrepancies in the process of market regulation. Because of its goal function, this discipline differs from other disciplines and classical Administrative Law as taught in Continental Europe, but is much closer to Administrative Law as known in common law systems. That *differentia specifica* between the Law of Market Regulation and Administrative Economic Law is the concept of 'Regulation' – which imply that legal rules do not only have an imperative character, but, to a certain extent, character of incentives directing the behaviour in a way that socially accountable. The role of law is not only to order or ban, but to create incentives, to direct, and harmonise interests at stake. The concept of ‘Regulation’ is much broader than its usual interpretation in a classical economic literature, although one may, hopefully, observe that in a modern economic theory, ‘regulation’ is nowadays being interpreted in a broader

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way, beyond market failure, beyond economic theory of politics and beyond command-and-control.\textsuperscript{53}

Public regulation of the market economy consists of legislative and administrative measures by which the state, or an entity to which it delegates, determines, controls or influences the behaviour of economic agents in order to prevent behaviour which could harm legitimate interests of the society.\textsuperscript{54} Public or private, the aim of regulation is to enable co-existence of legitimate interests of participants in specific economic sectors and the market in its totality.\textsuperscript{55} Narrower definitions of regulation centre on attempts by state to influence socially valuable behaviour by establishing and enforcing legal rules. In that sense, somewhat narrower, it would be appropriate to define ‘Regulation’ as a modality or type of participation of the state in institutional operations and alternative to other modalities.\textsuperscript{56} But, the social essence of the notion ‘regulation’ is its social nature – it belongs to all market factors, not only to the state, therefore regulation is a divided function.\textsuperscript{57} For this reason, skipping its legal determination and defining its techniques of regulation could override doctrinal differences about the concept of regulation.\textsuperscript{58} Or, to define the process of regulation by its three elements: the setting of standards, rules or other norms; monitoring or determining feedback for compliance with the norms; and some mechanism for realignment of behaviour which deviates from the norms.\textsuperscript{59} However for the purposes of understanding the emerging Law of Market Regulation, it would be necessary briefly to refer to a notion of ‘regulation’ in a sense appropriate to the emerging discipline and without ambitions to engage into its various interpretations.

\textsuperscript{53} In this respect it is worth pointing to an excellent book by E. Balleisen, D. Moss (eds), Government and Markets – Toward a New Theory of Regulation, Cambridge University Press, 2009.
\textsuperscript{54} A.C. Dos Santos, M. E. Gonçalves, M. M. Leitão Marques, op. cit., 191.
\textsuperscript{58} In this regard, followed by the analysis of economic policy and political sociology: B. Du Marais, Droit public de la régulation économique, Presses de Sciences Po et Dalloz, 2004, spec. p. 483-484.
For a long time, the notion of ‘regulation’ was used as a synonym for ‘legislation’ (in French réglementation, in German Regelung),\(^{60}\) as legal rule or the activity of legislating.\(^{61}\) And that distinction between a narrow concept of regulation as legal or at least legally sanctioned rule-making and a broader conception of regulation has lead to all sorts of conceptual misrecognitions and confusions.\(^{62}\) Concept of regulation is a scientific paradigm, which was adopted in social sciences later than in natural sciences. On the basis of a notion of ‘regulation’ in natural sciences,\(^{63}\) professor Frison-Roche rightly observes that the essence (‘acrobatics’) of Regulatory Law is to “maintain an equilibrium between the contrary necessities,” as well as to construct and promote such equilibrium.\(^{64}\) The idea of regulation as a dynamic process without doubt comes from cybernetic theory. Therefore regulation is the process which encompasses a command, communication, through which external system’s reaction may be detected, and the feedback between the system and its environment. Regulation is needed to ensure the existence of organised systems in line with their own logic, their exchange with the environment and their adaptation. The regulation is therefore the process of adaptation of the system – it is a key element of the systems theory, aiming to maintain the equilibrium of autopoietic systems. Regulation implies that it is possible to balance a unity of heterogeneous elements, hence implies that it is possible to ensure harmony of interests, from individual to collective.\(^{65}\) Hence, the regulation is a process of a systematic, legitimate, influence on subjects and events, through combination of ordering devices and mechanisms,\(^{66}\) a purposive attempt to influence and control economic and social activity.\(^{67}\)

