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U SUSRET JEDINSTVENOM FINANSIJSKOM TRŽIŠTU EVROPSKE UNIJE

Rezime

Trend pružanja spektra finansijskih usluga na jednom mestu zahteva pažnju svih finansijskih institucija, a kod nas ponajpre banaka koje pretenduju da dorastu novim tendencijama. Iako klasične bankarske usluge daleko prevazilaze značaj segmenta njihovog poslovanja okrenutom tržištu kapitala, za očekivati je da će udeo poslednjeg vremenom rasti i kod nas. Usled višegodišnjeg zaostajanja Srbija polako nastoji da uhvati priključak i prihvati standarde koji postaju ili su već postali sastavni deo finansijskog sistema zemalja Evropske unije. Tekst nastoji da pravničkoj i drugoj zainteresovanoj javnosti, kako u bankama tako i u okviru regulatora tržišta kapitala, približi određene tekovine velikog zakonodavnog projekta Evropske unije iz oblasti finansijskih usluga. U fokusu su osnovne ideje koje stoje iza pokretanja ove zakonodavne inicijative, njene prednosti i kritike uz akcenat na unifikovana pravila o prospektu, zloupotrebama na tržištu, transparentnosti i ostale oblasti značajne za dovršenje slobode kretanja kapitala, ali i podizanje sveukupnog integriteta evropskog tržišta kapitala. Predstojeće usaglašavanje naših propisa o tržištu hartija od vrednosti, a u globalnom okruženju poljuljanog poverenja u finansijske institucije, kao imperativ nameće potrebu harmonizacije sa celokupnim korpusom evropskih normi iz Akcionog plana za finansijske usluge.

Ključne reči: četiri velike slobode, zajedničko tržište finansijskih usluga, nadzorni organi, direktiva o prospektu, direktiva o zloupotrebama na tržištu, direktiva o transparentnosti, insajderske informacije, tržišna manipulacija, finansijski izveštaji, finansijski instrumenti

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ON THE WAY TOWARDS A SINGLE EUROPEAN UNION FINANCIAL MARKET

Summary

The trend of providing full range of financial services in one place is worth the attention of all financial institutions, in our country primarily banks as they strive to keep pace with latest developments. Although standard banking services by far exceed the segment of banks' operations oriented to capital market, the capital market segment is expected to grow over time in our country as well. After years of lagging behind, Serbia is slowly catching up and endorsing standards that are becoming or have already become an integral part of EU countries' financial system. The article's intent is to bring closer to legal professionals and a wider interested public, in banks and capital markets regulators, certain achievements of European Union's comprehensive legislative project in financial services area. The focus is on underlying ideas of this legislative initiative, the advantages and critiques, with an emphasis on common rules on prospectus, market abuse, transparency and other areas of importance for completing free movement of capital, as well as for strengthening overall integrity of the European capital market. The upcoming harmonization of our securities market regulation, in the context of globally shaken confidence in financial institutions, necessitates alignment with the whole corpus of European legislation stemming from the Financial Services Action Plan.

Key words: Four freedoms, internal market in financial services, supervisors, Prospectus Directive, Market Abuse Directive, Transparency Directive, insider information, market manipulation, financial statements, financial instruments

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Namera ovog teksta je da predstavi aktivnosti Evropske unije na polju zaokruživanja jedinstvenog tržišta finansijskih usluga prvenstveno putem unifikacije pravnih pravila. Sa ciljem boljeg razumevanja inicijativa i pravnih tekovina Evropske unije uz naglasak na regulisanje tržišta hartija od vrednosti, ovaj tekst može biti od koristi kako praktičarima tako i regulatorima u predstojećem najavljenom usaglašavanju naših propisa sa jedinstvenim evropskim rešenjima. Proces konvergencije finansijskih usluga i prelazak od klasičnog bankarstva ka konceptu objedinjenog pružaoca finansijskih usluga takođe je prisutan u Srbiji te ovi nazori postaju obavezno polje interesovanja i domaćih banaka.

Zajedničko tržište Evropske unije teži afirmisanju i dovršenju četiri velike slobode.[1] One, gledano zajedno, čine definiciju zajedničkog tržišta koja se ogleda u: slobodi kretanja lica, roba, usluga i kapitala. Četvrta sloboda je u najmanjoj meri zaokružena te je poslednjih godina bila u fokusu evropskih institucija. Iako se jedinstveno tržište finansijskih usluga stvara od 1973. jedna od glavnih poluga za postizanje (pune) slobode kretanja kapitala jeste Akcioni plan za finansijske usluge Evropske komisije, predstavljen u maju 1999.[2] To je bio šestogodišnji projekat čiji je krajnji rezultat doveo do usvajanja 42 zakonodavne mere.

Akcioni plan je dokument koji je predstavio program aktivnosti i inicijativa koje idu u susret ciljevima iz tzv. Lisabonske strategije, utvrđene na Samitu EU u Lisabonu 1999. Trebalo je primarno ukinuti pravnu raznolikost, ali i druge razlike koje postoje između zemalja članica EU i odgovoriti na rastuće potrebe ekonomije obima kompanija koje pružaju finansijske usluge. Kao što Komisija u svom saopštenju iz decembra 2005. ukazuje, integracija finansijskih tržišta EU nije cilj sam po sebi. Ona je ključni faktor u razvoju i modernizaciji celokupnog finansijskog sistema i privrede kao celine. Efikasan sektor finansijskih usluga je izuzetno važan za konkurentnost ekonomije/a EU u trci sa globalnim konkurentima kao što su SAD, Japan i odnedavno Kina. Osim toga, sve veći problemi u pogledu održivosti penzijskih sistema nameću potrebu za afirmisanjem investiranja u privatne penzijske fondove koji su investiciono orijentisani uglavnom na *equity*.

Studija jedne britanske konsultantske kuće pokazala je da bi uštede od formiranja jedinstvenog tržišta finansijskih usluga u narednoj deceniji bile oko 130 milijardi evra, ili do 1.1% BDP Evropske unije. Povrh toga, koristi koje bi imali korisnici ovih usluga, odnosno građani EU, bi zbog veće konkurencije i konvergencije u sektoru finansijskih usluga išle pre svega njima na ruku.

Akcioni plan za finansijske usluge postavlja tri glavna cilja: stvaranje jedinstvenog wholesale tržišta finansijskih usluga, stremljenje otvorenijem retail tržištu i jačanje prudencione supervizije. Osim ova tri cilja, Plan je identifikovao dve oblasti na kojima je neophodan zajednički rad zarad dovršenja jedinstvenog tržišta - korporativno upravljanje i porezi. Iako veoma širokog i različitog značenja kojem su izvor ne samo formalni propisi nego i običaji i tradicija, različiti aranžmani korporativnog upravljanja su zavredeli pažnju Komisije. Ona je 2003. izdala Akcioni plan kompanijskog prava (*Company Law Action Plan*) koji za cilj ima modernizaciju i unapređenje korporativnog upravljanja u EU. Jedan od ključnih, odnosno najtežih i najsloženijih oblasti regulisanja u kojoj je teško postići saglasnost jeste oporezivanje. Konstatuje se da je problem različitih poreskih tretmana glavna prepreka za integraciju tržišta finansijskih usluga. Komisija u bliskoj budućnosti namerava da predstavi predlog kojim bi se pravila o porezu na dodatu vrednost na finansijske usluge prilagodila evoluciji jedinstvenog finansijskog tržišta.

Pošto su sektorske politike i komunitarne nadležnosti veoma razgranate, da bi uspeo reformski zahvat u jednoj oblasti neophodno je obezbediti saradnju i koordinaciju sa drugim sektorskim politikama. Osim poreske politike, nad kojom EU ima manje ingerencije, za

1 1992. godine, zbog dostignutog nivoa integracije i simbolično preimenovano u unutrašnje
2 Financial Services - Implementing the framework for financial markets: action plan

The purpose of this text is to present European Union activities in the field of rounding-up a single financial services market primarily through unification of regulatory framework. Mindful of the need for better understanding of the European Union initiatives and its legal tradition, with the focus on securities markets regulation, this text may be found useful both to practitioners and the regulators in the forthcoming, announced harmonisation of our regulations with the single European regulatory framework. The process of convergence of financial services and the transition from classic banking to the concept of a unified provider of financial services is also present in Serbia today making these principles a mandatory field of interest for the domestic banks.

European Union common market strives towards an affirmation and completion of four main freedoms.[1] Generally speaking, they are offering a definition of the common market which is reflected in the freedom of movement of persons, goods, services, and capital. The fourth freedom is the least rounded up of the four, and during the last few years was the focus of attention of European institutions. Although the single market of financial services started its building-up from the year 1973, one of the main levers for achieving (full) freedom of movement of capital was the Action Plan for Financial Services of the European Commission presented in May 1999.[2] This was to be a six-year project and its final result led to the adoption of 42 legislative measures.

The Action Plan is a document which presented the programme of activities and initiatives leading towards the objectives set in the so-called Lisbon Strategy confirmed at the EU Summit in Lisbon held in 1999. The primary task was to abolish legal diversities, but also other differences existing between the EU member-countries, and to respond to the growing need of the economy of scale for companies providing financial services. As the Commission in its communiqué of December 2005 pointed out, integration of the EU financial markets is not the end unto itself. It is the key factor in the development and modernisation of the entire financial system and the economy in general. An efficient sector of financial services is of extreme importance for the competitiveness of economies and the EU, in the light of the race with its global competitors such as the USA, Japan, and of late China. In addition, growing problems regarding sustainability of the pension systems impose the need for affirmation of investments into private pension funds which are investment oriented, primarily towards equity.

The study made by one of the British consultancy houses showed that the savings from the formation of a single market of financial services during the next decade would amount to some EUR 130 billion, or up to 1.1% of the European Union GDP. On top of that, the benefits enjoyed by the beneficiaries of these services, i.e. the EU citizens, due to growing competition and convergences in the sector of financial services, would make them the best favoured stakeholders in this respect.

Action Plan for Financial Services is setting up the three main goals: creation of a single wholesale market of financial services, striving towards a more open retail market, and strengthening of prudential supervision. In addition to these three goals, the Plan identified two areas where the joint work was necessary for purpose of completion of the single market - corporate governance and tax policies. Although being the subjects of a very broad range of different interpretations, deriving not only from the formal regulatory framework but also from customs and tradition, different arrangements of the corporate governance captured the attention of the Commission. In the year 2003 the Commission issued the Company Law Action Plan aimed at modernisation and upgrading of corporate governance in the EU. One of the crucial or the most difficult and the most complex areas of regulation, where it is hard to reach an agreement, is actually the matter of taxation. The conclusion was that the problem of differentiated taxation treatments

1 In the year 1992, due to the level achieved of integration, symbolically was renamed into internal market.

2 Financial Services - Implementing the framework for financial markets: action plan.

pozitivan ishod reformi su značajne i određene intervencije u politici konkurencije, zaštiti potrošača kao i ugovornom pravu.

Reforma *wholesale* tržišta, gde spada i trgovina hartijama od vrednosti imala je više uspeha od *retail* komponente Akcionog plana - na primer, hipotekarnog i tržišta bankarskih računa. Između ostalih, donete su veoma značajne direktive. Direktiva o zloupotrebama na tržištu, zatim Direktiva o prospektu pre koje je, recimo, u državama članicama postojalo različito gledište o jednoj tako bitnoj definiciji kao što je javna ponuda. Iako Direktiva o aktivnostima i nadzoru nad ustanovama za profesionalno penzijsko osiguranje ne ustanovljava panevropski penzioni fond, što se kasnije eventualno može desiti, posredno utiče na harmonizaciju penzijskih šema poslodavaca na celom prostoru EU. Namera je da se, primenom principa uzajamnog priznanja prudencijalnih standarda i putem saradnje organa supervizije, *de facto,* stvori panevropski penzijski fond. Direktivom o transparentnosti se kompanije kojima se trguje na regulisanom tržištu obavezuju da dostavljaju periodične finansijske izveštaje i podatke o najvećim akcionarima. MiFID direktiva (*Markets in Financial Instruments Directive*) je možda temeljni propis za tržište hartija od vrednosti, a njom se dopunjuje i menja postojeća *Investment Services Directive*. MiFID direktiva proširuje okvir investicionih usluga i spektar finansijskih insturmenata koji potpadaju u domen regulisanja EU. Ona se primenjuje na kompanije koje se bave investicionim bankarstvom, opcijama i fjučersima, zatim portfolio menadžeri, brokeri i dileri, alternativne trejding platforme itd. MiFID direktiva omogućava firmama koje su registrovane u jednoj državi članici da nesmetano obavljaju delatnost u celoj EU - tzv. *single passport.*

Polje interesovanja od nedavno se seli ka implementaciji i analizi efekata usvojenog paketa mera. U svom izveštaju od januara 2007. Komisija konstatuje da je, što se nje tiče, 98% posla iz Akcionog plana urađeno na vreme. EU utvrđuje samo minimalni okvir oko koga postoji konsenzus, a na državama članicama je da svojim propisima podrobnije urede datu oblast. Međutim, članice često izlaze izvan datog okvira umanjujući značaj usvojenih odredbi. Osim toga, prepreke na putu pune realizacije ciljeva predstavlja neažurno preuzimanje rešenja iz direktiva. Nacionalna regulatorna tela imaju različite pristupe u nadzoru što takođe otežava funkcionisanje jedinstvenog tržišta. Kratkoročan problem je i vreme potrebno da se industrija navikne na novi, odnosno novelirani okvir.

was the main stumbling block to the integration of the financial services market. Commission, in the near future, intends to present the proposal for adjusting rules on the Value Added Tax on financial services to the evolution of a single financial market.

Sectoral policies and communitarian competencies being broadly branched-out, for the reform venture to succeed in one field, it is necessary to secure cooperation of and coordination with the other sectoral policies. In addition to the taxation policies where the EU is not having major influence, what is important for the positive outcome of reforms are the significant and determined interventions in the competition policies, consumer protection and contract law.

The reform of the wholesale market, together with its appurtenant part being securities trading, was more successful than the retail component of the Action Plan - for example, mortgages and bank accounts markets. Among others, some very important directives have been passed. They were the Directive on Market Abuse, to be followed by the Directive on Prospectus before which there were, let it be said, in the EU member-countries, different views on such a particularly significant definition as the public offering. Although the Directive on activities and supervision of the institutions for professional pension insurance does not establish a pan-European pension fund, something that may eventually take place at some future date, it does have an indirect impact on the harmonisation of the pension schemes of employers throughout the EU area. The intension is through the implementation of the principle of mutual recognition of prudential standards and by way of cooperation among the supervision authorities, to create a de facto pan-European pension fund. The Directive on Transparency requires companies traded in the regulated market to submit periodical financial reports and data on major shareholders. MiFID Directive (Markets in Financial Instruments Directive) is perhaps the most fundamental regulation for the securities market, and it amends and supplements the existing *Investment Services Directive*. MiFID Directive is broadening the framework of investment services and the spectrum of financial instruments covered within the EU regulatory framework. It applies to companies engaged in investment banking, options and futures, also on portfolio managers, brokers and dealers, alternative trading platforms, etc.. MiFID Directive allows companies registered in one member state to operate throughout the EU area - the so-called *single passport* approach.

The field of interest has recently moved

Osnovne zamerke koje upućuju skeptici ovoj inicijativi je da se ne vide realni učinci jer i dalje deluju druga ograničenja (neusklađeni porezi, pravosuđe, finansijske strukture). Takođe se prebacuje da je to bio dominantno administrativni projekat koji nije pošao od realnih problema na tržištu i koji je samo poskupeo regulativu. Govori se da su propisi iz akcionog plana nezgrapni, isuviše detaljni i prenormirani. Ovakve primedbe su sigurno delimično motivisane večitom dilemom o odnosu regulativnog i deregulativnog pristupa (finansijskom) tržištu. Opravdanje za ovaj zakonodavni projekat svakako daju trenutna krizna dešavanja koja mnogi doživljavaju kao posledicu labavog američkog regulatornog shvatanja. S druge strane, treba biti svestan da ovakvi projekti ne daju rezultate u kratkom roku, te u tom smislu efekti će se tek videti. Takođe, afirmisano je konsultovanje privatnog i javnog sektora u izradi i reformi regulative.

U svom dokumentu *White Paper on Financial Services Policy (2005-2010),* iz decembra 2005. Evropska komisija sumira rezultate i prihvata neke od primedaba predviđajući za ubuduće još više korišćenje konsultacija i analize uticaja prilikom koncipiranja propisa. Osnovano se postavlja pitanje da li Komisija implicitno priznaje da su mnoge direktive i druge mere brzo i nepromišljeno usvajane, bez potrebne analize troškova i dobiti, kao i uticaja na finansijsku stabilnost, funkcionisanje tržišta i zaštitu potrošača. Međutim, ono što je najvažnije jeste sprovođenje donetih propisa, tako da *ex-post* evaluacija donetih mera takođe postaje prioritet.

Ono što preostaje da se uradi da bi se postigla veća integracija finansijskih tržišta do 2010. godine jeste stvaranje jednog platnog područja (*Single Payments Area*), odnosno jedinstvenog i ekonomičnog platnog prometa između država članica. Investitori i građani EU, sa pravom, nisu voljni da prihvate situaciju gde se na prekogranična plaćanja naplaćuju provizije koje daleko nadmašuju one za domaće transakcije. Samim tim, efekat uvođenja jedinstvene valute evra se umanjuje i relativizuje u očima javnosti.

Takođe, potrebno je poraditi na harmonizaciji kliringa i saldiranja gde je Saopštenjem Komisije iz 2004. godine anticipirano donošenje okvirne direktive o kliringu i saldiranju. U tom papiru konstatuje se da su postojeći prekogranični aranžmani kompleksni i fragmentirani te tako nameću investitorima i izdavaocima hartija nepotrebne troškove, rizike i neefikasnost.

U domenu UCITS regulative, odnosno investicionih fondova,[3] očekuje se inicijativa kojom će se obezbediti bolje razumevanje investicionih limita kao i marketing fondova, a izazov predstavlja i doslednije funkcionisanje *single passport* principa. Komisija je nedavno izašla sa predlogom nove direktive koja bi zamenila važeći propis iz 1985. koji je pre sedam godina suštinski amendiran. Odugovlačenje i komplikovana procedura koordinacije nacionalnih organa supervizije, kao i troškovi skopčani sa organizovanjem evropskih UCITS fondova predstavljaju destabilizujući faktor za konkurentnost industrije investicionih fondova u poređenju sa konkurencijom iz Amerike. Valja pomenuti da je na kraju 2007. godine vrednost imovine pod upravom fondova UCITS tipa stajala na 6.400 milijardi evra što je oko polovine bruto društvenog proizvoda cele Unije. Što se tiče potrebe za jačom koordinacijom regulatorno-nadzornih organa za investiciona društva, iskustvo je pokazalo da u narednom periodu treba razjasniti odgovornosti organa zemlje porekla i zemlje gde se pružaju usluge. Potrebno je unaprediti njihovu saradnju, učiniti je bržom i obezbediti veću efikasnost. Treba napomenuti da postoji stidljiva, ali dalekosežna ideja o stvaranju jedinstvenog evropskog regulatornog tela čiji su pobornici uglavnom evropske prekogranične finansijske institucije, što je razumljivo, s obzirom na troškove koje imaju zbog opštenja sa desetinama zasebnih organa.