The necessity to take into consideration the interest which is different from that of enjoying basic freedoms, such as right to property and freedom of contract, was a basis for the

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\(^{60}\) However, in the broad sense régulation (French), Regulierung (German).


determination of the Law of Market in a sense of limitation of freedoms. As well, this was the underlying argument for the interpretation of a concept of ‘regulation’ of the market in Continental Europe, where the concept of regulation was, for a longer period of time, masked by the interventionist role of the State. But, this definition is problematic for at least two reasons. At first, because direct interventionism is not an appropriate concept, as the essence of the Law of Market regulation is the process of regulation, which imply coordination and balancing, and not a supremacy of public interest over the private, neither a demonstration of government’s *imperium* in solving problems of negative external effects. Secondly, limits the law imposes on market participants do not limit market freedoms, but guarantee them by preventing the abuse of private rights. And finally, a guarantee of market freedoms, not their limitation, implies that state is limiting itself and the administrative apparatus, which rulemaking and adjudicatory actions are confined by applicable substantial and procedural rules. For sure, this limits state's voluntarism.

On the other side, dynamics of economic development justifies a necessity for the existence of Law of Market Regulation to codify numerous partial changes of rules regulating markets, in a different way then classical legislative function does. There are many arguments supporting a conclusion that the Law of Market Regulation is an expression and result of regulation, the framework which directs behaviour and creates incentives. As traffic signs regulate road traffic with a wide range of signs of prohibition or of informative nature, not every sign has the character of a rule that triggers sanction. Law of Market Regulation, as regulation of market circulation, presupposes that rules themselves are created through a continuous social compromise.

This balancing of partial interests and the general interest to preserve the order of capitalism is in the essence of the ‘regulatory capitalism’. That process of social interactions

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is more complicated than a democratic hearing in the legislative process, because it assumes multiple manifestations of immediate regulatory activities of state, para-state and private institutions.\textsuperscript{72} Moreover, the regulatory process more and more infiltrates in the private law domain and enhances the role of private actors in the process of regulation.\textsuperscript{73} Privatisation of regulation supports thesis that the Law of Market Regulation can not be divided into the 'public' and 'private' sphere.

Internalisation of regulatory function at the level of market subjects, instead of direct interventionism signifies that regulatory process became decentralised through heterarchial, hybrid, relationship, a collaborative governance, between public administration, the regulated and the stakeholders.\textsuperscript{74} This idea of internalisation evolved from autopoietic theories of law which have been derived from systems theory, and place greater emphasis on the evolving nature of regulatory strategies and role of private parties in developing the regulatory framework.\textsuperscript{75} The basis of this idea of evolving strategies, which is known as 'proceduralisation of regulation'\textsuperscript{76} is the assumption that goals of legal norms may be fulfilled by creating incentives, instead of relying only on the command-and-control technique, through proactive regulatory intervention and reflexive elements.\textsuperscript{77} Although in the era of regulatory governance the law seems to have a marginal role,\textsuperscript{78} the Law of Market Regulation calls for the 'new public management' in implementation and enforcement, based on interactions between market institutions, non-governmental organisations and organisations established to protect the private interest, under coordinatory role of the administrative

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  \item \textsuperscript{73} F. Cafaggi, „Le rôle des acteurs privés dans le processus de régulation: participation, autorégulation et régulation privée“ in: La régulation, nouveaux modes? Noveaux territoires, Revue française d’administration publique, 2004, 23.
  \item \textsuperscript{77} G. Teubner, “Substantive and Reflexive Elements in Modern Law”, 17 Law and Society Review (1983), 239.
\end{itemize}}
apparatus.\textsuperscript{79} With other words, the law is calling for the involvement of other regulatory actors by regulating the basis for their involvement.\textsuperscript{80} Such new public management leads towards a new governance compromise, which includes a process of negotiating a law co-existence of various private and public instruments of regulation.\textsuperscript{81} And further, a responsive regulation.\textsuperscript{82}

Modern Law of Market Regulation has an important policy dimension: it pays attention to new ideas for better policy making, setting the agenda for research into new methods of delegated governance in regulating the market. Based on such a social ‘concert’ of regulators,\textsuperscript{83} the Law of Market Regulation shall not accept the \textit{status quo} represented by conventional forms of command-and-control regulation, but goes further in search for better solutions and identification of surrogate regulators and tools of new governance. An integral Law of Market Regulation would aim to leverage the private sector and encourage the internalisation of the compliance process.\textsuperscript{84} However, delegation of responsibilities to private parties raises questions about transparency and accountability of modern polycentric regulatory regimes.\textsuperscript{85} Since the government would be blamed for the failure of a delegated governance system, more attention needs to be given to questions of implementation and accountability. But the power in the “regulatory state” is now fragmented, spread between public, private and hybrid actors. Hence, the role of traditional public accountability

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\textsuperscript{80} L. McDonald, „The Rule of Law in the ’New Regulatory State’“, 33 Common Law World Review (2004), 33.
\textsuperscript{81} A. Pirovano, Changement Social et Droit Negocié, Economica, Paris, 1988, p. 5.
\textsuperscript{82} In this respect see the seminal book: I. Ayres, J. Braithwaite: Responsive Regulation, Oxford University Press, 1992.
\textsuperscript{85} J. Black, “Constructing and Contesting Legitimacy and Accountability in Polycentric Regulatory Regimes”, 2 Regulation & Governance (2008), 137.
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mechanisms characterizing hierarchal regulatory structure are diminishing and being replaced by broader and more complex “accountability networks”.

Balancing of confronted interests of market participants to preserve the market

The essential characteristic of the Law of Market Regulation, which differentiates it from interventionist administrative measures, is the respect of the autonomy of market participants. It is important to stress out that it does not attempt to replace the independence of will of market participants. Specific legal regimes only alter the scope of terms and conditions in the decision making process of each of them, but without any discrimination.

As the Law of Market does not deal with compensation of damages (as removal of consequences of individual contracts), but general prevention and coordination, it does not rely on the evidence of individual circumstances, but on the overall analysis of the appropriate legal instruments and identification of those powers of market participants which could jeopardize the public interest represented in efficient market. Market participants enter into contractual or non-contractual relationships in the pursuit of their own interests, but a specific regulatory regime alters their behaviour in a way which ensures consideration of the appropriate limitations. In a resultant of the force of those limitations we may see a compromise between private, partial, interests and a long-term general interest to preserve institutions of the market. Considering these institutional limitations as an objective framework within which they enter into agreements, in making decision on every single transaction contractors build in their final motive, profit, and the minimal but necessary limit which would enable them to respect the interest of third parties and the interest of a society. Being formulated ex ante, limitations imposed by specific regulatory regimes result in prevention of conflicting situations, such a framework contributes to the achievement of a legal certainty.

Contrary to market participants which are subjects of rights and obligations, the market is depersonalised and does not have its own will which could counterweight the other will. The role of law in regulating the economy is to create synergies with rules of the market. The Law of Market Regulation should, thus, represent an agent and a patron of laws of the

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markets, which transactors may not be aware of, but are strengthening essential elements of modern capitalist economy.

As the function of law is in general, the Law of Market Regulation should prevent conflicts which arise due to uncleanness and inconsistencies in the protection of private interests and, releasing market participants from transaction risks, create a stimulus for safe and continuous business. This raises a value of social welfare. In this context, to define social essence of the Law of Market Regulation we have to describe it as the group of norms, regulatory instruments and techniques of regulation aimed to advance the market efficiency through limitations, directions and incentives, sanctioning the behaviour of subjects which in their opinion may be economically legitimate, but in its totality decreases the level of social welfare in comparison with the level which could be achieved should the private autonomy be restricted to a certain extent.