Direktiva o prospektu

Umesto do tada važećeg režima iz Direktive 2001/34 koja uvodi uzajamno priznanje

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3 Undertakings for Collective Investment in Transferable Securities (institucije kolektivnog investiranja u prenosive hartije od vrednosti) je generički naziv za investicione fondove organizovane u skladu sa pravom EU.

towards the implementation and analysis of the effects resulting from the adopted package of measures. In its report from January 2007, Commission states that as far as they are concerned, 98% of the work under Action Plan was completed on time. EU is establishing only a minimum framework agreed upon by consensus, and it is up to the member states to regulate in more detail the given field. Member countries, however, often exceed the given framework thus diminishing the importance of adopted provisions. In addition, stumbling blocks on to road to full realisation of goals are the untimely taking over of solutions from the directives. National regulatory authorities have different approaches to supervision which is also undermining the functioning of a single market. Short-term problem is also the time necessary for the industry to adapt itself to the new, i.e. innovated framework.

The basic objections to this initiative, made by the sceptics, are that the real effects are not visible because other limitations continue to apply (un-harmonised taxes, judiciary, and financial structures). There are also objections that this was a predominantly an administrative project which did not start from the real problems encountered on the market and which has only made regulatory framework more costly. There is talk that regulations in the Action Plan are clumsy, presented in too elaborate detail and overly normative. Such objections are certainly in part motivated by the eternal dilemma on the relationship between a regulated and a de-regulated approach to the (financial) market. Justification for this legislative project is certainly now offered by the present-day crisis events, which are experienced by many as the consequence of a loose American regulatory perception. On the other hand, one should be aware that such projects do not yield results over a short time, and in that sense the effects are yet to be seen. In addition, an affirmation was awarded to the consultations between the private and the public sectors in the drafting and reform of the regulatory framework.

In its document *The White Paper on Financial Services Policy (2005-2010),* from December 2005, European Commission summed up the results and accepted some of the remarks made, forecasting in future higher use of consultations and impact analysis when conceiving (drafting) regulations. There is a well grounded question raised whether the Commission has implicitly admitted that many directives and other measures were hastily and without much thought being adopted, without the necessary cost/benefit analysis, and the analysis of the impact on financial stability, functioning of the market and consumer protection. However, what is the most important thing is the implementation of the regulations passed, so that an *ex-post* evaluation of the adopted measures is also becoming a priority in its own right.

What remains to be done in order to achieve a greater integration of financial markets up to the year 2010 is the creation of a *Single Payment Area*, or rather of a single and cost-effective payment transaction system between the member states. Both investors and citizens in the EU are reluctant, and rightly so, to accept the situation where the cross-border payments are being charged a commission which by far exceeds those charged for domestic transactions. This in itself alone is diminishing the effects of introducing a single EURO currency and is making its value rather relative in the eyes of the public.

In addition, it is necessary to invest more efforts in the harmonisation of clearing and settlement operations where the Commission Communiqué, issued in 2004, anticipated adoption of a framework directive on clearing and settlement. It is stated in that document that the existing cross-border arrangements are complex and fragmented imposing on both investors and issuers of securities unnecessary costs, risks and inefficiency.

In the field of UCITS regulation, i.e. investment funds[3], an initiative is expected that would provide for a better understanding of the investment limits and the marketing funds,

[3] Undertakings for Collective Investment in Transferable Securities (an institution for collective investment in transferable securities) are a generic title for the investment funds organised in accordance with the EU law.

nacionalnih pravila o prospektu, novi koncept "jedinstvenog pasoša" hartija od vrednosti se zasniva na obaveznom - automatskom priznanju prospekta u bilo kojoj državi članici Unije sastavljenog u skladu sa Direktivom o prospektu.[4] Slikovitije rečeno, "jedinstveni pasoš" prospekta predstavlja za slobodu kretanja (izdavalaca) hartija isto što i Šengenski sporazum za slobodu kretanja putnika.

Jedinstvena pravila o prospektu imaju za cilj da omoguće kompanijama da na jednostavniji način prikupljaju kapital od zainteresovanih investitora koristeći blagodeti jedinstvenog tržišta Evropskog ekonomskog prostora,[5] a posredno, direktiva evropskim izdavaocima olakšava ponudu hartija od vrednosti i na druga tržišta. Cilj direktive i njene prateće regulative nije samo da standardizuje formu i sadržinu informacija koje se prezentuju investitorima nego više od toga. Različita nacionalna pravila o prospektu čine postupak prikupljanja kapitala skupim, složenim i neefikasnim. U tom smislu, jedinstvena pravila o javnoj ponudi uz veću zaštitu njegovih vlasnika, odnosno investitora imaju za cilj efikasnije i jeftinije mobilisanje slobodnog kapitala. Direktiva sledi i usvaja regulatorne standarde relevantnih međunarodnih organizacija kao što je IOSCO.

Direktiva o prospektu ima 33 člana i četiri aneksa: o prospektu, registracionom dokumentu, napomeni o hartijama od vrednosti i sažetoj napomeni.

Član 1. utvrđuje svrhu i domašaj Direktive, a to je harmonizacija u pogledu sastavljanja, odobrenja i distribucije prospekta kada se hartije od vrednosti javno nude ili odobravaju za trgovanje na regulisanom tržištu u zemljama članicama. Direktiva se ne odnosi na investicione jedinice institucija kolektivnog investiranja izuzev zatvorenog tipa, nevlasničke hartije od vrednosti izdate od države članice ili njene regionalne ili lokalne vlasti, kao i hartije sa njihovom bezuslovnom i neopozivom garancijom. Pod domašaj direktive ne potpadaju ni hartije javnih međunarodnih tela čiji su članovi države članice, Evropske centralne banke ili centralnih banaka država članica, potom hartije od vrednosti izdate od udruženja sa statusom pravnog lica ili neprofitna društva priznata od države članice koja imaju nameru obezbeđenja sredstava potrebnih za ostvarenje njihovih nelukrativnih ciljeva itd.

U članu 3. propisana je opšta obaveza izdavanja prospekta pre javne ponude hartija od vrednosti. Posebne vrste ponuda u kojima su izdavaoci, pod određenim uslovima, izuzeti od obaveze sastavljanja prospekta su kada se ponuda odnosi na kvalifikovane investitore, ili na manje od 100 fizičkih ili pravnih lica. Takođe nije potrebno objavljivanje prospekta kada se ponuda hartija odnosi na investitore koji stiču najmanje 50.000 evra, ili čija je pojedinačna nominalna vrednost namanje 50.000 evra, kao i kada je ukupna ponuda manja od 100.000 evra za period preko 12 meseci.

Slično, sa stanovišta vrste hartija od vrednosti, član 4. predviđa "prirodne" izuzetke od obaveze izdavanja prospekta. Harmonizacija ovih izuzetaka je jedan od noviteta koji je razjasnio nedoumice i razilaženja. Radi se o slučajevima kada se emituju nove akcije u zamenu za akcije iste klase koje su već izdate ako nove akcije ne dovode do povećanja akcijskog kapitala. Dalje, ako se hartije nude u vezi sa preuzimanjem putem ponude za razmenu (*exchange offer*) ili prilikom spajanja (*merger*), pod uslovom da je dokument dostupan i sadrži informacije koje nadležni organ smatra da su jednake prospektu u skladu sa zahtevima komunitarnog prava. Takođe nije potreban prospekt ukoliko se akcije nude ili podela vrši postojećim akcionarima, odnosno isplaćuju dividende kroz akcije iste klase kao i akcije na osnovu kojih se te dividende isplaćuju. Osim toga, nije potreban prospekt za akcije koje se nude ili besplatno dele postojećim ili bivšim članovima uprave ili zaposlenima od strane poslodavca čije su hartije od vrednosti već odobrene za trgovanje na regulisanom tržištu, a sve pod uslovom da je dokument učinjen

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4 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC

5 Direktive iz oblasti finansijskih usluga imaju zapravo širu prostornu pokrivenost od EU jer u domenu četiri velike slobode EU, pravila EU ravnopravno primenjuju i tri države nečlanice - Norveška, Island i Lihtenštajn.

and the challenge here is posed by a more consistent functioning of the *single passport* principle. European Commission has recently come up with the proposal of a new directive that would replace the regulation now in force from the year 1985, which was seven years ago substantially amended. Delay dragging, tardy and complicated procedure of coordination of the national supervision authorities, as well as the costs involved in organising European UCITS funds, are a destabilising factor for the competitiveness of the investment funds industry in comparison with the competition coming from the United States. It is worth mention that in late 2007 the value of assets managed by the UCITS type funds amounted to 6, 400 billion EUR, which is about one half of the gross domestic product of the entire Union. Regarding the need for a stronger coordination between the regulatory-supervisory authorities for investment societies, experience has shown that in the forthcoming period it will be necessary to clarify accountability of the country of origin authorities, and those of the country where services are provided. It is necessary to promote their cooperation, making it more expedient, and to secure higher efficiency. It is also worth mention that there is as yet a rather timid, but a far-reaching idea of the creation of a single European regulatory authority, supported mainly by the European cross-border financial institutions, which is understandable, in view of the costs incurred by them because of the necessity to communicate with dozens of separate authorities.

Directive on Prospectus

Instead of the regime now in force, prescribed in the Directive 2001/34 introducing mutual recognition of national rules on prospectus, the new concept of a "single passport" for securities is based on a mandatory and automatic recognition of the prospectus in any of the EU member states, when compiled in accordance with the Directive on Prospectus.[4] Prospectus "single passport" more illustratively speaking means the freedom of movement for the securities (issuer) just like the Schengen Agreement guarantees freedom of movement of passengers.