Despite of appearing simplicity of a problem of creating effective preconditions for the appropriate functioning of markets, problem of regulation and governance must be treated by a more subtle mechanism. Goals of regulatory activity must undoubtedly reflect general interest: eventual conflict must be realistic and able to create serious distortions of market functions or causing permanent deformations to the market mechanism. 87 Existence of general interest, non-discrimination and proportionality, are basis for an evaluation of social values of legal norms and conduct of the administration in the regulatory process. When there is a particular trade-off between economic efficiency, on one side, and justice and fairness on the other side, the goal of regulation in the public interest is interpreted as ‘socially efficient use of scarce resources’. 88 General interest determines the goal of regulators: maximisation of the welfare of a society in its totality. This means that regulatory strategy is tailored in line with public interest, in creating optimal environment for supply and demand sides, that is to say to balance conflicting interests. 89 Regulatory process is therefore linked to various broad

89 In light of Peltzman’s attempt to modify Bernstein’s capture theory (M. H. Bernstein: Regulating business by independent commission, Princeton, 1995), stating that the full capture of regulators by one interest group is not realistic, as it could initiate the opposition of the others. Therefore, the regulatory process is based on the
strategies, including rules of a different kind and an array of adjudicative processes and arrangements, characterised with ‘nodal’ role of a regulatory state. The linkage of process to strategy is inevitably close, and therefore it would be difficult to claim legitimacy for a process if the overall strategy is not legitimate.90

Before a modern Economic Law evolved into the Law of Market Regulation, regulatory actions of the State in the field of economy could have been conceived as limitations of individual freedom, and of a freedom of the market. As an example, nationalisation of a company essentially limits the freedom of transaction, but also decreases a level of competition on the market. By inertia, it could be observed that functions of the Law of Market are attained by limiting authorities of the private sector, but this view, accustomed in legal and economic doctrine, is truly incorrect from a socio-legal standpoint. Limiting the freedom of contract for some participants is exactly guaranteeing of freedom for the others. It would be much more opportune to claim that that limitations help to establish a rule of law on the market, instead of a rule of the market power of one or several market participants. The rule of law in no way precludes the dominance of entities with high market power, as the law has to reflect the reality, but sanctions the abuse of power. The law does not act contra oeconomiae, as the inherent, egoistic, trait of a company is to grow and eliminate competitors. To forbid an attempt to conquer competitors would mean that economic development will be stopped. It is enough to recall those statutes and professional codes to make it clear how a normative framework of the modern market represents a complete negation of such conservative standards. But the law has to save the spirit of market and the essence of market relationships by guaranteeing freedom of competition and freedom of entrepreneurship, and to facilitate freedom of market development when basic freedoms are endangered by autonomous processes of the market itself.

Freedom of the market may be compared to a peak of an ice-berg, which main part lies under the surface. The Law of Market Regulation does not apply to individual terms and conditions of the contract, but social impact of the contract, the objective situations which do not fall under the explicitly stipulated unlawfulness, but rather to an abstract danger that such a relationship may jeopardize the market. Reformulation of a contractual freedom of market participants does not aim to make it more elegant, but to identify inherent deformations, reconciling the conflicting interests. S. Peltzman, «Toward a more general theory of regulation», 19 Journal of Law and Economics (1976), 211-248.

declare them undesirable and invoke sanctions which would not influence the other market freedoms. “The opposition, frequently made, between regulation and ‘free’ market is deeply misleading.”91 As the task of the Law of Market is exactly to alter the situation which would occur should the logic of the anarchic-liberal economy be absolutely interpolated into the legal transactions, we may compare it to the filter which, in that transformation of the economy into the law, is charged with a mission to save the economy from self-destruction. The Law of Market never attempts to abolish market freedoms, but demonstrates to all subjects who are interlinked through the market how heteronymous limitations through either mandatory intervention or self-regulation are actually supporting those freedoms.

One aspect of the rule of law in a modern market economy is to ensure a junction of the main material elements, such as capital, labour, natural resources, management and others, under equal conditions. Equality is stemming from constitutional basis of a legal system and corpus of rules protecting human rights. Economic equivalent of the legal framework is the freedom of competition. That is why freedom of competition represents not only an economic precondition for efficient market as a mechanism of allocation and distribution, but as well a logical condition for the establishment of a structure of modern enterprise where all factors are submitted to a single goal function.

To better understand the essence of the freedom of competition and corpus of mandatory norms aimed to protect it, it is necessary to point to the relationship between market and competition, without an ambition to further elaborate the notion of competition. The competition is an attribute of the market, and the market is the main precondition for competition. Competition is primarily an economic category, a process of the contest and rivalry between market participants. Classical economic theory differentiated between competition and monopoly as mutually exclusive categories, and hence the two different theories of competition and of the monopoly were promulgated. With an affirmation of the Chamberlin’s theory of monopolistic competition, this antinomy between a perfect competition and a pure monopoly has been weakened, as monopolistic competition represents a precondition for the development of the market. Determination of the element of monopoly, especially its negative impact on the economy, assumes much higher level of macro-economic consideration than a judge typically applies in the course of ordinary civil procedures.92 That

is because the object of protection of competition has an abstract nature: that is the freedom of behaviour and choice. In the process of a logical concretisation of such an object of protection, that is to say the goal of provisions on the protection of competition, economic considerations are predominant, as it is difficult to subtract all elements of social interest under the legal norm.

Rules on competition protection have two dimensions: subjective and objective. Subjective dimension encompasses rules designed to protect competitors, and is therefore deduced to ‘Law of Unfair Competition’ regulating rivalry among market participants. The objective dimension has macro-economic considerations, the competitiveness of the market itself. Therefore provisions on protection of competition represent an instrument for the achievement of broader goals of economic and social nature (‘competition as a mean’), and in its broadest sense the general interest known as ‘public economic order’. Provisions of laws on protection of competition therefore protect the freedom of market play, a broader, public interest. Contrary to its primary, narrow, interpretation, modern Competition Law is committed to creating and maintaining basic elements of an integrated market, and hence protection of competition represents, in its essence, protection of the market. Logically, the Competition Law represent a special set of rules and principles within a macro-corpus of Economic Law as the Law of Market. ‘European’ concept of Competition Law, which American equivalent is Antitrust Law, contributed to affirmation of its macro focus, complexity of goals and its layers: market freedom is a precondition of market efficiency; efficiency is a precondition of the development, development is the basis for employment, social policy and the efficient State. In Continental Europe, notably France, Competition Law represents an atomic nucleus of the school of thought known as School of Nice.

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98 On the EU strategy of the protection of competition see for example: P. Craig, G. de Burca, EU Law, Texts, Cases and Materials, Oxford University Press, 1995, 886–887.
The notion of 'general interest' has traditionally served as the basis for justification of limitations of market freedoms, and the basis for rules which were limiting the freedom of market in order to curb volatile nature of the market. That is why the general interest had been considered as an antipode of competition. Because the notion of general interest can not be clearly defined,\textsuperscript{100} it had always been conceived as a basis of State’s voluntarism and a threat to market freedoms. Despite this methodological and conceptual rivalry between competition and regulation, and a 'victory of competition', in modern economies the State turned to 'the regulator' instead of 'the administrator', and the competitive market is clearly a goal in the public interest. As Delion stressed: „the general interest is the goal of regulation, not solely the flow of the process of competing.. competition is one among the means of realisation of general interest“.\textsuperscript{101} Protection of competition does not imply the absence of the State in the Economy, but quite the reverse, its new role in the protection of the public economic order based on free, but regulated, competition. This transformation of a liberal model of competition into the model which fits the idea of 'regulatory capitalism' emphasised that the intervention of the State is necessary exactly to support market economy.\textsuperscript{102}

Social significance of the Law of Market Regulation lies in the fact that its task is to protect market institutions and the autonomy of will of transactors, by way of coordination of conflicting interests by collective self-limitation. The danger of infringement of public interest is not so much in a single transaction, infringing the private interest, but the tendency that imperfect contracts might become massive and result in a permanent modification of market functions. Such modifications, sooner or later, would result in a change essential market functions. This is why market regulation (here I am referring to regulation in a narrower sense) must be imposed limitation, as the 'precursor' of the freedom of competition.\textsuperscript{103} In this context, the appropriate description of social nature of the Law of Market Regulation should emphasise that this discipline encompasses limitations of transactors’ freedoms in relations that are established through the market, with the purpose to protect the integrity of the market.