Single rules on prospectus have the objective to allow companies to mobilize capital in a simpler manner from the interested investors by using the advantages of the single market of the European economic area[5], and indirectly, the Directive is making it easier for the European issuers to offer securities in the other markets. The objective of the Directive and its appurtenant regulation is not only to standardise the form and contents of information that are presented to the investors, but more than that. Different national rules on prospectus are making the procedure of mobilising capital costly, complex and inefficient. In that sense, single rules on public offering together with greater protection of its owners, i.e. investors, have as objective a more efficient and cheaper mobilisation of the free capital. The Directive is applying and adopting regulatory standards of the relevant international organisations such as the IOSCO.

The Directive on Prospectus has 33 articles and four annexes: on the prospectus, on registration documents, note on securities, and a summary.

Article 1 stipulates purpose and scope of the Directive, and that is harmonisation regarding compilation, approval and distribution of the prospectus for the public offering of securities, or approval for trading in a regulated market in the member countries. The Directive does not cover the investment units of collective investment institutions, except for the closed-ended type, non-proprietary securities issued by the member state or its regional or local authorities, and securities with their unconditional and irrevocable guarantees. The

4 Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 201/34/EC.

5 Directives in the field of financial services have actually a broader territorial coverage than the EU because in the field of four main EU freedoms, the EU rules are equitably implemented also by the three non-member states: Norway, Island and Lichtenstein.

dostupnim i sadrži informacije o broju i prirodi akcija i razlozima i detaljima ponude.

Član 5. predviđa da prospekt mora da sadrži sve informacije koje su potrebne kako bi, u skladu sa posebnošću izdavaoca i ponuđenim hartijama od vrednosti, omogućile investitorima uvid u prava i obaveze, finansijsko stanje, dobit i gubitke, buduće izglede izdavaoca ili garanta, kao i prava iz tih hartija. Ove informacije moraju biti predočene na analitičan i razumljiv način. Podaci o izdavaocu i hartijama koje se nude sadržaće i sažetak (*summary*) koji će ukratko i netehničkim jezikom saopštiti bitne karakteristike i rizike povezane sa izdavaocem, odnosno garantom i hartijama.

Prospekt može biti sačinjen kao jedinstven dokument ili od odvojenih, odnosno posebnih delova - dokumenata. Sastavni delovi prospekta ukoliko je sastavljen od posebnih delova su: registracioni dokument (*registration document*) koji sadrži informacije o izdavaocu, napomena o hartijama od vrednosti (*securities note*) koja sadrži informacije o hartijama koje se nude ili za koje se zahteva trgovanje na organizovanom tržištu i sažeta napomena (*summary note*). Izdavalac koji već ima odobren registracioni dokument dužan je da sastavi samo napomenu o hartijama od vrednosti i sažetu napomenu i da za oba dokumenta zatraži posebno odobrenje nadležnog organa.

U članu 6. predviđena je (građanskopravna) odgovornost za informacije navedene u prospektu, ponajpre izdavaoca ili njegovog administrativnog, nadzornog tela ili uprave, kao i ponudioca ili lica koje zahteva trgovanje na organizovanom tržištu, odnosno garanta. Rok važenja prospekta je 12 meseci od dana publikovanja, odnosno do prestanka emisije u slučaju nevlasničkih hartija od vrednosti koje se kontinuirano i ponavljano emituju od strane kreditnih institucija.

Član 13. sadrži opštu obavezu da nijedan prospekt ne može biti publikovan pre odluke o odobrenju nadležnog organa matične države. Postupak odlučivanja ne može trajati duže od 10 radnih dana od dana podnošenja zahteva.

Prospekt se smatra dostupnim javnosti ukoliko je objavljen u jednim ili više dnevnih novina koje izlaze u državama članicama u kojima se vrši javna ponuda ili je zatraženo odobrenje za trgovanje. Takođe, smatra se dostupnim javnosti ukoliko je u pisanoj formi besplatno dostupan u prostorijama gde se vrši trgovanje, ili u prostorijama sedišta izdavaoca ili posrednika u trgovini, odnosno u elektronskoj formi na njihovim internet stranicama. Nadležni organ će najmanje 12 meseci na svojoj internet stranici ostaviti mogućnost za preuzimanje odobrenih prospekata. Ukoliko se prospekt elektronski objavljuje, izdavalac mora na izričit zahtev investitora omogućiti i besplatnu štampanu kopiju prospekta.

Član 16. obavezuje da se svaka nova činjenica, materijalna greška ili netačnost informacije koja je u stanju da utiče na procenu hartije od vrednosti pomene u dopuni prospekta ukoliko se pojavi posle odobrenja prospekta a do konačnog zatvaranja javne ponude. Takva dopuna se mora odobriti u roku od sedam radnih dana, a investitori koji su već pristali da kupe ili upišu te hartije od vrednosti imaju pravo opoziva svoje odluke u roku od najmanje dva radna dana od dana objavljivanja dopune prospekta.

Članovi 17. i 18. uvode ključnu novinu. Predviđeno je automatsko priznanje važnosti odobrenog prospekta (i njegove dopune) u jednoj državi članici ukoliko je već odobren od nadležnog organa druge. Naime, ukoliko to zahteva izdavalac, ili lice koje je sastavilo prospekt, domaći organ je u obavezi da u roku od tri radna dana[6] od odobrenja prospekta obavesti nadležni organ druge države članice. Obaveštenje nadležnim organima se sastoji od potvrde o odobrenju (*certificate of approval*) kojom se potvrđuje da je prospekt sastavljen u skladu sa Direktivom o prospektu, kao i kopije samog prospekta. Ako je moguće, obaveštenje će sadržati i prevod sažetka za čije prevođenje je zadužen izdavalac ili lice koje je sastavilo prospekt. Nadležni organi (gostujuće) države ne mogu tražiti dodatna odobrenja niti sprovoditi upravni postupak koji se tiče već odobrenog prospekta. Ukoliko se odobrenje za prospekt zahteva za trgovanje u drugim državama a ne domaćoj državi, jezik na kome

[6] Ili u roku od samo jednog dana kada se zahtev upućuje zajedno sa nacrtom prospekta.

Directive does not cover securities issued by the international bodies whose members are the member states, European Central Bank or central banks of the member states, also securities issued by the associations with the status of legal entities or non-profit making societies recognised by the member country having the objective to secure funds necessary for the achievement of their non-lucrative aims, etc..

Article 3 prescribes general obligation for the publishing of a prospectus prior to the public offering of securities. Particular types of offering in which issuers, under certain conditions, are exempt from the obligation of publishing the prospectus are those cases when the offering pertains to the qualified investors, or to a number of less than 100 physical persons or legal entities. Publishing of a prospectus is neither necessary when the offering of securities pertains to the investors acquiring not less than 50,000 EUR, or whose individual nominal value is not less than 50,000 EUR, and when the total offering is below 100,000 EUR for a period of over 12 months.

Similarly, depending on the type of securities, Article 4 prescribes "natural" exemptions from the obligation of publishing a prospectus. Harmonisation of these exceptions is one of the novelties which have clarified some ambiguities and discrepancies. These are the cases when new shares are being issued in exchange for shares of the same class but already issued if the new shares are not bringing about the increase of the share capital. In addition, if the shares are offered in connection with the take-over by the *exchange offer,* or in cases of *merger*, provided the document is accessible and contains information which the competent authority deems to be equitable with the prospectus in accordance with the requirements of the communitarian law. Prospectus is also not required if the shares are offered or distribution made to the existing shareholders, i.e. dividends are being paid through shares of the same class as the shares on the basis of which the dividend in question is being paid. Furthermore, the prospectus is not required for shares offered or free-of-charge distributed to the existing or former members of the board or employees by the employer whose securities have already been approved for trading in the regulated market, all this provided that the document is made accessible and contains information on the number and nature of shares and reasons and details from the offering.

Article 5 prescribes that the prospectus must contain all information that may be necessary in order to make possible, in accordance with the particularity of the issuer and the securities offered, for the investors to have an insight into rights and obligations, financial situation, profit and losses, future prospects of the issuer or guarantor, as well as rights deriving from these securities. Such information must be presented in an analytical and comprehensible manner. Data on the issuer and securities on offer shall contain also a *summary* which will briefly and in non-technical language communicate significant characteristics of and risks involved with the issuer, i.e. guarantor and securities.

Prospectus may be presented as a single document or it may consist of separate, i.e. particular parts - documents. Component parts of the prospectus, if made in separate parts, shall be the following: registration document containing information on the issuer, securities note with the information of securities on offer, or for those where there is a requirement for trading in the organised market, and a summary note. The issuer who already holds an approved registration document is required to present only the securities note and the *summary note*, and to request for both documents a special approval by the competent authority.

Article 6 prescribes civic liability for the information given in the prospectus, firstly responsibility of the issuer or his administrative, supervisory body or board, and secondly, responsibility of the person offering or person requesting trading in the organised market, i.e. guarantor. Validity term of the prospectus is 12 months from the day of publishing, i.e. termination of the issue in case of non-proprietary securities which are continuously and repetitiously issued by the crediting institutions.

Article 13 contains a general obligation prescribing that no prospectus may be published prior to the decision on approval by the competent authority of the home country. The procedure of decision-making may not last se prospekt sastavlja je jezik koji je prihvatljiv u gostujućim državama ili na jeziku koji je uobičajen u međunarodnim finansijama po izboru izdavaoca, što će najčešće biti engleski jezik.