Competition is nowadays regulated (‘regulated competition’).\textsuperscript{104} Competition is an important attribute; a model of the market, and the market is the main precondition for the competition. Hence, the freedom of competition is conceived as general interest of a modern democratic society. The protection of competition does not imply the absence of the State on the market, but quite the reverse, its active role in protecting public economic order based on the freedom of competition. But, public interest is not being defended only with protective measures aimed to limit market power of an enterprise. Law of Competition is focused only on one market failure – imperfect competition. The achievement of public interest is also secured by rules stipulating conditions for entry into the market and the conditions for performance of certain economic activities, which may also eliminate various barriers to entry,\textsuperscript{105} especially with regards to privileges granted to public enterprises or enterprises performing services of general interest. The Law of Market Regulation in its broad sense transcends frontiers between sector specific regulation and competition policy,\textsuperscript{106} and contributes to the process of economic evolution. Systems of regulation should therefore balance the freedom of competition with the other social imperatives.\textsuperscript{107} The Law of Market Regulation, as the Law of Market encompasses general rules, mostly of a material nature, on access to economic activities, regulation of competition, trade practices (including the regulation of prices as a relict of state interventionism), consumer protection and basic issues in regulation of the main sectors of economy, such as monetary and financial system, agriculture or the industry, including growing network industries. Specific regulatory regime applied to network industries changes basic norms of the private law to ensure efficient and socially acceptable conduct of network operators.\textsuperscript{108} Pursuant to some authors, by setting out the main principles of \textit{ex ante} regulation and \textit{ex post} supervision,

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regulatory regime sector strengthen the role of the private law in regulating a specific network sector.109

Regulatory Law or Law of Market Regulation is founded on that still unaccepted and indistinct notion ‘regulation’ – and exactly this notion is its object.110 It encompasses the totality of rules affecting the market within specific regimes, and in the broadest sense the totality of rules and techniques of regulation. The rules and techniques forming the public economic order have several dimensions. On a horizontal level, besides general instruments related to enable and protection market freedoms, as briefly shown above, Regulatory Law is particularly focused on quality controls and control of information. As modern society increasingly faces risks, the subject matter of Regulatory Law is increasingly focused on legal and policy issues arising in a process of risk detection and risk management, or better to say risk regulation.111

Its time dimension is more disputable due to distinction between ex-ante and ex-post measures. In liberal theory, ex-ante dimension was often linked to public regulation, a normative or prescriptive activity, while ex-post was a “mark of liberalism, of minimal public intervention”.112 However, the ex-ante and ex-post are not two extremes, but are mutually dependent and strengthen each other. For, example, for an ex-ante intervention to be effective, ex-post mechanism of sanctioning must exist. The Law of Market Regulation as the normative framework of the regulatory system, the legal framework aimed to maintain the balance between legal system and spheres of the economic life, transcends the distinction between ex-ante and ex-post modes.

For sure, there is a wide array of instruments and techniques used to regulate social behaviour. Although economists and lawyers tried to classify regulatory instruments in many different ways, no single classification based on the type of action or modality of control may

truly reflect the essence of the object of the Law of Market Regulation.\footnote{However, a classification system adopted by Morgan and Yeung is appealing: An Introduction to Law and Regulation, Cambridge University Press, 2007, 79-146.} Every classification is a simplification, while regulation, its tools and techniques are evolving and mutually combining. Therefore, the Law of Market Regulation, as an intersection of public law and socio-economic regulation, is determined by its goal, creating and maintaining the equilibrium, rather than its instruments and techniques.

But why the term which should refer to ‘balancing’, ‘harmonising’ and ‘adjusting’ created so much dilemmas in social sciences, and subsequently approaches to teaching in Continental Europe? If we recognize that ‘regulation’ is fundamentally a politico-economic concept which can best be understood by reference to different systems of economic organization and the legal forms which maintain them,\footnote{A. Ogus, op. cit., at p. 1, quoting: P. Selznick, „Focusing Organizational Research on Regulation“ in: R. Noll (ed), Regulatory Policy and the Social Sciences, 1985, pp. 1-2.} which as such transcends a traditional public-private divide, then the Law of Market Regulation as a broad meta-juridical, multi and inter-disciplinary subject seems to be an appropriate discipline of a modern law.

Obviously, due to inherent pragmatism, common law system and universities in Anglo-Saxon world never faced a problem of placing a study of Regulation and Regulatory Processes within the public-private divide and doctrinal controversies among the private and the public law. However, in Continental Europe, although it became evident that talking about a strict public-private divide in the 21\textsuperscript{st} Century no longer makes sense, the Law of Market Regulation as a broad concept is still facing opposition. Both from ‘classics’ among Administrative Law scholars, who are reluctant to admit that the executive function in a regulatory state does not only command and control; but as well from private law scholars who still identify the market system exclusively with private law and have not yet recognized a facilitative function of public law and a new role of the state in the order of regulatory capitalism.