Mehanizam jedinstvenog pasoša je značajno doprineo stvaranju "zajedničkog" tržišta hartija od vrednosti, ali su brojne direktne i indirektne prepreke, koje su zadržale ili uvele pojedine države članice, onemogućile njegovu punu afirmaciju. Neujednačena primena i raznolika tumačenje u okviru Evropskog ekonomskog prostora ponajviše onemogućavaju razvoj istinskog jedinstvenog tržišta hartija od vrednosti. Između ostalog, regulatorna ograničenja i pravni rizik su onemogućili potpuno otvaranje međunarodnog tržišta duga malim investitorima. Ključ uspeha ove direktive kao i celokupnog jedinstvenog tržišta hartija je zapravo da se nacionalnim organima ne dozvoli da svojim različitim tumačenjima i postavljanjem dodatnih uslova onemoguće ostvarenje zacrtanih ciljeva. Profesionalna udruženja učesnika na tržištu identifikovala su brojna bespotrebna ograničenja zarad boljeg funkcionisanja režima koji ustanovljava ova direktiva (kao što je, na primer, praksa da nadležni organi traže originalne, poštom dostavljene primerke potvrde o odobrenju što predstavlja vremensko i finansijsko opterećenje i usporava prekograničnu ponudu hartija). U tom pravcu postoje ideje da se organizuje centralna elektronska baza izdatih prospekata.

Direktiva o transparentnosti

Ne treba podsećati koliko je za uspeh finansija i investiranja značajno vreme. Pravovremenost je vrednost, a vremešnost njen antipod. U tom pravcu inicijativa EU[7] uvažava ovaj problem pokušavajući da promoviše prvu a ukloni drugu.

Direktiva o transparentnosti nastoji da obezbedi da su finansijske informacije, koje pružaju listirane kompanije, standardizovane, redovno i brzo prezentirane investicionoj javnosti. Direktiva uvodi nekoliko novina. Prva se odnosi na obavezu izdavaoca akcija da predočava bilo kvartalne izveštaje, ili prelazni izveštaj menadžmenta koji daju sliku o finansijskoj situaciji i rezultatima za dati period. Takođe, standardizuje se sadržaj godišnjih, polugodišnjih i izveštaja menadžmenta. Novost je i propisana dužnost objavljivanja učešća u kapitalu izdavaoca čijim hartijama se trguje na regulisanom tržištu u okviru EU. Na kraju, direktiva predviđa obavezu organizovanja mehanizma za centralno čuvanje svih ovih informacija.

Na samom početku, član 3. pojašnjava pristup koji stoji iza zajedničkog regulisanja (tržišta) hartija od vrednosti, a to je da matične države članice mogu na izdavaoce i akcionare primeniti strožije zahteve od onih koji su uređeni direktivom. S druge strane, "gostujuća" država, tj. ona u kojoj su hartije primljene na organizovano tržište ne može, u vezi sa obelodanjivanjem, postaviti strožije uslove od onih predviđenih direktivom.

U delu koji se odnosi na periodično izveštavanje, za godišnje finansijske izveštaje se traži da su objavljeni najkasnije četiri meseca posle završetka finansijske godine, koja se najčešće poklapa sa kalendarskom godinom. Mora se takođe omogućiti da potom takvi izveštaji budu dostupni javnosti najkraće pet godina. Ovo, naravno, iz razloga uporedivosti i davanja mogućnosti zainteresovanim licima da vrše finansijsku analizu. Pod finansijskim izveštajima[8] imaju se u vidu oni nad kojima je izvršena revizija, koji poseduju obaveštenje menadžmenta i propratnu izjavu odgovornih lica kod izdavaoca.

Član 5. uspostavlja kao opšti standard, odnosno obavezu za izdavaoce akcija ali i dužničkih hartija od vrednosti, objavljivanje polugodišnjih izveštaja. Oni se moraju objaviti što je pre moguće, a najkasnije dva meseca posle okončanja šestomesečnog perioda uz istovetnu obavezu, kao i za godišnje, njihove dostupnosti

[7] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC

[8] U EU postoji obaveza sastavljanja finansijskih izveštaja u skladu sa međunarodnim računovodstvenim standardima.

longer than 10 working days from the day of submission of the request.

Prospectus shall be deemed accessible to public if published in one or more daily newspapers published in the member countries in which the public offering is made or where approval for trading was requested. It shall also be deemed accessible to public if made in writing and free-of-charge made accessible in the premises where trading is taking place, or in the premises of the seat of the issuer or trading intermediary, i.e. presented in an electronic form on the internet site. Competent authority shall leave the option available on its internet site for a period of not less than 12 months for taking over of the approved prospectus. If the prospectus is electronically published, issuer must allow, at the explicit request of the investor, also a free-of-charge printed copy of the prospectus.

Article 16 prescribes that every new fact, material error or incorrect information that may have an impact on the evaluation of the security, shall be mentioned in the supplement to the prospectus, if it should appear after the approval of prospectus was granted, and not later than the final closing of the public offering. Such a supplement must be approved within seven working days, and investors who have already agreed to buy or subscribe to such securities shall have the right to recall their decision within the time of not less than two working days from the day of publishing of the prospectus supplement.

Articles 17 and 18 are introducing a key novelty. They prescribe an automatic recognition of validity of the approved prospectus (and its supplement) in one member state if already approved by the competent authority of another. Namely, if the issuer should so require, or a person compiling the prospectus, national (domestic) authority must, within three working days from the day[6] of approval of the prospectus inform the competent authority of the other member state. Notification submitted to the competent authorities shall consist of a *certificate of approval* certifying that the prospectus was prepared in accordance with the Directive on Prospectus, as well as the copies of the prospectus itself. If possible, notification shall also contain the translation of the summary and translation shall be arranged by the issuer or a person which had compiled the prospectus. Competent authorities of the (guest) state can not request additional approvals nor conduct administrative procedure pertaining to an already approved prospectus. If the prospectus approval is requested for trading in other countries, and not in the home country, the language in which the prospectus shall be compiled shall be the language acceptable in the guest states or in a language which is customary in the international finances, to be selected by the issuer, which shall in most cases be the English language.

The mechanism of a single passport has substantially contributed towards the creation of a "common" securities market, but many stumbling blocks both direct and indirect, which some of the member states have retained or introduced, have obstructed its full affirmation. An uneven implementation and diverse interpretations within the European economic area mainly are making impossible the development of a truly single securities market. Regulatory constraints and legal risks, inter alia, have made impossible full opening of the international debt market to small investors. The key for success of this Directive and of the wholesome single securities market is actually for the national authorities not to be allowed with their different interpretations and imposition of additional requirements, to undermine the achievement of the set objectives. Professional associations of the markets participants have identified numerous and unnecessary limitations for better functioning of the regime established by this Directive (such as, for example, the practice for the competent authorities to request original copies of the certificate of approval sent by mail, which is both a constraint in time and a financial burden, slowing down cross-border securities offering). To that end there are ideas to organise a central electronic data base of published prospectus.

[6] Or within only one day when the request is submitted together with the prospectus draft.

javnosti narednih pet godina. Polugodišnji izveštaji se sastoje od sažetog seta finansijskih izveštaja, prelaznog obaveštenja menadžmenta (*interim management report*) i izjave odgovornog lica. Prelazno obaveštenje menadžmenta će sadržati naznaku važnih događaja koji su se dogodili u prvih šest meseci finansijske godine i njihov uticaj na sažete izveštaje sa opisom glavnih rizika i neizvesnosti za preostalih šest meseci. Za izdavaoce akcija, prelazni izveštaj menadžmenta će uključiti i glavne transakcije sa povezanim licima. Ako su šestomesečni izveštaji revidirani, izveštaj revizora treba da bude priložen.

Iako je postojala ambicija da se direktivom učini obaveznim objavljivanje kvartalnih izveštaja, kompromis je nađen uvođenjem prelaznog izveštaja menadžmenta (*interim management statement*), koji je ambiciozniji dokument od prethodno navedenog obaveštenja menadžmenta. Treba istaknuti da tačno i pouzdano informisanje, to jest ono koje u najvećoj meri odgovara stvarnosti podrazumeva, između ostalog, češće izveštavanje što je i bila namera prvobitnog predloga da se kvartalni izveštaji učine obaveznim. Loša strana takvog koncepta može biti ta da, u želji da predoče što lepšu sliku o sebi, kompanije i njihov menadžment naginju da ne prezentiraju bitne informacije i događaje kada nastanu, nego da sačekaju i objave ih sa prvim narednim kvartalnim izveštajem. Konkretna situacija vodi zloupotrebama i može se sankcionisati korpusom pravila o tržišnim zloupotrebama što, opet, samo predstavlja reakciju na već izvršeno protivpravno ponašanje.

Razumljivo je izuzeće direktive da izdavaoci hartija koji publikuju kvartalne izveštaje ne moraju da sačinjavaju prelazan izveštaj menadžmenta.[9] Prelazni izveštaj mora biti objavljen između desete nedelje od početka i šeste nedelje pre kraja odnosnog šestomesečnog perioda. Takav izveštaj treba da sadrži objašnjenje bitnih događaja i transakcija koje su se dogodile za vreme tog perioda i njihove posledice na finansijsku poziciju izdavaoca i preduzeća pod njegovom kontrolom. Uz to, treba da se dâ opšti opis finansijskog stanja i performansi izdavaoca i od njega kontrolisanih preduzeća.

Posebnom odredbom je naloženo državama članicama da, u vezi sa objavljenim informacijama, predvide odgovornost izdavaoca ili njegovog administrativnog, nadzornog ili upravnog tela, kao i da se njihovi zakoni i pravila o odgovornosti primenjuju na izdavaoca i pomenuta lica.

Predviđeni su i izuzeci od obaveze objavljivanja finansijskih izveštaja koji se primenjuju na određene izdavaoce. Lako je pretpostaviti da se radi o državi, njenim regionalnim ili lokalnim organima vlasti, zatim bilo kojoj međunarodnoj instituciji čiji je član barem jedna država članica, Evropskoj centralnoj banci i centralnim bankama država članica. Izuzeti su, osim njih, i izdavaoci koji isključivo emituju dužničke hartije, a koje su primljene na trgovanje na regulisanom tržištu i ukoliko su denominirane na iznos od najmanje 50.000 evra po hartiji.