In the United States, as well in the other common law countries, Regulatory Law in a doctrinally neutral sense as such predominantly refers to studies of Administrative Law and Regulatory Processes, with a strong policy component (Regulation and Regulatory Policy). There are several centres of excellence, among which the following deserve to be mentioned in this brief overview: Penn Program on Regulation, within the University of Pennsylvania
School of Law, Center for Business and the Government (notably its Regulatory Policy Program) of the JFK School of Government of Harvard University, Regulatory Law concentration of the Vanderbilt University, Center for the Study of Law and Society at the University of California, Berkeley.\textsuperscript{115} In the UK these are, without doubt, universities which have developed socio-legal studies or specialised centres for the study of regulation and competition.\textsuperscript{116} Australia is an excellent example with its Regulatory Institutions Network (ANU) and Centre devoted to regulatory studies at the Monash University.

In Continental Europe, situation is different. The main promoter or the Law of Market Regulation was France, where this discipline has evolved mostly from Economic Law (‘school of Nice’), but as well as through metamorphosis of the Public Law of the Economy, or Administrative Economic Law. As Competition Law has became an independent discipline, some universities offer a study of Regulatory and Competition Law as twin-courses. As in Anglo-Saxon university practice, special courses on specific legal framework on network industries emerged as separate disciplines – and hence the General Law of Market Regulation is basically a thread connecting various disciplines which are dealing with issues of market regulation.

For the purpose of strengthening this discipline at the University of Belgrade Faculty of Law, where it existed as the Law of Commercial System throughout the 80s and 90s, and was transformed into Law of Market Regulation during process of ‘the Bologna’ reform of a higher education in 2004, a database on academic centres of excellence in the field of Regulatory Studies and the intersection of public law and socio-economic regulation is under creation. This database will provide links to all identified centres of excellence which foster doctrinally neutral (in its essence a socio-legal) approach throughout the World, including centres specifically focused on sector specific studies.

\textsuperscript{115} The list is, of course, not limited. There are as well centres which are focused on the study of regulation in a liberal legacy, such as the Mercatus Center at the George Mason University etc.

\textsuperscript{116} Again, the list is just indicative: London School of Economics, Oxford’s Centre for Socio-Legal Studies, Centre for Regulation and Competition of the University of Manchester etc.
Conclusion

In a modern market economy, problem of ensuring macroeconomic efficiency is usually focused on how to restrain the expansion of those pretending to represent public interest and jeopardize the substance of private and individual by a multitude of legislative acts and administrative interventions. In a real economy, insistence upon the autonomy of will, freedom of contract and freedom of entrepreneurship is not only an attempt to defend those classical entitlements of contractors from political self-will, but also a way to protect institutions of the market economy and guarantee efficiency and effectiveness of the economic system. In accordance with this, it is no longer viable to consider the Economic Law (as the Law of Market) as an intrusive element of economic regulation, in a sense that it only creates limitations to a basic principle of freedom. It is rather a domain of continuous balancing of variable elements around the trend line – preservation of institutions of the market, which guarantee the accomplishment of market’s functions.

Global economy undoubtedly requires new modes of polycentric regulation that encourage the involvement of a private sector while still preserving role of the government. Hence the Law of Market must acknowledge that governments and the private sector could negotiate and jointly act in the interest of private parties and the market. New paradigms of governance, and need for a proactive regulatory strategy and reflexive regulation transformed the classical Economic Law into ‘Regulatory Law’. Or to be more concrete, the ‘Law of Market Regulation’, which is an evolving meta-juridical discipline. In addition to the General Law of Market Regulation focused on the transformed role of the State in a modern economy, instruments and techniques of regulation, its main components are existing as independent disciplines, are the Law of Competition and various legal disciplines which include principles of intervention of state in specific sectors of the economic system (for example Energy Law, Telecommunications Law etc.). The golden thread of the Law of Market Regulation, as a unity of such disciplinary diversity, is a socio-legal approach, which ensures its doctrinal neutrality.