U delu koji reguliše tekuće izveštavanje, član 9. uspostavlja dužnost obaveštavanja akcionara o sticanju učešća, odnosno prava glasa kod određenog izdavaoca akcije. Kada neko lice stekne ili raspolaže sa akcijama nekog izdavaoca i time dostigne, premaši ili padne ispod (praga od) 5%, 10%, 15%, 20%, 25%, 30%, 50% i 75% prava glasa,[10] nastaje dužnost obaveštavanja tog izdavaoca. Ona se konkretno sastoji u dostavljanju informacija o krajnjem stanju u vezi sa akcijama koje nose pravo glasa i lancu kontrolisanih preduzeća preko kojih se efektivno drže glasačka prava, ako se radi o takvom slučaju. Treba naznačiti i datum kada je prag dostignut ili premašen sa identitetom akcionara. Obaveštenje se ima dostaviti što je pre moguće, ali ne kasnije od četvrtog dana kojima se trguje. Zavisna preduzeća nemaju ovu obavezu ukoliko je njihovo društvo majka izvršila obaveštenje. Ovoj obavezi, prirodno,

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9 Treba imati u vidu da postoje države članice koje traže i kvartalno izveštavanje, a ova direktiva uvažava takvo stanje i, logično, izuzima od obaveze sastavljanja prelaznog izveštaja menadžmenta one jurisdikcije koje nameću obavezu sačinjavanja finansijskih izveštaja tromesečno.

10 Nije bitno da li je pravo glasa suspendovano ili nije.

Directive on Transparency

It is needless to recall how essential time is for success of finances and investments. Timeliness is a value, time dragging its antipode. To that end the initiative of the EU[7] respects this problem in an attempt to promote the former and remove the latter.

The Directive on Transparency strives to secure that financial information offered by the listed companies, be made in a standardised form, on regular basis and promptly presented to the investment public. The Directive introduces several novelties. The first one relates to the requirement for the issuer of shares to submit either quarterly reports, or interim management report offering a picture about the financial situation and results for the given period. In addition, contents of the annual, semi-annual and management reports are being standardised. The novelty is also a prescribed obligation to publish participation in the equity of the issuers whose securities are traded in the regulated market within the EU. Finally, the Directive prescribes the requirement to organise a mechanism for central storing of all these information.

At the very beginning, in Article 3, the approach is clarified which stands behind the joint regulation of securities (market), and it is that the home member states may apply to the issuers and shareholders stricter requirements from those prescribed in the Directive. On the other hand, "the guest" state, i.e. the one in which securities are received in the organised market, may not in relation to the notification, impose stricter requirements from those prescribed in the Directive.

In the part pertaining to the periodical reporting, for the annual financial reports it is required to have them published not later than four months after the end of the financial year, which most often coincides with the calendar year. It must be also provided that such reports, thereupon, become accessible to public for a period of not less than five years. This is done, of course, for the reason of comparability and offering an opportunity to the interested stakeholders to make financial analysis. Under financial reports[8] what is covered are those reports which have been audited, which contain management notification and an accompanying statement of the issuer's authorised persons.

Article 5 establishes as a general standard, i.e. a requirement for the issuer of shares but also of debt securities, the publishing of semi-annual reports. They must be published as soon as possible, but not later than two months after the ending of the six-month period with identical obligation, as for the annual reports, their accessibility to the public for the period of next five years. Semi-annual reports shall consist of a summarised set of financial reports, *interim management report,* and a statement of the authorised person. Interim management report shall contain designation of important events that have taken place during the first six months of the financial year and their impact on the summarised reports, together with the description of main risks and uncertainties for the remaining six months. For the shares issuers, interim management report shall include also the main transactions with related persons. If the six-month reports are audited, auditors report should also be enclosed.

Although there was an ambition for this Directive to make mandatory publishing of quarterly reports, compromise was found in the introduction of the *interim management statement*, which is a more ambitious document from the previously stated management report. It should be emphasised that accurate and reliable information, i.e. the one that to the greatest extent corresponds to the reality means, inter alia, more frequent reporting, and this was the intention of the initial proposal for the quarterly reports to be made mandatory. The disadvantage of such a concept may be the fact that in the desire to present as good a picture of themselves, companies and their

[7] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

[8] In EU there is an obligation of preparing financial reports in accordance with the international accounting standards.

ne podležu ni transakcije kojima se stiču akcije prilikom vršenja kastodi usluga ili obavljanja uloge market mejkera.

Dužnost izdavalaca da prevode sve tekuće i periodične informacije na sve službene jezike u državama članicama gde se njihovim hartijama od vrednosti trguje ne pospešuje jedinstveno tržište. Član 20. direktive olakšava poslovanje jer pruža mogućnost izbora da, u slučaju da se hartijama trguje van matične države, pored svog maternjeg jezika izdavalac koristi po izboru ili jezik gostujuće države, ili "jezik uobičajen u sferi međunarodnih finansija" što je najčešće drugi naziv za engleski jezik. Slikovitije rečeno, portugalska kompanija čijim hartijama se trguje na finskom tržištu, tj. na integrisanoj nordijskoj berzi ne mora prevoditi svoje izveštaje na finski jezik nego samo na engleski.

Državama članicama je takođe naloženo da moraju obezbediti postojanje najmanje jednog zvaničnog mehanizma koji će biti zadužen za čuvanje svih nabrojanih informacija i podataka.

Direktiva o zloupotrebama na tržištu

Novi finansijski proizvodi i tehnologije, pojačane prekogranične aktivnosti učesnika i internet pogoduju sve većoj pojavi zloupotreba na tržištu. Briga za integritet, odnosno čestitost evropskog tržišta kapitala kao i popunjavanje pravnih praznina u komunitarnom pravnom ambijentu podstakli su donošenje Direktive o zloupotrebama na tržištu[11] i na njoj zasnovanoj Direktivi Komisije 2004/72/EC[12] koja ima sprovodbenu namenu.

Ova direktiva definiše koja ponašanja se smatraju insajderskim delovanjem i tržišnim manipulacijama, a odnosi se, tj. primenjuje na finansijske instrumente kojima se trguje na regulisanom tržištu, ili za koje je podnet zahtev za trgovanje na regulisanom tržištu.

Definicija "finansijskog instrumenta" je slična onoj koja se koristi u kasnije donetoj sistemskoj MiFID direktivi, a obuhvata: prenosive hartije od vrednosti, jedinice šema kolektivnog investiranja, instrumente tržišta novca, fjučers ugovore uključujući i istovrsne *cash-settled* instrumente, forvard ugovore na kamatne stope, svopove na kamatne stope, valute i *equity*, opcije na ove pomenute instrumente, derivate na robe[13] i sve druge instrumente odobrene za trgovanje na regulisanom tržištu, ili za koje je podnet zahtev za odobrenje trgovanja.

Osnovno polazište definicije o zloupotrebama na tržištu su insajdersko delovanje i manipulacija tržištem. Član 1. direktive daje pojmovna razgraničenja o tome.

Insajderska informacija je precizna informacija koja nije dostupna javnosti, a direktno ili indirektno se odnosi na jednog ili više izdavalaca finansijskih instrumenata ili same finansijske instrumente i koja bi, da je učinjena javnom, verovatno imala znatan uticaj na formiranje cena tih finansijskih instrumenata, ili na cenu na njima zasnovanih derivativnih finansijskih instrumenata.

Tržišna manipulacija je troznačan pojam koji, kao prvo, označava transakcije ili naloge za trgovanje koji pružaju, ili bi mogli da pruže, pogrešne ili obmanjujuće signale u pogledu ponude, tražnje i cene finansijskih instrumenata, ili koji utvrđuju, od strane jednog ili lica koja deluju zajednički, cenu jednog ili više finansijskih instrumenata na abnormalnom ili veštačkom nivou ukoliko lice koje je ušlo u takvu transakciju, ili izdalo naloge za trgovanje, ne dokaže da su mu razlozi legitimni i da su te transakcije ili nalozi u skladu sa usvojenim tržišnim praksama na regulisanom tržištu u konkretnom slučaju. Kao drugo, manipulacija tržištem postoji kada transakcije ili nalozi za trgovanje koriste fiktivna sredstva ili bilo koju drugu formu obmane ili manevra. Konačno, u domen manipulacija potpada širenje informacija putem medija, interneta ili bilo kojim drugim

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11 Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)

12 Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of the lists of insiders, the notification of managers' transactions and the notification of suspicious transactions.

13 Commodities

management are tending to abstain from presenting significant information and events when they occur, but are rather inclined to wait a while and publish them in the first successive quarterly report. Concrete situation may lead to abuse and may be sanctioned by a corpus of rules on market abuse, which in turn is only a reaction to an already committed unlawful conduct.

There is an understandable exemption in the Directive prescribing that the issuers of securities publishing quarterly reports do not have the obligation to compile interim management report.[9] Interim report must be published between the tenth week from the start and the sixth week from the end of any given six-month period. Such a report should contain an explanation of the significant events and transactions that have taken place during the time of that period and their effects on the financial position of the issuer and the company under his control. In addition, it is necessary to provide a general description of the financial situation and performances of the issuer and by him controlled companies.

Special provision orders member countries, in relation to the published information, to provide for the accountability of the issuer or his administrative, supervisory or management board, and to ensure that their laws and regulations on liability and accountability are applied to the issuer and the stipulated persons.

Exemptions from the obligation to publish financial reports are also prescribed for those reports which are applicable to certain issuers. It is easy to assume that it is a question here of the sovereign state, its regional or local authorities, and also of any international institutions whose member is at least one member country, also of the European Central Bank and central banks of the member states. Exceptions also apply to the issuers who are exclusively issuing debt securities, those that are admitted to trading on a regulated market and if their denomination is an amount of not less than 50,000 EUR per security.

In the part regulating current reporting, Article 9 prescribes the duty of notification of the shareholders on the acquiring participation, i.e. the voting right with a certain share issuer. When a person acquires or holds shares of some issuer and thus reaches, surpasses or falls below (the threshold of) 5%, 10%, 15%, 20%, 25%, 30%, 50% and 75% of the voting right,[10] the duty of notification comes into force for that issuer. In concrete terms it consists of sending information on the final situation in relation to the voting right shares and the chain of controlled companies through which the effective voting right is held, if such should be the case. It is necessary to designate the date when the threshold was reached or surpassed, together with the identity of the shareholder. Notification shall be submitted as soon as possible, but not later than the fourth trading day. Dependent companies do not have this obligation if their mother company has made the notification. This obligation, naturally, does not apply to the transactions where shares are acquired during the execution of the custody services or when playing the market-maker role.

The duty of the issuers to translate all current and periodical information into all the official languages of the member states where their securities are traded does not help promote a single market. Article 20 of the Directive facilitates operations because it offers the option of choice, in case of trading in securities outside of the home country in addition to its own mother tongue for the issuer to use the language of his choice or the language of the guest state, or "the language customary in the sphere of international finance" which is most often a second name for the English language. Putting it more picturesquely, a Portuguese company with its securities traded in the Finish market, i.e. on an integrated Nordic stock exchange, does not have the duty to translate its reports into Finish language but only into English.

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9 It is important to bear in mind that there are member countries requiring also quarterly reporting, and this Directive respects this situation, and logically, exempts from the obligation of preparation of the interim management report in those jurisdictions where the obligation of preparing quarterly financial reports is present.

10 It is not important whether the voting right is suspended or not.

sredstvom koje pruža, ili bi moglo da pruži, pogrešne ili obmanjujuće signale u pogledu finansijskih instrumenata uključujući širenje glasina kao i pogrešnih ili obmanjujućih vesti. Ovo sve uz uslov da je lice koje širi takve informacije znalo, ili moralo znati, da je takva informacija pogrešna ili obmanjujuća. U slučaju novinara koji vrše svoju profesionalnu dužnost, procenjuje se da li je takvim širenjem informacija izvršena manipulacija osim ukoliko je očigledno da novinar direktno ili indirektno izvlači korist.

Direktiva potom nabraja određene nedozvoljene i prevarne prakse. Tu spadaju ponašanja koja vode ka stvaranju dominantne pozicije putem ponude i tražnje za finansijskim instrumentom koji za posledicu ima, direktno ili indirektno, fiksiranje kupovnih i prodajnih cena, ili stvaranje drugih nepoštenih uslova trgovanja. Vrlo je interesantno, pogotovo za naše prilike na tržištu, citiranje u direktivi obmanjujuće prakse kupovine ili prodaje finansijskih instrumenata pred samo zatvaranje trgovanja sa posledicom navođenja na pogrešan zaključak investitora koji se rukovode cenom na zatvaranju. Manipulisanje takođe predstavlja povremeno ili redovno korišćenje dostupnosti tradicionalnih ili elektronskih medija objavljivanjem mišljenja o finansijskom instrumentu (ili indirektno o njegovom izdavaocu) uz prethodno zauzimanje pozicija u istom i potonje iskorišćavanje posledica koje je proizvelo tako objavljeno mišljenje.

Osim definicije insajderske informacije, članom 2. se uspostavlja zabrana korišćenja takvih informacija od lica koja ih poseduju. Takva lica dolaze prvenstveno iz redova administrativnih, upravnih ili nadzornih tela izdavaoca, a to su i ona lica koja imaju učešće u kapitalu izdavaoca kao i lica koja poseduju insajderske informacije na osnovu svog zaposlenja, profesije i dužnosti, ili su ih stekla svojim kriminalnim aktivnostima. Prilikom sticanja ili raspolaganja finansijskih instrumenata sva ova lica ne smeju koristiti insajderske informacije, odnosno pokušati da ih steknu ili iskoriste za svoj račun ili račun drugog lica.

U uvodnom delu veoma je interesantno obraćanje pisaca direktive tržišnim operatorima, tj. berzama i OTC tržištima o njihovom doprinosu prevenciji zloupotreba na tržištu - usvajanjem strukturnih propisa koji imaju za cilj sprečavanje i detekciju manipulativnih praksi. Direktiva zapravo postavlja domaći zadatak državama članicama, tačnije berzama koje drže

Member countries are also ordered to provide for the presence of not less than one official mechanism in charge of storing keeping of all the above mentioned information and data.

Directive on Market Abuse

The new financial products and technologies, intensified cross-border activities of participants and the internet offer good grounds for a growing number of market abuses. The care for integrity, i.e. honesty of the European capital market and filling-in the legal blanks in the communitarian legal environment have instigated the adoption of the Directive on Market Abuses[11] and on its basis established Directive of the Commission 204/72/EC[12] which has the enforcement properties.

This Directive defines which conduct is to be deemed insider action and market manipulation, and pertains to, i.e. is applied to the financial instruments traded in the regulated market, or those that are subject of the request for trading in the regulated market.

Definition of "financial instruments" is similar to the one used in the later adopted systemic MiFID Directive and covers: transferable securities, collective investments scheme units, money market instruments, futures contracts including all the same type *cash-settled* instruments, interest rate forward contracts, interest rate, currency and *equity* swaps, options on these mentioned instruments, commodities derivatives[13] and all other instruments approved for trading in the regulated market, or those subject of the submitted request for trading approval.

The basic grounds for the definition of market abuse are the insider dealing and market manipulation. Article 1 of the Directive offers terminological differentiation in this respect.

Insider information is a precise information which is not accessible to public, and in a direct or indirect way pertains to one or more issuers of financial instruments or to financial instruments themselves, and which would, if made public, probably have a significant impact on price formation of these financial instruments, or the pricing of derivative financial instruments based on them.

Market manipulation is a three-fold meaningful notion which designates, firstly, transactions or trading orders that offer or might offer, erroneous or misleading signals regarding the offer, demand and pricing of one or more financial instruments at an abnormal or artificial level, if the person that has ventured into such a transaction, or has given orders for trading, should fail to prove that his reasons were legitimate and that those transactions or orders were in accordance with the adopted market practices in the regulated market in that particular case. Secondly, market manipulation shall be deemed to exist when transactions or trading orders are using fictitious funds or any other form of deception or manoeuvring. Finally, the field of manipulation covers spreading information through media, internet or any other means available, which offers of might offer erroneous or misleading signals regarding financial instruments, including spreading rumours as well as erroneous or misleading news. All this provided the person spreading such information had the knowledge, or must have had the knowledge, that such information was erroneous or misleading. In the case of reporters, journalists doing their professional duties, it must be determined whether such spreading of information caused manipulation to occur, except when it is obvious that the reporter or journalist was having a direct or indirect gain in this respect.

The Directive continues to enumerate certain illicit and fraudulent practices. This covers the

[11] Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider trading and market manipulation (market abuse).

[12] Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of insider information in relation to derivatives on commodities, the drawing up of the list of insiders, the notification of managers' transactions and the notification of suspicious transactions.

[13] Commodities

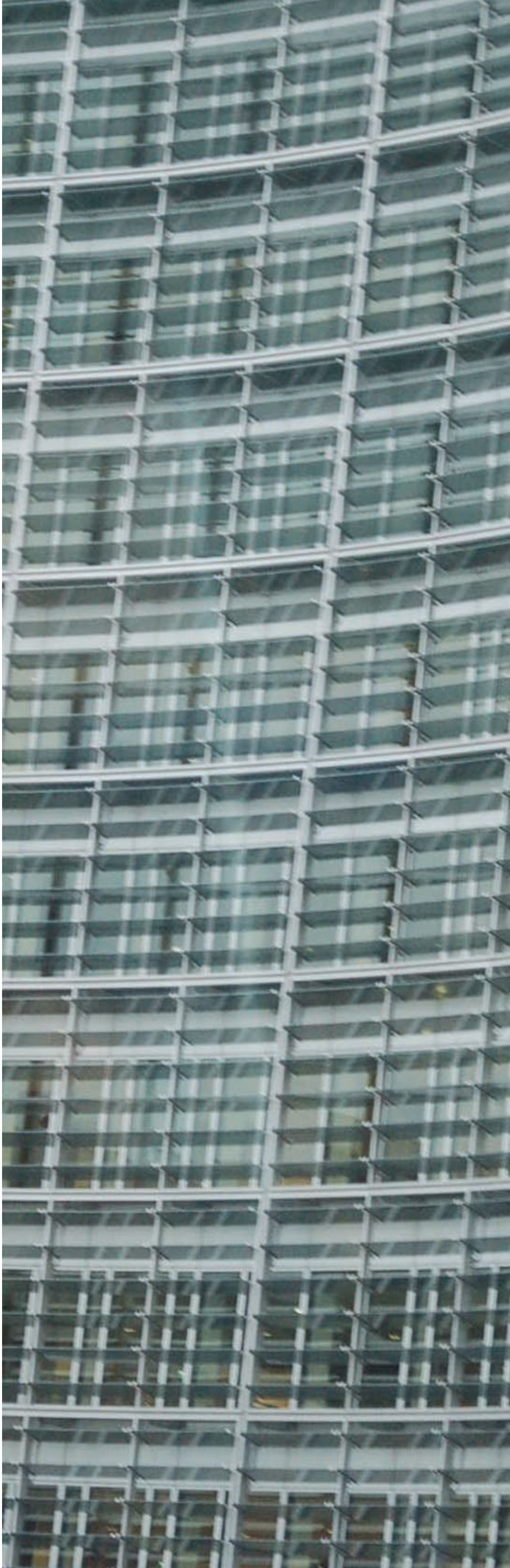
do visokih standarda integriteta tržišta i etičnog poslovanja. Napredni propisi i standardi koje tržišni operatori treba da donesu uključuju: transparentnost u pogledu zaključenih transakcija, potpuno obelodanjivanje sporazuma koji vode regulisanju cena, fer sistem uparivanja naloga, uvođenje šeme osposobljene za efikasno otkrivanje atipičnih naloga, solidan sistem za utvrđivanje cena koje su referentne za finansijske instrumente, kao i jasnost pravila o suspenziji trgovanja.

Član 6. nameće obavezu izdavaocima da što pre obaveste javnost o insajderskim informacijama koje se direktno tiču izdavaoca. To se, po direktivi, najbolje može postići ostavljanjem obaveze izdavaocima da za određeni period na svojoj internet stranici objave sve takve informacije. Izdavaocima je data mogućnost da, pod svojom odgovornošću, odlože javno objavljivanje informacija pod uslovom da takvo odlaganje ne dovodi investicionu javnost u zabludu i da se obezbedi tajnost neobjavljenih informacija. Kada izdavalac, ili gorepomenuta lica koja rade za izdavaoca, objave insajdersku informaciju trećim licima, dužna su takođe da tu informaciju kompletno i blagovremeno objave javnosti.

Lica koja kod izdavaoca obavljaju menadžersku funkciju moraju da obaveste nadzorni organ o transakcijama izvršenim za svoj račun a koje se tiču akcija izdavaoca, ili derivata i drugih finansijskih instrumenata povezanih sa pomenutim izdavaocem. Osim obaveštavanja nadzornog organa, postoji obaveza da se što pre omogući javan pristup informacijama o tako zaključenim transakcijama.

Jedna od najnaprednijih novina koje donosi direktiva odnosi se na obavezu sastavljanja posebne liste insajdera, odnosno lica koja rade za izdavaoca a koja imaju pristup insajderskim informacijama. Ova lista se mora redovno ažurirati i dostaviti nadzornom organu po njegovom zahtevu. Takođe, bilo koja osoba koja prilikom vršenja svoje profesije, a pri obavljanju transakcije povodom finansijskog instrumenta, osnovano posumnja da transakcija ima obeležja insajderskog delovanja ili tržišne manipulacije o tome, bez odlaganja, mora obavestiti nadzorni organ.

Član 8. direktive izričito izuzima iz sfere



conduct leading to the creation of a dominant position through supply and demand for financial instruments having as a consequence a direct or indirect fixing of purchase and selling prices, or a creation of other dishonest trading conditions. It is very interesting to note, especially for our situation on the market, the quotation in the Directive of the misleading practices for the purchase and sales of financial instruments immediately before the closing bell of trading, with the consequence of misleading the investors to an erroneous conclusion led by the closing bell price. Manipulation is also deemed to be an occasional or regular use of access by traditional or electronic media in publishing opinions on a certain financial instrument (or indirectly on its issuer) with a prior positioning in the same and the post-festum benefiting from the consequences derived from such a published opinion.

In addition to the definition of insider information, Article 2 establishes the prohibition on the use of any such information by the persons in possession of the same. Such persons primarily come from the ranks of administrative, managing or supervisory authorities of the issuer, and they are those persons who have the share in the capital of the issuers, as well as persons in possession of insider information on the basis of their employment, work post, profession and duties, or those who have gained such information through their criminal activities. In the process of acquiring or using financial instruments, all of those persons are not permitted to use insider information, i.e. attempt to acquire or use them for their own account or for the account of any other persons.

In the introduction, there is a very interesting address by the authors of the Directive to the market operators, i.e. stock exchanges and the OTC markets on their contribution towards the prevention of market abuse - through adoption of professional regulations aimed at prevention and detection of manipulative practices. The Directive in fact is actually giving homework to the member states, more specifically, to the stock exchanges upholding the high standards of market integrity and ethical dealings. Progressive regulations and standards that the market operators are to adopt include transparency with respect to concluded transactions, total disclosure of agreements leading towards price regulation, fair system of orders matching, introduction of the scheme capable of an efficient identification of atypical orders, a solid system of pricing for those prices that serve as reference prices for financial instruments, and the clarity of rule on trading suspension.

Article 6 imposes an obligation on the issuers to inform the public promptly on insider information that have a direct impact on the issuer. According to the Directive, this is best achieved by prescribing a requirement for the issuers to publish on their internet site all such information for a certain period of time. Issuers are also given an option, under their own liability, to postpone public disclosure of information provided such postponement shall not bring the investment public in a delusion, and shall provide for secrecy and confidentiality of undisclosed information. Once the issuer, or any of the above stated persons working for the issuer, shall disclose the insider information to third persons, they must disclose that information fully and timely also to the public.

Persons holding managerial functions with the issuer must inform the competent authority of transactions made for their own account, those that pertain to the shares of the issuer, or derivatives and other financial instruments connected with the said issuer. In addition to the information given to the competent authority, there is also a requirement to allow as soon as possible public access to information on so concluded transactions.

One of the most progressive novelties in the Directive refers to the obligation of compiling a separate list of insiders, i.e. those persons working for the issuer which are having access to the insider information. This list must be updated on regular basis and submitted to the competent authority at its request. Furthermore, any person that shall during the execution of its professional duties, and in executing transaction in relation to the financial instrument, have grounds for suspicion that such a transaction has the features of an insider dealing or market manipulation, must promptly inform the supervisory authority to that effect.

tržišnih zloupotreba programe sticanja sopstvenih akcija koji u određenim situacijama mogu biti legitimni. Slično, pristup insajderskim informacijama koje se odnose na drugu kompaniju i njihovo korišćenje u kontekstu ponude za preuzimanje ili spajanja kompanija, samo po sebi, ne predstavlja insajdersko delovanje.

Poslednjih nekoliko odredaba direktive ustanovljava kriterijume bilateralne saradnje nadzornih organa država članica i saradnje kroz zajednički forum - Komitet evropskih regulatora hartija od vrednosti.

U SAD se za nezakonita ponašanja često završava u zatvoru, a čuvena britanska finansijska vlast (*Financial Services Authority*) je fizičkim licima za prevarne radnje izricala kazne u iznosima i do par stotina hiljada funti, a pravnim licima i višemilionske sume.

Zaključak

Iz postojeće globalne krize poverenja jedna od pouka se već nazire, a to je da deregulaciju pobeđuje regulatorni pristup. Izložena pravila Evropske unije i ceo paket mera iz Akcionog plana za finansijske usluge nameću se ne samo kao model nego kao preka potreba. Dobra informisanost i transparentnost može da predupredi rizično postupanje investitora, a potražiocima kapitala da odagna pomisli da se manipulisanjem i skrivanjem informacija može profitirati. Veliki zadatak je pred našim regulatornim organima, ali i izvesna privilegija jer s jedne adrese dobijaju kodifikovani skup najboljih praksi razvijenih zemalja Evrope u sferi regulative finansijskih tržišta. Usvojena rešenja su ne samo uzori koji mogu biti od koristi prilikom izrade naših propisa, nego predstavljaju za nas, pogotovo posle stupanja na snagu Sporazuma o stabilizaciji i pridruživanju, obavezujući izvor prava. Visoko postavljeni zahtevi i dosledno sprovođenje evropskih kriterijuma isprva mogu izgledati nedostižni. Međutim, čvrsta rešenost uz proaktivan pristup regulatora i operatora tržišta, solidan pravni okvir koji daje ovlašćenja, obaveze i sankcije, kao i uvođenje modernih tehnoloških dostignuća koja omogućavaju prismotru između samih učesnika, vrlo brzo ideal mogu da pretvore u realnost i na našem tržištu kapitala.

Literatura i izvori

1. "Quantification of the Macro-Economic Impact of Integration of EU Financial Markets", Final Report to the European Commission by London Economics, November 2002
2. The ICMA response to the CESR's Call for Evidence on the Supervisory Functioning of the Prospectus Directive and Regulation, 29 January 2007

Article 8 of the Directive explicitly exempts from the sphere of market abuse the program of acquiring own shares which in certain situations may be legitimate. Similarly, the access to insider information which pertains to some other company and the use of such information in the context of an offer for the take-over or merger of companies, in itself shall not be deemed to be an insider dealing.

Several of the last provisions in the Directive are setting up criteria for bilateral cooperation between the supervisory authorities of the member countries and cooperation through the joint forum - Committee of European Securities Regulators.

In the USA the illicit conduct often ends up in jail, and the eminent British *Financial Services Authority* was pronouncing sentences to physical persons for fraudulent offences in the amounts going as high as a couple of hundreds of thousands of pounds sterling, charging legal entities even with several millions in fines.

Conclusion

In the present global confidence crisis there is one lesson to be learned and which is already on the horizon, and it is that a deregulation is being defeated by the regulatory approach. The presented regulations of the European Union and the entire package of measures from the Action Plan for financial services are imposing themselves not only as models, but also as a dire need. Proper information and transparency may preclude risky dealings of investors, and disperse the thought of those looking for capital of making profit through manipulation and concealing information. There is a great task facing our regulatory authorities, but also a certain privilege because they are receiving from one source a codified set of the best practices applied in the developed countries of Europe in the sphere of regulatory framework for financial markets. The solutions adopted are not only role-models that can be useful in drafting of our own regulations, but they represent for us, especially after coming into force of the Stabilisation and Accession Agreement, a mandatory source of law. Highly set requirements and a consistent implementation of the European criteria may seem, at first, to be unattainable. Firm resolution, however, together with a proactive approach of the regulator and market operators, a solid legal framework giving authority, setting obligations and sanctions, but also the introduction of modern technological achievements making possible oversight and supervision amongst the participants themselves, they can all together make the ideal turn into reality in our own capital market.

Literature and sources

1. "Quantification of the Macro-Economic Impact of Integration of EU Financial Markets", Final Report to the European Commission by London Economics, November 2002.
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